The Israeli Settlements from the Perspective of International Humanitarian Law

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Settlement forms one of the main pillars of the Zionist movement. It is in fact the reason, method, and goal behind this movement. Therefore, when the movement engages in settlement practices, it acts as if it is in fact practicing an undisputable right. This supposition seems to be true to a far extent. How else can we then explain that the whole world stands on one side while the Israeli Government stands on the other, challenging not only the positions of the states of the world and trends of the international public opinion, but, more importantly international legitimacy itself. The various international legal institutions, it should be noted, have never hesitated to express in the clearest legal terms the illegality of the Israeli settlements.

Israeli settlement, however, continues, without any obstacles except for internal factors, which are sometimes due to ideological disparities or economic priorities. The general principle of settlement is subject only to Israeli Law itself, which appears to observers as superior to International Law.

What is happening is in fact quite astonishing. When there seems to be a certain dispute over an Israeli settlement, the Israeli 'High Court' is approached. Its verdicts are considered 'decisive', so after they are issued, the settlements are considered 'clear' or 'legal', their legality no longer a cause for suspicion. It is very probable that there is not a single settlement in the occupied territories that was not looked into, or is not being looked into at present, by the Israeli High Court. It should be added here that this would seem to be intentional, the goal being to grant the settlements a 'certificate of innocence' that allows settlers to live in them without feeling any guilt!

It is annoying that even the Israeli peace movement joins in this game of legality. For example, it published in April 1999, a report which pointed out that "17 settlements had been illegally established" in the West Bank in the aftermath of the 'Wye River' Accord. Such statements give support to the Israeli official game. This however imposes the question of who, if anyone, legalized the previous 150 settlements

since it is implied that only the new settlements are illegal. In addition, is the Israeli peace movement of the opinion that settlements acquire their legality from Israeli Law?

The phenomenon of resorting to the High Court is very disturbing. When the legal system is formulated this way to circumvent International Law, and is used to serve selfish and racist attitudes, then the credibility of the judiciary and the whole judicial system becomes questionable. This is particularly so if we consider the fact that the judicial system's legality is based on an international resolution, without which it could not have come into existence.

This study is a serious effort to put things in order through explaining the legal background of the Israeli settlement movement and refuting its allegations as well as its claims on which the settlement policy and programs were based.

The study is also a serious research. The researcher ascertains the real legal position of these settlements, which represent a form of aggression against international legality and an infringement of basic human rights. Moreover, he makes it clear that the settlements are a destructive element in the context of the peace process and coexistence among nations.

In short, the study is a highly important document that can be used to support the Palestinian position in various legal endeavors.

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Introduction

Immediately after the Israeli forces secured full control of the occupied Palestinian territories during their armed aggression against the Arab countries in June 1967, the political leadership of the occupying state started formulating and implementing its plans and projects for settlement in the occupied territories. The aim was to create a whole range of political, social, and economic effects that would have impact on both the geographical and demographic levels of these territories.

Palestinian public and private land and properties were targeted by the policy of the Israeli occupation forces, which resorted to various methods of taking them away from their owners. The following are among the most flagrant:

1. Abusing the rules of International Humanitarian Law

The Israeli occupation forces abused the provisions and rules of International Humanitarian Law, which permitted the occupier to administer and benefit from the lands and governmental properties. In this regard, the command of the Israeli occupation forces issued Military Order[1] No. 59 on 13 July 1967, which authorized the Israeli military commander to extend his responsibility to include all State land and properties in the occupied Palestinian territories. The commander was also authorized to take any measure he deemed fit pertaining to these.

Because of the unstable political and administrative conditions that existed in the Palestinian territories at the end of the Ottoman rule in Palestine Following World War 1, the land was not officially registered in accordance with the Land Settlement Deeds Law, which was put into practice by the British Mandate Government in Palestine. The Israeli occupation authorities abused the situation and declared in the

[1] Only one third of the Palestinian lands were officially registered in accordance with the law pertaining to land settlement deeds upon the occupation of the West Bank. See

Raja Shehadeh, Occupier's Law: ***Israel and the West Bank,*** issued by the Institute for Palestine Studies/ Kuwait University, Beirut, 1st edition, 1990, p.34.

above-mentioned military order all unregistered land State land and proceeded to use this order whenever there was a desire to expropriate more land[2].

The authority to administrate and control any plot of land classified by the military command as State land was given to the Custodian of State Properties. Military Order No. 364 of 1969, which followed Military Order No. 59, relieved the Custodian of the burden of proving that the decision taken by the military command was sound, and demanded instead that the injured party (the land or property owner) prove his or her ownership of the land.

Today, as then, it is difficult for the Palestinian owners of the land that was declared State land to prove their ownership because they are not in possession of official land deeds, the reason being that land settlement deeds were never formally completed before the occupation. This is of special importance because the Military Objections Committee, which was established to look into Palestinian objections against the Israeli military decisions, does not accept documents proving land registration at the Tax Department as proof of land ownership. This, in fact, makes it practically impossible for the Palestinian landowners to prove their ownership of their land, forcing them to surrender to the decision of the military command and consequently forfeit the land in question.

2.Seizing the absentees' land and properties

The military command of the Israeli occupation forces issued Military Order No. 58, which defined absentees as those who left the West Bank before, during, or after the war. The Israeli military commander appointed a guardian, referred to as the Guardian of Absentees' Properties, for the immovable properties of such people. The Guardian was authorized by military orders to conclude real estate deals, sell, and register land.

Based on his legal authority as stated in military orders, the Guardian

[2] For more, see: Amin Dawwas, "The Israeli Settlements in Light of International Law," ***Economic Samed Magazine***, No.90 of October & November 1992, pp.95-106. In Arabic. (Samed is an economic, social and labor periodical issued by the Samed institution.)

of Absentees' Properties has contributed over the years to helping Israeli occupation forces seize and expropriate vast areas of land owned by Palestinians who were classified as absentees. The fact that the Palestinian owners were absent from their homeland and properties has relieved the military command of indulging into disputes with them and given the concerned Israeli authorities the benefit of being able to deal with the said properties without any opposition.

3. Expropriation of land for public use

Military Order No. 321 of 1969 permitted the occupation forces to confiscate and appropriate land in the occupied region of Palestine for public purposes. The military command of the occupying state used that order to expropriate thousands of dunums of land under the pretext of requiring them for public use, only to actually transferred the land to Jewish groups who were willing to settle in the occupied Palestinian territories.

4. The buying and possessing of Palestinian land by Israelis

In addition to the aforementioned measures and means, the occupation forces allowed the citizens of the occupying state to purchase immovable properties in the occupied Palestinian territories. Absolute confidentiality was imposed on such deals by the Israeli command to protect those who were willing to sell their land and properties to subjects of the State of Israel.

5. Seizing the land and properties for military purposes

The Israeli occupation forces resorted to the expropriation of large areas of Palestinian land under the pretext of security requirements. In this regard, they exploited the rules and provisions of International Humanitarian Law, which permits the occupier to seize movable and immovable properties if the security and military needs of the occupying forces required this.

The Israeli occupation forces were able through these various means to

confiscate and acquire large areas of the occupied Palestinian territories. The land confiscated from the beginning of the occupation until the first quarter of 1999 is estimated at 70 percent of the total area of the West Bank and about 48 percent of the Gaza Strip. The confiscated land was essentially used for the establishment of approximately 200 residential settlements to absorb thousands of citizens of the State of Israel and incoming immigrants from various parts of the world. These immigrants came to the settlements for religious reasons and/or with the intention of benefiting from the subsidies and privileges granted them by the State of Israel, international Zionist organizations, and organizations that support and finance settlement.

Consecutive Israeli governments continued their confiscation of the Palestinian land and property for the purpose of settlement*. These acts continued despite the political negotiations between the Palestinian and Israeli parties, which, conducted between the PLO as the sole legitimate representative of the Palestinian people and the political leadership of Israel, led to the Declaration of Principles**. Endorsed in Washington on 13 September 1993, the Declaration is considered a legal document that stipulates the legal principles and foundations that should be adopted by both parties in formulating the content and framework of the final and permanent solution to the conflict between them. The area of land confiscated since the endorsement of the Declaration of Principles until the present day exceeds 400,000 dunums. In addition, thousands of dunums were seized for the purpose of constructing by-pass roads for settlers.

Through their concentrated settlement campaign and confiscation of Palestinian land, the Israeli occupation authorities seek to exploit the

* This continuation came at a time when Israel had announced its commitment to the endorsed agreements with the Palestinian party, to respecting the exiting conditions, and to not violating or changing them. Among these agreements is the Washington Interim Agreement, the provisions of which force the parties not to execute any action that may prejudice the existing situation in the occupied Palestinian territories during the interim agreement. Article No. 31of this agreement states the following: *7. Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.*

** The Declaration was completed later by the Washington Interim Agreement endorsed in Washington, 28 September 1995. The provisions of this agreement clarified and explained the guidelines of the Declaration and its basic principles.

interim period, which was agreed upon in the Palestinian-Israeli agreements, in order to possess the maximum area of Palestine and impose this *de facto* situation on the Palestinian party in the final status negotiations. What confirms this is the fact that many Israeli leaders, on more than one occasion, have affirmed that the area of land from which Israel is to retreat will not exceed, even in the event of a final agreement being reached, 50 percent of the total area of the Palestinian territories.

The dangers of settlement and its destructive effects are not limited to the fact that they harm the region of Palestine and infringe on the most basic right of the Palestinians, namely self-determination. The destructive effects, as we will explain later, have far exceeded that. This phenomenon has violated the geographical unity of the Palestinian territories as these settlements separate the various cities and residential gatherings from each other, and maintain obvious control over the structural and organizational plans of the Palestinian towns. They have also forced Palestinian cities to develop and expand in directions that do not suit the needs of the local residents and institutions. In addition, the settlement activities have also contributed directly to undermining the Palestinian agricultural sector, which is considered the mainstay of the Palestinian economy, through the continued confiscation of Palestinian land, agricultural properties, and water resources, and the conversion of thousands of dunums of agricultural land to other purposes.

Probably the most dangerous aspect of the current Israeli settlement activities in the occupied Palestinian territories is the intellectual and ideological developments of settlers who have arrived in the occupied territories. These settlers have become the main source of danger threatening the Palestinian citizens. The fact that they have begun to organize themselves into armed military organizations in order to confront the Palestinians should a situation demanding this arise makes them all the more dangerous.

There is no doubt that the Israeli settlement program is a blatant violation of the human rights of the Palestinian people. The negative effect of the settlements on Palestinian human rights becomes obvious in the practical derogation and denial of certain basic rights and freedoms. These include rights guaranteed in the Universal

Declaration of Human Rights, the International Covenant of Civil and Political rights, and the Covenant on Economic, Social and Cultural rights. It is not any exaggeration to say that Palestinian human rights and their various ramifications have been lost in terms of content and meaning because of Israeli settlement. The rights and freedoms of the Palestinians will remain negated and denied as long as Israeli settlement continues in the occupied Palestinian territories. It is impossible for the Palestinians to reach a point where they can enjoy their human rights and basic freedoms, as specified by the International Bill of Human Rights, as long as they continue to be subjected to settlement, occupation, and foreign control.

The importance of studying settlement and its various legal dimensions is related to the legal problems raised by this issue. The following are just a few of these problems:

Can the Israeli occupation forces invest their aggression and illegal presence in the Palestinian territories to impose a *de facto* policy and annex parts of Palestine? If they are unable to do this, then what is the legal system that governs and organizes the Israeli presence in the Palestinian territories and what are the provisions of this system in terms of these practices? On the other hand, what are the rights given to the Palestinian party in terms of confronting this phenomenon? In addition, can the Palestinians hold the Israeli party accountable for the destruction, dilapidation, and confiscation of their property by the occupation forces for settlement purposes or for the stealing of Palestinian water resources for the settlers' benefit and that of the State of Israel?

What rights do the Palestinians have in confronting settlers? Can the Palestinians hold them accountable for their illegal actions against the civil inhabitants of the occupied territories, and what is the nature and limit of these Palestinian rights if they exist? Finally, what is the role of the international community? Do the countries of the world have the right to intervene and support the Palestinian people in confronting the threat of plunder and destruction, which endangers their land, properties, and wealth? If such a right exists in the provisions of International Law, then what is its content? What are the available means and mechanisms that could be used? In addition, to what extent can the international community use this right?

These legal problems were what motivated Al-Haq to study and research this topic. What also underlined the importance of this topic is the fact that it is closely linked to both individual and collective human rights and freedoms, which makes it closely related to the activities of Al-Haq, an institution concerned with human rights and the sovereignty of law in the Palestinian society.

Our study of the settlement issue in the occupied Palestinian territories aims only at reviewing and discussing various legal dimensions of Israeli settlement in light of the rules and laws of International Humanitarian Law and Public International Law. Therefore, we restricted our study to the sheer legal framework, and avoided, as much as possible, discussing other aspects of the settlement activity, except when linked to the main topic of this study.

With regard to the way we will treat this issue and its various legal aspects, the study has been divided into five basic sections:

The **first** section has been allocated for discussion of the legal nature of Palestine and the legal rules and regulations that govern and regulate the Israeli presence in it. This topic was selected as a prelude for this study due to several considerations, most important of which is the continuing Israeli attempt to cast doubt on the applicability of the Fourth Geneva Convention on the Palestinian territories under Israeli control.

On the other hand, it is not possible to evaluate the various practices and behaviors of Israel in Palestine without accurately identifying the nature of the international legal system that regulates these territories.

After we identify the law that should be applied in the Palestinian territories, we have then dealt in the **second** section with the various effects and repercussions of settlement on the occupied Palestinian territories. In this regard, we tried as far as possible to cover all aspects of these repercussions and effects and to support our findings with Israeli or neutral statistics.

The **third** section has been allocated for evaluating allegations and legal justifications presented by the Israeli Government to legalize the ongoing Israeli settlement in the occupied territories and to relieve Israel of any international accountability concerning these activities. We also clarified in the second part the nature of these allegations and

justifications and their legal position as presented by the Israeli governments and jurists, depending on the concrete facts and the laws and rules of International Humanitarian Law pertaining to belligerent occupation and Public International Law.

In order to discuss the legal aspects of the settlement phenomenon in a neutral and objective way, we have allocated the **fourth** section for evaluating the Israeli practices from the perspective of International Law. In this regard, we dealt in the first part of this section with the rights and commitments of the occupier concerning the properties in the occupied Palestinian territories and the limits imposed on the occupier in this regard. We concluded this topic by identifying the legal meaning of settlement (legal adaptation) in the context of Human International Law and from the perspective of Public International Law.

Finally, the **fifth** and last section of this study has been devoted to discussing the international responsibility of the occupying state because of its settlement practices. In this regards we divided the subtitles of this section into two parts. The first we allocated for clarifying the international responsibility and its various components and effects including the nature and substance of the Palestinian rights in light of the Israeli violations of International Humanitarian Law and Public International Law. The second part then clarifies the responsibility of the three parties, namely the world community in general, individual countries, and the United Nations.

We have concluded this study with the most important findings and remarks.

Chapter One

The legal nature of Palestine and the legal rules that govern it

The legal status of Palestine and the kind of legal rules that are applicable there are distinguished and of great importance. This is due to the conflict and non-agreement they provoke among the parties involved in the conflict. While the Palestinian leadership and the UN, with its various agencies and branches, insist that the description of 'occupied territories' is applicable to the Palestinian territories under the control and administration of the Israeli forces, and therefore that the provisions and rules of belligerent occupation are applicable to them, the Israeli Government refuses to acknowledge this status using various allegations and pretexts.

We believe it is important to include a special legal introduction to our study, through which we discuss the legal status of Palestine, the kind of legal rules that govern it, and their significance. This is important since we will discuss the Israeli practices and evaluate them based on these legal rules.

1. International Humanitarian Law's understanding of belligerent occupation and its legal rules

1/1 Defining belligerent occupation and its conditions

Article 42 of the Land War Regulations attached to the Fourth Hague Accord of 1907, defined belligerent occupation: "*Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised*".

Annotators of International Law defined it as any form of capture and control that exceeds a mere invasion of enemy regions with the aim of temporarily[3] possessing them. 'Hide'[4] defines it as a stage in the war that directly follows the invasion, when the hostile forces of a certain country are able to enter the region of another and to actually control it. This is achieved after the forces are able to crush the resistance of the other party and destroy it.

International and national courts dealt with the concept and nature of this phenomenon in the context of their dealings with topics related to belligerent occupation. In one case that the Nuremberg military court looked into, it ruled that invasion is a military operation, while occupation is something that requires that a new administration take governmental control, replacing a previous authority. It is assumed in this case that the resistance of the other party has already been crushed and that the occupation forces have succeeded in establishing a new administration to preserve order and law. When that is accomplished, the territories become occupied.[5]

In a similar case, the Higher Italian Military Court commented, in 1946, on the concept of belligerent occupation saying that invasion and occupation assume the presence of the armed forces of a certain state on the territory of another hostile state. What in fact differentiates the two cases is the fact that occupation leads to an actual transfer of authority and administration from the state whose territories are occupied to the new occupation authorities. Such a transfer is not realized in the case of invasion.[6]

As is clear from the previous concepts and definitions of the meaning of the term legal belligerent occupation, in order for belligerent occupation to be legally established, the following should take place:

[3] Openheim. ***International Law ed.*** by H. Lauter pact Vol. 2, London, 1969, p.167.

[4] Muhiee Al-Deen Ashmawi, ***The Rights of Civilians under Belligerent Occupation***, Cairo, 1972, p.100. (In Arabic.)

[5] Dr. Tayseer Al-Nabulsi, ***The Israeli Occupation of the Arab Territories***, A series of Palestinian researches No. 62. Issued by the PLO, Research Center, Beirut, April 1975, p.77.

[6] Dr. Muhiee Al-Deen Ashmawi, previous resource p. 101.

One: The armed forces of a hostile country should cross into the region of another state.

This means that the hostile forces actually cross the geographical borders of another state, or, in clearer terms, that the hostile armed forces cross the geographical borders of the territories that are recognized by third parties as legally belonging to the state whose territories are being invaded.

Second: The hostile forces should succeed in crushing and quelling the resistance of the other party.

This is achieved when the legal government and administration of the region are excluded and replaced by the administration of the occupying state. This administration consequently enjoys actual authority according to the rules and provisions of the Law of Belligerent Occupation. Annotators also add to that the success of hostile foreign forces in restoring and maintaining security and order in these regions, their running various affairs in the region through the newly established military authority, and their maintaining the capability to impose and consolidate order and security on these territories in a constant manner.[7]

1-2 The rules of International Humanitarian Law

The rules of International Humanitarian Law, particularly the rules pertaining to belligerent occupation, are characterized by being legal customary rules that were collected and codified in a consecutive series of collective international agreements. These agreements started with the Hague Charter of 1899, which related to the laws and customs of land warfare*. The content of this charter regulated and contained

[7] See also: Dr. Aisha Rateb, Some of the Legal Aspects of the Arab-Israeli Conflict, (Arabic) Cairo, 1969, pp.112-113.

Dr. Muhiee Al-Deen Ashmawi, op. cit, pp.105-107.

* The Brussels Conference held in the period between late July and the beginning of August 1874 is considered the first serious international attempt to codify and collect the followed customs and habits of land war that were being adhered to by the international community at the time. This conference failed, however, because the conferees did not agree on the prepared international draft agreements and charts.

the most important acknowledged international customs and habits pertaining to the state of belligerent occupation. It was followed by the Hague Charter of 1907, which also dealt with the laws and customs of land warfare. What is worth noting is that the second Hague Charter had almost nothing to add to the previous one, and therefore its content was no more than almost a verbatim repetition of the provisions and texts of the Hague Charter of 1899.

Following World War II, the activities of collecting and codifying the rules of the Belligerent Occupation Law witnessed a noticeable development with the formulation and endorsement of the four Geneva conventions on 12 August 1949*. What is of concern to us among these agreements is the Fourth Geneva Convention, which deals with the protection of civilians in times of war. The substance of this convention has become the basis and core of International Humanitarian law, particularly the rules pertaining to the Belligerent Occupation Law, because of its comprehensiveness in comparison with the rules and substance of the previous Hague charters and due to the legal innovations it introduced. This is manifested in the principles and concepts pertaining to the specification of the rights and commitments of the occupier and the rights of the adversary parties.

In 1977, a new and distinguished step was taken in the field of collecting and codifying the rules of International Humanitarian Law when the international community formulated and endorsed the First Geneva Protocol, which complemented the four conventions relating to the protection of victims of international armed conflicts. The protocol is rightly considered a valuable contribution and a successful addition through which the international family tried to compensate for and avoid the deficiencies or gaps of the previous agreements.

Despite the continuous international efforts to collect and codify the rules and provisions of International Humanitarian Law, including the rules and provisions pertaining to the Belligerent Occupation Law, brought forward from late last century until the present, this law is still

* These Conventions are the following: The First Geneva Convention, pertaining to improving the situation of the injured and sick in the armed forces in the battle field; the Second Geneva Convention, pertaining to improving the situation of the injured, and sick of the armed forces in the seas; and the Third Geneva Convention, pertaining to the treatment of the prisoners of war.

in need of serious international efforts and activity, especially on the level of creating an international mechanism that can guarantee making it binding and consequently transferring it from the mere theoretical level to the practical binding reality*.

1-3 The legal value of the rules of International Humanitarian Law

The general rules pertaining to the provisions of International Law** stipulate that every international accord or agreement is only binding for its signatories. These rules also provide that no international accord can create or establish commitments or rights for those who are not signatories without their consent and agreement***.

Since the rules of International Humanitarian Law, as we said earlier, are legal rules that are codified and collected in a consequential series of international agreements, their provisions, therefore, have a legal value that is binding for all signatories. It is clear then that the countries that are signatories to these agreements must respect their applicability and implementation and abide by them in all situations and under any circumstances.

Because these agreements were originally drafted to deal with and regulate the non-peaceful aspects of international relations, they resulted in many legal problems, particularly concerning the applicability of their provisions to those who are not signatories. These problems become clear in the following questions:

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* On July 17, 1998, the diplomatic conference that was held in Rome initialed the draft order of the international tribune which will become applicable as soon as the 60th endorsement is submitted. Despite the defects of this draft and the loopholes in it, which provoked the indignation of researchers and people concerned with the rules of International Law, particularly International Criminal Law, we believe it is considered the opening of a new era in regards to the interest of the international community in creating and endorsing an actual mechanism to guarantee international respect of and commitment to the provisions and principles of International Law in general and Humanitarian International Law in particular.

** The Vienna Convention of the Law of Conventions endorsed in 1969 regulated the legal aspects of the international conventions.

*** These matters were dealt with by Article 26 and Article 34 of the Vienna Convention. The first said that any convention is just binding to its parties only and that they should abide by it with good intention. The second said that the convention does not create commitments or rights for other countries without their own consent.

Will the applicability of the rules and provisions of International Humanitarian Law, including the rules and provisions of the Belligerent Occupation Law as part of it, depend on the countries that are amongst the signatories in the Hague and Geneva conventions based on the norm and principle of participation? Will a conflict between countries that are signatories to these agreements, and other countries that are not, lead to stopping the application of these rules and agreements, or do these rules have another legal status and system due to the special and serious situations they deal with?

The international community faced problems related to these questions during World War II. This became evident when the German Government refused to abide by the provisions and texts of the Hague Regulations in its war activities and in regulating its relations with the peoples of the occupied territories under the control and administration of its forces because it had not joined these regulations.[8]

In the aftermath of World War II, the German leaders, in defending themselves before the Nuremberg Court for senior war criminals, justified not abiding by the provisions and texts pertaining to the laws and norms of land warfare during the war in the territories under their control by saying that their state was not a party to these charters. Based on that, they said, and according to Article Two of the Hague Regulations, which clearly exempted the non-party states from being committed to its provisions, they were unaccountable and should not be punished for any of the acts they committed in violation of the provisions and principles of the Hague Regulations.

When the Nuremberg Court panel looked into these allegations and discussed their content, it refused to accept them, justifying its decision by saying:

> *Although, not all worriers are members of the agreement, it's not necessary to rely on this pretext. As those rules and principles are customary law.*

*Almost the same ruling was made by the judiciary of the individual

[8] Dr. Muhiee Al-Deen Ashmawi, op.cit p.197.

* Article Two of the Hague Regulations of 1907 read as follows "Article 2 is binding as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention."

states. A Greek court of appeals, in response to whether the rules and charters of the Fourth Hague Convention are binding to non-party countries ruled that "the rules and charters of the Fourth Hague Convention represent the principles of customary law, to which states are bound, and therefore, these rules are applicable to all countries, even if they were not parties, as is the case with Greece. This is so because the agreements came to disclose accepted international norms that are acknowledged to have a binding legal status that is applicable to all the countries of the international community."[9]

With reference to what was said by annotators and jurists on the legal value of conventions codifying international norms, we can see that there is almost total international agreement that the aforementioned conventions enjoy absolute obligation status.[10] This means that these conventions are not subject to the rules of International Law and its contractual provisions, which confine the binding effect to the parties alone, and that these conventions are influenced by the nature and value of the binding international custom applicable to all countries. The conventions codifying the rules of war acquire their value and binding force from the force and obligation of their customary substance. These conventions, consequently, are forcefully applicable to all countries, regardless of the role and status of these countries in terms of taking part in the preparation of these conventions or signing them.[11]

With regards to the Fourth Geneva Convention of 1949 and its legal value, we can say that the status of this convention is distinguished by the fact that all countries are obliged to respect it. We can support this argument with the following:

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[9]Ibid. pp.199-200.

In regards to the international judiciary, see:

- Sibert M., ***Traite de droit international Public***, Paris, 1950, p. 34.

- Trials of War Criminals before the Nuremburg Military Tribunals, Vol. 11, the High Command.

[10]In regards to the stand of the international jurisprudence towards this issue see:

- Beictly J.L., ***The Law of Nations, an Introduction to International Law of Peace,*** sixth edition, Oxford, 1963, p. 59.

Sibert, op.cit p.34-36.

[11]Dr. Salah Al-Deen Amer, ***Introduction to Studying International Law,*** Dar Al-Nahda Al-Arabiyyah, Cairo, first edition 1984, issued 1988, pp.454-458 (Arabic).

One:

The provisions of the Fourth Geneva Convention are characterized by their legal nature, which is identical to that which characterizes the Hague Regulations. In addition to their legal contractual nature, they are distinguished in the sense that they regulate and codify the international customs that are applicable and stable in international relations. This can be noticed as soon as we read the provisions of the Convention, which confirm that it reiterates and deals with the same issues and topics that were previously regulated by the provisions of the Hague Charters (loyalty of the residents, plundering, robbery, destruction and dilapidating of properties and other things).

On the other hand, the rules and provisions regulated by the Fourth Geneva Convention are in fact no more than precedents that were endorsed and implemented by countries in several international positions and during several events. Most important, however, is the fact that the international jurists involved in the 'Nuremberg and Tokyo Tribunals' depended in several cases on these rules as legal bases for the evaluation of the legality of the countries' practices and behavior during World War II, consequently judging these practices to be in accordance with the substance of these rules*.

In addition to the aforementioned, we can see through the annotations and commentaries of the International Committee of the Red Cross on the justifications of drafting and endorsing the Fourth Geneva Convention that this convention did not come up with new principles and rules on the level of International Humanitarian Law and the Law of belligerent occupation. It nevertheless practically disclosed principles and rules that have become firm and stable in the international interaction. The following is a quotation from the comment of the Committee on the objective and motive of drafting and endorsing this convention by the international community, [12]

> *" Strictly speaking, this Convention introduces nothing new in a field where the doctrine is sufficiently well established. It adds*

* Among these precedents is the illegality of transferring the citizens of the occupying state to the occupied territories, the right of the residents of the occupied territories to revolt, and the transfer of the residents of the occupied territories outside these territories.

[12] The Geneva Conventions Dated 12 August 1949, published by the International Committee of the Red Cross, third edition, 1995, p.19.

no specifically new ideas to International Law on the subject, but aims at ensuring that, even in the midst of hostilities, the dignity of the human person, universally acknowledged in principle, shall be respected."

Finally, it seems to us, that the issue of acknowledging the customary nature of the provisions of the Fourth Geneva Convention has become an axiom that cannot be doubted. This is particularly so in light of the open decision taken by the International Court of Justice in relation to this issue during its deliberations on the legality of threatening with nuclear weapons or using them in legitimate self defense.[13]

Two:

The international judiciary acknowledged in many of its provisions and verdicts that international law-making treaties drafted for the benefit and development of the international community as a whole acquire a legal value that is binding on all countries.[14] Modern international jurists, many of whom tried to introduce a new legal adaptation to the nature and concept of law-making treaties, considering them as conventions establishing new international customs in international relations, [15]also voiced this opinion. It is important to know that the International Court of Justice endorsed that adaptation in the case of 'The Continental Drift of the North Sea'.[16]

I believe that such an adaptation was wise, because these conventions enjoy vast international support for their provisions. They are also distinguished by the large number of parties that have committed themselves to them. This number comprises the majority of the international community, most of whom accept and adhere to the provisions of the various conventions. This fact makes these rules and

[13]In this regard look at paragraphs 81, 82, and 85 of the court verdict of 7 July 1996 pertaining to the legality of using nuclear weapons or threatening with them. Also see:

Louis Doswald Beck, "International Humanitarian Law and the Opinion of the International Court of Justice on the Legality of the Threat of Use of Nuclear Weapons," International Review of the Red Cros, January-February 1997, No. 316, pp.36-37.

[14]Dr. Ihsan Hindi, Op. cit. pp.88-89.

[15]Dr. Salah Al-Deen Amer, Op. cit. pp.458-487

[16]Ibid. p. 458

provisions applicable to non-member parties on the level of international relations.

The Fourth Geneva Convention shows that the substance and significance of the legal and juristic concept of these international law-making treaties are applicable to this convention. The Convention, as its rules and principles show, was designed in the first place to serve and develop the human society as a whole, through consolidating a number of rules and principles that aim at guaranteeing the protection and respect of basic human rights under abnormal circumstances and conditions such as 'armed conflict'.

The number of countries that have committed themselves to the Fourth Geneva Convention now exceeds 188 states, which is a clear indication of the degree of international interest in and respect for its provisions, making it almost totally accepted internationally. We would not be exaggerating if we were to say that there is no international convention like the Fourth Geneva Convention in terms of the volume of international acceptance and abidance.

Finally, we can say that the Fourth Geneva Convention possesses a legality that makes it applicable to all countries, regardless of whether or not they have committed themselves to respecting it.

The following are the legal bases of the comprehensive obligatory nature of this convention:

- The convention reveals applicable and stable international norms.
- The Fourth Geneva Convention is classified as one of the international law-making treaties, which enjoy the acceptance and support of the majority of the international community members.
- This acceptance on the part of the majority of the international community members and their abidance by the provisions of this convention have empowered it with the status of legal rules that must be followed and applied in armed conflicts. Consequently, for the minority of the non-party countries these rules become binding customary rules. Therefore, the Fourth Geneva Convention is almost exclusively considered by the countries that have not committed themselves to it as a convention that encompasses new international customs.

2-The Israeli Position Concerning the Applicability of the Fourth Geneva Convention on the Palestinian territories

When the Israeli occupation forces finished extending their control over the Palestinian territories in the War of June 1967, Brigadier Chaim Hertzog, the commander of the Israeli forces in the West Bank at the time, issued a military order pertaining to security instructions, 'Leaflet No. 3'. Article 35 of this leaflet stated the following: "The military court and its directorate should apply the provisions of the Fourth Geneva Convention dated 12 August 1949 pertaining to the protection of civilians during times of war in everything that deals with judicial measures. Should there be any contradiction between this order and the mentioned convention, preference should be given to the Convention."[17]

The military command of the Israeli occupation put an end to the applicability of Article 35 of the aforementioned leaflet soon after it was issued. This was done through Military Order No. 107, issued for the Gaza Strip and North Sinai[18] on 11 November 1967 and Military Order No. 144, issued for the West Bank on 23 October 1967.[19] The military command justified its decision by saying: "The provisions of the Fourth Geneva Convention do not enjoy any supremacy or preference in relation to Israeli Law and the instructions of the military command, and the reference to the Fourth Geneva Convention in Article 35 of Leaflet 3 was made by mistake, therefore it was cancelled."[20]

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[17] Leaflets, Orders, Appointments, issued by the Command of the Israeli Defense Forces in the West Bank, No. 1, August 1967, p.12.

The same verbatim text was endorsed for the Gaza Strip and North Sinai by the Commander of the Israeli Defense Forces in the Gaza Strip area and North Sinai "Aloof" Mosheh Goren. See also Leaflets, Orders, Appointments, issued by the Command of the Israeli Defense Forces in the area of the Gaza Strip and North Sinai, 14 September 1967, p.21.

[18] Leaflets, Orders, Appointments, Op. cit. p.337.

[19] Leaflets, Orders, Appointments, Op. cit. p.303.

[20] Dr. George To mah, "The Palestinian Problem and the Arab-Israeli Conflict in the UN 1965-1974,", Issue 41/42, February 1975, pp.130-131.@rax Note: Object 53.02035 40

The position of Israel is still the same in regards to the implementation of the Fourth Geneva Convention and its applicability to the occupied Palestinian territories. Israel, however, still tries to deceive and mislead international public opinion by alleging that it continues to carry on its duty in regards to maintaining public order in the Palestinian territories. It alleges that it is applying all the human standards and principles stated in the Fourth Geneva Convention despite the deep Israeli conviction that it is not applicable to the Palestinian territories under the administration and control of its forces.[21]

2-1 The Israeli Legal Justifications for Rejecting the Applicability of the Fourth Geneva Convention on the occupied Palestinian territories

Israeli jurists are in almost total agreement that the military presence of the Israeli forces in the occupied Palestinian territories following the armed attack waged by the Israeli forces on 5 June 1967 is of a special and distinguished nature. They agree that this presence resulted from the special legal and political circumstances and considerations necessitated by the legal self defense practiced by Israel. This was necessary, they say, in order for Israel to face the Arab countries, and it consequently led to Israel imposing the control of its armed forced over parts of their land and territories. [22]

Israeli International Law jurisprudents considered their own explanation and analysis concerning the legality of the Israeli attack against the Arab countries, in addition to casting doubt on the legality of the Arab presence (Jordan) in Palestine (West Bank), as a legal justification for the position of their government, which rejects the applicability of the Fourth Geneva Convention on the Palestinian territories under its control.

Among the most prominent advocate of that idea is the Israeli jurist Yehuda Blum, who justified the legality of his government's position

[21] ***Al-Milaff***, Vol. 4, Issue 10/46, January 1988, p.946. l-Milaff is a bilateral monthly on Israeli affairs, issued by Al-Manar Press Agency in Nicosia, Cyprus.

See also: Raja Shehadeh, ***The Occupier's Law***,

by saying that "Israel is not considered an occupying force according to the rules and provisions of International Law." This is so, in his opinion, because the party (Jordan) that was deposed from these territories did not enjoy internationally acknowledged legal sovereignty over them. As a result, the Israeli presence in these territories should not be called occupation. Consequently, the Fourth Geneva Convention cannot be considered applicable to the Palestinian territories because it is only applicable when there is a state of belligerent occupation.[23] The majority of Israeli experts[24] on International Law supported that opinion and analysis. Moreover, consecutive Israeli governments went along with their positions and tried, in various ways, to consolidate these analyses in their official activities to impart legality on their presence in the occupied Palestinian territories and to relieve themselves from accountability for any behavior that may contradict with the provisions and principles of the Fourth Geneva Convention.

The Israeli Attorney General, Gabriel Bach justified his government's rejection of the applicability of the Fourth Geneva Convention on the Palestinian territories by saying "Jordan's annexation of the West Bank in 1950 was not recognized except by Britain and Pakistan. This shows that the issue of sovereignty over these territories was not yet determined, so Israel considers itself the existing authority in these territories, responsible for administering them until their status is determined through negotiations. As a result of this situation, Israel believes that the Fourth Geneva Convention, pertaining to the occupation of hostile territories, does not apply to the West Bank and that the role carried out by Israel is the role of an administrator of these territories and not the role of an occupier." [25]

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[22] Yehuda Blum, Z. "The Missing Reversioner Reflections on the Status of Judea and Samaria," ***Israel Law Review***, Vol. 3, April 1968, p.279.

[23] Dr. George To'mah, "The Palestinian Problem and the Arab-Israeli Conflict at the UN 1965-1974," ***Palestine Affairs***, double issue, 41/42, February 1975, pp.130-131.

[24] Allan Gershon, ***Israel the West Bank and International Law***, Frank Cass, London, 1978, pp.78-80. Yehuda Blum, op.cit, p. 280.

Raja Shehadeh, ***The Occupier's Law***, Op.cit. pp.5-7.

[25] Raja Shehadeh & Jonathan Kuttab, The West Bank and the Rule of Law, translated by Wadi Khoury, Dar al-Kalemah, Beirut, second issue, 1983, p.10.

With regard to the Israeli judiciary, the judges of the Israeli High Court of Justice justified the non-compliance of their government to the Fourth Geneva Convention by saying that international agreements endorsed by Israel do not have a binding legal value. Therefore, they say, these agreements cannot be applied unless they become part of the Israeli Law. This can be achieved when the Israeli Knesset (parliament) passes legislation to this effect. The Fourth Geneva Convention therefore is not considered binding and applicable to Israel because it has not been included in Israeli Law, since the Knesset did not issue legislation in this regard.[26]

2-2 Discussing and Evaluating the Israeli Justifications

The aforementioned Article No. 42 of the Hague Regulation of 1907 defined belligerent occupation as the crossing of foreign hostile forces into the region of another state, their actually controlling it through establishing and constructing a military administration in order to administer the various affairs of the region, and their maintaining the capability to impose actual and continuous security and order.

The Fourth Geneva Convention, as its content shows, only identified the persons to whom the Law of Belligerent Occupation applies and who are under its protection, without pointing to the nature and legal implication of this condition. Article Four of the Convention stated

"Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."

These articles, as is clear in their content, affirm beyond any doubt that Palestine, according to the rules and provisions of International Humanitarian Law pertaining to belligerency is considered an occupied region. This is so because it was subjugated to the authority

[26] Dr. Abdallah Abu 'Eid, "Israel and the Fourth Geneva Convention," Economic Samed Magazine, 1992, p.127.

and administration of hostile foreign forces, whose presence in this region is illegal and was imposed by the force of arms following an illegal act of armed aggression. On the other hand, we can see that following that aggression, the inhabitants of the Palestinian territories have actually found themselves under the authority and administration of the forces of a hostile foreign state of which they are not subjects.

Thus, the Palestinian territories are classified within the framework of the legal concept of the occupied territories. This necessitates the applicability of the Fourth Geneva Convention and other agreements that codify the rules of International Humanitarian Law pertaining to the belligerent occupation of these territories.

Regarding the Israeli allegations that Egypt and Jordan did not enjoy legal sovereignty over the Palestinian territories and that this fact legalizes the Israeli presence, granting Israel the status of an administrative presence rather than an occupying force, it is our belief that this allegation lacks any justification according to the rules and provisions of Public International Law and International Humanitarian Law. There is no legal text in the various conventions codifying the rules of International Humanitarian Law pertaining to belligerent occupation in general, nor in the Fourth Geneva Convention in particular, that makes the applicability of the Convention dependent on the opinion of the foreign party and its adaptation to the nature of its presence in the regions of others or on the degree to which it acknowledges the legality of the party that existed in the region before.

Professor Milson commented on the aforementioned Israeli allegation, and Israel's justification for not abiding by the application of the Fourth Geneva Convention on occupied Palestine, by saying that if International Humanitarian Law is to be changed so that its applicability becomes conditional on the occupier's recognition of the fair goals of the war waged by its enemy, then it is clear that it will rarely be applied if we suppose that it is ever possible to apply it in the first place. He added that the history of negotiating the convention makes it very clear that since the application of the Fourth Geneva Convention is obligatory, then there is no way to question the legal ownership of the territories. The Convention must be applied in the occupied territories regardless of allegations pertaining to the juristic

status of those territories,[27].

On the other hand, if we suppose, for the sake of discussion, that the Israeli allegations concerning the illegality of the Jordanian presence in the Palestinian territories are true, then it is obvious that, even then, this disputed and illegal presence should in no way be considered as justifying or legalizing the subsequent forcefully imposed Israeli presence. It also cannot justify Israel giving itself the right and authority to administer these territories and control them until their status is determined. Such a condition cannot be determined by the sole will of the states. The authority to decide on the status of a region in such a case is the task and right of the United Nations alone[*].

In addition to the aforementioned, Israel's refusal to apply the provisions and rules of the Fourth Geneva Convention to the occupied Palestinian territories, using the pretext of the illegality of the previous presence, means that Israel considers the Convention an agreement that just protects and deals with the regions and territories of legal governments and with governmental rights.[28] This naturally contradicts with the goal and objective of the Convention, which was mainly designed to protect the civilians caught up in armed conflicts and belligerent occupation, regardless of the nature of the existing legal and political regimes in the regions. This was asserted in many official and juristic annotations. In the comment of the International Committee of the Red Cross on the substance and objective of the Convention, the following was stated: "This is the first time that a collection of international laws are consecrated for the protection of human beings and not the protection of the interests of states."[29] **Jurist Boyd** asserted the same thing, saying that the Convention is mainly a convention for the sake of humanity and should be dealt with accordingly. [30]**Jurist Galahen** also noted that "the Geneva Convention

[27]The Policy of Israel in the Occupied Territories, Studies in the methods of annexation and judaization, a collection of researches supervised by Khalid Abed, issued by the Palestinian Studies Institution, series 69, first issue 1984, Nicosia, Cyprus p.85-86.

[*]This issue was regulated buy the provisions of Chapter 11 of the International UN Charter.

[28]Sali Melson, "The Israeli Settlements from the Perspective of International Law, Economic Samed Magazine, issue 87, 1992, p. 119.

[29]Ibid, p.120.

[30]Dr. Abdallah Abu 'Eid, Op. cit. p.126.

was mainly formulated to protect the civilians in armed conflicts."[31]

In brief, the provisions and text of the Convention focused on the mere human feature of its content and on its comprehensive applicability to all armed conflicts and states of occupation, regardless of the nature of the legal regimes in these regions.

Thus, we can see the falseness of the legal allegations and justifications presented by the State of Israel with the aim of casting doubt on the applicability of the Convention on the occupied Palestinian territories. The legal bases for forcing Israel to apply this convention has two elements:

One: The Provisions and Texts of the Convention

Article One of the Fourth Geneva Convention stated, *"The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."*[*]

The second paragraph of Article Two also stated the following: *The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.*

It is noteworthy in this regard that Article One obliges the contracting parties to respect and apply the Convention in all armed conflicts and cases of belligerent occupation. They should not be influenced by the position of other parties in regards to its application. In other words, the commitment of the countries, in accordance with Article One, entails that they ignore the principle of reciprocity when implementing the Convention. This means that the application of the Convention by the signatories should not be linked to the degree to which others respect and apply it.

[31] ibid. p. 126.

[*] Israel signed the four Geneva Conventions on 8 December 1948 and endorsed them on 6 January 1952, but did not set local legislation in terms of their applicability on the domestic level.

This was underlined by jurist **Jean Pictet** who wrote the official annotation for the Convention. He said it is not a convention concluded on the basis of reciprocity whereby each party is committed to it as long as the other party is committed to it as well. Rather, it is a series of unilateral conventions that were concluded before the world. It is clear that Article One is more than words with no value; rather, it is binding and should be understood according to its verbatim meaning.[32]

Two:

The Customary Nature of the Provisions and Principles of the Convention

The legal nature of the provisions and principles of the Fourth Geneva Convention, being international customs, requires that Israel heed and respect its applicability. Based on this, even if there was anything that seemed to make application of the Convention difficult or seemed to relieve it from doing so, like an agreement concerning the Palestinian occupied territories for instance, this still does not mean it is relieved from applying and respecting all the provisions and principles pertaining to them. These provisions and principles are internationally binding customs.

Finally, regarding the Israeli stand concerning the applicability of the Fourth Geneva Convention on the occupied territories, we refer to several resolutions issued by the UN and its agencies condemning Israel's refusal to apply it.[33]To sum up the position of the international community and its opinion concerning the issue of the applicability of the Fourth Geneva Convention on the occupied Palestinian territories, we quote the report of the UN Secretary General, submitted to the

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[32] Jost Hilterman, ***The Israeli Policy of Deportation in the Occupied West Bank and Gaza Strip***, the General Union of Palestinian Lawyers, the General Secretariat, 1988, p.35, margin 69.

Also see: Dr. Abdallah Abu Eid, Op. cit., p.132.

[33] With regards to resolutions of the various UN branches, see:

- The Israeli Violations of Human Rights in the Occupied Territories, The Case Before the UN, issued by the PLO Research Center, Beirut, 1975, p.7.
- Dr. George To'mah, ***The Palestinian Problem and the Arab-Israeli Conflict,*** pp.28-130.

Security Council on 21 January 1988 and entitled 'The Situation in the Occupied Territories.'

"...Several resolutions issued by the Security Council, including Resolution 242, emphasized the impermissibility of acquiring territories by force and insisted on the withdrawal of Israel from the occupied territories. The Security Council and the General Assembly have been asserting since 1967 that the territories, which came under Israeli control in the War of 1967, are occupied territories within the framework and concept of the Fourth Geneva Convention. The Security Council and the General Assembly have also declared in several resolutions that the Fourth Geneva Convention is applicable to the occupied territories. Despite the fact that Israel does not agree on the legal applicability of the Convention, the legal opinion of the international community is that it should be applied."[34] (Quote translated from Arabic.)

In conclusion, we can say that the Israeli position that rejects the applicability of the Fourth Geneva Convention on the occupied Palestinian territories is an invalid position that does not have any legal bearing on the provisions of the Convention. In other words, the abstention of Israel from applying the provisions of the Convention on the occupied Palestinian territories according to its alleged legal considerations and justifications does not relieve Israel from its international responsibility. It does not relieve it from its legal accountability for all the acts it committed and perpetrated in violation of the provisions and principles of the Fourth Geneva Convention, which is valid and binding and should be applied in the occupied Palestinian territories.

[34] Origines et Evolution du probleme Palestinie, .Op.cit. pp.272-274.

Chapter Two

The Effects of Settlement on the Occupied Palestinian Territories

Those who are not in direct contact with what is happening in the Palestinian territories may believe that the Israeli settlement taking place there involves nothing more that the settling of civilian Israeli groups in these territories. This is in fact very different from the reality. The Israeli settlement, as affirmed by facts and data, has inflicted great harm on the Palestinian people, the negative effects of which have become apparent in all aspects of the Palestinians' daily life.

It is because of the seriousness of this phenomenon and its negative repercussions on the Palestinian society, that we decided to deal with this topic in detail. In doing this, we tried to monitor and identify the most important effects and repercussions, which are as follows (specific violations of law will be dealt with in a later section):

Section One: Destroying the Palestinian agricultural sector

The Palestinian economy, before the Israeli armed aggression against Palestine on 5 June 1967, was characterized by being mainly an agricultural economy. Some resources put the contribution of this sector to the Palestinian domestic product in 1966 at about 34 percent. The percentage of the Palestinian labor force linked to this sector and making a living through the job opportunities it provided each year was 38.7 percent of the total Palestinian labor force.[35]

In order to clarify the importance of this sector in Palestine, we have to mention that 70 percent of the total population of the West Bank were living in rural areas when the occupation began, while 64 percent of

[35] Dr. Adnan Staitiyyeh, Usama Abu Ali, "Settlement in the Occupied Territories- Reality and Future," Economic Samed Magazine, issue of year 1992, p.51.

the population depended on the income gleaned from agricultural labor.[36]

The Israeli occupation had an obvious effect on this sector, which started to retreat and deteriorate for several reasons. Some of these reasons were the natural outcome of the predetermined and systematized policy of destruction implemented by the occupier against various Palestinian economic sectors. Other reasons, meanwhile, were linked to the special conditions that faced this sector because of the Israeli settlement, expropriation and confiscation of large areas of Palestinian land and property, something that stripped it of the land, its main tool of production. It has therefore become impossible, we believe, to talk about the Palestinian agricultural sector at a time when three quarters of the West Bank and half of the total land of the Gaza Strip have become under the authority and control of the Israeli occupation forces.

The Israeli occupation forces started to exploit and use the land mentioned above for the purposes of settlement, which manifests itself now in hundreds of settlements and in residential, agricultural settlement nuclei that are scattered in various regions in occupied Palestine[37] as follows:

Jerusalem	27
Ramallah and Al-Bireh	29
Bethlehem	21
Jenin	11
Jericho and Jordan Valley	19
Hebron	26
Nablus	15
Gaza Strip	19
Qalqiylia	9
Tulkarem	3
Salfit	13
Tubas	8

[36] Ismael D'aiq, "The Role of NGOs in Rural Development in the Occupied Territories," ***Economic Samed Magazine***, issue 61, 1986, p.43.

[37] This data was taken from the working paper presented by the Palestinian Ministry of Information to the Conference of Information Ministers of the Islamic Countries, held in Dakar, Senegal, 29-30 November 1997.

Section Two: Besieging Palestinian cities and urban areas

The Israeli occupation authorities deliberately positioned the settlements at the entrances and peripheries of the Palestinian urban areas, encircling these areas, and preventing their development and expansion.

One of the best examples is the Arab city of Jerusalem. Cordoning off this city with a belt of Israeli settlements led to a halt in its growth and expansion,[38] leaving it as it was before the occupation. The Palestinian population of the city is in desperate need of expansion and for alternatives to the old buildings that currently exist, capable of meeting the needs of the increasing population. It should be noted that in 1994, the population reached approximately 165,000, compared with no more than 6,5000 on the eve of the occupation in 1967.[39]

The premeditated policy of siege and strangulation involving the Arab city of Jerusalem has left its inhabitants and legal owners living in moderately or extremely difficult conditions. Nearly 50,000 Palestinian Jerusalemites were forced to leave Jerusalem in order to avoid the pressure and suffering they faced due to the siege imposed on the city*, and at the same time as the Jewish neighborhoods were expanding at the expense of Palestinian land and properties, there was a period of reversed immigration by the people of the city. It is worth mentioning that the construction of one of the Jewish neighborhoods in the city led to the dispersion of about 5,500 Palestinian Jerusalemites.[40]

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[38] See also: Repport du Comite Special Charge d'edguetr sur le partiques Israeliennes: Affectant les droite de l'homme de la population des territoire occuopes. A. /41/680. Para.82 Drigines dt evolution du pobleme Palestinien 1917-1988 Nation Unies, New York, 1990, p.211).

[39] Muhanned Abdel Hamid, "Jerusalem Between Two Strategies," Publications of the Palestinian Minister of Information, first issue, 1996, April, p.12.

* See: "Administrations and Solutions," a memorandum presented by the Palestinian Ministry of Information to the meeting of the Permanent Committee of the Arab Media and the Arab Minister (Ministers???) of Information in Cairo, July 1995, Publications of the Palestinian Ministry of Information, p.9

[40] See: report of the special committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories. A/50/463/-22/September 1995, p.104.

It is also worth mentioning that the policy of siege and strangulation from which the Palestinian cities are suffering is an Israeli official policy that was included in several Israeli projects and plans. Among these were the **Droblis plan,** which stated the following: "State and uncultivated land should be seized immediately for the purpose of settlement in the areas located among and around the populated centers with the aim of preventing as much as possible the establishment of another Arab state in these territories. It will be difficult for the minority to form a regional connection and political unity when split by Jewish colonies." The plan also stated that "in light of the current negotiations on the future of the West Bank, we are entitled to compete with time, as in this period everything will be decided mainly on the basis of the facts that we create in these territories...."[41]

The aforementioned phrases and the implicated strategic concepts and goals have affirmed beyond any doubt that besieging the cities and cordoning them off by Israeli populated centers is nothing more than an Israeli political plan. It is also an initial action that aims at achieving a geographical and demographical division of Palestine in preparation for annexing some of its regions and lands to Israel.

In addition to the aforementioned, the Israeli settlements scattered in the occupied Palestinian territories and the network of bypass roads established to serve them have created and imposed on the Palestinian cities and urban regions a certain regulatory reality. Because of the existence of Israeli settlements in their vicinity, these cities and regions have become obliged to expand in the direction of areas that are free of Israeli settlements, regardless of whether or not they are suitable for their urban development plans. It can be said, therefore, that the Israeli settlements established in the Palestinian territories have directly and deliberately delineated the structural and constructional pattern that the Palestinian cities and urban communities should follow.

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[41] See also:

- Ahmad Abdel Rahman, "The Israeli settlement in the Occupied Territories," ***Palestine Affairs Magazine***, No. 231/232, June 1992, p.68.
- Antony Quinn, ***The Israeli Structural Planning of Cities in the West Bank***, translated by Mahjoub Umar, edited by Khalid Al-Batrawi, published by Palestine Studies, Beirut, first edition, January 1995, p.204.

Section Three: Seizing water resources

The policy of settlement and the confiscation of vast areas of Palestinian land and Palestinian properties have enabled the Israeli occupation authorities to lay their hands on most of the Palestinian water resources.[42] These authorities started to exploit and use this water in a way that meets the needs of settlers and the State of Israel without taking into consideration the needs and requirements of the Palestinians of the occupied territories.

Reports and international specialized studies that included statistical figures all confirm the Israeli occupation authorities' misuse of authority in this regard. The 'Rand Report'* estimated the quantity of water supplies that the occupation authority puts at the disposal of the Israeli settlements in the West Bank at about one third of the total quantity of the extracted Palestinian water. Israeli Knesset member Yossi Sarid, on the other hand, said in a statement that the total quantity consumed by the Israeli settlements established in the Jordan Valley alone is equal to 50 percent of the total quantity consumed by the entire West Bank.[43]

The UNCTAD report on the situation in the occupied Palestinian territories stated that the fresh water supplies in the West Bank total approximately 800 million cubic meters. The Arab residents are allowed to use 110 million cubic meters, while the rest is left for the settlements, as well as for the State of Israel to which the water that exceeds the settlements' needs is piped.[44]

The International Committee on the Inalienable Rights of the Palestinians People elaborated on this issue and the way water resources are used in its report 'Water Resources in the Occupied Palestinian Territories'. The report included the following: "The consumption of sweet water resources, which are estimated at 850 million cubic meters annually and which originate from the

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[42] The Rand Report: ***Why a Palestinian State is Now Inevitable***, Palestine Liberation Organization, unified Information, p.16.

* Rand: The Institute of American National Defense, California.

[43] Origins et Evolution, Op. cit. p.255

[44] UNCTAD - Report, Recent Economic Developments in the Occupied Territories, with special reference to the trade sector, Economic Samed Magazine, No. 87, 1998, p.14.

Palestinian occupied territories, is subjected to Israeli restrictions. The Palestinians are allowed to use approximately 27 percent or 230 million cubic meters of these resources, while more than two thirds of the water is provided, either directly or indirectly, to consumers in Israel and in the Israeli settlements in the West Bank and Gaza Strip. The Israeli consumption of the water that crosses the Palestinian boarders is estimated at 95 percent".[45]

The report also stated that the 5,000 settlers in the settlement of Kiryat Arba in Hebron receive approximately 5-6 thousand cubic meters of water on a daily basis, while the Palestinians in the city of Hebron who number 100,000 persons receive only 6-7 thousand cubic meters daily. Because of the limited water resources in Palestine, this unfair distribution of water keeps some neighborhoods in the city without water for long periods exceeding one month and even, in extreme cases, two months.[46]

Another report on water issued by the Israeli organization 'B'tselem' included various statistics on the mechanism followed by the Israeli occupation authorities in exploiting the Palestinian water and the distribution of the extracted quantities. The report said that the State of Israel uses annually about 80 percent of water resources, which are shared with the Palestinians, including some 71 percent of the underground water that is extracted from various Palestinian areas. At the end of the report, B'tselem made a comparison in figures through which it showed that the volume of the Israeli annual consumption of water per capita is 357 cubic meters, while for the Palestinian individual it is about 85 cubic meters.

With regards to the way agriculture benefits from the extracted water, B'tselem said that the percentage of irrigated agricultural land in Israel reaches 45 percent of the total agricultural areas, while the percentage of the irrigated Palestinian agricultural land is no more six percent of the total agricultural areas. The contribution of agriculture to the Palestinian GNP reaches 30 percent. Such a contribution in Israel is no more 20 percent (*Al-Quds* Arabic daily, 30 November 1998, p.10).

[45] Les Ressources, Op. cit. p.62.

[46] Ibid, p.63.

We can notice through the aforementioned the unanimity of most of the parties related to the water in regard to the belief that Israel is violating its commitments and acting unfairly when it comes to its use of Palestinian water resources. These resources, it should be emphasized yet again, have been directed to serve the benefit of Israel and its people settling in the occupied Palestinian territories.

Section Four: Terrorizing the people and pushing them to leave

As a result of a situation whereby thousands of Palestinians lost their main tool of production (the land), in addition to the overcrowding and the limited building area, thousands of Palestinians had to leave to find alternative housing. Those people had lost their properties and their houses, which were confiscated in the ongoing confiscation and seizures being carried out by the occupation authorities.[47]

That was not, however, the only danger posed by settlers. The influx of tens of thousands of Israeli inhabitants and immigrants, being brought from all over the world and settled in the occupied Palestinian territories, inflicted additional suffering upon the Palestinians. Amongst other things, they suffered greatly because of the settlers' acts of violence and their organized terror campaigns, all of which were designed to force the Palestinians to leave their land. These campaigns have both a religious and an ideological bases linked to the religious perspective, through which settlers look at the Palestinian territories. They consider this land as the 'holy right' of the Jewish people, a right that should not be stained with the presence of Arabs, the 'goyim'. Accordingly, the duty of every faithful Jew is to contribute to the fight against the Arabs and kill them so that they are forced to leave the land; only then, it is claimed, will the purity of the State of Israel as a state for Jews be achieved.[48]

[47] See also: Rapport du Comite Special,Op.cit,A/41/680:para. 82 Origines et Evolution du Problem Palestinei, Op. cit. p.212.

[48] See in this regard:

-Yehud Shafat Harkavi, Decisive Resolution, translated by Al-Quds Media, prepared and introduced by Subhi Amer, published by Bisan for Publication, Nicosia, first edition, 1986, pp.161-184.

Statements made by the political and religious leaders of these settlers shed light on the real position regarding the people of the occupied territories. An example is a leaflet distributed by Rabbi Tsvi Yehuda Cook, part of which reads as follows: "Giving the Land of Israel, the land of the Fathers and the Grandfathers to the atheists is a crime and shows a lack of faith. Our Torah does not allow giving our land to the atheists. Every minister in the government and every military person should stop that. The heavens will not forgive those who do not take part in this holy action."[49]

In another verdict he said, "I announce openly that in the Torah there is a prohibition that disallows ceding any span of our liberated land. We do not occupy foreign land, but we return to our house, to the homeland of our fathers. There is no Arab land here, here there is only the land of the God of Israel."[50]

The chair of the Council of Israeli Settlements in the occupied Palestinian territories said in a statement, "We have come to Israel because we did not want to live in the Diaspora where Jews are unable to do things according to the Torah because others threaten their lives. It will be more astonishing if we are prevented in the land of our grandfathers from doing what we were allowed in the Diaspora as a result of the presence of the Arabs who are aggressors in this land."[51]

In addition to the aforementioned statements, which express, very clearly, the degree of racism and the inimical attitude of the settlers towards the people of the occupied territories, several rabbis and Jewish religious leaders judged that it is permissible for a Jew to kill a Palestinian. Some of them even included these crimes within the context of worship and preferred holy actions. Rabbi **Shlomo Gudin,** in his religious verdict related to settler attacks against Palestinians in which Palestinians were killed, said that Jews have the right to kill unarmed Arab civilians, including women, the aged and children. The Chief Rabbi, **Mordechai Elyahu**, in a similar context, issued a verdict

[49] See in this regard: Ibid. pp.161-184.

Mohammed Suleiman, Settlers and the Intifada, issued by Bisan for Publication, Nicosia, Cyprus, first edition, 1990, p. 81.

[50] Yehud Harkavi, Ibid. p.168.

[51] Mohammed Sleiman, Op. cit. p.53.

in which he made it clear that he did not consider the settler who killed a young Arab girl a murderer.[52]

The Jewish clergy in their verdicts also prohibited any non-Jew from living or staying in Jerusalem because it is in their view a sacred land in which only Jews should live. Their racist view even extended to include those Jews who have not been Jewish for a long time. The extremist Jew **Meir Kahana** tried to have this verdict legalized on the ground by presenting it as an act on the agenda of the Israeli Knesset in 1984*[53].

Such verdicts and the intellectual and ideological background of the religious parties and groups supervising the settlement movement in the occupied Palestinian territories had their clear effect on provoking the feelings of enmity and hatred in the settlers' hearts against the Arabs. The continued racist education has also made them deal with the annihilation and killing of the Palestinians from the perspective of a holy duty, which is something that has motivated many of them to create clandestine groups and organizations of a military nature. These groups and organizations practiced all forms of violence and terrorism against the people of the occupied territories, using inhuman methods and means like kidnapping, torturing, killing, arson, the destruction of property and others**.

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* The last and most recent of these verdicts is the verdict of a religious court in Jerusalem, issued by the rabbis of this court looking into the complaint of a Jewish woman from the neighborhood of Nahlout against the owner of an immobile property who leased it to workers from Thailand and Rumania working in Israel. The court judges issued their verdict based on Biblical texts that prevent and prohibit leasing houses to foreigners (non-Jewish people) in the Jewish residential neighborhoods. See Al-Quds Arabic daily, 1 January 1999, p.2.

(box: Note: Object 53.62214 40.77789 371.69206 224.38913 0.00 0.00 0.00 1.00 k 335.38025 129.65754 m 335.18863 130.79480 L 335.18863 131.81187 L 336.04016 131.81187 L 336.04016 130.79480 L 335

[53] Yehushafat Harkavi, Op. cit. pp.170-171.

** Among these organizations there is Lehi, which was established in 1975, The Society of Preservers of Security in the Streets of Yehuda and Samaria, which was established in 1979, The Central Security Committee, which was established in 1980, the Kiryat Arba Revenge Group, established in 1980, and the Hashmona'im Organization, established in 1982. Approximately one month ago, the settlers established a new military organization called Bnelli "The Eternity of Israel is not a Lie," 19 January 1999.

For information on these organizations see:

- Mohammed Sleiman, Op. cit. p.87 and after.

-Report on the occupied homeland presented to the Palestine National Council in its 18th session held in Algeria 1987, prepared and issued by Dar Al-Jalil for Publishing and Palestinian Studies and Researches, Amman, Jordan, pp. 290-298.

The acts of violence and terrorism organized and carried out by the settlers against the Palestinians led to the killing of hundreds of civilians of various ages. The most abhorrent of all such acts is the massacre carried out at the Ibrahimi Mosque in Hebron on 25 February 1994 by terrorist **Baruch Goldstein**, who broke into the mosque as the Moslem worshippers* were performing their dawn prayers and started to shoot randomly, killing 36 people and injuring 200 others.

The settlers' terrorism was not limited to violence and direct attacks against the properties and lives of the population in the occupied Palestinian territories. There are several other indirect means and ways that are followed by the settlers to terrorize the people. Among these means, the most dangerous, no doubt, are the explosive devices that the settlers plant in the Palestinian territories adjacent to the settlements. These devices have victimized scores of civilians in the occupied Palestinian territories**.

Section Five: Destroying and devastating the agricultural land and private properties

In addition to direct confiscation and the open seizure of the Palestinian lands and properties for the purpose of establishing Israeli settlements, thousands of people have lost land and properties due to the construction of highways and bypass roads, which is considered another indirect method of stripping the Palestinians of their land and properties.

Aiming to guarantee the security and mobility of the Israeli civilian population brought to settle in the occupied Palestinian territories, the Israeli occupation authorities decided to enable Israelis to avoid using

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* Dr. Ahmad Al-Alami, ***the Intifada Dailies***, publications of the Palestinian Ministry of Information, 1995, p.102.

** The number of explosions in the occupied Palestinian territories because of these bodies until summer of 1998 was about 334. They killed 144 people and seriously injured another 320.

The resource is the special annual report on the Israeli settlement attacks on in Palestine, from September 1997 until September 1998, issued by the National Committee against Settlement, the North Department, the Legal Center for the Defense of land, Palestine, Nablus, 1998, p.225.

the local road network by constructing scores of external roads that link the settlements together and with the surrounding Israeli cities. Such acts destroyed and devastated hundreds of thousands of dunums of agricultural land and private Palestinian properties located within the area of these roads.

The Israeli occupation authorities escalated the construction of these roads in an irrational manner following the signing of the Oslo Accord. The total Palestinian owned areas confiscated and devastated for this purpose amounted to approximately 35,000 dunums.[54] Informed sources stressed the fact that the Israeli occupation authorities have prepared a new bypass road project that will destroy and devastate large areas in Palestine estimated at 100,000 dunums.[55]

In addition to the devastation and destruction resulting from the construction of bypass roads, the Israeli occupation authorities imposed segregating 'security' areas on both sides of the roads. They then forbade local Palestinian residents from using the areas, which measure 50-150 meters in width on each side, either for cultivating their crops or for construction.

These segregating areas allocated for 'security' may seem to be small and of no significance for Palestinians, but in reality this is not so. They have swallowed huge amounts of properties and agricultural land, which, in the case of the land, is no less than the land already devastated for the construction of these roads.

To estimate the real size of these areas, we need to know that the lengths of the by-pass roads that have already been constructed since the endorsement of the Oslo Accord have reached 180 kilometers. According to Israeli sources, the total length will reach 360

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[54] See in this regard:

Abdel Fattah Abu Shaker: "The Economic and Social Dimensions of the Israeli Structural Planning in the West Bank," Issues for Studies Magazine, Jerusalem, Winter 1991-1992, pp.40-42.

Dr. Awni Bader, "Legal Status of the Structural Planning in the West Bank Under Occupation," Economic Samed Magazine, No. 80, 1991, pp.204-206.

Settlement an Obstacle for Peace, Op. cit. p.3.

[55] Palestinian Al-Hayyat Al-Jadeedah daily, Arabic, 28 December 1996, p.3.

[56] Problems of Employment in Palestine, Publications of he Palestinian Ministry of Labor, Geneva 1996, p.126.

kilometers[56] when all the planed roads are constructed. So if we add to these roads the segregating 'security' areas, which have an average width of 100 meters (the minimum width decided by the occupation authorities for these areas on both sides of the road), this means that 18,000 dunums will be lost in the first stage and twice as much, 36,000 dunums, in the second stage. If we add to that the 'security' areas imposed on the roads already constructed from the beginning of the occupation until the endorsement of the Oslo* Accord, we will come up with hundreds of thousands of dunums of agricultural land and private properties whose owners were prevented from using them by the occupation authorities.

We can say, therefore, that although the official ownership of these segregating 'security' areas remained Palestinian, it is theirs in name only, because the owners of the land cannot practice the most important element of ownership namely the right to benefit from the land and deal with it. Therefore, these areas in our view are subjected to destruction and confiscation in a disguised, indirect method that targets thousands of dunums of agricultural land and should therefore be included in the list of areas and properties destroyed by the occupation in the name of constructing bypass roads.

Section Six: Destroying and devastating the Palestinian environment

The impact of Israeli settlement on the occupied Palestinian territories was not restricted to stripping the people of their main tool of production, the land, devastating and destroying public and private properties, and seizing most of the Palestinian water resources. Rather, it extends to using the Palestinian territories as a dunghill for the settlements' industrial and urban wastes. Several settlements also

* There are no decisive figures or statistics on the lengths of the roads during the period between the beginning of the occupation and the endorsement of the Oslo Accord. What can be deduced from the survey I did on the maps of the Israeli occupation army with the support of Palestinian road expert engineer Maher Zuhd is that the occupation forces constructed by-pass roads 400 kilometers long while roads under construction are 150 kilometers. There are also plans to construct roads of 350 kilometers in length that will be executed in the near future.

deliberately pumped their wastewater and the liquid waste of their factories into the Palestinian agricultural areas, preventing farmers from cultivating the land, which was then no longer cultivable.[57]

In addition to the waste and residues of the settlements, Israeli factories, as well as the Israeli industrial centers erected in the settlements, dump both their liquid and solid waste in adjacent Palestinian areas without taking into any consideration the repercussions and effect of this waste on the environment and the Palestinians. A high ratio of these factories and establishments function in the field of chemistry, producing fertilizers, cement, paints, car batteries, copper, pesticides, and similar products.

These factories and industrial centers should adopt scientific, internationally followed procedures to dispose their waste i.e. treatment before dumping because the waste has destructive effects on the environment and human health due to the presence of substances such as mercury, zinc, Cadium and acids.[58]

It is also worth mentioning that most of these factories established in the Israeli settlements were prevented from functioning inside Israel due to the harm they cause to the environment and the danger they pose to the health and safety of the people inside Israel.

[57] See in this regard:

- Report of the special committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories. A/50/465/ p.166-165-107 1995. 22. September.

- Raja Shehadeh, Op. cit. p.184.

[58] Environment and Settlement, summary of a workshop, issued by the Office of the National Institutions and the Palestinian Hydrology Group, p.22 on.

Chapter Three

The Legal Justifications for the Settlement Activities

The Israeli occupation authorities legalized the current settlement activities in the occupied Palestinian territories by leaning on various rules and provisions in International Law from which they deduced things that, according to their belief, permitted them to carry on such activities.

Israeli jurists, quite naturally, supported the position of the Israeli Government and its philosophy by presenting several legal justifications that support the allegations and justifications made by the occupying state. Therefore, we believe that it is of great importance that we discuss these allegations and justifications. We will try in the first part to list these justifications and allegations, and then, in the second part, to discuss them in order to determine the extent to which they match with the rules and provisions of International Humanitarian Law, particularly in regard to belligerent occupation.

Section One: The Israeli official and juristic justifications for the settlement activities

Consecutive Israeli governments justified their confiscation and expropriation of Palestinian land for the establishment of settlements using security reasons and urgent military exigencies. They allege that such activities are needed to maintain security and order in the Palestinian territories under the control and the administration of their forces.

The Israeli occupation authorities base their justifications on the rules and provisions of International Humanitarian Law, particularly the rules and provisions of the Law of Belligerent Occupation. These rules and provisions are codified in the Hague Regulation of 1907 and in the Fourth Geneva Convention. Both these conventions permitted the

occupiers to carry out such activities in the occupied territories if the urgent military need and security requirements necessitate it in order to maintain the security and the safety of their forces and properties in the occupied territories.

The Israeli jurists and annotators of International Law justify what they believe to be the legality of the acts perpetrated by their governments, including the confiscation of land and the establishment of settlements in the Palestinian and Arab territories under their control by presenting several justifications and legal pretexts. Most important among these is alleging that Article (49)* of the Fourth Geneva Convention, (12 August 1949) and pertaining to the protection of civilians in time of war, is not applicable to the existing situation in the Palestinian and Arab territories under the control of the Israeli forces. They explained that by saying that the content of Article 49 of the Fourth Geneva Convention was originally set to deal with the formal activities of states, which means those activities performed under the auspices and the actual intervention of governments. Therefore, they say, there is no way of applying these articles on the individual and voluntary activities of individuals or groups carried out without any formal intervention by the State, as is the case in the Palestinian territories. Those who voice this justification believe that the Israeli settlements established in the occupied Palestinian territories by voluntary individual and collective efforts and activities without the participation of the State of Israel are excluded from the applicability

* Article 49 of the Fourth Geneva Convention reads as follows "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

The occupying state can, however, execute a full or partial evacuation of a certain occupied region if the safety of the residents so requires or for coercive military reasons. The evacuation operations can only lead to the movement of the protected people within the limits of the occupied territories, unless that is impossible. The transferred people as such should be returned to their homeland as soon as the aggressive acts are stopped in this region.

The occupying state that carries out the transfer and evacuation operations should make sure as far as possible that suitable abodes are provided for the protected persons and that the transfer operations are carried out in a satisfactory manner in terms of safety, health conditions, security, and food and maintaining the unity of individual families.

The protecting country should be notified of the transfer and evacuation operations as they occur. The occupying country cannot transfer or move part of its own civilian population to the territories it is occupying.

of Article 49 of the Fourth Geneva Convention.[59]

Dr. Yehuda Avi Blum, in his legal defense of the Israeli settlements in the occupied Palestinian territories went even further, through his effort to legalize these settlements based on his own concept pertaining to the rules and provisions of International Humanitarian Law. He established this concept through his personal analysis and juristic annotation of Article 49.

Dr. Blum believes that the objective of prohibiting the occupying state from transferring its citizens and employing them in the territories under its control and administration was to protect the civilian residents in these territories. These civilians would be facing an occupier who could resort to deporting them from their land and replacing them with its own citizens in order to implement settlement activities. Based on that idea, settlement activities according to Dr. Blum become legal and excluded from the prohibition stated in Article 49 of the Geneva Convention if it is implemented in vacant areas that are not populated by local residents.[60]

Dr. Blum's analysis and annotation of the Fourth Geneva Convention's Article 49 won the support and acceptance of the Israeli governments, making it a legal basis imparting legality on the settlement practices in occupied Palestine.[61]

In addition to the efforts of the Israeli annotators and experts in International Law to justify the practices of their government in this regard, many other western writers like Professor Eugene Rustow and Professor Alan Gerson defended the practices of the Israeli government in terms of settlement and transferring Jewish Israeli citizens to settle in the occupied Palestinian territories. They did this through coming up with several legal pretexts, which cover these practices and grant them protection and legality.

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[59] B'Tselem, Israeli Settlement in the Occupied territories as a Violation of Human Rights Local and Conceptual Aspects, pp. 17-20.

* B'Tselem, (The Israeli Information Center For Human Rights in the Occupied Territories).

[60] Khaled Abed, The Israeli Policy in the Occupied Territories, a study in the methods of annexation and judaization, issued by the Palestinian Studies Institution, first issue, 1984, p.85.

[61] Ibid, p. 85.

These pretexts[62] can be summarized in the allegation that Israel enjoys special considerations in the Palestinian occupied territories. These special considerations, according to those making the allegation, were created and consolidated by the lack of decisions in terms of the legal status of these territories. This situation resulted in the Israeli presence practically acquiring a legal status that makes it a continuity of the Mandate regime, which formerly existed in the Palestinian territories. It also makes Israel a guardian occupier, not a military occupier, according to **Gerson**.

The aforementioned legal consideration, based on the special and distinguished legal nature of the Israeli occupation in the Palestinian territories, exempts Israel from many of the legal rules and provisions normally imposed on an occupying state. These include Article 49 of the Fourth Geneva Convention, which, according to the legal consideration, Israel is not obliged to adhere to whilst conducting its affairs in the Palestinian territories under its administration.

In addition to the mentioned allegations and legal pretexts, there is also the religious and historical justification that is voiced by the supporters of the religious movements and parties. This justification says that the Israeli people has the right to possess the Palestinian territories based on God's promise to Abraham, in which He allocated these territories for Abraham and his children. The supporters of the extreme religious movements deal with these lands on this basis, considering Israel the 'property' of the sons of Israel, who have the right to own it and to settle in it without giving any consideration to the rights of the legal owners and residents, who these movements consider aliens.

Based on these religious myths, any Israeli settlement in any part of the occupied Palestinian territories is a restoration by the Jews of today of a divine right and of the Jewish kingdoms, which existed in these territories and which were demolished by force.

[62] The Israeli Settlements in the Occupied Palestinian Territories, a collection of studies and researches presented during the international symposium on the Israeli settlements in the occupied Palestinian territories held in Washington, 22-24 April 1985, publications of the Arab League, p.376.

Section Two:Discussing and evaluating the Israeli justifications

We will try through the following to discuss and evaluate the Israeli allegations to see how valid they are and to what degree they are compatible with the provisions and rules of International Humanitarian Law pertaining to the state of belligerent occupation. This law was mainly formulated to regulate the legal relations resulting from occupation and to determine the rights and duties of the parties of this legal relationship between the occupation authorities on the one hand and the population of the occupied territories as civilians on the other, as well as the country and property under occupation.

A.The allegation that the military necessities and the security requisites inevitably demanded the establishment of such settlements in the occupied Palestinian territories is a baseless allegation. Security reasons or war requirements may necessitate that the occupation authorities confiscate and seize specific areas of land that have characteristics that are compatible with the objectives for which they are confiscated and seized. This includes, for instance, the fact that they enjoy a strategic location or are needed for a military purpose.

What draws attention regarding the confiscation and seizure of land carried out in occupied Palestine is the fact that they are in no way connected to security and military requirements. This becomes clear when one considers the vast areas of Palestinian land that the State of Israel has taken by force. Three quarters of the West Bank and about half the total area of the Gaza Strip have, for practical purposes, come under the control and exploitation of the Israeli occupation forces, which leads us to ask if there is really a security need that entails the confiscation and appropriation of large areas of land by the occupier.

On the other hand, the security and military requisites logically demand the establishment of military camps or security centers on the confiscated and seized Palestinian land. What is noticed regarding the existing Israeli settlements in terms of their population, practical reality, services and the geographical nature of their locations is the absence of security and military dimensions, because most if not all of them were established for residential purposes and for practicing occupational activities of a civil nature.[63]

The Special Committee to Investigate Israeli practices Affecting the Human Rights of the Palestinian people and Other Arabs of the Occupied Territories asserted this fact by noticing that there are increasing efforts to expand the settlements that are already established, especially those which are located in the densely populated areas, like Hebron, Nablus, and Ramallah. The Committee concluded that the Israeli allegations relating to security needs, which, according to Israel, supported the policy of annexation and settlement, are not justified.

Commenting in another report on the Israeli practices pertaining to settlement, the same committee said that Israel's settlement policy is based on a clear principle that considers the territories occupied by Israel in 1967 part of the State of Israel, which is why it establishes settlements there.[64]

The Israeli leaders have asserted this more than once. Former Israeli Minister of Defense, the late Moshe Dayyan who was one of the main pillars of the Israeli policy once said, "I don't believe that the Israeli settlements in the occupied territories enjoy any special significance in terms of security, but I consider settlement the most important factor, as I assume we are not going to move from the place in which these settlements were constructed."

In addition to the aforementioned, belligerent occupation is distinguished by being a temporary state created by force. The occupying state, therefore, is supposed to take into consideration the standards of proportionality between its acts in the occupied territories and this temporary presence of its forces in the occupied territories. It is noticed, however, that the Israeli settlements established in the occupied Palestinian territories are characterized by permanency and stability.

There is no proof or indicator pointing to the fact that the objective of establishing these settlements was to meet security needs and the military necessities of this temporary presence of the Israeli occupation forces in the occupied Palestinian territories. On the other

[63] For the locations of the Israeli settlements see: Mohammed Sleiman, Op.cit. pp. 26-29.

[64] The Israeli Settlements in the Occupied Arab Territories, Publications of the Arab League, Op.cit., pp.383-384, Margin 4.

hand, indicators pointing to the permanent nature of these settlements manifest themselves in different ways, the most important of which is the way the settlements are constructed. They have the nature of contemporary residential cities in terms of structure, shape and nature as well as the material used in the construction.

The legal advisor of the US Secretary of State Herbert J. Hertsel noted this fact, drawing attention to it in his speech addressed to two Congress members who head two branch committees stemming from the Committee of International Relations at the US House of Representatives. He said, according to available information, that the civil settlements in the territories occupied by Israel do not seem proportional to the limits of the Israeli authority as a military occupier. They do not, he added, seem to have been established in order to remain for a limited period, nor to ensure an organized rule of the occupied territories, nor out of a desire to meet military needs during the occupation.

Finally, even if we accept the Israeli allegation that the settlements were constructed to meet security needs and for military purposes, then there is no doubt that the situation is different now that the PLO and the Israeli Government have accepted the principle and idea of solving and settling the existing conflict between them by amicable means. This was embodied officially in the endorsement of the Declaration of Principles in Washington on 13 September 1993.

With regard to this declaration and its legal effects, one of the issues of great concern is the PLO endorsement that affirmed the PLO's legal commitment to freeze all acts of resistance and military activities that it formerly practiced against Israel. This was in fact asserted by several developments, including the return of the PLO to the homeland, the formation of the Palestinian Authority (PA) in the territories from which Israel withdrew, its elimination of the state of disorder and absence of security that prevailed in the Palestinian territories following the Intifada, as well as the capability and effectiveness of the PA in putting Palestinian armed factions and movements functioning in the Palestinian territories under control. The PA was also successful in getting the armed movements to agree on the need to respect and abide by its peaceful approach and strategy.

It is taken for granted that the change in the PLO military and political approach should be met with a similar change on the same level in the Israeli political and military approach. This entails that Israel reformulates its strategy and the way it deals with the Palestinian problem to match with its commitments, which emerged the moment it accepted to negotiate with the PLO and to endorse the Declaration of Principles.

Based on this, we can say that although there were security and military requirements that justify the policy of establishing settlements in the occupied Palestinian territories, they ceased to exist following the signing of the Accord and as a result of the change that took place in regard to the political and military approach of the Palestinian party. This change logically entails that Israel stop all its activities and projects in this regard because the security and military reasons and justifications given for constructing the settlements are no longer valid.

Israel's continuing settlement activities and the appropriation and confiscation of about 400,000 dunums of land since the endorsement of the Agreement up until the summer of 1999 is just further proof that these settlements have no military or security-related significance. It is also noticed that the number of settlers has increased in an extraordinary manner since Oslo, the number reaching 169,327 settlers by September 1998 (according to the Palestinian daily *Al-Ayyam* of 8 September, 1998), compared with 107,000 in 1992, according to UN sources (The Economic and Social Council Report on the Permanent Sovereignty over the National Resources in the Occupied Palestinian and Other Arab Territories 172/52/A, 71/1997/E p.4).

This remarkable increase in the number of settlers and the area of confiscated land following the Palestinian-Israeli agreement confirms beyond any doubt that these settlements have no significance from a security point of view. It also confirms that there was another objective behind the building of these settlements, namely, an attempt on the part of the Israeli occupation command and the State of Israel to create physical facts on the ground in Palestine. It should be emphasized that this attempt aims at imposing these facts on the Palestinian negotiator, forcing him to eventually accept and deal with them as concrete facts

that are difficult to overcome.

B. With regard to the Israeli jurists' justification concerning the non-applicability of Article 49 of the Fourth Geneva Convention on the Israeli settlements because the occupied territories were not a state, we can say the following:

This is no more than an unsuccessful attempt on the part of the Israeli jurisprudents. It expresses their inability to find practical and open legal proof that can impart legality on the behavior and practices of the State of Israel on this subject. They tried, with this allegation, to circumvent the text and content of Article 49, hoping to succeed in finding a legal leeway to justify the policy of their state in this regard and to relieve it from the legal accountability resulting from its practices. The following can refute the allegations of those people:

Alleging that the current settlement activities in the occupied Palestinian territories are activities carried out by individuals or groups without the interference or participation of the government is not valid from a legal perspective. This is so because in accordance with the provisions and rules of International Law, the Israeli occupation authorities are responsible for maintaining security and order in the territories under their control. In addition, they are also responsible for implementing and respecting the rules pertaining to the Law of Belligerent Occupation. This law is applicable and should be enforced in the occupied Palestinian territories.

Based on that, the legal responsibilities of the Israeli occupation authorities entail their immediate intervention to stop the settlement carried out by their own settler citizens because it represents a serious threat to the security and safety of the civilians of the occupied territories, and an act of aggression that threatens civilians' private properties. More important is the fact that these acts were clearly prohibited by the provisions of the Fourth Geneva Convention.

Because of these considerations and the fact that the activities of the citizens of the occupying state are a flagrant violation of the rules pertaining to belligerent occupation, there is no way we can relieve the Israeli occupation authorities of their legal responsibility. The absence of any effort to confront and stop these activities on the part of the Israeli authorities is decisive legal evidence that confirms Israel's

violation of its commitments accruing from the provisions and rules of the Law of Belligerent Occupation.

In addition to that, the reality of the role of the State and its involvement in the settlement activities are clear through the State's financial contribution and the big spending allocated in the budget every year to finance the costs of construction and the establishment of settlements. These costs between the beginning of the occupation and the end of 1987 were put at US$20 billion.[65] The settlement share in the budget of 1992 alone was US$6.5 billion, while the defense budget on the other hand reached US$7 billion.[66] In the year 1997, more than US$300 million were allocated in the State budget for the development of settlements and covering their needs.[67]

These allocations leave no doubt whatsoever concerning the prominent position of settlement on the Israeli Government's list of priorities. The State contribution even exceeded the figure already given due to the fact that the government sets legal and administrative measures to protect settlers and settlements.

These measures were embodied in the State taking several decisions and issuing several orders that exempt settlers from the jurisdiction of the local courts in the Palestinian territories, putting them instead under the jurisdiction of the Israeli judiciary.[68] The State also made several decisions linking the settlement local councils with the Israeli structure and administrative organization.[69] Most important among these measures is the Cabinet's December 1996 endorsement of the

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[65] Origunes et Evolution du Problems Palestinein, op.cit., p. 249.

[66] *Al-Thawra* Syrian Arabic Daily, 3 January 1992, issue 8729.

The settlement budget is introduced in several provisions, most important of which are those related to security and defense, so it is very difficult to identify the size of actual spending on the part of the State of Israel on these settlements. In addition to that, the Israeli governments often do not reveal their real role and their real contribution in this regard.

[67] The report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories. Oct. 14, 1997, /52/131/Add P.197

[68] Suppressing a People, Field Affidavits, prepared and translated by Bashir Al-Barghouthy, issued by Dar Al-Jalil, Amman, first edition, 1990, p.149. See also: Raja Shehadeh, The Occupier's Law, Israel and the West Bank, Op.cit. p.71.

[69] Dr. Awni Bader, "The Legal Status of the Structural Planning in the West Bank under Occupation," ***Economic Samed Magazine***, issue 80, 1995, pp. 207-209.

decision granting settlers the position of first-degree development status. This meant that the Israeli Government had included these settlements in the Israeli urban areas, which receive the utmost attention. The danger and repercussions of these negative decisions are evident, we believe, in the fact that the aforementioned measures have granted the settlers several benefits, most important of which is the knowledge that their actions and practices in the Palestinian territories are not subjected to local laws and military orders. Now with legal protection and immunity, the settlers have become legally unaccountable before the judicial departments and local courts for any violation or crime they may perpetrate against the people of the occupied territories and their properties.

Linking the Israeli settlements with the Israeli administrative structure, and extending the applicability of that structure to the occupied Palestinian territories, practically meant a direct annexation of all Palestinian territories under the control and administration of the Israeli settlements.

Finally, among the most important features of the Israeli Government's interference in the settlement activities, and the most dangerous, is the permission and encouragement it gave to the settlers to carry out military activities in the occupied Palestinian territories. This was done through several military orders issued by the command of the occupation forces. The most recent of these included Order No. 1456, issued on 11 June 1998, which allows the civil guard forces of the settlers to assist the occupation forces in their security activities outside the settlements. Military Order No. 1457, issued on the same date, gave the civil guard of the settlements the right and authority to arrest, inspect, and use force outside the limits of the settlements away from the supervision and control of the occupation forces*.

Although the content of these military orders confirmed the intervention of the State in the settlement and settlers' activities and the right of the State to supervise them, they also point at the same time to the risk that the Israeli settlements are posing due to the militarization of their population.

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* Some resources said that a civil guard center was inaugurated in the 'Bitar Elite' settlement. The center consists of an armed force of 11,000 settlers all of whom are extreme Israelis. The source: The Annual Report on Settlement Aggressions, Op.cit. p. 229.

C. With regard to Dr. Blum's allegation and his explanation of the prohibition included in the text of Article 49, we can respond to this allegation by saying that Dr. Blum's explanation and his analysis of the content of the article totally contradict its reality. The text of the Article is characterized by clarity and accuracy, and the prohibition it included was decisive, leaving no place for any exception. This can be noticed when reading the text *in toto* or in a complementary manner. There is no paragraph or clause whose formulation suggests an exceptional or conditional implementation of what is included in the last paragraph of Article 49 pertaining to prohibiting the occupying state from transferring its citizens to the territories under its occupation and the administration of its forces.

This was asserted by Professor **Thomas Mleson** in his comment on Dr. Blum's explanation of Article 49. He said that the text of Article 49 meant that it is impermissible for the occupying state to transfer groups of its civilian population to the occupied territories. This text was not subjected to any restriction or exception that would allow the State to arrange such a transfer.[70]

Going back to the history of negotiating the Fourth Geneva Convention, we can understand fully and clearly the decisiveness of the prohibition included in Article 49. Its text pertaining to prohibiting the occupying state from moving its citizens or settling them in the occupied territories was endorsed with the agreement of all the parties without reservation. This is due to the negotiating parties' desire to prevent the recurrence of certain acts, especially by Germany during World War II when it transferred its citizens and settled them in the land that came under its control and the administration of its forces with the aim of imposing a *de facto* policy on the new demographic realities it established in these regions, inflicting serious harm on the population there in the process.

This was asserted by jurist **Jean Pictet**, one of the jurists who contributed to the preparatory work of the Fourth Geneva Convention and who later supervised the preparation of the annotation of the convention. He commented on including Article 49 in the Fourth Geneva Convention by saying that it aims at preventing the practice

[70] Sali Malison, ***The Israeli settlements from the Perspective of International Law***, Op.cit. pp.19-21.

engaged in during World War II by some forces, which transferred part of their population to the areas they occupied for ethnical and political reasons or for the sake of colonizing these areas.[71]

Through the aforementioned, we can see that in order to justify Israel's practices in the field of settlement and to create a legal cover for them, Dr. Blum resorted to expanding the analysis and annotation of Article 49 in a subjective manner and in a way that fully contradicts its content and objective.

D. With regard to the allegation that Israel enjoys special considerations similar to those provided for by the mandate system due to the legal vacuum resulting from the absence of international resolutions pertaining to this region, which legally allows the occupier to overlook several provisions and rules in the Law of Belligerent Occupation, including the prohibition concerning the transfer of the citizens of the occupying state to the occupied territories, we can respond with the following:

These pretexts and allegations are no more than political stands because they lack any legal foundation. The mandate system was a legal measure based on the mechanism of the League of Nations, which imposed it on some regions due to certain objectives that are elaborated upon and specified in Article 22 of the League of Nations Covenant. The third paragraph of that article stated that

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

After the demise of the League and the establishment of the United Nations, the authority to look into the situation of the regions under the British Mandate was transferred to the General Assembly according to the provisions of Chapter 12 and 13 of the Covenant. These chapters asserted the need to put the regions that are under occupation under a system of guardianship as a legal alternative system that is

[71] Suppressing a People, Op.cit. p.168, Margin 34.???

complementary to the role of the Mandate, and that this should be done in agreement with the mandated states.

Based on that, no states or others can impart such a legal status on the presence of foreign states in the territories of others. In addition to that, the mandate or the guardianship as an alternative legal system, despite its legality, does not allow the state administering it to change the legal status of the region under its control, like for instance annexing part of it or transferring its citizens to that region in order to create new demographic and regional facts.[72]

As for the allegation that the Israeli occupier is a guardian occupier and not a military occupier, this allegation, in our opinion, is not valid because it implies that there are two kinds of occupation and that there is a dual legal system and dual standards organizing the rights and duties of the occupier in both cases. This idea does not exist at all in International Law. Such a dual classification of occupation does not exist, neither in the provisions and rules of the Law of Belligerent Occupation nor in the provisions and rules of International Customary Law. The occupation, according to the provisions and rules of International Law is a legal episode that is regulated by the same rules that apply to it whenever it occurs. These rules are applicable in a complementary manner and events should be treated equally without any discrimination.

Therefore, the Israeli occupation of the Palestinian territories, just like any case of belligerent occupation, is subjected to the codified and customary rules and provisions of the Law of Belligerent Occupation, which are applicable in a complementary manner and without any exception.

Regarding the allegation that there is an absence of international resolutions pertaining to the legal status of the Palestinian territories and the attempt to use this as a justification to impart legality on Israel's violations against the provisions of Public International Law and the rules of International Humanitarian Law, we can say that the Palestinian problem has gathered the highest number of international

[72] See verdict by the International Court of Justice pertaining to the legal status of South West Africa, Namibia which was put under the mandate of South Africa. Resource: *Al-Waqa'*, a magazine issued by the UN, December 1983, p.121.

resolutions in terms of its legal status. Probably the most important among these international resolutions is 242, through which the International Security Council called on the conflicting parties to settle their conflict by peaceful means, demanding that the State of Israel withdraw from the territories it occupied following its armed attack on the Arab countries on 5 June 1967.

Despite our negative remarks on the content of the UN Security Council resolution, it is important to note that the legal concept of occupied territories is applicable to the Arab territories that the Israeli occupation forces were able to control following the aggression of 5 June 1967. The resolution read as follows:

> *Withdrawal of Israeli armed forces from territories occupied in the recent conflict; Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;*

In addition to that, there are hundreds of international resolutions issued by the General Assembly pertaining to the legal status of the Palestinian territories. In these resolutions, the General Assembly called on Israel to respect the provisions of the UN Charter, the resolutions of the?} Security Council and various UN departments, to end its occupation and withdraw immediately from the occupied Palestinian territories, and to recognize the right of the Palestinian people to self-determination in these territories.

Based on that, the allegation that there are no international resolutions regarding to the legal status of the Palestinian territories is not true.

There is finally a justification that was not voiced or talked about that much by the Israeli jurists, although the Israeli governments depended on it. This allegation says that the Jews own the land on which the settlements were established. Based on that, the Israelis then allege that their presence is legal and is based on the Jewish ownership of these lands. The importance of this allegation in our opinion is dependent in the fact that the Israeli governments have adopted it and that the current government will no doubt try to depend on it to justify

keeping in its hands some of the Palestinian territories as soon as the final status negotiations start. The Israeli Government will evidently resort to this argument to justify retaining most of the land in the Arab city of Jerusalem, alleging that its citizens own it.

This is affirmed by the fact that attempts on the part of Jews and several Jewish and Zionist organizations to purchase Palestinian land and properties in the Arab city of Jerusalem have been escalating recently in what seems to be a race against time to obtain the largest area of land possible. However, we have to look into the matter and see to what degree this allegation is true, and to see if the Israeli governments can legally rely on such allegation.

As we mentioned earlier, the region of Palestine is considered from a legal point of view an occupied region that is not in any way subject to Israeli sovereignty and laws. The national laws, which were applicable before the occupation began, should remain applicable, with the exception of those among them that pose a threat to the security and safety of the occupation forces. This was confirmed by the Law of Belligerent Occupation, which permitted the occupying state to abrogate and suspend the application of penal legislation that threatens the safety and security of the occupier. Article 64 of the Fourth Geneva Convention states:

> *The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.*

On the other hand, the right of the occupation authorities to set and issue new laws in the occupied territories is not an absolute right. This was restricted in the Fourth Geneva Convention by Paragraph 2 of the above-mentioned article, which states:

> *The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or*

administration, and likewise of the establishments and lines of communication used by them.

The text of the previous article, as is clear, has asserted that the right of the occupier to enact and issue new legislation in the occupied territories is conditioned on the need to do that in order to meet its commitments in accordance with the Geneva Convention. Such legislation should also be necessary to organize the administration of the occupied territories and the security and safety of the occupying forces there.

With regard to the issue of the Israeli purchase of Palestinian land, the Israeli occupier should take into consideration the local legislation pertaining to this matter and abide by its provisions relating to foreign ownership in the region. It should take note, for example, of the local Palestinian legislation regulating the purchase and ownership of land and realties, the Jordanian Law No. 40, issued in 1953, dealing with the selling and leasing of immovable property to foreigners and regulating the foreigners' ownership of land and real estate. It is noticed that this law acknowledges as a general rule the right of foreigners to own land in Jordan - the 'East and West Banks' - on condition that certain conditions are met. These conditions were regulated by Article 3/1 of the law and in the consecutive articles, which asserted the need for foreign individuals and institutions willing to own or possess any land to obtain a permit for that ahead of time from the Council of Ministers. The following conditions should also be met in regard to the land to be purchased:

1. The immovable properties should be in the cities and villages.
2. The area of land should not exceed the need of that institution to carry out its objectives.
3. The ownership should not be for personal benefit and not for property trading purposes.

The law, on the other hand, permitted individuals and institutions to possess land outside the cities and villages if the public interest required this on condition that certain conditions are taken into consideration and that they first consult the competent authorities.

There is no doubt that the content of the previous articles is clear, and

therefore that the purchase made by the Israelis is considered illegal as it clearly violates these articles and must be abrogated. Some people may allege, however, that the military orders issued by the military command of the occupation forces in the occupied Palestinian territories, particularly Military Order No. 1025, issued on 4 October 1982, permitted foreigners to possess immovable properties after obtaining the approval of the head of the Civil Administration. Therefore, these people allege that this kind of purchase is considered legal and cannot be challenged because it does not contradict all local applicable laws.

Such a statement in our opinion has neither value nor a legal impact. Our proof is the texts and provisions of the Fourth Geneva Convention, which stipulate that the occupier must abide by certain considerations and controls when issuing laws in the occupied territories. It is clear that Military Order No. 1025 does not do that.

On the other hand, even if we assume that there is some kind of applicable legislation in the Palestinian territories that permits foreigners to possess Palestinian land without any restrictions, it is still the legal duty and commitment of Israel to prevent its own citizens from possessing properties and living in the occupied territories. This is due to the commitments of Israel, according to the provisions and texts of the Fourth Geneva Convention, which prohibits settling the civilian citizens of the occupying state in the occupied territories.

Therefore, the occupying state as a higher contracting party to the Fourth Geneva Convention should be committed in accordance with the provisions and rules of the Convention, especially Article 146*, to

* Article 146: "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions f its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article".

carry out its duty and responsibility in stopping any practices or behavior on the part of the subjects of the contracting parties that contradict its provisions and principles. The commitment of the contracting parties is not restricted to merely preventing the violation. They are also committed according to the content of the article to set effective legislation that guarantees that citizens who perpetrate an act considered a grave violation are punished.

Based on the open prohibition of settlement in the Convention, and considering the practices that accompanied this settlement as grave violations of the Fourth Geneva Convention Article 47, Israel must be committed as a signatory to the duty of preventing its civilian subjects from purchasing or possessing land or residing and settling in the occupied Palestinian territories. Israel is also obliged to follow up and punish those people if they do not abide by the prohibition stated in the conventions

It should also be noted that ownership by foreigners in other countries, if permitted by domestic laws, does not allow the foreigner anything more than the right to possess and practice the rights related to ownership (the right to benefit, invest and deal with the property). This right, it should be noted, does not grant him political rights.

Therefore, the purchase and possession of land and property by the subjects of Israel in the Palestinian territories and their permanent residence there is decisive evidence of the Israeli violation of the Fourth Geneva Convention. It is also an act that the Israelis should not be allowed to use as an excuse to justify acquiring political gains or to demand maintaining these lands and alleging that they have rights to any revenues derived from them.

Chapter Four

Evaluation of the Israeli Settlement Practices in Light of International Humanitarian Law

Legally, the Palestinian territories fall under the category of occupied territories since they were effectively placed under the control and administration of a foreign hostile force. These forces acquired these territories through the use of force and have successfully controlled and administered them via their military government, which performed its role as governor and administrator of those lands.

The application of the contractual legal understanding of occupied lands on the legal status of the Palestinian territory leads to a number of legal implications. Those mainly include the application and jurisdiction of the laws and regulations of International Law in general and the rules and regulations of International Humanitarian Law related to military occupation, in particular, on these territories. The application of those laws becomes the legal foundation that governs and regulates all aspects of the relations between the occupying force and its administration on the one hand, and the occupied territory and its civilian population on the other.

In light of our discussion and evaluation of the settlement and property confiscation, demolition, and other damaging practices of the Israeli occupation, we shall attempt in the beginning to enumerate and identify what the rules and provisions of International Humanitarian Law related to military occupation include with respect to the legal principles and bases regarding occupied lands. In addition, we shall also try to identify and clarify the legal standards that the occupier should honor and consider in its practices because of the limitations set by these bases on the rights of the occupier in this regard.

Section One

The Regulation of International Humanitarian Law Pertaining to the Rights and Obligations of the Occupier towards Persons and Properties in Occupied Lands

The provisions and stipulations of the 1907 Hague Convention Respecting the Laws and Customs of Land War discuss various subjects pertaining to the occupier's rights and obligations once the occupier begins to use and exploit private and public property and the various resources of the occupied lands for the benefit and interest of its forces and in its administration of the occupied territory.

Article 46 of the Convention states that "family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated." Forbidding pillage was also stipulated in Article 47, which stipulates, "pillage is formally forbidden."

Article 55 addressed the status and legal nature of the role and position of the occupying authority in relation to the properties and forests that it seizes. According to this article, "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

What is remarkable in the provisions and stipulations of the 1907 Convention is the omission of any stipulation or clear indication concerning the issue of settlement and the occupying power's transfer of its citizens to the lands under the control and jurisdiction of its forces.

In our view, this neglect is due to a number of reasons, most important of which is the non-exposure of the international community during the drafting of this convention to such practices. Accordingly, the absence of such activities had a clear impact on the failure of the negotiating parties to address this issue as a worthy one and

consequently not mention it in a specific provision. Also, reaffirming the context of the Convention as implied in its provisions regarding the temporary nature and non-permanence of military occupation* logically means that occupying forces do not transfer their civilian population to the control and administration of their military forces because their permanent residency in the occupied territories is not allowed.

The 1949 Fourth Geneva Convention, however, addressed the issues of the acquisition and confiscation of the properties of the citizens of the occupied lands, settlement activities, and the transfer and movement of civilian populations to the lands falling under the jurisdiction and administration of the occupation forces. This issue appeared in many of its articles and provisions. Article 33 stated, "...Pillage is prohibited..." In the stipulation of Article 49, the agreement, as stated earlier, affirmed the fact that the occupier is not permitted to transfer and move its civilian population to the lands under its control and occupation. Article 53 addressed the issue of the destruction and demolition of properties. According to this article, "Any destruction by the occupying power of real or personal property belonging to private persons, or to the State, or to any other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations".

Article 55 identified the commitments and obligations of the occupier towards the civilian population in regarding their living conditions by

* The temporary and impermanent nature of the military occupation in various indications stipulated by the provisions of some of the convention's articles, particularly in Article 42 concerning the legal interpretation of military occupation, then to the reference to its previous stipulation???. Article 43, which states that if "the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

Moreover, the temporary nature of occupation is clear in the content of Article 45, which states that "it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power". Article 55 of the Convention also stipulates that "the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

stating "to the fullest extent of the means available to it, the occupying power has the duty of guarantee the food and medical supplies of the population. In particular, it should bring in the necessary foodstuffs, medical stores, and other articles if the resources of the occupied territory are inadequate.

"The occupying state may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international agreements, the occupying state shall make arrangements that ensures just compensation for whatsoever it requisitions."

In addition to the previously-mentioned agreements, the First Geneva Protocol, which supplements the Four Geneva Conventions, has addressed, in its various articles, the rights and commitments of the occupation forces towards private and public property and towards the agricultural areas and resources in the occupied territory. Article 54 stated that:

The starvation of civilians as a method of warfare is prohibited.

It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

The prohibitions in Paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse party:

a. as sustenance solely for the members of its armed forces; or

b. if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken that may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

Following the review of the rules and regulations of International Humanitarian Law relevant to the identification and regulation of the rights and commitments of the occupier towards the private and public property in the territory falling under its control and jurisdiction, we notice that these rules and regulations are limited to conditions, if present, the occupier may use and enjoy the resources and property of the territory as well as breach and violate what these rules have imposed regarding the general prohibition on all acquisition activities, confiscation, and the demolition and destruction of property. These conditions are:

First: If the military requirement necessitated that. This means that the occupation authority is required to carry out and implement acts of confiscation, destruction, and demolition whether for the purpose of protecting the security and safety of the occupying forces, or because the private and agricultural property of the other party are used in acts and activities of a military nature. In these cases, it becomes necessary for the occupying forces to demolish and destroy them in order to deny the other side the advantage of using and benefiting from them.

With regard to international jurisprudence, International Law experts provided various definitions of military necessity. All these definitions agree with the notion that military necessity derives from urgent conditions that require a swift reaction in order to prevent the conflicting parties from using the mechanisms at their disposal in military activities. As some have said, it is the conditions that appear in times of war that lead to actions that violate the rules and regulations of war and render the committing of such actions inevitable due to the exceptional circumstances existing at the time.[73]

Second: The necessity for the appropriation, confiscation, exploitation or use of the territory's resources and capabilities as well as the property of its citizens to be for the sole use of the occupying forces. They should be limited and specifically geared towards the

[73] Concerning the concept 'military necessity' and its conditions see:

Bowett D.W., ***Self Defence International Law,*** London, 1958, p.59.

William Downey, "The Law of War and Military," ***American Journal of International Law***, Vol. 47, pp. 252-254.

Rateb, 'Aisha., ***Some Legal Aspects of the Arab-Israeli Conflict, in Arabic***, Cairo, 1969, pp.87-91.

fulfillment of the needs and requirements of those forces. What is even more important is that this right applies only to the forces present in the territory and does not extend to include all the military forces of the occupying state.

According to this principle, international jurisprudence concurs that it is forbidden for the occupier to violate these principles by manipulating and exploiting the resources and wealth of the occupied territory.[74] It is not permissible under any circumstances for the occupier to transport these resources and national wealth to outside the occupied territory for use by the occupying state. It is also prohibited to allow the citizens of the occupying state present in the occupied territory to use and exploit these resources and wealth for their benefit.

With respect to the judiciary, national and international courts affirmed the obligation on the part of the occupier to take these conditions and constraints into consideration once he proceeds with exploiting and using the resources and wealth of the occupied territory. According to a ruling by the Polish High Court of Justice in one of the cases in this regard: "Obtaining property under the context of military necessity for the purpose of exploiting and reselling it for profit, and not for the direct use of the occupying forces, is an improper and illegal action."[75] The Joint French-German Tribunal also affirmed this opinion when it heard the case of Gross Roman vs. Germany.[76]

As for the trials of the war criminals in the aftermath of World War II, the International 'Nuremberg' Criminal Court asserted the international responsibility of the occupying state once its forces violate and neglect their commitments and obligations while proceeding with confiscation, appropriation, and exploitation of the resources of the occupied territory and its wealth.[77]

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[74] McDougal and Florentino Feliciano, ***Law and Minimum World Order***, Yale University Press, 1961, pp. 819-822.

Julius Stone, ***Legal Controls of International Conflict***, London, 1959, pp. 707-709.

[75] Shihateh, Mustapha Kamel, ***Military Occupation and the Rules of Contemporary International Law***, in Arabic, The National Press and Publication Company, Algeria, 1981 edition, p.248.

[76] Ibid, p.247.

[77] H. Lauterpachi., ***Annual Digest and Reports of Public International Cases***, Vol. 14, 1947, pp. 266-274.

In this regard, it is worth mentioning that immediate compensation in cash should be paid for confiscation and appropriation carried out by the occupying forces in the occupied territory. If the occupier fails, for any reason, to immediately fulfill this obligation, he should give the injured party an invoice for the due amount, which should be paid later and at maximum speed*.

Finally, the endorsement of the rules and principles of International Humanitarian Law relevant to military occupation with respect to the permissibility of appropriation and confiscation by the occupier in the occupied territory falling under his control and jurisdiction is not unqualified. The rules and principles of International Humanitarian Law relevant to military occupation have restricted this right through an important legal principle and standard known as the 'symmetry' standard.

This standard or principle necessitates the requirement that confiscation and appropriation measures, as well as all current or future practices of destruction and demolition of property for the military necessity of the occupying military forces or for the fulfillment of their needs in the occupied territory, should be relative to the capabilities and resources of the occupied territory and consider the needs and requirements of its citizens. Accordingly, it is not permissible under any circumstance for the occupying forces to use this right, even when the justification for confiscation and appropriation is valid, if such actions infringe on the citizens' living requirements and render their living conditions miserable and their stability and presence of their land impaired.

In this respect it is worth noting that the rules and principles of International Humanitarian Law relevant to military occupation did not only force, in writing, the occupying forces to respect the standard and principle of symmetry once these forces confiscated, appropriated, or demolished property, but also, as clearly indicated in Article 55 of the Fourth Geneva Convention, went even further by obliging the occupation forces to import that which is necessary for the residents of the occupied territory such as foodstuffs and medical

* Refer to Articles 52, 53, and 54 of the Hague Convention in this regard, also to Article 55 of the 1948 Fourth Geneva Convention.

supplies if the resources and capabilities of the occupied territory were not sufficient to meet the needs and requirements of its civilian population[78].

Section Two

Israeli Practices and the Level of Compliance with the Rules and Regulations of International Humanitarian Law

It is clear from what was previously mentioned that the status of the rules and regulations of International Humanitarian Law relevant to the identification and regulation of the rights and obligations of the occupier with respect to private and public property and the wealth and resources of the occupied territory, and concerning his rights and the limitations regarding appropriation and confiscation, are determined and regulated by a number of legal standards and qualifications that should be respected by the occupier once he proceeds with using and exploiting for his benefit the rights of the private and public individuals in the territory falling under the control of the occupier and his administration.

In light of our discussion concerning the confiscation and destruction of private and public property currently being carried out by the Israeli occupation forces in the occupied Palestinian territories, one can question whether the Israelis have indeed complied with what the rules and regulations of International Humanitarian Law relevant to military occupation have confirmed and endorsed with respect to the restrictions imposed on the occupier's rights to appropriate and confiscate public and private property and to exploit the wealth and resources of the occupied territory.

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[78] For the concept 'military necessity' and its conditions see:

Bowett D.W., ***Self Defence International Law'***, London, 1958, p.59.

William Downey, "The Law of War and Military," ***American Journal of International Law***, Vol. 47, pp. 252-254.

Rateb, 'Aisha, ***Some Legal Aspects of the Arab-Israeli Conflict***, in Arabic, Cairo, 1969, pp.87-91.

In reality, the Israeli measures have been far removed from the standards set by the rules and regulations of International Humanitarian Law relevant to military occupation. We are not exaggerating by stating that the Israeli occupation forces have ignored throughout the years of occupation until the present day all the rules and regulations stated by International Humanitarian Law and International Law in its relations with and practices in the occupied Palestinian territories and in regard to the civilian population.

On the other hand, what the Israeli occupation forces have confiscated in the way of private property and land in the Palestinian territories was not intended for the goals and objectives related and connected to the needs and requirements of the Israeli forces present in those territories. They aimed, in fact, to fulfill and cover the needs and requirements of the State of Israel and its civilian population, which was transferred and settled in the occupied territories. This confirms the absence of a military need for such confiscation.

The same goals and objectives apply to the capture by the Israeli military forces of the Palestinian water resources and wealth. It later became clear that this absolute control has no connection at all with the presence of the Israeli forces on Palestinian territory. In fact, it emphasized the true intentions of the Israeli Government: namely, to use the Israeli occupation forces to fulfill the water needs and requirements of the urban Israeli settlements as well as those of the industrial and agricultural ones and the State of Israel in general.

From this vantage point, we can state that the current confiscation and appropriation practices engaged in by the Israeli occupation forces with respect to private and public property and water resources were used towards objectives and aims that are in no way related to the needs and requirements of the Israeli occupation forces present on the occupied Palestinian territory. In addition, the confiscation was clearly carried out to fulfill the needs and requirements of 'settler' population groups, which the occupying state should not have allowed, in the first place, to settle in the occupied Palestinian territories.

We can see from reviewing the rules and regulations of International Humanitarian Law pertaining to identifying and restricting the rights of the occupying forces with regard to private and public property and the resources and wealth of the occupied territory, that these rules

affirm the necessity and obligation of the occupier to be committed to the principle and standard of symmetry once it proceeds with using and manipulating its rights in this regard. Accordingly, it is pertinent that the acts of confiscation and appropriation that may be carried out by the occupier in the occupied territory be consistent with the actual capabilities of the territory and with the needs and requirements of its residents.

In reality this was disregarded and ignored by the Israeli occupier, both with regard to the appropriation and confiscation of private and public property (according to the lowest estimates, these amounted to two thirds of the West Bank land and half of the aggregate Gaza Strip land), and with respect to the capture of the Palestinian water resources and the exploitation and manipulation of most of the water in a manner inconsistent with and contrary to the needs and requirements of its rightful owners, the residents of the occupied Palestinian territories.

The size of the confiscated land and the amounts of water exploited and used by the occupying forces and their state unequivocally prove the absence of the standard of symmetry and the noncompliance with it by the occupation authorities in their practices and measures with regard to the occupied Palestinian territories.

As for the destruction and demolition practices currently underway against Palestinian property, whether for the purposes of settlement or for the building of bypass roads, we can state that these measures, as observed by field workers, were carried out for private goals and objectives. They were either implemented due to the need to construct residential settlements or for the purpose of fulfilling and answering the needs and requirements of the citizens of the State of Israel and their transfer and settlement in the occupied land, or for the purely service-oriented needs of those settlements, such as bypass and external roads whose construction is aimed at facilitating the movement of settlers within the Palestinian territories. The roads are to connect settlements together or to link them with nearby Israeli towns regardless of the destruction the building of these roads has inflicted on the Palestinian agricultural property.

The Israeli occupation authorities have on many occasions prevented the owners of Palestinian agricultural property, under the pretext of protecting settlers, from using their property adjacent to settlements.

In addition, the settlers, who were not satisfied with the level of destruction of Palestinian property that took place as a result of the building of Israeli settlements, adopted clear terrorist policies against the adjacent Palestinian property by intentionally disposing of their waste and garbage on these lands. Thousands of properties were ruined as a result, and tens of thousands of Palestinian landowners have lost their rights pertaining to their land or are otherwise unable to benefit from it.

In summary, there is no link between the destruction and demolition practices currently being committed by the occupation authorities in the occupied Palestinian territories and the military justifications and necessities because these measures were primarily carried out for the purpose and benefit of settlements. Accordingly, these actions served and benefited a cause that is regarded as illegal according to International Humanitarian Law, and especially according to the rules pertaining to military occupation.

Section Three

Legal Interpretation of Settlement Activity

On the basis of what has preceded regarding the specific particulars and facts relating to settlement activities, which we have supplied and presented throughout this study, we are faced without any doubt with a clear violation and arrogance on the part of the Israeli occupation authorities in their measures and practices committed in the occupied Palestinian territories in relation to the rules and regulations of International Humanitarian Law relevant to military occupation.

In striving to identify the nature and substance of the legal interpretation or 'legal characterization' of the Israeli settlement activities and the practices that accompanied them, we deemed it necessary to divide this section into two parts. The first is dedicated to identifying and clarifying the legal interpretation of this phenomenon with respect to the rules and regulations of International Humanitarian Law. The second is intended to address the nature and context of the legal interpretation of settlements in light of the rules and regulations of the public International Law.

Part one

The Legal Interpretation of Settlements in Light of the Rules and Regulations of International Humanitarian Law

As mentioned previously, the rules and regulations of International Humanitarian Law relevant to military occupation, specifically Article 49 of the Fourth Geneva Convention, prohibited the occupying state from transferring and deporting its civilian population to the areas falling under the control and jurisdiction of its forces stationed in the occupied territory. The aforementioned article, as explained by the official commentary on the provisions of the agreement was unconditional in this respect. Accordingly, there is no room for any exceptions or exemptions, no matter what justifications or excuses are offered.

Consequently, the settlement activities of the Israeli occupier are illegal because they constitute a clear violation of the provisions and essence of the Fourth Geneva Convention, which is an enforceable and binding agreement, in the occupied Palestinian territories.

Regarding the position of the provisions of the Fourth Geneva Convention with respect to the practices that accompanied settlement activities, such as the illegal and unjust demolition, destruction, and confiscation of private and public property and the manipulation of the resources of the occupied Palestinian territory and its population, the Fourth Geneva Convention has identified, *inter alia*, a number of measures and activities whose implementation is deemed a grave violation of the agreement. Article 147 of the Convention states that "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile power, or willfully depriving a protected person of the right to a fair and regulated trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified

by military necessity and carried out unlawfully and wantonly."

Returning to what has accompanied settlement activities, such as the confiscation, seizure, demolition and destruction of private and public properties, we can ascertain the applicability of the concept of grave violations stipulated in the previous article to those practices since they were committed on a large scale and contravened the security and military necessities of the occupier. Moreover, these practices are illegal since, as explained earlier, they were carried out in order to serve the goals and objectives that the occupier is forbidden from pursuing in the first place in the occupied territory, regardless of the justifications and reasons.

Although Article 147 of the Fourth Geneva Convention does not explicitly address the issue of settlement as one of the enumerated serious violations of that agreement, which represents a serious shortcoming, the problem was later rectified by the countries party to that convention in two technical conferences that addressed post-Convention war issues. In the First Geneva Protocol of 1977, which is an addition to the Fourth Geneva Convention, the parties to the Protocol implicitly included provisions and stipulations pertaining to the issue of settlement in the list of actions deemed as grave violations of the rules and principles of military occupation.

It is worth mentioning in this regard that the parties to the Protocol were not fully satisfied with the addition of new actions and practices classified by the Fourth Geneva Convention as grave violations in the First Geneva Protocol. The parties were successful, in the view of the author, in determining the issue of legal reconciliation regarding the practices described as grave violations of the rules and regulations of military occupation and the rules of military conflicts. This was clear in Article 85 of the First Geneva Protocol, which recognized these practices as war crimes by stating the following:

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this section, shall apply to the repression of breaches and grave breaches of this protocol.

4. ...The following shall be regarded as grave breaches of this protocol, when committed willfully and in violation of the Conventions or the Protocol:

(a) The transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention. Without prejudice to the application of the Conventions and of this protocol, grave breaches of these instruments shall be regarded as war crimes.

Thus, as is evident in the stipulation of Article 85 of the First Geneva Protocol, Israeli settlement actions and the accompanying widespread and militarily unjustified destruction and confiscation of Palestinian properties fall within the scope and interpretation of war crimes. Such actions necessitate, according to the rules and provisions of International Law, the interrogation and the punishment of those who gave the orders to those who committed such actions.

Regarding international practices and the position of the members of the international community on the violations committed by the occupier against the rules and provisions of International Humanitarian Law during times of war, we would like to point here to the special international precedence pertaining to the punishment and indictment of individuals suspected or violating the Law of Wars and International Humanitarian Law once the hostilities end. These members regarded unjustified confiscation practices and demolitions as falling within the list of actions regarded as war crimes that require the punishment of those responsible for them.

The report of the Responsibilities Committee (the committee formed by the Preliminary Peace Conference in the aftermath of the World War I cease-fire on 25 January 1919) included a list of actions committed by the antagonists during the years of World War I that necessitated the criminal prosecution of those responsible. This list included such actions as unjustified damage to public and private property, widespread destruction of property and the spoiling and stealing of resources as well as the appropriation and confiscation of private and public property*.

As for post-World War II international trials, the Charter of the Nuremberg War Crimes Tribunal defined war crimes in Article 6 as those "violations of the laws or customs which include, but are not limited to, murder, ill-treatment or deportation to slave labor or for any

other purpose of the civilian population of or in occupied territory, murder or ill treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity."

With regard to the current international situation regarding violations of the rules and provisions of the laws of military occupation on the part of an occupying state, the international community has ratified the Charter of the standing International Criminal Tribunal as the judicial criminal body responsible for the punishment and questioning of those accused of committing international crimes, including war crimes. This was stipulated in Article 8 of the Tribunal's charter.

Returning back to the practices identified in the previous provision concerning war crimes, one can find the inclusion of Paragraph (a) concerning the grave violations of the provisions of the Fourth Geneva Convention found in these crimes as well as the incorporation of other actions and practices described by Paragraph (b) as serious and dangerous violations of the present laws and regulations on international military conflicts. These include:

- Direct or indirect action taken by the occupying state to transfer or deport part of its civilian population to the land it occupies.
- The destruction and seizure of property when such action is not justified by war necessities.

In summary, we can argue that Israeli settlement activities in the occupied Palestinian territories are war crimes covered by the rules and provisions of International Law and the rules and regulations of International Humanitarian Law relevant to times of war, set into laws by the 1907 Hague Convention, the Fourth Geneva Convention, and the First Geneva Protocol.

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* This list included 30 practices. See :

Oppenheim, ***International Law***, ed. by Lauterpacht, Vol. 2, London, 1969, pp.567-569.

Part Two

The Legal Interpretation of Settlement Activities in Light of International Law

The violation and breach of the rules and provisions of the Law of Military Occupation due to the settlement activities of the occupation authorities in the Palestinian territories extended further to have an impact on a number of principles relating to fundamental provisions of International Law that regulate the basic tenets of international cooperation.

Due to the numerous and various principles that were infringed upon by the Israeli occupation authorities, we propose to list them in what appears to us to be the four most basic points:

1. Israeli settlement activities infringe upon the principles of the right of nations to self-determination.

1.1 The meaning of the right of nations to self-determination

The ramifications of the principle of the right of nations to self-determination were first detailed during the 1776 American Revolution and the 1789 French Revolution. Both revolutions demanded this right as a political principle that should be respected and exercised by all nations in both their internal and external affairs.[79]

Whilst the right of nations to self-determination appeared in the beginning as a political principle, during the first years of this century it started to gradually emerge as one of the principles of International Law. This became more evident in the aftermath of the stipulations affirmed by a number of international conventions and treaties, most important of which was the United Nations Charter*, the Covenant on Political and Civil Rights and the Covenant on Social and Economic Rights.

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[79] Regarding the historical development of the principle of the right of self-determination see:

Dr. Omar Ismaicl Saadallah, ***The Right of Political Self-Determination of Nations in Light of the Public International Law***, The National Book Institute, Algiers, First Edition, 1986, pp.19-50, in Arabic.

Bin Amer Tounisi, ***Self Determination and the Case of the Western Desert***, the Algerian Publishing Institute, Algiers, First Edition, pp. 20-35, in Arabic.

Regarding the meaning of this right, we point to the number of definitions stated in this regard. Some have defined it as the right of every nation to rule itself in the form it sees fit and to amend this form according to its will.[80] Others defined it as the right of peoples to establish an independent state having its own special political entity.[81] In addition, it was defined as the right of peoples to determine their political future and the form of governance and the right to absolute sovereignty over their natural resources as well as the right to choose the social and economic orders they prefer.[82]

Regarding the content and interpretation of this right, one can argue that according to recent and favored interpretation, it consists of four basic elements: political, economic, social, and cultural. The political aspect implies the right of peoples to choose the political system under which they wish to live. This is known as the internal side of this aspect. The external side is embodied in the right of peoples to freely choose their political status, whether this choice means total independence or federation or affiliation with another independent state, or to willfully enter and join a commonwealth or any other political regime.[83]

The economic sides of this right are represented in the right of nations to freely and willfully choose their economic system, their total right of sovereignty over their natural resources and the right to nationalize foreign property whose foreign-owned status may contradict with their interests and aspirations.

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* This right was stipulated in Articles 1(2) and 55 of the Charter. The first stipulation stated: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples..." The second stipulated: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples..."

[80] Salah Eddin Dabbagh, "The Palestinian People's Right to Land and of Return According to Human Rights Legislation and the Right of Self Determination of Nations", Majallat Shuun Filasteen, Nos. 41-42, January/February 1975, p.45., in Arabic.

[81] Ibid, p.145.

[82] Dr. Tayseer Nabulsi, p.253.

[83] Hector Gross Cecil, The Right of Self-Determination - Application of United Nations Resolution, United Nations Publications, 1980, pp.34-35.

Regarding the social and cultural aspects of this right, we would like to point here to the right of nations to choose and develop their social systems as well as enjoy all facets of their social and cultural rights without discrimination as well as their right to maintain their national heritage and prevent any assault or slander against it.[84]

As for the legal value of this right, we can state that the principle of the right of nations to self-determination has become one of the most important obligatory legal principles. This was adopted and ratified by the prevailing side of international jurisprudence[85] in addition to being affirmed and ratified by international practices on various occasions and positions where this legal issue was discussed and deliberated. Furthermore, the international community's recognition of the obligatory nature of this right[86] and its legitimacy as well as its non-volatility affirms the right of peoples to use armed struggle to confront whatever may prevent them from freely exercising the right of self-determination*. The states were not fully satisfied with recognizing and affirming the right of self-determination of nations and went further by endorsing its enforcement power and the need for intervention by third parties if conflicts are related to self-determination. This intervention could be through the provision of aid and assistance to the peoples fighting against the side preventing the free and legitimate exercise of the right of self-determination.[87]

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[84] Regarding the various aspects of the rights of nations to self-determination see:

Bin Amer Al-Tounisi, Op cit, pp.141-148.

Dr. Omar Ismaiel Saadallah, Op cit, pp.257-258.

[85] In this regard see:

Dr. Tayseer Nabulsi, p.151 onwards.

Yousef Muhammad Qaraeen, The Right of Palestinian Self-Determination, Dar Al-Jaleel, Amman, First Edition, 1983, pp. 25-30, in Arabic.

Hector Gross, Op cit, pp.14-15.

* This right was affirmed by tens of decisions by United Nations General Assembly Resolutions including Resolution 2621-D25, Resolution 2625-D25, Resolutions 3101, 2787-D26, Resolutions 3070-D28, 3089-D28, 3236, and Resolution 32-154.

As for Security Council Resolutions, the Council indicated in various resolutions the right and legitimacy for nations to use armed struggle to attain their right of self-determination. These resolutions included Resolution 269 for the year 1969, Resolution 277 for the year 1970, and Resolution 282 for the year 1970.

[87] Hector Gross, p.25, footnote 78.

These resolutions and the rights and legitimacy they provide to enable the use of force affirm the significance of this right and the legal value it enjoys. Accordingly, this right now represents, in addition to the legitimate right of states to self-defense, the second condition for the use of armed force as a legitimate exception to what was previously proclaimed by the United Nations Charter concerning the prohibition preventing the use or threat of force in international relations.

1.2 The Right of the Palestinian People to Self-Determination and its Conditions

Although the United Nations General Assembly is the international mechanism that issued Resolution No. 181, which calls for the partition of the Palestinian territory then falling under the British Mandate, thus recognizing the legitimacy of the existence of two states in Palestine, it, nonetheless, totally ignored the right of the Palestinian people to self-determination. This was illustrated in the Assembly's actions since the Partition Plan in 1947 till the end of 1969, during which time it dealt with the Palestinian case, through the United Nations humanitarian efforts, as a humanitarian one that concerns a group of refugees, without applying any legal or political dimensions to it.

However, the mechanism used by the General Assembly in dealing with this problem has witnessed a clear shift in the aftermath of Resolution 2535/B in 5(sic.) December 1969, which stated that the causes of the Palestinian problem "has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights… ."

Shortly after this, the General Assembly issued Resolution 2672-G in December 1970. This resolution recognized, for the first time, the right of the Palestinian people to self-determination. According to this resolution: "Bearing in mind the principle of equal rights and self-determination of peoples enshrined in Articles 1 and 55 of the Charter and more recently reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations

-Recognizes that the people of Palestine are entitled to equal rights

and self-determination, in accordance with the Charter of the United Nations;

-Declares that full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East."

Various other General Assembly resolutions followed. Some of those resolutions affirmed this right, while others called for the need to provide the Palestinian people with the support necessary to ensure the actual implementation of this right. Perhaps General Assembly Resolution 3376 of 10 November 1975 is the most important in this respect. This resolution established a Committee on the Exercise of the Inalienable Rights of the Palestinian People. This committee was granted responsibility for submitting recommendations related to the bases for a special executive program that enables the Palestinian people to exercise their right to self-determination on the ground on their territorial soil.

An overview of the work of the General Assembly in general and that of the Committee on the Exercise of the Inalienable Rights of the Palestinian People in particular leads to the notion that the right of the Palestinian people to self-determination necessitates the fulfillment of two conditions for it to assume practical grounds.[88]

-The withdrawal and retreat of the Israeli military forces from the entire Palestinian territories occupied by Israel on 5 June 1967. Naturally, this withdrawal should include the members of the armed forces of the occupying state and all civilians brought by the military authorities to assist and help them in the administration of the territories, in addition to all the subjects of the State of Israel who resided and settled in the occupied territories.

-Enabling the Palestinian people who were evicted from their homes to return to their houses and other property. In this respect, one should indicate that this right is not limited in its legal interpretation only to the Palestinian people who were forced to

[88] Refer to ***Origines et Evolution du Probleme Palestinien***, pp.196-199, 221-228.

The International Conference on Palestine, Geneva, 29 August.

17 September 1983, United Nations Publications, New York, Sale Number 21/1/87a, pp. 122-134.

leave in the aftermath of the 1967 aggression against the Palestinian territories and other territories belonging to neighboring Arab countries, but is also applicable to all Palestinians evicted from their homes after the end of the British Mandate in Palestine and after the declaration of the establishment of the State of Israel on 15 May 1948.

1.3 The Impact of Israeli Settlements on the Right of the Palestinian People to Self-Determination

In the aftermath of this review of the meaning and definition of the right of peoples to self-determination, and of the steps required for the actual implementation of this right on the ground, we observe that the settlement building practices in the occupied Palestinian territories are acts that violate the right of the Palestinian people to self-determination because settlements were erected on parts of the Palestinian territories designated to the Palestinian people for them to live in and exercise their right to self-determination in all its aspects.

On another level, the influx of thousands of citizens of the State of Israel and their permanent placement in the occupied Palestinian territories is an act that could lead to major changes to the nature of the demographic character of the Palestinian people. Not only that, the existence of these settlements brought about a situation of forced and obligatory partnership between the legitimate residents and the settlers in the Palestinian territories, whether with respect to the distribution of Palestinian land or its manipulation and the manipulation of its resources and wealth.

Perhaps the most serious aspect of settlements in the context of the right of the Palestinians to self-determination is the fact that the settlers have imposed themselves as a population group with the right to intervene and express opinions regarding the map and boundaries of the Palestinian territory during the final status negotiations for a permanent solution between the Palestinian and Israeli side. In other words, they intend to have a say, along with the rightful owners, who alone are entitled to this right, in determining the future of the Palestinian territory.

In conclusion, we can state that Israeli settlement activities and the

presence of Israeli settlers in the Palestinian territories represent an explicit act that violates the right of the Palestinian people to self-determination. One does not exaggerate by saying that the right of the Palestinian people to self-determination has become, in the wake of Israeli settlement practices, a right void of its content and meaning.

Finally, Israeli settlement activities in the Palestinian territories represent a clear violation of the right of the Palestinian people to self-determination and consequently a violation of the right of peoples to self-determination, regarded as one of the basic legal and binding principles whose violation is prohibited by international legal bodies. Any action inconsistent with this basic principle is outside the framework of international legitimacy and, as such, is considered within the list of international crimes prescribed by the Draft Declaration on Rights and Duties of States, which was proposed by the International Law Commission.

According to Article 19 of this draft,

> "...(2) Internationally illegal action constitutes an international crime that arises as a result of a violation by a state of an international commitment essential to maintaining the basic interests of the international community, which recognizes as a whole that such a violation constitutes a crime.
>
> This section continues:
>
> 3.Pursuant to the provisions of Paragraph 2 and the principles of International Law in force, an international crime may arise from the following:
>
> A. Serious violation of an international commitment essential to the maintenance of international peace and security. For example, a commitment against aggression.
>
> B. Serious violation of an international commitment that is essential to ensuring the right of nations to self-determination; for example, the commitment against the imposition of forced colonial control or its continuation..."

Finally, we can summarize from what has been stated that there are clear violations by the Israeli occupation authorities, due to their settlement policies and the transfer and deportation of their civilian

population to the occupied Palestinian territories, that threaten the legitimate right of the Palestinian people to self-determination. Accordingly, the Israeli violations stemming from these actions are directed against one of the most important principles and rules of binding International Law, which no state or international legal body can under any circumstances violate or ignore.

2. Israeli Settlements and the Violation of the Rules and Principles of International Humanitarian Law

2.1. International Legal Definition of Human Rights

International Law defines human rights as the modern branch of Public International Law that contains the collection of international legal principles pertaining to basic human rights and public liberties, both in terms of definition and stipulation, and with respect to the definition and determination of the legal commitments of the international legal bodies that guarantee the individual's actual enjoyment of these rights.

International Law pertaining to human rights is a relatively new topic because the provisions of Public International Law were limited to regulating and identifying the rights and commitments of states in their mutual relations. International legal bodies, such as international organizations, were later included. Previously, the issue of individual rights and liberties did not enjoy any interest in the rules and provisions of International Law, which left the regulation and consideration of those rights to the internal laws of states. As such, the provisions of International Law refrained, because of the fact that they had no jurisdiction in these matters, from interfering and considering these rights.

2.2. The Legal Value of International Law Pertaining to Human Rights

The principles of International Law pertaining to human rights invoked wide debates over their legal value. International jurisprudence was divided within itself. One view dismissed the

binding legal value of this law from a narrow constitutional perspective. This view maintained that the General Assembly does not have the jurisdiction or the right to force binding legal decisions on member states. As such, the lack of a binding legal basis for the International Declaration of Human Rights and the other relevant international declarations was behind the reason why International Human Rights Law does not possess this legal value. On the other hand, others considered human rights an internal issue for states. Consequently, the binding provisions and the principles of International Human Rights Law may not be adhered to, since such adherence will touch on an important International Law principle, which is the respect of, and non-interference in the internal affairs of nations.

Other scholars, however, supported the prevailing view, which states that International Human Rights Law possesses the legal binding value. They support this view through various legal arguments and bases, most important of which is based on the fact that International Human Rights Law consists of contractual agreements signed between states. In addition, they argue that the bases of International Human Rights Law are rooted in the United Nations Charter. Consequently, the requirements demanded by the United Nations Charter from the states regarding the respect of human rights are considered a binding legal stipulation that suggests that all international agreements and conventions issued by virtue of the UN Charter possess that binding legal value.[89]

Undoubtedly, the binding legal value of International Human Rights Law, in spite of the debate surrounding this issue, is gradually being accepted, especially since the affirmation of the International Court of Justice of the importance and value of this legal principle in the case of *barce lina tarction* of 1970. This case affirmed the necessity for states to respect and implement the basic human rights principles, including the protection against servitude and racial discrimination... since

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[89] Refer to Dr. Omar Ismaeel Saadallah, ***Introduction to International Human Rights Law***, The University Publications Department, Algiers, First Edition, 1991, p.33 onwards, in Arabic.

Human Rights, a collective work supervised by Thomas Briggental, translated by George Aziz, published by Ghareeb Bookstore, Cairo, 1977, p.31 onwards.

these and other rights pertaining to human rights are enumerated within the general international commitments. The International Court of Justice previously confirmed this issue in its opinion related to the reservations pertaining to the agreement concerning the prohibition of and punishment for genocide. In this regard, the Court stated that the humanitarian principles in this agreement are principles affirmed by states and by the United Nations as legal binding principles even in the absence of international contractual legal commitments to these principles.

Finally, we can state that the International Law Commission has concluded the international position concerning the legal value of International Human Rights Law by directly stipulating in its Draft Declaration on Rights and Duties of States that these rules and principles enjoy particular importance on the international level, and that any violation is to be considered an international crime.

2.3 Definition of Human Rights

Human rights are defined by the collection of political, civil, economic, and social rights and liberties intended for the member of society. These rights and liberties aim at developing his capabilities, sustaining his tranquility and happiness, defending his existence, and protecting his dignity.

These rights and liberties are human and moral values that are a product of a mixture and amalgamation of the essences of the three monotheistic religions and the various intellectual, political, and social ideas, the outcome of which is drafted in various international agreements and conventions that were adapted in a manner compatible with, and relevant to the characteristics of our modern times.

Form this vantage point, the international community ratified, in late 1948, the Universal Declaration of Human Rights. This international document includes the most important principles and rights that all members of the international community should guarantee and provide for individuals.

In order to strengthen the principles and content of the Universal Declaration of Human Rights and to affirm, at the same time, the importance and value of its articles and provisions, the international

community attached to this declaration a series of international agreements and declarations, most important of which are the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.

Those two declarations, together with the Universal Convention on Human Rights, embody the tenet and the basis of International Human Rights Law, or what is referred to today as International Human Rights Legislation. This has practically become the guideline and the basis upon which societies are judged if they are to be evaluated on whether their citizens enjoy basic rights and liberties.

2.4 The Legal Interpretation of Human Rights

As stated earlier, human rights imply the collection of political, social, civil, economic, and cultural rights that citizens should enjoy. Positive State intervention in this regard is to protect and guarantee against any assault on those rights with few exceptions when such involvement is permitted by the provisions of International Human Rights Law*. In addition, the internal local laws may equally intervene to prevent and restrict individuals from enjoying some of those rights and liberties during exceptional and emergency situations facing those states such as unnatural disasters or when those states are exposed to external dangers that threaten their security and safety as well as their political independence - "war conditions, invasion and assault" - or because of internal conditions that may destabilize the regime or endanger public order and threaten stability.

Based on the stipulations and principles of the international conventions on human rights, we can identify and determine the

* This was regulated by Article Four of the International Convention on Civil and Political Rights which states that:

"1. In time of public emergency that threatens the life of the nation and the existence of that which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under International Law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (Paragraphs 1 and 2), 11 ,15, 16 and18 may be made under this provision."

content of human rights and its basic elements in the following points:

1st. Basic rights. They include:

- The right of political asylum due to persecution
- Freedom of expression and thought
- Freedom of the individual and his right to join peaceful organizations
- Freedom of the individual and his right to administer the public affairs of his country
- The right of the individual to be treated equally as others in assuming public positions for his country

2nd. Social and political rights and liberties. Those include:

- The right of the individual to work, to be safeguarded from unemployment, and to relax and benefit from paid vacations
- The right of the individual to live in healthy conditions with his family
- The right of individuals to establish unions
- The right of individuals to strike
- The right of every individual to compulsory and free education at least during the preliminary stages and to have equal access to higher education, depending on qualification

3rd. Individual and civil rights and liberties. Those include:

- The right of the individual to life and personal safety
- The right of the individual to have his legal personality recognized
- The right of the individual to move within his country
- The right of the individual to own property individually and collectively and to not have his property taken from him unjustly
- The right of the individual to be protected from servitude and slavery
- The right of the individual to be protected from torture and harshtreatment including that which is degrading
- The right of the individual to judicial review and legal protection
- The right of the individual to have a free and fair trial
- The right of the individual to have his private life respected and to be granted protection againstinterference against his correspondences, his family, or his dwelling

2.5 The Impact of Settlement on the Rights and Liberties of the Palestinians

Following this description and this account of the basic rights and liberties that should be provided to individuals for their enjoyment, we will attempt to clarify and discuss the extent of the effects of Israeli settlement activities in the occupied Palestinian territories on those rights and liberties.

As illustrated in the various dimensions of our research pertaining to the effects and implications of settlement on the occupied Palestinian territory, the Israeli settlement activities have undoubtedly and clearly violated the basic rights and liberties of the Palestinian people. It is not an exaggeration to state that not a single right, out of the collection of the basic rights contained in the international human rights legislation, has been unaffected by these violations.

In this respect, we can identify and state the most important violations resulting from the Israeli settlement practices and activities against Palestinian human rights and public liberties. These practices and activities can be summarized in the following points:

- Israeli settlement activities have practically led to the violation and neglect of the basic human civil right, the right of individuals to own property and to protect this property against unjust seizure. The Israeli occupation authorities did not consider this right through their aggression and confiscation of private Palestinian property and the destruction of parts of this property for illegal intentions. Those intentions are illegal because they led to actions that go beyond the scope and limitations of the rights of the occupier in regard to the property and individuals in the occupied territories.
- The humans' right to right to live one's life and enjoy personal security has been violated.. This violation is clearly exemplified in the series of attacks by settlers against the Palestinian people. What we have stated earlier regarding settler terrorism and the nature of the settlers' political ideology and religious beliefs may confirm the extent of their insensitivity concerning this right as far as the people of the occupied territories are concerned.
- Settlement activities represent a clear violation of the economic

rights of the people and their rights to utilize and benefit from the wealth and resources of their territory. Moreover, it represents an obstacle before their development. Their land, wealth, and natural resources are constantly being assaulted and used by settlers. In fact, the use of these resources has become the right of and benefits settlements and they decide as to when and how the Palestinians can benefit from them.

- The Israeli settlements existing in the Occupied Palestinian territories have limited and restrained the individual's right of movement in his own country. This is evident in the fact that the presence of military check posts at city and village entrances as well as on the roads leading to settlements has impeded the movement of Palestinians. On many occasions, the occupying state frequently resorts to closing the entire Palestinian territories and prevents the movement of Palestinian residents to protect settlers.The situation in Hebron provides a good example of the negative impact this policy has on the free movement of Palestinians.

Finally, it is worth noting here that the interconnectedness grounded in the sphere of human rights and in the various liberties and freedoms associated with it prevent any division or distortion. Respecting parts of the human rights principles by limiting their enjoyment to certain individuals is not permissible.

Basic rights are meaningless and valueless in the absence of social, economic, and cultural rights. The same also applies to economic rights, whose enjoyment is insignificant in the absence of civil and political rights.

In summary, the congruity and unity of the various aspects of rights and liberties are essential. Either they are awarded to all individuals - in this case, one can state that these rights and liberties exist - or are granted selectively, meaning they are granted to some and not to others. In the case of the latter, these rights are absent because the value of what is awarded is senseless and absurd*.

On the other hand, the interconnectedness of all spheres of human rights is extended to include all individual branches of human rights as well. Any of the branches of human rights or principles include a

compatible series of peripheral rights, the denial of which undoubtedly results in the denial of other related rights.

On the social and economic levels, the denial and absence of the right of individuals to work implies the denial of other rights designated to that individual in this regard because these rights are rendered meaningless as a result. There is no meaning to the right to establish and join trade unions, or the right to strike or the right to equality in rights and in wages because these rights are of no use if their base, the right to work, is non-existent. The same also applies to civil liberties whose main components and reasons for existence are the rights of the individual to life and personal safety. Accordingly, neglect and a lack of respect for this right render the value of other rights absurd. Similarly, if the right of individuals to ownership is disregarded, all other relevant rights become equally unimportant and of no value.

From this perspective, the presence of settlements in the occupied Palestinian territories is clearly in violation of the Palestinians' human rights. Consequently, the Israeli occupier's neglect of these rights embodies a violation by Israel of its contractual commitments made by virtue of its affiliation to and acceptance of the various human rights conventions, particularly the International Convention on Human Rights and the other two international conventions. As such, Israeli settlement activities are regarded, on the basis of the International Law Commission Concerning the Duties of States, as activities falling in the sphere of international crimes.

3. Israeli Settlements are in Violation of the United Nations Charter and Israel's Contractual Commitments

3.1. The Legal Nature of the United Nations Charter

One of the commonly accepted facts of international jurisprudence and the fundamentals and principles of International Law is the

* The United Nations General Assembly has affirmed in its Resolution 32/130 of 1977 the indivisibility of human rights by stating that "a. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights."

privileged legal nature of the United Nations Charter, which imposed on the international community a commitment to its provisions and principles. In addition, this charter has supremacy in the face of all international commitments arising from the contractual relations amongst states.

The compulsory and obligatory provisions of this charter were defined and legitimized as a result of a number of considerations, most important of which are as follows:

The application of the pertinent international conventions to the United Nations Charter

The relevant international conventions as stated previously in part one of this study are distinguished because they contain absolute and fundamental principles that should be applicable to all members of the international community, for they are legislative acts aimed at regulating and developing the entire international community. Thus, these conventions necessitate that all states approve and commit themselves to them and respect their provisions and principles.[90]

The International Court of Justice explicitly affirmed the legal status of the United Nations Charter in its ruling in the 'Compensation' case of 1949. According to the court decision, "In the view of the Court, 50 states who constitute the great majority of the international community, have the capability to establish a judicial personality and not merely a body recognized only by these states."[91]

The constitutional status of the Charter

International jurisprudence concords with the United Nations Charter's privileged legal nature, regarded as a constitution for the United Nations and to its members, as well as with all other charters establishing the other international organizations and even, in specific

[90] See in this regard Dr. Jafar Abdul Salaam "Legitimate Agreements in international Relations," ***The Egyptian Law Review Journal***, Volume 27, 1971, in Arabic.

[91] Dr. Ihsan Hindi, p.89.

cases, to the non-member states.[92] From this perspective, the Charter's status implies the presence of an important legal value represented in the supremacy of its provisions. Consequently, states are obliged to respect these provisions and refrain from violating them in their external relations. Accordingly, any violation of these provisions falls within the sphere of illegitimacy and absolute invalidity due to the constitutional status of the Charter.[93]

The central status of the provisions and stipulations of the Charter with respect to binding legal principles

Binding or obligatory international legal principles are defined as those rules and principles that may not under any circumstances be violated by International Law bodies, regardless of the justifications and so-called necessity for abandoning them. If violated or abandoned, the actions are deemed invalid.

With respect to the United Nations Charter, its provisions and stipulations affirmed the jurisdiction of the Charter over these binding legal principles. According to Article 103, "In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

The content of the above stipulation clearly affirms the central and distinguished legal status of the Charter, whose provisions and principles are superior to all agreements and conventions signed by member states before the Charter came into being as well as to any contractual commitments.

3.2. Israeli settlements are clear violations of the provisions and principles of the Charter

Article 2 of the Charter concerning the principles of the organization obliged the member states to respect the commitments stemming from

[92] See Dr. Abdul Aziz Sarhan, General Principles of the International Organizations, First Edition, 1968, Cairo, p.73 onwards.

[93] Dr. Omar Ismaiel Saadallah, p.182.

the provisions of the Charter and emphasized that those states should implement its provisions in good faith. Paragraph 4 of Article 2 obliged states to refrain from using force or the threat of force in their international relations.

From this perspective, the aggression of the State of Israel against Arab states and the Palestinian territory on 5 June 1967 and its subsequent use of its military forces to carry out illegitimate practices such as settlement building and expansion as well as land appropriation in the occupied Palestinian territories clearly violates the provisions and principles of the Charter. Consequently, the Israeli Government has violated the legal commitments expected of it under the Charter, particularly those pertaining to its obligations to refrain from using force or the threat of force in a manner inconsistent with the objectives and goals of the UN.

Since settlement activities are based on expansion and the seizure of land belonging to others through the use of force, then such actions undoubtedly contravene with the goals and the objectives of the UN, specifically those pertaining to the development and strengthening of peaceful relations between states, the respect of the rights and liberties of individuals, and the right of nations to self-determination. As such, the United Nations has demanded from Israel through a large number of international resolutions adopted by various organizations that it immediately abandons its settlement and expansion activities and its annexation of parts of the Palestinian territory*. Israel, however, refused to abide by any of these resolutions as clearly manifested in the continuation of its settlement activities throughout the Palestinian territories. This refusal and the violation, mentioned above, exemplify Israel's clear lack of respect for the commitments embodied in the Charter, for the implementation in good faith of those commitments, and of the provisions in Article 25 of the Charter, which obliged member states to respect and implement the resolutions of the Security Council.

The continuation of the Israeli settlement activities in the occupied Palestinian territories in spite of the fact that they contradict the

* Such are United Nations Security Council Resolution 242 of 22 November 1967, Resolution 252 of 21 May 1969, and Resolutions 271, 298, 476, 465, and 478.

principles of the Charter and the resolution of the United Nations represent an act that harms security and international peace.

Chapter Five

The International Responsibility of the Israeli Occupying State for its Settlement Activities in the Occupied Palestinian Territories

In the aftermath of our previous discussion of the issue of settlements and our identification of the nature and interpretation of this legal phenomenon in accordance with the rules and provisions of the Law of Military Occupation and the principles of International Law, we are faced with a number of important queries. The most important of these queries is whether or not the role of the provisions and fundamentals of International Humanitarian Law concerning military occupation and International Law ceases to describe these practices and to identify their legal implications. What are the rights of the parties facing and confronting the violations by others of the rules and provisions of International Law as a result of the commitment of actions and practices that are internationally prohibited?

Section One

Israel's International Responsibility

One of the basic and most stable principles of modern International Law is holding states accountable for any violations they commit against the international commitments they made pursuant to the rules and regulations of this law. Such actions include armed aggression against other states, or the failure of the international legal bodies to carry out actions or practices pursuant to their commitments specified by the rules and provisions of International Law; for example, the rules of International Law pertaining to military conflicts, which oblige the parties to the conflict to care for, attend to and treat the injured from the other side. Another example is a state's failure to prevent and protect against any aggression that may affect any diplomatic mission or its staff once disturbances occur in its territory.

Although international responsibility was limited in the beginning to requesting the violating side to comply with its international obligations and to normalize conditions or to provide the inflicted party with just compensation, in addition to other actions to rectify the situation, major changes have since occurred. These changes resulted from the serious and dangerous situations that first emerged at the beginning of this century, including the world wars, during which the states in conflict committed atrocities that led to disasters that disturbed the conscience of the human race. As a result of these developments, the international community realized the need to re-examine the traditional and common principle of international responsibility.

As a result, part of the international community called for the principle of the criminal accountability of member states in the event that those states commit severe atrocities that harm international and human interest at large. These atrocities are those that in the aftermath of World War II were documented in a number of international treaties and conventions and then, later on, dealt with as international crimes.[94]

In our examination in this context of Israel's international responsibilities for its settlement activities and practices, we found it more appropriate to divide this section into two parts.

The first part will concentrate on dealing with and clarifying the civil aspect of the international responsibility of the State of Israel for its settlement actions and practices. The second part will focus on the consequences if settlement activities were to be included within the framework of international crimes and the implications this has in respect to stimulating international criminal responsibility.

[94] Regarding the historic development of international criminal responsibility see:

Dr. Rashad Aref Al-Sayeed, Part One, p. 117 onwards; Jeer Hard Vanglann, ***Law Among Nations***, translated by Abas Al-Omar, Al-Jaleel House, Beirut, Second Edition (no date), p. 207 onwards.; Dr. Abdullah Suleiman, ***Basic Introduction in International Criminal Law'***, University Publication Department, Algiers, First Edition, 1992, p.32 onwards.

Part One

Israel's Civil Responsibility

The application of what is understood of the provisions of International Law concerning war crimes on the Israeli practices necessitates discussing the international responsibility of the occupying state for these crimes and violations. As previously discussed, this international responsibility has two sides, the first of which is civil and the second criminal.[95]

By returning to the rules and regulations of International Law relevant to the violation by the international legal bodies of their international commitments and their illegal practices pursuant to the rules and regulations of this law, we conclude that the provisions of International Law, in general, and the provisions of International Humanitarian Law relevant to military occupation, in particular, have compelled the aggressor inflicting damages to the other side to abide by several commitments. This party is responsible for respecting and implementing, rectifying and ending the consequences resulting from a violation of the provisions and rules of the law.

The required steps that the international legal bodies are obliged to consider taking once they begin to rectify the consequences of their violations of the rules and provisions of International Law in general can be identified and limited to the following points:

Halting the internationally illegal action

This implies the need to immediately prevent whoever has committed an action or a practice in contravention of the rules and provision of the law from continuing to proceed with such acts. If the action involves military aggression by a state against the territory of another, the state responsible for this aggression must immediately halt its military aggression. If, however, the violation takes the form of an internationally illegal act such as the exploitation of the resources and capabilities of the land, maritime or airspace borders of another state, the state, in this case, is obliged to stop and discontinue such exploitation.

[95] See Dr. Mohammed Bahaa Al-Deen Bashan, ***Reciprocity in International Criminal Law***, The General Bureau for Government Publications, Cairo, 1974, p.179 onwards.

Normalizing and restoring conditions in kind compensation

This means that the side responsible for hurting another by committing an illegal act must remove all manifestations of these practices and actions. In other words, this party must return conditions to how they were originally, prior to the commitment of these internationally illegal practices and actions.

Accordingly, if the subject of violation, for example, was the invasion by the forces of one state of the territory of another, the invading state must order its forces to retreat and return back to where they were before the invasion. If on the other hand, the type of violation was the confiscation by a state of the properties belonging to another state such as a ship or plane or other property, then, it is conditional that the state responsible for these actions must return the confiscated property to the rightful owner and so forth.

Financial compensation

Whilst returning the situation to its original and previous condition might be regarded as the best mechanism with respect to the rules and provisions of International Law, there are nonetheless certain circumstances that render the achievement and implementation of such a procedure impossible and non-feasible, either because the subject matter upon which the illegal action occurred is ruined, or has vanished because of being utilized by the party committing this action: Examples might include the bringing down of a civilian plane belonging to one state by another, or accidentally killing the subject of another state, or the utilization by the occupying state of an oil well or steel mine of that state, or the ruining and damaging by the invading state of hospitals and other civil installations of the invaded state in a manner contrary to the provisions of International Humanitarian Law.

Under such circumstances, financial compensation becomes the only legal procedure and mechanism that the affected party may rely on as an alternative to the responsible party returning the condition to its previous state.

The rules and provisions of International Public Law have examined the type and kind of compensation the violating state should provide. The law set conditions with respect to compensation. These conditions

must take into consideration the principle and standard of symmetry. This means that the compensation must be relative to the value of the actual damage inflicted on the other side regardless of whether this damage was immediate and direct or indirect, or whether its consequences and implications occur at a later stage.[96]

With respect to restoring the situation to its previous condition, thus respecting the rights of the Palestinian people harmed as a result of settlement activities, and the violations these activities represent as far as the international obligations of the Israeli occupying state, pursuant to the laws and provisions of International Humanitarian Law relevant to military occupation, in general, and the fundamentals of International Law, in particular, we can state that the rights of the Palestinian people oblige Israel to fulfill a number of international commitments, most important of which are the following:

Halting its illegitimate practices:

This requires that Israel discontinues the deportation and transfer of its citizens to the occupied Palestinian territories and halt its confiscation and acquisition of Palestinian property for settlement purposes. Moreover, it should stop its demolition and destruction practices against public and private Palestinian property, intended to make way for the building of bypass roads to benefit the settlements.

Normalizing and restoring conditions (in kind compensation)

This may be implemented and achieved if the occupying state vacates, clears, and disassembles all Israeli settlements erected on the occupied Palestinian territory and returns its civilian subjects to their state. Moreover, all confiscated Palestinian land and property must be returned to its rightful owners. In other words, this condition implies that the State of Israel must return the Palestinian territory, property, population, and demographic and geographic conditions to the same situation that existed before it started engaging in these violations, i.e., before 5 June 1967.

[96] For the types of compensation see Dr. Salah Abdul Bade' Shalabi, ***The Right of Recovery***, First Edition, 1983, Cairo, p.209 onwards.

Financial compensation:

As it is impossible for the residents of the occupied territories to return to the condition that existed prior to Israel committing certain violations, such as destroying large portions of their land and property and exploiting Palestinian resources and wealth, the most feasible legal solution would be for the Israel to make financial payments to all those harmed in this respect. Financial compensation must take into consideration fairness and as such, all types of damage inflicted as a result of settlement activities upon the residents of the occupied territory as well as on their private and public property, whether directly or indirectly.

Direct damage means for the Palestinian people all types of damages incurred as a result of the building of settlements. For example, this includes properties confiscated and the prevention of their use, the uprooting of trees, damage to property, in addition to the damages inflicted as a result of settlements to individuals killed by settlers or by the occupation forces or those injured as a result of an activity to which settlements are directly connected.

As for indirect damages, which is the damage whose consequences appear later, such as damages due to waste and poisonous material being disposed of on Palestinian land by neighboring settlements, their impact and damage become evident only in the future. The same applies to hazardous factories established in industrial zones within settlements. The impact of the waste and fumes of these factories on the environment and health, including human health, does not appear immediately and takes time to become apparent. Finally, the meeting by Israel of the requirements such as compensation for violating its international obligations as prescribed by the Fourth Geneva Convention and other international agreements and conventions is a procedure that needs to be carried out pursuant to the principles of Public International Law and the provisions of International Humanitarian Law relevant to military occupation. Accordingly, under no circumstances should Israel be exempted from fulfilling its international responsibility for the commitment of such actions, nor should her actions be dismissed and cleared.

Part Two

Israel's Criminal Responsibility

In addition to the Palestinian rights mentioned previously, the listing and inclusion of settlement activities within the actions and practices necessitates that the Palestinian side invokes its right to hold the individuals ordering, planning and executing crimes in the occupied Palestinian territory criminally accountable and responsible for their actions.

The rules and regulations of Public International Law and International Humanitarian Law relevant to military occupation affirm in Article 146 of the Fourth Geneva Convention* and Article 88 of the First Geneva Protocol, the addition to the Fourth Geneva Convention** the right of the parties injured as a result of the commitment of international crimes by others to hold them accountable for their crimes and to question them as war criminals before national courts.

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* According to Article 146, "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

** Article 88 of the First Geneva Protocol concerning mutual assistance in criminal matters states that".

1. The High Contracting Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of grave breaches of the Conventions of this Protocol.
2. Subject to the rights and obligations established in the Conventions and in Article 85, Paragraph 1 of this Protocol, and when circumstances permit, the High Contracting Parties shall cooperate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.
3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

This right was also affirmed and guaranteed by Article 6 of the Declaration of the Nuremberg Trial, which stipulated "...The organizers and provocateurs (partners) involved in planning and implementing or conspiring to commit any of the referred to crimes shall be questioned regarding all the committed actions..." From this perspective, the Palestinian side has the right according to the fundamentals and rules of the Law of Military Occupation and the Law of International Military Conflicts to pursue all individuals, military, diplomats and statesmen, who ordered the commitment of such crimes. Moreover, this right is also applicable in respect to the settlers themselves, because criminal pursuit includes them as well due to the fact that they were the individuals responsible for carrying out these crimes in the occupied Palestinian territories.

It is worth noting here that the limitations and prescription right* applicable to internal criminal laws does not apply to war crimes. This issue is rational in our view and the legislators of International Criminal Law should be praised for it because international crimes and the negative impact they have on the international community as a whole necessitate the abandonment of the members of the international community of any action that may enable war criminals from hiding to avoid punishment. Preventing war crimes from ever becoming subject to the statute of limitations is one of the primary guarantees that provide traumatized nations with the grounds necessary to punish, once conditions change, whomsoever is responsible for international crimes.

Although the Charter of the International Court of Justice, adopted in Rome on 17 July 1998, affirmed the inapplicability of the statute of limitations to war crimes (Article 29), it nonetheless protected all war

* Article One of the Agreement on the limitations and prescriptions of war crimes and crimes committed against humanity states that (prescription does not apply to the following crimes irrespective of the time they were committed: a. War crimes defined in the basic regulations of the Nuremberg Military Tribunal of 8 August 1945, reaffirmed in General Assembly Resolutions 3(d-1) of 13 February 1945 and 95 (d-1) of 11 December 1946, particularly serious crimes detailed in the Geneva Convention of 12 August 1948 Concerning the Protection of War Victims).

The previously mentioned agreement was ratified through a General Assembly Resolution 2391 (d-23) of 26 November 1968 and went into force on 11 November 1970 in compliance with the stipulation in Article Eight.

criminals and perpetrators of international crimes and, in our view, also those ordering the crimes, both in the present and the past, as stipulated clearly in Article 24: "No one shall be criminally investigated, pursuant to this regulation, concerning any conduct prior to the enforcement of the regulation… ."

As becomes clear from its content and implications, this stipulation came to clear the criminal accountability of tens and even hundreds of individuals who committed actions and practices regarded by the rules and provisions of International Law, in general, and the rules of International Humanitarian Law relevant to military occupations as war crimes. As such, this stipulation granted full protection, without justification, to such individuals by awarding them the legal basis that will in the future deny grieved nations (the Palestinian people, the people of Bosnia-Herzegovina, Kosovo, and others) legal action and criminal proceedings once this regulation enters into force.

Section Two

The Legal Implications of Israeli International Responsibility on Third Parties

1. Obligations of States in Confronting Other States' Violations of the Provisions of International Law

The absence of an effective executive body on the international level had a clear impact on states with respect to deciding upon instruments and other means to assist them in regulating and solidifying stable international relations based on security, peace, and mutual respect in regard to the rights and obligations of the international legal bodies, which are based on rejecting and prohibiting the use of force and the strengthening and sustaining of legal equality amongst nations.

The developments that the rules and regulations of International Law have witnessed in the aftermath of the United Nations Charter, represented in the strengthening of friendly relations between states

and international bodies, led to the notion of international interest, which is based on states respecting the rules and regulations of International Law and its fundamental principles. Moreover, this international interest required all states to make serious efforts to invent and create new instruments to ensure that it is respected and protected.

On this basis, states, through international conventions, agreements and charters, have accepted the responsibility for strengthening the law and protecting their international interests by obligating themselves to interfere once the legal regime is invaded. Naturally, the obligations of states differed according to the various legal bases that formulated the commitments by the members of the international community to protect, strengthen, and respect.

By examining the content and kind of obligations that have been agreed upon in order to protect the rules and provisions of International Law, one can notice two kinds of obligations. The first are negative obligations since their content and essence clearly do not go beyond requesting legal bodies to abstain from carrying out certain actions in response to the acts committed by others against the rules of International Law or requesting states that are contravening international legitimacy to refrain from acting in such a manner. Perhaps the most visible of these obligations is the refusal of states to recognize facts created by the illegal action of a certain state and the necessity for a state to refrain from carrying out any action that may assist and help a state that committed that violation.

The other kind of obligations we can describe as positive because they go beyond mere abstinence and the condemnation of the conduct of states committing violations against International Law and because of positive and actual intervention by states against other states involved in aggression and the violation of International Law.

Since our study examines actions regarded by the provisions and rules of International Humanitarian Law as war crimes and, by the rules and regulations of International Law in general as international crimes, we decided to clarify them in our discussion of the obligations of states that resulted from Israel's violation of the rules and regulations of International Humanitarian Law and International Law in general.

1.1 The Negative Obligations of States in Response to Israel's Violations of the Rules and Regulations of International Humanitarian Law and International Law in General

The obligations of states in response to Israel's violations of the rules and regulations of International Humanitarian Law and International Law in general can be described as obligations of the negative kind. States refrain from recognizing the facts created by the Israeli occupier in the occupied Palestinian territories and from suspending their assistance, which may help Israel to continue to violate the principles and fundamentals of the law.

This commitment is evident in numerous resolutions passed by the various bodies of the United Nations. For example, United Nations Security Council Resolution 465 of 1 March 1980 concerning a request that Israel halt its settlement activities and dismantle all the settlements erected in the occupied Palestinian territories stated the following:

> "...Deploring the decision of the Government of Israel to officially support Israeli settlement in the Palestinian and other Arab territories occupied since 1967...Deeply concerned over the practices of the Israeli authorities in implementing that settlement policy in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population...;
>
> 5. Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the protection of civilian persons in time of war and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;
>
> 6. Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the

Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

7. Calls upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories.

In addition, United Nations Security Council Resolution 478 of 20 August 1980, concerning the condemnation of the Basic Law, ratified by the Israeli Knesset to create changes in Arab Jerusalem, reiterated the Security Council's commitment, which:

3. Determines that all legislative and administrative measures and actions taken by Israel, the occupying power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and, in particular, the recent 'basic law' on Jerusalem, are null and void and must be rescinded forthwith;

5. Decides not to recognize the 'basic law' and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon all members of the United Nations:

(a) to accept this decision, and

(b) and upon those States that have established diplomatic missions in Jerusalem to withdraw such missions from the Holy City;

As for the general Assembly, a number of resolutions included this commitment, including Resolution 2949 of 8 December 1972, which stated:

5. Invites Israel to declare publicly its adherence to the principle of non-annexation of territories through the use of force;

7. Declares that changes carried out by Israel in the occupied Arab territories in contravention of the Geneva Conventions of

12 August 1949 are null and void, and calls upon Israel to rescind forthwith all such measures and to desist from all policies and practices affecting the physical character or demographic composition of the occupied Arab territories;

3.Calls upon all states not to recognize any such changes and measures carried out by Israel in the occupied Arab territories and invites them to avoid actions, including actions in the field of aid, that could constitute recognition of that occupation.

The affirmation of the international community of the previously mentioned obligations was also stated in the Special International Conference on the Palestinian Situation (The Geneva Conference held at the United Nations Headquarters in Geneva in 1983, which was attended by 137 countries and 25 international governmental organizations and all other United Nations agencies as well as 104 international non-governmental organizations). In the work schedule on the effective instruments that the international community was requested to provide as part of its assistance to the Palestinian people in their efforts towards exercising their self-determination, the states clearly opposed and rejected all the practical measures taken by Israel in the occupied Palestinian territories, specifically those related to settlements and the changes in the nature of East Jerusalem. In addition, the attending states affirmed in this conference the importance of states providing Israel with any economic, financial, or military aid if such assistance could encourage Israel to continue its violations and occupation of the occupied Palestinian territories*.

This issue was also reiterated in a resolution adopted in the emergency session of the General Assembly on 15 July 1997, which stated the following:

3.Reaffirms that all illegal Israeli actions in occupied East Jerusalem and the rest of the occupied Palestinian territories, especially settlement activity, and the practical results thereof cannot be recognized, irrespective of the passage of time;

6. Recommends to Member States that they actively discourage activities that directly contribute to any construction or

* The Geneva Declaration and the work schedule were ratified by the participants without voting. For the proceedings of the conference see Origines et evolution pp.221-228.

development of Israeli settlements in the occupied Palestinian territories, including Jerusalem, as these activities contravene International Law;

10.Recommends that the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War convene a conference on measures to enforce the Convention in the occupied Palestinian territories, including Jerusalem, and to ensure its respect in accordance with Article One, and requests the Secretary-General to present a report on the matter within three months.

1.2. States' Positive Obligations towards Israel's Violations of the Rules of International Humanitarian Law and International Law

In addition to the previously mentioned negative obligations, the rules and regulations of International Law, specifically the rules and regulations of International Humanitarian Law, have obliged states to positively intervene in regard to Israel's violations of the rules and regulations of the law. After reviewing the rules and regulations of International Humanitarian Law and International Law in general, we can identify and limit the states' positive obligations towards the Israeli violations of the rules and regulations of International Humanitarian Law and International Law in general in the following points:

1.2.1. Intervention to Stop and Confront Israeli Violations

This obligation is clearly manifested in International Humanitarian Law agreements, particularly in the Fourth Geneva Convention and in the First Geneva Protocol, which is an addition to the four Geneva Conventions. According to Article One of the Fourth Geneva Convention, "The High Contracting Parties undertake to respect and to ensure respect for this Convention in all circumstances." Also, Article 146 of the Convention stated the following: "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention

defined in the following article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following article."

As for the First Geneva Protocol, Article One stipulated, "The High Contracting Parties undertake to respect and to ensure respect for this protocol in all circumstances." Article 86 also stated "The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol, which result from a failure to act when under a duty to do so."

The provisions of the Fourth Geneva Convention and the Protocol, in addition to the four Geneva Conventions, imposed on nations clear obligations aimed at confronting the side that intentionally violated the rules and provisions of International Humanitarian Law. States were entitled to take whatever measures they find necessary in this respect.

Although the agreement omitted and ignored the means that states should use for the purpose of enforcing the respect of this agreement by other states, it nonetheless identified the obligations of states against those who were proven to have committed grave violations against the provisions of these agreements. These obligations include tracing and holding those responsible accountable to the law. These states have the right to choose and either bring those responsible before their own courts or to hand them over to the side that presented a complaint against those responsible to judge them before their own national courts.

What is perhaps important in this respect is the responsibility of the

accusing state in tracing and questioning war criminals, regardless of other states' requests to question them. Article 146 of the Fourth Geneva Convention obliged states to issue and promulgate effective legislation to confront the violations and criminal actions committed by others in pursuance to the rules and regulations of the Fourth Convention. The commitment of states in this regard is an individual commitment in the sense that each state party to this agreement is obliged to implement its commitments individually, in spite of the positions of other states.

With respect to the relevance of the previously stated provisions and obligations to our subject, one can state that the states party to the Fourth Geneva Convention and the First Geneva Protocol are obliged by virtue of the rules and regulations of the agreements to interfere effectively against the Israeli settlement violations and what those violations represent as far as the provisions of the agreements are concerned. They are entitled, for example, to impose any collective measures to ensure the end of these violations and to compel Israel to effectively abide by those agreements in relation to the occupied Palestinian territories.

In addition, these states are individually obliged to promulgate domestic legislation that ensures the chasing of Israelis who ordered settlement activities and all others who actually implemented this crime (settlers). The Palestinian side is responsible, at this juncture, to request from the states party to the Fourth Geneva Convention and the First Geneva Protocol that they implement their obligations in this respect.

1.2.2. Assisting and Supporting the Palestinian People in Confronting these Violations

In addition to the obligations of states to intervene to confront the Israeli violations of the rules and provisions of International Humanitarian Law, numerous resolutions by the United Nations have obliged states to interfere and financially assist the party injured by another party's violations of the rules of International Law*. In this regard, we can refer to the obligations stipulated in numerous

* For example Resolutions 2787d26, 3070d28, 3089d28, and Resolution 3236d29.

international resolutions pertaining to the rights of nations to self-determination. All of these revolutions obliged states to intervene individually or collectively by assisting the nations and the states injured as a result of the violation of others of its right to self-determination.

Perhaps the most important resolution adopted by the United Nations General Assembly in this respect is Resolution 3236 of 22 November 1974. This resolution, "requests all states and international organizations to give a helping hand to the Palestinian people in their struggle for the attainment of their rights." In addition, the General Assembly Resolution 35/35 of 14 November 1980 stated that the United Nations "requests from all states and the relevant United Nations agencies and the specialized bodies as well as other international organizations to give a helping hand to the Palestinian people through its representative, the Palestine Liberation Organization, in their struggle to regain their rights to self-determination and independence, pursuant to the United Nations Charter".

This commitment is also evident in United Nations General Assembly Resolution 42/95 of 7 December 1987, which:

> 1. Calls upon all states to implement fully and faithfully all the resolutions of the United Nations regarding the exercise of the right to self-determination and independence by peoples under colonial and foreign domination;
>
> 2. Reaffirms the legitimacy of the struggle of peoples for their independence, territorial integrity, national unity, and liberation from colonial domination, apartheid, and foreign occupation by all available means, including armed struggle;
>
> 37. Urges all states, the specialized agencies, organizations of the United Nations system and other international organizations to extend their support to the Palestinian people through its sole and legitimate representative, the Palestine Liberation Organization, in its struggle to regain its right to self-determination and independence in accordance with the Charter."

In sum, we can state, on the basis of what was previously discussed

regarding the obligations of nations, that the members of the international community are obliged by the rules and obligations of General International Law and Humanitarian International Law to intervene against the aggression of the Israeli practices in the sphere of settlements. Also, they are obliged to chase those ordering and committing those violations and to either try them before their national courts or to hand them over to the states that were harmed as a result of these practices and actions.

2. The Obligations of the United Nations in Confronting Israeli Violations

We have clarified in the various aspects of our discussion that Israeli settlement activities that are currently underway in the occupied Palestinian territories are war crimes pursuant to the rules and regulations of International Humanitarian Law and are illegal acts according to General International Law.

Since the international responsibility undoubtedly rests on the shoulders of the State of Israel because of the previously referred to violations committed by its military forces, it is the responsibility of the United Nations and specifically the Security Council and the General Assembly to immediately and effectively intervene and confront those violations. We can identify the legal responsibility of these bodies and the manner by which they can interfere and exercise their jurisdiction once nations fail to comply with their international responsibility and as a result of the committing of illegal and forbidden acts pursuant to the rules and regulations of International Law in the following points:

2.1. Obligations of the Security Council

The United Nations Charter granted the Security Council the jurisdiction to maintain the safety and security of the entire international community. To this end, Sections 6 and 7 of the United Nations Charter have regulated the mechanisms that the Security Council can employ in carrying out the tasks within the jurisdiction granted to it.

There are two types of intervention mechanisms used by the Security Council in cases where states have committed violations against the Charter and International Law. The first is based on diplomatic and non-military approaches against internationally illegal state practices.[97]

The approaches used and relied on by the Security Council may take the form of certain actions by member states against the state violating its international obligations and commitments. Such actions range from economic sanctions to interrupting transportation routes. The Security Council is also empowered to use naval, land, or air forces in order to impose such sanctions.

The second mechanism that the Security Council can use in its dispute with states violating the provisions of the Charter and the provisions of International Law is the exercise of military power and the utilization of force. However, the Security Council does not have the right to decide which mechanism it wishes to use in disputes. It is compelled to use the diplomatic approach first. If this approach fails, the Security Council may resort to the second approach. In other words, the Security Council may not use military force before all diplomatic and non-military means are exhausted as stipulated in Articles 41 and 42.

The Security Council has indeed exercised its responsibilities and duties regarding international security and safety and with respect to enforcing its will using diplomatic or military means against states violating the provisions of the Charter. Whereas it intervened militarily in the Korean conflict in 1950, the Congo in 1960, and Iraq in 1990, it used non-military means to enforce sanctions against South

[97] These means were regulated through the provisions of Articles 41 and 42 of the Charter. The first one stated that "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations." The second stated: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

In this regard see Bo Baker Idris The Principle of Non-Intervention in Light of Contemporary International Law, The National Book Institute, Algeria, First Edition, 1990, p.292-298.

Rhodesia (Zimbabwe) in 1966 and South Africa in 1977, to blockade Sudan*, Libya, and Iraq, and to prohibit the export of weapons to former Yugoslavia. Perhaps one of the most important forms of Security Council interventions and confrontation against states violating the rules and regulations of International Law and Humanitarian International Law was the promulgation by the Council of Resolutions 808 and 827 in 1993, which call for the establishment of an international criminal tribunal to put to trial the former Yugoslavia's war criminals responsible for the crimes committed by Serbs in Bosnia-Herzegovina and the promulgation of Resolution 995 in 1994 concerning the formation of Rwanda's criminal tribunal to try the war criminals in the conflict between the Rwandan military forces and the Rwandan national army.[98]

As for the relevance of the Security Council's obligations towards the Israeli practices in the occupied Palestinian territories, it could be stated that the Security Council is obliged, due to Israel's war crimes as stipulated by the rules and regulations of International law and what these crimes represent *vis-à-vis* the rules and regulations of International Humanitarian Law, to effectively intervene against such violations.

In this regard, we can identify and limit the steps that the Security Council should take pursuant to its defined responsibility and jurisdictions according to Chapters 6 and 7 of the United Nations Charter as the following:

- Take binding and clear resolutions demanding that Israel refrain immediately from its settlement practices and call for the dismantling of all traces of Israel's illegal settlement

* The Council's measures against Libya and Sudan generate reservations and legal comments as to the validity and legality of this intervention. In this respect, identifying these countries as examples of the Council's intervention does not imply that such interventions are valid. It is worth mentioning that the justification for blockading Libya is no longer valid pursuant to UN Security Council Resolution 478 of 31 March 1992 (which imposed a comprehensive blockade against Libya for refusing to hand in the suspects of the Lockerbie air tragedy) because Libya handed in these suspects on 5 April 1999 to be tried before a Scottish Court which will sit in Holland in accordance with the agreement reached among the various parties to this case.

[98] Regarding the special international criminal tribunals in Yugoslavia and Rwanda see *The International Red Cross Journal*, Volume 58, November/December 1997. (This volume contains a special file on these special tribunals.)

actions by returning the situation in the occupied Palestinian territories to the way it was prior to the conducting by the Israeli military authorities of settlement activities in those lands.

- The utilization of non-military, diplomatic approaches in case Israel refuses to abide by the resolutions of the Security Council. These approaches may be in the form of requesting the members of the United Nations to suspend their economic relations with Israel to compel her to abide by the rules and regulations of International Law and the provisions of the Charter as well as all other resolutions adopted by the various agencies of the United Nations.
- The use of military force if the previous approaches fail to achieve the objectives and the results set for that purpose.

Naturally, it is not surprising that the reason behind the Security Council's failure to take the previously mentioned measures against Israel is the United States' continuous threat to use its veto power against any resolution pertaining to Israeli practices. In fact, throughout the period of the Arab-Israeli conflict, which started the day the State of Israel was established and lasts until today, the Security Council was unable to pass any binding resolution against Israeli violations in the Palestinian territories. We are not exaggerating by saying that the Security Council will remain incapable of effectively intervening against such violations because of the United States' continuous and legally unjustifiable use of her veto power. This situation points to the paralysis and the incapacity of the Security Council to fulfill and implement its role and responsibilities with respect to maintaining international peace and security. Moreover, the weakness of the Security Council in this regard shows the bias and the unfairness of this agency when dealing with international crises and situations that require its intervention*.[99]

* Indications of the double standard activities of the Security Council in its dealings with international cases are available in the Namibian case, regarded as closely legally similar to the Palestinian case. What distinguishes the Namibian case however is the strict intervention by the Security Council and the resolutions it adopted regarding Namibia. Such resolutions are 245 and 246 of 1968, Resolution 284 of 1969, Resolution 276 of 1970, Resolution 301 of 1971, and Resolution 385 of 1976. The last resolution has affirmed the responsibility of the United Nations for Namibia and its demands from South Africa to abide by all UN resolutions

3.2. The Obligations of the General Assembly

The relations between the General Assembly and the Palestinian issue started immediately after the British Mandate government in Palestine included the problem of the mandate in the agenda of the General Assembly. It did this in order to decide on its destiny and to settle the legal status of Palestine once the British Mandate ended.

What has characterized the intervention of the General Assembly regarding this issue was the issuance on 29 November 1947, during its second session, of Resolution 181, which called for dividing Palestine into two states: one Arab and the other Jewish. According to this resolution, the Arab state was granted 24.88 percent of the entire size of Palestine, while the Jewish state was granted 56.47 percent. The remaining 56 percent was left for Jerusalem, whose status was put under international supervision.[100]

In view of the serious conditions that Palestine was witnessing at the time and which drove the General Assembly to issue such a resolution, this agency intentionally affirmed the need and obligatory nature of this resolution and the necessity for its implementation by the concerned parties. Accordingly, we find it of utmost importance to examine the position of the State of Israel towards the legal value of the General Assembly's partition resolution because there is a strong relationship and linkage between this position and the obligations of the United Nations General Assembly, which we are currently addressing.

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pertaining to Namibia. These demands included the release of all Namibian political prisoners and the unconditional return of all Namibian citizens forced to leave because of the conditions of the territory. The position of the Security Council against the South African occupation of Namibia led to the independence of the territory and to its subsequent liberation in March 1990, after one hundred and five years of occupation.

Regarding the methods of intervention by the Security Council in the Palestinian case see: The Institute for Palestine Studies, UN Resolutions on Palestine: 1947-1960, edited by Sami Hadawi, Revised Edition, Beirut 1967, pp.127-170. As for the mechanisms of intervention in the aftermath of the Israeli aggression against the Arab territories in June 1967, see Dr. Hasan Al-Halabi The Resolution and the Settlement: A Legal and Political Study for the Resolution of the Arab- Israeli Conflict in the Context of Resolution 242, Beirut, 1978, p.22 onwards. Also see Mahmoud Riyad, Search for Peace and the Conflict in the Middle East 1948-1978, Dar Al-Mustaqbal Al-Arabi, Cairo, Second Edition 1978, p.142 onwards.

[100] Issam Al-Deen Hawas, "Self Government and the Rights of Sovereignty and Self-Determination in the Light of Contemporary international Law," ***The Egyptian International Law Journal***, Volume 37, pp.19-20.

In the aftermath of the declaration of the establishment of the State of Israel and its request to join the United Nations, the General Assembly of the United Nations attempted to obtain a clear Israeli commitment to the content of the special resolution pertaining to the partition. From this perspective, a number of questions were forwarded to the representative of Israel, including "Can the representative of Israel inform us as to whether or not the State of Israel, in case of its admission to the United Nations, will approve to cooperate with the General Assembly to settle the issue of Jerusalem and the issue of refugees, or whether or not it will act contrary to this by referring to Paragraph 7 of Article 2 of the Charter*, which deals with the issue of the internal state sovereignty?" Israel's representative answered by saying, "In the last year we have reached an opinion regarding the General Assembly resolutions. This opinion essentially states that we should be very cautious with respect to the demands for applying Paragraph Seven of Article Two, especially if such application will take all the binding moral power away from the General Assembly resolutions. Evidently, the admission of Israel in the United Nations will lead to the possibility of rendering Article 10 of the Charter** applicable to Israel. In his case, the General Assembly will be in a position to directly submit recommendations to the Israeli Government, which will, in my view, regard these resolutions as legal to a large extent."

Following the numerous questions presented by the specialized political committee, one of the committee's members evaluated the questioning of Israel's representative as follows: "The representative of Israel affirmed that upon the admission of his country as a member, the issues of borders, the internationalization of Jerusalem and the Arab refugee problem will not be within Israel's internal jurisdiction

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* Paragraph Seven of Article Two states: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Seven".

** Article Ten stated: "The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12 may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters".@rax Note: Object 53.38517 41.30816 371.69235 139.61991 @E 0 O 0 @g 0.00 0.00 0.00 1.00 k 68.

nor will they be protected against intervention pursuant to Paragraph 7 of Article 2."

For the General Assembly to give the Israeli Government answers a legal dimension that will prohibit Israel in the future from negating or escaping its obligations, it included the official Israeli answers to its questions within Resolution 273, issued on 11 May 1949, concerning the admission of Israel to the United Nations by stating:

> *"Noting furthermore the declaration by the State of Israel that it "unreservedly accepts the obligations of the United Nations Charter and undertakes to honor them from the day when it becomes a member of the United Nations.*
>
> *Recalling its resolutions of 29 November 1947 (Resolution 181) and 11 December 1948 (Resolution 194) and taking note of the declarations and explanations made by the representative of the Government of Israel before the Ad Hoc Political Committee in respect of the implementation of the said resolutions,*
>
> *The General Assembly,*
>
> *Acting in discharge of its functions under Article 4 of the Charter and Rule 125 of its rules of procedure,*
>
> *1. Decides that Israel is a peace loving state, which accepts the obligations, contained in the Charter and is able and willing to carry out those obligations;*
>
> *2. Decides to admit Israel to membership in the United Nations."*[101]

Returning back to the issue of the Israeli settlement activities and the obligations such acts impose on the United Nations General Assembly, we can state that the commitment of Israel to actions described as international and war crimes, and the effect such actions have on international peace and security, necessitate the intervention of the General Assembly to end these actions on the basis of its jurisdiction

[101] For further details regarding the membership of Israel in the United Nations see: The United Nations The Right of Return of the Palestinians, UN Publications, New York, 1978, sale number (21,1,78,A), p.18 onwards.

and the responsibilities granted to it by the United Nations Charter.*

The intervention by the General Assembly in this situation takes the form, as a general rule, of first informing and cautioning the Security Council as to these violations in order for it to take the necessary measures it deems appropriate. However, the Council is clearly incapable of exercising its jurisdiction and responsibilities because of the veto power. Accordingly, it is unlikely to intervene against the Israeli violations and practices. Therefore, the United Nations General Assembly has, in the face of its clear belief that the Security Council is incapable of acting on its responsibilities towards the conditions in Palestine, to rely on itself and to set effective measures including the use of force against Israel to force her to retreat and reverse her practices as well as to honor her international obligations emanating from the United Nations Charter**.

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* Article 11 of the Charter regulated the jurisdiction of the General Assembly in this regard by stating "1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both."

** The General Assembly issued this resolution because of the conflict in Korea. What is perhaps important in this resolution (Uniting for Peace) is the General Assembly recognizing that the primary function of the United Nations Organization is to maintain and promote peace, security and justice among all nations,

Recognizing the responsibility of all Member States to promote the cause of international peace in accordance with their obligations as provided in the Charter,

Recognising that the Charter charges the Security Council with the primary responsibility for maintaining international peace and security,

Reaffirming the importance of unanimity among the permanent members of the Security Council on all problems which are likely to threaten world peace,

Recalling General Assembly Resolution 190 (III) entitled "Appeal to the Great Powers to renew their efforts to compose their differences and establish a lasting peace",

Recommends to the permanent members of the Security Council that:

(a) They meet and discuss, collectively or otherwise and, if necessary, with other States concerned, all problems which are likely to threaten international peace and hamper the activities of the United Nations, with a view to their resolving fundamental differences and reaching agreement in accordance with the spirit and letter of the Charter;

(b) They advise the General Assembly and, when it is not in session, the Members of the United Nations, as soon as appropriate, of the results of their consultations."

The General Assembly used this resolution to intervene in a number of international conflicts such as the Hungarian problem in the aftermath of the Soviet intervention in 1956, the aggression against Egypt by France, Britain, and Israel in 1956, and the internal conflict in the Congo in 1961.

Intervention by the General Assembly in such a scenario has legitimate and legal bases. These bases stem from practical precedents set by the General Assembly that are rooted in Resolution 377 of November 1950 (Union for Peace). This resolution enabled the United Nations General Assembly to review all international cases and conflicts that threaten international peace and security. Moreover, it granted the General Assembly the right to take any measures it deems necessary, including military intervention in the cases where it is clear that the Security Council is hesitant and fails to assume its jurisdiction and responsibility because of the threat of veto by any of its permanent members*.

Due to the Security Council's failure to assume its responsibilities, the General Assembly is obliged by the abovementioned resolution to assume the responsibility of maintaining international peace and security, and to consequently intervene against the practices of the State of Israel in any manner that it sees practical and effective, including the use of force, to force it to rescind its practices that violate the rules and provisions of the Charter and to respect and implement the decisions of the international legitimacy, represented by the promulgation of the General Assembly and the Security Council, which demand of Israel that it immediately halt its practices and illegal actions committed against the occupied Palestinian territories and their civilian population.

In addition to the General Assembly resolution concerning Unity for Peace, the United Nations General Assembly is obliged to effectively intervene against the Israeli violations of the United Nations Charter, pursuant to the obligations and commitments that the General Assembly compelled Israel to respect when it submitted an application for admission to the United Nations. The Israeli commitments were indeed affirmed in the General Assembly resolution concerning the admission of Israel to the international organization, which rendered the membership of the State of Israel a conditional membership subject

* Israel is the only member state that accepted its membership conditionally. With respect to Israel's membership in the United Nations see: J. Jansen "Israel and the United Nations: Conditional Membership", Majallat Shoun Falastinia, Number 49, July 1975, p.19 onwards; William Thomas Malison and Sally Malison, Analysis of the Main United Nations Resolutions Pertaining to Palestine from the Perspective of International Law, United Nations publications, New York, 1979, p.29 onwards.

to Israel respect and implementation, in good faith, of the obligations imposed on it by the General Assembly.

Thus, the General Assembly, by virtue of being the party confronting Israel as to its previously stated obligations, is obliged to officially demand from Israel that it implement and honor these commitments. In case Israel refuses to comply with these obligations, the General Assembly must then work on expelling Israel from the membership of the United Nations.

Finally, the intervention by the General Assembly, resulting from Israel's practices and its violations of its legal commitments, must proceed, in our opinion, according to the following procedures:

·-Demanding from Israel via a clear resolution that it comply with its conditional obligations stipulated in the resolution admitting it as a member of the United Nations. In addition, to demand the immediate halt of all the actions and practices that contravene its legal obligations as a member of the United Nations.

-Demanding from Israel that it honors and respects the United Nations Charter and the rules and provisions of International Law and that it refrain from violating these provisions. In case Israel refuses to comply with the resolutions of the General Assembly, the latter should make the necessary arrangements it is entitled to make to force Israel to rescind its practices and to comply with international legitimacy resolutions.

-In case the General Assembly's arrangements fail, it must ask the Security Council to use military means to confront Israel. In this situation, the General Assembly should bear its legal responsibility and order the use of force pursuant to the unity for peace resolution, which gave the General Assembly the right to use military means if the Security Council fails to do when members act outside the provisions of the Charter and the resolutions of the international legitimacy.

Conclusion

Based on what preceded and was stated regarding the current Israeli settlement activities in the occupied Palestinian territories and the practices and violations committed in violation of the rules and regulations of International Law and International Humanitarian Law, we can limit and identify the most important conclusions regarding the facts and findings of the different sections of this study as follows:

- The Palestinian territories legally and judicially fall within the scope and interpretation of occupied lands pursuant to the juridical and legal understanding of the nature and definition of military occupation. This evidently implies the applicability and validity of the rules and regulations of International Humanitarian Law to all the relations between the occupier and his military administration on one side, and the population of the occupied land and their territory on the other. Moreover, the rules and regulations of International Humanitarian Law are the only legal bases that should be used in making decisions regarding the practices of the Israeli occupier in the Palestinian territories and their legality.
- It is worth noting in this respect the absence of any legal justification for Israel refusing to acknowledge the applicability and validity of this law over the Palestinian occupied territories. The Israeli non-recognition does not under any circumstances disavow the State of Israel from being legally accountable in accordance with International Law and International Humanitarian Law for its violations of the provisions of the law, which are represented in its actions committed against the occupied Palestinian territories and the civil population.
- The damaging consequences of settlements are not merely limited to the stealing by the Israeli occupying forces of private and public Palestinian land and property, which is illegal according to the rules and provisions of International Humanitarian Law. The actual damage is much greater due to the policies of stealing the wealth and resources of the occupied territories and the intentional damage

inflicted on other Palestinian land and property that is not included within that confiscated and expropriated through direct means.

- The settlers present in the occupied Palestinian territories are not civilians from a legal perspective. They are a collection of politically organized groups who protect and impose their existence on Palestinian owned land and property taken by force by the Israeli occupation authorities. Moreover, these groups proceeded with the establishment of militant organizations to protect and solidify their authority, over the land controlled by the settlements, by force should the need arise.
- The justifications given by the occupying state to legitimize its practices with respect to settlements are null and void as far as the rules and provisions of International Law and International Humanitarian Law are concerned.
- The Israeli settlements in the occupied territories and the accompanying practices fall according to the rules and regulations of International Humanitarian Law within the list of practices considered as war crimes. In addition, settlement practices, pursuant to the rules and regulations of International Law, fall within the practices described as international crimes because of the clear violations to various international principles, specifically the right of nations to self-determination and basic human rights, in addition to the clear violation of the principles and fundamentals of the United Nations Charter.
- Including settlements within the scope and interpretation of war crimes and international crimes evokes Israel's international responsibility for these crimes and consequently raises the issue of the right of the Palestinian people to demand from the Israeli Government that it immediately halt the implementation of settlement projects and to demand the dismantling of all existing settlements, as well as the right to full and just compensation for the harm inflicted by settlements against the Palestinian occupied territories and its civilian populations. What is even more important is the international criminal responsibility that emerged as a result of the inclusion of settlement, pursuant to the rules and regulations of International Humanitarian Law, within the scope of war crimes,

an issue which provides the Palestinian side with the right to chase and question all those responsible for this crime, whether in their capacity as the persons ordering the erection of the settlements or in their capacity as the persons actually responsible for committing this crime in the occupied territories (settlers). Moreover, the emergence of an international responsibility resulting from settlement activities grants the Palestinians the right to demand from the international community that it intervene to confront the Israeli violations and to pressure Israel to dismantle all settlements, pursuant to the provisions and regulations of International Law and Humanitarian International Law, which compel states to positively intervene against the states that violate the rules and regulations of the law.

- The Security Council is obliged to intervene pursuant to its basic jurisdiction regarding the maintenance of international peace and security in order to confront Israel's violations of the provisions of the Charter and international legitimacy represented by the large volume of resolutions and recommendations promulgated by the United Nations General Assembly and the Security Council. As such, the negative handling by the Council of the Israeli violations grants the Palestinian side the legitimate right to rely on its own capabilities to confront these violations through the use of military force, the use of which is legitimized by the provisions of the United Nations Charter, and by the resolutions adopted by the General Assembly and the Security Council in this regard.

- States are obliged, collectively and individually, according to their contractual commitments emerging from the codification agreements of the rules of International Humanitarian Law, as well as their obligations pursuant to the provisions of the United Nations Charter and the Human Rights Conventions, to refrain from recognizing the material and demographic facts established by the Israeli occupation forces in the occupied Palestinian territories. These states are also compelled by their obligations emerging from the rules of International Humanitarian Law and International Law in general, which call for effective intervention in the form of providing assistance and help to the Palestinian people to confront the Israeli violations. Moreover, these states are obliged to utilize

the appropriate means, including the use of military force to suppress the Israeli violations of the rules and regulations of International Humanitarian Law and International Law.

- States party to the agreements codifying International Humanitarian Law (The Fourth Geneva Convention of 1949) and the First Geneva Protocol, the addition to the four Geneva Conventions of 1977, are compelled on the basis of the provisions of this law to chase and question the Israeli war criminals who ordered the establishment of settlements as well as those responsible for this crime in the occupied Palestinian territory, i.e., the 'settlers'.

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