

APPROVAL SHEET

Jurisdiction of the International Criminal Court in the Occupied
Palestinian Territory – (Israeli's Settlements)

A Rights Based Approach

By

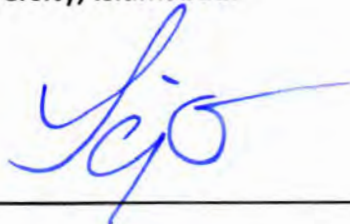
Dalya Walid Ahmad Abu Ali

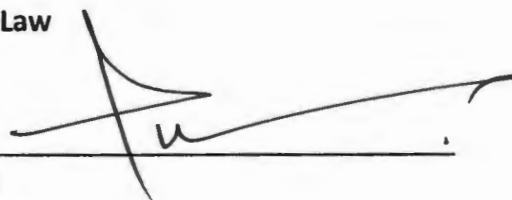
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Criminal courts.
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DECLARATION

I, Dalya Walid Ahmad Abu Ali, hereby declare that this dissertation is original and has never been presented on any other institution; I moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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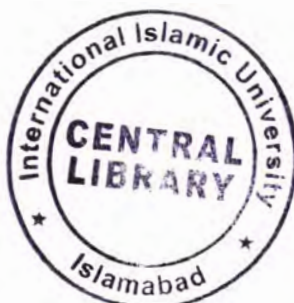
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ABSTRACT

This research deals and discusses one of the most sensitive and complicated issues regarding the Israeli's occupation in the Palestinian Territories, which is one of the most violent and aggressive occupation that mankind have witnessed and gone through. The recognition of the state of Palestine by the United Nations and the membership acceptance by the International Criminal Court has become very supportive to focus on the Palestinian violated rights under the Israeli occupation, which has committed various violations of Geneva conventions in addition to the disrespect of the International norms during armed conflicts. Hence, as Palestine has been just recognized and become a member of the ICC; the research will illustrate some of the beneficial aspects for Palestinians through the ICC.

The research scope focuses on the ICC's legal position and its jurisdiction on the Palestinian cause, and more precisely, on the Israeli settlements over the Palestinian territories, as considered as a war crime under the Rome Statute.

The creation of an independent Palestinian State is threatened by the Israeli's daily's serious violations. However, attempts of civilian killing, displacing and lands confiscation have been only serving and benefiting the settlements expansion projects.

Moreover, the legal position of the occupied Palestinian territories is discussed in three main titles, the historical brief, the Palestinian State recognition in the UN and the applicable International law. Moving on, we focus on the ICC through three titles; its essence, crimes under its jurisdiction and Palestine in the ICC. Then focus has been made on the settlements as war crimes, its legal status, regime and policies. Finally; the Israeli's settlements as violations of international law and human rights have been addressed.

ملخص

تتعامل هذه الرسالة مع أحد أهم القضايا الحديثة نسبيا والتي باتت مدرجة على سلم أولويات الطرف الفلسطيني في طريق نضاله التي سلكها في مواجهة أطول و أشرس احتلال شهدته المنظومة الأممية على مر العصور ألا وهو الاحتلال الصهيوني الاستيطاني الإسرائيلي . ومع إنشاء المحكمة الجنائية الدولية و إمكانية تطبيق عقوبات جنائية دولية على القوة المحتلة (إسرائيل) باعتبارها مرتكبة مخالفات جسيمة لاتفاقيات جنيف وانتهاكات خطيرة أخرى للقوانين والأعراف التي تطبق في المنازعات المسلحة الدولية. لذلك من المفيد توضيح بعض الجوانب المتعلقة بالمحكمة الجنائية الدولية وطرق الاستفادة منها فلسطينيا.

تتمحور هذه الرسالة حول الموقف القانوني لمحكمة الجنايات الدولية، و مدى الاختصاص الذي تمارسه المحكمة فيما يتعلق بالقضية الفلسطينية عموما و في الموقف القانوني من الاستيطان الإسرائيلي المقام على الأراضي الفلسطينية خصوصا، باعتباره جريمة جرب حسب النظام الأساسي للمحكمة الجنائية الدولية او ما يسمى نظام روما.

في الوقت الذي يواجه فيه الفلسطينيون ذوي الحق الشرعي سياسة الطرد و التهجير القسري من أراضيهم و ممتلكاتهم من قبل الحكومات الإسرائيلية المتعاقبة فهي تصب في نهر المشروع الإسرائيلي الاستيطاني الذي يعد أحد أخطر الممارسات التي تهدف الى منع قيام دولة فلسطينية مستقلة على الاراضي الفلسطينية المحتلة، والذي يمثل الوجه الآخر لعملية الاحتلال والمكمل لمصادرة وتهويد الأرض وتفريغها من سكانها يوما تلو الآخر، منتهكا بذلك كل القوانين الدولية و الحقوق الفلسطينية التي كفلتها جميع المواثيق الدولية .

اشتملت هذه الرسالة في بدايتها مفاهيم الدراسة ، مقدمتها ومنهجيتها، تبعتها الحديث عن الوضع القانوني للأراضي الفلسطينية المحتلة من خلال ثلاثة عناوين ، لمحة تاريخية عن الأراضي الفلسطينية، يليها الاعتراف ب فلسطين في الامم المتحدة ، ومن ثم القانون الدولي الواجب

التطبيق على الأرض الفلسطينية المحتلة. لاحقاً إستعرضنا اختصاص محكمة الجنايات الدولية من خلال ثلاثة عناوين أيضاً أولها تحدثنا فيه عن محكمة الجنايات الدولية وجودها ، و أساسها القانوني و قواعد الاختصاص , ثانياً كان عن الجرائم الداخلة في اختصاص المحكمة الجنائية الدولية بأنواعها الأربعة و أخيراً في هذا القسم فكان محور الحديث عن فلسطين و اختصاص محكمة الجنايات الدولية فيها . ومن ثم تطرقنا الى الاستيطان الاسرائيلي في الاراضي الفلسطينية المحتلة باعتباره جريمة حرب و أيضاً من خلال ثلاثة عناوين تمحورت حول الوضع القانوني للاستيطان الاسرائيلي و من ثم النظام الاستيطاني و مواقف الحكومات الاسرائيلية منه و أخيراً السياسات الاستيطانية الاسرائيلية عبر المراحل المتعاقبة. وأخيراً خصصنا البحث في الانتهاكات الإسرائيلية الواقعة في الأراضي الفلسطينية المحتلة و الناتجة عن سلسلة السياسات الاستيطانية الاسرائيلية المتبعة فيها.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(رَبِّهِ أَوْزَعْنِي أَنْ أَظْكَرَ بِعَمَلِكَ الْبَرِّ أَنْعَمْتَ عَلَيَّ وَعَلَى وَالِدَيَّ وَأَنْ أَعْمَلَ حَالًا
تَرْضَاهُ وَأَخْذِلْنِي بِرَحْمَتِكَ فِي مَجَادِكَ الصَّالِحِينَ)

صدق الله العظيم

I would like to dedicate this dissertation to

My parents who supported me all the way to achieve this work

To my Brothers and sisters,

To the lady of the land.... the mother of all beginnings, the mother all of
ends...It was used to be called Palestine; it will be called Palestine...To
My Homeland Palestine.

To the people of my country who are yet tormented with the longest and
most arrogant occupation and for those who stood along for the Fairness
of the human rights.

To my Supervisor, whose contribution will always be remarkable.

And to all my respected teachers.

Table of Content

S.No	Pg.No.
Abstract in English	i
Abstract in Arabic	iii
Acknowledgements	□
Table of Content	1
A. Abbreviations	3
B. Introduction	6
C. Significance of Research	10
D. Research Methodology	11
E. Research Limitation	12
1. Chapter One: The legal Status of the Occupied Palestinian Territories	13
1.1. Historical Evolution of the Palestinian Territories	13
1.2. Recognition of Palestine in the United Nations	22
1.3. Applicable International law	28
2. Chapter Two: The Jurisdiction of the International Criminal Court	45
2.1. The Essence of International Criminal Court (ICC)	45
2.1.1. Establishment of ICC	46
2.1.2. The legal Basis of ICC (Rome Statute and The General Principles)	51
2.1.3. Rules of Jurisdiction of ICC	71
2.2. Crimes under the Jurisdiction of the International Criminal Court	88
2.2.1. Crime of Genocide	89
2.2.2. Crime of Aggression	91

Table of Content

S.No	Pg.No.
Abstract in English	i
Abstract in Arabic	iii
Acknowledgements	□
Table of Content	1
A. Abbreviations	3
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C. Significance of Research	10
D. Research Methodology	11
E. Research Limitation	12
1. Chapter One: The legal Status of the Occupied Palestinian Territories	13
1.1. Historical Evolution of the Palestinian Territories	13
1.2. Recognition of Palestine in the United Nations	22
1.3. Applicable International law	28
2. Chapter Two: The Jurisdiction of the International Criminal Court	45
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2.1.1. Establishment of ICC	46
2.1.2. The legal Basis of ICC (Rome Statute and The General Principles)	51
2.1.3. Rules of Jurisdiction of ICC	71
2.2. Crimes under the Jurisdiction of the International Criminal Court	88
2.2.1. Crime of Genocide	89
2.2.2. Crime of Aggression	91
	1

2.2.3. Crimes against Humanity	96
2.2.4. War crimes	99
2.3. Palestine in the International Criminal Court	109
2.3.1. Palestinian State and the PLO	110
2.3.2. Palestine in the ICC before 2012	112
2.3.3. Palestine in the ICC after 2012	125
3. Chapter Three: Israel's Settlements in the Occupied Palestinian Territories	142
3.1. Legal Status of Israel's Settlements	149
3.2. Israel's Settlement Regime	180
3.3. Israel's Settlement Policies	221
4. Chapter Four: The Violations of the Israeli Settlements	259
4.1. Violation of International Human Rights Law	264
4.2. Violation of the International Humanitarian Law	267
4.3. The Implications of the Israeli Settlements on the Civil, Economic, Political Social and Cultural Rights	278
5. Conclusion	300
6. Appendix	309
7. Bibliography	317

A. Abbreviations

In this paper, there are few terms, which have been mentioned for important Legal, political and geographical implications which are achieving its purposes as follows:

PLO Palestine Liberation Organization

OPT Occupied Palestinian Territory

P.A Palestinian Authority

GS Gaza Strip

WB West Bank

WHO World Health Organization

Occupying power: It is intended to Israel as the occupying power of Palestinian territories

IDF Israeli Defence Forces

ICA Israeli Civil Administration

IHRL International Human Rights Law

IHL International Humanitarian Law

UDHR Universal Declaration of Human Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

HRW	Human Rights Watch
ICC	International Criminal Court
ICJ	International Court of Justice

Oslo: The agreements that signed by and between PLO and the Occupation power (Israel) in the Norwegian capital, Oslo.

Green Line Areas: The line that separates the occupied Palestinian territory in 1948 and the Palestinian territory which was consequently called (West Bank), and the southern part, called (Gaza Strip), all of which constitute the historical Palestine.

1967 Zone: The Palestinian lands occupied by Occupying power (Israel) after the war of June 5, 1967.

The settlement: The Jewish colonial project on the occupied Palestinian territories, including Jerusalem.

The Settlement colonies: Lands dedicated to the civil or paramilitary Jewish Occupying power settlements, which were established in 1976 and is still expanding to the present day.

Outposts: A civil or paramilitary building not officially approved by the occupation authorities, but they have infrastructure and military protection, which is in fact the core of establishing new Settlement colonies.

Settlements District councils: The Occupying power local government entities representing settlements in the region. So that each council area is governed by a number of settlements

"Yesha" Council: Colonial settlement of West Bank and Gaza Strip settlements.

Occupied Area: Is the area of land on which the settlement activities are applied such as construction, public utilities, industrial or agricultural areas, facilities etc. It does not demonstrate the actual size of the land confiscated by the settlements.

Dunum: The unit of measurement equivalent to 1,000 square meters.

The settlement process: is the term alternative to the term "peace process" given that what happened until the day of the negotiations is to delve into the issues of political settlement, not a peace process.

Settlement structure: it is the settlement facilities and projects of civil and industrial, agricultural, tourism and infrastructure and all civilian facilities and paramilitary forces, named and unnamed, which constitute settlement body.

B. Introduction...Core Argument

Israel; (The Occupying Power of the Palestinian Territories) voted against the adoption of the Rome Statute, its principle objection being the inclusion of the crime of "the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies" as a war crime. The Occupying power signed the Rome Statute initially but then refused to ratify and subsequently withdrew its signature.

According to Article 12(3), a State which is not a party to the Statute may lodge a declaration with the Registrar, accepting the jurisdiction of the court with regard to particular crimes, on 21st January 2009, the Palestinian Authority (hereafter PA), filed an Article 12(3) declaration, signed by the Minister of Justice. The declaration accepted the ICC jurisdiction over crimes committed on "the territory of Palestine" since 1st July 2002, when the ICC Statute came into force.

This implies its applicability on Gaza Strip, the West Bank and East Jerusalem. Following the declaration, submissions were made to the ICC Prosecutor, addressing whether the PA declaration meets statutory requirements. Many of the arguments, for and against, the Court's acceptance of the declarations, were based on the question of whether or not Palestine is a State capable of accepting the jurisdiction of the Court.

On 29th November 2012, the United Nations General Assembly adopted the resolution 67/19, which elevated Palestine's status from "Observer Entity" to "Non-Member Observer State". The resolution settled the dispute over Palestine's status as a state under the international law, thus extending the membership options to the State of Palestine permitted to states, including the Rome Statute of the ICC.

On 1st January 2015, the registrar of the ICC, Herman von Hebel, announced that he received a declaration signed on 31st December 2014 by President Mahmoud Abbas based on article 12, paragraph 3 of the Rome Statute, in which Palestine acceded to the jurisdiction of the Court as of 13th June 2014. He added later that he had sent President Mahmoud Abbas a letter, dated 7th January 2015, informing him that the Palestinian declaration was accepted and that it was referred to the prosecutor's office for further examination.

On 2nd January 2015, Palestine lodged its declaration of acceptance of the Rome Statute with the United Nations General Assembly. On 7th January 2015, Sidiki Kaba, the president of the Assembly of States Parties to the Rome Statute of the ICC, issued a statement welcoming Palestine as member in the Rome Statute and the treaty governing the privileges and immunities of the Court.

By ratifying the Rome Statute, Palestine gained membership in the General Assembly of the Member States of the Rome Statute, as such, it will have a permanent representative in the Assembly and will have the right to vote during its annual meeting. Additionally, Palestine has the right to demand the office of the prosecutor to investigate crimes that fall within the jurisdiction of the Court (Art. 13-A), whether such crimes were committed within or outside Palestine's territories.

By becoming a member of the ICC, Palestine has settled a long debate that was testing the patience of Palestinians. The main question is: Does the ICC have jurisdiction over crimes committed in Palestine? By ratifying the Rome Statute and giving the Court jurisdiction, the Court's prosecutor is required to open investigations of crimes alleged to have been committed in Palestine since 13th June 2014 (when the Palestinian government accepted the jurisdiction of the ICC) and crimes that may take

place in the future and fall within the subject-matter jurisdiction of the Court such as: deportation and illegal transfer, destruction of property, genocide and the threat of genocide, apartheid war crimes, and crimes against humanity.

One of these crimes will be put as the settlements in the Occupied Palestinian Territory (OPT), including east Jerusalem, its first was established in 1967, the year the territory fell under the Israeli occupation. Since then, the occupying power, has engaged in the colonization and illegal exploitation of the occupied Palestinian territory.

The Occupying power has established over a hundred settlements in the West Bank, dozens of more outposts settlements that are not officially recognized by the authorities, were established on vast tracts of lands taken from the Palestinians in breach of the international humanitarian law. The very existence of the settlements violates the Palestinian human rights, including right to property, equality, a decent standard of living and freedom of movement. The Occupying power's dramatic alteration of the West Bank map has precluded realization of Palestinians' right to self-determination in a viable Palestinian state.

As the occupation is a temporary state, the occupying power does not acquire the occupied resident's sovereignty. However, the nature of the Israeli occupation is a long-term which dominates all aspects of life in the Palestinian territory. Today, the on-going creation and expansion of the Occupying power settlements in the oPt pose the single greatest threat to the establishment of a sovereign Palestinian state, this expansion has fragmented the occupied Palestinian territory and society, denied the Palestinians access to vital land and water resources, commercial markets and essential social, educational and health services.

The Israeli's settlers population in the OPT has grown each year by between 5-5.7%, it is three times the average population growth inside what's called Israel. For more than four decades, the settlements activities in territories occupied in 1967 have undermined the Occupying power's security and corroded hopes for peace and stability in the region. This continued settlements activities violate the Occupying power's international commitments.

The illegality of all settlements activities in the OPT are not subject to dispute. International law and International Humanitarian law consider them illegal. This position has been repeatedly reaffirmed and embodied in various United Nations (UN) resolutions, including UN Security Council resolutions 904, 471, 465, 452, 446, 252, 267, 271, 478, and 672. There is also international consensus that Occupying power's settlement activities constitute a grave violation of the 1949 Fourth Geneva convention relating to the Protection of civilians in times of War.

The obligations put by the IHL on Israel, as it is the occupying power of the Palestinian territories, is based on the fourth regulation appended to the Hague Convention concerning the Laws and customs of War on Land of 1907 (Hague Regulations) which reflects an international customary law, as well as the Fourth Geneva Convention, which expresses an international customary law as well. In that regard, various resolutions passed by the United Nations General Assembly and Security Council, as well as the statements issued by the governments of countries around the world has confirmed the applicability of Fourth Geneva Convention to the occupied Palestinian territories and the enforceability thereof by virtue of law. This was confirmed by the International Court of Justice in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian

Territory, and the jurisprudence of the International Court of Justice and the practice confirms that the obligations imposed by the human rights conventions ratified by the occupying power shall apply to the occupied Palestinian territory as well.

This research is divided into four main chapters, each chapter has different inter-titles which explain the content, in the first chapter The legal Status of the Palestinian Occupied Territories has been assessed, while in the second chapter the jurisdiction of the International Criminal Court over Palestine has been analyzed, the third chapter has discussed the Israeli's Settlements in OPT, regarding to legal status, Settlement Regime and Settlement policies, Finally the fourth chapter has thoroughly discussed the Violations of the Israeli's Settlements that are inconsistent with the international laws, and The Implications of the Israeli's Settlements on Civil, Economic, Political, Social and Cultural Rights.

C. Significance of Research

Based on the responsibility of the international community and the international legal framework for the protection and promotion of human rights, and the maintenance of international peace and security and to help ending of impunity for the perpetrators of the most serious crimes of concern to the international community, one of the international bodies was created for this purpose is the international criminal court and closely to all the international principles, it is important to understand and analyse the Problem of Palestine joining the ICC and its jurisdiction, and to analyse the Rome Statute dealing with the crimes. This research identifies the importance of focusing on the Israeli settlements as a crime under the international law, especially as a war crime in the scope of the International Criminal Court, and to shed lights on the

legal implications and the violations of it on the basis of international humanitarian law. It will also contextualize the effects of forced population transfer by factoring in social, political and legal conditions in order to delineate the violations of the Palestinian's human rights.

The purpose of this research is to investigate the multi-dimensional phenomenon of the Israeli's Settlements inside the occupied Palestinian territory (OPT) in light of the International law especially the International Criminal Court. The research recognises the position of the International Community with respect to the applicability of the International Humanitarian Law (IHL) to the OPT and hence, the illegal status of settlement construction inside the West Bank and annexed East Jerusalem.

D. Research Methodology

Analytical, descriptive methodology has been used in this research. In doing so, Qualitative approach has been adopted, specifically "Content Analysis". However, the historical methodology furtherly be taken to illustreate the mentioned facts.

Reliance has been made on exploring the articles of the international human rights and international humanitarian law, the main resources are the official documents of United Nations conventions, the Palestinian Ministry of Information Center Concerning Israeli Settlement and Apartheid Wall Affairs, some of the main books concerning the legal status of Palestine under international law, official reports of International Organizations, reports of local Organizations, legal articles, and some official internet websites.

E. Research Limitation

The subjective frame discusses the jurisdiction of the international criminal court of Article 8(b) (viii)) of the Rome Statute 1998, that defines "the transfer directly or indirectly by the Occupying Power of parts of its own civilian population into the territory it occupies" as a War Crime, is the time where the Israeli settlements in the Palestinian territories amount to war crimes.

An illustration and deep discussion of the Israeli settlements on the Occupied Palestinian territories, as war crime without the interfering of the ultimate number of different Israeli crimes and violations against the land and the people of Palestine. It has included the entire Palestinian territories which have been threatened and suffering from the establishment of settlements in the West Bank and specifically on the (c) areas. Moreover, it was meant to include the different time lines where Israel ever started its projects over the occupied lands, it discusses the hidden games those were planned and followed by different Jewish and Israeli leaders through the sequential governments. These settlements are one of the daily violations against the Palestinian human rights.

1. Chapter One: The legal Status of the Occupied Palestinian Territories

1.1. Historical Evolution of the Palestinian Legal System

The essence of the Palestinian problem is the cause of people, fate of the nation; issue of the gradual invasion, and the continuous seizure of the entire country by military force; the issue of the occupation slaying on the society especially its children, women, aged people, Muslims and Christian Arabs; replacing its community of Jews transported in a foreign political entity, robbed the property of the indigenous people and the remaining were displaced and subjected to the colonized settlement.

Since the end of the First World War and the collapse of the Ottoman Empire, the West Bank and Gaza Strip has been under International control. In 1917, the British Foreign Secretary, AJ Balfour, pledged to Lord Rothschild¹ the 'establishment of a National Home for the Jews' in Palestine². On 24 July 1922 the Council of the League of Nations adopted the Palestine Mandate, which came into effect on 29 September 1922 with Britain as the Mandatory power³. The Mandate, in its Preamble, recognised and encouraged the establishment of a 'national home for the Jewish people' in Palestine and made this a purpose of its administration⁴.

¹Lionel Walter Rothschild was the 'Lord Rothschild' to whom Balfour addressed his 1917 proposal regarding the establishment of a Jewish state, and he was the unofficial leader of the British Jewish community.

²Yale Law School, "The Balfour Declaration", http://avalon.law.yale.edu/subject_menus/mideast.asp (October 10, 2015).

³Yale Law School, "Text of the Palestine Mandate", www.yale.edu/lawweb/avalon/mideast/palmanda.htm (October 10, 2015).

⁴Yale Law School, "Palestine Mandate(Art 2)", http://avalon.law.yale.edu/20th_century/palmanda.asp (October 10, 2015).

On 29 November 1947, the United Nations General Assembly (UNGA) approved a Partition Plan for Palestine, three months earlier recommended by the United Nations Special Committee on Palestine (UNSCOP). The plan provided for a Jewish State on 56.47 percent of the territory (excluding Jerusalem), and an Arab State on 42.88 percent of the territory (excluding Jerusalem). The Partition Plan also provided for an international trusteeship for Jerusalem⁵ as a *Corpus Separatum*⁶. (UNGA Resolution 181)⁷.

The British Government set 15 May 1948 as deadline for the Palestine Mandate. The Partition Plan adopted by the General Assembly anticipated a UN Commission of taking temporary control of the two territories until the independent governments are established in accordance with the Plan. On 15 May 1948, an assembled 'People's Council'⁸ declared the ((State of Israel)). While this declaration did not establish for specific boundaries of the new State⁹, it indicated willingness to work with the UN to implement General Assembly Resolution 181. On 11 May 1949, Israel -the Occupying Power- was accepted as a new member of the United Nations. Israel's membership was pursuant to its pledge to honor General Assembly Resolutions 181¹⁰ and 194¹¹ and to accept its obligations under the UN Charter¹².

⁵(0.65%).

⁶ (Latin word for "separated body") is a term used to describe the Jerusalem area in the 1947 United Nations Partition Plan for Palestine. According to the plan the city would be placed under international regime, conferring it a special status due to its shared religious importance.

⁷UNGA Doc A/286 cited in Origins and Evaluation of the Palestinian Problem: 1917-1988 Part II/ UNGA Res A/RES/ 273 (1949).

⁸It is the name of The Jewish People's Council, The Declaration of Establishment of State of Israel

⁹In line with the Israeli Zionist future plans by the expansion of its settlement to control the largest amount of the Palestinian territories

¹⁰29 November. 1947, The General Assembly approved the Partition Plan

¹¹11 December. 1948, The General Assembly approved this resolution which protects the Right of Return and Compensation for Palestinian Refugees.

¹²UNGA Doc A/286 cited in Origins and Evaluation of the Palestinian Problem: 1917-1988 Part II/ UNGA Res A/RES/273 (1949),

<https://unispal.un.org/DPA/DPR/unispal.nsf/0/D442111E70E417E3802564740045A309>

Palestinians have lost their community nature after the 1948 war; because of their geographical dispersion, their actual allegiance to their homeland, community values, their cultural and national identity and, became unable to express them. They also have lost their citizenship, rights and obligations; as they were a stateless nation.¹³ Lands were occupied by the Israeli Occupation power no longer keeps the Palestinian terms, Gaza Strip was subordinate to the authority of the Egyptian military ruler, and then to the administrative governor of Egypt while West Bank became a part of the Hashemite Kingdom of Jordan.

As a result of the 1967 Arab-Israeli war, the Israeli occupation forces occupied both West Bank and Gaza Strip. The Resolution 242 of the Security Council, declared 'the acquisition of territory by war' inadmissible and asked the occupation forces to withdraw its 'armed forces from territories occupied in the recent conflict'. However the Israeli Occupation forces did not incorporate into its domestic jurisdiction the territories occupied in 1967, as it had done in 1948.

At that time the west bank was under the control of Jordan, which exercised sovereign control of the territory prior to the war fought between the Occupying power and its Arab neighbors. In the opinion of the Legal Adviser of the US Department of State in 1978: the Israeli armed forces entered Gaza, the West Bank, Sinai and the Golan Heights in June 1967, during the course of an armed conflict. Those areas had not previously been part of the Occupying power's sovereign territory, nor under its administration. Due the entry of its armed forces, the Israeli Occupying power established control and began to exercise authority over these

¹³BADIL Resource Center for Palestinian Residency and Refugee Rights, "BADIL Occasional Bulletin No. 18 June 2004 From the 1948 Nakba to the 1967 Naksa", <http://www.badil.org/en/>.

territories; and under international law, the Israeli Occupying power thus became a belligerent occupant of these territories¹⁴.

In October 1974, the Arab League recognised the Palestinian Liberation Organization (PLO) as the sole representative of the Palestinian people and under its leadership a Palestinian National Authority could be set up on any 'liberated Palestinian land'. In its concurrent session, the General Assembly affirmed the Palestinian peoples' 'inalienable right to self-determination' and 'national independence and sovereignty'. The General Assembly invited the PLO to take part in plenary meetings addressing the question of Palestine and accorded observer status to it¹⁵.

The occupation occurs when a territory comes under the control of a hostile State as a result of the use of force in an international armed conflict. The international legal status of the West Bank, as a territory of international concern dedicated to Palestinian self-determination, marks any conflict in or related to the territory as international. The conclusion of hostilities between the Occupying power and Jordan and, Jordan's renunciation of its constitutional ties with the West Bank does not alter the status of Israel as an occupying power. The peace treaty between Israel and Jordan did not attempt to change the status of the West Bank and Israel has not claimed annexation of the territory¹⁶.

Since the territory is recognised as subject to Palestinian self-determination, from the perspective of the local population, Israel remains a hostile state. The military nature of the Israeli's control of the territory underlines its presence as a

¹⁴Opinion of the Legal Adviser of the Department of State to the US Congress on 21 April 1978.

¹⁵UNGA Res A/RES/3210 (XXIX) (1974) and UNGA Res A/RES/3237 (XXIX) (1974) respectively.

¹⁶University of Oxford, "Legal Consequences of Israel's Construction of a Separation Barrier in the Occupied Territories", <http://www.nad-plo.org/userfiles/file/Reports/wallrelated1.pdf> (February 2004)

belligerent occupant. It is possible to argue that the hand-over of civilian administration to the Palestinian Authority changes the status of the territories from belligerent occupation to *stricto sensu*. Actually, the territory of concern is those areas within the West Bank where the separation Barrier is constructed. In those and surrounding areas, Israel plainly retains effective military control and thus the occupation continues. So much so that the separation Barrier affects areas administered by the Palestinian Authority under transitional peace agreements, the construction of the Barrier in those areas is clear violation of peace agreements¹⁷.

The occupation is not conditional on continued armed conflict or an active state of hostilities because 'occupation' as an act of war itself and is subject to international humanitarian law. However, because it is a description of status of a territory with correlative internationally enforceable rights and obligations of the Occupying Power, Israel remains the Occupying Power as long as it exercises effective territorial control notwithstanding the existence of guerrilla activities or low-level, sporadic violence. The West Bank as a territory is subject to the Palestinian self determination and currently under the control of Israel and is also, and according to international law, a non-self governing territory. The recognition of the territory and the Palestinian people as a unit of national self-determination makes a foreign administration susceptible to the provisions of Chapter XI of the UN Charter ('Declaration Regarding Non-Self- Governing Territories'¹⁸).

Having formally been part of the Mandate of Palestine and not having attained final status, the West Bank falls within the definition of Article 73 of the UN Charter

¹⁷University of Oxford, "Legal Consequences of Israel's Construction of a Separation Barrier in the Occupied Territories", <http://www.nad-plo.org/userfiles/file/Reports/wallrelated1.pdf> (February 2004)

¹⁸University of Oxford, "Legal Consequences of Israel's Construction of a Separation Barrier in the Occupied Territories", <http://www.nad-plo.org/userfiles/file/Reports/wallrelated1.pdf> (February 2004)

as a territory whose peoples have not yet attained a full self-government'status . The West Bank's status as a Non-Self-Governing Territory imposes obligations on the administering power beyond those of international humanitarian law.

The Israeli occupying power, proposes to have annexed East Jerusalem as sovereign territory. The international community has consistently rejected this claim as an unlawful attempt to acquire title to territory by force as prohibited by the UN Charter 1945, the Kellogg-Briand Pact 1928, the Declaration on Friendly Relations 1970 and the Definition of Aggression 1974. Numerous Security Council resolutions have confirmed that the Israeli Occupying power attempts to change the legal status and demographic composition of East Jerusalem 'have no legal validity' and are null and void. The General Assembly has taken a similar approach¹⁹. These resolutions have also confirmed that the international community regards East Jerusalem as Occupied Territory and which the Fourth Geneva Convention applies²⁰.

"Historic Palestine" includes the land before 1948, which are now areas or regions within the Green Line, which were called by the Occupying power as "Israel" and in addition to Jerusalem, the West Bank and Gaza Strip. Historic Palestine underwent in the 1922 British Mandate, as acknowledged by the League of Nations. In 1947, the General Assembly of the United Nations recommended to make plan to divide Palestine by which 55 percent of Palestine were allocated to the establishment of the Jewish state, at a time when Jews, most of them were new immigrants, constituting third of the population, and they took possession of less than 7 percent of the land of Palestine. And the Jewish armed militias military has begun campaigns to

¹⁹UNGA Resolution ES-10/14 (2003).

²⁰This position is shared by the International Committee of the Red Cross ('ICRC'): ICRC, Official Statement, Conference of High Contracting Parties to the Fourth Geneva Convention, Geneva, 5 Dec 2001, para 2

seize more lands of historic Palestine, occupying areas exceeded the total areas recommended by the dividing plan proposed by the General Assembly, and after several months of military expansion, Zionist forces announced on May 14, 1948 the establishment of the State of occupying power Israel. And by the end of 1948, Israeli occupying power took control of almost 78% of historic Palestine.²¹

War of June 1967, the Israeli military forces occupied the remainder of historic Palestine area amounting to 22% which included the West Bank, East Jerusalem and the Gaza Strip. The occupying power expanded the boundaries of the city of East Jerusalem pursuant to a legislation passed, stating that the occupying power law shall be applied to the regions which Occupying power has extended and included in itself. The international community refused illegal Occupying power's inclusion of areas of East Jerusalem, as per the UN Security Council Resolution No. 242. However, despite this resolution the Occupying power started construction of illegal settlements in the occupied Palestinian territories in violation of international law, which continues to date.

In 1988 and, as a step to achieve peace, the PLO proclaimed the state of Palestine with its capital in East Jerusalem including all territories occupied by the Occupation power in 1967 (including the West Bank, East Jerusalem and the Gaza Strip), meaning that the 1967 boundaries are separating the Occupying power (Israel) and the occupied Palestinian territories as the internationally recognized boundaries²². These boundaries are recognized by the international community and supported under international law which prohibits the acquisition of territory by force. The

²¹ Palestinian Negotiations Affairs Department, "Palestine Borderline", <http://www.nad-plo.org/atemplate.php?id=17> (February 25, 2016)

²² Palestinian Negotiations Affairs Department, "The Borders of Palestine: A Brief Background", <http://www.nad-plo.org/etemplate.php?id=10&more=1#2> (February 24, 2016).

international community does not recognize the occupying power sovereignty over any part of the occupied Palestinian territories, including Jerusalem²³.

The Occupation government began to colonize the Palestinian land by the transferring of some of its own civilian population of Jews to the West Bank and the Gaza Strip in a systematic and organized way, which obviously is breach and violation of international law. The Occupation settlements vary in type and size from nascent settlements or "outposts", consisting of a few homes and the settlements which has constituted complete cities housing tens of thousands of settlers. These settlements were not usage for military purposes rather it included agricultural, industrial and civil settlements and they have been consistently adopting a series of discriminatory measures aiming to promote and consolidate the settlement projects. The Occupying government attracts the settlers and encourages them to live in the settlements through a variety of incentives offered to them, including housing allowances, income tax decreases, and allocating huge budgets for settlements to support businesses therein. These incentives are self-explanatory and in contrary to the claims that this is a "natural growth". Today about three to four times is the rate of population growth within the state of the occupation²⁴.

In 2002, the Occupying power illegally began to build the separation barrier inside the occupied Palestinian territories in order to redraw political boundaries and this barrier surrounds the West Bank and penetrates in its territory to include most of the settlements and the settlers living there, it also contributes to the same time in the seizure of large areas from the Palestinian territories to ensure enabling the occupation

²³ Palestinian Negotiations Affairs Department, "The Borders of Palestine: A Brief Background", <http://www.nad-plo.org/etemplate.php?id=10&more=1#2> (Februray 24,2016).

²⁴ Mideastweb Middle East, "Israeli illegal immigration to Palestine", http://mideastweb.org/palestine_history_arabic_1.htm (Februray 24,2016).

from expanding these settlements in the future. The occupying power has already included areas located in the western side of the barrier and prevented Palestinian from access to it while facilitating the arrival of the settlers to these areas. In October 2003, Israel announced that the Palestinian territories between the boundaries of 1967 and the separation barrier, northern West Bank, as a closed military zone, and asked the Palestinians to obtain permits from the Occupation's authorities to continue living and for access to this territory. In view of the racial separation barrier surrounds the existing illegal settlements and the areas which will be expanded, it is clear that Israeli Occupying forces are targeting occupying Palestinian lands through the construction of this barrier, which is not in fact a security measure for it. Indeed, the barrier doesn't isolate the occupying power from the Palestinian territories, rather isolates the Palestinian citizens from each other²⁵.

Article II of the Charter of the United Nations 1945 requires all members in their international relations to refrain from threat or the use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations²⁶. Resolution No. 242 of the UN Security Council in 1967 confirms on inadmissibility of the acquisition of territory by war and calls for the withdrawal of the Occupation armed forces from territories occupied²⁷. International Court of Justice acknowledged in its advisory opinion issued on July 9 2004, the armistice line of 1949 constitutes the legitimate boundaries of the West Bank and Gaza Strip, considering the Occupying power expansion, including

²⁵Palestinian Negotiations Affairs Department , "Unilateral Re-demarcation of the borders", <http://www.nad-plo.org/index.php> (February 24, 2016)

²⁶Charter of the United Nations, <http://www.un.org/en/sections/un-charter/chapter-i/> (February 24, 2016)

²⁷UNGA Doc A/286 cited in Origins and Evaluation of the Palestinian Problem: 1917-1988 Part II/ UNGA Res A/RES/ 273 (1949), <https://unispal.un.org/DPA/DPR/unispal.nsf/0/D442111E70E417E3802564740045A309>

settlement activities and the construction of the separation barrier, as illegitimate and a violation of its obligations as an occupying power²⁸.

1.2. Recognition of Palestine in the United Nations

The Israeli-Palestinian conflict's relation to the UN began when the British Mandate government put the subject of its mandate for Palestine on the agenda of the assembly to decide on the existence and persistence and, in order for the General Assembly to determine the Israeli-Palestinian conflict and to settle its legal status as soon as the British Mandate is foregoing.

The United Nations General Assembly passed, during its second session held on 29th November 1947, its famous resolution number "181," deciding to divide Palestine under the British Mandate into two states, Israel and Palestine. Israel was allocated under this resolution about 42.88% of the total area of Palestine, while Palestine was allocated remaining 56.47% of the area of Palestine, and 0.65% for the city of Jerusalem, which had been developed on the basis of the content of the resolution under International Trusteeship System²⁹.

Palestinians rejected this resolution for being an unfair resolution against their national cause and national aspirations for independence and statehood, but at the same time the Zionist movement, which was leading the Jewish communities in Palestine, started implementation of the part pertaining to Jewish state by announcing

²⁸University of Oxford, "Legal Consequences of Israel's Construction of a Separation Barrier in the Occupied Territories", <http://www.nad-plo.org/userfiles/file/Reports/wallrelated1.pdf> (February 2004).

²⁹UNGA Doc A/286 cited in Origins and Evaluation of the Palestinian Problem: 1917-1988 Part II/ UNGA Res A/RES/ 273 (1949)
<https://unispal.un.org/DPA/DPR/unispal.nsf/0/D442111E70E417E3802564740045A309>

immediately after the termination of the official British government for its mandate over Palestine, for the so-called the state of Israel on May 15, 1948.

The Israeli occupying forces, didn't abide by their area allocated under the dividing resolution, it took over 77.4% of the total territory of Mandatory Palestine territory, in addition, they sought to apply the principle of land without people, and started implementing a policy for ethnic cleansing by confronting Palestinian through displacement and expulsion campaigns carried out by their forces for a forced migration from their homes and properties located in areas controlled by the occupation forces³⁰.

The Israeli occupying forces, violated the General Assembly division resolution, it took over vast tracts of territories allocated for the Arab State, as well as the implementation of the forced displacement of the population and other crimes and violation which have not stopped to this day, on December 11, 1948 the United Nations General Assembly adopted resolution No. 194 which provides for the right of return and compensation for Palestinian refugees³¹. The UN Security Council has recommended, pursuant to Resolution No. 69 dated March 4, 1949 to accept Israel's membership in the United Nations, as the United Nations General Assembly decided by Resolution No. 273 issued by the third session of the General Assembly on May 11, 1949, to accept the state of Israel as a member in the United Nations.

In order for the General Assembly to emphasize the enforceability of the dividing resolution and the necessity of respect and commitment by the Occupying power to the boundaries established in the dividing resolution and to implement the

³⁰Palestinian Negotiations Affairs Department, "Palestine Borderline", <http://www.nad-plo.org/index.php> (February 25, 2016).

³¹Palestinian Negotiations Affairs Department, "Palestine Borderline", <http://www.nad-plo.org/index.php> (February 25, 2016).

right of refugees to return, it expressly included in the text of its resolution to approve the acceptance of the state of Israel in the United Nations, Israel explicit approval statement to resolution 181 and resolution No. 194 without reservation. The United Nations General Assembly held on 14th Oct 1974 adopted resolution recognizing the right of the Palestinian people to self-determination and independence, and on 20th August 1980 the Security Council adopted resolution No. (478), which refused to recognize Israel's decision on the annexation of Jerusalem; and considered null, void and illegal. However, Israel did not comply with any of the above decisions and did not comply with at all.

As per the international law, governing relations between sovereign states means that the state is the main body in the international law. However, as of the beginning of the last century, the international organizations such as the League of Nations were occupied by bodies who acquired positions as personalities of international law and then the national liberation movements began to stand on the international stage and have their rights recognized in the international law³². The Geneva Conventions of 1949 and the additional Protocol of 1977 were made to give these movements distinctive positions in protection rights as combatants and prisoners of war. Accordingly, the PLO still possess the most dominant part of land and to the extent that one can say that the position of the PLO in the international arena is the closest thing to "state without accomplishing the sovereign state procedures"³³.

PLO made various achievements at international level, the most important of which was the adoption of United Nations General Assembly in its resolution dated 22nd Nov 1974 which recognizes PLO as legitimate representative of the Palestinian

³² Mohammad Fahad, Al-Shalaldeh, *International Humanitarian Law*, Alexandria, Munsha'at al-Ma'arif, 2005, 170.

³³ Ibid, 150

people. The organization has gained Observers status at the United Nations as a movement of national liberation. Observer is not in the meetings of the General Assembly only but, in all conferences held under the supervision of the UN and the international organizations which emerge from those. Thus, PLO gained the observer status in about seventeen Organization spouts of the United Nations, such as UNESCO, FAO, WHO and other organizations³⁴. At the regional level in 1976, it has become a full member of the Arab League, and member equalent to other countries at the Non-Aligned Movement and the Organization of the Islamic Conference (OIC). The achievements of the Palestinian Liberation Organization are not limited to political and diplomatic levels but, have been expanded to include economic, cultural, financial and military areas as well³⁵. In 1988, the nineteenth Palestinian National Council in Algeria announced the so-called Declaration of Independence of State of Palestine.

In 1993, the PLO made a resolution to seek independence through negotiations and therefore PLO together with Israel signed number of agreements between 1993 and 1999, known to everyone as "Oslo Accords" whereby Israel recognized the PLO as the legitimate representative of the Palestinian people. Oslo Accords was put on the basis of resolving the issues of difficult and permanent status³⁶. Certain principles which have been agreed upon within these agreements include:

³⁴On 4 Dec.1975,the Security Council has invited the Palestine Liberation Organization to attend the ongoing discussions in the Council about the Israeli raids on Palestinian refugee camps in Lebanon that year. The invitation was based on Article 37 of the Council's procedures and not on the basis of Article (39). The difference between them is that the first article for the State which is not representative or a member of the Security Council, while Article (39) to invite persons, This means that the invitation was directed to the PLO as a «state».

³⁵For example, It is a full-fledged member of the Arab Fund for Economic and Social Development, the Arab Monetary Fund, and the Arab Organization for Education, Culture and Science from 1981

³⁶Palestinian Negotiations Affairs Department/ Claims Resolution, <http://www.nad-plo.org/etemplate.php?id=139> (Feb24,2016)

- (1) The interim period will be time-limited.
- (2) Nothing that would adversely affect the negotiations of permanent status shall be done.
- (3) The final solution must comply with the UN resolutions (242, 338), which affirm the inadmissibility of the acquisition of Palestinian territory by military force.

However, Israel despite the signing of Oslo Accord is still breaching the provisions of these agreements and principles, and as yet not ended its occupation. It is supposed that the Israeli occupation forces will substantially withdraw from all of the West Bank and Gaza Strip³⁷.

The interim agreement between Israel and the PLO, categorized the lands of the west bank into three main areas³⁸:

Area A: formats of almost 15%, includes most of the Palestinian population of the West Bank, most of the governmental powers are endowed to the Palestinian Authority (PA).

Area B: formats 20%, includes Palestinian civil control and joint Palestinian Israeli security control, later on the Occupation forces retained security and transferred the civil matters to PA.

Area C: covers 65% of the west bank, its under the full control of the Occupation government. The PA responsibility is to provide their civilians with education and medical services; however the infrastructure necessities and the services supplement remains in Occupation's control.

³⁷Palestinian Negotiations Affairs Department, "Claims Resolution", <http://www.nad-plo.org/etemplate.php?id=139> (Feb 24.2016)

³⁸Palestinian Negotiations Affairs Department, "Claims Resolution", <http://www.nad-plo.org/etemplate.php?id=139> (Feb 24.2016)

Oslo agreement, divided these lands in a way meant to gradually transfer and permeate authority to the PA, which was not even planned to satisfy the long term needs of demographic growth. The previous mentioned areas A and B, were systematically defined by the drawing lines around the population of the Palestinian living there at the time when Oslo agreement was signed. Around 2.5 million Palestinian lives in these areas, which already been subdivided into an almost 160's units of land that have no territorial contiguity. Therefore, lands C, is defined as of all the lands surrounding areas A and B, they additionally have a territorial contiguity³⁹.

As for the cause of the Israeli settlement to the Palestinian territory, the occupying power is still constructing and expanding the illegal settlements, the Fourth Geneva Convention which was acknowledged by the Occupying power in June 1951 and, which has not been voided by "Oslo Accords" prohibits the Occupying power from constructing settlements in the occupied Palestinian territories. According to Article 49 (6) of the Fourth Geneva Convention, "the Occupying Power shall not deport or move its own civilian population into the territory it occupies"⁴⁰, and "Oslo Accords" confirmed this opinion. Section 31 of the "Oslo Accords" provides that "the two states shall consider the West Bank and Gaza Strip as one territory that the unity of which shall be maintained and status during the interim period." This section also states that "Neither party shall initiate or take any action that may change the status of the West Bank and the Gaza Strip while waiting the result of the permanent status negotiations".⁴¹

³⁹Middle East and North Africa Programme, "Jerusalem: The Cost of Failure", <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Middle%20East/bp0210jerusalem.pdf> (Feb 24.2016).

⁴⁰Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, <https://www.icrc.org/ihl/WebART/380-600056> (Feb 24.2016).

⁴¹Declaration of Principles, <http://www.refworld.org/docid/3de5e96e4.html> (Feb 24.2016)

The Israeli Occupying power continues doing otherwise through separation barrier, and implementation of settlement projects, as against the rules of international law⁴².

1.3. Applicable International law

In 1967, the remaining of the Palestinian territories after the Nakba (1948 Palestinian Exodus) has fallen under Israeli occupation, violating the international law and the Declaration of Principles of the International Law concerning Friendly Relations and Cooperation among States in accordance with the United Nations Charter which says: "No region in any state shall be subjected to military occupation resulting from the use of force in contrary to the provisions of the Charter". Which means that no state shall take over the territory of another state as by use of force or threat to use? It shall not recognize the legitimacy of acquiring any territory by the threat or use of force.

The Occupation forces claims that it is not in the process of "occupation" of the occupied Palestinian territories; rather it is "management", so the Palestinian land is not within the scope of the Fourth Geneva Convention and the law of belligerent occupation. The Occupation forces have used legal ploy to justify its position and to attempt to provide groundless jurisprudential justification. Accordingly, Missing Reversioner theory was developed to strengthen its arguments for its non-compliance with Fourth Geneva Convention and law of belligerent occupation⁴³. This theory contended that Jordan and Egypt were not the legitimate sovereigns in OPT. Since there was no ousted legitimate sovereign "a missing reversioner" to whom the territory would revert, the Occupation forces could make possession of OPT given

⁴²Palestinian Negotiations Affairs Department, "Israel's violations of the Oslo agreement", <http://www.nad-plo.org/atemplate.php?id=75> (February 25, 2016)

⁴³This argument was presented for the first time by Yehuda Blum, "a missing reversioner", Reflections on the status of Judea and Samaria, *Israeli law journal* 3, (1968), 279

that they have a relatively stronger title to the territories. This is argued on the basis of strange interpretation of common article 2 of the Geneva Conventions. Article 2 that reads:

“The Convention shall apply to all cases of partial or total occupation of the territory of a High Contracting Party....”

Thus it is argued that the object and purpose of the law of belligerent occupation is to protect the rights of the ousted sovereign holding valid legal title. Therefore, it has been suggested that because Egypt and Jordan were not the two states of legitimate sovereignty in the Occupied Palestinian Territories before 1967 thus, those areas shall not be affiliated to a "High Contracting Parties." According to this perspective, the legal status of Occupying power (Israel) in the occupied territory is that it is a state legally in control of the territory due to the inability of any other country to perform it better.

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The Occupation power Israel, claims that they have the right in the occupied Palestinian territories rather than Jordan and Egypt on the basis of the concept of "defensive invasion." Based on this concept, they took over the occupied Palestinian territories in 1967 during the "defensive" War against both Jordan and Egypt, which did not have a valid legal basis for the ownership of such territories; hence they have the full legal control over the occupied Palestinian territories⁴⁴.

The introduction of these descriptions and titles confer them on the occupied Palestinian territories, it's a continuous Israeli project since the occupation of

⁴⁴The Chronicle of the Middle East & North Africa, "Jewish settlements in the occupied Palestinian territory", <https://chronicle.fanack.com/palestine/history-past-to-present/jewish-settlements/> (January 20,2016)

Palestinian land, which is a process based in deep studies drafted by senior Israeli jurists and adopted by Israeli politicians and decision-makers. However, The Israeli legal experts and officials did not use similar descriptions of the Egyptian or Syrian or Lebanese territory, which means that this process was confined to the Palestinian territories only.

Since the occupation of the Palestinian territories, the Israeli occupying power trying stubbornly to exclude the description «occupied territories» of this land and has tried to fabricate several other descriptions since its occupation. The most damaging Mentality that was invented by the Zionist thought, when lawyer Meir Himar who served in the military public prosecutor for a long time, and was a legal adviser to Defense Minister Moshe Dayan, before becoming president of the Israeli Supreme Court of Justice, said that the Israeli position in the occupied Palestinian territories is better than the Jordanian in the West Bank and Egyptian in the Gaza Strip⁴⁵. The professor of law at the Hebrew University at that time, Dr. Yehuda Blum, cling to this argument in his detailed legal study, published it in the year 1968, in which he defended the idea of Israeli sovereignty over the West Bank in the confrontation of Jordanian sovereignty. The seriousness of this argument, that it has become the official stated policy of the Israeli government. Menachem Begin presented a new argument that led to consider the Palestinian territories as «disputed land», which make the Israel's claims on these lands equal to the claims of Jordan and Egypt.⁴⁶ (This was before the recognition of the Palestinians as a people with legitimate representative...PLO).

⁴⁵Reflections on the status of Judea and Samaria, 3, the Journal of Israeli Law No. 279, (1968)

⁴⁶This pretext was presented for the first time by Yehuda Blum, the Institute of Public Policy, "the status of Jerusalem", <http://www.ipp-pal.ps/PDF/Seyasat33.pdf>

The Israel's attempts to consider the occupied lands whether as «disputed land», or to change its name to the Judea and Samaria or change it to Area A, B and C, or consider it as a Land without a people, and the Israel's presence in those lands is equal if not better than Jordan or Egypt presence. Israel has used all these attempts to free itself from the guilt of occupation and international legal constraints, which responds to the occupation authority and the criminal responsibility for violation of these laws and rules. Furthermore, Israel in its attempts to change the legal description will increase the colonization of the Palestinian territories and the establishment of settlements, and will increase the practice of acts of violence and crimes against civilians for a degradation of international humanitarian law restrictions.

The Geneva Conventions of 1949, in particular the Fourth Geneva Convention, are considered as serious development for abiding the law, in the period of occupation or in the period of Armed Conflict, the Fourth Geneva Convention is centering on the status of protected (Persons in the occupied territory, their rights and obligations of the Occupying Power towards them⁴⁷.

In 1976, the President of the Security Council, after consultation with all members and the approval of the majority, stated that "the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949 shall be applicable to the Arab territories occupied by the Occupaion forces since 1967⁴⁸. The origins of the PLO in connection with the four Geneva Conventions of 1949 and the Protocols thereof, are dated back to 1977 when the organization signed the final Act of the international diplomatic Conference concerning the promotion and

⁴⁷ Mohammad Fahad, Al-Shalaldeh, *International Humanitarian Law*, Alexandria, Munsha'at al-Ma'arif, 2005, 100

⁴⁸ Statement of the President of the United Nations Security Council, United Nations documents: UN Doc. S / PV.1922, 26 May 1976

development of international law. In 1980, the voting result was 14 to none, with one abstention and the Security Council blamed the Occupation forces for the enactment of the "statute" concerning Jerusalem, which was a violation of international law and does not affect the continuing application of the Fourth Geneva Convention⁴⁹. It was decided not to recognize the statute and other acts that seek to change the nature and status of Jerusalem. After the announcement of the state of Palestine done in Algeria on 15th Nov.

1988, the Executive Committee of the Palestine Liberation Organization on behalf of the Government of the State of Palestine decided to abide by the four Geneva Conventions of 1949 and the Protocols thereof of 1977, the PLO submitted on the seventh of July of 1989, a formal notification to the Swiss Union stating its commitment to the provisions of the Geneva Conventions of 1949, and the consequent effects thereof. The signed PLO's notice has been considered as a commitment from one side, and was welcomed. This is still far but this notice met with rejection from Britain, United States of America and the Israeli Occupation Government, while it was welcomed by several countries, including non-aligned countries, as well as the Commission on Human Rights of the United Nations at its sixth session, held in Geneva in March 1990⁵⁰.

Similarly, the UN General Assembly also has been reiterating that the Occupying power is bound by the obligations of the Fourth Geneva Convention in OPT. Its Declaration on 5th Dec 2011, reconvened the International Conference of High Contracting Parties to the Fourth Geneva Convention expressed its deep concern over the deteriorating humanitarian situation, reaffirmed the applicability of the

⁴⁹Security Council resolution 478 (1980).

⁵⁰The Palestinian Red Crescent Society, "Palestinian legislation and international humanitarian law", <https://www.palestinercs.org/ar/adetails.php?aid=2>

Convention to Occupied Palestinian Territory, including East Jerusalem, and reiterated the need for full respect for the Convention in that Territory⁵¹.

The status of the Fourth Geneva Convention of 1949 in the Israeli's law is not clear. According to thier law, the convention does not oblige their state, because it is classified as one of international legislation based on agreements. This means that although it is referring about a convention of the Occupying Power which Occupying power is a party therein, however, it doesn't obligate, necessarily, the state bodies to act within the framework of context. With a view to the Fourth Geneva Convention are binding instructions to Occupying power, the Occupying power's Supreme Court has confirmed that the Occupying power's legislator shall adopt the convention instructions in Occupying power's legislation.

On the other hand, the customary international law, or such legal norms based on international arena for many years, and which has the wide international approval obligates the Israeli Occupying power to adopt those norms without the need for local legislation. The Israeli law, for example, recognizes the Hague regulations of 1907 as customary laws, and therefore, in itself it is an obligation.

The ICJ issued her judgment in that regard and emphasized the importance of IHL: "these fundamental rules⁵² are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law... These rules indicate the normal conduct and behavior expected of States⁵³."

⁵¹Conference of the High Contracting Parties to the Fourth Geneva Convention: Geneva, (December 5,2001).

⁵²Here the rules are the rules of the applicable humanitarian law in armed conflict

⁵³Legality of the threat and use of nuclear weapons, Advisory Opinion, ICJ Reports,1996 (226, 257) paragraphs. 79.82.

Thus, the Occupying power's compliance with the Fourth Geneva Convention is not supposed to be based on an optional basis with one-sided interpretations, so when counting the occupation activities in the occupied Palestinian territory one can observe that they have violated almost every single provision of the Fourth Geneva Convention⁵⁴.

There is no doubt about the clarity of the contemporary international law regarding the legal status of the occupied Arab territories, they are subject to the occupation which obligates Israel as an occupying power to acknowledge the principle of applicability of the provisions and rules of International Humanitarian law, on both customary and contractual aspects, on such territories, which the authorities continue to refuse using various legal arguments and justifications⁵⁵.

The applicability of Geneva Conventions to the OPT is confirmed by the International Court of Justice which delivered its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory⁵⁶, where the ICJ replied to the allegation of the Israeli Occupying government that the Fourth Geneva Convention is not applicable to the Palestinian Territories, in that regard, the court stated that since the Palestinian territories have been taken over by Occupying power as a result of War therefore the Occupying power controls over the Palestinian Territories shall be consistent with the Geneva Convention⁵⁷.

⁵⁴Mohammad Fahad, Al-Shalaldeh, *International Humanitarian Law*, Alexandria, Munsha'at al-Ma'arif, 2005, 177

⁵⁵Ibid

⁵⁶University of Oxford, "Legal Consequences of Israel's Construction of a Separation Barrier in the Occupied Territories", <http://www.nad-plo.org/userfiles/file/Reports/wallrelated1.pdf> (February 2004), for more details: http://www.icj-cij.org/homepage/ar/advisory/advisory_2004-07-09.pdf

⁵⁷MONITORING ISRAELI COLONIZATION ACTIVITIES in the Palestinian Territories, <http://www.poica.org/details.php?Article=1720>

Until the time where the Occupying power respects its obligation under the Fourth Geneva Convention concerning the Protection of Civilian Persons in Time of War, 12 August, 1949, as well as other principles of international law in particular those provisions of the Convention that obligates the occupying power to protect the status quo, human rights and prospects for self-determination of the occupied people, violations of the rights of Palestinian civilians shall continue. The Convention also obliges all State Parties to enforce the Convention in the face of "grave breaches". Since 1967, the Occupying power has refused to accept this framework of legal obligations. Not only has it failed to withdraw from the occupied territories, but during the occupation, it has created heavily armed settlements, bypass roads and security zones amidst future Palestinian State and this seriously compromises basic Palestinian rights⁵⁸.

One source that addresses the obligations towards the inhabitants of the occupied territories is documented in the Fourth Geneva Convention (1949). These provisions impose on the occupying state overall responsibility for the security and welfare of the citizens living inside the occupied zone. The crucial criterion for the validity of the provisions of the occupation on the particular state regarding the region is the presence of "effective control" over the part of the state on the same area. In contrary to their claim, the Supreme Court of Justice decided that the formation and continuation of the occupation is related to the readiness of the occupying state to activate a system to manage the lifestyle of the citizens, but it is limited to the extent of military control over the area. More than that, to be considered a certain area as occupied territory, it is not need that a constant military presence on all parts. At the discretion of the finest experts in humanitarian law, effective control can exist even if

⁵⁸Mohammad Fahad, Al-Shalaldeh, *International Humanitarian Law*, Alexandria, Munsha'at al-Ma'arif, 2005/177

the army controls the main points in a given area reflects the power in the entire region and prevents crystallization of central rule alternative works to extend its control and authority.

The large-scale of their control in the occupied territories, and on the ground, it creates a reasonable basis for assuming that this control amounts to "effective control", and therefore, the provisions applicable to the occupation of Israel. Even if the Occupying power's control of the occupied territories is not classified as "effective control", and the region is considered as occupied territory, this does not mean that they are exempted from any responsibility under international humanitarian law. This law is not limited to the protection of citizen's lives under the occupation, but includes various instructions that aim to protect citizens in time of armed conflict, regardless of the status of the region where they are located⁵⁹.

The International Humanitarian law (IHL) is the law of war and applies from the commencement of any conflict, in this case the initiation of the 1967 war marks the beginning of the applicability of IHL in the West Bank and Gaza⁶⁰. These laws continue to apply until a general conclusion of peace is reached. In the case of a military occupation, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 lays out the rights and duties of the Occupying Power. The Geneva Conventions are considered to be customary international law and are thus binding on all states, including Israel. Further aspects of IHL, namely article 51 (Protection of civilians) and article 52 (protection of civilian objects) of Additional Protocol 1 to the Geneva Conventions of 1977 are also

⁵⁹B'Tselem, "Israeli obligations under International Law",
http://www.btselem.org/arabic/gaza_strip/israels_obligations (23 Jan,2016)

⁶⁰International Committee of the Red Cross, "What is International Humanitarian Law",
https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf

considered to be customary international law and are also binding on the Occupying power's actions in the occupied territories⁶¹.

The International Covenant on Civil and Political Rights (ICCPR)⁶², whose purpose is to ensure that every individual can enjoy their basic human rights, is also binding on the occupation's actions in the occupied territories. Despite the continued refusal to apply the ICCPR in the West Bank and Gaza, the Human Rights Committee, which is the monitoring body of the ICCPR, has stressed that "the Covenant must be held applicable to the occupied Palestinian territories where Israel exercises effective control."⁶³ Israel is also a state party to the International Covenant on Social, Economic and Cultural Rights (ICESCR). The monitoring Committee of the ICSECR criticised Occupying power's discrimination between Jews and Palestinians in the Occupied Palestinian Territories, noting its concern that "the Government's written and oral reports included statistics indicating the enjoyment of the rights enshrined in the Covenant by thier settlers in the occupied territories but that the Palestinian population within the same jurisdictional areas were excluded from both the report and the protection of the Covenant. The Committee is of the view that the State's obligations under the Covenant apply to all territories and populations under its effective control. The Committee therefore regrets that the State party was not prepared to provide adequate information in relation to the occupied territories."⁶⁴

Article 47 of the Fourth Geneva Convention concerns the inviolability of the rights of protected persons in occupied territory. It states that such persons shall not

⁶¹ Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims in International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 609

⁶² General Assembly. Res.2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force Mar. 23, 1976.

⁶³ Concluding Observations of the Human Rights Committee, "Concluding Observations, Comments" CCPR/C/79/Add.93 at para.10 ,(August 18.1998)

⁶⁴ Concluding observations of the Committee on Economic, Social and Cultural Rights: Occupying power, E/C.12/1/Add.27, (December 4,1998)

be deprived “in any case or in any manner whatsoever, of the benefits of the [Fourth Geneva Convention] by any change introduced...by any annexation by the occupying power of the whole or part of the occupied territory”. This provision highlights a fundamental principle of international humanitarian law, namely, that the annexation of occupied territory in no way affects the rights and duties of an occupying power in relation to the protected persons in that territory. The official commentary to the convention reiterates that while occupation of territory as a result of war - in the immediate instance the 1967 “Six-Day War” - represents actual possession to all appearances, it “cannot imply any right whatsoever to dispose of territory⁶⁵.” Noting that the reference to annexation in Article 47 cannot be considered as implying recognition of this manner of acquiring sovereignty, the Commentary states that a decision on annexation cannot be made while hostilities continue but can “only be reached in the peace treaty.” Thus the unilateral actions of the Occupying power government and military in building the Wall on occupied Palestinian territory that will result in the *de facto* annexation of vast amounts of the West Bank violates the rule of customary international law that territory cannot be annexed by force.

The United Nations General Assembly and Security Council have condemned the occupation power’s *de facto* annexation of occupied territory in Resolution after Resolution⁶⁶. These resolutions consistently reaffirm that the acquisition of territory by military conquest is inadmissible and confirm the applicability of the Fourth Geneva Convention to the territories under the occupation since 1967. The resolutions constantly condemn Occupying power’s policy of creating “facts on the ground” in an attempt to change the legal status of the occupied areas that it has declared annexed.

⁶⁵ Jean S. Pictet “Commentary: IV Geneva Convention” ,(International Committee of the Red Cross, 1958) , 275

⁶⁶ E.g. Security Council Resolution 252 (1968), Security Council Resolution 465 (1980), Assembly Resolution 56/32 (2001)

The Occupying power has, however, rejected the content of these UN resolutions, and continues to defy the international community and disregard its rights and responsibilities under international law. Palestinians fear that by building the Wall within the West Bank is in fact encouraging many more settlers to establish new colonies, or to join the existing ones that will be west of the Wall. John Dugard, the Special Reporter of the United Nations Commission on Human Rights has stated that the Wall is a tool to facilitate the settlers' territorial expansion which represents "de facto annexation" and is therefore illegal under international law. He dismisses Occupying Power's claims that the Wall is a necessary and temporary security measure stating that "the reality is that this is a creeping form of annexation⁶⁷."

The ICJ's advisory opinion _ that the wall built by the Occupying governments in the Occupied Territories violates its obligations under both IHL and international human rights law— strikes me as accurate. Thses settlements in the West Bank violate, inter alia, Article 49(6) of the Fourth Geneva Convention⁶⁸ but because of the Occupying power's decision not to participate in the advisory proceedings, and because of the Court's failure to conduct an independent, impartial investigation for itself (or even to solicit additional evidence), the majority manifestly lacked "the requisite factual bases for its sweeping findings."⁶⁹ Even assuming, as Judge Buergenthal stressed:

⁶⁷ "UN rights expert: Security fence is illegal annexation", Associated Press, March 27, 2003

⁶⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9).

⁶⁹ (Declaration of Judge Buergenthal) at page 240... decide the validity of Occupying power's security claims, the Court relied on little more than a report by the Secretary-General of the United Nations and a statement Occupying power submitted "limited to issues of jurisdiction and judicial propriety," although the Court said it included "observations on other matters," including Occupying power's security concerns./ and see also : (noting that the Court "fails to address any facts or evidence specifically rebutting Occupying power's claim of military exigencies or requirements of national security" and "barely addresses the summaries of Occupying power's position on this subject that are attached to the Secretary-General's report and which contradict or cast doubt on the material the Court claims to rely on"). It would have been advisable, in my judgment, for the ICJ not to hear the case as a

“That on a thorough analysis of all the relevant facts, a finding could well be made that some or even all segments of the wall . . . violate international lawTo reach that conclusion with regard to the wall as a whole without having before it or seeking to ascertain all relevant facts bearing directly on issues of the Occupying power’s legitimate right of self-defense, military necessity and security needs, given the repeated deadly terrorist attacks in and upon the Occupying power proper coming from the Occupied Palestinian Territory to which they have been and continues to be subjected, cannot be justified as a matter of law, the humanitarian needs of the Palestinian people would have been better served had the Court taken these considerations into account, for that would have given the Opinion the credibility which it lacks”⁷⁰.

In fact, the majority opinion lacks not only credibility but analytic clarity relative to the proper analysis of the law of war. The result is, as Judge Buergenthal emphasizes, a disservice to the humanitarian objectives that the majority purports to vindicate. Assume the Court correctly found that Occupying power cannot assert a right of self-defense in this context and that the wall as such therefore violates the Charter’s *jus ad bellum*. The dualistic axiom should be understood to insist that this conclusion is irrelevant to the Occupying power’s duty to respect (1) *ad bellum* necessity and proportionality; and (2) the *jus in bello* in its entirety, including *in bello* proportionality. The ICJ failed to examine either issue. Instead, its analysis essentially ceased after it condemned the wall as unlawful force. It thereafter supplied little more than a conclusion litany of various treaty provisions that it said the wall violated. It is not that the ICJ necessarily erred in finding the wall unlawful (or in violation of these

matter of its discretion... <http://www.icj-cij.org/docket/files/131/1687.pdf> .See Western Sahara, Advisory Opinion, 1975 I.C.J. 12, 28-29 (Oct. 16); Status of Eastern Carelia, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 5, at 28-29 (July 23); see also 2004 I.C.J. at 207- 11 (separate opinion of Judge Higgins).

⁷⁰2004 I.C.J. at 240-41 (declaration of Judge Buergenthal), <http://www.icj-cij.org/docket/files/131/1687.pdf>

treaties); it is that, even so, the dualistic axiom should have led the Court to offer guidance on *ad bellum* and *in bello* law beyond merely condemning illegal force. Instead, the ICJ effectively allowed its conclusion that they lacked on the right to self-defense to obviate the need for this analysis⁷¹.

Whatever the *ad bellum* legality of the wall as a measure of self-defense, for example, the dualistic axiom requires an independent *in bello* proportionality analysis—that is, an analysis of the extent to which the wall may be “expected to cause incidental loss of civilian life, injury to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated⁷².” The Court (lacking evidence on this issue) simply neglected it. In fact, The Wall may be seen as an extreme version of denying the analytic independence of *ad bellum* and *in bello* judgments: it suggests that the former not only affect but determine the latter. Relative to *in bello* proportionality, the Court, without evidentiary analysis, offered only the *ipse dixit* that it is not convinced that the specific course they have chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by their forces and, the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order⁷³.

⁷¹ Robert D. Sloane/ The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War/ Boston University School of Law Working Paper No. 08-14/page 87,http://www.bu.edu/law/workingpapers-archive/documents/sloaner040708rev5andfinal_000.pdf (Dec 14, 2015)

⁷² Protocol I, *supra* note 30, art. 51(5)(b)

⁷³ I.C.J., 2004 at 193.

A more credible and sophisticated analysis would have sought and considered evidence bearing on the asserted military exigency carefully, even assuming the wall were unlawful, and then opined on proportionality relative to “individual segments of its route.”⁷⁴

The ICJ’s tacit justification for disregarding the dualistic axiom in *The Wall* seems to be the view criticized by Lauterpacht more than fifty years ago: that any effort to offer guidance on the conduct of hostilities in the context of unlawful force might confer a veneer of legitimacy on that force. This is misguided, for “it is not the existence of rules for the conduct of war which causes states to resort to force but more fundamental factors in international relations.” The foregoing logic is also counterproductive. Unsurprisingly, and as experience since *The Wall* attests, Occupying power will not accept (nor would any state) the Court’s cavalier dismissal of its national security interests. Nor will it obey an order to dismantle the wall forthwith. That does not mean the ICJ should refrain from declaring a situation unlawful or issuing an appropriate remedy because it anticipates disobedience; only that it should not allow this initial finding to obviate the need for further legal analysis. It is not unreasonable to believe that had the ICJ made its views on proportionality available, Occupying power would have considered them⁷⁵.

⁷⁴Id. at 244 (declaration of Judge Buergenthal)/ <http://www.icj-cij.org/docket/files/131/1687.pdf>

⁷⁵Robert D. Sloane/ *The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War*/ Boston University School of Law Working Paper No. 08-14 /page 87, http://www.bu.edu/law/workingpapers-archive/documents/sloaner040708rev5andfinal_000.pdf (Dec 14, 2015).

This is not speculation: the Occupying Power's Supreme Court considered the complex, fact-intensive judgments about *in bello* proportionality raised by the wall (or security fence). Based on a sophisticated *in bello* analysis, it ordered parts dismantled. These orders, backed by effective domestic institutions of enforcement, did much more to ameliorate the injuries to Palestinians than did the ICJ's opinion, which simply declared the wall unlawful and then neglected the hard questions about *in bello* proportionality. This is not to suggest that the Occupying power Supreme Court necessarily gave the right answer on each issue. But its willingness to work out a concrete theory of *in bello* proportionality and to apply it to the factually complex, politically sensitive circumstances of the conflict contributed far more to IHL's objectives than the ICJ's categorical declaration and elision of the dualistic axiom⁷⁶.

True, the ICJ has a limited capacity for fact finding and a distinct institutional role within the international system. It would be misguided to suggest that the Court could, or should, have undertaken an analysis comparable in specificity or approach to that contained in the Occupying power decisions. But had it rigorously analyzed the *jus in bello* after finding the wall unlawful, Beit Sourik and Mara'abe suggest that its judgment would have been considered seriously by their courts. By declining to engage difficult *in bello* issues, the ICJ failed to offer guidance to a state whose judiciary has historically treated international law seriously. Because domestic incorporation and internalization is one of the most effective means by which international law is enforced, the ICJ's approach in *The Wall* seems not only

⁷⁶Robert D. Sloane/*The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War*/Boston University School of Law Working Paper No. 08-14 /page 87 http://www.bu.edu/law/workingpapers-archive/documents/sloaner040708rev5andfinal_000.pdf (Dec14, 2015)

misguided but counterproductive. It did little but weakens the ICJ's credibility and authority for the future. The Wall's failure to analyze the facts rigorously or to consider the Occupying power's claims of military necessity diminishes the decision's force. Outside the politically charged context of the Occupying Power's- Palestinian conflict, one may be sure that states, relative to themselves, will not heed a judgment that dismisses the relevance of their national security interests⁷⁷.

⁷⁷Robert D. Sloane/ The Cost of Conflation: Preserving the Dualism of Jus ad Bellum and Jus in Bello in the Contemporary Law of War/ Boston University School of Law Working Paper No. 08-14 /page 87, http://www.bu.edu/law/workingpapers-archive/documents/sloaner040708rev5andfinal_000.pdf (Dec14, 2015) .

2. Chapter Two: The jurisdiction of the International Criminal Court

The Court is an essential element of the international legal system and an essential contribution to the national courts in their efforts to prosecute suspected characters. The idea of the International Criminal Court emerged as a judiciary mechanism aims at deterrence by application of international law; as a result of the horrific abuses against humanity.

2.1. The Essence of International Criminal Court (ICC)

The idea of establishing an international criminal court has always inspired those in charge of the international law and the concerned to punish the perpetrator of international crimes before the establishment of the League of Nations and is demonstrated by the attempts to prosecute the Emperor of Germany by the victors of the First World War but, these efforts failed. The Second World War occurred and a new generation of war crimes perpetrators and crimes against humanity has emerged, this in turn reiterated the need to create a court that can deter perpetrators of international crime and limit their activity. The Nuremberg court came to try Nazi leaders and the Tokyo Tribunal for war crimes, which has specialized in trying Japanese leaders' wartime leaders. These courts have had a great role in codifying international criminal law, despite the criticism made to it, these courts have resulted in a lot of the rules of international criminal law concerning the adaptation of the crimes and their elements that were not existed before the trials of Nuremberg and Tokyo.

2.1.1 Establishment of ICC

The first establishment steps of the court began when the General Assembly of the UN in 1947 assigned to commission of the international law legislators for the drafting of a law penalizing crimes against humanity, peace and security violations but, the project did not come out and remained suspended because of the political problems that overshadowed the international relations through what was known as the period of the cold war between the Western camp led by the United States of America and the eastern camp, led by the former Soviet Union⁷⁸.

In 1982, the legislator from the International Law Commission provided the first report of the rationing project which included general rules on international criminal law; the drafting of this project was finished in 1991. Then from 1993 to 1994 two temporary criminal courts convened to prosecute perpetrators of war crimes and crimes against humanity in the former Yugoslavia and Rwanda, and those Tribunals have contributed to the establishment of many of the jurisprudence of international crimes but, it was not enough for the international community leading the Security Council to seek the establishment of a permanent international court.

In 1998, the UNs General Assembly requested the International Law Commission to submit a report on the international criminal jurisdiction to prosecute drug dealers; here a panel of international law experts submitted to prepare a draft statute and was submitted to the Eighth Conference of the UNs to prevent international crime and punish criminals, the human needs to establish an international criminal court were realized, and in April 1998 the Commission has completed the preparatory work and, the Rome Statute of the international Criminal

⁷⁸"The Establishment of the International Criminal Court and its jurisdiction", <http://www.aljazeera.net/news/pages/7e617add-be36-4afe-9fce-cd79784e5525>

Court has been adopted in July 17 of 1998, which in turn was considered the most important since the adoption of the Charter of the UNs.

The Rome Statute of the International Criminal Court was adopted in 1998, after the approval of 120 countries on the establishment of the court, with 21 abstentions, and the objection of seven countries, including the United States and Israel.

The signing on the Statute of the Court was availed starting from July 18th, 1998, until December 31st, 2000 at the headquarters of UNs, and the quorum was complete on April 11, 2002 and entered into force on July 1, 2002⁷⁹. The International Criminal Court was established under the statute as a permanent body with the authority to exercise its jurisdiction over persons for the most serious crimes of international concern⁸⁰.

The headquarters of the International Criminal Court shall be in The Hague, Netherlands, and the Court may convene elsewhere, whenever it considers it desirable and as stipulated in this statute.⁸¹

Among the jurisprudential definitions, Dr. Mahmoud Cherif Bassiouni, defined the International Criminal Court as "an international legal entity, and not a local Supreme Court, established by international convention and has supplementary jurisdiction of local criminal jurisdiction⁸²".

⁷⁹more details about the Rome Statute of the International Criminal Court follow: https://www.icc-cpi.int/en_menus/icc/legal%20texts%20and%20tools/official%20journal/Pages/rome%20statute.aspx

⁸⁰Article (1) of the Rome Statute of the ICC

⁸¹Article (3) of the Rome Statute of the ICC

⁸²Mohammad Fahad Shalaldehy, *international humanitarian law*, Dar Al-Feker Library, 2005,347

Based on the first article of the Rome Statute⁸³, we note fundamental characteristics such as the following:

- ❖ It's a permanent judicial body, which is one of the most characterizing features to it from all other previous international courts, as they were temporary tribunals for specific purposes. This feature means that the legal existence and its jurisdiction are continuing and do not end with the end of its assignment, the establishment of a permanent international criminal court will work on consolidating international criminal law, that law which states participated in the drafting and approval thereto, and that any law sought for effectiveness and respect for its provisions needs to have a permanent and independent judicial system so as to work on the confirmation of respect for these provisions. And the continuity feature of the court will relief the international community from the political efforts and additional material expenses for the establishment of special international courts have jurisdiction in the perpetrator of international crimes in conflicts or specific areas.
- ❖ It exercises its jurisdiction on the basis of the individual criminal international responsibility: the individual criminal international responsibility is an application of the jurisdiction of the International Criminal Court to natural persons who commit a crime after reaching the age of eighteen years and not to legal persons such as the State or legal persons from companies, for example, and organizations. And later we will talk at length with respect to the international Criminal individual responsibility.

⁸³ Art. 1: The Court: An International Criminal Court ('the Court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

- ❖ It exercises its jurisdiction towards the most serious crimes on the international entity set forth in its statute in accordance with the legal base. Previously during the preparatory work on the crimes that fall within the jurisdiction of the Court, we note the agreement of views of all the participating delegations on the meeting of the Preparatory Committee concerning the establishment of the Court at its meeting on the importance of the court's jurisdiction to be limited to the most serious crimes of concern to the international community as a whole, and to develop specific criteria for this jurisdiction in order to avoid non-infringement on the jurisdiction of local courts; also opinions agreed in general on the necessity of the definition of crimes within the jurisdiction of the court in a clear and precise definition, and some delegations expressed concern about the potential for duplication or obstruction of the work of the international law Commission on the draft Code of crimes against the Peace and security offenses. And later in this study we will talk in more detail about these crimes.
- ❖ It's supplementary to the local jurisdiction: Rome Statute is based on inviting States Parties to the initiative to investigate any facts constitute crimes in accordance with the provisions of the statute, by the competent local authorities in accordance with local laws, on the basis that this position is a first line of defense to deal with crimes falling within the jurisdiction of the Court. In the case of the inability of local authorities to carry out this task for one reason or another, as it's not competent or capable, the jurisdiction shall be vested to the International Criminal Court.

- ❖ In its work and powers, it's subject to the provisions of the Statute: the court shall have the legal capacity necessary to exercise its functions and fulfill its purposes as set forth in this statute.

The International Criminal Court is financially, functionally and administratively independent from the UNs, the legal relationship between them is organized through a special agreement. The Court began an investigation in four cases: Northern Uganda and the Democratic Republic of Congo and Central African Republic and Darfur.

With regard to the Assembly of States Parties, it's the body that have the privilege of general supervision of the mechanisms of the International Criminal Court and the effectiveness of the provisions of the Statute and the Rules of Procedure and Evidence and other rules applied by the court, or organizing the work of the court in terms of funding, accounts and relationship other bodies like the UNs and the hosting country⁸⁴. Its membership includes all States Parties to the Statute, each Member State has a representative, and limiting membership to the Assembly to the States Parties is consistent with the logic as it is unacceptable to grant membership to countries that have not signed the statute, otherwise it will be a motivation for the non-ratification, however, it may grant observer status in the Assembly to the States that signed to the Statute or the final Act of the Conference even if it does not become a party to the court statute⁸⁵.

⁸⁴ Ahmed Dughmash, "A seminar on Democracy and Human Rights", research on the International Criminal Court, http://ppc-plo.ps/ar/download_attach.php?id=290&type=2

⁸⁵ Art.(112/1): An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.

2.1.2 The legal Basis of ICC (Rome Statute and the General Principles)

The International Criminal Court was established under a multilateral international agreement, as a result of negotiations has taken its final form in July 17th, 1998 and as it's an international convention, the states are not obliged by force in application of the principle of "consensual acts". Article IV of the Statute provides:

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes .

(2)The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Article (2/a) of Vienna Convention of Treaties Law of 1969 provides⁸⁶:

(2) For the purposes of the present Convention

(a)"Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

According to Vienna Conventions concerning the International Treaties Law (1969, 1986), this statute is considered as an international treaty notwithstanding the

⁸⁶Vienna Convention on the law of treaties (with annex).Concluded at Vienna on 23 May 1969, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

designation, as the designation has no importance in that regard, it may be designated as agreement, convention, protocol or declaration.

The jurists of international law defined the treaty⁸⁷ as "agreements made by and between the States for the purpose of organizing an international legal relationship and defining the rules governing this relationship⁸⁸". And from the nature of the treaty system; what is applied to the statute is also applied and applied to international treaties such as the rules of interpretation and, the application of spatial and temporal except the availability of it otherwise, that means the states are not obliged to be bound by the statute if they have not duly signed and ratified.

Article 21 of the Statute determines the law applied by the court in the dispute before it, taking into account priority in the application of sources as follows ⁸⁹:

- ❖ Statute of the Court in determining the territorial, temporal, personal and objective jurisdictions of the court and the rules of the Elements of Crimes and the Rules of Procedure and Evidence of the Tribunal and other relevant rules and consideration of the case provisions.
- ❖ International treaties and applicable principles of international law and rules including the rules established in the international law of armed conflict principles.
- ❖ General principles of law derived by the Court from local laws and legal systems of the world, as appropriate, including national laws that mandate to

⁸⁷Also: The wills agreement of two or more subjects of international law to make certain legal effects in accordance with the rules of international law, Dr. Mohammad Yousuf Ilwan, *General international law/ Introduction and the source*, edition 3, Amman, Wa'el for Publishing and Distribution, 2003, 189

⁸⁸Dr. Ali Sadiq Abu Heef, *General international law, Egypt Alexandria*, Musha'at al-ma'aref 1991, 113

⁸⁹Ahmed Dughmush, "A seminar on Democracy and Human Rights", research on the International Criminal Court/ http://ppc-plo.ps/ar/download_atc.php?id=290&type=2

extend the crime provided that these principles are inconsistent with the statute or international law or the rules and internationally recognized standards.

- ❖ Legal principles that have been settled by the court in the previous provisions, own devising provisions of the original sources, and the court back to the views of Fiqh as guidance.

The third paragraph of Article 21 imposed an important restraint on the court, It applies the law or interpret it, that this application or interpretation has to be consistent with internationally recognized human rights, and to be free of any discrimination based on sex, age, race, color, or language, religion or belief, political or other opinion, national, ethnic or social origin, property, birth or any other consideration.

Under the Vienna Convention on the Law of Treaties of 1929, as well as the 1922 agreement in accordance with Article 19 paragraphs of (a, b, c)⁹⁰ the States are free to put reservations to the treaty, except for three exceptions are:

- a) The reservation is prohibited by the treaty
- b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- c) In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

⁹⁰Vienna Convention on the law of treaties (with annex).Concluded at Vienna on 23 May 1969/available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

Since the primary purpose of the reservation is the exclusion of the rule of one or more of the treaty from scope of the obligation of the State, or to limit or restrict their compliance with these provisions, and may be intended to give a special interpretation of certain provisions of the state⁹¹. "There are no reservations" on the Statute of the Tribunal and as stipulated in Article 120 of the Basic Law that: "No reservations may be made to this Statute which means that the statute prohibited putting any reservation to the text that exists within the meaning of this is that Statute of the Court took the first exception, and therefore preferred to the statute of integration and the unity and coherence of texts on any other consideration and that the Statute of the court constitutes an integral agreement that shall either be taken or left as a whole.

Statute of the International Criminal Court has dealt with various general principles of international criminal law and upon which the Court is relying, and they will be incorporated and clarified through the key principles which are:

1. The Principle of Complementarity and Lack of Statute Limitations:

The International Criminal Court was established under the Rome Statute, it was characterized by the previous international criminal tribunals that established in Nuremberg, Tokyo, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)⁹² _ all of which special international criminal Tribunals established for a specific purpose and ceases

⁹¹Dr.Mohammad Yousuf Ilwan,*General international law*, Introduction and the source,edition3, Ammn,Dar Wa'el for Publishing and Distribution,2003,189

⁹²The previous International Criminal Court of Yugoslavia CITY and Rwanda CITY where these courts have "Inseparable and simultaneous" jurisdiction, Jointly with the jurisdiction of national courts,that means a preliminary jurisdiction, so that any of the tribunals have the right to ask the national courts at any time to comply with its mandate, the reason of that is due to that these courts that have established under the resolutions of the Security Council under Chapter VII of the Charter of the UNs.

to exist when the assignment is completed, the previous special tribunals granted the preference to local courts, if the accused requires appearance before one of the special tribunals, the national judiciary is refrained for the trial and must forward the accused person to the Special Criminal Tribunal⁹³. While the ICC is a permanent international court and has general jurisdiction, thus the Statute has formulated the relation between the court and the national judiciary.

The Permanent ICC was established to be an international judicial body, its Statute has put the basic relation's rules in which jurisdiction of the Court integrates with the national legal statute of the member states authenticated on the Statute of the Court which in this case has given the preference to the national jurisdiction, where the preamble to the Rome Statute of the ICC indicated this principle in the tenth paragraph: "The ICC which is established under this Statute shall be complementary to national criminal jurisdiction."⁹⁴ This sentence was explicitly contained in Article I of the statute. This principle firstly states for the local jurisdiction, and if it does not proceed with its competence because of the inability to conduct the trial or unwillingness, then the ICC has its consideration on this regard. However, and to maintain the national sovereignty to prevent the International Criminal Court to skip the national justice system. The states that fall within this system must follow actions of criminalizing such crimes that fall within the jurisdiction of the ICC into their national legislation, and afterwards to be exposed to discuss the appropriateness of its constitution and its domestic legislation with the Statute of the ICC, and it is amended to be consistent with the Statute of the ICC.⁹⁵

⁹³European laws p. 196 from Germany and Belgium

⁹⁴Rome Statute of the ICC, http://legal.un.org/icc/statute/99_corr/preamble.htm

⁹⁵The Spanish Council of State accepted the opinion and decided that "The constitutional right of effective judicial protection is not limited to the protection that is afforded by the Spanish courts, but may extend to the judicial bodies that Spain accept its jurisdiction)

While Article 17 of the Rome Statute stated: the Court can proceed with its jurisdiction when the crime be filed in front of the national courts of the state and of sufficient gravity; but that state does not have the capacity or the will to direct the investigation and the trial, or that the case raised in front of the competent courts of the State but it did not proceed with the investigation because it decided not to prosecute for its unwillingness to do so or they adjourned the investigation procedures without justification. The statute supports the punitive system that the four Geneva Conventions of 1949 drafted when it obligated states parties to prosecute of war criminals and to pass judgments against them, and then it is clear that the statute of the ICC encourages States to exercise judicial jurisdiction on crimes within the jurisdiction of the Court, and the court may not exercise jurisdiction, except pursuant to the provisions contained in Article (17).⁹⁶

Thus, the Statute Reminds the States of their contractual obligations arising from the ratification of the Geneva Conventions, if they are not interested in it or were not capable of the same, then the jurisdiction shall be vested to the International Criminal Court, which means that the States Parties to the Geneva Conventions of 1949 if they had applied the contained provisions, then it would of have no need for the establishment of the international Criminal Court to punish war crimes but, this has not been achieved before the establishment of the international Criminal Court, hence, its most important objectives that war crimes shall not be left unpunished, so that could fill a large void in the field of criminal justice which has suffered and is still suffering from the international community until today.⁹⁷

⁹⁶ Rome Statute of the ICC, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

⁹⁷ Dr. Omar Ahimed Makki, *Mechanisms of application of international humanitarian law and human rights during the conflict*, Riyadh, 2012.

And despite the fact that the principle of complementarity is a fundamental principle in Rome Charter, yet the most difficult matter raised in respect of this principle is the lack of a specific list or a mechanism for evaluation of the International Criminal Court for the goodwill of the internal judiciary when referring to a matter of international criminal law, Article 17 of the Rome Statute deals with administrative issues in the light of the principle of complementarity, which enables States Parties to the Court, to search and attempt to retain its authority to the local judiciary.⁹⁸

Some obstacles within the Rome statute:

- a) The existence of obstacles in the way of ratification by some states to the Rome Statute; was a result of the fear of those states primarily; to the prosecute its soldiers or citizens who have committed crimes which fall within the Court's jurisdiction and, this seems obvious if you see the attitude of the United States and Israel.

In the early stages of the idea to establish such court, the United States was very excited for the establishment of international criminal justice in the forties (but at a later stage the US position radically changed); the United States became afraid for their own commanders for the crimes they committed especially those which fall within the court jurisdiction. In the UNs Diplomatic Conference in Rome in 1998, 120 states voted in favor of the court, while 7 countries, led by the United States, opposed, which has tried hard to create a kind of control of the Security Council on the court and they obstructed the Rome Statute in a format to "check the basic principles of

⁹⁸Dr. Omar Ahmed Makki, *Mechanisms of application of international humanitarian law and human rights during the conflict*, Riyadh, 2012

international law; such as equality among other countries, or to prevent them from falling under the influence of other international organizations, specifically the UN Security Council, it has been numerous amendments to the charter in the negative direction".⁹⁹

The United States signed the Rome Statute after it carried out some amendments in favor of granting some of the powers to the Security Council and put the transitional government on the cessation of entry into effect of the system on the state party for a period of seven years if it wants it for war crimes. However, the subsequent government to Clinton's signed the withdrawal of this sign declaring that it will not ratify the Statute of the Court for a number of weak justifications. Not only that but also, mounted a campaign against the International Criminal Court through the issuing of resolutions by the Security Council that exclude non-States Parties to appear onfront of the court and, through bilateral agreements prohibit the extradition of American soldiers to the international Criminal Court. Very similar attitudes to the American position is the Israeli's, which had also signed the Statute and subsequently it did not ratify it, it is also a signatory to the efforts to impunity bilateral agreements, which the United States held with a number of countries¹⁰⁰. For Israel; these bilateral agreements grant the immunity for its citizens from arrest or extradition to the International Criminal Court.

- b) Article 298: The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations

⁹⁹Sana Odeh Mohammed Eid, *procedures of investigation and trial before the International Criminal Court by the Rome Statute 1998*, Palestine , 2011.

¹⁰⁰Amnesty International's recommendations with respect to the Impunity treaties and crimes of genocide, crimes against humanity that the United States signed with a number of countries, Amnesty International expressed its concern about those conventions especially since some of the signatory countries were among the signatories of the Rome Statute like Israel and East Timor, The Israeli delegation at the Rome conference was disturbed when the Arab Group has insisted on retaining the article of the criminalization of settlement, Vida Najeeb Hamad , *ICC towards international justice*, Halabi legal publications , 48

under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender¹⁰¹. This article formed an easy loophole to penetrate, where some countries, such as the United States and Israel actually exploited the conclusion of agreements to facilitate impunity.

- c) Article (124) of the Statute Contained, in fact, under the name of (Transitional Provision), a sort of permitting the reservation that the system has prohibited.

This article gives the right of the state when it becomes a party to the Statute of the Court, may declare that the court's jurisdiction for a period of seven years from the entry into force of this Statute them, and with regard to the category of crimes referred to in Article 8 of the Statute¹⁰². This is a serious judgment and affects the effectiveness of the Court and to achieve the goal of deterrence and to ensure that there is no impunity. Which is totally inconsistent with the objectives established and the International Criminal Court found ground to achieve them, in addition, the text of Article 121 totally contrasts with the text of Article 120 which does not permit to express any reservations to the Statute of the Court¹⁰³.

- d) The Security Council's authority in intervening of the court's matters and, approving it as the highest authority by giving it the right to request the

¹⁰¹Sana Odeh Mohammed Eid, *procedures of investigation and trial before the International Criminal Court by the Rome Statute 1998*, Palestine, 2011

¹⁰²Namely war crimes.

¹⁰³Sana Odeh Mohammed Eid, *procedures of investigation and trial before the International Criminal Court by the Rome Statute 1998*, Palestine, 2011

suspension for its investigations or the prosecution within 12 months, can be renewable on unspecified terms¹⁰⁴.

The term criminal statute of limitations means" the evasion of the crime effects or its evidence through the influence of the passage of time, It represents the way of the expiration of the right of criminal prosecution, and the right to enforce the criminal judgment of conviction", the statute of limitations leads to the fall of the state's right to prosecute the offender either through the expiration of the right to trial or descent of its right to punish them.¹⁰⁵

Therefore, the principle lack of statute of limitations means that the right in the lawsuit shall not be terminated and therefore they have the right to prosecute the perpetrators of international crimes within the jurisdiction of the International Criminal Court, the limitation results in the expiration of the criminal case, so that drops the State's right to punish the perpetrator of a crime, However, a desire to prevent impunity for perpetrators of international crimes because of the seriousness of the crimes within the jurisdiction of the Court is considered as the most serious crime and the most threat to humanity¹⁰⁶. The rule of non-validity for periods of any statute of limitations on the war crimes and crimes against humanity have stabilized, so that it is known that the force of the statute of limitations on such crimes means preventing the prosecution and punishment of those responsible to commit these crimes after the expiration of the time.

¹⁰⁴Sana Odeh Mohammed Eid, Procedures of investigation and trial before the International Criminal Court by the Rome Statute 1998, Palestine, 2011

¹⁰⁵Amena Hamdan, "The Protection of civilians in the occupied Palestinian territories", Al-Najah University, Palestine, 2010
https://scholar.najah.edu/sites/default/files/allthesis/the_protection_of_civilians_in_the_occupied_palestinian_territories_geneva_fourth_convention.pdf, 100

¹⁰⁶Mahmood Cherif Bassiouni, *research of Criminalization in international criminal law and the protection of human rights*, published in Studies on global and regional legal documents Beirut, Dar Al-E'elm, 1989, 227

At the time when no reference was made to tribunals of Yugoslavia and Rwanda in this Statute, the Statute of the International Criminal Court provided for the unenforceability of limitation on the crimes within the jurisdiction of the Court; through Article 29 "crimes of limitations within the jurisdiction of the Court shall not be terminated regardless of their provisions".¹⁰⁷

It should be noted that the principle of non-limitation of international crimes is contained in numerous international conventions, among them the Resolution (2391) of the UNs General Assembly, issued in November 1968, in which the Convention adopted the "non-applicability of the rules of the statute concerning limitations on war crimes and crimes against humanity", also the European Convention on the non-Applicability of Limitations to crimes against humanity and war crimes adopted by the European Council since 1974¹⁰⁸.

2. The Principle of Non-retroactivity to Individuals/ No Punishment Except by Evidence/ No Crime Except by Evidence

The contents of the second section of the Rome Statute of articles (22, 23, 24)¹⁰⁹ are being the legal principles governing the work of the International Criminal Court and ensures the achievement of the principles of a fair trial.

¹⁰⁷ Mahmood Cherif Bassiouni, *research of Criminalization in international criminal law and the protection of human rights*, published in Studies on global and regional legal documents Beirut, Dar Al-E'elm, 1989, 227

¹⁰⁸ Amana Hamdan, "The Protection of civilians in the occupied Palestinian territories", Al-Najah University, Palestine, 2010, https://scholar.najah.edu/sites/default/files/allthesis/the_protection_of_civilians_in_the_occupied_palestinian_territories_geneva_fourth_convention.pdf, 100

¹⁰⁹ Art.22: 1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court. 2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or

The principle of legality refers to legitimacy of criminalization and punishment. Its content of no crime and no punishment except by law; that is, it is not a criminal offense till the existence of former criminalizing text and determination of punishment, and the strength of this legitimacy is the idea of "warning or previous adomation" by the legislator for individuals under legal rules enacted to warn them of committing certain actions or refrain from certain acts in order to avoid punishment. On the other side, the origin of actions is permissibile and the exception is the criminality, which must be specified in clear criminalizing text, the criminal jurisprudence divides the principle of criminal legality into two parts:

(I): The principle of no crime without law (Nullum crimen sine lege), and

(II): The principle of no punishment without law (Nulla poena sine lege).

The Statute of the International Criminal Court has included the principle of no crime except by evidence, but the text of the article (22) thereof, which means, according to this article that a person is criminally responsible only upon what was committed of a crime which falls within the jurisdiction of the Court. The above-mentioned article indicated that the interpretation of the criminal provisions should be accurate, and should not be expanded in the interpretation of criminal provisions by analogy, and that in the case of ambiguity must be interpreted in the text for the benefit of the person being investigated, prosecuted or convicted, and finally it included the lack of impact on the legal qualification of any behavior as criminal behavior under the statute of international law. While Article 23 of the Statute on the

convicted.³ This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Art.23: A person convicted by the Court may be punished only in accordance with this Statute.

Art.24: 1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute .2 .In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

principle of no punishment without by law, which means it is not permissible to punish any person found guilty by the court, except in accordance with the Statute of the Court.

The principle of non-retroactivity in the Rome Statute refers to that the statute is applicable to the crimes committed after the applicability, and not applicable before. That means; a person can not be accountable for crimes were committed before the Statue came into force. This principle finds a justification for the idea of an advance warning, but there is an exception for criminal rules in which its permissible to be retroactively applied if it benefits the accused person, and law is more favorable to the accused person if the new law makes the incident not punishable, whether by canceling the culprit text of the incident, or reporting the cause of legalization, or contraceptive responsibility, or punishment, or if the new text decides a criminal punishment that is lighter than the previous penalty and that will be measured according to the type of the new punishment, its degree and duration.¹¹⁰

The article (24) of the Statute of the Court states the principle of non-retroactivity on individual, which means a lack of accountability of a person criminally responsible for previous behavior on the Statute of the Tribunal into force, the same article adopted the application of the more favorable law for the accused person , which pointed out that in case of a change in the applicable law in a particular case before the final judgment, the most favorable law applies to the person being investigated, prosecuted or convicted.

The Rome Statute of the Criminal Court also includes the prevention of punitive duplication in the jurisprudence of the International Criminal Court by

¹¹⁰ Mahmood Cherif Bassiouni, *research of Criminalization in international criminal law and the protection of human rights*, published in Studies on global and regional legal documents Beirut, Dar Al-E'elm, 1989,229

providing that individual shall not be punished twice for the same act through Article 20¹¹¹, that judging a person for a crime where they were already punished for, this is one of the most important general principles of criminal law which aims to protect the person suffering from a second trial for the same crime previously convicted or acquitted, however the same article cited two exceptions in which the international Criminal Court was authorized to trial that person for the same crime again in front of it. That's of;

- If the International Criminal Court proved that the proceedings in the National Court has been taken in order to protect the person concerned from criminal responsibility of crimes within the jurisdiction of the International Criminal Court.
- If the International Criminal Court proved that the proceedings in the National Court were not independent or impartial, or it has been conducted in a manner that was inconsistent with intent to bring the person to justice.

3. The Principle of Irrelevance of Official Capacity and Responsibility of Commanders or Superiors

In this regard, article 27 of the statute has approved the equality among people and that they are all equal on the applicability of law with no differences or discrimination in regard of their formal state. Whether of being the president of a state, government or a

¹¹¹Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court . No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court .No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court) :a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or) b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

member of that government. The formal state of this person doesn't exempt him/her under any circumstances from the criminal responsibilities. However, this state can never be a reason that could mitigate the punishment of the committed crimes during his/her tenure in that period of time. Even though, the local and international immunity doesn't prevent actions of investigation and punishment. Crimes of this matter fall under the jurisdiction of the court where usually these crimes are committed by people enjoy power and authority.

In respect of this principle, Article 28 of the Rome Statute of the ICC has divided the responsibilities in both of its paragraphs:¹¹²

What was mentioned in the first paragraph of the mentioned article is that the military commander or indeed his deputy shall be criminally responsible for a crime within the jurisdiction of the International Criminal Court committed by forces under his command and control, in availability of the following conditions;

- The first condition: when the military commander or his deputy are aware or knew because of the circumstances at that specific time his troops are committing or about to commit a crime falls within the jurisdiction of the International Criminal Court. in two different cases this condition will

¹¹²In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court :a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes ;ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution .

determine the criminal responsibility of the military commander or his deputy:¹¹³

- ❖ The first case: that military commander or his deputy has actual knowledge that the troops under his command and control are committing or about to commit a crime within the jurisdiction of the Court.
- ❖ The second case: that the military commander or his deputy is supposed he had known because of the prevailing circumstances at the time that the troops under his command and control are committing or about to commit a crime of crimes within the jurisdiction of the Court. In this case the military commander or his deputy does not have actual knowledge that his forces were committing or about to commit a crime within the jurisdiction of the Court, but he has sufficient and clear information allows him to conclude in the circumstances at the time that his forces were committing or be on the verge of committing a crime within the jurisdiction of the Court, it means that the military commander or his deputy has a duty to make a positive effort to remain actively aware of his troops activities.
- The second condition: If the military commander didn't take all necessary and reasonable measures within the limits of his power to prevent or repress their commission or to submit the matter to the competent authorities¹¹⁴.

¹¹³ Mohammed Mustafa Mahmoud Darwish, "Individual criminal responsibility in accordance with the provisions of the Statute of the International Criminal Court", 2012, http://www.alazhar.edu.ps/Library/aattachedFile.asp?id_no=0045885 (January 16, 2016)

¹¹⁴ Article 28 of the Rome Statute ..from this principle that the subordinate will not be able to justify his crime by receiving an order from the President.. however, if one of the Contraindications responsibility are available like: Coercion or self-defense.

As stated in the second paragraph of Article (28) in regard to the President and subordinate relationship. Article 22 described in its first paragraph, the president shall be criminally responsible for crimes within the jurisdiction of the Court committed by his subordinates under his authority and control as a result of failure to exercise control over such subordinates. The civil president shall be criminally responsible for crimes within the jurisdiction of the International Criminal Court, which are committed by subordinates under effective authority and control, if the three following conditions were available:

- The first condition: the civilian president had already acknowledged that his subordinates under his effective authority and control were committing or about to commit a crime within the jurisdiction of the court, or that the civilian president intentionally ignored any information indicates and shows clearly that the subordinates were committing or about to commit a crime of crimes within the jurisdiction of the Court.
- The second condition: the related crime's (within the jurisdiction of the court) activity falls under the responsibility of the civil president or his effective control. For example, we can clarify this requirement through a war crime of medical or scientific experiments that are not justified by the medical treatment or dental treatment or treatment in a hospital where it can hold the criminal accountability against the hospital's director for a crime within the jurisdiction of the International Criminal Court committed by doctors are subject to the effective authority and control within the hospital. This is because such a crime related to medical and scientific activities that fall within the responsibility and control of the hospital's director.

- The third condition: the civilian president abstained or failed to take all necessary and reasonable measures within his power to prevent or repress the commission of a crime within the jurisdiction of the Court or to submit the matter to the competent authorities for investigation and prosecution.

The second paragraph of the article (86) of Protocol I also stipulates that "any subordinate violates agreements or this annex _the protocol_ doesn't exempt his superiors from penal or disciplinary responsibility, as the case, if they knew, or had information allowed them in those circumstances to know that the subordinate is committing or was going to commit such a violation and they did not take their best endeavors to prevent or repress that breach¹¹⁵.

Article (33) of the Statute of the International Criminal Court stated a general rule that inadmissible to exempt a person from criminal responsibility for the crimes within the jurisdiction of the International Criminal Court and committed by a person with the command of the government or military or civilian, in the sense that is not permissible to challenge or protest the orders of superiors for exemption from criminal responsibility, as the above-mentioned article provided for an exception to that general rule that it is permissible to refuse orders superiors for exemption from criminal liability by the availability of three conditions:

- The person shall have a legal obligation to obey orders of the Government or the President concerned, this means that there must be a relationship between the perpetrator subordinate and the president who gives the order to commit that crime, this relationship requires a legal obligation on the subordinate to

¹¹⁵ Protocol I of 1977 to the Geneva Conventions, Article (86/2)

obey and execute orders issued to him by the President, and impose sanctions if he refuses to obey and implement the president orders.

- such person is not aware that it is illegal, meaning that the subordinate does not know that the order issued to him by the president is illegitimate, and therefore if the subordinate knew that the order issued to him by the president is illegal and he implemented it and committed a crime within the jurisdiction of the international Criminal Court, the subordinate will not be relieved of criminal responsibility for the crime.
- Another condition should be added, if the illegality is not obvious, that the illegality of the order issued by the president is not obvious, and as stated in the second paragraph of Article (33) of the Statute of the Court, the illegality shall be obvious is in the case of the order to commit genocide or crimes against humanity. This means that the illegality of the order issued by the President cannot be obvious in only two cases, namely: the case of the order to commit war crimes and the order to commit the crime of aggression, it is not permissible for subordinates to refuse orders of superiors for exemptions from criminal liability in the case of the order issued to them of committing genocide or of committing crimes against humanity because of the illegality of it, in both cases is obvious, while the subordinates can refuse the orders of superiors for exemption from criminal liability for not knowing that the order illegally issued to them is illegal and the illegality of this order is not obvious and in the case of war crimes orders, or orders to commit the crime of aggression within the statute.

As for the State's responsibility for the crimes committed by its personnel or its nationals, they will be asked of a civil liability where the State is obliged to repair the damage and carry the amount of compensation for damage caused by the behavior of the offender, and so the international civil responsibility of the state alongside the International Criminal responsibility arises for individuals, whether those individuals are state employees or its nationals, according to the general rules of international law.

4. The principle of International Cooperation

The Statute indicated that the States Parties shall fully cooperate as stipulated in the articles (86-91), under the jurisdiction of the Court, of investigations and prosecution of crimes¹¹⁶, The Court shall have the power to submit requests for cooperation to the States Parties and perhaps through Diplomatic channels or any other channel designated by each State party, whether upon ratification, approval and accession or it can use international organization or any other regional organization¹¹⁷. The States should among other things, make procedures available under their national regulations for all of the manners required for cooperation in accordance with the Statute¹¹⁸.

The court may ask the non-party state to provide assistance by agreement or special request is held with non-party, in such cases; if the state has refused to provide assistance or that it breached its compliance with a request for cooperation from the Court; the court may decide to refer the matter to the Assembly of States Parties or to the Security Council if the Security Council has already referred the matter to the court. Hence, the matter of wanted persons to the court, it has the right to request the

¹¹⁶Article 86 of the Statute of the International Criminal Court(Rome Statute), https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹¹⁷Article 87of the Statute of the International Criminal Court(Rome Statute)

¹¹⁸Doa'a Mohamed Zyoud,"Rules of procedures and practices on international criminal court jurisdiction",Middle East University, 2014, <http://www.meu.edu.jo/ar/images/القانون/القانون العام/قواعد ممارسة المحكمة الجنائية الدولية لاختصاصها القضائي.pdf> (January 11,2016),40

cooperation of the State to arrest the person, the States parties must comply with requests for the court to arrest and delivery, and be in accordance with the provisions of the court system and procedures laid down in national law.

2.1.3. The Rules of Jurisdiction of ICC

The jurisdiction in general is a department or a body's authority to do its work. The international criminal tribunals jurisdiction of implementing the international humanitarian law is subjected to the general rules of the general international law. This jurisdiction is defined in the international conventions, to prosecute and punish the perpetrators of the very serious international crimes that threaten peace and security of humanity. The implementation of the international humanitarian law jurisdiction to the international criminal courts does not exclude the national judiciary duty in this area. However; the international humanitarian law imposes an obligation on States to enact the necessary legislations to prosecute and punish the perpetrators of violations and irregularities that occur in armed conflicts legislation.

The Statute of the International Criminal Court designated jurisdiction of the court on the basis of four principles, spatial, temporal, personal and objective jurisdiction and, this will be discussed in this part of the study.

1. Territorial/ Spatial Jurisdiction

During the Rome conference of diplomatic plenipotentiaries negotiations on the establishment of the International Criminal Court in 1992, some of the countries tried to make the court of a global authority and, different views on the issue of whether the approval of a particular state are essential and necessary to the International Criminal Court so it can exercise the jurisdiction over serious international crimes or that the

Court will exercise automatic jurisdiction against all States, both of Parties and non-parties to the Statute of the Court¹¹⁹.

According to the Article (12); the scope of the territorial jurisdiction of the International Criminal Court was defined so that the ICC can exercise its jurisdiction as follows:

First: If the state is party to the Statute, it will automatically be subject to the jurisdiction of the Court with respect to offenses referred to in Article (5) of the rules, thus, the mere fact that the state's accession to the Statute of the Court of ratification or accession or acceptance includes acceptance of the jurisdiction of the Court to consider all the crimes set forth in Article V, which fall within the jurisdiction of the Court. The International Criminal Court can exercise its jurisdiction in confronting the States Parties to the Statute, without prior acceptance of these countries and the requirement in the following cases:

- a) If a State Party to the Statute of the Court transmitted to the prosecutor of the court a case in which it appears that one or more of the crimes within the Court's jurisdiction have been committed.
- b) If the Prosecutor of the Court has initiated an investigation into the crimes within the jurisdiction of the court of his own. Provided that in the above two cases (1-2) to be a crime has been committed on the territory of a State party to the Statute of the Court, or on board a ship or aircraft registered to have, or that the offense is committed by a national of that State Party.
- c) If the Security Council referred in accordance with the provisions of Chapter VII of the Charter of the UNs situation to the Prosecutor of the Court in which

¹¹⁹ Mohammed Mustafa Mahmoud Darwish, Individual criminal responsibility in accordance with the provisions of the Statute of the International Criminal Court, 2012, http://www.alazhar.edu.ps/Library/aattachedFile.asp?id_no=0045885 (January 16, 2016)

it appears that one or more of the crimes within the Court's jurisdiction have been committed.

Thus, the jurisdiction of the International Criminal Court stands on the basis of two principles:¹²⁰

- territorial principle: the court can exercise jurisdiction over the crimes contained in the Statute of the Court that have been committed in the territorial scope of a State Party to the Statute and to prosecute the perpetrator, even if the perpetrator is a national of a State that is a non-party to the Statute of the Court.
- personal principle: the court can exercise jurisdiction over the crimes listed in Article 1 of the Statute of the Court that have been committed by a person holding the nationality of a State party to the Statute, no matter where the offense was committed.

Second: The International Criminal Court can exercise its jurisdiction in confrontation of non-party States to its Statute, either upon prior acceptance of these countries, or without the need for prior acceptance of these countries and in the following manner:

- the practice of the International Criminal Court's jurisdiction upon prior approval of non-party to the Statute of the Court: State which is not a party to the Statute of the Court were to commit an offense contained in the statute on its territory, or on board a ship or registered trademarks of their aircraft, or may the crime was committed by one of its nationals to accept the practice of the international Criminal Court jurisdiction over the crime under a declaration

¹²⁰Mohammed Mustafa Mahmoud Darwish, Individual criminal responsibility in accordance with the provisions of the Statute of the International Criminal Court,2012,
http://www.alazhar.edu.ps/Library/aattachedFile.asp?id_no=0045885 (January16,2016)

lodged with the Registrar of the Court and the consequences of this declaration's commitment to that country to fully cooperate with the Court without delay or exception in accordance with Part IX of the Statute of the Court¹²¹.

- the practice of the International Criminal Court's jurisdiction without the need for prior approval of non-party to the Statute of the Tribunal shall be in the following cases:
 - a) If a national of the state not party to the Statute of the Court committed one of the offenses listed in Article 1 of the Statute of the court in the territorial scope of a State Party to the Statute of the Court, or in the territorial scope of the non-State Party accepted the jurisdiction of the court.
 - b) If the UN Security Council referred the acting under Chapter VII of the Charter of the UNs situation to the Prosecutor of the Court in which it appears that one or more of the crimes contained in the Statute has been committed. Where should these crimes are considered a threat to international peace and security, in other words, the International Criminal Court may exercise its jurisdiction in this case without the need for acceptance by States Parties and non-Parties to the Statute of the Court to exercise this jurisdiction, this situation is an exception to the general basic principle of consent to the exercise of the International Criminal Court jurisdiction over crimes stipulated in the Statute of the Court, as this case also is an exception to the general basic principle of the jurisdiction of the International Criminal Court on the basis of the principle of territoriality

¹²¹Article (12/3) of Rome Statute, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

and personal principle because in these case, the jurisdiction of the international Criminal Court on the basis of the principle of universality¹²².

2. Temporal Jurisdiction

The Statute of the International Criminal Court applies when the ratification of the accession by sixty countries. And according to the text of Article (26/1) of the statute, and that's what was really carried out on 1 July 2002 where the ratification was completed on that date to vote on the statute by the necessary number to enforce the same.

The International Criminal Court commences temporal jurisdiction concerning offenses based on the general rule in criminal law, which stipulates the inadmissibility of applying the law retroactively, meaning that the court does not concern only crimes committed after the entry into force of the Statute after 1 July 2002¹²³, and this is decided by Article 11 of the Statute of the international Criminal Court and took it to the jurisdiction of the international Criminal Court is the jurisdiction of the future does not apply to crimes committed before the entry into force of the Treaty of any statute of the court comes into force. This is the implementation of the general principle in criminal law, the validity of the legal base immediate and direct impact has also been emphasized this general rule in Article (24/1) of the Statute of the Tribunal and it seems that the reason of the adoption of the Statute of the Court of that rule is to encourage States to join in order to encourage States to accede to the Statute

¹²²Mohammed Mustafa Mahmoud Darwish, Individual criminal responsibility in accordance with the provisions of the Statute of the International Criminal Court,2012, http://www.alazhar.edu.ps/Library/aattachedFile.asp?id_no=0045885 (January16,2016)

¹²³Art. (11/1): The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/rome_statute_english.pdf

of the Court¹²⁴ without fear of return to the past and exciting research in the crimes that have been committed earlier¹²⁵.

Article 11 has differentiated as for the International Criminal Court's jurisdiction in terms of time between the two cases, namely: -

- The first case: related to the state which becomes a party to the Statute of the Court before it enters into force: in this case may not be the International Criminal Court may exercise its jurisdiction in confronting that State only with respect to crimes committed after the entry of the Court's Statute entered into force after 1 July 2002.
- The second case related to the state that becomes a party to the ICC after its entry into force: in this case; the International Criminal Court can not exercise its jurisdiction over that State, but only with respect to the crimes committed after the Statute entered into force for that State (the Statute of the Court enters into force on the first day of the month following the sixtieth day from the date of the deposit of its instrument of ratification), unless that the state may present a declaration under the paragraph (3) of Article 12 of the Statute of the Court to accept the practice of the International Criminal Court's jurisdiction with respect to crimes referred to in Article 5 of the Statute, that have been

¹²⁴ The article (24/1) of the Statute of the Court approved the inadmissibility of the accountability of a person criminally responsible under the Statute for conduct prior to the start of the system enters into force, but the second paragraph of Article 24 authorized the application of the law retroactively, and that if the law benefit of the accused where Paragraph the second states that "in the event of a change in the law applicable to a given case law before a final judgment, applies the most favorable to the person being investigated, prosecuted or convicted." the law was Dr. M. Cherif Bassiouni felt that it had to be the integration of Article (11) with Article (24) but the presence of Article 11 in the second door which was sent directly to the General Committee and not to the drafting Committee was the main reason for this overlap, and pointed out that in the case of the possible contradiction must rely on article (24) because it is formulated tightly in part III, containing the the general principles of criminal law -Dr. Mahmoud Cherif Bassiouni, *ICC, its inception and its statute*, Versions of the Egyptian Judges association, 2002,151

¹²⁵ Ahmed Attia Abu al-Khair, *Permanent International Criminal Court, Study of the Statute of the ICC court and the crimes under ICC statute*, Cairo Dar al-Nahdah al-Arabia,1999 ,39.

committed before the Statute of the Court entered into force for that State. (it is to be noted that in this case, the ICC can not exercise its jurisdiction over crimes were committed before the Statute of the ICC entered into force (1 July 2002).

As for the cases in which the International Criminal Court can exercise its jurisdiction in the face of non-States Parties to the Statute of the Court, we can also say that it may not be the International Criminal Court may exercise its jurisdiction in the face of those states only with respect to crimes committed after the entry of the Court's Statute entered into force.

It should be noted that the state, upon becoming a party to the treaty, may choose to postpone the application of the jurisdiction of the International Criminal Court for war crimes for seven years from the start of the Statute into force and that when he claim that the citizens of that State had committed one of these crimes or that the crime has been committed on its territory. The declaration can be withdrawn at any time.¹²⁶

3. Personal Jurisdiction

The Personal jurisdiction¹²⁷: is the application of the jurisdiction of the International Criminal Court on natural persons who commit a crime after reaching the age of eighteen years and, not on incorporeal or legal persons from countries, organizations or bodies enjoying legal personality¹²⁸.

The international crime was committed by natural persons in name of the state, the international jurisdiction would not include individuals as it extends only to

¹²⁶ Article (124) of Rome Statute, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹²⁷ Mai Abed Rabbo Abdel Meneim, "international criminal law", <http://www.mohamah.net/answer/30413/> بحثناؤو نيمفدفاالقانو نالجناياالدولي (October 20, 2015)

¹²⁸ The body is the existence of a moral law, recognized its ability to acquire rights and assume obligations.

include countries which is stated in the jurisdiction of the International Court of Justice Article 34 of the Statute¹²⁹, when the International Criminal Court was created, it has been said that it's come to play a complementary role of the functions of the international Court of Justice by providing criminal equivalent to civil jurisdiction and to expand international jurisdiction to include individuals.

The debate has widely raised among jurists about the accountability of the state criminal, but because the international criminal law emphasizes the importance of the mental element of science and the will, to do international crime and hold the accountability of their perpetrators, the idea of criminal international responsibility of the State was rejected and liability became limited to natural persons who has committed international crimes on behalf of the state and into its account.

The international responsibility is one of the recognized requirements of the general principles of law, because its logic for international law that those who have committed actions which constitute a violation of the provisions of that law shall be asked for these actions. Long time ago the international custom has settled on the responsibility of States for any violation of the rules of the general international law¹³⁰. The traditional theory of international responsibility clarify that the responsibility falls only on the state, in the sense that the state is the only responsible to repair the damage of these wrongful act and, based on the traditional theory the international responsibility can be defined as¹³¹ "the legal penalty; when an

¹²⁹Article 34 of Statute of the International Court of Justice "Only States may be parties in cases before the Court", https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹³⁰Abu Atiya alsaied, *international sanctions between theory and practice*, Alexandria, University culture Foundation, Edition I, 2004, 249

¹³¹There is also a definition of the international responsibility for Prof. Abdul Ghani Mahmoud: it is the legal system that entails under which the state attributed to wrongful act according to international law commitment to reform the consequent reaction about the State which has committed the act against him

international legal body commits or abstain an act which constitutes a violation of an international obligation in accordance with the general international law, this means, that the international legal body who is attributed to these impermissible actions is responsible for the compensation¹³². "The jurisprudence defines the international responsibility as "the legal penalty which is arranged by the public international law; on the disrespect of this law and international obligations¹³³." without any exceptions, all bodies of the international law are under obligations to respect the international responsibility¹³⁴.

Since the basic principle of the international law is that when a state violates an international obligations, it will be responsible for the results of such breach; and therefore the international legal responsibility arise in cases where a state or a person of the international law commits or refrain any action violates the established obligations in accordance with the provisions of the international law. For these responsibilities to be valid, the international body shall commit violated actions against any of the other international bodies¹³⁵.

Accordingly, is the International Civil liability a subjective responsibility based on danger or a personal responsibility on the idea of faulty actions?

The subjective liability that is based on the risk theory and assuming liability, means that it is to be held responsible if the State does action constitutes an exceptional seriousness of the consequent damage to another state, even if the act was

and mentioned in the international claim to repair the damage in public international law and Islamic law, Dar Al -Tebaa Al-Hadetha, 1986, 3

¹³²Maged Ibrahim Ali, *the law of international relations*, Study of international law and International security cooperation, Cairo, Eltooby, 2005, 99.

¹³³Ali Sadiq Abu Hief, *public international law*, Egypt-Alexandria, Monsha'at Al ma'aref, second edition, 1965, 267

¹³⁴Qsay Mustafa Abdul-Karim Tim, *the Effectiveness of international humanitarian law in international and non-international armed conflicts / Palestine / Najah National University*, 2010, 129

¹³⁵Qsay Mustafa Abdul-Karim Tim, *the Effectiveness of international humanitarian law in international and non-international armed conflicts / Palestine / Najah National University*, 2010, 129

premisable, the responsibility here is based on damage not fault, as long as the damage has occurred because of its activity. However, the faulty actions theory held the responsibilities when the state commits any kind of faulty actions, yet the international responsibility held only when these actions of fault are proven whether they were done by purpose or disregard.¹³⁶

In addition to the act and the occurrence of the damage, we have here a causal relationship between them, which means that the result will be the result of the activity of this act or that this act be a cause of the damage, which is not in dispute in international criminal jurisprudence¹³⁷.

With respect to the criminal responsibility, it is one of a modern subjects in public international law, as it is one of the main topics in international humanitarian law, the responsibility is the legal means by which identifies the offending person or who has violated the law, and clarify the obligation to compensate or punishment as a penalty on the offense that order the implementation of this law¹³⁸.

The availability of an evidence on any of international criminal law parties results in issuing an appropriate international criminal sanctions on those are found responsible, and the penalty might be of a civil nature, such as compensation for damage and that could be financially or any of its kind, or of a literary character, such as satisfaction. Yet, it may be of a coercive punitive nature, such as imposition of penalties on the perpetrator of the internationally wrongful act. The ordering for the

¹³⁶Yahya Ahmed al-Banna, *Terrorism and Cooperation and International Responsibility*, Faculty of Law, Mansoura University, 1998,11

¹³⁷Ahmed Rifai: *The general theory of international criminal responsibility*, PhD thesis submitted to the Faculty of Law, Cairo University, 2005, 57

¹³⁸Qsay, Mustafa Abdul-Karim Tim, *the Effectiveness of international humanitarian law in international and non-international armed conflicts*, Al-Najah National University, Palestine, 2010,127

criminal punishment requires an international proven criminal responsibility, and this of course requires that the crime committed is substantiated by criminalizing text, in addition to that the crime committed cannot be subjected to one of the denial causes.¹³⁹

Thus, the current trend in the jurisprudence of the international law recognized the principle of the international criminal responsibility of individuals. This in turn raised a jurisprudential controversy between the opposer and supporter of the individual personal to be eligible for the International Criminal Responsibility¹⁴⁰.

a) The oppose trend

Supporters of this trend rejected the idea of people other than countries having the legal capacity as parties to the international law, and to justify their views they submitted several arguments including that the individual is not addressee to the provisions of this law only through his/her state.

b) The supporter trend

The Recognition of the individual's legal personality and capacity for being litigated and the establishment of criminal responsibility on acts are contrary to the international law, as being a member of the human community, and it should work to protect the individuals from any kind of abuses behavior which is contrary to the provisions of the public international law.

¹³⁹ Ahmed Rifai: *The general theory of international criminal responsibility*, PhD thesis submitted to the Faculty of Law, Cairo University, 2005, 308

¹⁴⁰ Maged Ibrahim Ali, *the law of international relations, Study of international law and International security cooperation*, Cairo, Eltobgy, 2005, 42

The special international criminal tribunals had adopted the former principle of the individual's international criminal responsibility, and the Statute of the ICC followed the same approach and the Security Council stressed on the principle for the perpetrators of the serious violations of the international humanitarian law in its resolution No. (955) for the year 1994 on the establishment of an international criminal tribunal for Rwanda. However, this approach was also mentioned in both laws of Nuremberg and Tokyo Tribunals which were established by the Allied powers. The previous mentioned Tribunals implicate sets of specific obligations on individuals where they are punished in any cases of violations¹⁴¹.

The individual's international criminal responsibility have risen up after the forbidden acts Committed during the war and hence the international criminal justice was set, this have achieved a fairly measure of criminal justice, as the Statute of the International Criminal Tribunal for Rwanda and Sierra Leone, that the individuals are criminally responsible for war crimes committed in non-international armed conflicts crimes¹⁴².

The affirmation on the individual's international criminal responsibility was completed after being provided in the statute of the ICC, as stated: The Court shall have jurisdiction over the natural persons; a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this statute)¹⁴³. Therefore, the statute of ICC includes the criminal jurisdiction with respect to the natural individuals without states, and so the responsibility is no longer a relationship between nations alone, but there are other

¹⁴¹ Ahmed Rifai: *The general theory of international criminal responsibility*, PhD thesis submitted to the Faculty of Law, Cairo University, 2005,308

¹⁴² Articles 49/50/146 of the four Geneva Conventions of 1949

¹⁴³ Article (25) of Rome Statute, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

cases of responsibility which individual criminal responsibility on the international level.

The natural person who commits a crime within the jurisdiction of the International Criminal Court will be held responsible as an individual and liable to punishment in accordance with the Statute of the Court, which applied its provisions equally to all persons without any distinction based on official capacity. The leadership or presidential occupied position that ease the person to committ international crimes, cannot be an obstacle to the accountability of this person on crimes fall within the jurisdiction of the international criminal courts. Yet, the immunity cannot be invoked or uphold by the person to enjoy committing international crimes, or to invoke his/her official capacity as of a head of state or one of its leaders or government officials. As such excuses cannot be a defense or a mitigating circumstance for committing such crimes. Since the ICC's jurisdiction is limited only on individuals. The person must be of minimum 18 years old at the time the crime was committed because the International Criminal Court does not have jurisdiction over any individual in the time of the commission of the crime charged under the age of 18, as stipulated in Article (26): (the Court shall not have jurisdiction to any person at the time of committing the crime charged under the age of 18 years)¹⁴⁴. Thus, the statute has taken into account the general principles of the criminal law, in addition to the text on the irresponsibility of people who are not over the age of 18 years, in line with the Convention on the Child's Rights.

The UN have played an important role in defining the rules of international criminal responsibility, where the decision was issued by the UNs Commission

¹⁴⁴ Article (26) of Rome Statue, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

acknowledges unanimously on December 11, 1946 on the approval of the principles of Nuremberg. Resolution No. 95 was confirmed (D-1) that the Nuremberg Principles are considered the principles of international law, and drafted the Committee of the UNs law recognized principles of international law in the system of the Nuremberg Tribunal and the judgment of it. And discussed after the four-year project for the material in this regard and in accordance with Article 6 of that project constitute crimes against peace, war crimes under international law, and the first article of the same project by stipulating that "any person who commits a criminal act in terms of international law, he must take responsibility it is subject to punishment." This means that the legalization of the rules of international criminal responsibility for the first time legitimizing on them.

The violation of the norms and laws of war, and attacks on civilians is associated with the idea of responsibility. It is the state's and the individual's responsibility here, where for the State it represents a general principle of international law defined by the basic rules that determines the framework and the form of the illegal behavior and what decides the state's right versus the duty placed on the other country needs to final compensate, or to return the situation to what it was before committing the offending behavior, and it comes in the context of the political or civil liability of the state¹⁴⁵.

The article 130 of the Third Geneva Convention of 1949 on the treatment of war prisoners is one of the leading legal articles which directly sparked the international criminal responsibility, it provided that the violations of the provisions of this convention are war crimes and its violaters must be punished and they bear the international criminal responsibility resulting from their actions. For this, each person

¹⁴⁵ Ismail Abdul Rahman Mohammed, *criminal protection of civilians in times of armed conflict*, p.173

affects in any way on the principles set forth in this convention is a perpetrator of an international crime, and therefore he/she is subjected to punishment as being in breach of binding legal base which is stipulated by the Geneva convention.

The principle of the individual international criminal responsibility has become one of the established principles in the conscience of the international community, and there is a consensus between the jurisprudence and the judiciary on the criminal accountability of an individual when an international crimes are committed, and this has been confirmed by the jurisprudence of the previous international criminal tribunals, where the International Criminal Court established and codified this responsibility's rules and has changed it from the theoretical framework to the practical application. Where the International Criminal Court approved the special rules of the personal responsibility for the international crimes. The text of Article (25) of its statute¹⁴⁶ confirming it as follows:

1. The Court has jurisdiction over natural persons pursuant to the provisions of this statute.
2. A person who commits an offense included by this statute is individually responsible and be liable to punishment.
3. Criminal responsibility, individual responsibility and cannot exceed the person nor his property.
4. An inclusion of a provision in this statute on the individual's criminal responsibility; does not affect the responsibility of States under the international law, and so is decided by the Statute of the International Criminal Court on the inadmissibility of raising the international criminal responsibility only in rights of natural persons. Hence, the State is a legal

¹⁴⁶ Article 25 of Rome Statute, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

person which cant not be criminally asked, but asked on a civil responsibility for the financial compensation on damages caused by the illegal acts committed by its representatives¹⁴⁷.

The four Geneva's Conventions of 1949 and the Protocols thereto reflected legalizing international customary rules established regarding the international responsibility of individual criminal for serious violations of international humanitarian law violations, and this means that the provisions relating to this type are not only based on customary international law, but also based on the international agreements of IHL, which is of course binding on all member states of the international community, by means of the Geneva Conventions and their Additional Protocols¹⁴⁸, because the agreements are considered as the primary source of the international law and international obligations. States parties to the Geneva Conventions of 1949 shall take measures to ensure the application of those conventions, and if they failed to carry out this commitment, they have to bear the liability of the international responsibility¹⁴⁹. The four international humanitarian conventions of 1949 included census of serious crimes (grave violations), where the signatory states are committed to enact legislation to be punished, and these countries are necessitated to penalize any of the international legal crimes even if it wasn't mentioned in this regard.

There is no doubt that when the conventions consider the natural person as solely criminally responsible and not the states; as a legal entity which is not perceived that the criminal responsibility is held to them. This is consistence with

¹⁴⁷Dr. Mohammad Fahad Shalaldeh, *international humanitarian law*,330

¹⁴⁸Qsay, Mustafa Abdul-Karim Tim,"the Effectiveness of international humanitarian law in international and non-international armed conflicts",Palestine ,Al-Najah National University,2010,127

¹⁴⁹Ibid

what was unfolded in the Judicial precedents and established by the international documents¹⁵⁰. In other words, in light of the contemporary international law, the individual alone is the subject of the criminal responsibility, while the state holds the Civil international responsibility through reparation and compensation¹⁵¹. The principle of individual's criminal responsibility has the confirmation of the most important objectives of the ICC that are to ensure a permanent commitment to the international justice by raising the personal responsibility of the perpetrators of crimes to prosecute and punish them for what their hands committed of crimes against humanity.

Some of the international conventions have confirmed this type of responsibility, including the lack of Statutory Limitations to War Crimes and Crimes against Humanity, where in its second article that stated "If any crime of what is mentioned in the first article was committed; the provisions of this Convention are applicable on the representatives of the State's authority and the individuals who are actors or associates of any of those crimes, or non-direct incitement¹⁵².

4. Objective Jurisdiction

The ICC's jurisdiction extends to the most serious international human rights violations and international humanitarian law, where the objective jurisdiction was specified through four crimes. which are; crime of genocide, crimes against humanity, war crimes, and crime of aggression which it's jurisdiction was kept holding until the crime is defined and its elements are determined.

¹⁵⁰ Abdel Wahed Mohamed Al-far, *international crimes and punishment authority*, 272

¹⁵¹ Wael Ahmad Allam, *The person status in the legal system of international responsibility*, Dar Al-Nahdah al- Arabia, 2001, 95

¹⁵² Compilation of International Instruments - Volume I - Part II - p. 948

And for the seriousness and extent of its importance in this study, the next section discusses it in details, in terms of the concept, content, images, and how to handle the international Criminal Court on the basis of the Rome Statute and the rules and principles of the international law and International humanitarian law.

2.2. Crimes under the Jurisdiction of the International Criminal Court.

One of the most important considerations with which the Rome Statute of the International Criminal Court deals is, to confirm that the most serious crimes of concern to the international community as a whole must not go unpunished and that prosecution must be ensured effectively by taking measures at the national level, as well as through promoting the international cooperation in the prevention of such crimes, and to put an end to the impunity for the perpetrators of these crimes, and to ensure dealing with these crimes that constitute a grave danger to humanity and human security, addressing the precise identification of acts constituting a physical element, and therefore it can not be expanded, which is the principle that the text of Article 22 of the Statute has already been referred to.

The International crimes were listed for determination, in Article (V) of the ICC's Statute, namely: Crime of Genocide, Crime of Aggression, Crimes against Humanity, and War Crimes. And each crime is addressed separately:

2.2.1. Crime of Genocide

This sort of crimes have not appeared in the modern era. Hence; ancient peoples have been subjected to various forms of genocide. The genocide can be described as one of the gravest crimes committed against humanity and that pose a threat to the international peace and security for touching human rights¹⁵³. But since this crime is very important, a separate agreement was made for the same and it was not included with the acts that constitute a crime against humanity.

UNs organization focused on the topic of preventing genocide of the human race and punishment on them, and in 11 December.1946 UNs General Assembly adopted resolution No. 96 (D-1) which stated that genocide is the denial of the right to exist as entire human communities, such as murder, which represents the denial of the right of a person in life, this denial of the right to exist is incompatible with the public conscience rights and the adoption of serious affects both in terms of culture or in terms of other things contributed by these human groups, which is not consistent with the moral law and the purposes of the UNs. In response to the decision mentioned Assembly was preparing a draft international convention on the crime in question, and presenting the project to the members of the UNs and was approved unanimously in 9 December 1948 and became effective as of 12 January 1951. According to the preamble the crime of genocide is an international crime under general international law and contrary to the spirit of the UNs and its objectives and condemned by the civilized world¹⁵⁴. As it stated in article (1) including: "The genocide are crimes under international law whether committed in time of peace or in time of war these countries will take appropriate measures to prevent the perpetration and punishment on them".

¹⁵³Khalil Hussein, "Responsibility of Individuals and presidents for their actions in the international criminal law", http://drkhalilhussein.blogspot.com/2009/08/blog-post_27.html (December13,2015)

¹⁵⁴Rome Statute of ICC, http://legal.un.org/icc/statute/99_corr/preamble.htm

While the provisions of Article (2) of the Convention, genocide means:"any of the acts committed by the mean of destruction, of whole or part, of a national, ethnic, racial or religious group".¹⁵⁵

There was no problem in the inclusion of the crime of genocide under the jurisdiction of the International Criminal Court, as most countries agreed that this crime meets the criteria set out in the Preamble of the International Criminal Court acknowledged in Article (6) the definition of genocide according to the Convention in 1948¹⁵⁶. As stated in Article (6) of the Statute of the International Criminal Court: For the purpose of this statute genocide means any of the following acts committed with intent to destroy a national, ethnic, racial, religious group, as such, racial or religious group: killing members of the group. Causing serious bodily or mental harm to members of the group deliberately inflicting on the group conditions of life calculated the actual depreciated in whole or in part. Imposing measures intended to prevent births within the group. The transfer of the group's Children by force to another group.¹⁵⁷

The physical element of the crime of genocide is in every act where the perpetrator aims to eliminate a human group, for a national, religious or racial reasons whether as of whole or in parts. While the moral element is directed of the perpetrator will to commit a constituent of criminal behavior acts in the crime with the

¹⁵⁵ Rome Statute of ICC, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁵⁶Regarding to the moral element, that will be available in the case of specific intent, which is the intention to destroy the group in a whole or in part. Stated in (Fregeh Mohammed Hisham,"The role of international criminal judiciary in fight against international crime", PHD Thesis, Faculty of Law and Political Science, University of Mohamed KHIDER,2013-2014, 254

¹⁵⁷An example of these crimes: the massacre - the Jenin refugee camp - in March 2002 within the second intifada of the Palestinian people, the Israeli army destroyed the camp after continuous shelling for more than two weeks, and The international community did not react to these acts, and as it was said at that time that the United Nations has failed to send a fact-finding committee to there and did not move to such acts.

knowledge that this act is prohibited and punishable,¹⁵⁸ and the moral element takes the form of a criminal intent, which consists of knowledge and the will, but the availability of this intent is not enough for a general check only, but must also have a special intent, which is the mean for extermination of any total or partial destruction of a certain group, either this Genocide is in whole or parts¹⁵⁹.

Mostly and if not always, the crime of genocide is committed by the order of a higher authority of the state and under its control, this requires the development of ways to not to permit the perpetrators of getting off with the responsibility on the basis of receiving presidential orders they did not know the unlawfulness of them or its unlawfulness was not clear. However, everyone knows the acts that may constitute an international crime.¹⁶⁰

2.2.2. Crime of Aggression

At the time where the Charter of the UNs adopted an explicit position on the prohibition of the use of force and acts of aggression or threat of force in the international relations in order to preserve the international peace and security¹⁶¹; the UNs has worked on creating a binding international legal formula that is forbidden to resort to a war of aggression and to control its precise definition, until it adopted the

¹⁵⁸ Mahmoud Sharif Bassiouni/ International Criminal Court, *Study of the provisions and mechanisms for national implementation of the Rome Statute*, Cairo, Dar Al Shorouk, 2004, 161

¹⁵⁹ Doa'a Mohamed Zyoud, "Rules of procedures and practices on international criminal court jurisdiction", Middle East University, 2014, <http://www.meu.edu.jo/ar/images/القانون/القانون العام/قواعد ممارسة المحكمة الجنائية الدولية لاختصاصها القضائي.pdf> (January 11, 2016), 40

¹⁶⁰ In this regard, dr. Moataz Kafeisheh (professor of international law in the Palestinian Hebron University), mentioned in an interview on Palestine's accession to the International Criminal Court that: The crime of genocide, is the most aggressive than the apartheid. Mahmoud Alaftaah, *Palestine's accession to international conventions*, <http://www.alhadath.ps/article.php?id=5eba8y388008Y5eba8df> (October 10, 2015)

¹⁶¹ This mission was entrusted to the Security Council under article 39 of the UN Charter.

famous General Assembly resolution no. 3314 issued on 14 December 1974¹⁶², but that term was just a political term interpreted by each country in accordance with its political vision and vital interests, and it has not gained the enough importance because of conflicts of political and economic interests.

The concept of the crime of aggression has several forms, not necessarily includes the use of armed force, it may be economic or ideological, direct or indirect. More than once, the UNs General Assembly has nominated the use of force by means of directly or indirectly on behalf of the aggression.

At the General Assembly resolution (peace through acts), it condemned the the interference in the internal affairs of a state for the purpose of changing its legitimate government by intimidation or use of force. The General Assembly has also confirmed the intervention, either directly or indirectly by provoking an internal civil conflict and so, which is one of the most serious crimes against peace and international security.

Decision endorsement to the jurisdiction of the International Criminal Court into the crime of aggression has not been the object of an agreement between the countries, but sparked a legal and wide-ranging debate, both during the period leading up to the Rome Conference or through it, and even the period that followed¹⁶³, Article 5, paragraph 1, of the Statute of the Court includes the crime of aggression stipulating that: "the court's jurisdiction is limited to the most serious crimes of

¹⁶²The definition of the crime of aggression by General Assembly Resolution 3314, the UN document (A / 9890) dated December 14, 1974

¹⁶³Essam Abdeen, the head of the local and regional advocacy in the Al-Haq organization said in an interview "the International Criminal Court and the latest developments": the Palestinian side should also look into the definition of the crime of aggression, which was included in the ICC system at the review conference in Kampala, Uganda in 2010, and the court terms of its jurisdiction over this crime, yet the Palestinian side have not confirmed on the definition of this crime, Al-Haq Organization, http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=739:2015-07-07-11-45-54&catid=94:2014-09-24-09-28-04&Itemid=234 (November6,2015)

concern to the entire international community", and the Court under the system's jurisdiction is to consider the following crime, the crime of aggression, and the following paragraph added (when the rule adopted in accordance with articles 121 and 123 of the same statute defines the crime of aggression and the conditions under which the Court shall exercise the jurisdiction with respect to this crime, and this provision should be consistent with the relevant provisions of the Charter of the UNs).

The jurisdiction of the ICC has been restricted to try the perpetrators of this crime, until the adoption of the rule in this regard, according to the rules of the amendments that can be performed on the Statute of the Court, and this is what has been agreed upon by the ad hoc working group on the crime of the originator of the aggression by the Assembly of States Parties of the ICC, the discussions and the work of this team focused on two conditions of the exercise of the ICC for the judicial powers of this crime, with reference to the Security Council's role in determining what is an act of aggression¹⁶⁴ before the Court exercising its jurisdiction into the crime of aggression¹⁶⁵.

Kampala Review Conference held in 2010 has made a fundamental amendment to the crime of aggression, to include a precise definition and determine the potential for the exercise of the court's jurisdiction with respect to this crime. The

¹⁶⁴According to the provisions of the United Nations Charter and the adopted resolution 3314 by the General Assembly, the Security Council is the competent authority adapting the act that took place on that constitutes an act of aggression, the discretion enjoyed by the Council was inspired by the text of Article 39 of the Charter stipulating: "The Security Council decides whether to action has signed a threat to peace or breach of, or was the act of aggression and shall make recommendations, or decide what measures to be taken in accordance with the provisions of articles 41 and 42 of the Charter, in order to preserve international peace and security or restore. If the Council decided that the acts issued by the State constitutes an act of aggression in accordance with the preceding Article, the aggressor state is internationally responsible for these acts, and be subject to the signing of international sanctions, as well as responsibility for the damages caused by due to be considered aggression as an international crime intervention in the system collective sanctions prescribed in the Charter of the United Nations in the legal system of international responsibility, and in view of the Legal list 1314 and Article 19 of the Commission's draft law on the international responsibility of States.

¹⁶⁵Darraj, Ibrahim, *the crime of aggression and the extent of international legal responsibility*, Beirut, Halabi legal publications, first edition, 2005, 953.

other major results obtained are amendments relating to the Elements of Crimes, especially the crime of aggression in the text of article 8 bis, and some other understandings with respect to the temporal and spatial jurisdiction of the Court on this crime; with the stress that these amendments should not be interpreted in a manner contrary to the rules of general international law, or contrary to the Statute of the Court purposes.

With regard to the definition of the crime of aggression, paragraph 2 of Article 5 of the ICC Statute was deleted, and article 8 bis after Article 8 of the Statute of the Court was added. And the States Parties to the Review Conference put precise definition in article 8 bis, for aggression, based on General Assembly Resolution No. 3314 as follows¹⁶⁶:

1. For the purposes of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
2. For the purposes of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence, of another state, or in any other manner inconsistent with the Charter of the UNs. Any of the following acts, regardless of a declaration of

¹⁶⁶Report of the International Criminal Court/ Sixty-fifth session, for 2009-2010, <https://www.icc-cpi.int/NR/rdonlyres/EA7DF985-4549-40EF-A0DC-814BE440655C/282601/ICC6RepAra.pdf>

war, shall, in accordance with UNGA resolution 3314(XXIX) of 14 Dec1974, qualify as an act of aggression:¹⁶⁷

- The invasion or a attack by the armed forces of a State of the territory of another State , or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- Bombardment by the armed forces of a State against the territory of another State, or the use of any weapons by a State against the territory of another State;
- The blockade of the ports or coasts of a State by the armed forces of another State.
- An attack by the armed forces of a State on the land, sea or air forces or marine and air fleets of another State.
- The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.
- The sending by or on behalf of a State of armed bands, groups, irregular or mercenaries which carry out acts of armed forces

¹⁶⁷ UN Documents Gathering a body of global agreements, "Definition of Aggression", Twenty-ninth session, <http://www.un-documents.net/a29r3314.htm>

against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein;

In all cases, the court's jurisdiction shall be held in considering the crime of aggression, after a decision taken by a majority of States Parties equal to the majority required for the adoption of amendments to the statute, after 2017.

2.2.3. Crimes Against Humanity

Crimes against humanity; is a modern expression in the international criminal law and was firstly used after the World War II, Nuremberg's list was the first international document provides for crimes against humanity in Article VI, this text is repeated in Tokyo's list (m/2/c)¹⁶⁸. Crimes against humanity are distinguished from other crimes, such as murder and torture must be committed in the context of a widespread or systematic attack¹⁶⁹, this attack must be directed against a civilian population, so that the court cannot look at the individual, isolated or sporadic acts, which did not encompass to crimes against humanity¹⁷⁰, but these acts must be committed by a state or an organization policy.

The Rome Statute provides for the gravity of the crimes against humanity and that it should be included in the list of crimes that are specific to the International Criminal Court, where Article 7 of the Rome Statute provided for the crimes against humanity within the jurisdiction of the International Criminal Court:

- Murder.
- Extermination.

¹⁶⁸Mahmoud Sharif Bassiouni, *International Criminal Court*, Study of the provisions and mechanisms for national implementation of the Rome Statute, Cairo, Dar Al Shorouk, 2004, 155

¹⁶⁹However, the word "attack" does not mean just a military attack, but could include administrative laws and measures such as deportation and forced displacement.

¹⁷⁰Fregeh, Mohammed Hisham, "The role of international criminal judiciary in fight against international crime", PHD Thesis, Faculty of Law and Political Science, University of Mohamed KHIDER, 2013-2014, 254

- Enslavement.
- Deportation or forcible transfer of population¹⁷¹.
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- Torture
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- Enforced disappearance of persons;
- The crime of apartheid;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

According to the provisions of Article VII of the statute, these three elements must be available:

- 1) The crime committed is contained in Article VII, paragraph (1).
- 2) These crimes are committed in the context of a widespread or systematic attack directed against a civilian population.
- 3) That this attack resulted from the policy of the state or organization requires committing such an attack.

¹⁷¹Israeli occupation policies in the Palestinian territories

Generally, as required in the above-mentioned acts in the seventh article that makes up the physical element of the crime against humanity to be serious and degree's discretion is up to the International Criminal Judiciary.¹⁷²

The physical element of crimes against humanity is achieved based on the commission of an offense specified in Article Seven which is related to crimes against humanity, and that affects the fundamental interests of the person or group of people united by one politician or national strap, or one race. The existence of moral element requires the availability of both types of criminal intent, public and private. The General Intention is the awareness of the perpetrator that the acts he/she committed are a serious violation of the rights of victims, punishable by law, regardless of his/her intention behind taking such actions, such as the desire to kill or cause of suffering severe pain to the victims or just obeying orders.¹⁷³ However, the general intent is insufficient and needs a special intent, which is the need for the perpetration of such acts as part of a widespread or systematic attack directed against a civilian population in implementation of the state policy or a part of this policy, and that the perpetrator is aware that his/her behavior is part of the broad attack or systematic scale, or intends to have his/her behavior as part of the attack, without requiring accurate knowledge of its details. Nor can the perpetrator in this case invoke obeying orders issued by his/her superiors to impunity in accordance with Article 33 of this Convention¹⁷⁴.

¹⁷² Doa'a Mohamed Zyoud, "Rules of procedures and practices on international criminal court jurisdiction", Middle East University, 2014, <http://www.meu.edu.jo/ar/images/القانون/القانون العام/قواعد ممارسة المحكمة الجنائية الدولية لاختصاصها القضائي.pdf> (January 11, 2016)

¹⁷³ Fregeh, Mohammed Hisham, *The role of international criminal judiciary in fight against international crime*, PHD Thesis, Faculty of Law and Political Science, University of Mohamed KHIDER, 2013-2014, 256

¹⁷⁴ Fregeh, Mohammed Hisham, *The role of international criminal judiciary in fight against international crime*, PHD Thesis, Faculty of Law and Political Science, University of Mohamed KHIDER, 2013-2014, 256

With regard to the extent of correlation crimes against humanity in armed conflict, it was the subject of discussion during the Rome conference, where a minority of states stuck to the idea that crimes against humanity must be linked to armed conflict, but the majority of states refused to do so on the grounds that adhere to this condition lead to the complete abolition of the concept of crimes against humanity, because they become so identical to war crimes, and that this trend ignores the development that has occurred in this area. This statute omitted any reference to armed conflict of any kind, which shows that it recognizes crimes against humanity committed in times of peace and war; no doubt in a logical trend, as it is for through which the accountability of authoritarian regimes that reflect on abuse and oppression of the protestors and their peoples in order to dominate the power¹⁷⁵.

2.2.4. War Crimes

War crimes are the oldest international crimes that the international community tried earlier to identify, the international community went off to alleviate it's woes and, for that; several international treaties and charters were issued to organize wars habits and laws, which imposed certain restrictions on the behavior of armies, duties and the types of weapons that may not be used during war time. Most notably, the Hague Conventions of 1899 and 1907, which organized the rules of neutrality and war.

War crimes are defined as: acts that constitute grave breaches of the laws and customs of war in general, whether according to the traditional concept of war embodied in the law of war or as the contemporary concept expressed by the law of

¹⁷⁵ Mohammed Galay, *Litigation procedures Before the International Criminal Court*, Master thesis, Faculty of Law, University Abu Bakr Belcaid Algeria, 2004-2005, 44

armed conflict or the international humanitarian law¹⁷⁶. The war in the realistic concept: is an armed conflict or a mutual fight between the armed forces of more than one country ends with each of the peaceful relations, whether issued by an official announcement or not, the legal concept of war entails a formal declaration by the side of one of the warring states before the start of combat military operations¹⁷⁷.

Article 8 of the Statute of the International Criminal Court in the states for war crimes, especially when committed as part of a plan or policy or as part of a large-scale commission of such crimes and in accordance with the provisions and rules of international humanitarian law, through four classes of crimes, namely:

- a) Serious violations of the Geneva Conventions of 1949
- b) Other serious violations of the laws and customs applicable in international armed conflicts within the framework of existing international law
- c) Serious violations of Article 3 common to the four Geneva Conventions of 1949, in the event of an armed conflict not of an international nature.
- d) Other serious violations of the laws and customs applicable in non-international armed conflict in the framework of existing international law

The Geneva Conventions on the protection of victims of war of 1949 and the Additional Protocols of 1977, have developed the list of crimes that belong to the category of war crimes and crimes against humanity, and therefore all grave

¹⁷⁶Some scholars define war crimes as: premeditative actions that rescind the Geneva Conventions and the additional protocols. These actions lead to Death, Pain, or fatal damage to any person, prisoners, civilian, who are protected by law, Mahmood Cherif Bassiouni/ research of Criminalization in international criminal law and the protection of human rights published in Studies on global and regional legal documents Beirut, Dar Al-E'elm, 1989, 485

¹⁷⁷Doa'a Mohamed Zyoud, "Rules of procedures and practices on international criminal court jurisdiction", Middle East University, 2014, http://www.meu.edu.jo/ar/images/القانون/القانون_العالم/قواعد_ممارسة_المحكمة_الجنائية_الدولية_لاختصاصها_القضائي.pdf (January 11, 2016), 40.

violations set forth in the Geneva Conventions and its protocols have been received in the Statute of the International Criminal Court serves as a war crimes. These documents have recognized the principle under which the state is responsible for the actions of the persons (Responsibilities of the Contracting Parties), the articles (51/52/131/148) respectively, which stipulate that " No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article". The contents also census serious crimes inflicted on the criminal responsibility of the perpetrators, but rather acts fall within the penalty of the Penal Code in most systems of internal and criminal legislation in all circumstances, in the sense that if the act is perpetrated by one of the military during the war, it is not permissible for the accused to depend on the military duty implementation as a cause of permissibility, because the military duty does not include such crimes, and they do allow it¹⁷⁸.

The definition of an international armed conflict can be understood from Article 2 of the Geneva Conventions of 1949, which states "cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the State of war is not recognized by one of them ... and, 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". As considered an international armed conflict the case of resorting to armed violence between two or more States, whether by an earlier announcement or without it, and Warring Contracting Parties shall apply the provisions of international humanitarian law, whether the case of conflict has been recognized or not, as the national liberation wars

¹⁷⁸Dr. Mohammad Fahad Shalaldeh, *international humanitarian law*, p347

follow the international armed conflicts as what mentioned in the first Additional Protocol (I) to the Geneva Conventions, 1977 in articles (1/4) and (3/96) respectively.

It is worth to mention the crucial development that followed the concept of war crimes, as extended to grave violations committed in non-international armed conflicts, as in spite of the refusal of some countries during the conference for any attempt to compare between the international armed conflicts and non-international armed conflicts in this regard, arguing that the internationalization of criminal responsibility for the crimes committed during non-international armed conflicts would give international legitimacy to groups that resist the legitimate authority in the country.¹⁷⁹

Among these violations, the Eighth clause of the second paragraph of article VIII of the Rome Statute, states that " The transfer, directly or indirectly, 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;" this settlement or the deportation of the population become war crimes.

This kind of War crimes is realized through the occupying power's action, of the directly or indirectly parts transfer 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. This behavior must be issued and associated with cases of an international armed conflict, and the perpetrator is aware of the factual circumstances that established the existence of an armed conflict.

¹⁷⁹Mohammed Galay, *Litigation procedures Before the International Criminal Court*, Master thesis, Faculty of Law, University Abu Bakr Belcaid Algeria, 2004-2005, 45

War crimes are consist of two criminal conducts; deportation and illegal transfer. The deportation of protected persons under the Fourth Geneva Convention- the protection of civilians - who are under the occupation of the occupied territories to other places far away, whether inside or outside the home land, with a view of keeping them away from their homes in order to transfer and replace them with the population of the occupied State, as this work is incompatible with the freedom and dignity of the civilian population as guaranteed under the international rules and customs. Transportation and deportation come in two directions:

1. Either from the occupied territory to the outer side, as previously happened in Yugoslavia, as well as deportations of Zionists to the indigenous Palestinian Arab's population forcibly from their country.
2. Or from the outer side to the occupied territory, just as how France did during the French occupation of Algeria by transferring their population to Algeria, and as how the Israeli's occupying forces are transferring the Jews from all over the world to Palestine and settle them there.

Such behavior is prohibited; because it may lead to serious results for dissolving aboriginal national entity. This prohibition is mentioned in Article 49 of the Fourth Geneva Convention and it's Article 147, considering it as grave breaches of the its provisions. Based on the above mentioned article, the Israeli occupying power's transfer of its population to the Palestinian territories; is a war crime and a serious violation of the Geneva Conventions, they have implemented settlements and policies which together include the displacement of the Palestinian population. The so-called forcible transfer of the population and the resettlement of occupying power's settlers in their place and explained in depth later on.

The Statute of the ICC classifies the transfer of the occupying power's civilians directly or indirectly to the land it occupies as a war crime. The deportation or transfer of people in the occupied territories from their homes to other places inside or outside this territory is also a war crime under the Statute of the International Criminal Court.

Israel was among the countries that voted against the adoption of the Rome Statute and did not ratify it and has repeatedly tried not to consider the settlements in the occupied Palestinian territory as a war crime.

We have previously discussed the temporal jurisdiction of the ICC which falls into crimes committed after the entry of the Statute into force¹⁸⁰ according to Article 11 of the Rome Statute but; it is to say there is a need to have the court jurisdiction over continuing abuses in which there are continuous crimes¹⁸¹.

Accordingly, the court must consider the so-called in-law to "ongoing crimes" as chronologically continuous crimes,¹⁸² crimes which their facts begin before the state statute comes into force and their impact remain constant thereafter.¹⁸³ Assuming that the criminal activity on the grounds is still ongoing and has not completely stopped. The settlement crime of the Israeli Occupying power in light of the international law is continuous crime, and its effects extend as long as settlements are present in the occupied Palestinian territories, and its one of the ongoing crimes that results a daily violation of the Palestinian life. Thus, the criminal jurisdiction of the ICC extends to include the Israel's settlements crime, despite the Israel reservation to

¹⁸⁰ Art. (11/1): The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

¹⁸¹ International Criminal Court: the immunity challenge, the International Committee of the Red Cross (ICRC) publication, 1st edition, Damascus 2001, p. 113

¹⁸² International Criminal Court: the immunity challenge, the International Committee of the Red Cross (ICRC) publication, 1st edition, Damascus 2001, p. 113

¹⁸³ Fadwa Al-Thweb, "International Criminal Court", Master thesis, Birzeit University, Palestine, 2014, <https://www.bal.ps/pdf/1.pdf>

include the settlement as a war crime in the statute of the ICC. However, this reservation is contrary to the goals and purposes of the statute and to the international law principles.

This option can be used as an effective tool to face the colonization, apartheid crimes, deportation and forcible transfer as "ongoing crimes" vested with the jurisdiction of the ICC, as the settlement constitutes a war crime under the Rome Statute. Previously, the Court considered it in a similar case in the Democratic Republic of Congo, which was considered by the court within the ongoing crimes that fall under its jurisdiction¹⁸⁴ and the point here is that the settlement project as the core of the occupation structure, the crimes of apartheid as crimes against humanity practiced in various forms by the occupation leaders and their officials, that linked to the settlement project, as well the case concerning the deportation and forcible transfer as war crimes, and possibly up to crimes against humanity.

On the basis of the prohibition of discrimination, on basis of national affiliation, race and religion the Israeli Occupation authorities practiced an internal forced displacement against the Palestinians, the constant looting of their property along the Palestinian territories that are occupied since 1967, including the West Bank, East Jerusalem, and Gaza Strip where it is estimated over the past four decades as a long-term occupation. Colonialism, racial systematic and institutionalized discrimination are the root causes of this internal forced displacement of the indigenous Palestinian's population and stripped of their property. These practices

¹⁸⁴The Court's jurisdiction over Israeli settlements already related to the principle which was accepted in a similar case concerning the Democratic Republic of Congo, which explains that Crimes such as those related to settlements and the transfer of civilians into occupied territory, even if they occurred before the first of September / September 2014, they are within the jurisdiction of the court because they are ongoing crimes, this conclusion based on the rule that the confiscation of property for the construction of the settlements, it remains a criminal until the property is returned to its rightful owners.

and policies in the occupied Palestinian territories have come in order to assert its control over the largest area of land with a minimum number of the Palestinian population.¹⁸⁵

The individual or mass deportations of indigenous people in the occupied Palestinian territories, and the arbitrarily displaced are acts prohibited under the international humanitarian law and human rights law, these practices are serious violations of the Fourth Geneva Convention and the customary international law. The Fourth Geneva Convention prohibits the destruction of private property for the protected population by the occupation. Therefore, invoking the security of the population and military imperatives cannot justify the forced displacement of the Palestinian population. This destruction of property and the forced displacement of Palestinians violate the Occupying power's commitments to the human rights and the laws of occupation.¹⁸⁶

Human Rights Watch documented how the Occupying power's restrictions cause the cumulative impact on the Palestinian's construction, demolition and forced displacement as well as of other restrictive policies. However, Palestinians who cannot build houses are forced to move to the West Bank areas under the control of the Palestinian Authority or migrate out of Palestine. Human Rights Watch refers to the close relationship between the Israeli policies of division, construction, demolition in the Palestinian territories and forced displacement of Palestinians¹⁸⁷.

Settlement is a form of the war crimes, Article 49 of the Fourth Geneva Convention of 1949 and Article 85 of the additional protocol I clears that "no

¹⁸⁵BADIL Resource Center for Palestinian Residency and Refugee Rights, <http://www.badil.org/en/> (December6,2015).

¹⁸⁶BADIL Resource Center for Palestinian Residency and Refugee Rights, <http://www.badil.org/en/> (December6,2015).

¹⁸⁷Illegal Demolition of Palestinian homes, <http://www.palnnn.com/?p=69749> (December6,2015)

Occupying Power shall deport or transfer parts of its own civilian population into the territory it occupies". The International Committee of the Red Cross, confirmed on 19 May.2001 that the settlements in violation of international law and should not be where they are now¹⁸⁸.

The Israeli occupation forces allow their settlers to carry weapons freely and without adequate controls and they provide them a secure protection in most cases where they attack on the unarmed Palestinian citizens. Settler's attacks, killings and torture can be classified as crimes against humanity. Article (7/1/k) of the Statute of the International Criminal Court states that "for the purpose of this statute, any of the following acts is a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population:

- (a) Murder;
- (b) Extermination;
- (c) Other inhumane acts of a similar character intentionally causing great suffering, or serious body, mental or physical health injuries.

According to the view of the jurisprudence; the definition of the crimes falling within its scope can be crimes that result from a state or system acts that can be implemented by actors with or without the authority.¹⁸⁹ The Israeli settlers carry out the occupation State policy in the murder and repression of the Palestinians.

In December 2003 the General Assembly requested the International Court of Justice to give an advisory opinion on the legal consequences of construction of the

¹⁸⁸ Al-Quds newspaper, No. 11401, Sunday May20,2001

¹⁸⁹ Mahmoud Cherif Bassiouni, *ICC, its inception and its statute*, Versions of the Egyptian Judges association, 2002,74

apartheid wall in the occupied Palestinian territories, which was issued in July 2004 and in which the Court made it clear in paragraph 120 of its advisory opinion of 2004, that "the Israeli's colonies in the occupied Palestinian territories including East Jerusalem are established in a violation of the international law", the court emphasized that the wall as well as the Israeli's settlement in the occupied Palestinian territories, are illegal acts and void and must be removed, it interferes with the provisions of the fourth Geneva Convention, which applies legally to the Palestinian territories that occupied by Israeli forces since 1967. Yet, the Court held that the settlements and the apartheid wall are two of war crimes in accordance with the provisions of the international humanitarian law, specifically under the Fourth Geneva Convention of 1949. Such activities prohibit the Palestinian people to exercise their right to self-determination which is the most serious consequences of committing these crimes¹⁹⁰.

The Four Geneva Conventions of 1949 is one of the many international conventions that dealt with the individual criminal responsibility, the international Criminal Court statute established its judicial system based on the individuals responsibility for international crimes and, by applying this to the Israeli Occupation, it is an evident that all persons who have committed crimes against the Palestinian people bear individual criminal responsibility for their criminal acts, whether they are public individuals or soldiers in the armed forces or military officials or civilian leaders in government¹⁹¹.

Israel as an occupation power has not shown any response to the advisory opinion of the international Court of Justice and ignored it and continued its

¹⁹⁰The advisory opinion of the International Court of Justice issued on July 4, 2004 regarding the Israeli wall in the occupied Palestinian territory

¹⁹¹Hassan Mohamed Qahwaji and Sami ashram, "The position of the international law on the occupying power for the murder acts", paper of Al-Azhar University in Gaza, Department of Public Law, 2012, 7

operations that violate the provisions of the fourth Geneva Convention and the principles of the international law.

2.3. Palestine in the International Criminal Court

The ICC's jurisdiction takes place between the States Parties to the Rome Convention, which is the Statute of the Court. At this particular time; where Palestine and its people are daily exposed to many of the Israeli's crimes, in which they are the punishable crimes as stated in the International Criminal Court system whether they are war crimes, crimes of aggression or crimes against humanity. Many have stressed on the need to resort to the international criminal law as a tool to ensure the imposition accountability on the occupation authorities and achieve the desired justice for the Palestinian people. However, Palestine lacks on the application of the international law due to the lack of the political will of the major powers and because the interests of these countries do not require them to work hard on the fairness of the Palestinian nation by enabling it to exercise its right to self-determination up to the emancipation of the occupation and establish their independent state with Jerusalem as its capital.

For the privacy concern of the Palestinian situation, the legal difficulties and sometimes the political process that stood in the face of the Palestinians to head to this international body for the prosecution of the Israeli war criminals, which affected the credibility and seriousness of this court, especially against the serious crimes that were committed in all Palestinian areas¹⁹².

¹⁹²Abdul Aziz Nouaydi, "jurisdiction of the International Criminal Court for Israel's crimes after the Palestinian Authority acceptance of the jurisdiction of the ICC Court", January 2011.

A numerous attempts and legal ways were there in order to reach to the ICC, but in the end these ways focused on the consideration of Palestine as a State existing with its pillars and on the application of other legal grounds, taking into account the legal nature of Palestine in the international law and the right of Palestinian people to self-determination and many of the decisions of the UNGA in its advisory capacity and some of the decisions of the Security Council. The biggest problem that stood in the way to move towards the International Criminal Court was considering Palestine as a state or a full member State of the UNs.

2.3.1. Palestinian State and the Palestinian Liberation Organization (PLO)

The PLO was founded in 1964, consists groups of Palestinian movements and parties. It includes all the Palestinians in the West Bank and Gaza Strip, in addition to the Palestinian diaspora, to represent them on international forums.

The Palestinian Liberation Organization has worked to create some of its affiliated institutions such as liberation army, radio stations, research center, bronchial unions, national council and offices in most countries of the world. Later, the Palestinian Liberation Organization got observer status at the UNs, according to UNs General Assembly Resolution (3237) and issued on November 22 of the year 1974, and under that was being invited to participate as an observer in the UNs General Assembly sessions and conferences and to participate in its work and participate in international conferences held under the auspices of the General Assembly¹⁹³.

¹⁹³ for more details follow: www.un.org

On 15 November 1988, the National Council of the PLO declared an "independent State of Palestine" and the acceptance of the UNs Resolutions 242 and 383, which call for the Israeli withdrawal from the Occupied Palestinian Territory in 1967; and to reach a solution through negotiation. At the time, the National Council instructed the Executive Committee of the Palestinian Liberation Organization to carry out the functions of the Government of the State of Palestine. Based on the Declaration of Independence, the UNs General Assembly adopted a resolution replaces the designation of Palestine to the UNs from the PLO Mission to Permanent Observer Mission of Palestine. In 1993 a peace agreement was signed in Washington after a long round of negotiations between the delegations of the Palestinian Liberation Organization and the Israeli occupation government known as "Oslo agreement", which was made to approve the Palestinian autonomy and the Israeli withdrawal out of the Palestinian territories. May 1994, the Israeli occupation forces withdrew from the Gaza Strip and Jericho in implementation of the Oslo agreement, and the territories became under the Palestinian autonomy, was represented by the National Authority.

The Oslo agreement didn't go further as planned, yet as the Israeli aggression on the Palestinian territories continued; the presidency of the Palestinian National Authority started a diplomatic move among the UNs member states, to secure the support for a full membership at the UNs for the State of Palestine that was announced earlier by PLO in Algeria 1988 and recognized by about 100 UNs member state.

2.3.2. Palestine in the ICC before 2012

We explained the cases of the International Criminal Court where it can proceed its jurisdiction, in both cases of States and Non-States Parties of the ICC Statute. The Non-States Parties can deposit a declaration with the Registrar of the ICC, whereby it recognizes and accept the exercise of ICC jurisdiction with respect to the crime under consideration, this acceptance needs to be submitted for each crime separately because every crime is separate from the other¹⁹⁴, or by referral to the Security Council, in accordance with Chapter VII of the Charter of the UNs of any crime within the jurisdiction of the ICC, and in this regard, the Security Council may transmit such crimes regardless of the membership of the state in the ICC. The Security Council practiced this validity when confronted Sudan, after receiving a report issued in January 2005 from the investigation committee that set up resolution 1564 to investigate the situation in Darfur, as the Council decided to move through the Prosecutor of the ICC for investigation.

The Palestinian's beginning with the ICC was in response to the Israeli aggression on Gaza Strip on 22 January, 2009¹⁹⁵, when Dr. Ali Khashan, the Minister of Justice in the Palestinian government, deposited a declaration under Article 12 (3) of the Rome Statute¹⁹⁶, accepts the exercise of the ICC jurisdiction on the Israeli crimes were committed in the Palestinian territories since the first of July 2002. The declaration permits Non-States Parties to accept the exercise of ICC jurisdiction. As

¹⁹⁴Dr. Ahmed Attia Abu al-Khair, permanent International Criminal Court/ Study of the Statute of the ICC court and the crimes under ICC statute, Cairo, Dar al-Nahdah al-Arabia, 1999, 46-47.

¹⁹⁵Israeli aggression on Gaza, the so-called Cast Lead Operation in the period between December 27, 2008 and January 18, 2009

¹⁹⁶"If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question..... "

for the Palestinian situation and the international community's position on the ambiguity about the existence of the State of Palestine, this Declaration was accepted by the registrar of the ICC, and the office began the discussion of all the legal matters relating to the ICC jurisdiction, Whether the deposited declaration acknowledges the Court to exercise its jurisdiction meets the required legal conditions.

Later, and in the private ninth session of the Human Rights Council of the UNs Organization, which was held in January 2009 to discuss the "grave violations of human rights in the Occupied Palestinian Territory including the recent aggression on Gaza in 2009_ (to prevent any legal doubt concerning the Characterization of the legal status of Gaza Strip, the term "aggression" in international law is used when the armed force is using against the territory of an independent and sovereign state or to destabilize the political stability, and this is not the case of Gaza Strip, which retains legal status, like the West Bank, including Jerusalem, as an occupied territory. Therefore, the occupation itself is a case of continuous aggression with its illegal use of armed force, which constitutes a serious crime under the international law and the Statute of the ICC)¹⁹⁷ _the human rights Council, formed one of its first fact-finding missions headed by judge Richard Goldstone to investigate the IHL violations, and human rights violations committed by the Israeli occupation power, the mission published its_ "Goldstone report" _in September 2009.

The report's summary was published by the UNs states:"The case of escaping from the punishment for long periods was the reason of resulting justice crisis in the Occupied Palestinian Territory..., the Israeli regime regarding the investigation and prosecution of serious violations of human rights and humanitarian law , particularly

¹⁹⁷PLO,Expatriates Affairs Department,"the Israeli violations and war crimes",
<http://www.pead.ps/الانتهاكات-وجرائم-الحرب/الانتهاكات-الاسرائيلية.html>
(November30,2015)

They adopted the use of (Palestine) instead of naming (PLO) without prejudice to the observer status of the Palestine Liberation Organization and its functions. And as a non-membership State, Palestine participates in the work of the organization, in addition to what's decided by the legal status of the non member state of the organization. Yet; Palestine continues in replacement of the PLO to enjoy the rights of participation and representation in the organization.

As Palestine is a state within the considerations of the UNs based on the provided 43/177²⁰⁴ (the first paragraph of the provisions of resolution) and as a substitute for the Palestinian Liberation Organization in the UNs Organization, without prejudice to the observer status of the Palestine Liberation Organization and its functions (the third paragraph of the provisions of resolution)²⁰⁵, the UNGA recognizes the observer status of the State of Palestine proclaimed on 15 November 1988 and therefore, Palestine firstly enjoys the non member state position's of the organization on the level of participation and representation, and secondly retain the privileges obtained by the Palestine Liberation Organization for the duration of presence in the UNs, and as Palestine combines the two traits: statehood; at least for and by dealing with the UNs and secondly as a national liberation organization as it struggles to gain independency and to keep its content of rights qualities, the UNs facilitates to achieve the principles and objectives they established in particular to the right of peoples to self-determination and the establishment of peace and security in the international arena²⁰⁶.

²⁰⁴In this resolution, UNs recognized the declaration of the independence of the State of Palestine of 1988, and replaced the the naming from PLO to Palestine

²⁰⁵The observer status that granted to the PLO by the United Nations through the resolution No.3237(D-29) of 1974

²⁰⁶Dr. Issa Hanna, A titled article "What is the legal status of Palestine in the United Nations." <http://www.samanews.com/ar/index.php?act=post&id=96069> (November2,2015)

for the Palestinian situation and the international community's position on the ambiguity about the existence of the State of Palestine, this Declaration was accepted by the registrar of the ICC, and the office began the discussion of all the legal matters relating to the ICC jurisdiction, Whether the deposited declaration acknowledges the Court to exercise its jurisdiction meets the required legal conditions.

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¹⁹⁷PLO,Expatriates Affairs Department,"the Israeli violations and war crimes",
<http://www.pead.ps/الانتهاكات-وجرائم-الحرب/الانتهاكات-الاسرائيلية.html>
(November30,2015)

the prosecution of suspects of war crimes and crimes against humanity, is a regime with major structural flaws and is not consistent with the international standards. " The report contained preliminary evidence of war crimes and crimes against humanity, and was also the first international report attacking the issue of internal investigations on war crimes charges, pointing out that the Israeli military investigations did not comply to the international standards. This report benchmarks in how the international human rights institutions work with the Israeli ongoing crimes against the Palestinian people, and the complementary reports from the UNs concluded that the Israeli judicial system does not have the structural and institutional autonomy which is necessary to do the investigations properly. In addition, these reports criticized the fact that Israel did not investigate with those who put a vision for these crimes and they had planned and ordered its implementation¹⁹⁸.

Palestine submitted a request to the UN Security Council in September 2011 to gain full membership in the UN, but as a result of divergent views about the membership in the Committee on the admission of new members of SC, the request was not put to the vote in the Security Council.

The Prosecutor's office finished the study based on the declaration of 22 January, 2009, and he issued a statement in March 2012 on the situation of Palestine in which it referred to the question "Who knows what the state is" for the purposes of Article 12 of the ICC Statute.¹⁹⁹ The Prosecutor has felt that neither his office nor the court are in a position to take such a decision. Instead, the prosecutor considered that

¹⁹⁸Report of the UNs Fact Finding Mission on the Gaza Conflict.

¹⁹⁹Office of the Prosecutor of the International Criminal Court,the situation in Palestine, April 3,2012 para5

this decision is up to the Secretary-General of the UNs²⁰⁰, who can note the directives that issued by the General Assembly in this regard or to the Assembly of States Parties to the Rome Statute²⁰¹.

The Prosecutor's report stresses that:

"The current situation which was awarded by UNGA to Palestine at that time is the "observer status" not a "non-member state." This observer status will not confer signature or ratification to the Rome Statute or to deposit declaration within the scope of the ICC ".

At the same time in which he explained that Palestine as a state is recognized in bilateral relations by more than 130 countries and by some international institutions, including the UNs organs .In sum, the prosecutor noted that the prosecutor's office can examine in the future the crimes that committed in Palestine, in the case if the competent organs of the UNs or the Assembly of the Member States of the Rome Statute take a decision on the legal issue relating to the assessment of Article 12.

In doing so, the prosecutor have ignored many of the facts in his decision, notably that the UNs recognition of Israel is conditional to the implementation of the partition decision 181, which provides for a two-state with clear boundaries, and that the decisive vote at the UNs for the recognition of Palestine in the UN system in 1989 after the independence declaration in 1988 is enough to consider it a State for the purposes of the ICC, as Professor John Quigley says. And Palestine is subject to

²⁰⁰The Secretary-General of the United Nations accepted in July 2008 the joining of the Cook Islands, which is not a -member State but an entity has recipe autonomy with New Zealand since 1965, noting that the population of the Cook Islands 25 thousand inhabitants and an area of almost 265 square kilometers.

²⁰¹Statement of Prosecutor of the International Criminal Court,
<http://www.voltairenet.org/article173433.html> (November30,2015)

Vienna formula by virtue of the full membership in UNESCO since 31 October 2011 and could thus join the international treaties²⁰².

Professor William Schabas replied to the statement issued by the ICC Prosecutor in 2012, referring to the two main issues. Firstly, Schabas compared between the methodologies adopted in the accession of the Cook Islands to the Rome Statute and the Palestinian declaration, the exclusion of the Cook Islands from 'Non-Members' list did not prevent the Secretary-General of the acceptance of the accession to the Rome Statute on 18 July, 2008. Therefore, it seems that the Secretary-General is not obliged to take a decision on whether an "entity" is a state for the purposes of the enforcement of Article 125, even if the State appears on the list of "Non-Member States" that is adopted by the General Assembly or not. Secondly, Schabas supposed that the prosecutor should give great attention to the consequence of the UNESCO voting in 2011, on the basis that the Secretary-General's reference to accept the membership of a specialized agency of the UNs agencies may be taken as a suitable directives must be followed, as it copes with the directives that can be received from the General Assembly.

With the Israeli occupation's insistence on its expansionist settlement policy, building the apartheid wall, annexation and isolation of Jerusalem from its Arab surroundings and practices of ethnic cleansing of the Arab population, which is unacceptable and reflects a loss of the Palestinian rights which makes imperative need

²⁰²Later on, after the decisive vote in the United Nations on November 29, 2012), Raising the level of representation of Palestine into a "non-member state" was not enough for the Prosecutor to move and ask for a permission from the Pre-Trial Chamber in court to open an investigation of the current situation in Palestine since July 1, 2002 according to the statement filed with the court. Still, the prosecutor is capable of doing so without the confirmation by the Palestinian side to adopt the declaration, and this is clearly given by rights of the Rome Statute. This has already happen when the court considered the situation in Ivory Coast , and hence Palestine enjoys the same./follow the decision "The situation in the Republic of Ivory Coast", which was issued under Article 15 of the ICC Rome Statute,(October 3,2011),paragraph 173

to search for tools and means of re-consideration of the Palestinian cause and to form a pressure card in the Palestinians hands to help them in a confrontation with of the Israeli policies and attitudes. From this point, the Palestinians found that the orientation to the UNs through the application for recognition the State of Palestine as a outlet that could be achieved to re-position and consider the Palestinian's issue at the international level.

While the Palestinian's natural, historical and legal right of establishing an independent sovereign State is still an awaiting for implementation. The natural, historical and legal right of the Palestinian people which is guaranteed by the international law and international humanitarian law, and according to the international law; nations have a sovereign right of an independence declaration and statehood. Therein; various efforts took a serious steps towards finding a way for the possibility of penalizing the Israeli occupation criminals by through the criminal responsibility for crimes that committed in Palestine, the most important effort was headed by the Palestinian President Mahmoud Abbas to the UNs in order to get the Observer Member State,²⁰³ where the Secretary General of the UNs received a request on 23 September 2011 for the acceptance of Palestine to the UNs body as member state, while this effort was blocked through refraining to exert the required political actions in the UN Security Council, at time when the admission of Palestine to UNESCO has been approved on 31October 2011 as a member state.

The membership resolution focused on granting Palestine the state of an observer, without prejudice to the rights and privileges acquired, as the role and status of the PLO as a representative of the Palestinian people under the relevant resolutions.

²⁰³For more details about the concept of the observer state follow: The Legal entitlements of obtaining Palestine state observer at the United Nations, issued by: The Independent commission for Human Rights, Report No.79/2013

The resolution has affirmed the right of the Palestinian people to self-determination and independence in their state, Palestine, and also confirmed the fact that the Palestinian movement in order to obtain the international recognition and the membership in the UNs does not affect the status of the PLO as the legitimate and only representative to the Palestinian people according to the previous UN resolutions.

During this stage, the United States warned to close the door of the Security Council by using the veto against the Palestinian request, so Palestinians were left only by resorting to the General Assembly. Some objected that the General Assembly is not the jurisdiction body, but the response to this objection is, the General Assembly has already practiced what is more important than the decision to recognize the membership of the international member in the UNs, who already has the right to self-determination, when it decided to partition Palestine into two states in 1948.

Through the numerous resolutions of the UNGA over the past decades, it is clear that many of these resolutions affirming the right of the Palestinian people to self-determination, independence and ending the decolonization. The most famous Resolution No.(2535) , emphasizes that the rights of the Palestinian people's are inalienable, and Resolution No. (2672) emphasize on the right of the Palestinian people to self-determination. The Security Council in several resolutions also stressed that the Palestinian territories considered as occupied territories, through referring in its resolutions to the applicability of the Fourth Geneva Convention of 1949, including Resolution No. (237) issued on 14 June 1967, Resolution No. (271) issued on 15 September 1969, Resolution No. (1322) issued on 7 October 2000. The most important of these decisions is Resolution No. (43/85) dated 6 December 1988, these

decisions and if they were important then, they must be taken in consideration to the membership of Palestine and the decision to raise the level of its representation.

On November 29, 2012, UNGA voted overwhelmingly on a resolution recognizing the state of Palestine and adopted the Resolution (19/67) to grant Palestine and raise the level of its representation to " Non-Member Observer State " and requested under that the Secretary-General to take the necessary actions for the implementation of this resolution. This resolution emphasizes on the right of the Palestinian people to self-determination and to have an independent state on the occupied Palestinian territory since 1967, the General Assembly expressed its hope that the Security Council responds to the request made by the State of Palestine on September 23, 2011 in order to obtain full membership in the UNs, and urged all States, specialized agencies and organizations of the UNs system to continue to support the Palestinian people and help them achieve their right to self-determination independence and freedom at the earliest. Thus, Palestine name change at the UNs (Entity) to (Non-Member Observer State) and Palestine has become a subject of the international law, which owns the irreversibility access to the Charter of the UN, especially the first article to emphasize the right of peoples to self-determination.

The United Nation; is the international organization that represents the international community, and since 1974 the Palestinian people were represented through their sole and legitimate representative; PLO. However; the UN did not restrict itself from the jurisprudence definition about Palestine nor on the other entities that have proceeded in the same situation like India at the beginning and Guinea in the seventies.

They adopted the use of (Palestine) instead of naming (PLO) without prejudice to the observer status of the Palestine Liberation Organization and its functions. And as a non-membership State, Palestine participates in the work of the organization, in addition to what's decided by the legal status of the non member state of the organization. Yet; Palestine continues in replacement of the PLO to enjoy the rights of participation and representation in the organization.

As Palestine is a state within the considerations of the UNs based on the provided 43/177²⁰⁴ (the first paragraph of the provisions of resolution) and as a substitute for the Palestinian Liberation Organization in the UNs Organization, without prejudice to the observer status of the Palestine Liberation Organization and its functions (the third paragraph of the provisions of resolution)²⁰⁵, the UNGA recognizes the observer status of the State of Palestine proclaimed on 15 November 1988 and therefore, Palestine firstly enjoys the non member state position's of the organization on the level of participation and representation, and secondly retain the privileges obtained by the Palestine Liberation Organization for the duration of presence in the UNs, and as Palestine combines the two traits: statehood; at least for and by dealing with the UNs and secondly as a national liberation organization as it struggles to gain independency and to keep its content of rights qualities, the UNs facilitates to achieve the principles and objectives they established in particular to the right of peoples to self-determination and the establishment of peace and security in the international arena²⁰⁶.

²⁰⁴In this resolution, UNs recognized the declaration of the independence of the State of Palestine of 1988, and replaced the the naming from PLO to Palestine

²⁰⁵The observer status that granted to the PLO by the United Nations through the resolution No.3237(D-29) of 1974

²⁰⁶Dr. Issa Hanna, A titled article "What is the legal status of Palestine in the United Nations." <http://www.samanews.com/ar/index.php?act=post&id=96069> (November2,2015)

The recognition of the Palestinian state maintains the impact of the rights of the Palestinians. And as the Palestinian state became the legitimate representative after PLO, which means that, all the rights of the people of Palestine that were adopted by the UNs in accordance with the decisions made at the time of the PLO have moved to the state of Palestine, which has the full right to claim the international community to the realization and implementation of these decisions, including decisions related to the permanent sovereignty over resources, wealth and decisions concerning the inalienable rights of return and self-determination.²⁰⁷

The international community's recognition, represented by the UNs, for the right of the Palestinian people to self-determination is an international position cemented in several decisions, including the UNGA resolutions²⁰⁸, which confirmed on the Palestinians' right to self-determination is inalienable right and, the Palestinians have the right to establish their independent and sovereign state. Moreover, the International Court of Justice acknowledged- in its advisory opinion issued in 2004 on the construction of the separation wall in the Occupied Palestinian Territory- the illegality of undermining the Palestinians' right to self-determination and, consolidates the recognition of the state of Palestine and the support for its accession to the UN for the ineligibility of the Israeli occupation authority in any part of the occupied lands and, this is consistent with the Security Council resolution 242, which affirmed the non-eligibility of the acquisition of the territory by force.

The year of 2012 was a turning point for the Palestinian cause, Palestine was subjected to get the Non-Member Observer State, this had a number of the legal

²⁰⁷ Nasser Al Rayes, "Recognizing Palestinian state at the United Nations body", http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=587:2012-07-14-13-35-31&catid=86:2012-05-09-07-29-49&Itemid=201 (January 5, 2016)

²⁰⁸ The following decisions (3236) and (2649) and (65/455)

consequences at the international law level, including the change of the legal status of the Palestinian State, which brings an end to the Israeli allegations that the Palestinian land is disputed land and a new confirmation of the previous UNs resolutions that explains the Palestinian land as occupied lands, including Jerusalem and, these lands are under the Israeli occupation and must be liberated to enable its people to exercise their right of self-determination.

This recognition confirms the fact that the state of Palestine is under the Israeli forces occupation and this does not reduce the responsibilities of the Israeli Occupation power towards the occupied Palestinian territory. Sovereignty; and under the laws of war isn't transferred to the occupation authority, as the occupation in its essence is temporary and, since the Article 42 of the Hague Convention of 1907 regarding the customs of war on land, stipulates that "the territory is considered occupied when the state is under the de facto authority of the occupation army. On the other hand, the essence of the judicial responsibility is that, it imposes an obligation on each law party if it commits an illegal act, it is responsible to remove these acts and to return the situation to what it would have been like if it didn't commit that illegal act.

This underlines the fact that the Palestinian territories are under the occupation and confirms the continuing validity of the four Geneva Conventions on the state of Palestine and, especially the Fourth Geneva Convention of 1949 related to the protection of civilian persons in time of war²⁰⁹. Article 2; the common article between the four Conventions, states that "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared

²⁰⁹ Abdul-Hakim Sulaiman Al-wadi, "status of the state of Palestine at the United Nations in the light of the provisions of international law", Rachel Corrie, the Palestinian Center for Human Rights and follow-up of international justice/ legal research, <http://rachelcenter.ps/news.php?action=view&id=8284> (January 26, 2016)

war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of themThe 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".²¹⁰

The Israeli government's attitude towards the Palestinian National Authority(PNA) declaration on stepping forward to the UNs to get the status of the state, proceeded to obstruct the Palestinian move. Moreover; Israel asked the US Congress to stop providing any sort of aids to PNA in case it decided to go to the UNs. The US Congress has agreed, and its decision didn't include the cessation of aid only but, extended to include a halt to all US financial contribution to the international institutions that recognizes Palestine as a state.

President Barack Obama's administration joined the efforts to prevent the Palestinians from going to the international institution, by aborting the Palestinian request using the veto in the Security Council to reject the membership of the state of Palestine at the UNs to be accepted in 2011, And then put its pressure on the various states to refuse the recognition of the Palestinian state. However, the vote's result was in favor of the Palestinians, where Israel found itself in political defeat, and in a beginning of an international intervention that will push towards the pressure and sanctions against the Israeli Occupation government to reach for a solution according to the Palestinian vision without taking into account the political, legal and security Israeli demands, and a beginning of a losing war with the PNA to enter the rest of the

²¹⁰ Application of the Convention, <https://ihl-databases.icrc.org/ihl/WebART/365-570005?OpenDocument>

international institutions, especially the ICC, which Israel considers the accession of the Palestinians to a threat to the political leadership²¹¹.

Another consequence for the membership of Palestine in the GA is the decline in the case of deterrence, which is one of the most important elements of Israeli security in the face of the Palestinians and the Arabs. The Israeli occupation government considers the Palestinian movements to the international institutions as signs that could outbreak the popular uprising against it, hence, the Israeli occupation force cannot use the military means in the face of the Palestinians, due to the presence of the international institutions, in particular, the International Criminal Court²¹².

Hereby, the recognition of the State of Palestine, consistent in line with the essence of the UNs relevant resolutions, includes resolution 242 and 338. The Israeli occupation government has undermined these references and foundations through unilateral steps, including the illegal construction of the settlements on the occupied Palestinian territories, especially in East Jerusalem. In contrast, the international community considers the Israeli aggressive unilateral policies illegitimate. Yet; it does not recognize the changes resulted on the ground. The past forty-four years has made it clear to the Palestinians that the Israeli occupation policies and practices on the ground are just targeting the de facto annexation of their lands.

²¹¹Limor Yehuda, Human Rights in the Occupied Territories: the possible Implications of the Palestinian state recognition. The website of the Association for Civil Rights in Israel, www.acri.org.il

²¹²Shlomo Brom and Anat Quars, the Israeli annual strategic assessment, translated by Alian Alhindi, National Security Research Center of Tel Aviv University, p. 49, published by the National Liberation Movement-Palestinian Media Commission 2011. For more details on Israeli responses, for more details follow: <http://www.shuun.ps/page-127-ar.html>

2.3.3. Palestine in the ICC after the 2012

The subject of Palestine's accession to the ICC took special trend after the global recognition of Palestine as Non-Member Observer State at the UNs, and become a significant topic in light of the ongoing violations practiced by the Israeli occupation authority of committing war crimes and crimes against humanity.

The UNGA's vote of 29 November 2012 to raise the level of representation of Palestine in the UNs to the status of a Non Member Observer State considered being more than enough for the ICC Prosecutor to accept the declaration filed by Palestine in 2009, as a right and a sufficient declaration to the ICC to take a decision on the Palestinian issue.

When the UNGA has stepped up the development on Palestine's status into a Non-Member Observer State through the adoption of resolution 67/19, the Prosecutor Office of the ICC examined the legal implications of this development and concluded that "the change of the status of Palestine did not result in a retroactive effect that leads to validate and accept the declaration submitted in 2009²¹³, which was deposited without the necessary enjoyment, and Palestine can accept the jurisdiction of the Court through a new declaration starts from 29 November 2012 and onwards²¹⁴.

President Mahmoud Abbas received a letter signed by the President of the Swiss Confederation, informing him, that he was depositing the instrument of accession of the State of Palestine to the four Geneva Conventions of 1949 and the

²¹³General Prosecutor's Office, the jurisdiction of the International Criminal Court on Palestine "

²¹⁴Article by lawyer Florence Darck –leightn, titled consequences of Palestine's accession to the Rome Statute, <http://www.alhadath.ps/article.php?id=19260e7y26370279Y19260e7> (February2,2016)

Protocol of 1977 from the second day of April 2014 as a matter of commitment to the articles 61, 62, 141 and 157 of the four Geneva Conventions. This instrument announced the acceptance of the State of Palestine as a party of the four Geneva Conventions and its Protocols.

In addition to the UN secretary-General's statement²¹⁵; "The entry into force of the State of Palestine to the international treaties in May and July 2014".²¹⁶

Riyad al-Maliki; the Palestinian foreign minister said that:

"This acceptance activates the second and third articles of the four Geneva Conventions, and he pointed out that the applicability of the four Geneva Conventions on the state of Palestine will continue by the rule of law and by virtue of being a High Contracting Party to the provisions of these conventions, which have been immediately entry into force because; the State of Palestine falls under an entire occupation."²¹⁷ He also said that "The acceptance of the state of Palestine as a party to all of these conventions, is one of the main tools for using the international law to access to the legitimate rights of the Palestinian people".²¹⁸

Accordingly, Palestine sought back to the ICC and deposited a statement in 1 January 2015 under the Article 12 (3) of the Rome Statute, which accepted the

²¹⁵ Ban Ki-moon statement.

²¹⁶In addition to the four Geneva Conventions and the First Protocol Palestine joined other international conventions: the Hague Convention respecting the Laws and Customs of War on Land and the Regulations Respecting the Laws and Customs of War on Land. The International Convention for the Suppression of the Crime of Apartheid. International Convention on the Elimination of All Forms of Racial Discrimination. Convention on the Prevention of the Crime of Genocide. The International Covenant on Civil and Political Rights. International Covenant on Economic, Social and Cultural Rights. The Convention against Torture. The Convention on the Elimination of All Forms of Discrimination against Women. The Convention on the Rights of the Child. The Convention on the Rights of special needs Persons. United Nations Convention Against Corruption. Vienna Convention on the Law of Treaties. Vienna Convention on Diplomatic Relations. Vienna Convention on Consular Relations.

²¹⁷The signing of the agreements, or not thereof does not fall the responsibilities of Israel as an occupying power, since it can not evade its authority as an occupying power, pointing out that these agreements entail responsibilities and duties in order to strengthen human rights in Palestine."Shawan Jabarin, Al-Haq organization, article titled *Palestine's accession to international conventions* <http://www.karamapress.com/arabic/?Action=ShowNews&ID=73771>

²¹⁸Palestine is a party to the Geneva Conventions, <http://www.pal24.net/content/print/26656> (December27,2015)

jurisdiction of the ICC on the crimes that committed "in the occupied Palestinian territories, including East Jerusalem since 13 June 2014, and on the second day of January 2015, Palestine deposited the instrument of its accession to the Rome Statute to the Secretary-general, and based on the summary of the practice of the secretary-general as depositary of multilateral treaties,"the Secretary-General, in discharging his functions as a depositary of a convention with an 'all States' clause, will follow the practice of the Assembly in implementing such a clause..."²¹⁹, means the secretary-general is seeking to petition the General Assembly practices that are unambiguous, and indicate that it consider the entity as a state.

Hence and according to these practices, especially the general assembly resolution of 67/19, by the Secretary-general in 6 January 2015, acting in his capacity as depositary, accepted Palestine's accession to the Rome Statute, and the state of Palestine became the member number 123 in the ICC. The head of the assembly of states parties welcomed Palestine as a state party to the Rome Statute. On 7 January 2015, the Registrar of the Court informed President Abbas the acceptance of the declaration deposited by the Government of Palestine under Article 12 (3) on 1 January 2015, and that the declaration was sent to the ICC Prosecutor for consideration.

The office of the ICC Prosecutor sees that in view of the GA granting Palestine the Non-Member Observer State status in the UNs, means it should be considered as "state"for the purposes of accession to the Rome Statute²²⁰(according to the formulation of "all nations"). In addition, the term "State" that used in Article 12 (3) of the Rome Statute should interpret in the same way that it used the term "State"

²¹⁹ https://treaties.un.org/doc/source/publications/practice/summary_english.pdf

²²⁰ General Prosecutor's Office, the Prosecutor of the International Criminal Court, Fatou Bensouda, open a preliminary study of the situation in Palestine, 16 Jan, 2015

in Article 12 (1). Thus, the state, which may join the Rome Statute, may also deposit correctly declaration under the Article 12 (3).

16 January 2015, after receiving a referral or a true statement filed pursuant to Article 12 (3) of the Statute, the Prosecutor of the ICC , Fatou Bensouda, announced the opening of a preliminary study of the state of Palestine in accordance with section (25/1/c) from the list of Prosecutor's Office and the requirements of policies and practices. This preliminary study is based on the government's announcement of Palestine, which accepted the Court's jurisdiction by which to identify the perpetrators of crimes falling within the occupied Palestinian territory, including East Jerusalem, and their partners in crime, for trial and prosecution, since 13June, 2014".²²¹

With reference to Article 126 of the Statute of the ICC and, with respect to the accession's document, the Statute of the ICC shall enter into force on the Palestinian land on the first day of the month that following the sixtieth day from the date of depositing the accession's instrument of the State of Palestine to the Secretary-General of the UNs. Therefore, the deposit of the accession to the general secretary was in 2 January 2015. hence; 1 April 2015 is the date of entry into force of the Rome Statute.

The ICC exercises its jurisdiction over the international crimes within the objective jurisdiction of the ICC in three cases; either by referring the complaint from a State party, or through the decision of the Security Council under Chapter VII of the Charter of the UNs, or by the Prosecutor of her own, as previously explained in this regard. Accordingly, in all cases, the opening of the preliminary study that was announced by the Prosecutor of the ICC on her own initiative based on information of

²²¹ Essam, Abdeen, "A perusal of the announcement of the ICC prosecutor for opening a survey of the situation in Palestine", Al-Haq Organization, (12 Oct,2015)
http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=712:2015-01-18-07-25-51&catid=86:2012-05-09-07-29-49&Itemid=201

crimes are committed in Palestine, this does not prevent the State of Palestine to refer complaints to the ICC prosecutor of international crimes within the jurisdiction of the ICC in accordance with Article (14) of the Statute after its entry into force on 1 April, 2015.²²²

Later and on the following preliminary study that was announced by the Prosecutor of the ICC; and if the prosecutor concludes that there is a reasonable basis to proceed in a "formal investigation" based on information upon its examination, analysis and evaluation, the prosecutor should apply to the judges of Pre-Trial Chamber of the ICC to request a permission to initiate a formal investigation, and if the Pre-Trial Chamber and after the examination of the request and the supporting items of it they find that there is a reasonable basis to initiate the formal investigation; they authorize the prosecutor to begin the procedures and without prejudice to the decisions of the ICC judges with regard to the jurisdiction and admissibility. But if the Pre-Trial Chamber refused to grant permission to the prosecutor to conduct an official investigation, this refusal does not preclude the Prosecutor to present a subsequent request for permission to conduct an official investigation based on new facts and evidences they already have or might be available in the future, according to the Statute of the ICC.

In the case, if the Prosecutor have been granted a permission to investigate, and the official investigation has become underway, the Prosecutor must notify all States Parties to the Statute of the ICC that an official investigation is ongoing, for the purposes of international cooperation and judicial assistance in pursuing these crimes within the jurisdiction of the ICC, and must also notify the relevant state that an official investigation is underway in light of the available information and, once the

²²² Ibid

Prosecutor notifies the relevant state ,the State and within one month shall announce that it is conducting a criminal investigation on those crimes at the domestic level.²²³

Therefore and as usual, the Israeli occupation authorities began to announce that they are investigating on the recent military offensive in the Gaza Strip but in fact, they were just trying to prohibit the Prosecutor and the ICC to move forward and, on the grounds that the International Criminal Court's jurisdiction is a complementary to the jurisdiction of the internal judicial system of states according to the Statute of the ICC, and not a substitute of it, in a sense that if the Concerned State conducts a serious investigation of those crimes, the Prosecutor shall surrender the ongoing official investigation for the benefit of the investigations conducted by the Concerned State in this regard, but on the other hand, if the Concerned State has not undertaken investigations within a one-month, the Prosecutor will continue the ongoing investigation, and so if the Concerned State is "unable or unwilling" to conduct the investigation and the prosecution of such offenses, the Prosecutor will need again to get permission from the Pre-Trial Chamber of the ICC to continue the formal investigation.

Here, The internal investigations that were announced by the Israeli occupation authorities against the backdrop of the recent military offensive in the Gaza Strip appear - like other investigations - sham and non-serious, which means in this situation, the Prosecutor will return again to the Pre-Trial Chamber of the ICC to get permission to resume formal investigation into the serious international crimes under the International Criminal Court's jurisdiction²²⁴.

²²³Essam, Abdeen,"A perusal of the announcement of the ICC prosecutor for opening a survey of the situation in Palestine", Al-Haq Organization, (12 Oct,2015)
http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=712:2015-01-18-07-25-51&catid=86:2012-05-09-07-29-49&Itemid=201

²²⁴For more about the results of the occupation authorities investigation and its results that was contained in the Goldstone report which had been previously mentioned in this paper.

The official spokesman of the Palestinian Supreme National Committee to follow up with the ICC, Ghazi Hamad pointed out in his statement about the proclamations and supplementary notes that provided by Palestine:

"Through the legal follow-up group and with the cooperation with the international legal team, Palestine provided the Prosecutor a complaint includes all issues which the Palestinians want to be considered by the Prosecutor during the preliminary study, it focused on three core issues: the Israeli settlement system and the Israeli aggression especially in the Gaza Strip and the Palestinian prisoners".²²⁵

Subsequent to that supplementary note was submitted to the prosecutor on 3 August, 2015 after the crime of burning the (Dawabsheh) family²²⁶, a crime of arson and violence and crimes of the Israeli settlers, and the Israeli legal system, which serves protective cover to the Israeli perpetrators of crimes against the Palestinians, especially by the settlers. as the State of Palestine in 30 October, 2015 provided a second supplementary note with regard to the latest developments on the ground, of the field executions and, collective punishment against Palestinian civilians, and to put these crimes under the responsibility of the Israeli political and military leadership and, for the perpetration of these crimes and the responsibility of the Israeli Occupation courts of providing immunity to the perpetrators of crimes, and to highlight these crimes as a public policy and crimes in a systematic and wide-ranging.

²²⁵ A meeting on the latest developments concerning the International Criminal Court in respect of the Palestinian affairs, <http://www.alwatanvoice.com/arabic/news/2015/12/13/831546.html>

²²⁶ For more details see: <http://english.pnn.ps/2016/01/03/israeli-arsonists-of-the-dawabsheh-family-indicted/> and more at: <http://www.aljazeera.com/news/2015/08/palestine-lodge-icc-complaint-baby-death-israel-hague-arson-settlers-150801030303160.html>

The state of Palestine determined the temporal jurisdiction of the ICC retroactively to 13 June 2014 therefore, the court's investigation does not include any crimes committed by the Israeli's occupation forces before that date back until the entry into force of the Rome Statute in July 2002²²⁷, but it must be seen as a starting point and not a specific deadline for the temporal jurisdiction of the ICC as many of the crimes were committed by the Israeli occupation forces before that date are still subject to the jurisdiction of the ICC, as an ongoing crimes, including settlements, the apartheid wall, the Judaization of Jerusalem and the siege imposed on all the Palestinian territories especially Gaza strip. The Israeli's settlements were created in the seventies, are still existing to this day, they were crimes and remains so, these ongoing crimes considered verdict in the temporal and objective jurisdiction of the ICC according to the declaration of the state of Palestine²²⁸.

Moreover, the identification of the temporal jurisdiction of the ICC in June 2014 has an important significance, as it is the same time period when an investigation is being done by the UN investigation's Committee set up by the Human Rights Council in its private session, which was held in Geneva in July 2014 during the aggression on Gaza and, into the crimes committed by the Israeli occupation forces and it's settlers. Means that the Commission's report is an important additional material that is available to the Prosecutor to move the criminal case, especially as the outcome of the investigation will be conducted by the independent and professional team that enjoys the international legitimacy.

And thus; the State of Palestine and according to Article 14 of the Statute of the ICC has the right to transmit complaints to the prosecutor to investigate the

²²⁷from July 2002 to 13 June 2014

²²⁸Issam Younis, Director of Al Mezan Center for Human Rights in Palestine, A titled article "Constituent notes about joining the ICC", <http://paltoday.ps/ar/post/> (January 15, 2016)

international crimes within its jurisdiction committed on Palestinian land since 13 June, 2014, and in particular the war crimes and crimes against humanity including Israeli settlements,²²⁹ deportation and forcible transfer, as an ongoing crimes through the continuation of its criminal activity. And according to the Rome Statute the State of Palestine reserves its right to deposit a new declaration in the future for accepting the jurisdiction of the ICC from 1 July 2002, which is the date of the Rome Statute into force.

It is important here to note that the Israeli Occupation's position on the ICC, and as Israel signed on the Statute of the ICC on the same day with the United States on 31 Dec 2000, and by extension to the American attitude, Israel informed the Secretariat of the UNs on 28 Aug 2002, it does not intend to ratify the Statute of the ICC and they are liberated from any liabilities that may arise from its signature of the Statute of the ICC, Israel has justified its position of non-ratifying the Statute of the ICC for the reasons of:

- a) The possibilities that the ICC could be an instrument within the hands of the Arabs to accuse Israel on crimes that fall within the jurisdiction of the ICC and this may chase them as war criminals.
- b) The broad powers to the court's prosecutor.
- c) The geographical distribution will deprive Israel from the nomination process of having a judge within the ICC.

Although, the non-ratification of the Statute of the ICC remained concerned about the possibility of the prosecution of their settlers, officers, soldiers and leaders

²²⁹its beneficial here to check the Report of the international independent fact-finding mission In order to investigate the effects of the construction of Israeli settlements issued on February 7, 2013

by the ICC . For this, Isrel has formed a special crew to provide judicial advice on how to face the prospect of being prosecuted in the future. Experts of Foreign and Justice Ministries drafted their perceptions to face those future possibilities as follows:

- 1) The confirmation on the non-ratification of the Rome Statute.
- 2) Strengthen the collaboration with the United States to ravel the court's objectives for that regards.
- 3) Resorting simulated trials for its soldiers , officers and leaders who commits violated actions in which they fall under the jurisdiction of the ICC so that could defeat any chance of presenting them at the ICC.
- 4) Maintain strong communication with the Israel Human Right Organization's to change the facts of the Israeli violations against the Palestinian that will present them to the International Organizations.

The International humanitarian law has become a part of the Public International law. Therefore, talking about the Israeli Occupation violations under the international humanitarian law is at the same time a violation of the principles of the international law and its provisions and as long as it comes to Palestine, it's therefore the situation of the Israeli occupation which grew by force and through the armed actions, in contravention with the principles of the international law which do not permit the acquisition of a territory by war²³⁰and, the mandatory rules of the international humanitarian law has been agreed as a peremptory in accordance with the definition contained in Article 53 of the Vienna Convention on international

²³⁰Security Council Resolution 242, issued on November 1967

treaties, as a rule may not be violated or modified unless by issuing new regulations have the same character. It should also take into account the importance of requiring all states, without regard to the accession or reservation to certain terms of this agreement or that, as the principles of the international custom is one of the sources of the international humanitarian law²³¹.

Israel, as an Occupying power on the Palestinian territories and under the rules of the international responsibility, is responsible on both sections of the responsibilities (civil and criminal). The civil responsibility includes the compensation for all damages resulting from the continued occupation as well as the ending of this occupation, while the criminal responsibilities include the prosecutions of persons who are members of the armed forces, settlers and responsible for war crimes and crimes against humanity.

The rule of the international responsibility of the Israeli Occupation power is that they are not adhering to the partition resolution of (181), issued by the UNGA on 29 Nov1947, and upon which to declare its independence on 15 May1948, while it is already null and void for the Palestinian's right. The issuance of that comes from a party that does not have the right of sovereignty over Palestine, which is the UNs and, the obvious contradiction with the provisions of its Charter, which prohibit the threat or use of force against the territory integrity or political independence of any state. It remains an essential basis of the decision to approve the international responsibility of Israeli occupation.

There is no doubt that the claims and justifications of the Israeli Occupation authorities on constant occupation against the Palestinian people and their property is a justification for inconsistent and contrary to the provisions of the UN Charter and its

²³¹Issam Younis, Director of Al Mezan Center for Human Rights in Palestine, A titled article "Constituent notes about joining the ICC", <http://paltoday.ps/ar/post/> (January15,2016)

principles. In is this sense, Israel as a party to the Charter has violated the principles and purposes of calling for a ban on use of force in contravention of the provisions of the Charter of the UNs, which is undoubtedly what applies to the aggression against the Palestinian territories and which have no goal but to devote the hegemony over the Palestinian territories, as well as to prevent Palestinians from exercising their right to self-determination.

Based on the Fourth Hague Convention of 1907, the land of a state is occupied when it is actually placed under the authority of the hostile army. The West Bank and Gaza Strip are under the authority of the Israeli Occupation forces in full control of its borders. The second article of the four Geneva Conventions states the applicability of the convention to all cases of partial or total occupation, even if the occupation meets with no armed resistance or if the dispute state was not a party of the conventions. Therefore, Jerusalem and all the cities of the West Bank and the Gaza Strip fall under full Israeli occupation and this Confirms the applicability of the four Geneva conventions especially the fourth one, even if Palestine was not a state party.

The Fourth Hague Convention respecting the Laws and Customs of War and, the Fourth Geneva Convention on the protection of civilians in time of war and, all international covenants like the First Additional protocol of the Geneva Convention and the International Covenants on Civil and Political Rights, as well as the economic, social and cultural rights; are obliged by "Israel" as the existing occupying power, and it shall apply the rules of international responsibility for war crimes and crimes against humanity against the Palestinian people since 1948, the individual criminal responsibility that was established by Article (227) of the Treaty of Versailles in 1919, and became as a principle of international law through the

tribunals of Nuremberg and Tokyo, and applied in practice against the Germans and Japanese war criminals, that become a Judicial precedents for the same crimes that are based upon to condemn the Israeli occupation of the internationally wrongful continued against the Palestinian people, which requires the prosecution of leaders and officials for their responsibilities of the individual crimes that they practice, as well as the international civil Liability for Israel of compensation for all damages resulting from acts of occupation. The preamble of the Hague Convention IV respecting the Laws and Customs of War on Land also states "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces".²³²

There are three main obligations ensue as a result of the occupation of civil liability for war crimes and crimes against humanity which violates the international law, and the consequences of this violation causes harm to others²³³. These commitments are centered on a cease unlawful act and contrary to international law, restitution compensation and financial compensation.

- a) A cease of unlawful acts: the continued Israeli occupation of the Palestinian land is the most serious illegal act committed by the occupation authorities against the Palestinian people. Thus, the most important obligation of the occupation authorities is to end the occupation and to withdraw from the occupied territories in accordance with the international legitimacy of resolutions 242 and 338, but there are several immediate obligations rest with

²³²Article 3 of the preamble of the Hague Convention IV, p.14

²³³Dar'awi, Dauod, a report on war crimes and crimes against humanity (Israel's international responsibility for crimes during the Al-Aqsa Intifada), the Independent Commission for Citizens' Legal Rights, reports No. 24, Ramallah, Palestine, August 2001.

the Israeli occupation authorities, the most important, to stop the siege and stop the manifestations of violence from soldiers and settlers and to stop the murders and the bombing of civilians, civilian objects, arbitrary arrests, torture and cruel treatment, etc...

- b) Restitution compensation: the international person who commits unlawful act inflicted damage on other party shall remove all the manifestations of this damage. The Israeli occupation has a basic commitment, as well as to end the occupation, is to remove all the manifestations of this occupation, especially military checkpoints and the presence of the tanks and the occupation of buildings and schools. Also to compensate for any injury or damage they cause.
- c) Financial compensation: the occupation authorities must compensate the victims of its illegal actions, such as compensation for killings and executions, and the bombing of buildings and facilities.

The Israeli Occupation power, targets the geographical, demographical and institutional situation of all the Palestinian territories, especially the city of Jerusalem in order to Judaize the city, and through the issuance of laws and regulations that help the Israeli Occupation power to tighten its grip on the city of Jerusalem since the first day of the occupation, the UNGA and the Security Council focused on the Israeli dangerous practices and grave breaches of the principles of the international law and the international humanitarian law, the Security Council and General Assembly took resolutions that rejects and denounces and condemns the Israeli Occupation measures in the city, ranging from the military parade, which erected by the Occupying power

in the city in 1968²³⁴, then the Israeli government's decision to impose the basic Law on Jerusalem and to be annexed to Israel as its capital, the geographic, demographic changes and the establishment of settlements around the city to be isolated from its Palestinian surroundings.²³⁵

Most of these decisions confirmed the invalidity of the Israeli Occupation actions in the holy city and the applicability of the provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in time of War of 1949 on Palestinian land occupied by the Israeli Occupation forces, including Jerusalem. And based on the above, all these measures and actions in the occupied Palestinian territories since 1967 have no legal basis and therefore, they are null and void in accordance with the international instruments and decisions for two reasons:²³⁶

- First: these actions have been issued by an occupying force and the military occupation is a temporary situation, which does not hold any right to it. Hence; all arising from falsehood is a false verdict.
- Second: the Israeli Occupation measures in the occupied Palestinian territories are inconsistent with the provisions of the Fourth Geneva Convention, which applies to the Palestinian territories as an occupied territory, but rather constitutes grave breaches of the provisions and principles as they constitute grave violations of the provisions and principles of the international humanitarian law, which its seriousness reaches to the level of war crimes according to the fourth Geneva Convention, but rather to the level of crimes against humanity, according to the resolutions of the UNs Commission on

²³⁴Security Council resolution No. 250 issued on April 1968

²³⁵ Dar'awi, Dauod, a report on war crimes and crimes against humanity (Israel's international responsibility for crimes during the Al-Aqsa Intifada), the Independent Commission for Citizens' Legal Rights, reports No. 24, Ramallah, Palestine, August 2001.

²³⁶ Ibid

human rights since 1968, and reports of special rapporteurs of the UNs, over the last twenty years since 1993.

Under the international humanitarian law and its provisions, what was done by the Israeli Occupation governments since its occupation, starting with the decision to annex Jerusalem issued by the Basic Law, and Jerusalem as the capital of the Occupying power state, and changing the geographic, demographic and institutional landmarks, seizure and destruction of Palestinian homes, and the incursion in the excavations under Al-Aqsa Mosque and causing dislocations and cracks, surrounding the city of Jerusalem with Israeli colonies, and the imposition of restrictions on Palestinian acts building in the city, and all restrictions methods such as imposing prohibitive taxes , and to prevent the people of Jerusalem from returning to their city when they go abroad and isolate the city from its Palestinian surroundings, and all actions that target Al-Aqsa mosque from the incursions and attacks, and make it a hotbed of Israeli settlers a prelude to divide it.²³⁷

These are void occupational actions according to the principles of public international law and the provisions of international humanitarian law and the decisions of the international bodies and institutions mentioned. The Occupying power is committing these acts and crimes where people will reach to the point of despair, of life and to search for ways of migration out of it in accordance with the aspirations and intentions towards the Palestinian cities, which focused on the

²³⁷ Dar'awi, Dauod, a report on war crimes and crimes against humanity (Israel's international responsibility for crimes during the Al-Aqsa Intifada), the Independent Commission for Citizens' Legal Rights, reports No. 24, Ramallah, Palestine, August 2001.

displacement of the largest possible number of Palestinian residents to facilitate its control and swallowed by including the largest area of Palestinian land with the least number of the Palestinian population, to maintain a Jewish majority in it.²³⁸

²³⁸ Dar'awi, Dauod, a report on war crimes and crimes against humanity (Israel's international responsibility for crimes during the Al-Aqsa Intifada), the Independent Commission for Citizens' Legal Rights, reports No. 24, Ramallah, Palestine, August 2001.

3. Chapter Three: Israel's Settlements in The Occupied Palestinian Territories

Settlement activity with its colonial and expansionary motives is one of the most substantial intellectual and ideological components of the Zionist movement since its inception and elaboration. Thus, the World Zionist Organization adopted the settlement activity as a priority policy of its approaches, internal and external actions, and in its international relations to achieve its goals and objectives for the "establishment of a homeland for the Jews" on the historical land of Palestine, by repatriating Jews to Palestine, seizing the Palestinian lands and establishing Jewish settlements on them.²³⁹ Considering that the settlement activity means: taking a homeland for oneself by eliminating the homeland of others, along with the entry of a new foreign element in order to seize a part of the land or the whole of it, as it is happening in Palestine. For Palestinians, the settlement activity embodies spread evil and numerous types of serious threats, on top of which is the political future of settlements. As for the Zionist movement and Israel, the settlement activity was and still is the way to achieve the political goal of controlling Palestine and establishing the Jewish state instead of the Palestinian entity.

"Zionism" is the name of a political movement that emerged in the late of 19th century among the Jews of Europe and evolved from an abstract idea to an integrated project of settlement activity in Palestine, which is aimed at establishing a political entity for the Jews there.²⁴⁰ Nowadays, Zionism became a description for a political movement calling for the displacement of the world's Jews to Palestine, and their

²³⁹ Lua'y Abdo, documentary study titled: The Peace and the state to face the settlement, <https://pulpit.alwatanvoice.com/articles/2006/05/24/46472.html> (November 10, 2016).

²⁴⁰ Ibid.

resettlement there, based on the claim that they have a historical land rights there, and therefore the right of establishment of a Jewish political entity. The Zionist claim that a "Jewish nation" existed was a total heresy because when it just launched it lacked the most important elements of a national movement which are one nation (united people) and specific land (with specific borders). The only thing that linked all the Jews around the world was their religious belief with a multiple "doctrines". Taking a completely opposite path for the establishment of a nation state, Zionism has started from the "Declaration of Sovereignty", then started looking for "the people" giving them the status of a "nation", and then for a patch of land to gather the people and the sovereignty. Thereby, this idea was far from the people and the land, did not express aspirations of that "people" and did not embody their will based on the self-consciousness and desire to have their own unit with privacy and defined territory with sovereignty, like all the other people. It was normal that a movement of this type claimed a national association between the religious communities scattered all over the world and a historic right on the land which is full with its people, along with making allegations purposely and distorting history and historical geography during political discourses²⁴¹.

The World Zionist Organization based on its Zionistic implied and stated goals has started the implementation of its settlement policy through many different forms. This policy was performed under false historical justifications which deform the objectivity facts. It was also performed under false interpretations of religion and Tora, meanwhile the core truth was the dimensions of an expansionary colonial policy. If the premise of the Zionist idea was to establish a Jewish political entity

²⁴¹ Lua'y Abdo, documentary study titled: The Peace and the state to face the settlement, <https://pulpit.alwatanvoice.com/articles/2006/05/24/46472.html> (November 10,2016)

through immigration and settlement activity, the practical embodiment of the Zionist project demonstrates the stages of its construction and the activity of institutions aimed at expanding the settlements and seizing Palestinian land. Thus, all the Zionist intellectual and political movements agreed on the need to settle in the Palestinian territories, particularly since the state of Israel itself is the product of a global settlement project and at the same time a product of an international colonial project, supported at the beginning by the British occupation through the policy of fulfilling the Balfour Declaration in 1917 until the partition resolution, which limits were over crossed by the Zionist gangs who announced the creation of Israel several months after the adoption of the international resolution on 15May1948 through the "People's Council"²⁴², based on the international legitimacy presented in the Partition Resolution No.181 adopted by the United Nations General Assembly²⁴³.

Before announcing the establishment of so called Israel State and till 1967, the Israeli occupation forces managed to seize Palestinian land and bring in Jewish immigrants until Zionist efforts backed by the colonial powers achieved success when the creation of Israel was announced in 1948 on 77% of historic Palestinian territories. Israel managed to dismiss most of the Palestinian population after it committed numerous massacres and destroyed Palestinian villages and towns, turning Palestinians into homeless refugees in neighboring Arab countries, living in miserable camps²⁴⁴. In return, Israel opened the doors for Jewish immigrants which led to the arrival of a huge amount of Jews from all over the world.

²⁴² It is a name of "The Jewish People's Council".

²⁴³ Political and security dimensions of the settlement of Israeli in Jerusalem in light of the international law/ *Al-Azhar University magazine*, Humanities Series 2010, volume 12, No 1, 905-940

²⁴⁴ Ibid

After the June War in 1967 a fundamental change happened in the project of Zionist settlements according to which Israel occupied the West Bank, Arab Jerusalem (East) and the Gaza Strip, and thus all the Palestinian territories were under Israeli occupation. This became a new opportunity for Israel to follow its Zionist's plans to Judaize Palestine. These plans still exist to this day because Israel has control over the entire territory of historic Palestine. Israel also occupied the Syrian Golan Heights and Egypt's Sinai Peninsula. Later on, Israel withdrew from the Sinai Peninsula after signing the settlement agreement between the Governments of Israel and Egypt with the help of the US which mediated the negotiation process that culminated in the Camp David agreements. As for the Golan Heights, the Israeli Knesset adopted a law on the annexation of the Golan Heights to Israel in 1981; the same was done with annexing Jerusalem to Israel under the Law on reunification of Jerusalem and declaring it the eternal capital of Israel. Israel by completing its occupation of Palestinian lands in 1967 demonstrated a refusal to confirm the existence of any Arab country within it. For this reason the Israeli settlement project came out in a new form to expand and take more control over large territories since the occupation and until today, and pave the land for the establishment of settlements on it.²⁴⁵

When using the concept of "settlement" it refers to the resettlement of Jewish Israelis in the areas occupied by Israel in the June War of 1967 and this concept does not only mean resettlement on the West Bank and Gaza Strip, but it is used for the resettlement in Arab Jerusalem and its surroundings, meaning that the construction plans of the Government of Israel in Jerusalem and the areas that were annexed to West Jerusalem fall under the concept of settlement, whether it is classified like this

²⁴⁵ Johnny Mansour, *Israel and the Settlement Project Constant and Changing Policies of Governments, Parties and Public Opinion (1967-2013)*, The Palestinian forum for Israeli studies, Palestine ,2014,13.

by the Israeli left camp or different international sides, such as the United Nations, the European Union and the US administration or others²⁴⁶.

Israel still holds the occupied territories under belligerent occupation. Therefore, the Fourth Geneva Convention and other provisions of international humanitarian law are applicable to these territories. This also includes East Jerusalem, which remains an occupied territory despite Israeli attempts to annex the city to be a part of the Israeli occupying state.

Palestinian territory falls under the scope and concept of the occupied territories for being under the control and management of a hostile foreign forces and occupied using force unlawfully, and this foreign troops succeeded effectively in controlling and managing this territory by setting up a military government playing its role in the governance and management of these lands. Israel continues to colonize the occupied Palestinian territories since 1967 through moving its own civilian Jews to all Palestinian areas in a systematic and organized way, which constitutes a breach and violation of international laws.²⁴⁷

Through the establishment of settlements, Israel is willing to get their hands illegally on all the Palestinian lands and natural resources, by forming long and big Israeli settlements to stop the growth of Palestinian population, which will affect the status of occupied Palestinian territories from physical and demographic sides and prevent their return as they were. At the same time it works to isolate the Palestinian people, in addition to the separation of East Jerusalem from the rest of the occupied Palestinian territories, along with cutting the geographic connection between the

²⁴⁶ Johnny Mansour, *Israel and the Settlement Project Constant and Changing Policies of Governments, Parties and Public Opinion (1967-2013)*, The Palestinian forum for Israeli studies, Palestine, 2014, 13

²⁴⁷ Ibid, 14.

communities and restricting the ability of the Palestinian economy to survive and thrive.²⁴⁸

The Israeli settlements also impose the greatest threat ever to the establishment of an independent Palestinian state. The danger of settlements and their devastating effects do not reflect only the clear violation against the Palestinian region only, but goes beyond to prejudice the geographical unity of the Palestinian territories from the Israeli spacers and constructions created by Israeli occupying forces and settlers between Palestinian cities and communities as well as the clear control of the structure of the Palestinian cities and regulatory plans, and thus Israel is acting through imposing the policy of *fait accompli*, and creating a set of facts that cannot be changed later.²⁴⁹

Israel and since its occupation in 1967, is acting like it owns the sovereignty on the land and began to enact laws and regulations on the annexation of the territory. Israel refuses, since its inception, the demarcation of the borders and moreover; it is the only country in the world that has no constitution and no exact borders which enables it to continue with its territorial expansion to improve its presence in the region.

The idea of Israel's security is based on drawing a new map of Israel that achieves the maximum of security requirements with the least possible number of Palestinians. Therefore, Israel clings to the principle of safe borders and refuses to return to the borders of 1949, demanding a vast amount of amendments to borders

²⁴⁸ Political and security dimensions of the settlement of Israeli in Jerusalem in light of the international law/ *Al-Azhar University magazine*, Humanities Series 2010, volume 12, No 1, 905-940

²⁴⁹ Johnny Mansour, *Israel and the Settlement Project Constant and Changing Policies of Governments, Parties and Public Opinion (1967-2013)*, The Palestinian forum for Israeli studies, Palestine, 2014, 13

²⁴⁹ *Ibid*, 14.

that matches its permanent pursuit of strategic and tangible security but not tactical and limited.²⁵⁰ Leaders of the State of Israel including David Ben-Gurion saw that Jewish immigration to Israel is one of the main pillars of security concepts due to the Zionist movement's strategy; which stressed out that increasing the number of population is a key factor in solving the security problem and helps with the expansion operations. Immigration requires settlements, which are essential and vital pillars of Israel's security. The process of Israeli control can be associated closely with the process of Jewish immigration, as well as with the displacement of inhabitants of the Palestinian land through the depletion of their economic and human potential.²⁵¹

After presenting in the first part of this study the legal status of the Palestinian territories defined and proved by virtue of international law as an occupied country to which Geneva Conventions apply. The second part includes the idea of the establishment of the International Criminal Court to the moment it became an integrated system with its rules and principles that are fixed for years and their competence in Palestine. In this part in particular, the Israeli settlements in Palestinian territories will be combined it based on considering them a war crime as it is set out in international conventions and resolutions in general, and especially in the Statute of the international Criminal Court. This part is of high importance since the settlements form one of the most dangerous occupation practices affecting the fate of Palestinian land and because of this high importance it deserves to be brought up before the international Criminal Court .

²⁵⁰ A titled Article: Israeli security policy, http://www.moqatel.com/openshare/Behoth/Siasia2/isra-south/sec03.doc_cvt.htm (December 15, 2015)

²⁵¹ Ibid

This will be presented in three subtopics separating the legal status of Israeli settlements in the occupied Palestinian territories with the violation of all international laws and legitimacy, as well as the settlement's system and its application and finally the policies adopted and imposed by these settlements.

3.1. Legal status of Israel's Settlements

A settlement is an old phenomenon²⁵² practiced by different nations throughout history. Ancient nations and civilizations lived through different types of settlements and migrations. This phenomenon is mainly based on the existence of places that attract human groups to immigrate and coexist with communities that live in those places, and integrate with them without using violence, or through settlement expansion that took place as a result of attempts of the indigenous people to improve their living conditions and form new lands in order to ease population pressure experienced by the region. However the modern phenomenon of a settlement revealed itself after geographical discoveries, particularly in the sixteenth century, when the world was still living in feudalism and witnessing at the same time the early beginnings of capitalism. This phenomenon was associated with religious persecution suffered by religious minorities in Europe which prompted many European groups, especially the Jews, to immigrate to already discovered and settled areas to build up strange entities in these areas among hostile indigenous population of the existing countries.

²⁵²Political and security dimensions of the settlement of Israeli in Jerusalem in light of the international law, *Al-Azhar University magazine*, Humanities Series 2010, volume 12, No 1, 905-940

The history had known two types of settler colonialism²⁵³:

- Direct settler colonialism, which is aimed at exploitation of a land, and those on it, and it is a type of settler colonialism based on color discrimination – the discrimination on the basis of color and race.
- Settler colonialism, which aims to exploit the land without its inhabitants. This type is based on replacement as the newcomers replace the original population by sending them away or committing genocide against them. This is the type that characterizes the colonial Israeli settlements based on replacement.

Israeli colonial settlements in the Palestinian territories represent a colonial Zionist occupying movement aimed at the replacement of indigenous people with Jewish ethnic group in the occupied area through using different instruments in order to seize the land that plays the role of the main element in this process. The phenomenon of settler colonialism in Palestine in general is characterized by incorporating the religious, biblical and ideological dimensions in order to legitimize the Israeli project, so that the implementation of this settlement activity happens through a comprehensive settlement project.²⁵⁴

The settlements are one of the pillars of the Zionist movement, a racist movement that is based on the ideological views built on two fundamental visions. The first is about controlling the Palestinian territory and seizing it through religious and historical pretexts to implement the Zionist project, displacing at the same time

²⁵³Political and security dimensions of the settlement of Israeli in Jerusalem in light of the international law, *Al-Azhar University magazine*, Humanities Series 2010, volume 12, No 1, 905-940

²⁵⁴Zionist principle that works to achieve this target, It deals with Palestine as the land of the Jewish people who they have right to live in , and realize their religious, political, social, and cultural ambitions.

Palestinians from their land. All forces are used to achieve this target: displace Palestinians and implement the Zionist project aimed essentially at uprooting the Palestinian people from their towns and villages²⁵⁵. The second vision is grounded on immigration and settlements, the migration of the world's Jews to Palestine, their residency there instead of the original Palestinian people and the establishment of the Zionist colonies and settlements.

This is only happening by using the policy of *fait accompli* through the implementation of the project of settlement activity. Zionism with its ideology and practices is based on the settlement activity, and the settlement activity cannot be done as a project unless the Palestinians are evacuated, displaced from their land and deported, followed by imposing a tight closure on the land that was occupied²⁵⁶.

International law limited the right of the occupation to act in the areas under its control in the case of military necessity to conduct and implement confiscation, demolition and sabotage acts and these acts must be allowed only for the occupation forces and they should be specific and limited to meet and cover the needs and requirements of these forces, but the Israeli occupation authorities exploited the provisions and rules of international humanitarian law, using this definition for settlement purposes contrary to the provisions and rules of international humanitarian law.

The ongoing settlement activities that are carried out and implemented under the supervision, support and financial aid of the Israeli occupation government is

²⁵⁵To achieve this goal, Zionism was established through the various intellectual trends and a number of military bands, most notably was the Haganah organization that took over the implementation of a range of military plans, The first plan «Dalit (which became known in the international concept that «ethnic cleansing plan» for the original people of Palestine, uprooted them from their land and replace them with other people

²⁵⁶Ilan Pappé book, *Ethnic Cleansing in Palestine*/ Institute for Palestine Studies, Beirut 2007

clearly contradictory with the content of article 49 of the Fourth Geneva Convention that completely prohibits the occupying country from transferring and settling its civilians in occupied lands. Israeli occupying power is using the right of management of land and property for its advantage and as a pretext for the policy pursued in the occupied Palestinian territories, overwhelming itself from any international condemnation or pressure connected with its settlement activity.

The Israeli occupying power claimed that as long as the West Bank and Gaza Strip were not under the authority of any recognized state before Israel's takeover, they cannot be considered occupied territories; therefore they do not apply to the relevant treaties. Many institutions, nations and scientists on international level refused this position, and even the Occupying power (Israel) Supreme Court itself refused it. It was said that the possibility of applying military occupation laws there, first of all depends on whether the state exercises effective control outside its territory and not on the existence of a previous authority. This kind of dependency translates the provisions in a useless manner, especially that the issue is often disputed as it was in the past and is in the present. Another plea for Israel is that a permanent community "is a relative term, "no more no less." This argument was rejected as well, because, without a doubt, converting an open space to civil society is a radical and far-reaching change. Considering this kind of change as temporary would explain a provision in a way that does not make sense²⁵⁷.

Based on the law of war, the occupation authority is allowed to make changes in the occupied territories under certain circumstances and in a certain way, as long as this is been done for the benefit of the local population or to meet military needs.

²⁵⁷Report of CHRONICLE of the Middle East & North Africa, "Israel's Settlement", <https://chronicle.fanack.com/specials/palestinian-israeli-conflict/jewish-settlements/settlements-and-international-law/international-humanitarian-law/> (February 12,2016)

Israel has already tried to claim that the establishment of settlements was a military need. However, this claim was also not accepted by the international community, because in spite of the possibility of discussing the security costs and the interest of the settlements from the perspective of an Israeli, it is quite clear that this was not the reason behind their creation.

In fact, this was an excuse to try to take advantage from the need of the army as a mask for political and ideological motives and strategy. Article 49 of the Fourth Geneva Convention states that "the occupation authority is not entitled to deport or transfer parts of its own civilian population to the territory occupied by it." It was stated internationally that this article prohibits the establishment of settlements²⁵⁸.

On the contrary, Israel has rejected this allegation and claimed that "the movement of individuals to the lands is completely voluntary" which was refused internationally for two reasons: first, because the goal of the prohibition is to defend the local population from the settlement of strangers in their own land; whether this migration is voluntary or forced it is still misplaced. The Second reason is that the term "voluntary movement" in this case is misleading because the will of the citizens of Israel to go and live in Palestine would not have appeared in the absence of effective state intervention in the construction of settlements. The State of Israel seized the land, began to establish the vast majority of settlements, approved, planned and financed them. Israel also grants its citizens economic incentives to migrate to the settlements and takes responsibility for their security²⁵⁹.

²⁵⁸ International committee of the Red Cross, <https://ihl-databases.icrc.org/ihl/WebART/380-600056> (February 12,2016)

²⁵⁹ Report of CHRONICLE of the Middle East & North Africa, "Israel's Settlement", <https://chronicle.fanack.com/specials/palestinian-israeli-conflict/jewish-settlements/settlements-and-international-law/international-humanitarian-law/> (February 12,2016)

As the human being, the land and the water are considered the key pillars of the existence of nations and the continuation of life and progress, Israel in its aggression against the Palestinian people, targeted those pillars primarily. In 1948 the Palestinian people endured forced displacement led to their uprooting from their land and the resettlement of Jewish immigrants instead. Later on and since the beginning of the Israeli occupation of the West Bank and Gaza Strip in 1967, the subsequent Israeli governments have supported the construction of settlements in the occupied Palestinian territories, and the settlements played a role of a national goal indisputable between the Israeli Labor Party and Likud concerning the principle. The only dispute about the settlements between both was concerning the details and used methods to achieve this goal.

The Settlement processes in the occupied Arab territories became more aggressive and wider after the inauguration of the Likud government in Israel in 1977, when the settlements began to have other motives rather those of security considerations. Moses Dweik, the legal scholar, indicates that "after the settlements were established under the cover of security motives the situation has changed and those motives were mixed with historical and ideological reasons when the right-wing Likud brought up the logo of liberated land of Israel and the right of all Israeli people to settle in every part of it, in order to create a Jewish population preventing any possibility of establishment of a future Palestinian state in those territories²⁶⁰."

The construction of settlements is a violation of international humanitarian law which states the laws and regulations that must be followed in times of war and occupation. This is also a violation of human rights recognized in international law, as

²⁶⁰Musa Dweik, "The Zionist settlement strategy in the Arab occupied territories after 1967", *Arab Future magazine*, No. 216, Beirut, Center for Arab Unity Studies, February 1997, 33.

according to international law - the establishment of settlements in addition to the transfer of the population of the state of occupation to the occupied areas contradict all international principles. Fourth Geneva Conventions of 1949 stated a long list of prohibitions imposed on the occupying power. The essence of the Charter in this case is "the occupier prohibited from the resettlement of his population in the occupied territories"²⁶¹. Since the construction of Israeli settlements affects Palestinian Rights²⁶², a set of international resolutions was issued confirming the denial of any legal status of settlements or annexation and demanding the repeal and dismantling of settlements. Among the rights that are violated is the right of self-determination, the right to equality, the right to property, the right to a decent standard of life and the right to freedom of movement²⁶³.

Since the beginning of the Zionist movement and until this moment the settlement activity did not stop, but on the contrary, it has accelerated with the help of Israeli government's approval of the establishment of dozens of new settlements and the expansion of existing ones in order to impose new facts on the ground. The government is also working on building many bypass roads to ensure the security of the settlements. These roads in addition to swallowing up hundreds of acres of Palestinian lands, which hampered the growth of Palestinian towns and villages, they are seriously damaging several Palestinian families who lost their only source of

²⁶¹Which confirmed in many of the international legitimacy resolutions whether the UN Security Council resolutions or the General Assembly. "

²⁶²The rights that set out in international human rights treaties and its customary law.

²⁶³Security Council Resolution 446 of 1979, which stressed that the settlements and the transfer of the Israeli population of the Palestinian territories is illegal / and Resolution No. 452 of 1979 that requires stopping the settlements even in Jerusalem and not to recognize the annexation of Jerusalem/ Resolution No. 465 of 1980, which called for the dismantling of settlements / Resolution No. 478 of 1980. And The General Assembly resolutions, including many resolutions condemning Israeli settlements, including: Resolution No. 2851 of 1977 / Resolution 42/160 of 1987, Resolution No. 44/48 of 1989 / Resolution No. 45/74 of 1990 / Resolution No. 46/47 of 1991 / Resolution No. 46 of 1991

livelihood²⁶⁴. Israeli government deals with the settlements as if they are a part of the so-called State of Israel, it allocates budgets to them and provides them with the tools of protection and defense of all types, as well as providing them with all kinds of social, economic, cultural and other services.

Israel's failure to meet the minimum of democratic and legal standards does not stem from procedural defect, but comes from an ideological motive rooted in Israel. In other words, Israeli Occupying power's regular and tireless actions in violating fundamental legal, ethical and logical standards in Palestine show intentional ideological pattern that cannot be mistakable, the pattern is designed to displace Palestinians from their ancestral homeland²⁶⁵. This pattern has no legal or legitimate limits except for Israeli law that allows the settlement process and most importantly the Israeli High Court of Justice which tries to prove the legality of the settlements contrary to international law, decisions and judgments which do not permit such practices but prohibit them. At the time when most of the world's political, economic, social and cultural institutions consider the phenomenon of settlements as a violation of international law, and that the establishment of these settlements is a contradiction to international law as they are built on a land that is under military occupation.

Referring to the Declaration of Principles on Interim Self-Government Arrangements (Oslo Accords) signed in 1995 between the Palestinian Liberation Organization (PLO) and the Israeli occupation government, a major part of the Palestinian territories that called (West Bank) were divided into three administrative zones A, B, and C. **Area A** comprises 18% of the West Bank where civilians and

²⁶⁴Khalid Ayed, "Jewish settlement in the occupied Palestinian territories", *Journal of Palestine Studies*, No. 21.1995, Beirut, Institute for Palestine Studies.

²⁶⁵ "Forced population displacement (the Palestinian case)", *Badil Resource Center*, paper 17, 2015

security are under the Palestinian Authority. **Area B** comprises 22% of the West Bank, where the Palestinian Authority controls the civil services, whilst the military and police affairs are under the control of Israeli occupation forces. This area surrounds Area (A), where the major of Palestinian cities are situated. Area (C) comprises 60% of the West Bank and it is the largest administrative area of the West Bank, where Israel retains full control including civilian control (planning and construction) and military control. The Palestinian Authority was given only limited responsibilities for education and other civilian sectors²⁶⁶. This area includes Israeli settlements, main roads, smaller Palestinian villages and Palestinian agricultural lands.

After signing the Interim Accord in 1995, the Palestinian Authority received planning and construction permissions in areas "A" and "B", which is approximately about 40% of the West Bank. Although the vast majority of Palestinians live in these areas, the truth is the vacant lands for construction in dozens of villages and towns throughout the West Bank, are located on the outskirts of these towns and villages which are according to the agreements a part of Area "C" and under the control of Israeli planning systems.

The list of who has declared settlements illegal is long, but includes almost everyone except for the Israeli Government. In 1981, the 24th International Conference of the Red Cross reaffirmed that "settlements in occupied territory are incompatible with article 27 and 49 of the Fourth Geneva Convention"²⁶⁷. European Union considers the settlements illegal, and various UN bodies have stated this in numerous documents.

²⁶⁶Dr.Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies, Palestine*, Dec.2014, 23

²⁶⁷24th International Conference of the Red Cross, Res. III

In addition to the prohibition against transferring its own population to the occupied territory, i.e. enabling the settlers' establishment in the oPt, the settlements are also part of, and mostly the goal behind, illegal policies including the forcible transfer of protected persons, destruction of private property, appropriation of land and the denial of Palestinian access to natural resources. The settlements also form an integral part of Israeli policies that permanently change the occupied territory, in violation of international law. Settlements obstruct the exercise of the right of the Palestinian people to self-determination. The illegality applies also to the settlements built on occupied land in East Jerusalem, which are considered by Israel as neighbourhoods within the Jerusalem municipality²⁶⁸.

There are regular condemnations of policy and practices of Israel in establishing settlements issued by the United Nations, the International Committee of the Red Cross and the European Union considering them as a major obstacle to achieving a comprehensive, just and lasting peace in the Middle East and contrary to international law, particularly the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War.²⁶⁹

Policy and practices of Israel in establishing settlements violate Article 49, paragraph 6 of the Fourth Geneva Convention, which prohibits the occupying power from resettling parts of its own civilian population in the territory it occupies. This Article is not only concerning the resettlement by force, as Israel claims, but it also includes the situation in which the occupying power works actively and with the help of a set of political and economic incentives on encouraging people to resettle and

²⁶⁸ Facts of International Law and Israeli Settlements in the Occupied Palestinian Territory, <https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/fact-sheets/international-law-and-israeli-settlements-in-the-occupied-palestinian-territory.pdf> (February 4, 2016)

²⁶⁹ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

accommodate in the occupied territories, thereby changing the geographic and demographic nature of these territories.²⁷⁰ Israel has also violated other articles of the international humanitarian law, especially:

1. Article 53 of the Fourth Geneva Convention, which prohibits the destruction of private property, unless deemed necessary for military operations;
2. Article 46 of the Hague Convention, which prohibits the confiscation of private property;
3. Article 55 of the Hague Convention, which oblige the occupying power to administer the occupied territories in accordance with the rules of usufruct. (This Article is important when it comes to examining the Israeli actions related to the natural resources of the occupied territories, such as water).

Israel urged that the settlements were built to enhance Israel's security, but the real objective of building settlements was to strengthen Israeli control over the occupied territories and ensure its strength, through the establishment of settlements and continued expansion, including the expansion through any signed agreement. In other words, Israel through the colonization of the occupied territories is trying to turn the negotiations in such a way that brings it to its own interests, hoping to obtain the recognition of its right to sovereignty and constant management of the colonies. One of the objectives of this policy can also be the desire to ensure that any Palestinian state will not be able to grow and develop by making its territory divided with settlements. Speaking of the colonies of East Jerusalem, including the settlements that have been established within the municipal boundaries of Jerusalem, there is no doubt, that the goal of them is also to support Israel's claim which is illegal, and to

²⁷⁰ Dr.Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies, Palestine*, Dec.2014, 24

make the occupied East Jerusalem a part of its capital with modifying the demographic composition of the city to ensure that Israelis form the majority of civilians in it.²⁷¹

Since Israel seized the territories by force, even though the international law stipulates the illegality of such actions, it is still in a belligerent occupation of these territories. This means specifically that the Fourth Geneva Convention related to the Protection of Civilian Persons in Time of War applies to this territory, including occupied East Jerusalem. This position is the agreed position of the international community. In addition, the Hague Regulations added to the Hague Conventions on the Laws and Customs of War also apply to this situation. In fact, the Fourth Geneva Convention is a complementary to Parts 2 and 3 of the Regulations (Article 154). Although Israel is not a party to the Additional Protocols to the Geneva Conventions of 1977, the additional protocols are considered to be helpful as long as their Articles obtained the status of International customary law, or added significance to the existing principles of international law. It must also be noted that international humanitarian law does not care about the legitimacy of the occupation or the land under occupation. Its main goal is to ensure that when civilians find themselves stranded in an armed conflict, the parties to the conflict must take into account and apply minimum specific standards of behavior. Therefore, the focus in all the paragraphs of the Fourth Geneva Convention is on the "protected persons".²⁷²

According to that, any position taken by Israel concerning the legal status of the occupied territories will not be related to the application of international humanitarian law on this matter. Israel's position on the application of the Geneva

²⁷¹ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

²⁷² Ibid

Convention to the occupied territories is contradictory to some extent. Israel does not accept the applicability of the Convention to the land, but it is ready to implement certain provisions of it that are compatible with its occupational interests. As mentioned before, this position is not shared with the rest of the members of the international community, which believe that the Convention applies to all occupied Palestinian territories.²⁷³

Article 49, the sixth paragraph of the Fourth Geneva Convention states: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". This Article is the basis for the argument that Israeli settlements violate the Convention, and as a result they are illegal according to international law. This is also meaningful and supports the truth when the Israelis claim, as they have done on numerous occasions, that this Article is only about resettlement by force because the rest of the Article is related to the forced transfer or deportation. The deletion of the word "forced" in the sixth paragraph is deliberate. The first five paragraphs of the Article refer to forced transfer and deportation of protected persons, while the sixth paragraph dealing with the situation in which the population of the occupied power is transferred to the occupied territories. The goal of this is very clear and it is to prevent the occupying power from changing the demographic composition of the occupied territories.

The other articles of the international humanitarian law are related to settlements. Article 53 of the Fourth Geneva Convention prohibits the occupying power from any destruction of real or personal property, which is individually or collectively owned by private people, the State, other public authorities, social or

²⁷³ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

cooperative organizations, except where such destruction is absolutely necessary for military operations. Article 46 of the Hague Regulations prohibits the confiscation of private property (unless there is a military necessity for it).

Article 55 of the Hague Regulations states:

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

In this context, we must note that the term “hostile State” in this Article and others should not be given a restricted meaning and it applies only to the property owned by an entity that has the legal characteristics of a State in accordance with international law. As stated in the sixth paragraph above, the reason of this is due to the fact that international humanitarian law does not care about the issue of the legitimacy of the occupation or the legal status of the territories under occupation. It cares only about ensuring that the occupying power observes the minimum standards of behavior and ensuring the protection of people who are covered by international humanitarian law.²⁷⁴

Therefore, the settlement policy of the Israeli Occupying power is not only violating the general prohibition in Article 49, the sixth paragraph of the Fourth Geneva Convention about not transferring its own population to the occupied territories, but it also violates the specific provisions of the Convention and the Hague Regulations through the implementation of its political methods. Since the establishment of settlements in most cases requires the confiscation or destruction of

²⁷⁴ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

private property, settlements also violate Article 53 of the Geneva Convention and Article 46 of the Hague Regulations.

The same applies to the destruction of farms etc. In addition, the establishment and operation of settlements do not comply with the limited rights of the occupying power in accordance with Article 55 of the Hague Regulations about property management under occupation in accordance with the rules of usufruct. This applies specifically to deprive the local population from valuable natural resources, such as water, for the benefit of the settlements.

The rules of usufruct do not allow the occupying power to use the land and natural resources under occupation for the objectives of building industrial parks, especially as the industrial parks will be used only for the benefit of the settlements and not for the benefit of local population, and this is exactly what the Israeli occupation forces doing in the Palestinian territories, as same is true on the highway network built by Israel to link the settlements and other structures set up by or confiscated by Israel to serve settlements.²⁷⁵

Regarding the military necessity and delving deeper into the policies of the Israeli occupying authority, it is clear that a lot of these facilities are necessary to protect the settlements and do not serve the occupation itself. If there were no colonies, there would be no need for a lot of military installations. These military installations are also illegal, settlements.²⁷⁶

Palestine position statement sets out first of all the issue of Jerusalem, confirming that the city of Jerusalem is the capital of Palestine, and this was set in the

²⁷⁵ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

²⁷⁶ Dr.Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies, Palestine*, Dec.2014, 23

Declaration of Palestinian independence, the city is also a part of the territories occupied in 1967, and the Israel occupying state has no right to any part of it.²⁷⁷ It is a part of the land where the sovereignty of the indigenous Palestinian population will be exercised as soon as the Israeli withdrawal takes place. East Jerusalem is subject to the principles stipulated by Security Council Resolution 242, and in particular the inadmissibility of territory seizure by force. Thus, it is not under Israeli sovereignty.²⁷⁸ The Resolution also emphasizes the full applicability of the Fourth Geneva Convention to East Jerusalem, as it applies to other territories under occupation²⁷⁹.

Moreover, in accordance with international law and the terms of Oslo Accords on Interim Self-Government Arrangements, All of Jerusalem (and not only East Jerusalem) is a subject for permanent status negotiations. Palestinian position complies with the principle that Gaza Strip and the West Bank comprise one geographical unit and there must be permanent arrangements that won't be canceled to establish safe passage which provides communication and free movement of people, goods and resources between the two parts of this unit.

²⁷⁷ The PLO Negotiations Affairs Department (NAD), "Position-Jerusalem", <https://www.nad.ps/en/our-position/jerusalem>

²⁷⁸ The European Union's position on Jerusalem, in a statement of the European Union Ministers council On October 1996 confirming the full applicability of the Fourth Geneva Convention to East Jerusalem, as it applies to the other Palestinian territory under occupation.

²⁷⁹ The United Nations recognizes East Jerusalem as occupied territory (subject to the Fourth Geneva Convention), and rejects Israel's claims of sovereignty over East Jerusalem, in response to Israel's occupation of foreign territory, Security Council Resolution 242 of 1967 calls for the "withdrawal of Israeli armed forces from the occupied territories". In response to Israel's expansion of the boundaries of Jerusalem, the Security Council resolution No. 252 of 1968 states that the Security Council "considers that all ... actions by Israel ... which tend to change the legal status of Jerusalem invalid and can not change that situation." In response to Israel's expansion of the of occupied East Jerusalem, Security Council Resolution 476 of 1980 states that the Security Council "reaffirms that : all ... actions by Israel, the occupying power, which it is said that it changes the status of Jerusalem have no legal validity and constitute a flagrant violation of the Geneva convention which relevant to the Protection of Civilian Persons in Time of War. available at : <http://www.mofa.pna.ps/ar/>

The Palestinian position regarding the Israeli settlements in the occupied Palestinian territories is the position of the Palestinian Liberation Organization that is compatible with international law, which prohibits Israel's acquisition of territory by force. Israel continues to colonize the occupied Palestinian territories, through the confiscation of Palestinian lands in order to build there illegal Israeli settlements and bypass roads (the special roads for settlers, for connecting the settlements with each other), and also to transfer parts of its own civilian population of Jews to the West Bank and Gaza Strip in a systematic and organized way, which constitutes a breach and violation of international law.²⁸⁰

Israeli settlements vary in size between the nascent settlements or settlement outposts consisting of a few mobile homes or settlements that constitute complete cities which are homes for tens of thousands of settlers. These settlement projects carried out by Israel are aimed at changing the physical and demographic status of the occupied Palestinian territories, in order to prevent the ability of Palestinians to use their lands and live in them. Through the establishment of settlements, Israel is also seeking to drain Palestinian natural resources and seize the monumental outputs of Palestinians illegally. At the same time, this is aimed at isolating the Palestinian people in spots where they lack the ability to survive and lose continually parts of their area, in addition to the separation of East Jerusalem from the rest of the occupied Palestinian territories, along with cutting the geographic connections between Palestinian population and restricting the ability of the national economy to survive and thrive.²⁸¹

²⁸⁰ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

²⁸¹ Palestinian Foreign Ministry, Position of Israeli Settlements, <http://www.mofa.pna.ps/ar/>

Under international law, there is no difference. However, under Israeli law, settlements are formally recognised, while outposts are not. The term "outposts" describes, what is often a relatively new, small settlement with a few residential structures or caravans. Often, outposts are built on private Palestinian land, are close to a recognised settlement or other strategic locations, with the aim of creating new, or expanding existing, settlements. Although outposts do not have formal recognition, municipal status or building permits, the State rarely enforces demolition orders against outposts. They are sometimes issued permits for connection to water and electricity networks and residents of outposts are entitled to protection from the Israeli military²⁸².

The adopted series of measures by the occupying State is aimed at strengthening settlement projects and their consolidation by attracting Israeli citizens and encouraging them to live in the settlements. These policies resulted in (the opposite of Israel's claims about "natural growth") increasing the number of settlers at an accelerated pace in the settlements - where their number exceeded in some cases three or four times the rate of population growth in Israel itself. The existence of settlements and Israeli settlers is the main source of instability. It has been proven over the years of Israeli occupation of Palestinian lands that settlements represent one of the factors that fuel the fire of clashes between Palestinians and armed settlers who live in them. In addition to the social and economic damages and human tragedies caused by settlements, Israeli settlers and soldiers in charge who protect them do not

²⁸² Facts of International Law and Israeli Settlements in the Occupied Palestinian Territory, <https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/fact-sheets/international-law-and-israeli-settlements-in-the-occupied-palestinian-territory.pdf> (February 4, 2016)

hesitate from attacking the Palestinians and abusing them through various insults and harassments.²⁸³

Based on what have been presented about the ongoing and implemented Israeli settlement activity in the occupied Palestinian territories and the practices and acts accompanied with it which are contrary to the provisions and the rules of international law and international humanitarian law, we can determine the results it has reached as following: the occupied Palestinian territories fall legally under the meaning of occupied territories according to the legal concept of military occupation, which means the applicability and validity of all the provisions and rules of international humanitarian law to all the existing relations between the occupier and its military administration from one side and the occupied Palestinian territory's population on the other side. The provisions and rules of the international humanitarian law are obligatory and are to be applied and adopted in judging the actions of the Israeli occupation on the Palestinian territories. The allegations and legal excuses provided by the occupying state to legitimize its actions within settlement activity are not truthful and have no basis in terms of the provisions and rules of international humanitarian law and public international law.²⁸⁴

The Israeli settlements in the occupied Palestinian territories and what accompanied them from practices according to the rules and provisions of international humanitarian law fall under the acts and actions classified by this law as war crimes, settlements also based on the provisions and rules of general international law fall under the acts and practices described as international crimes as they violate clearly many of the international principles, specifically the right of peoples to self-

²⁸³ Palestinian Foreign Ministry, Position of Israeli Settlements, <http://www.mofa.pna.ps/ar/>

²⁸⁴ Negotiations Affairs Department, Summary of Palestinian positions, <http://www.nad-plo.org/atemplate.php?id=16>

determination and the fundamental principles of human rights. It is important to determine the fate of Israeli settlements during the Palestinian-Israeli negotiations in a way that should come out of what has been approved by the international legitimacy, which underlines the illegality of settlements and calls upon removing them completely to stop Israel's policy of imposing a fait accompli.²⁸⁵

The significance behind establishing the settlements on the occupied Palestinian territories was the allegations of the military necessities and the security requisites; this has been promoted for decades and what the Israeli governments are asserted to achieve by the confiscation and the expropriation of the Palestinian land. Different justifications were to permit the occupier to carry out such activities under the need of urgent military exigencies. In fact, the Israeli former minister of defense, Moshe Dayyan has different comments related to the settlements, saying the Israeli settlements in the occupied territories enjoy and special significance in terms of security, but he considers them as the most important factor, assuming no one will ever leave those settlement as in fact they were constructed for stability.

On the other hand, no proof was to conduct the importance of the establishment of the settlement which are related to the military allegations, the special committee to investigate Israeli practices affecting the human rights of the Palestinian people noticed the fact of the expanding occurring in the existing Israeli settlements in terms of population, practical reality and services. Additionally, the US secretary of state Herbert j.Hertsel noted the fact on available information that these settlements don't seem to be established for the purposes of military requirements nor

²⁸⁵ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

for limited period. Commenting on this, different reports noticed the characteristics of the established settlements where it clearly drives towards permanency and stability.

In addition to the aforementioned, the Israeli's governments have been basically confiscating the vast areas of the Palestinian lands proclaiming the need of the military necessities; it had all the purposes but the security requisites. Three quarters of the west bank and about half the total of Gaza have come under the control and exploitation of the Israeli occupation forces. Settlements were constructed for residential purposes and for practicing occupational activities of a civil nature.

The confiscation of almost 500,000 dunums of land since the endorsement of the agreement up until the summer of 1999, therefore, all this is just a proof on that all these settlement have no absolute reasons of military necessities, keeping in mind the increasing numbers of the settlers since Oslo. It has been clearly noticed, the objectives behind all this activity, changing the map and making all this to be a part of the conflict can't be separated, radical change and creating of new map, new generation and new mindset through what is been practiced and worldly promoted. This attempt aims to force the Palestinian negotiator to eventually accept and deal with them as fact that is literally difficult to overcome. Yet, many Israelis jurists have different point views on the fact of the non-applicability of the Article 49 of the Fourth Geneva Convection, alleging such activities of confiscations are carried by groups without the interference of the government and yet considering the occupied territories not as a state. In addition to that, the reality of the state's financial contribution and the allocated spending on the establishment of the settlement proving the prominent position's on the governments list of priorities. Moreover, the

government sets legal and administrative measures to protect settlers and settlements.²⁸⁶

This is no more than an attempt on circumventing the texts and the contents of article 49, trying to legalize and to justify the policy of their state in this regards. This remarkable flagrant activities which are carried buy the settlers and without any governance intervention are not valid from legal perspectives due to the fact of the rules and provisions of the international law clears the responsibility of the occupational authorities for maintaining the securities and yet the responsibility of implementing the law of Belligerent occupation. Subsequently, the absence of confronting and stopping these activities are decisive legal evidences that assert the Israeli's infringement of the Belligerent occupation rules and provisions.

Insolently, the state made several decisions and the most important was taken by the Cabinet on December 1996, granting them the position of development status, which means that the government had included the settlements in the Israeli urban areas. And decisions exempt the settlers to be chased any local court in the Palestinian territories, hence, their violation actions against the Palestinian citizens will not be subjected to any of the local courts, on the other hand the permissions and encouragements by the government which are given to the settlers to carry out military activities in the occupied Palestinian territories, military orders issued by the command of the occupation forces.²⁸⁷

Among those jurists who were claiming on the non-capability of article 49, different professors asserting the fact of no paragraph or clause whose formulation

²⁸⁶ Geoffrey Aronson, Settlement Monitor: Quarterly Update on Developments, *Journal of Palestine Studies*, Vol. 25, No. 4 (Summer, 1996), 125-136, <http://www.jstor.org/stable/2538020> (March 2, 2016)

²⁸⁷ Ibid

suggests an exceptional implementation of the article 49 competence the occupying state from transferring its citizens to the occupied territories under the administration of its force. Jean Pictet²⁸⁸, one of the jurists who commented on including the article 49 in the Fourth Geneva Convention and contributed to preparatory work, says it's to assert preventing the engagements of what took place during the world war II by the German forces, who transferred and settled part of its citizens over the lands that came under their forces control.

Yet before that, an important and clear fact has to be mentioned here that after the vanish of the League of Nations and the foundation of the United Nations, the responsible authorities to look into the situation of the regions under the British Mandate was directed to the General Assembly according to the provisions of chapter 12 and 13 of the covenant, therefore these chapters assert to put these regions under a system of guardianship as a legal alternative system. Moreover, the guardianship as an alternative nor the mandate doesn't allow the state administering it to change the legal status of the region under its control or transferring its citizens to create new demographic and regional facts.²⁸⁹

There is no doubt on how important is the Palestinian conflict and its legal terms which it gathered almost the highest number of international resolutions, among these is 242 through which the international security council called to settle by peaceful and demanding a withdraw by the Israeli's from the territories they occupied following its armed attack on the Arab countries in June 1967.

²⁸⁸Commentary published under the general editorship of Jean S. PICTET, Doctor of Laws Director for General Affairs of the International Committee of the Red Cross:
https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf

²⁸⁹ Geoffrey Aronson, Settlement Monitor: Quarterly Update on Developments, *Journal of Palestine Studies*, Vol. 25, No. 4 (Summer, 1996), 125-136, <http://www.jstor.org/stable/2538020> (March 2, 2016)

In the beginning we may identify the rules and provisions of international humanitarian law related to military occupation include with respect to the legal principles and bases regarding occupied lands as well as the honor standards of which the occupier should consider in its practices.

On this base, many articles by the 1907 Hague convention justify the family honors and rights, lives of persons and private property. Clearly assert that private properties can't be confiscated and, forbidding pillage was also stipulated. Moreover the status and the legal nature of the role and position of the occupying authority in relation to the properties and forests is mentioned in the article 55, the occupying state shall be regarded only as administrator and usufructuary.

On the other hand, the 1949 Fourth Geneva Convention also addressed different articles on the fact of the confiscations of properties and the transfer of the occupier citizens, affirmed the fact that the occupier is not permitted to transfer and move its civilian population to the lands under its control, beside the destruction and the demolition of personal properties is yet prohibited as well as the social cooperative. Not only this but, the occupying power is responsible to guarantee food and medical supplies for the civilians of the occupied territory.

In addition to the previously mentioned, all the provisions and rules of the International Humanitarian law in relation to the occupier behaviors for some extents are Limited in certain conditions if present, thus the occupier may enjoy the resources and the property of the occupied territory. Such conditions refer to the military necessities, where the occupation power requires implementing acts of destruction and confiscation for the security purposes. The main core relies of what the definition of the military necessities is? Therefore various definitions are provided by the

International Law experts in whom it derives from urgent conditions that required swift reactions. Or the necessity for the appropriation 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. More importantly, such rights apply only to the forces present in the territory and don't extend to include all the military forces of the occupying state.

Accordingly, it is forbidden for the occupier to violate the previous principles and to exploit the resources of the occupied territory as well as the transportation of these resources and wealth outside the occupied territory for use by occupying state. Additionally, the citizens of the occupier can't present or even exploit those resources for their benefit. Many national and international courts asserted the obligation on the part of the occupier to take the mentioned conditions into considerations in times of using the occupied territories wealth's and resources.²⁹⁰

The International Humanitarian Law relevant to military occupation have restricted this right Symmetry standard, it necessitates the requirement that confiscation and appropriation measures, as well as the current or the future practices of destruction and demolition of properties for the military needs should be relative to the capabilities and resources of the occupied territory. Therefore, it is not permissible under any circumstances for the occupying forces to use this right even when the justification for confiscation and appropriation is valid if such actions render the citizens living conditions miserable, their stability and presence of their land impaired.

²⁹⁰ Illegal Occupation: Framing the Occupied Palestinian Territory, Berkeley Journal of International Law, 2005, Volume 23, Issue 3, Article 2, available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1299&context=bjil>

In this regard, the principles of the International Humanitarian Law in relation to military occupation didn't only force the occupying forces to respect the standards of the Symmetry once they confiscate or demolish property but also, they import that which is necessary for the residents of the occupied territory such as foodstuffs and medicine.

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. This right is guaranteed and affirmed by the declaration of the Nuremberg trial, accordingly, the Palestinian side is protected by the fundamentals and rules of the Law of Military Occupation and the International Military conflicts to pursue the settlers because they are responsible for carrying out crimes in the occupied Palestinian territories. Moreover, the national criminal laws does not apply to war crimes, therefore it should be praised because the negative impact they have on the international community as a whole necessitate the abandonment of the members of any action that may enable war criminals from hiding to avoid punishment.

In reference to the Security Council resolution, all the measures and actions taken by Israel to change facts and realities (physically, demographically and on the status of the Palestinian and the Arab territories) are not legally, in addition to the Israeli's practices of settling part of their population and new immigrants, the previous actions lead to clear violation of the Fourth Geneva Conventions in relations to the civilian protection in time of war. Beside, the General Assembly resolution 2949 of December 1972, calls upon all the changes and measures carried by Israel not to be recognized, and it declares that all the changes are null and void in contravention of the Geneva Conventions of August 1949.

In the Special International Conference On the Palestinian Situation have clearly stated the previous obligations, the states rejected all the practical actions taken by Israel specifically those which are related to settlements and the changes on the nature of the East Jerusalem. In fact, this conference have also witnessed the importance of states providing Israel with economic and financial aids if the previous mentioned assistance may encourage Israel continuing its violations of the occupied Palestinian territories.

Structurally , the law of occupation bears strong resemblance to an emergency regime. This regime, with roots dating back to the Roman- Commissarial model, rests on three precepts: exceptionality, limited scope of powers, and temporary duration²⁹¹.

In this discourse, a situation of emergency is separated and distinguished from the ordinary state of affair as it signifies an occurrence which does not conform to the rule. Because the emergency situation is the exception, its duration must be limited and it must generate no permanent effects; it merely suspends the rule. This is also why the norm is regarded as superior to the exception: the existing legal order defines the terms under which it is suspended, and the powers granted in such a situation are to be used for the purpose of an expeditious re-establishment of the status quo, that is, of a return to normalcy.

The basic tenets of the normative regime of occupation in the international arena largely conform to this constitutional model. The normal order of affairs is based on the principle of sovereign equality between states that are, at least to

²⁹¹Illegal Occupation: Framing the Occupied Palestinian Territory, Berkeley Journal of International Law, 2005, Volume 23, Issue 3, Article 2, available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1299&context=bjil>

some extent, presumed to be founded on the ideas of self-government and self determination. The severance of the link between sovereignty and effective control, and life under foreign rule, constitute an exceptional state of affairs and the law of occupation recognizes it as an exception; it is to be managed so as to ensure return to normalcy. This is why the occupant has only limited powers in terms of both scope and time, and is not permitted to act in a manner designed to yield permanent results.

Indeed, modern studies of emergency situations concerned with the derogation from human rights law thereby occasioned have concluded that: "above and beyond the rules..., one principle, namely, the principle of provisional status, dominates all others. The right of derogation (of human rights) can be justified solely by the concern to return to normalcy." This conclusion holds true and applies equally to occupation. A reversal of the relationship between the norm and the exception generates, as of necessity, the terminus of every normative system. Carl Schmitt's political theology, wherein the norm becomes subservient to the exception, is both a precedent and a warning. "The rule," said Schmitt, "proves nothing; the exception proves everything: it confirms not only the rule but also, its existence, which derives only from the exception".²⁹²

One lesson to be drawn from the above is the importance of retaining a clear distinction between fact and norm; between the rule and the exception, lest the exception becomes a new rule, and generates a new conception of reality. This is important because in this new conception of reality, one's security habitually overrides one's enemy's human rights. Indeed, the reversal of the

²⁹² Illegal Occupation: Framing the Occupied Palestinian Territory, Berkeley Journal of International Law, 2005, Volume 23, Issue 3, Article 2, available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1299&context=bjil>

relationship between the rule and the exception operates as a legitimizing device allowing for a discussion of various specific violations of human rights carried out in the name of security as if they are the exception to the normal order of things, thereby obfuscating the fact that the violations have become the rule, not the exception.

The international rule of law recognized the situation of occupation as an exception. It created a normative regime designed to ensure that the effective control of the occupying power is exercised in a manner that is temporary, respectful of the humanitarian needs and human rights of the occupied population, and leads to an expeditious return to normalcy based on sovereign equality. An occupation that fails to do this is substantively and intrinsically illegal (in terms of the law of occupation), as well as structurally and extrinsically illegal (in terms of the international legal order which provides the normative framework within which the law of occupation operates). The Israeli occupation of the OPT has thus failed²⁹³.

Since 1967, Israel has allowed and even encouraged its citizens to live in the new settlements established in the territories, motivated by religious and national sentiments attached to the history of the Jewish nation in the land of Israel. This policy has also been justified in terms of security interests, taking into consideration the dangerous geographic circumstances of Israel before 1967 (where Israeli areas on the Mediterranean coast were potentially threatened by Jordanian control of the West Bank ridge).

²⁹³ Illegal Occupation: Framing the Occupied Palestinian Territory, Berkeley Journal of International Law, 2005, Volume 23, Issue 3, Article 2, available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1299&context=bjil>

The international community, for its part, has viewed this policy as patently illegal, based on the provisions of the Fourth Geneva Convention that prohibit moving populations to or from territories under occupation. For obvious reasons, a decision on the legality of the settlements would have put the Israeli Supreme Court in an extremely difficult situation. Acknowledging the legality of the settlements does not seem to satisfy the relevant provisions of international law. At the same time, denying their legality would invite confrontation with the Israeli government as well as with significant segments of the Israeli polity.

In practice, the Court managed this very delicate matter by systematically avoiding any decision on the legality, as such, of the settlements policy. Although the Court exercised its jurisdiction in numerous petitions originating in the occupied territories, including military operations and security measures, the one matter it never addressed was the settlements' legality. The Court dismissed petitions attacking the settlements policy for being "general," that is, running counter to the judicial legacy of deciding petitions on specific matters, and even as non justiciable²⁹⁴. Indeed, the Court has decided questions of legality regarding several settlements, but only when the issue concerned specific issues of location, as in its famous decision to overrule the establishment of a settlement on land taken from private Palestinian landowners²⁹⁵.

At the same time, the Court has systematically stated that a general ruling on the settlements' legality was not needed for the purposes of deciding any of the particular petitions it did consider. Occasionally, the Court has also noted that the fate

²⁹⁴See HCJ 4481,91 Bargil v. Government of Israel (1992) IsrSC 47(4) 210.

²⁹⁵See HCJ 390,79 Dweikat v. Government of Israel (1980) IsrSC 34(1) 1.

of the settlements will be decided in future peace agreements between Israel and its neighbors²⁹⁶.

Petitions attacking the location of the security barrier had threatened to challenge this long-lasting judicial policy. The security barrier constructed on the territories was planned so as to protect Israeli settlements as well. *Prima facie*, then, the question of the settlements' legality was potentially relevant. The Court, however, remained firm in its decision not to address the issue, insisting that the military commander is responsible for all the people in the territories, and that the settlers who are Israeli citizens are entitled to such protection. This argumentation is understandable, bearing in mind the Court's institutional constraints, but not entirely persuasive in terms of pure legal analysis. Unquestionably, residents in the settlements deserve protection but, legally speaking, the measures taken for protecting them should be influenced, perhaps, by the question of the settlements' legality. Various measures could be adopted to protect the settlers' lives. Some are based on the assumption that the settlements, as such, must be maintained, whereas others are based on the assumption that the residents deserve protection but not necessarily the settlements. Protecting the lives of Israelis in the territories could also be achieved by recourse to other protective measures, such as building fences encircling their settlements or even by offering them the option of leaving their homes. Such an offer should obviously be part of a larger plan regarding the area.

International humanitarian law, particularly The Hague Regulations and the Fourth Geneva Convention, applies to the conduct of Israel in the West Bank. Israel is

²⁹⁶See HCJ 610/78 Oyeve v. Minister of Defense (1979) IsrSC 33(2) 113, 131, 134

also bound by parallel customary norms. Israel also owes obligations to the inhabitants of the West Bank and to the international community in relation to the right of the Palestinian people to self-determination. As a Member of the United Nations, Israel must observe and implement relevant Security Council resolutions, which require Israel to implement the Fourth Geneva Convention in the Occupied Territories .

3.2. Israel's Settlement Regime

Colonial settlements and colonial occupation are the grounds of Zionist ideology which is therefore based on three elements: occupation, colonization and settlement activity. The ideology only works with these three elements. The colonial and settlement activity in Palestine includes several phases, the first one is the acquisition and control of the Palestinian territories and then moving to unloading the territories and regions that were seized from the indigenous Palestinian inhabitants through deportations and the liquidation of their presence and the establishment of colonies (settlements) followed by the resettlement of Israeli Jews in these areas or the areas that are to be seized.²⁹⁷

Control of Palestinian lands was the essence of the philosophy pursued by World Zionism since the emergence of the first idea to resettle Jews in Palestine and followed up later by Israel after its establishment till present day. Along with the seizure of lands there was a process of demographic change because all the seizures brought numbers of Jews from around the world to replace Palestinian Arab

²⁹⁷ Islamic unity, "The Zionist settlement and its destructive effects on the Palestinian people", (May 2014), <http://wahdaislamyia.org/issues/149/imaatook.htm> (January5, 2016)

population. Since the emergence of the Zionist project in Palestinian territories, especially in the area of occupied West Bank, settler groups began to impose their control over large areas of land with the support of successive Israeli governments no matter how different were their political and intellectual directions.²⁹⁸

According to the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, colonialism is defined as the actions of a state taken to control other territories illegally or to annex them and aimed at depriving its indigenous population from exercising their right to self-determination on a permanent basis. Colonialism represents a serious violation of international law because it is fundamentally inconsistent with the core values of the international legal system.²⁹⁹

Colonialism represents a denial of fundamental human rights; it is contrary to the Charter of the United Nations and is an obstacle to world peace and cooperation.³⁰⁰ According to the Law of Armed Conflict (international humanitarian law), occupation is the potential realistic result of an armed conflict and the occupier must control the occupied territory temporarily without affecting the legal status of the territory, its population and the origins of sovereignty. International law prohibits the unilateral annexation or permanent hold of the land with exercising sovereignty on it by threats or using force, but the Israeli occupation does the opposite, it has a de facto authority in controlling the Occupied Palestinian Territory, where Israeli

²⁹⁸ Liberal left government, which has adopted the principle of security, demography and the Government of the ideological right, which has adopted the principle of annexation and control.

²⁹⁹ United Nations Declaration on the Rights of Indigenous Peoples,
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

³⁰⁰ See (Convention Against Apartheid 1976)

colonialism and settlements are used as instruments for geographic, legal, social and economic domination.³⁰¹

In the Israeli case, it is difficult to separate the settlements and military occupation, they are two sides of the same coin, the Israeli Military force (Army) which controls the West Bank as well as some leaders of the Israeli government are settlers living in West Bank settlements³⁰². Moreover, every settler is considered a reserve soldier, he must be always on a standby to receive military orders, he also must take the permission to travel abroad, and if he is conscripted to army, he must meet that immediately, even if it led to interferences in his private life³⁰³. The Israeli army provides full protection for the settlers living in the West Bank. The settlers represent a whole army themselves as they own weapons, while Palestinians are prohibited from carrying even knives. Thus, settlements in the West Bank are considered to be Israeli instruments to Judaize the land and expand the borders through the expansion of settlements, claiming they are military ones³⁰⁴. The Occupying power (Israel) through settlements is practicing oppression and deportation of the Palestinian population and this is done through settlers' attacks on the land and the people.

Israel began building settlements in the West Bank immediately after the occupation of the territory in 1967 and since then the number of Israeli settlements

³⁰¹ BADIL Resource Center for Palestinian Residency and Refugee Rights, <http://www.badil.org/phocadownloadpap/badil-new/campaigning-tools/brochures/2015/Q&A-ar-2015.pdf> (January 1, 2016), 22.

³⁰² Ehud Barak, who served as prime minister and defense minister, is a resident of "Kochav Yair" which is a settlement near the Palestinian city named of Qalqilya.

³⁰³ Adel Manna, Azmi Bishara, "Studies in Israeli society," the center Studies of the Arab Society in "Israel", 1996, 41

³⁰⁴ Mohammad Amir Alqetah, "Israeli settlements in the West Bank and Gaza Strip-Geopolitical Study", Dar-Alamnah Library, 147

and Israeli settlers is constantly growing under a series of successive Israeli governments. Israeli governments were the fundamental supporters of the settlement project in the West Bank - including East Jerusalem. This is leading to a deformation in the social, economic and environmental landscape of Palestinian society, and thus, will block the ability of Palestinians to exercise their right to self-determination.³⁰⁵

Currently, the establishment of an independent Palestinian state is much more complicated due to the fact of the immoderate actions has occurred by Israel on the map of the west bank. Therefore, the major penetrations of the settlements have changed certain facts on the ground which is day by day affecting the issue of the Palestinian Israeli conflict.

The lands (C) known to be under full Israeli control and declared as closed military zones by military orders. In fact, Palestinians are prohibited to enter these areas except by special permits, on the other side settlers and tourists from all over the world are freely allowed to enter these areas. In total, these settlements and the areas under the jurisdiction of the regional council cover about 63% of areas (C), therefore, the Palestinian are prohibited from any sort of development and constructions moreover, the settlements enjoy the fact of controlling, developing and planning further infrastructure.

In realities, settlers rights now are treated just as the Israeli citizens within the green line where on the other part of the conflict, on daily basis there are different violation incidents on the rights of the Palestinian, in addition to the Israeli

³⁰⁵ Islamic unity, "The Zionist settlement and its destructive effects on the Palestinian people", (May 2014), <http://wahdaislamia.org/issues/149/imaatook.htm> (January5, 2016)

governments implementation of a systematic policy in violation of the International Law of encouraging its citizen to relocate to the west bank.³⁰⁶

(C) Lands are mostly those parts of the eastern territories of the west bank, they approximately include 125 settlements in addition to the lands which was defined by Israel as being the jurisdiction of the local and regional councils of the settlements. Worth mentioning, the mid 1990's witnessed around 100 illegal settlements were established without any sort of formal permission from the state authorities and by the end of 2011, there were about 320,000 settlers living over these lands.

We previously mentioned, Palestinian are prohibited on any action of developing or constructing over their lands in (C) areas, therefore, the needs of the Palestinian population was always ignored. Moreover, if any action of residential constructions or communities development is taken by individuals or groups of the Palestinian population on the current areas, it might be demolished and facing financial penalties. Demolishing residents incidents were recorded in different villages of the west bank, due to the claims of no valid permission.

The responsibilities of developing infrastructure throughout area (C) considered as tasks of the civil administration and, they are responsible for granting construction permits for public buildings, where in realities such actions are not reflected on the ground of these areas, the Palestinian development in area (C) is rarely initiated and the case of the unrecognized villages is even worse because the civil administration does not issue permits, nor for building construction nor for

³⁰⁶ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 5.

schools and medical services. yet, they issue demolishing orders against institutions was build without a permit.

More than 50,000 civilian living in area (C), are suffering from water supply shortage due to the fact of not being connected to any of water supply network, these communities first resource is the rainwater and secondly the private contractors who charges high cost.

In the beginning, immediately after the occupation of the West Bank, the settlement activity was presented in the establishment of military security centers to protect the area, but it turned quickly into a civil agricultural colonies built on Arab lands whose inhabitants have been expelled. In the second decade of the occupation of the West Bank, Israel announced its plan to Judaize parts of them under the pretext of "historical right" of Israeli people above other nations, including the Palestinian Arab people. As for Jerusalem, it was clear from the first moment of its occupation that the schemes to Judaize it were planned in advance. The most important part is that all the parties and political movements in Israel are consistent regarding Jerusalem, its status and future, which is that Jerusalem is a united and eternal capital of Israel, and that the withdrawal of it is out of the question in any negotiations with either the Palestinians or any other Arab state related to the issue. Israeli Knesset adopted a decision on the annexation and unification of Jerusalem in the same month in which Jerusalem occurred under Israeli occupation.

Early settlements were established in the West Bank as military bases built by Israeli soldiers for the fulfilment of their duties as military actions and forming a "center" for agricultural settlements, expanding later to become a fully civilian settlements. The first settlements were influenced by the informal plan of Yigal

Allon³⁰⁷ to create "an Israeli presence" in areas of the West Bank where the density of Palestinian population is not high³⁰⁸. The settlements and the annexation of these areas in the beginning were planned as necessity for the security of the state and are parts of the plan to control the areas of the West Bank as parts of the Jewish state³⁰⁹. In 1974, Israeli religious nationalists from the Lobby Settlement Organization, has endeavored to pressure the government for the establishment of settlements in many areas of the occupied West Bank to emphasize the religious rights of Jews in the region³¹⁰. In January 1981 the Israeli cabinet adopted a "Drobles plan" calling for increasing the number of civil settlements in the occupied West Bank³¹¹.

For that Israeli presence in the Palestinian territories is illegal and is considered as military occupation, Israeli governments in establishing settlements relied mainly on two principles: First, the confiscation of private lands for military purposes and secondly: the confiscation of private lands for public purposes. During the period between the years 1968-1979 Israel began to confiscate portions of Palestinian private lands, claiming that these lands are required for urgent military purposes³¹². After 1979, Israel stopped building settlements on Palestinian lands that were confiscated for military purposes, but it did not stop the confiscation of Palestinian lands under the pretext of military purposes to serve other needs, especially the bypass roads. In this aspect, it must be emphasized that the confiscation

³⁰⁷ He was the Labor Minister and Chairman of the Ministerial Committee on Settlements in 1967

³⁰⁸ Include the eastern region of the West Bank, Jordan Valley and the desert area east of Jerusalem.

³⁰⁹ Yigal Alon, "Israel: the Case for Defensible Borders," Foreign Affairs, oct. 1976, <http://www.foreignaffairs.com/articles/26601/yigal-allon/israel-the-case-for-defensible-borders> (February 24, 2016)

³¹⁰ Akiva Eldar and Idith Zertal, *Lords of the Land: The War for Israel's Settlements in the Occupied Territories* (English trans.), Nation Books, 2007; B'Tselem, *Land Grab*, 2002; and Gershon Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements* (Times Books, 2006)

³¹¹ Mattityahu Drobless, "Settlement in Judea and Samaria – Strategy, Policy and Plans," World Zionist Organization, Settlement Division, September 1980

³¹² Israel's Supreme Court considers that: the seizure of private property in the occupied Palestinian territories in order to build civilian settlements does not conflict with the principles of customary international law..If this building was ..required to the military needs /(Badil, 2013, page 35)

of lands based on such allegations of military necessity must be temporary as the occupying power Israel receives the rights to use, but not the property rights on expropriated lands³¹³.

Israeli forces proceeded in the development and implementation of settlement plans and projects in the occupied territories in order to achieve a numerous results, political and social effects at regional level, geographically and demographically. The occupation authorities adopted a series of actions and decisions aimed at tightening control in the West Bank, Gaza Strip and East Jerusalem with the creation of legal and administrative changes in their status, preparing to take over a large area of the land and establish colonies (settlements) that cannot be waived or negotiated in the future.

Israeli settlements emerged through a process that was not consistent either chronologically or geographically. The first wave of Israeli settlements focused on the question "how" and not "how many", while the successive waves focused on greater numbers in limited periods of time. The successive governments of the occupying state have created the concept of informal settlements or the so-called "outposts" that are not recognized by Israel officially but supported by it by providing housing, roads, electricity, water and various other privileges. Furthermore, they established new settlements under the pretext of creating new neighborhoods in the existing settlements³¹⁴. It is possible to state that the first waves of settlement activity in the West Bank were concentrated selectively in strategic places in the Jerusalem area and the Jordan Valley, whilst the subsequent waves continued to intensify settlers in militarily strategic areas on tops of mountains and hills to impose a new reality on the ground with a view to annexation and control.

³¹³Dr.Ahmad EL-Atrash, Settlement Geography, MADAR The Palestinian forum for Israeli studies, Palestine ,Dec.2014, 21-24

³¹⁴State Comptroller report for 1999-2000, State Comptroller office, Jerusalem 2001, 398-405

Israeli settlements has not been established in order to solve housing problems, but in order to implement selective thoughts and systems, not only within the borders of Israeli settlements that settlers seek to create, but in all the occupied Palestinian territories, which they believe are an integral part of "Greater Israel", and that's by applying the idea without referring to law, judicature or legacy. The Israeli settlers do not believe in the law of the state if it is in conflict with their expansionist goals. Israeli settlements were built to remain within the policy of *fait accompli* that ignores all relevant international conventions that considers them as illegal, and thus they violate international law and international humanitarian law.

Here "Israel" tried to give a legal status to settlements, but there is a clear interfere in Israeli society, as it is hard to differ there between a soldier and a settler because this state is a hostile settlers state par excellence. So, this state can be called an armed camp, either through the regular army which includes settler groups, or by the army of settlers who carry guns and kill Palestinian people. This fact became obvious through the statements of Zionist leaders like Ben-Gurion who called for the organization of Israeli security forces in accordance with the requirements of war military forces³¹⁵ and this theory still exists and has existed in all successive Israeli governments. Any actions taken by the settlers against the Palestinians are justified, while the function of Israel's Ministry of Foreign Affairs is to justify the actions of the War Department, and market it internationally³¹⁶. There is also a clear penetrate of the Israeli military institutions in all political, economic and social fields, which confirms that the Israeli settlement activity with its civil composition contains military aspects.

³¹⁵Khalil Tufkaji, a titled article: "Trying to give legal legitimacy to the Israeli settlement-Ten new Knesset members residing West Bank Posted on Palestine newspaper on 14Feb,2009, <http://www.felesteen.ps/index.php?action=showdetail&nid=44976>

³¹⁶As what it happened in the invasion of the West Bank in 2002 and the war on Gaza Strip

When the Israeli occupying power claims that it does not establish new settlements, it is continuing to "expand" existing settlements based on what it describes as "natural growth" despite the fact that the Israeli government statistics show that the significant growth in the population of settlements is a result of Jewish immigration to the settlements and not to the principle of natural growth. Israel also turned a blind eye on the outposts set up under the auspices of the Settlement Department, which receives its budget from the government³¹⁷. In response to the decrease in numbers of the declared settlements - the activities of settlers has led to increase in the numbers of" outposts "or settlements built without prior approval from Israel. Through the combination of the construction of new outposts and the continued expansion of existing settlements, the number of settlers is increasing with high frequency. The fastest growing population among the Israeli settlers is the "religious nationalists", who believe in the biblical right of Israel to include within its borders the West Bank. The religious settlers make up more than 80%³¹⁸.

Israeli governments have taken a strategic approach to increase the number of settlement blocs in order to expand and grab new areas through a variety of levels, including³¹⁹:

- Political needs – strategic needs; the control of areas in preparation to annex them partially or completely to the State of Israel. For that purpose Jewish settlements have been concentrated in a connected way to each

³¹⁷Israel's Discriminatory Treatment of Palestinians in the Occupied Territories, Report of Human Rights Watch, Dec 2010, , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 24

³¹⁸International Crisis Group, Israel's religious right and the question of settlements, July 20, 2009,p.8

³¹⁹ Lua'y Abdo, documentary study titled: The Peace and the state to face the settlement, <https://pulpit.alwatanvoice.com/articles/2006/05/24/46472.html> (November 10,2016), 22.

other, separating Palestinian regions, communities, towns and villages from each other.

- Security needs; the settlements have been established in the areas of political and military importance, such as the highlands to turn them into political borders in the future.
- Economic needs and responding to the demands of various forces in Israel on settlements either for religious or economic purposes. etc.

Through different time periods and successive Israeli governments the main strategic political objective of all Israeli governments was taking and tightening the control over large areas of the occupied territories and their annexation to Israel.

There was certain diversity in the system of the government in Israel after 1967, brought by the two Israeli main parties (Labor Party and Likud), but when it comes to settlements the contrast between them disappears, in the sense that there are no differences between the orientation of the parties regarding the settlement project, except for the formal matters only. The joint point of the policies of these two parties (Labor and Likud) is that the settlement in the eyes of governments and Israeli planners is an existential issue more than it is a security issue, and does not mean that Israel's existence is threatened in any sense, but it means that the existence of Israel should be reinforced, strengthened, expanded and fortified through settlements³²⁰.

³²⁰Hassan Ayoub. Research Study: agreements «Oslo» and the new strategy of the Israeli settlement expansion in the occupied Palestinian territories (1993 - 2003)

Both Parties: Labor and Likud formed factional and political strength in the political life and parliamentary scene during a long period through three approaches³²¹, namely:

- The first approach: the settlements as a functional project: This approach believes that the future of the occupied territories is determined within the framework of a regional and geographic solution based on sharing this land and keeping for Israel its military and human presence in the strategic settlement areas as demarcated by Allon plan. This was the vision of the Labor Party, which dealt with the settlements as functional project.
- The second approach: functional sharing with the Palestinians without compromising on the land: The Israeli army had its own vision³²², based on a sharing project "extensive and functional" with the Palestinians without compromising on the land and maintaining permanent Israeli presence in the Palestinian territories. This vision embodied the vision of the hardline wing of the Labor Party which was expressed by Diane when he said: "Without the settlements, Israeli forces become an army of foreigners governing foreign people³²³" and then he spoke about the role of settlements as a main justification for occupation and the maintenance of Israeli army in the occupied territories. This approach calls upon Israel to establish settlements in all the areas³²⁴.
- The third approach: the ideological orientation: This approach expresses the ideology of Greater Israel that should become a political strategy

³²¹ Hassan Ayoub. Research Study: agreements «Oslo» and the new strategy of the Israeli settlement expansion in the occupied Palestinian territories (1993 - 2003)

³²² This vision is used by military commanders such as "Moshe Dayan

³²³ Report on Israeli settlements in the occupied territories. Published by the Fund for Peace in the Middle East, May - June 2007, Vol. 17, No. 3

³²⁴ Geoffrey Aronson, the future of Israeli settlements in the West Bank and Gaza Palestine Studies Institute, Beirut, 1996, the first edition, 3.

based on the annexation of all occupied territories to Israel and the establishment of settlements there. The strategy of the land of Greater Israel embodied the ideology of Likud and other Zionist parties that demand granting citizenship and full equality for the residents of the areas so they become citizens of the Greater Land of Israel, with the inclusion of all regions occupied in the War of 1967.

Menachem Begin, the Israeli prime minister in 1977, considered the settlement activity in all parts of the land (Israel) as an expression of permanent identity of Zionism, and he believed that there is no essential distinction between the settlement policies that were emitted during the establishment of the state of Israel and those that arose after the Israeli occupation of the West Bank, Gaza Strip and the Golan Heights in June 1967 because the previous settlements as well as the future ones present the assignment of Jewish sovereignty over Palestine which is not completed yet.

Israeli motives towards the establishment of settlements were different; we will present them as following:

- First-political motives: Mainly they concern the Israeli security dilemma that does not mean (from the standpoint of Israel) the problem of borders or even the sovereignty, but the problem of physical existence³²⁵. Israel's policy towards settlements was significantly affected by the problem of security, which has become a strong excuse to keep a large number of settlements along with the unwillingness to just think of compromising them, namely those in the West Bank and Gaza Strip situated along the separation borders between

³²⁵ Moshe Sneh, head of the Haganah leaders in 1943, said "the settlement is not a goal in itself, but also a means of political seizure of Palestine."

them and the occupied territories in 1948, considering those settlements as front lines of defense of the state and therefore they cannot be spared in any way. If some of the settlements play the role of serving Israeli security, others, especially those located in the densely populated areas undermine Israel's security and present serious burden for the army and the Israeli government, and now there is a lot of debates in Israel over the question whether the settlements are really ensuring the security of Israel, especially among military leaders. The importance of settlements remains in giving Israel the ability to absorb any land attack as it saves time for the mobilization of reservists. Political objectives and motives of the Israeli settlements in the West Bank were clear through the geographical division of them. The forms of settlements are certainly different but they ultimately serve the political goal which is the dismemberment of the West Bank, seizure of more territories of Palestinian land, strangling Palestinian communities and separating the city Jerusalem from its Palestinian surroundings³²⁶. These are political goals par excellence! They make it impossible to even talk about peaceful solutions in the future that will lead to a Palestinian state, in such a situation posed by the settlements, especially when the settlements network is expanding, serving the strategic political goal which is creating the state of "Greater Israel" with unified Jerusalem as its capital and West Bank divided into sections which prevents the establishment of a Palestinian state.

- Second-economic motives: Israel is trying to control all economic resources in the West Bank, particularly water and agricultural products. These two elements constitute the settlement theory in the West Bank since Israel

³²⁶ kabreet network , A titled article "Israeli settlements", paper no 21,
<http://www.egypt.com/kabreet/issue21/article7.asp>

controls 68% of West Bank water stocks for providing sources to the settlers so they accept to live in these settlements. This is the main tool always used by Israeli political system to expand the borders, Judaize the land and the holy places. This also solves the problem of growing unemployment due to the large number of immigrants to Israel which makes Israeli settlements important for strengthening the capacity of Israeli economy, provides jobs for Israelis and facilitates Israel's capture of natural resources of the occupied lands and also guarantees the acquisition of the most part of the groundwater. An Israeli economic study prepared by the Yesha Council stated that Israeli settlements bring great economic benefit to Israel which is incomparable with the obstacles caused by them, in addition to the new jobs and new resources they offer to Israeli economy. Israel earns because of their existence nearly two billion dollars a year aid to house the settlers and provide jobs. However, the study showed a dramatic increase in the costs of settlers' protections in some areas such as Hebron and Gaza Strip. In Hebron, 450 settlers are protected by 1,200 soldiers, and in Gaza there are 22 settler families whose protection costs \$ 10 million annually.

- Third ideological motives: Settlements are one of the three pillars of Zionism, in addition to defense and immigration, and whatever government controls Israel, it cannot ignore this factor since the ideological component of Israel's entity is based on the concept of the settlement activity. As a result of feeling lack of security and fear, all Israeli governments without exception preceded with providing settlers all tangible and intangible guarantees to allay their fears from the peace process with the Arabs and convince them that they are

just trying to waste time to increase the scope of settlements and feed their sense of hatred and aggression.

- Fourth The nature of relationship between the government and the settlers: Israeli settlers practice a lot of pressure on Israeli government, backed by some of the small religious parties with the aim of strengthening the settlement policy and providing more security guarantees and privileges to the settlers. Besides the power of exercising political pressure on the government, they have instruments such as Israeli military courts that are responsible for settling any dispute over lands as well as adopting military decisions that allow them to seize Palestinian land.

However, there is no difference between the settlers who came for economic or political or religious motives, they are all practicing the policies of murders, sabotage and control, while the army and government made them above the law. They often take the law into their own hands and control the richest Palestinian areas, both in terms of agriculture and water supplies, or in terms of geographical and strategic locations. This suggests that their lasting presence in the West Bank will bring to a constant point of disputes between the two parties and make it impossible to coexist between them in the lights of political agreement, because their continued presence in the West Bank means the continued presence of occupation.³²⁷

On The position of successive Israeli governments on settlements, Settlements present an ongoing project of Israel and its successive governments which is not restricted or limited to one government or another. After the Israeli occupation in 1967 the Israeli government has formed a government company for settlements and a ministerial

³²⁷ Islamic unity, "The Zionist settlement and its destructive effects on the Palestinian people", (May 2014), <http://wahdaislamyia.org/issues/149/imaatook.htm> (January5, 2016)

committee on settlements, which means that the government adopted settlement activity through institutionalized channels and brought it into the mainstream of its projects to re-build what it calls the Jewish entity in the "Land of Israel". At the same time, the settlers launched initiatives heading towards the settlement in several areas in the occupied West Bank, whilst Israeli governments competed with one another in providing assistance, facilities and tax exemptions to them. The government also issued a decision in the first year of the occupation of the West Bank and Gaza Strip that considers settlements as areas of type A to encourage a huge number of settlers to move there and live in the settlements, which the government began to call for establishing³²⁸.

The Labor Party and the left-wing parties allied with it after the war in June 1967 launched the settlement project, whilst Likud worked to expand and deepen the project. The national unity governments, formed in the wake of the complexity of the process of installing / formation of a new government, took the same path. After this initial and central support by the government in Israel, the project has gained internal payments at governmental and non-governmental levels which made it cross all the limits. Israeli ministers from the Labor party proposed settlement and expansive projects, led by Allon Yigal whose plan focused on grabbing a larger area near the Jordanian borders in the Jordan Valley to pose a security belt between the West Bank and East Bank, in spite of the vast areas that have been seized in the Jordan Valley. Turned out that his project was aimed at the dismemberment of the West Bank and preventing the availability of territorial and demographic contiguity between the Palestinians. Moshe Dayan's plan focused on the confiscation of Palestinian land for

³²⁸ Johnny Mansour, *Israel and the Settlement Project Constant and Changing Policies of Governments, Parties and Public Opinion (1967-2013)*, *MADAR The Palestinian forum for Israeli studies*, Palestine ,2014, 32.

military purposes of Israeli army, avoiding the Palestinian Arab communities and transforming the Palestinian territories to camps, and then gradually to settlements, in the sense of collapsing the communication between Palestinian villages and installing the communication between the Jewish settlements.

According to official Israeli figures, in the period from 2009 to 2014 when Benjamin Netanyahu served as Chairman of the Government of the State of Israel's occupation there was an increase in settlement constructions by 25% over the previous years. Daniel Seidman, chairman of the organization Land of Jerusalem, linked the tenders for construction of settlements with the forthcoming elections, in which contested the Likud Party, led by Prime Minister Benjamin Netanyahu with other right-wing parties in order to win the votes of settlers, he said: "It's the opening of a wide door for settlements". He said: "this is not a coincidence; the tenders are not possible without Netanyahu's knowledge and approval". He added: "Netanyahu has a tendency to do so, especially when faces difficulties in the polls."³²⁹

This indicates the seriousness of the exploitation of the Israeli elections by the extremist «Israeli» right forces and further operations on «Judaizing Jerusalem», land confiscation and settlement expansion. The popularity of Benjamin Netanyahu as head of the Government of the State of Israel grows in the settlements, and the number of voters among the settlers for Likud party grows as well, while Netanyahu refrains from commenting on the allegations to freeze the construction of settlements in the Palestinian territories under international pressure, suggesting that they are legal. However, despite the allegations of settler leaders and Netanyahu's silence about them, the data of official statistics of the Office of the Israeli Central Bureau of

³²⁹ Increment of Settlers population in the west bank during Netanyahu's term by 55% since 2009 ,Report of *MADAR The Palestinian Forum for Israeli Studies*, <http://www.madarcenter.org/en/>

Statistics showed that it has been adopted a policy to mislead in all matters relating to settlement expansion, according to an article published by economic and political analyst Sever Blotskr in the newspaper "Yediot Aharonot"³³⁰

This official statistical data means that during the years of continuous Netanyahu's rule, settler's population grew by 55%, with the annual rate 6,5%. For comparison, during the recent years, the number of inhabitants of the so-called Israel (areas inside the Green Line) rose by 13%, and annual rate 1.8%.

This means that the pace of population growth in the settlements was more than four times comparing to the pace of population growth inside the so-called Israel (areas inside the Green Line). As well as the pace of population growth among the settlers is twice bigger than the pace among the Palestinians, according to Blotskr. He explained that this rapid population growth among settlers is because of a housing crisis, and in order to get special budgets for their community. Another reason for the increase of population in the settlements is the internal migration ideology, because the settlements for the vast majority of Israelis became an agreement.

Blotskr believed that the increase in the number of settlers during Netanyahu's mandate - the fat years of the settlement project which cost large government investments in physical and social infrastructure, and in the institutions of the State of Israel's occupation, and public services in the occupied Palestinian territories that produced a new national reality, turned the two-state solution to a non-applicable issue. As well as the separation between Israelis and Palestinians and the

³³⁰ Increment of Settlers population in the west bank during Netanyahu's term by 55% since 2009 ,Report of *MADAR The Palestinian Forum for Israeli Studies*, <http://www.madarcenr.org/en/>

disengagement between them became no longer possible in a reasonable and applicable way³³¹

All this reflects the seriousness of the exploitation of the governments of the occupying State of the electoral political process inside the community by attracting the largest number of political supporters to its party and continuing to confiscate Palestinian lands and establishing more Israeli settlements and expanding the existing ones.

Israel tried systematically to keep the Palestinians away from their land by all means. The Israeli occupation forces exercise displacement and deportation which shows systematic approach to replace the Arab Palestinian population from Palestine to neighboring or distant countries, or to small tight areas inside the occupied Palestinian territories. Forced displacement of the population is one of the most serious violations of international law, and according to the statement of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Human Rights Committee:

"The essence of population transfer remains a systematic coercive and deliberate...movement of population into or out of an area... with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another³³²."

³³¹ Increment of Settlers population in the west bank during Netanyahu's term by 55% since 2009 ,Report of *MADAR The Palestinian Forum for Israeli Studies*, <http://www.madarcenter.org/en/>

³³² A.S. Al-Khawasneh and R. Hatano, *The Human Rights Dimensions of Population Transfer Including the Implantation of Settlers*, Preliminary Report Prepared for Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-Fifth Session (Bethlehem, Palestine: BADIL- Resource Center for Palestinian Residency and Refugee Rights, August 2, 1993).

"The deportation of a number of Palestinians from Palestine by the Zionist entity (Israel) and the expulsion of population from the occupied territories, whether recently or in the past, constitute violation of the principles of the International Law on Human Rights, international criminal law and international refugee law, as well as the provisions of international agreements and conventions such as the Hague Conventions of 1899 and 1907, the Charter of the United Nations of 1945, international humanitarian law through the Geneva Convention related to the protection of civilian persons in time of war of 1949, which prohibits all deportations as a form of punishment in the occupied territories. " These international instruments regulate the forced displacement of population both internally (within the internationally recognized borders) and externally.

Israeli deportation of Palestinians since 1948 until these days is an international crime defined as forcible transfer of population. Israel is continuing the forced displacement of Palestinians through systematic practices and policies. These practices and policies led to creating the most significant and longest refugees and immigrants issue who are still suffering from the Israeli policies and the efforts to displace them. These policies began with the expulsion of Palestinians by force, destruction of cities, houses and Palestinian labor projects, and also the confiscation of Palestinian land, building new settlements, the expansion of primarily ones and encouraging Palestinians to emigrate by impoverishing them after the seizure of agricultural land and water resources along with imposing military curfews³³³.

Through a complicated judicial mechanism, the Israeli occupying state captured about 50% of the West Bank, and this was mainly to build settlements and

³³³ Palestinian Negotiations Affairs Department, Fact sheets,
<http://www.nad-plo.org/atemplate.php?id=35> (February 25,2016)

create reserves in case of the need to be expanded. The Announcement of the lands as state lands and recording them on this basis is the central way to conquer the land. To grab more of Palestinian land the Israeli occupation on a judicial basis followed the method of declaring lands as military areas. This seizure of lands happened in violation of basic laws of any fair action³³⁴. All of these actions have a single goal which is building civilian settlements in the occupied Palestinian territories. Therefore, the way in which the transfer of land from Palestinians to Israelis takes place is invalid from the beginning. Since the goal is illegal according to international law (we mean construction of settlements) the mechanism of reaching of this goal is also illegal, and as Israel is the occupying power on the land, it must take into account the needs of Palestinians when using the land.

In the majority of the cases, the Israeli Supreme Court collaborated with land grabbing mechanism and helped to create a legal robe for these procedures. Initially the Supreme Court accepted the state's argument that the acquisition of land is a matter of urgent military needs and allowed the state to seize lands owned by Palestinian residents to establish settlements. However, later on the Supreme Court refused to intervene to prevent the announcement of the land as state land.³³⁵

Taking a look at the statements and behavior of the Zionist leaders, we find that Zionism in its basic form is an infringement of international principle that prohibits ethnic cleansing and expulsion of people from their homes by force. The mask of war, and "security measures" that are endless, and also the military purposes

³³⁴In many cases, the Palestinians did not know that their lands have been recorded as a state land, and when they knew it, the date of submission of the objection was too late, and Palestinians are always tasked to prove their identities and mostly these lands were recorded as state's land that later on becomes lands of settlements.

³³⁵ B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, Settlements, "Israel's High Court legitimizes looting of land", <http://www.btselem.org/topic/settlements>

to practice occupation, as well as the justifications that, in fact, are colonial – they are all parts of a comprehensive strategy to expel the largest possible number of Palestinians from their land.³³⁶

Today Israeli regime is gathering occupation, apartheid and colonialism which are the causes of continuing forced displacement of Palestinians within the historic borders of Palestine. Forced displacement is performed with a group of Israeli policies and practices that are interconnected and characterized by systematic racial discrimination and repressions which are carried out in the context of military operations and administrative routines. Israel is implementing these policies by using military force, police, legislation, regulations, military orders and actual measures taken by governmental bodies, state organizations, private individuals or private sector institutions with the approval of the State.³³⁷

Apartheid is the cruelest form of racism³³⁸ and, it is "a political system whereby racism is maintained and institutionalized through the laws, regulations and governmental policies." Article 3 of the Convention on the Elimination of Racial Discrimination described as a form of segregation. The definition of the crime of apartheid, according to the Convention for the Suppression and Punishment of the Crime of Apartheid in 1976 is as follows:

The term "crime of apartheid" applies to policies and practices of racial segregation and discrimination.....to inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically

³³⁶ The Palestinian Return Centre, "The violation of the Israeli occupation of human rights in Palestine", (January 9,2012), <http://prc.org.uk/portal/index.php/> (February 27,2016)

³³⁷ BADIL Resource Center for Palestinian Residency and Refugee Rights, <http://www.badil.org/phocadownloadpap/badil-new/campaigning-tools/brochures/2015/Q&A-ar-2015.pdf> (January 1,2016) , 22

³³⁸ Ibid

oppressing them, especially through acts such as apartheid, confiscation of lands, denial the right of persons to leave their country or return to it, denial the right to a nationality, denial the right to freedom of movement, choice of residence and other...³³⁹

Rome Statute of the International Criminal Court defines as inhumane acts of a character similar to other crimes against humanity "committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime." Apartheid is a crime against humanity. International criminal responsibility is to apply to individuals, members of organizations and representatives of the State who commit, incite or conspire to commit the crime of apartheid³⁴⁰, regardless of their motivation, or time of involvement, which could be carried out directly or by encouraging or cooperating in the commission of the crime of apartheid. All States must to condemn, suppress and punish those involved in the crimes of apartheid. Israeli long termed military occupation cannot be considered as a temporary measure to maintain law and order in a certain territory after an armed conflict. It is an authoritarian military regime and a system of racist colonial power under the cover of military occupation. This system includes the worst racist attributes (apartheid), such as the segmentation of the occupied Palestinian territories into Israeli and Palestinian areas, construction of the apartheid wall, the regime of racial segregation; separation system on the roads, the closure and permits regime that restricts the freedom of movement on the basis of national, ethnic, racial and religious affiliation.

³³⁹ (The Apartheid Convention 1976)

³⁴⁰ Ibid

The United Nations Relief and Works Agency for Palestine Refugees (UNRWA) has highlighted the Israeli measures that correspond to the legal definition of forced displacement which is a grave breach of the Fourth Geneva Convention. These measures are subject to legal prosecution as war crimes, or crimes against humanity when committed on a large and systematic scale against the civilian population, according to UNRWA's recognition that the forced displacement can be caused by creating a "coercive environment" which forces individuals and families to leave their homes and their communities. Badil Resource Center³⁴¹ (Resource Center for Palestinian Residency and Refugee Rights of Palestinians) supports UNRWA's assessment that the implementation of the demolitions carried out by Israeli forces of the homes and facilities of Palestinians" aggravate the coercive environment that already exist and also lead to the exclusion of the communities from their land they inhabited for decades." Badil Center also confirms that the fact of the existence of a formal plan or not is not a prerequisite to verify the existence of forced displacement because any forced displacement caused by the presence of an effective coercive environment within the occupied Palestinian territory is an actual forced displacement. As a result of committing the crime of forced displacement, other countries must fulfil legal obligations according to the text of article 1 of the Fourth Geneva Convention and since the forced displacement is a grave violation of the Fourth Geneva Convention and defined as a war crime, States are obliged to prosecute individuals accused of the crime of forced displacement, or those who gave the orders to commit it, and bring them to trial in a local court, or extradite them to another High Contracting Party for trial³⁴².

³⁴¹BADIL Resource Center for Palestinian Residency and Refugee Rights: <http://www.badil.org/en/>

³⁴²BADIL Resource Center for Palestinian Residency and Refugee Rights: <http://www.badil.org/ar/publications-ar/press-releases/79-2016/4537-pr-ar-110116-05.html>

The danger of the settlements rises from their expansion and siege on other Arab communities as the Palestinian territories have been divided into isolated areas surrounded by settlements that stricture their lives. This isolation is only the prelude to swallow the Palestinian Arab land and expel its inhabitants. With no doubt, isolating Palestinian towns and villages from each other is a crafty style that reflects the malice and cunning of sons of Zion who thus are cracking down on residents and imposing on them economic blockade. Indeed, settlement is one of the most complicated issues in the Israeli-Palestinian conflict.

The settlements planted in Palestinian territories have the purpose aimed at creating a disturbance in the balance of Palestinian population. The construction of settlements is only a series that will end stage in causing a coup in demography so that the number of Israelis become more than the number of Palestinians. Israel wants to create a reality in front of the whole world to get their asset in the final status negotiations, and that change in the balance of population in favor of the Israelis is only an obstacle that complicates the achievement of the agreement on a just solution.

The successive Israeli governments have constructed a network of bypass roads which are ways built by the Zionist state for the exclusive use of settlers in the West Bank inseparable from those roads for the Palestinian use, they are surrounding the Palestinian centers in the West Bank to provide direct links between the Israeli settlements and the Israeli cities and Israeli illegal military bases.³⁴³

These bypass roads around Palestinian cities transform the cities into Palestinian communities besieged by settlements, bypass roads and military installations, and thus bypass roads are like security fence around the settlements as they make the settlers

³⁴³ Dr.Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies*, Palestine ,Dec.2014, 26-28

who live in the middle of Arabic towns and villages able to move around without having to cross the Palestinian territories or face the Palestinians. These roads place restrictions on the freedom of movement and the ability to build and develop; they also create a new reality on the ground that prevents the establishment of a sovereign Palestinian state connected geographically³⁴⁴.

Settlements and bypass roads were built on large tracts of agricultural land and they closed other spaces for security reasons which gave the Occupying Power the control over the roads and crossings between the Palestinian territories making them at the mercy of settlers who can close the roads anytime they will to. Moreover, the presence of these settlements near the Palestinian cities makes the last border cities that Israel can close or attack whenever it wants. That means a security threat to the integrity of the Palestinian state and thus a threat to the core of Palestinian sovereignty. These settlements also have security protection that requires Israeli military presence to protect them, which means the existence of a state within a state which affects the national security of the Palestinian state.

Israeli governments applied in the West Bank several methods to achieve the settlement project, such as surrounding Palestinian cities by settlements that form a fence, cutting the West Bank with roads that extend from within what is called Israel (inside the Green Line) until the settlements, so as they are directly linked to what is called Israel³⁴⁵. These settlement blocs are aimed at isolating almost the entire

³⁴⁴For more details about the Israeli Pass Roads: Dr.Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies*, Palestine ,Dec.2014,p 26-28

³⁴⁵In addition to the colonies chain along the western valleys of the Jordan River, from the Jordan River till his exit from Tiberias Lake and even Ein Gedi according to Alon project. And The colonies of the hills, from the Bethlehem hills from eastward and northward until Bisan which is north of Jenin, This fits with Moshe Dayan project. The colonies of the western hills of Jerusalem and even Jenin in the north, according to the Sharon project. These longitudinal settlements cross from south to north with the occasional settlement blocs that surround Palestinian towns. About Alon Diane and Sharon plans, see Palestinian encyclopedia/ public section, Folder I, 221

Palestinian towns from each other, and also isolating the Palestinian countryside, transforming their population into fragmented and incoherent human groups to prevent their unity in future political or military actions, in addition to the ease of controlling these incoherent and non-related communities, and thus the possibility of their deportation without objections or mass Palestinian resistance³⁴⁶.

After the military occupation, the Israeli occupying authorities began a series of actions, the main one of them was the establishment of Israeli military regime under military orders ³⁴⁷ (or so-called "Leaflets") covering various aspects of life in the occupied territories, including a number of orders that legalized the subsequent seizures of large areas of the occupied territories and the conquest of Palestinian property from its owners and the control over it. Multiple methods have been used in the occupied territories³⁴⁸. It all began in Jerusalem, where the Government of Israel settled in the Arabian Jerusalem municipality, as a step initiated to implement the settlement project in Jerusalem, and it shut down all the Arabian administrative

³⁴⁶For example: The Israeli plans that have been implemented in the Jordan Valley immediately after the occupation in 1967, which have expelled and displaced thousands of Palestinian farmers and nomads, plundered their land and turned it in favor of the settlement project. The Israeli pretext in this process is to provide security cover for Israel, but this scheme falls under the name of the Israel's colonial expansion and the disposal of the largest possible amount of Palestinian human blocs that constitute a demographical obstacle front of the superiority of population. In Addition to the Israeli ambitions to control the quality of agricultural lands which have huge quantities of water that can generate huge revenues to the Israeli Treasury, stated in Johnny Mansour, Israel and the settlements (fixed and convertible in the attitudes of governments, political parties and public opinion) the Palestinian Center for the Israeli Studies, 2013, p. 16

³⁴⁷Proclamation No. 1 "on the IDF access to power " and followed it immediately proclamation No. 2 "on the judiciary power systems", both founded the radical change graded in the legal and administrative structures prevailing at the time, stated that the laws existed in the West Bank remain applicable as long as they don't clash with this publication or any order issued by the commander of the Israeli forces in the West Bank.

³⁴⁸In this aspect, we recall examples of military orders issued by the Israeli military. Such as Order No. 58, which defined the "absent person" as anyone has left the West Bank before, during or after the war. The military commander appointed Custodian of Absentee Property, where the military commands passed him/her the right to conduct real estate transactions and the sale of land. The Custodian of Absentee Property and over the past years assisted and enabled the occupation forces from the acquisition of large tracts of Palestinian land owned by the classified population as being absent, the military orders 59 of the year 1967 on state property / Military Order No. 321, issued in 1969, to lead and confiscate lands by the occupation forces in the Palestinian occupied territory for the purposes of the public benefit.

institutions, including the court system, and has linked the Arabian Jerusalem with the Jewish West Jerusalem municipality services. At the same time it cut off Jerusalem from the rest of the West Bank areas that were its natural extension³⁴⁹. The most dangerous part in the Judaization of Jerusalem is the expansion of the construction, during this process Israel has built dozens of settlements, forming a circle around Jerusalem and preventing any territorial or human contiguity between the cities of south Jerusalem and the cities of north Jerusalem. Israel through this expansionist settlement project took control over vast areas of Palestinian private and public lands, blocked and will block in the future the implementation of any Palestinian urban project in the region³⁵⁰.

The city of Jerusalem was besieged by Israeli neighborhoods and settlements in an attempt to strangle the city and Judaize it. Palestinian population has become a minority in their own city. Israeli settlement plan in Jerusalem has become one of the main priorities of the successive Israeli governments until Israeli government got the control over the area of Jerusalem after carrying out the well-organized acquisition of lands under the pretext of public interest, and so it turned the demographic balance of the Arabian Jerusalem. Israel applies discriminatory policies in the housing in East Jerusalem, which it believes, in contrast to the rest of the West Bank, is a part of Israel. The Allocation laws customize about 25% of the land in East Jerusalem for Israeli settlements, while it only allocates 13% for Palestinian construction, according to UN statistics. In some Palestinian neighborhoods Israel has not issued building permits in Jerusalem since 1967, and it demolished hundreds of Palestinian homes

³⁴⁹On the other hand, the Israeli Jerusalem municipality began applying schemes of Judaizing Jerusalem, it demolished the Moroccan Quarter in the Old City of Jerusalem, and it displaced thousands of Palestinian residents of Jerusalem who have lived in this neighborhood for thousands of years, then the Jerusalem Municipality began to re-control the Jewish Quarter in the Old City, and carried out the demolition of Arab buildings under the pretext of illegal housing

³⁵⁰This is what is defined by the Israel as "Greater Jerusalem"

and buildings as they were considered built illegally due to the absence of building permits. In contrary, the Israeli authorities have failed the implementation of several orders of private courts on the closure or demolition of illegal buildings of settlers in East Jerusalem.³⁵¹

In 2009, the Jerusalem municipality has adopted a basic plan (Jerusalem Plan Framework of 2000) which means "the instructions and guidance on the city's development in the coming decades," and adopts the principle of "maintaining the ratio of 70% of Jews and 30% of Arabs" in the city "by improving services and providing reasonable housing prices to Israelis as" an essential political objective." Based on the demographic trends, the plan should lead to a severe shortage in the Palestinian Housing, and in genera it aimed at re-switching the demographic balance in Jerusalem by reducing the number of Palestinian population in the city. For such reasons, Israeli authorities canceled the residence permits of a lot of those who reside in Jerusalem³⁵².

As for the Gaza Strip, the main problems faced by the government of Israel were the population density and the lack of agricultural lands. Despite this problem, Israel's plans included operations to take apart the Palestinian population system through evacuation of camps and Palestinian areas and building wide roads to prevent their rebuilding or the composition of new ones. These projects and others have led to the displacement of the population and their resettlement in other locations. Therefore, an operation of forcible transfer of population was carried out by Israel to

³⁵¹ According to the Civil Rights Association in Israel which is Israeli human rights organization: for example in 2004 it was 85 percent of the Violations of the rules construction in Jerusalem is located in the western part of the city, but 91 per cent of all the administrative demolition orders issued against buildings in East Jerusalem.

³⁵² Report of Human Rights Watch , "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 11.

decrease the population density, but it has not achieved what it wanted from this project. The Government of Israel has established a number of settlement blocs in the Gaza Strip, in the south and the north of it, and the goal behind this is the isolation of the Gaza Strip³⁵³. By this Israel has violated the provisions of the Declaration of Principles between Israel (the occupying power) and the PLO of 1993, where agreed that the West Bank and Gaza Strip must be treated as a single geographic unit, but Israel until today has been willing to form two Palestinian units: the Gaza Strip and what remained from the West Bank, separated by major settlement blocs. Thus it will keep the sovereignty over the land and achieve geographical integration of Israel, where Palestinians will be forced to use areas under Israeli control³⁵⁴, along with hard economic conditions which came up as a result of Israeli practices such as closures and preventing people and goods movement in both directions.

Israel started building the wall during the second intifada¹ for the stated purpose which is to prevent Palestinians from entering Israel for carrying out suicide bombings or other attacks. However, 85% of the wall's path lies inside the West Bank. On 15 October of 2003, the United States used its veto against the draft resolution submitted to the Security Council, which condemned the construction of the wall. During the Tenth Emergency Special Session held on 27 of October 2003, the United Nations General Assembly adopted the Resolution ES-10/13 in which it "Demands that Israel stop and reverse the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, which is in departure of the Armistice Line of 1949 and is in contradiction to relevant provisions of

³⁵³ Palestinian encyclopedia, General Section, Vol. I, 224.

³⁵⁴ Dr. Ahmad EL-Atrash, Settlement Geography, *MADAR The Palestinian forum for Israeli studies*, Palestine, Dec.2014, p.30

international law." It also requested the Secretary-General to report on compliance with the present resolution periodically.³⁵⁵

In November 24, 2003 the Secretary-General submitted his first report (*UNDoc A/ ES-10/248*), in which he described what he called "the wall" and its planned path as a network of fences, walls, razor wire, trenches, patrol roads and barriers with barbed wire, partially with armed guards that is set particularly in areas where the Palestinian population clusters are located, on the borders with the territory inside the green line. He also pointed out that much of the wall, as planned, or, as has already been done, deviates from the Green Line (the Armistice Line of 1949), includes Israeli settlements and creates Palestinian enclaves. He also described the humanitarian, social and economic consequences of the wall for the Palestinians. He described the situation of Palestinians in enclaves due to the absence of access to their agricultural land, markets and services. In his concluding remarks, he said that the State of Israel's occupation did not comply with the request of the General Assembly. He adopted the opinion that this duty should not be fulfilled contrary to international law and it could damage the long-term prospects for peace in the region³⁵⁶.

The Palestinian position and the position of the occupying Power of Israel on the apartheid wall were summarized by the Secretary-General in the appendix to his report (*UNDoc A/ ES-10/248*). It included the position of the Government of the State of Israeli occupation and the PLO as the legitimate representative of the Palestinian people. Israel has justified the construction of the wall by claiming it is a legitimate right of self-defense as enshrined in the Charter of the United Nations and the norms

³⁵⁵Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

³⁵⁶Ibid

of international law, and insisted the barrier is essential to prevent suicide attacks inside the green line or so-called Israel.³⁵⁷

As for the path of this wall, it has announced that neither the Green Line nor armistice line has been confirmed as international borders in any legal document, and that the legal status of Palestine is still a subject of dispute. Israel also denied the applicability of the Fourth Geneva Convention and Human Rights Charters on these lands; and in general, the measures that were taken regarding the population of Palestine were proportionate and in line with the security requirements of Israel and in accordance with international humanitarian law. Israel also stressed the temporary nature of this procedure. From the other side, the Palestine Liberation Organization stressed that such measures must match the international human rights law and the international humanitarian law.

And thus, the construction of the wall is a violation of this law because it is not justified in terms of military necessity and does not apply to its purpose, which was more likely to be achieved if the construction of the wall happened inside the Green Line, for example, in the territory of 1948 borders, as well as through the evacuation of Israeli settlers currently living illegally in the occupied West Bank, in the state of settlements inside the borders of 1967. As a result, the planned path of the wall represents the reality of annexation of these territories, which constitutes an interference in the right of Palestinians to self-determination³⁵⁸

Then the advisory opinion of the International Court of Justice was issued on July 9, 2004 after the United Nations General Assembly asked the International Court

³⁵⁷ Palestinian Negotiations Affairs Department, "Palestine Position", <https://www.nad.ps/en/our-position/borders> (February 25, 2016).

³⁵⁸ Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

of Justice in Hague to give its advisory opinion on the legal consequences of the construction of Israel's "apartheid wall" in Palestine, after an attempt by Israel and its supporters in the United Nations to disable the issuance of a condemnation resolution claiming that the wall was held for security motives and it does not violate the rules of international law.

The Court then gave an analysis of the legal status of that territory. It recalled the creation of the mandate for Palestine after World War I and its termination in 1948. It summarily sketched the proclamation of independence of Israel, the armed conflict between Israeli occupation and a number of Arab States and the subsequent Armistice Agreements of 1949 that, among others, established the Demarcation or Green Line. It further recalled the 1967 June War (in the West known as the Six Day War) during which Israel occupied all the territories that had constituted Palestine under the Mandate, in particular those lying east of the Green Line, nowadays known as the West Bank. It then – again summarily – described the measures taken by Israel, in particular the Basic Law of 30 July 1980, through which Jerusalem was declared to be the ‘complete and united’ capital of Israel, the condemnation of that law by the Security Council as a violation of international law, the 1994 Peace Treaty between Israeli occupation and Jordan and the 1993 agreements between Israeli occupation and the PLO.³⁵⁹

It observed that under customary international law a territory is considered to be occupied when during or as the result of an armed conflict ‘it is actually placed under the authority of a hostile army’ and that in 1967 Israel occupied the West Bank during an armed conflict. Israeli occupation therefore has the status of occupying

³⁵⁹ Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

Power in these territories and subsequent events have done nothing to change this situation (paragraph 78).³⁶⁰

After a factual analysis of the route of the wall as fixed by the Israeli Government and its actual and potential impact on the inhabitants of the West Bank, the International Court of Justice identified the rules and principles that are relevant in assessing the legality of the measures taken by Israeli occupation. The first of these is that '(n)o territorial acquisition resulting from the threat or use of force shall be recognized as legal' (GA Resolution 2625(XXV) of 24 October 1970); the second is the principle of self-determination of peoples; next there are the principles and rules of international humanitarian law which are laid down in various treaties on the law of warfare and of which the Fourth Geneva Convention of 1949 is of particular importance since it deals with the protection of civilian persons in time of war. Although Israel is a party to that Convention it had always denied that it was applicable to the West Bank since this had never belonged in law to Jordan, the other party to the conflict and to the Convention, which had been in actual control of the West Bank between 1948 and 1967. From 1967 on this had been a hotly disputed issue between Israel and the United Nations and it is therefore highly important that the Court unambiguously concluded that the Fourth Convention is applicable in any occupied territory in the event of an armed conflict between two parties to the Convention, irrespective of the question whether that territory lawfully was part of the other party (Jordan) before the conflict erupted (paragraph 101)³⁶¹.

³⁶⁰Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

³⁶¹Ibid

The last set of rules and principles identified by the Court were those contained in the human rights conventions. Here, again, Israeli occupation had always denied their applicability to the West Bank since in its view human rights treaties are intended for the protection of citizens from their own Government and thus are only applicable within a state and not outside its territory. Moreover, in Israel's occupation view they are only applicable in times of peace whereas humanitarian law is applicable in times of war. In this respect the Court repeated what it had said earlier in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), namely, that the protection offered by human rights conventions does not cease in case of armed conflict. With regard to Israel's contention that the human rights conventions were only applicable within its own territory, the Court found that these conventions did not intend to allow States to escape from their obligations when they exercise jurisdiction outside their national territory. In view of the fact that Israeli occupation had exercised jurisdiction over the West Bank for more than 37 years, the human rights conventions must be considered to be applicable within Palestine (paragraph 112).³⁶²

The Court touched the issue of the legality of the Israeli settlements. It noted that the sinuous route of the Wall had been traced in such a way as to include in the area between the Green Line and the Wall (the so-called Closed Area) the great majority of the Israeli settlements in the West Bank (including East Jerusalem). It then recalled that article 49, paragraph 6 of the Fourth Geneva Convention provides: 'The occupying Power shall not deport or transfer parts of its own civilian population into

³⁶² Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

the territory it occupies'. The Court thus concluded that the Israeli settlements had been established in breach of international law (paragraph 120)³⁶³.

The Court therefore concluded that, in spite of the fact that Israel had assured that the Wall is of a temporary nature and that its construction thus does not amount to annexation, its construction and its associated regime create a 'fait accompli' on the ground that could well become permanent and thus would be tantamount to de facto annexation (paragraph 121). Moreover, its chosen route may contribute to further alterations of the demographic situation and to the departure of Palestinians from certain areas. Thus the construction of the Wall not only gives expression in loco to the illegal measures taken by Israeli occupation with regard to Jerusalem (the annexation) and the settlements, but also severely impedes the exercise by the Palestinian people of its right to self-determination and is found to be a breach of Israel's obligation to respect that right (paragraph 122)³⁶⁴.

The Court then applied a number of provisions of international humanitarian law and of human rights instruments to the facts. From the information submitted to it, it concluded, among others, that the construction of the Wall has led to the destruction or requisition of properties and to substantial restrictions of the freedom of movement of the inhabitants of Palestine in contravention of Israel's obligations under humanitarian law. As a result of the construction of the Wall, the Court also noted impediments to the exercise of the right to work, to health, to education and to an adequate standard of living as proclaimed in various human rights instruments. It observed that it is true that the applicable international humanitarian law contains

³⁶³Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

³⁶⁴Ibid

provisions which enable to take account of military exigencies in certain circumstances, but considered that the measures taken were not rendered absolutely necessary by military operations. More in general, it was not convinced that the specific course chosen for the Wall was necessary to attain Israel's security objectives (paragraph 135)³⁶⁵.

The Decision of the International Court of Justice³⁶⁶, with no doubts, described the wall built by Israel in the occupied Palestinian territory as illegal, and the allegations made by Israel to justify the construction of the wall also illegal, illogical and not based on any legal basis. It also called the occupying power Israel immediately to stop construction of the wall and to repeal or invalidate all measures that limit or impede illegally the access of West Bank residents to their rights; The Court also found that Israel is obligated to recover all the caused damages.

The court also pointed out that there is considerable concerns that the barrier's route could create "facts on the ground" that may lead to a de facto annexation of land and result in negative impact on the future borders between Israel and the Palestinian state. International Court of Justice considers that the de facto annexation of parts of the West Bank to Israel; constitutes a breach of the right to self-determination. The

³⁶⁵ Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

³⁶⁶ The substance of the ICC response to the request of the General Assembly of the United Nations was: The wall that Israel has built in the occupied Palestinian territories, including the piece in and around the city of Jerusalem is contrary to the international law. It is the responsibility of Israel to end the violation of the international law (and here means the construction of the separation wall) remove and dismantle this wall, including in and around the occupied East Jerusalem, in accordance with paragraph 151 of the resolution. As well as the responsibility of reparations of the construction of the separation wall in the occupied Palestinian territories, including Jerusalem. All States are committed not to recognize the legitimacy of the separation wall that erected by Israel and, all the consequences of its construction and not to provide any help or support that would strengthen and stabilize the presence of the illegal wall and, all member states that have signed the Geneva Convention of 1949 on the protection of civilians in times of war that respects the Charter of the United Nations are to urge Israel to comply with the resolutions of the United Nations and the relevant international conventions. Finally, the United Nations and specifically the Secretariat and the UN Security Council should take what is necessary and what is needed to end the illegal situation erected by Israel in the occupied Palestinian territories.

court found that the separation wall is dedicated to assist in the settlement projects that constitute a breach of clause 49 of the Geneva Convention. In addition, the court pointed out that the restrictions on the population remaining between the separation wall and the Green Line could lead to their immigration, which is also contrary to the same clause of the Convention.

Most of the settlement operations were fulfilled by approval from the occupying state (its government), in particular its security institutions. Every settlement activity took place with a permit, approval, official actions and generous financial support, including settlement outposts which are of illegitimate status, in addition to mobile houses that fall under the state government policies of Israel, even though the government does not openly declare its approval. Israel continues to expand and invest in existing settlements, in addition to providing the settlements with infrastructural facilities and outposts that are not recognized, as well as dedicating generous security financing for Israeli army to commit permanent defense of settlements, according to a study prepared by Israeli daily newspaper Haaretz in 2003, which also showed that the government funding for settlements reached \$ 1.4 billion a year, \$ 526 million of them are security expenses to protect the settlers³⁶⁷.

Israeli settlement types varied in line with the diversity of settlement goals to tighten control over the Palestinian territories and not to serve military necessity, as claimed by successive Israeli governments, but they have integrated into a whole

³⁶⁷Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

system. The settlements are no longer limited to the military aspect, but they extended to the civilian, cultural, agricultural, industrial, religious, as well as political levels.³⁶⁸

Initially it was the military settlements, the argument used by Israel to establish settlements as a matter of military necessity through which it occupied and confiscated territories with focusing on the confiscation of lands with geographical and military importance that help in the attacks and defense, in order to protect the ongoing settlement projects and to achieve a number of objectives as to tip the demographic balance in favor of Jews, which, in their view, will make it easier for them to impose a *fait accompli* policy. Israel implements the so-called urban settlement policy aimed at building residential neighborhoods around the settlements to be a shelter for the settlers and Jews who emigrate to them, and these settlements activity is intensifying with each day.³⁶⁹

As for cultural and religious colonization, we find that in the Israeli confiscation and control over the historic land and monuments that confirm the Arab and Islamic identity of Palestine and Jerusalem, in violation of all the rights and freedoms guaranteed by international charters and principles. This colonization is implementing excavations under the Al Aqsa mosque, the Western wall and the Church of the Resurrection to prove that there is Jewish Remnant.

The settlements from the agricultural outset include the consequent security, the necessary water for the plants, and the establishment of light industries and other requirements such as urban settlements to provide apartments for the settlers. Agricultural settlements take place in several forms to fight the Palestinian economy,

³⁶⁸ Lua'y Abdo, documentary study titled: The Peace and the state to face the settlement, <https://pulpit.alwatanvoice.com/articles/2006/05/24/46472.html> (November 10,2016).

³⁶⁹ Ibid

such as the seizure of fertile land and the establishment of settlements by bulldozing, burning and uprooting trees .The industrial settlements do not hesitate to commit arbitrary and repressive methods in uprooting the Palestinian economic infrastructure in order to destroy it completely and provide the needs of the settlers in special food items linked to agricultural settlements, such as dairy products, canned goods, jams, juices and other light industries, and the goal is to provide food for settlers and to increase incomes, create jobs and attract new settlers.³⁷⁰

By looking at the allocation of Israeli settlements in the West Bank, it is easy to note that the total concentration of Israeli settlers is centered in Jerusalem Governorate, equivalent to 50% of all Israeli settlers, reflecting the settlement project focused on the capture of Jerusalem and its environs. It is important to note that the number of Israeli settlements classified as rural settlements is almost twice the number of settlements classified as urban settlements. Rural settlements are composed of agricultural, tourist and industrial settlements, etc. This shows that the essence is not in quantity but in the type and functional characteristics, as rural settlements are the basis for the existence of urban settlements.

If one compares the number of settlers living in settlements classified as urban with the number of Palestinians living in urban and rural areas, we note that the Palestinians who live in urban areas are about 69%, and this is a shift in the functional pattern of Palestinian communities. A large number of Palestinians had rapidly moved from rural to urban areas during the Israeli occupation due to Israeli practices and the restrictions on the right to freedom of movement, housing, education and other related rights.

³⁷⁰ Lua'y Abdo, documentary study titled: The Peace and the state to face the settlement, <https://pulpit.alwatanvoice.com/articles/2006/05/24/46472.html> (November 10,2016).

3.3. Israel's Settlement Policies

The principle of stealing the land of others, expulsion of the owners and resettling there those who come from the diaspora is an idea with ideological basis and strategic goals, which is embodied in the concept of settlement. The settlement policy is one of the basic Israeli policies aimed at the displacement of Palestinian people by force from their homes and land. At the same time it works on the resettlement of Israeli settlers in all parts of Palestine. Israel believes that this policy is a way to penetrate the Palestinian communities and tear them apart. Suffering from the terrorism of settler's, a lot of residents of these communities are forced to leave their homes and go to other Palestinian territories or abroad. In addition to the fact Israeli settlement policy also exercises different ways of discrimination in the application of the laws which apply to both, the settlers and the Palestinians.

During the years of Israeli occupation of Palestinian territory, the Occupying Power has pursued many ways and policies aimed at the displacement of Palestinian citizens and their expulsion from their land, according its colonization plans, using all the instruments, without mercy or a deterrent, without caring about international laws. Among those policies: the demolition of homes and houses, especially in Jerusalem and the Gaza Strip. Once the 1967 Six-Day War started and resulted in occupying the remainder of the land of Palestine - the West Bank and Gaza Strip, Israel quickly organized the plans in order to establish more the settlements and outposts, bypass roads, and military bases. Despite the small size of the West Bank, however, the Occupying Power Israel has set up on its territory where many of the settlements. There is no area there that is empty of settlements or settlement blocs and that was done for having a full control over all Palestinian land.

Before the announcement of signing (Oslo Accords), Government of the State of Israeli occupation announced the launch of structural schemes for all Palestinian cities, towns and villages in the West Bank, through which it put (unilaterally) the limits of urban areas of those communities, serving the interests of Israeli occupation and colonial plans leading to unload the land from its Palestinian inhabitants by the oppression of their liberty, and the pressure on them in various ways, denying even their basic rights, and all their rights. These policies cropped all the development plans of future Palestine in areas classified as A and B, while allowing the expansion of the existing Israeli settlements in the West Bank and the construction of new settlements and other Israeli plans.

Following the signing of Oslo Accords between the Occupying State and PLO in 1995, after the Palestinian territories have been divided according to the plan into three zones (A, B, C) Israeli campaign against Palestinian homes has escalated, particularly against those located in the area (C) in an unrealistically way³⁷¹. Israel claimed that those houses were held in contravention of Israeli plans in these areas which are fully under its control, and where the Palestinians must obtain the necessary permits to live there from the Israeli civil administration building and land reclamation for any purposes³⁷². At the same time, Israel has intensified its illegal activities in the Israeli settlements and outposts across the occupied Palestinian territories, especially in the Israeli settlements in East Jerusalem. Moreover, the Israeli Civil Administration has imposed tough conditions for the Palestinians who are

³⁷¹ Area C which divide within the Palestinian territories, that constitute the largest area of the West Bank, including 61%, A study of construction in area (C), according to Oslo Accords, <http://www.wafainfo.ps/atemplate.aspx?id=5178#> (January 6, 2016)

³⁷² In the classification of Urban Construction in Area C, there is an area of (188.3 Km²) classified as Israeli settlements, and (248 Km²) classified as israeli outposts, and (45.8 Km²) classified as Israeli military bases, and (54.5 Km²) classified as urban Palestinian areas. These figures available in : A study of construction in area (C), according to Oslo Accords, <http://www.wafainfo.ps/atemplate.aspx?id=5178#> (January 6, 2016)

applying for building licenses in lands located in C zone, and those licenses were often rejected because of failure to meet the necessary conditions, according to the Israeli allegations, which made the Palestinians build without a permit to keep up with natural growth of population in those areas.

Israel granted to the Israeli settlements exclusive control over about 70% of the area (C) which is equivalent to (42.8%) of the area of the West Bank, including the areas for settlement buildings and land reserves, whilst the area available for Palestinian development as planned by the Israeli Civil Administration is less than 1 % of the area (C),³⁷³ which is under full Israeli control, and which is a subject of division into several categories, all of which restrict the Palestinians' ability to use them. Israel confirms it's military and civilian control over the area C, it also emphasizes it's actual right on property on the territory, which is usually confiscated from Palestinians with transferring the contractual rights of those lands to settlers. When observing Israeli occupation settlements, we will find they are built according to well thought out plans to surround gatherings of the Palestinian population such as the cities, villages and camps, and besiege them from all directions³⁷⁴, to impose a fait accompli demographically and geographically, and to crack down on the Palestinians in order to force them to leave the land of their home.

The settlement establishment passes through three main stages, starting on seizing lands followed by granting economic benefits and finally the legality system.

³⁷³ UNOCHA (2011) 'Humanitarian Fact Sheet on Area C of the West Bank', op. cit.; and Factsheet for the EU Foreign Affairs Council meeting. Information provided by UN OCHA, March 2012
numbers of Demolition orders and demolitions for Palestinian communities are official statistics provided by the Israeli Ministry of Defense to the Israeli Knesset, later published by Peace Now movement. Area C: Palestinian Construction and Demolition Stats, February 2008. Available at: <http://www.peacenow.org.il/op.cit>

³⁷⁴ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010; <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>, 29

Such policies have been followed by and through the consecutive Israeli governments, where it often seeks on how to encourage settlers to go and live on.

Historically, Palestine is under the Israeli occupation for almost the past 6 decades and through the past years, the main justification of land confiscation was always the military necessities and the urgent requirements of military forces and, during the first decade of the occupation to the Palestinian territories, Israel seized on vary scope various lands and kept claiming on that lands are being seized for the military requirements which in fact as previously mentioned that the international law allow the occupational forces to confiscate lands for the security purposes, most of the old settlements were constructed on justifications to be military bases.³⁷⁵

International Humanitarian Law organized the obligations of the occupant towards public and private property, resources and wealth of the occupied territories, it also organized the limits and scope of the seizure and confiscation of lands or the use of public Property, which means that international humanitarian law created a number of guidelines and legal criteria to be committed by the occupier in areas and lands under his control and management.

The operations that Israel use to confiscate land in the West Bank and grant it to the settlements include the seizure or the acquisition of Palestinian land for military purposes, and the confiscation of Palestinian land for "public needs" and the declaration of Palestinian property as if "ownership is absent". Israel issued a military order to transfer whereby all Palestinian property which owners left the West Bank during 1967 War time, regardless of the circumstances, and the land which owners are

³⁷⁵Report of CHRONICLE of the Middle East & North Africa, "Israeli Discrimination wall", <https://chronicle.fanack.com/ar/specials/palestinian-israeli-conflict/separation-wall/israeli-and-palestinian-positions/> (February 12, 2016)

not known, or which owners are from the population of "enemy state"³⁷⁶, to the "mortmain of left lands". The mortmain rule must keep the ownership of the property until the owner is back, Israel has banned the return of refugees to the West Bank, which prevented Palestinians from demanding their lands back.

The same situation is with the Palestinian territories registered under the name "State Land". Israel's wiping of West Bank lands has been conducted in an attempt to demand for it the lands which Palestinians cannot prove ownership of. Israel has allocated about 36.5% of the land in area C as "state land"³⁷⁷ and has allocated 63% of the territory of the C area within the influence of local and regional councils of the settlements. Nearly 20% of the land in area C is defined as "savage territory" - that is not registered and has not been announced as state land, and the authorities are examining the position of this territory in order to allow its possession as governmental property and its use by the state. A total of 30% of the land in Area C is defined as military training areas, mostly in the Jordan Valley. Nearly 5,000 Palestinians live in these areas, in dozens of population groups. 14% of Area C is areas declared as nature reserves and national parks of Israel, where construction is prohibited for Palestinians. 3.5% of Area C is besieged land between the separation wall and Green Line. If we calculated all these categories above we will get the result which shows that the area where Palestinians are prohibited to build makes nearly

³⁷⁶hostile state Included in that time, Jordan, Egypt, Lebanon, Syria and other Arab countries

³⁷⁷For more details about "state lands" see: Taking over Palestinian land by declaring it state lands available at: http://www.btselem.org/area_c/state_lands

70% of the total C zone³⁷⁸. In all cases, the government transferred the land seized from Palestinians to the Jewish settlements³⁷⁹.

Most of Israeli settlements in the West Bank (excluding East Jerusalem) have been established on the so-called "state land"³⁸⁰. The term "state land" is derived from the Ottoman territories Act of 1858, which remained in force during the British and Jordanian rule of the West Bank, and Israel continued to apply it, with the introduction of significant changes under military orders. Based on the Fourth Hague Convention of 1907 (Art.43), the occupying powers must respect the laws applicable in the occupied state unless their application has been prohibited from the beginning". Therefore, Israel as the occupying authority is prohibited to amend the laws in force in the West Bank. After the court decision has been issued in 1979 which prohibits the Israeli civil administration to use other methods to confiscate land for the construction of settlements, Israel expanded what it considers as the territory of the state in a manner allowed it to confiscate the land that Palestinians cannot prove as their private property, at the same time, Israel has imposed tough and restrictive standards of proving ownership. While the acquisition military orders were supposed to be temporary, they often remained endless.

Israel transferred most of the confiscated land to settlements, both to settlement construction areas and areas of municipal and civilian utilization or land reserves under the control of regional councils of the settlements. The confiscated

³⁷⁸ For more details about area C see: Restrictions on Palestinian planning and construction in Area C available:

http://www.btselem.org/planning_and_building/restrictions_on_palestinian_planning_and_building

³⁷⁹ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>, 30.

³⁸⁰ Israeli authorities consider that 26.7 per cent of the West Bank land are state land and it has always been funding the settlement construction and controlling the territory while refusing to allocate similar land for Palestinian use. In addition to large areas known as the "Absentee property", which is classified later on as "state land".

land was used exclusively for the benefit of the settlements, while the Palestinians were prohibited to use them in any way³⁸¹. All this itself is illegal, as well as the tremendous obstacles created by Israeli law for Palestinians who are seeking to recover the ownership of the confiscated land by the Israeli authorities.

Most of the land that was seized without compensation had been officially quoted to the Israeli Ministry of Housing and Construction or the Settlement Divisions of the World Zionist Organization, the choice of the side happened on a non-stationary basis, and these organizations transferred the land to the settlers³⁸². Israel's confiscation of West Bank land is based on systems, laws and practices that violate Israel's obligations. As occupying country it has to limit the activities on land under occupation to those of military necessity, and it must maintain public order and ensure the wellbeing of the population, it is prohibited also to transfer civilians to the occupied territories. Instead of this, Israel has granted itself the right to control large areas of the West Bank. In several cases this happened through persuading Palestinian property of Palestinians who did not get absolute fair trials during the appeal on their land, and the transfer of those lands only to Jewish settlers. Israeli government policies have also led in almost all cases to the confiscation of the land of Palestinians for the benefit of Jewish settlers in breach of the prohibition against discrimination and violations of Palestinian property rights.

Israel has sought to strengthen the principle of the existence of Israeli-Jews and the consolidation of its foundations all over Palestine, through policies aimed at expanding the centers and communities of Jewish Israeli population. Israel formulated

³⁸¹Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israel-discriminatory-treatment-palestinians-occupied>, 42.

³⁸²Ibid, 43.

the legal mechanisms that facilitate its confiscation of Palestinian land and seizure of them with further redistribution³⁸³. The Occupying Power (Israel) turned the legal focus from confiscation of the land to implementing policies and restrictions on land use in the later stages of its history, after the Palestinians ended up almost having no land any longer.³⁸⁴

In 1981 Israeli government created the so-called Israeli Civil Administration. It is the Israeli military authority governing civil affairs in the West Bank to perform the bureaucratic functions within the occupied territories from 1967. This civil administration is a part of larger entity known as the "Coordinator of government activities" which is a unit in the Israeli Ministry of Defense. The Civil Administration and the Israeli Army have to approve any construction work in area C, starting from limited renovations and small joints, to utilities and even the construction of homes, schools and hospitals.

Palestinian homes and buildings that are not built according to the agreed Israeli plan are considered ineligible for building permits and subjects to demolition. When the Palestinians build or repair or renew any of their buildings without prior approval from the Israeli authorities, which in fact is impossible to get, the Israeli Civil Administration distributed issues orders to "stop the works" and may order after their demolition.

This Israeli Civil Administration refuses almost all Palestinian requests for building permits, usually because these areas are not for construction according to the Israeli plans. According to the information provided by the Civil Administration,

³⁸³KEDAR, "The Jewish State and the Arab Possessor.", Forced population displacement (the Palestinian case) , Badil Resource Center /paper 17,2015

³⁸⁴KEDAR, The Third Annual Conference on Land and Housing: The Internally Displaced and the Arab Houses Under the Threat of Demolition.

Israel between the years 2000-2014 refused more than 94% of the building permits for houses or building for Palestinians. The basic facilities that are built without permits and development plans are often removed in violation of international law. The process of obtaining permits to build homes, mosques, schools, medical clinics, animal shelters and electricity poles, water pipes, wells and water tanks, or other infrastructure facilities Palestinian communities is almost impossible to be done by families and businesses. This would restrict Palestinian development more and more. According to recent legal opinions, the current Israeli construction permit system in the region (C) is a violation of international law³⁸⁵.

Issuing demolition orders in addition to the demolition operations represent one of the forcible actions carried out by Israel within the policy that creates coercive environment, making it almost impossible to live in the targeted areas³⁸⁶. The repeated demolition operations led to the final displacement of Palestinian families from the residential communities in the West Bank, on the ground that these communities are located in "closed military zones", which Israeli authorities considered as military zones despite the availability of vast uninhabited areas nearby. The extensive demolition operations are closely linked to the large-scale Israeli plan to displace thousands of Palestinians by force to urban towns and villages; which is an economic, social and cultural disaster to the affected persons, families and tribes. These actions are also prelude to the operations of a huge expansion of settlements / colonies as well as they lead to taking apart the West Bank. These operations are far from being one

³⁸⁵T. Boutruche and M. Sassòli (2011) 'Expert Opinion on International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank', 1 February 2011: <http://rhr.org.il/heb/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf>

³⁸⁶For example, a number of Palestinian communities in the vicinity of Jerusalem has been linked to the water network, While none of them has been linked to the electricity grid.and Access to land has become more difficult because of the apartheid wall, The continuous expansion of settlements; which also led to the expansion of abuse operations which are practiced by the Israeli settlers against Palestinian Bedouin.

separate accident; but on the contrary, they represent one of the latest efforts of Israeli policies to erase the Palestinian presence in C zone by force.³⁸⁷

Thousands of Palestinian families are living in conditions of congestion, overcrowding and lacking safety; because their children are barred from using their land or getting their share of the public lands to use. In addition to the lack of facilities and modern infrastructure networks which leads to the natural growth of the population where many families live in substandard living conditions surrounded by underdevelopment.

Israeli authorities impose restrictions on the division of land, planning and construction to support and protect settlements, preventing Palestinian communities to develop vital infrastructure and access to basic services such as water, electricity, schools, and health clinics. Allocation of areas and planning system applied by Israel restricts the growth and development of the Palestinians, while providing preferential treatment to Israeli settlements illegally. Office of the United Nations Coordination of Humanitarian Affairs reported that more than 60% of the facilities, which are removed, are located near, or inside areas mentioned for settlements³⁸⁸.

Israel established the so-called Planning Bodies which is a mechanism set up by the military government in the occupied territories and operated by the Israeli Civil Administration (unit of the Israeli army responsible for civil affairs in the West Bank). Planning Bodies operate in two directions, one for Israelis and one for Palestinians. It is responsible for the actual change the map of the West Bank, where it approves the plans of the settlements, issues licenses required to build new settlements or to expand

³⁸⁷ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>, 42.

³⁸⁸ UN OCHA (2012) 'The Humanitarian Impact of Israeli Settlement Policies', January 2012

existing ones and to build bypass roads. Israel has set up the planning institutions in the West Bank and transferred numerous planning powers to the Jewish local authorities, among them tearing out competences from Palestinian planning institutions.³⁸⁹

These Planning bodies are also working hard to limit the development of Palestinian towns and villages. They do this by refusing the applications of Palestinians to obtain building permits. The applications are often rejected on the grounds that the regional plans which were approved in the forties (the period of the British Mandate) do not allow building on this land. However, these plans do not reflect the development needs of the Palestinians, but they support and protect Israeli settlements. The planning system deliberately does not provide new plans that match the needs of Palestinians. It is worth mentioning that the Civil Administration demolishes unlicensed houses built by Palestinians, knowing that they were built on the land originally owned privately by Palestinians³⁹⁰. Israel's full control of the area C deeply influenced the inhabitants of those cities and towns, especially in cases where Israel has refused to approve Palestinian requests to build new homes on the land beyond the borders of construction zones, which is required to accommodate growing population.³⁹¹

³⁸⁹ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 44.

³⁹⁰ In 1995 and after the signing of the interim agreement, the Palestinian Authority took the powers of planning and construction in zones "A" and "B", which constitute about 40% of the area of the West Bank. Although the vast majority of Palestinians live in these areas, but the vacant land for construction in dozens of the Palestinian villages and towns throughout the West Bank, located on the outskirts of these countries and knowledge according to the agreements as area "C"

³⁹¹ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 46.

Israel took control over the planning systems that define the legal Palestinian construction in a pure discriminatory policy where Israeli military orders were focused on different treatment of the settlers so they can take part in planning the housing for their communities. At the same time Israel altered the Jordanian planning laws applicable in the West Bank in order to exclude Palestinians from any participation in the planning process. As a result, Palestinian communities do not have any plans in C zone, but on the contrary their plans were formulated by the Israeli military authorities and allowed construction only in very limited areas³⁹².

The plans applied to the Palestinian communities are of a lower quality than those applicable to Israeli settlements. The Israeli authorities plans detailed framework for settlements only, without the Palestinian territories. Israeli plans for Palestinian communities in the zone C do not exceed the division of the town or village into residential areas that may differ from each other in the amount of the buildings that are allowed exist. These "special plans" do not allocate lands for public buildings, parks or even roads. According to Bimkom, "There is not special plan for even one Israeli settlement of the kind applied to the Palestinians".³⁹³

There is an additional tool used by Israel to confiscate the land and it is presented, in particular, in the "special security zone" with which Israel enclosed the settlements in the West Bank with lands to which Palestinians are not allowed to enter. This increased the total area of these settlements after enclosing them with walls and obstacles. More than half of the territory defined as a "special security zone" is a private Palestinian land. It can be estimated that the total area of lands that

³⁹² Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 9.

³⁹³ Ibid, 36

have been closed to Palestinians and annexed to settlements reaches up to tens of thousands of acres. Thus, the looting of these lands will be implanting and documented in official policies as long as the settlement project continues to expand and increase the annexation of lands. Palestinian farmers who want access to their closed lands are forced to face the bureaucratic system and a set of conditions. First of all, Israel requests from these farmers to prove their ownership of the land and obtain from the Israeli Civil Administration an arranged schedule each time to enter. The security authorities organize farmers' access to their lands in accordance with the wishes of the settlers.

For these reasons a lot of farmers give up and refrain from trying to access the land and farm it. At the same time, Israel allows settlers to enter freely and without control to the lands that are supposed to be empty alarm zones, but in practice they are closed to Palestinians only. As a result, settlers walk around constantly in the closed Palestinian lands and loot their crops, live and work there. All this is incompatible with military orders which state that these territories are considered as closed areas.

Basic Israeli settlement policies are discriminatory against Palestinians and led to the forced displacement of Palestinians from their homes and villages. These policies include: the means used to confiscate Palestinian lands and transfer those lands to build settlements, restrictions on the ability of Palestinians to plan and build on their private lands versus easy planning system for the construction of settlements, the massive support for Israeli settlers by the government and the application of relevant Israeli laws on the establishment of settlements.

Since the beginning of the settlement activities in the territories occupied in 1967, there was an essential unity of purpose that combined the two major parties

which controlled political decision-making in Israel. What has not been carried out by the Labor Party in the occupied territories, particularly in the West Bank because of political and demographic considerations, was carried out by the Likud Party.³⁹⁴

The settlement policy of these governments was based on several principles, including: the establishment of settlements in the strategically vital centers (highlands and the foothills of the mountains) or lands of agricultural importance (high fertility and abundant water), as well as in areas of the Arab population density and the creation of a network of major roads in the occupied territories to facilitate the control over them.³⁹⁵

In addition to enclosing and controlling Palestinian towns and villages and the fragmentation of the demographic module of them to create strange and contradictory groupings of settlements in the middle of the areas of Palestinians. Also dividing the West Bank into small geographic areas and isolating them from each other with building the largest possible number of settlements so that the villages and towns of the West Bank become isolated like islands amid a lake of settlements. Moreover, the establishment of industrial centers and agricultural projects to provide employment opportunities for Jewish settlers in the settlements or in places close to them, in addition to the development of the hostile spirit of the settlers against the Arab population, provoking them and encouraging the tendency of superiority and arrogance leading to permanent stress mode. On top of that the establishment of the major city of Jerusalem as the capital of eternal Israel to expand Jewish settlement

³⁹⁴ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 42.

³⁹⁵ Dr. Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies, Palestine*, Dec. 2014.

scale around it in all directions and to accelerate the implementation of the plan to Judaize Jerusalem including so-called (by Israel) Greater Jerusalem.³⁹⁶

The actual beginning of the application of these principles was the implementation of the plan of Pigalle Alon based on the priority of the security and demographic considerations, calling for the annexation of territories considering them as an integral part of Israel's sovereignty through the establishment of civilian and military centers of Jewish territorial contiguity to cut the gatherings of the Arab population in the West and East Banks from one side, and the other between Jerusalem and the West Bank and neutralize the West Bank mountains because they contain a high density of Arab population. From here it is clear that Labor governments and Likud governments have been conducting thorough accounts of settlement activity, in terms of providing support to them, which keeps Israeli control for a long period in the West Bank, and thus perpetuate the settlement enterprise in every way, including apartheid taking place currently in the West Bank.³⁹⁷

Israel has worked for a long time to cleanse the Palestinian land of its indigenous population. The seizure of land is accompanied with the process of changing the demography. In all cases of seizure, high numbers of Jews were brought from all around the world, replacing the Palestinian Arab population, thereby ensuring the superiority of Israeli demography.

³⁹⁶ Dr.Ahmad EL-Atrash, "Settlement Geography", *MADAR The Palestinian forum for Israeli studies, Palestine*, Dec.2014.

³⁹⁷ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

To achieve the illegal goals of changing the demographic composition³⁹⁸, Israeli occupation authorities' use several policies, some of them are:

- 1) Policies of house demolition: during the period between 1967 and 2009, Israel has demolished more than 24,102 houses in the Palestinian territories, including the recent military operation in Gaza, the West Bank and East Jerusalem. There is a noticeable increase in house demolitions and displacements in the Jerusalem governorate, which has referred to recently by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). This increases the pressure on Palestinian residents of Jerusalem to force them to move to the West Bank or outside Palestine.³⁹⁹
- 2) Policies of land confiscation and colonization: Israel occupies the entire territory of the West Bank, an area of about 5,860 square kilometers, and confiscated and / or de facto annexed more than 3,350 square kilometers. The confiscated Palestinian land was granted exclusively for the use of Jewish settlers and for the construction and expansion of illegal Israeli settlements. However, the Israeli official statistics do not reflect the reality and scope of the illegal nature of the settlement activities in the occupied Palestinian territories; where more than 30 settler colonies include massive urban facilities and related infrastructure built on private land of Palestinian owners in the West Bank, but that are not included in the official Israeli government's statistics.⁴⁰⁰
- 3) The policies of closure and the wall related to it: there is a clear evidence of the existence of internal displacement caused by lack of access to essential services because of "closure regime", the construction of the wall and the

³⁹⁸ Note of the United Nation on the forced displacement,
<http://www.maannews.net/Content.aspx?id=146780> (December 12,2015)

³⁹⁹ Ibid

⁴⁰⁰ Ibid

regime related to this, which makes the Palestinians, especially those living in isolated territory pockets, in a position where they cannot be defended. The freedom of movement is limited for Palestinians in a systematic way because of the system of Israeli military roadblocks and checkpoints on the roads, in addition to the fact that the bypass roads and infrastructure of Jewish settlements which fragment the occupied Palestinian territories⁴⁰¹.

- 4) Policy of silent deportation: This is an additional method used by the Israeli authorities to achieve their demographic objectives, particularly in East Jerusalem, which was annexed to Israel illegally in 1967. Under this policy; every Palestinian resident of Jerusalem who lives outside the city for a number of years, lose his right to settle in East Jerusalem, and thus the government of Israel issues orders regarding them to force their departure from their homes, in violation of international humanitarian law and international human rights law. Between 1967 and 2007, the Ministry of Internal Affairs of Israel cancelled the right of residence in East Jerusalem for 8,269 Palestinian indigenous residents of Jerusalem⁴⁰².
- 5) Settler violence and attacks on Palestinians: systematic aggressive actions carried out by the settlers against Palestinians and their property, in line with the absence of any effective reaction from the relevant Israeli authorities to enforce the rule of law. The result of both is further displacement of Palestinians, mainly in the areas bordering with Israeli settlements in the West Bank. Under international humanitarian law and international human rights law Israel bears the responsibility to provide protection, maintain public order and safety of the Palestinian civilian population in the occupied Palestinian

⁴⁰¹Note of the United Nation on the forced displacement,
<http://www.maannnews.net/Content.aspx?id=146780> (December 12,2015)

⁴⁰²Ibid

territories. However, Israel does not assume these responsibilities. For example: 90% of the investigations of the acts of violence and attacks by settlers are closed without providing any accusation against the perpetrators.

The concept - needs of natural growth: successive Israeli governments have established new settlements under the pretext of new neighborhoods in the old existing settlements⁴⁰³ that included the encouragement of immigration from the so-called Israel (within the Green Line) to the settlements. This was considered by Israel as natural needs of the population / settlers in services after their intensification. Governments awarded millions of dollars to these settlers to support their projects in the settlements in terms of the needs of natural growth, in accordance with the government's definition. In addition the governments had granted tax rebate for the settlers, or those who are interested in living in the settlements among the Israelis⁴⁰⁴. In 2006, according to Israeli official statistics, 20% of the population growth in the settlements was in result of migration inside Israel, including new immigrants from other countries and not "natural growth", the term used by the Israeli government to justify settlement construction. In 2007, this rate reached 37% as a result of such migrations⁴⁰⁵.

Israeli restrictions on Palestinian built-up areas in the C zone reflect a change in the policy which appears to be linked to the provision of reserve lands to build settlements. One of the effects of this policy is to make a huge disparity between

⁴⁰³State Comptroller's report for the year 1999/2000. State Comptroller office, Jerusalem, 2001, 398-405

⁴⁰⁴Johnny Mansour, Israel and the Settlement Project Constant and Changing Policies of Governments, Parties and Public Opinion (1967-2013), MADAR *The Palestinian forum for Israeli studies*, Palestine, 2014, 39

⁴⁰⁵Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>, 8.

population density in the Palestinian communities on one side, and Israeli settlements on the other side. The areas that are most vulnerable to the expansion of settlements are located in the same area where Palestinians are prohibited from construction in Zone C. Israel also implemented a series of restrictions that cancel the possibility of obtaining building permits. Israeli authorities do not allow, in practice, Palestinians to build except within the plan which Israel ratified, and in limits of less than one percent of the Area C.⁴⁰⁶

Israel is doing this through the demolition of Palestinian houses and property in all parts of the occupied Palestinian territories, which is a flagrant violation of the norms of international law and international humanitarian law. Israel, the Occupying Power, is trying through this policy to displace Palestinian people from their land and force them to migrate, depriving them of their legitimate right to live in security and stability.

It is Easy for the Israeli occupation authorities to demolish Palestinian houses, which are announced illegal. For the reason that the Israeli authorities rarely and sometimes impossibility grant the building permits to Palestinians in the region C, there is an increasing part of the Palestinian construction work that is considered illegal under Israeli law and is subject to demolition. In addition to the failure to implement demolition orders against Israeli settlements and outposts, the Israeli authorities have failed to implement plans and other laws concerning them which resulted in building the settlements in violation of Israeli laws not only on "state land" but also on private Palestinian land. Derived from a special report issued by the Office for the Coordination of Humanitarian Affairs of the United Nations in the Palestinian

⁴⁰⁶ United Nations OCHA occupied Palestinian territory, Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank, 2009

territories that the planning and zoning policy of the Israeli authorities in the region (C) in the West Bank is actually preventing Palestinians from construction in 99% of the territory of the region (C) which is under the security and civilian occupation authorities according to Oslo Accords. The report also showed that in addition to preventing construction in about 70% of the territory of the areas classified (C), Israel is applying in the remainder, which is 30%, restrictions virtually abolishing the possibility of obtaining building permits⁴⁰⁷. To emphasize on the above, there are currently many Israeli settlement spots in the West Bank, all of them are illegal according to Israeli law and they have not been demolished. Israeli authorities did not recognize the pattern-based discrimination in the application of measures against illegal constructions in the Palestinian communities and Israeli settlements⁴⁰⁸.

The expansion of settlements continued under several names, in spite of pledges or the Israeli governments declarations about freezing the settlements for several times reacting to international pressure. Thus, without the establishment of new settlements, but by the establishment of new neighborhoods and expansion of the existing, the settler's population began growing since the beginning of the nineties to the present day. It was necessary for the government to apply special economic policies in the settlements that are different from the general economic policies, as well as creating controlling policies over the territory and policies for planning and building that meet the needs of the settlement enterprise; in order to ensure that the transformation of the economic situation in the settlements won't fall under market forces, and ensure comfortable economic conditions for the settlers and their survival

⁴⁰⁷ A study of construction in area (C), according to Oslo Accords, <http://www.wafainfo.ps/atemplate.aspx?id=5178#> (January 6, 2016)

⁴⁰⁸ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>, 39.

in the settlements. These policies were pursued in parallel with a major change in Israeli economic policy in the last two decades and declined the role of the state in the economy⁴⁰⁹.

In the financial field and determining budgets it is seen that the State of Israel is pursuing two types of economic policies: one for inside the so-called Israel in the 1948 borders and the other for the state of settlements in the 1967 borders. The economic policies in the state of settlements are programmed and prepared to serve the Zionist settlement project, without paying attention to the financial cost. Israel does not deal with the settlement enterprise using the concepts of economic rationality, the same as the Zionist institutions did in the beginnings of implementing the Zionist project⁴¹⁰. Israel allocates surplus budgets – larger than the settler's population- to the settlements. This surplus allocation did not turn into a controversial subject neither inside the Israeli society nor between the Israeli parties. There is a consensus on the settlements and their role in the Zionist project: the security, ideological and political. In the end, there is almost a consensus in Israel that the State of Israel is ready to pay economic price for the achievement of national goals.

Settlers enjoy all the rights given to the citizens of the so-called Israel - within the Green Line borders of 1948 and often given additional rights not enjoyed by the rest of the citizens. The enormous efforts invested by Israel in the settlement project whether financially, judicially or bureaucratically, turned the settlements into civilian enclaves in the territory under military control, and turned the settlers into those with

⁴⁰⁹Mtanes Shihadeh , Husam Jeries ,Settlers Welfare State ..Settlements Political Economy, *MADAR The Palestinian forum for Israeli studies*, Palestine ,2013, 26

⁴¹⁰For example, Israel is working to eject the land market and the labor market in the settlements beyond the vagaries and controls of market forces and in order to ensure control of the land and the labor market to serve the settlement enterprise, available at: Mtanes Shihadeh, Husam Jeries , " Settlers Welfare State..Settlements Political Economy", *MADAR The Palestinian forum for Israeli studies*, Palestine ,2013, 93

the status of favorites in the matter of transferring funds to these settlements. Apparently the Green Line in recent years, especially after the second Palestinian uprising, from the viewpoint of the Israel, turned into separation line between the two states: the state with minimum of needs in the borders of 48, and the welfare state in the land of the settlers. When the lifting of taxes and reduce in budgets designated for services and social needs are announced, Israel allocates budgets for new grants or investments in Israeli settlements. The economic newspaper *Calculust* published a report stating that the budgets allocated by the State for Settlements are far bigger than the allocated for the same purposes in Israeli towns within the borders of 48 and it is difficult to follow up on those budgets and define them in the various ministries.

The settlement policy is a central reason for economic and social disparities between the Israelis. Last thirty years prove that the settlements are prospering in parallel with the reduction of the welfare inside Israel. The government present to the settlers in the occupied Palestinian territory services and funding that do not exist within the borders of the State of Israel. It offers cheap lands, apartments and houses, privileges and support of the government, advanced infrastructure and supported educational system, tax rebate and generous governmental assistance in the field of social welfare, and all of that among the framework of the governmental policy aimed at encouraging Israeli citizens on living in settlements. This, in addition to ideological reasons, explains the transmission of hundreds of Israeli families from within the Green Line to live in Israeli settlements in the Palestinian areas.

The supply of funds by the Settlement Division of the World Zionist Organization is one of the mechanisms used by the government to favor Israeli local authorities in the West Bank, preferring them to the local authorities within the Green Line areas (or what is now called Israel). Although the settlement department's

budget is originally sourced from state budgets, it is a non-governmental organization; therefore it is not subject to the rules applying to government ministries in the occupying power of Israel⁴¹¹.

Israel's continuing actions on pumping budgets and huge investments to the settlements in the occupied territories and the money that is spent on security aspects prove that the governments of Israel put settlements at the top of their priorities and they always find sources of funding for the settlements⁴¹². The Israeli occupying government maintains its refusal to address the settlements and settlement budgets under the cuts applicable to all public budget items in recent years. While the government in the Occupying Power (Israel) within the Green Line reduces social services, education, health and public housing, settlers' state is flourishing from welfare in the West Bank.

The occupying governments of Israel follow a systematic policy of encouraging Jewish citizens to migrate to the West Bank. Despite the common belief that the settlers are the product of the religious quest by the Israelis to seize new lands, the causes of the transition for the majority of the settlers in fact are purely economic incentives, as the government grants preferences to those who moved. However for some of them, living in the settlement may be as a motive for extremism⁴¹³. For this, the government has granted economic rewards and incentives (housing, education, water, and transport) directly to the settlers or Israeli local

⁴¹¹B'Tselem The Israeli Information Center for Human Rights in the Occupied Territories, "Land Grab, Israel's settlement policy in the West Bank", May 2002, http://www.btselem.org/arabic/publications/summaries/200205_land_grab (December 10, 2015)

⁴¹²This is clear in Prime Minister Benjamin Netanyahu and his finance minister, Yuval Htaenitez statements about the economic imperatives that require the reduction in the welfare of the citizens of Israel and the generosity of the government for the citizens who live on the other side of the Green Line, stated in: Mtanes Shihadeh, Husam Jeries, "Settlers Welfare State ..Settlements Political Economy", *MADAR The Palestinian forum for Israeli studies*, Palestine, 2013, 93

⁴¹³Economical Reasons behind living in the Israeli settlements/Report of IRIN News.org/ available at: <http://www.irinnews.org/ar/report/4632/>

authorities, in order to raise the quality of life of these settlers and to encourage migration to the settlements. The settlements are known as areas of preference for the settlers in order to work or invest, earning significant financial benefits⁴¹⁴, which motivates them to come and settle in these settlements. These areas of national preference get discounts on land and grants for mortgage loans. The areas recognized by the Ministry of Construction as areas of national priority receive governmental investment in infrastructure, residential apartments. In areas classified as the highest priority, there are discounts on the price of land and real estate development expenses. Settlers also receive substantial educational assistance from the Ministry of Education, since the kinder garten period and until the university graduation and teachers' salaries there are higher by 12 to 20% than the salaries of teachers within the Green Line, or the so-called Israel⁴¹⁵.

Different aspects of supports are currently held by the Israeli governments towards encouraging the settlers on heading directly to buy and stable at any settlement. The support covers discounts on buying lands, infrastructure developments, and educational systems, further to increase salaries, health insurance and many other subsidies. All in all these are considered as the core ingredients that every individual seek to get, therefore, settlers are being highly attracted into moving towards moving forward.

Investment in settlement infrastructure such as roads is also a key; and teachers who live in settlements receive generous assistance, including what the

⁴¹⁴The Ministries are working to provide these benefits, among them the Ministry of Housing (abundant loans for buyers of apartments, part of this loan turns into a grant), State Land Management Directorate (substantially reduced land rent) The Ministry of Education (incentives for teachers, exemption from payment of tuition and free travel for schools), Ministry of Commerce and Industry (grants for investors, infrastructure for industrial zones, etc ...), And the Ministry of Finance (Reductions in income tax for individuals and And companies.)

⁴¹⁵Suan and Neeman-Haviv, Judea and Samaria Statistical Yearbook for 2007, cited by B'Tselem, By Hook and by Crook, P58

Israeli NGO B'tselem reports as 15-20 percent salary boost and government coverage for 75 percent of travel and 80 percent of home rental expenses. As national priority areas, the settlements also receive extra investment in education, including increased school hours and more funding⁴¹⁶.

Israeli governments have sought to facilitate the lives of settlers', making them less expensive and therefore more attractive to move to live in the settlements, especially for the social segment to which they belong. The biggest part of them is religious and their families have a lot of children compared to households within the Green Line (the so-called Israel). The statistical data shows that the population in the settlements has different social and economic features from the population in Israel, forcing them to move to the settlements, primarily for economic reasons, such as lower housing costs. There is no doubt that the large government aid contributes in the high level of migration to the settlements, as the Israeli government allocate larger budgets for them than inside the Green Line. The report cites an example in this context, showing the Israeli government's policy of encouraging the migration to settlements: in a number of settlement outposts there is no municipal tax, and all taxes in these settlements are absolutely non-existent compared to taxes within the green line, where the taxes are too high and take a significant portion of income. The Israeli Ministry of Industry and Trade provides grants for investors and provide free infrastructure for industrial zones in the settlements. The Ministry of Finance reduces taxes on individuals and businesses there⁴¹⁷. Settlers benefit from the Israeli government aid in attracting investments, agricultural and industrial production, as

⁴¹⁶Report of CHRONICLE of the Middle East & North Africa, Israel's Settlement Policy, <https://chronicle.fanack.com/specials/palestinian-israeli-conflict/jewish-settlements/israels-settlement-policy> (February 12,2016)

⁴¹⁷In addition, for example, in the Jordan Valley, the Israeli government provide grants covering up to 24 percent of industrial institutions costs, and tourist institutions costs. Invest In Israel Promotion Center (a government-run website), "Investment incentives," <http://www.investinisrael.gov.il/NR/exeres/08348DA2-83D3-47B1-B043-ED418D9AA846.htm>

well as in receiving preferential access to transport, national and international markets including export to overseas markets⁴¹⁸. A lot of multinational companies invested in "industrial areas" in the settlements using discounts and assistance received from the Israeli government. The Ministry of Labour and Social Affairs also provides incentives for social workers in the settlements.⁴¹⁹

In spite of the fact that the mandatory of the occupied Palestinian territory as a whole falls under the control of one authority, the occupying Israeli authority, each geographical unit (area) in which is governed by a legal framework that is based essentially on different legal systems applicable to each unit of them separately. Israel has created in the occupied territories a discrimination system based on separation, it created in the same area two separate judicial organs with which it defines human rights according to the nationality. This system is the only one of its kind in the world and reminiscent of past systems as a system of racial discrimination (apartheid) that prevailed in South Africa.

As part of an effort to encourage its citizens to move to the occupied Palestinian territories, Israel has made a lot of efforts, many of which are financial, in addition to reducing the feeling among Israeli settlers of being separated from the Green Line areas or the so-called (Israel). Israel used legal methods in the way that matches its interests to cover the settlement enterprise.

⁴¹⁸Between 2000 and 2006, the average grant that received by the individual in the Israeli settlements in the West Bank by 57% higher than the Average of expenditure of the individual of Israeli citizens inside Israel/available at: Israeli settlements and their impact on the Palestinians in the Jordan Valley ,available at: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp160-jordan-valley-settlements-050712-ar_0_3.pdf

⁴¹⁹Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

On one hand, the Israeli administration has applied most of the Israeli laws to the settlers and the settlements, and with this practically annexed them to the State of the occupation (Israel), despite the fact that the West Bank is not formally part of the State of the occupation (Israel) and the law in effect there is Jordanian law and military legislation. On the other hand, Israel adheres to the Jordanian law in cases where it serves its interests and objectives, sticking to the argument that it should deal under Jordanian law, as required by international law follow the existing regulation in the occupied territories before the occupation.

In cases where Jordanian law is contrary to the interests and objectives of Israel, Israel did not hesitate to cancel this law by military law (military commands) to enact laws to serve its interests. As a result of this annexation, a policy of discrimination has appeared in the occupied territories, and this policy became law applied by the state of occupation. In this context, there are two separate mechanisms in the same area that define the rights of individuals based on their nationality. This system grants the Israeli settler and occupier the right to the enjoyment of the resources of the occupied lands and improvement of his standards of living on the account of the most basic rights of Palestinians. Thus, Israel trampled on numerous international conventions it has signed and that were conducted to reduce prejudice and violation of human rights and the protection of populations under occupation⁴²⁰.

Comparing between the treatment of Jewish settlers and population of Palestinian communities near settlements throughout the West Bank by the Occupying Power (Israel), including East Jerusalem, we find that there is a dual system of laws, rules and services used by Israel in dealing with the two groups in the

⁴²⁰B'Tselem-The Israeli Information Center for Human Rights in the Occupied Territories, Report of Settler Violence and Dual Legal system/available at:
http://www.btselem.org/settler_violence/dual_legal_system

West Bank regions under Israeli control, which lead to discrimination in services, development and the benefits granted to Israeli settlers with imposing harsh conditions on the Palestinians.⁴²¹ Through many of Israeli practices, it seems that the only purpose of the Israeli successive governments is to promote life in settlements, with obstruction of Palestinian population growth in communities at the same time, and even the forced displacement of the population. Such discriminatory treatment on the basis of race, ethnicity or national origins, and that, in fact, was not intended to meet the security needs but have other goals, violates the basic prohibition on discrimination under international human rights law.

Under the segregation system established by the Israeli occupation between the occupied Palestinian territories and the Israeli settlements, thousands of acres of Palestinian land were robbed. This stolen land was used for the construction of dozens of settlements in the West Bank and the resettlement of hundreds of thousands of Israeli settlers there. The Occupying Power (Israel) forbids Palestinians from entering these lands and using them, and takes advantage of the presence of these settlements to give legitimacy to a series of violations committed against the rights of Palestinians, including the right to housing, the right to life and the right to freedom of movement. The drastic change that Israel has done in the map of the West Bank prevents any real possibility of establishing an independent Palestinian state within the right of self-determination.

Palestinian territory is under Israeli military rule, and all Palestinians living in this area are subject to military law. However, Israeli Defense Minister issued in July 1967 a decree on the basis of the emergency conditions that allowed applying a lot of

⁴²¹ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

Israeli laws to the settlers. Israeli Knesset has extended these provisions again and again, and in accordance with these provisions, Israelis who commit crimes in Palestine stand trial in Israeli civil courts. Thus, there has been a dual legal system applied in the same region, and the national identity of the citizen decides to any legal regime he belongs. While Israeli citizens are under civil law, Palestinians are subject to military law. The differences between the two legal systems are clear in the following aspects: the length of detention permitted before allowing the accused to see a lawyer or bringing him to justice, the maximum penalty, the possibility of early release, and others. According to international law, as long as there is occupied territory, it is necessary to apply military law to all civilians residing there. The verdict on two people who committed the same crime with two different legal systems and different laws is racial discrimination⁴²².

Among the discriminatory policies set up by Israel are the checkpoints system, roadblocks, trenches and earth walls and other physical barriers to Palestinian movement. All this was found for the protection of Israeli settlers and to facilitate their movement and resulted in separating the Palestinians where they were from the rest of the occupied Palestinian territories, which impact negatively on their rights and livelihood resources⁴²³. In contrast, the settlers have freedom of movement which is unlimited; they easily use the roads built for them with large expenses which pass through the Palestinian inhabited areas, connect settlements with Israeli road network, other large urban areas and settlements inside Israel. In some cases, Palestinians are not only banned from using these roads, sometimes they are unable to reach their land

⁴²²Report of CHRONICLE of the Middle East & North Africa, "Israel's Settlement Policy", <https://chronicle.fanack.com/specials/palestinian-israeli-conflict/jewish-settlements/israels-settlement-policy/3-two-legal-systems/> (February 12, 2016)

⁴²³Oxfam, Israeli settlements and their impact on the Palestinians in the Jordan Valley , https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp160-jordan-valley-settlements-050712-ar_0_3.pdf

or other villages and cities. Settlers also has the ability and with ease to cross checkpoints, or move on roads with no checkpoints, while the Palestinians are moving on roads with more than 500 immunization, checkpoints and roadblocks, as well as the separation wall. Israeli restrictions on movement have led to "turning the Palestinian traffic to a network of secondary roads," according to the United Nations report in June 2010.⁴²⁴

Israeli government imposes other restrictions on Palestinian goods that are transferred to or from the occupied Palestinian territories. Israel has established the so-called commercial crossings, where Palestinian goods should be unloaded from the truck, inspected intensively, and then re-shipped to Israeli trucks on the other side. At the same time, the goods of Israeli settlements pass to Israeli and international markets through private ways with government's aid, which includes free access to the air and sea ports, allowing the settlers to control the domestic and overseas markets, and gives them a significant competitive advantage over the Palestinians. Here, the competitiveness of Palestinian products shrinks as a result of long delays, increased transportation costs, labor and equipment costs, security checkpoints, and the inability to access to suitable storage facilities. It also brings to high levels of the inability to predict the quality of the product on delivery time, depriving the Palestinians to fulfill their obligations and prevents them from competition in local and global markets⁴²⁵.

Settlement activity has accelerated in recent period, the state of the Israeli occupation confiscated thousands of acres of land either to expand existing

⁴²⁴ Oxfam, Israeli settlements and their impact on the Palestinians in the Jordan Valley , https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp160-jordan-valley-settlements-050712-ar_0_3.pdf

⁴²⁵ Ibid

settlements, build new ones or for the Apartheid Wall, which destroyed thousands of acres of fertile agricultural lands, uncaring about the advisory opinion of the International Court of Justice. From the point of view of Israeli politicians these settlement blocs are security belts through which Israel surrounds the Palestinian communities and tighten the control over them.

The Israeli government adopted the establishment of the apartheid wall which is marketed as a security response to Palestinian operations of warriors, and to strengthen Israel's security plan. However, on the ground, the wall turned into confiscation of new lands from the Palestinians and a tool to intensify the settlement and create a new reality on the ground, by a consensus between the government and the regional councils of the settlements which are Israeli local government entities representing settlements in the region. Each council of a region governs a number of settlements.

Israel after the establishment of the separation wall took control over additional 9.5% of the Palestinian territories inside the wall. Planning the path of the wall was affected by the plans to expand settlements and intensify them. Israel annexed, in fact, 80% of the settlements inside the wall, adding the start of the establishment by settlers of what known in Israel as illegal settlement spots. This policy is aimed at the fragmentation of the Palestinian territories and preventing territorial contiguity, barring the establishment of a Palestinian state and transforming the Palestinian territories into cantons. The settlers' outposts were not just a wish of the settlers or just an ambition; they were part of the completion of a grand plan, which is to prevent the establishment of a Palestinian state, and the failure of all the peace process.

It has been reported by the non-governmental Israeli organization Bimkom that barrier's route "almost completely ignores the daily needs of Palestinian population" and "focused almost exclusively on the desire to maintain the quality of lives of Israeli settlers." The Israelis can get freely in and out of those areas including East Jerusalem, without passing through checkpoints or showing identity documents⁴²⁶.

One of the most dangerous policies applied by the Government of the State of the occupation is violence by settlers. Through the concept of settlement activity in the Palestinian territories it is clear that it is; "A strategy for the continuation of the completion of the view of nationalist, religious and geographic revival Jewish people in Palestine as region where according to the claims of Israelis they have their historical rights". In order to secure the continuation of this settlement activities and their development security must be guaranteed and it must be used for controlling the resources and spreading ideological, economic and social influence in the surrounding sites .The ban on the transfer of a civilian population into occupied territory stems from a concern for the humanitarian situation, including the fact that civilians living under occupation are vulnerable to harassment and exploitation by the occupying military force, and that the civilian-state territory will have access to a best position and so at the expense of the occupied population. This has happened in the occupied Palestinian territories, where the creation of the Israeli settlement has developed two separate systems of rights and privileges are working mostly for the benefit of the

⁴²⁶Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied> , 12.

citizens of Israel at the expense of more than two million Palestinians are West Bank residents".⁴²⁷

The International Law define the Palestinian civilian to be the protected persons due to the fact of being under the occupation and on the other side, Israel is the occupying power and formally their responsibility is manifested by protecting those civilian from any sort of violence.

In fact, Palestinians on the occupied territories witnessed various forms of violence were perpetrated by Israeli civilian. By acting in such way, Israel is ignoring the responsibility on ensuring the safety of Palestinians and directly facilitate all the actions of violence to be occurred, in addition to the Israeli police by condone the investigations of causes related to such action by settlers where this will highly increase their repeatedly tendencies on perpetrating different forms of violence.

The phenomenon of Zionist settlement in Palestine is characterized by its direct connection with violence in all its forms and types in order to grab lands owned by their rightful owners, with a plan to expel these people in order to establish an expansive neo-colonial state, and defend this country using all ways and methods. If there was no military participation in the daily routine management of the Palestinians, Israel would not to be able to expand regionally and expel Palestinians from their lands with building settlements in them. As well as, the settlers could not be able to violate Palestinian human rights as they do today. Turning a blind eye to settler punishing also contributes significantly to the continuation of the various violations.

⁴²⁷Settler violence against Palestinian civilians and their property, UN Office for Coordination of Humanitarian Affairs in the occupied Palestinian territories,
https://www.ochaopt.org/documents/ocha_opt_settler_vilonce_special_focus_2008_12_18_arabic.pdf
(January 14, 2016)

At the time when Israel has not stopped looting the land, settlers have continued attacking and terrorizing Palestinians for seizing their lands and expelling them from there by force⁴²⁸. The prevailing trends in Israel became racism, fascism and incitement against the Palestinians. Palestinians who live in the adjacent areas of the settlements, scattered across the West Bank, become victims of a growing number of violent attacks by Israeli settlers while the acts of violence committed by settlers remain almost without any punishment⁴²⁹.

The unquestionable fact remains that the successive Israeli governments are directly responsible for the settlement crimes in the occupied Arab territories, as well as for the breach of international law and the Fourth Geneva Conventions about the territory which is under military occupation. Therefore they are responsible for all attacks carried out by the herds of settlers such as the crime of bulldozing Palestinian lands, changing their features, killing and torturing Palestinians and destroying their crops by these invaders, which were given the right to seize the lands by committees of military interception and military orders, while Israeli army providing them with full protection in all their actions.

Israel as an occupying power is obliged to maintain public order and security of the Palestinian population and to defend and protect them according to international law as citizens under protection. However, in fact, the Israeli authorities violate this duty and not doing enough to prohibit the settlers from attacking the property and lands of Palestinians. Even after the implementation of these actions the

⁴²⁸"B'Tselem" It is the Israeli Information Center for Human Rights in the occupied territories, which documented that farmers are primarily affected/ in this context cases of fire, the threat of shooting and killing, beatings with fists, rifle butts and handles, sticks, throwing stones, firing dogs, attempts to run people over, damaging Agricultural equipment and crops, theft of crops, pets and steal cattle, which are used in the work of the land and farming /B'Tselem, 2008): <http://www.btselem.org/>

⁴²⁹Yesh Din (2012) 'Law Enforcement upon Israeli Civilians in the West Bank,' Yesh Din Monitoring 2005– 2011, 27 March 2012

Israeli authorities follow undeclared policy that fails to examine the application of the law on offenders, while many of these cases are not investigated at all or the investigation did not lead to anything⁴³⁰.

Based on Oslo Accords, the State of the occupation (Israel) is obliged to hold trials against Israelis for crimes committed against Palestinians. Since the signing of the agreement, attacks by Israeli settlers against Palestinians and their property are still ongoing and the occupying state did not try to punish these settlers for their crimes⁴³¹.

Law enforcement authorities are not doing what it takes to eliminate the phenomenon of settler's violence and apply the law to violators, but these authorities join the settlers and close the access to roads that lead to the neighboring lands. Soldiers permanently expel Palestinians from agricultural land and in some cases when settlers are present there. Israel built around the settlements a system of physical obstacles such as barbed wire, patrol roads, lighting and electronic sensors, away from the houses of settlers, and so it annexes more lands for settlements⁴³².

Closure policies are not confined only to the occupation authority and its arms, but they are used by settlers who close roads as one of the types of violence against the Palestinians. There were a lot of incidents when armed groups of settlers established checkpoints on roads used by Palestinians and prevented vehicular traffic,

⁴³⁰Report of Human Rights Watch/Israel: New Commander Should Protect Palestinians From Settler Violence(Impunity for Attacks; Excessive Force Against Palestinians)/ November 21, 2011, <http://www.hrw.org/news/2011/11/21/israel-new-commander-should-protect-palestinians-settler-violence> (February 25,2016)

⁴³¹Palestinian Negotiations Affairs Department, "Israel's violations of the Oslo agreement", <http://www.nad-plo.org/atemplate.php?id=75> (February 25,2016)

⁴³²B'Tselem-The Israeli Information Center for Human Rights in the Occupied Territories Report 2008, available at: <http://www.btselem.org/>

and the main characteristic of these cases is that they were organized and supported by the leaders of the settlers who supported this phenomenon⁴³³.

The report of B'Tselem⁴³⁴ stated that the investigations carried out by it on settlers violent break into Palestinian villages, showed that the security forces do not intervene until late stages of events, and in general, only after the Palestinians begin to throw stones at those who attack them. This happens despite the fact that these incidents are repeated often, so it is clear that they can be predicted in advance. "B'Tselem" stressed out that the failure of the Israeli army to stop settler attacks is not caused by a lack of the necessary powers, but for the lack of a genuine desire to protect Palestinians and their property.

Despite the increase in violence, Israeli police and army failed to prevent settler attacks, and take all necessary measures to enforce the law, and punish the accountables perpetrators of these crimes. At the time, when the rate of violence of the settlers increases, the Palestinians who are victims of the attacks of settlers hesitate to lodge complaints, because they do not trust the Israeli law that provides them only with small protection, at the same time allowing settlers to commit these attacks, ensuring their impunity. Palestinians face many obstacles, including bureaucratic and logistical obstacles while attempting to make complaints to the Israeli authorities. They are under the risk of revenge attacks and harassment of the settlers and ill-treatment of the law enforcement bodies. When formal complaints against the attacks of settlers are presented, Israeli officials fail in the implementation of the law by not conducting a thorough and impartial investigation in these attacks.

⁴³³B'Tselem-"The Israeli Information Center for Human Rights in the Occupied Territories," "Forbidden Roads: The Discriminatory West Bank Road Regime", Report 2004, <http://www.btselem.org/> (February 24, 2016)

⁴³⁴Ibid

All the institutions dealing with the rights of the Palestinians in the occupied territories in 1967 came to a point that the continuation of violence and the increase in it is a result of the non-application of the law on settlers, and the first and last responsibility is on the occupation authorities⁴³⁵.

Reviewing the Israeli settlement history in the occupied territories, the position of the diverse Israeli leaderships, the clarity of the importance of the continued Israeli occupation of the West Bank, the importance of the settlement in the eyes of all Israeli leaders despite their different tactics; we find that all leaders, researches and statements agree at once on the national, military, demographic, religious, economic and political importance of settlements shared by the majority of political and partial Zionist movements; which means that talking about the voluntary dismantling of Israeli settlements in the West Bank has no sense, and it is clear upon the detection of financial support allocated to Israeli settlements in the West Bank and the size of governmental budgets to them. These settlements have turned into a wealthy attractive "State" not only for the categories of certain right-wing ideology, but even for popular categories that belong to a wide variety of levels⁴³⁶. However, the one-sided "disengagement" from the Gaza Strip, which was carried out by Israel in 2005 proved that "the facts created by Israel on the ground 'are not permanent nor fixed, but they can be removed during a period of time far less than the period it took to create them, if the needed political will to achieve this was available⁴³⁷.

⁴³⁵In the ruling which spoke about the duty of security forces that must work to facilitate the olive harvest season, the Supreme Court determined that "the protection of the security and property of the local people is one of the fundamental obligations of the military commander." The judges added that the security authorities should issue a clear and decisive guidance to security forces in the region." And they should issue a clear and unequivocal guidance to the actors of the security forces on the ground" to protect the property of the Palestinian population."available at : <http://www.btselem.org/>

⁴³⁶Mtanes Shihadeh , Husam Jeries ,Settlers Welfare State ..Settlements Political Economy, *MADAR The Palestinian forum for Israeli studies*, Palestine ,2013,p.11

⁴³⁷The Ministry of Foreign Affairs/State of Palestine/ <http://www.mofa.pna.ps/en/>

The international community called on Israel repeatedly to freeze all its settlements. The main elements of this freezing are: (1) to put an end to all construction works related to settlements, (2) to stop all subsidies and economic incentives offered by the Israeli government for settlements and settlers, (3) to end all the planning and organizing works on settlements (4) to stop the confiscation of Palestinian lands, the demolition of houses and the destruction of property and vandalism, (5) to stop the transfer of settlers and their deportation to the occupied Palestinian territories⁴³⁸.

What is happening in fact, especially in the last years since the construction of the apartheid wall and the expansion of Israeli settlements, shows the real concept and the meanings of colonialism and Israeli settlements in the occupied Palestinian territories. What becomes clear and understandable is that the financial policies and the distribution of budgets are very close to the control strategy pursued by the Zionist project to control the Palestinian territories since its inception. It is clear that the Israeli organization is ready to allocate unlimited budgets for the settlement projects and is willing to pay a political price for the continuation of settlements and control on the ground. As well as, it is ready to pay the price of security, in order to control the success of the project. All of this demonstrates that the settlement enterprise was held to last and become reality on the ground, but not to be a tactical tool in the negotiating process or sharing the land⁴³⁹.

⁴³⁸The Ministry of Foreign Affairs State of Palestine, <http://www.mofa.pna.ps/en/> (February 20,2016)

⁴³⁹Mtanes Shihadeh , Husam Jeries ,Settlers Welfare State ..Settlements Political Economy, *MADAR The Palestinian forum for Israeli studies*, Palestine ,2013,p.93

4. Chapter Four: The Violations of the Israeli Settlements

Israel came into being through heinous violations of the human rights of the Palestinians, continued to practice its policy of aggression and colonialism in Palestine making life much more miserable as the political aspirations of Zionism itself formed a justification for violating the rights of Palestinians.

Over the last six decades, Israel has succeeded in setting itself above the international human rights Law and in legitimizes its expansionist policy and excluding itself from the penalties of UN legal and moral sanctions. This gave Israel the chance of spoiling life of millions of people through continuing violence and out breaking new wars. The growing conflict and instability is always among basic constituents of Zionist plan, by keeping view on the strength of underlying ideology behind that, the affects of this ideology at large with uncompromising insistence on its implementation, no consideration either morally or legally, are able to stand in its way of implementation.⁴⁴⁰

Israel's enormous efforts in the settlement plan whether financial, judicial or bureaucratic turned the settlements into civilian localities in the areas and territories which are under military rule and turned the settlers into property owners, for the process of perpetuation, which is fundamentally illegal.

Israel violates the human rights of Palestinians again and again. Details of these violations which are carried by the Israeli occupation forces against the Palestinians since decades of occupation, have been documented by many of the

⁴⁴⁰ The Palestinian Return Centre, "The violation of the Israeli occupation of human rights in Palestine", (January 9, 2012), <http://prc.org.uk/portal/index.php/> (February 27, 2016)

conventions of human right bodies, governmental, non - governmental organizations, individuals and the High Commissioner for Human Rights (OHCHR).

This current Israeli policies and practices in the Palestinian territories violate the human rights and undermine the existence of Palestinian communities and their development. Processes of demolitions, forced displacement, settler's violence, as well as the systematic confiscation of lands and resources are parts of the daily reality which is faced by Palestinian communities in various parts of the occupied Palestinian territories.⁴⁴¹

Any assault practiced by the Israeli policy amounts to hundreds of thousands of human rights violations. When Israel exercises any criminal action to be imposed in the Palestinian territories, they are not doing so as a violation of international law, but they are also violating the thousands of different human rights.

The impact of Israeli settlements on the lives of Palestinians in the West Bank, which actually carries a series of prohibitions which has a very negative impact and restrictions on their freedom of movement, in addition to the violence of settlers, makes it often difficult to earn a living or access to basic services is a very big challenge for Palestinians.

In the absence of access to land and water resources, upon which many of them hold their livelihood, those Palestinian communities who are living in area (C) are facing crisis like displacement , unemployment and poverty, as well as they have to give up on the traditional way of life. The Israeli settlements on the geography of WB have its democratic, physical, economic and environmental impact on both short

⁴⁴¹ The Palestinian Return Centre, "The violation of the Israeli occupation of human rights in Palestine", (January 9,2012), <http://prc.org.uk/portal/index.php/> (February 27,2016)

and long run. It is a matter which has changed the reality and made it very difficult, as especially for the Palestinians who are struggling for the foundation of Palestine.⁴⁴²

In this section, we will highlight some of the Israeli violations practiced by the Israeli occupying power through the establishment of settlements and through pointing to some of the implications of the establishment of these settlements in the occupied Palestinian territories.

The clauses in the Hague convention of 1907, suggest in different positions of rights and obligations of the occupying power. Article 47 " the prohibition and total ban on looting " and the article 55 says " the occupying state shall only be considered as administrator and beneficial of institutions, public buildings, forests and agricultural lands, that exist in the occupied country, and the occupying state should be responsible for the maintenance and administration of these properties in accordance with the rules of utilization "while in the light of fourth Geneva Convention of 1949 regarding seizure , confiscation of the properties of the citizens of occupied territories, acts of settlement, transfer and deportation of the civilian population of the occupying state, to the territories controlled by occupying state's administration and forces, article 33 provides that "looting is prohibited, " while article 49 emphasized on "the inadmissibility of the occupier to transfer and deport it's civilian population to the territories situated under occupation.

Article 53 deals with demolition and destruction of the property and it states "It is prohibited for the occupying power to destroy any private property, fixed or movable, possessed by individuals, groups, other public authorities and social organizations. Several articles regulate the relationship of livelihoods between

⁴⁴² Oxfam, "Israeli settlements and their impact on the Palestinians in the Jordan Valley", (July 5, 2012), https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp160-jordan-valley-settlements-050712-ar_0_3.pdf (February 25, 2016)

occupier and occupied civilian population in order to manage the everyday lives affairs. In addition to the agreements regarding the rights and obligations of the occupying forces in Geneva Protocol I supplementing the four Geneva Conventions and public and private areas and natural resources at the level of the occupied territory, the article 54 asserts that " it is prohibited to attack, destroy, remove or render needs and materials that are essential to the population protected by civilians, for whatever reasons ,whether to starve civilians or cause them to move , by any other reason ".⁴⁴³

Despite the fact that the international laws have identified the occupier's right to dispose in the territory under its control in the case of a military necessity to conduct and for the implementation of the act of confiscation and demolition, sabotage and that these actions may be limited to only the occupation forces, and specific and limited to meet and cover the needs and requirements of these forces,⁴⁴⁴ but the Israeli government and the occupation forces are using the justification cited, for the goals of the settlements which are contrary to the provisions and rules of international humanitarian law, and Israel claims that the settlers are engaged in settlement individually without the intervention of the state and in the settlement activity takes place in the occupied Arab Jerusalem.⁴⁴⁵

But in fact, in the case and since the occupation of 1967 , the Israeli government recognizes the settlers and their leaders as observed by their movements and orientation, which are basically with the support of settlement work at all levels, and the settlements have the support of all ministries and government institutions,

⁴⁴³The PLO Negotiations Affairs Department (NAD), factsheets," The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

⁴⁴⁴Oxfam, "Israeli settlements and their impact on the Palestinians in the Jordan Valley", (July 5, 2012), https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp160-jordan-valley-settlements-050712-ar_0_3.pdf (February 25, 2016)

⁴⁴⁵The PLO Negotiations Affairs Department (NAD), factsheets," The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

both large budgets that provide for the settlers or other facilities in the construction work, and in order to provide land, as well as reductions in taxes and provide massive military protection is not only in the settlements ,but on the roads leading to them and, in addition to the incision private roads on the Israeli army 's expense to facilitate the movement of settlers and no matter how small or how remote the settlement is located, then the Ministry of Construction and housing of Israel to builds tens of thousands of housing units in the settlements by government funding, and the provision of large residential loans to settlers and attractive facilities, as the same applies to the Arab city of Jerusalem , where thousands of housing units for Jewish residents built on land confiscated from Palestinian population, will out a single return by building a neighborhood for the Arab population.⁴⁴⁶

And while getting Israeli citizen on a very large number of facilities, the Arab Palestinian citizens are prohibited from obtaining the minimum housing loans and thus created housing problems in the Palestinian territories , while Israeli government brings thousands of Jewish residents to live in neighborhoods built on occupied areas where construction is a project for the population of the occupying power (Israel), so whatever does the occupying power in the settler movement is the remainder to be noticed which is therefore should be considered as violation of international laws and the series of lies and claiming things that are not so, therefore the change does not come from status quo⁴⁴⁷.

⁴⁴⁶ The PLO Negotiations Affairs Department (NAD), factsheets," The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

⁴⁴⁷Tayseer Ablasee , Settlements and the confiscation and demolition of homes in Arab Jerusalem..contradictory policies of international laws, *Al-byader Al-Syasee journal*, <http://www.al-bayader.com/readarticle.aspx?articleid=8897> (January19,2016)

4.1. Violation of International Human Rights Law(IHRL)

The International law has gradually become consistent standard and binding factor of human rights as a whole and specifically for the conduct of armed conflicts. As situations of armed conflicts are major subject, including military occupation, for two main branches of international law, namely international human rights law and international humanitarian law. So the source of the Israel's responsibility towards the population of the occupied Palestinian territories as an occupying power comes from the international human rights law as well as from the international humanitarian law.

The fundamental principles of international human rights law were developed at the beginning of the Universal Declaration of Human Rights in 1948 and were placed in two conventions of the United Nations in 1966 and Israel signed on these agreements. The International conventions recognize the right of every individual for the freedom of movement, work, decent living conditions, education, a decent standard of health and family life. The signatory states to these conventions are obliged to implement instructions not only in the sovereignty areas, but to persons subject to its jurisdiction.

According to the Human Rights Committee at the United Nations, which is made up of independent experts from different parts of the world; the basic question that must be answered in order to determine the responsibility of State towards a particular function, is not if the function was performed in the sovereign territory belonging to the concerned state but in fact, what is the nature of relations between the injured individuals and the state.

And as stated in the Universal Declaration of Human Rights that says "all human beings are born free and are equal in all values and rights"⁴⁴⁸, this is recognized by the International Court of Justice, on the base of international humanitarian law, to be applicable on Palestine, as well as based on the foundations of international human rights law.

The Palestinian territories have been earlier recognized and defined under the term "occupied territories" for the reason being that they undergo a foreign control has already occupied it by force, which on the long have succeeded in establishing a military government to control these territories. For that and in times of occupation, occupied territories must be subjected to the laws and regulations of the International law and IHL in times of military occupation, which makes them the norm and the regulator of the relevant conflicts arises between both occupied and occupier. Israel, the occupier of the territories is obliged to follow and respect the international conventions of this regard and most important of these is the application of the human rights principles for occupied nation.

Similarly, the establishment and existence of the Israeli settlements violates long list of human rights set forth in these treaties, either directly or indirectly. The right to self - determination is violated as a result of the settlements control on nearly half of the territory of the WB and the way it infests across the land by preventing territorial contiguity for tens of Palestinian towns and villages. This undermines the possibility of establishing an independent Palestinian state, even though it has been recognized by the international community as a framework to exercise properly the right of self – determination. The right of equality is also violated as a result of applying two separate systems of law for all residents of the population of the WB,

⁴⁴⁸ B'Tselem Organization, "Israeli obligations under International Law", http://www.btselem.org/arabic/gaza_strip/israels_obligations (January 23, 2016)

where the Israelis settlers are subjected to the Israeli civil law and the Palestinian population living under the occupation are subjected to the military laws .The implementation of two different rights to the residents in the same area according to their national identity constitutes a big violation of the right of equality. As seen, the right of property is violated as a result of the Israel's control on public and private land belonging to Palestinians⁴⁴⁹. The ease access of these lands by Israel for its settlers is considered as clear violation of this right.

Yet, the right of an adequate standard living is also violated as a result of the establishment of settlements in areas closer to Palestinian towns and villages, and thus they become restricted or prevented to natural expansion. In addition to that, violation of the right of freedom of movement because in fact, many of the settlements are located near to the main Palestinian roads, Israel has restricted the movement of Palestinians on main roads in order to protect the settlements. Violation of this right also directly affects the right to work, health, education and family life⁴⁵⁰.

It is important here to emphasize on what is stated in the report of the Special Committee which was supposed to Investigate the Israeli Practices affecting the Human Rights of the inhabitants of the occupied territories and in its second report , dated September 17 , 1971 any attempt by the Government of Israel to implement the annexation and settlement policy, serves as a denial of the local population human rights , and in particular right to self -determination and to retain to their homeland. From this point, the establishment of settlements to this extant and the continued presence on the occupied Palestinian territories, represents a clear violation of human rights of Palestinians and thus, the Israeli occupier silence forms a clear example of

⁴⁴⁹Report of CHRONICLE of the Middle East & North Africa,"Israel's Settlement", <https://chronicle.fanack.com/specials/palestinian-israeli-conflict/jewish-settlements/settlements-and-international-law/international-human-rights-law-ihr/> (February 12,2016)

⁴⁵⁰ Ibid

violation, arising from their fruitless participation and adherence of human rights conventions, specifically the Universal Declaration of Human Rights and the two international covenants as well, thus the Israeli settlements and based on the commissioner's draft regarding the responsibilities and actions are considered as international crimes. The more details of such violations will be included in the last part of this section.

4.2. Violation of International Humanitarian Law

The establishment of settlements is a violation of two of the main treaties of the international humanitarian law which states that the provisions are applicable in war and occupation: The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, which Israel signed and ratified on.

The interim period of the military occupation is one of the fundamental principles of the international law. This period is the source of the restrictions that apply to the occupation authority that creates the policy in the occupied Palestinian territories. The Hague Conventions define the lawful use of public property that may be carried out by the occupying power control, including land. A government can manage or even benefit from like public property, as an occupier of the country, but they may not change their character and nature only for military purposes or for the benefit of the local population. Hence, this was the basic principle of the various institutions and officials in the international community to ensure that the settlement plan, which includes the confiscation of land and the establishment of settlements and the emigration of Israeli citizens to it, is illegal.

The prohibition of the establishment of settlements and the transfer of the occupying civilian population is reported in the additional Protocols of the Geneva Convention in June 1977, particularly article 2/54 of the first Protocol, Which stipulates the prohibition of attack, destroy and disrupt of the materials that are indispensable for the survival of the civilian population, whatever the motive order is to starve out civilians or to flee or any other motive.

The implementation process of the Israeli settlement policy in the occupied territories involves very ugly and gross violations of human rights , where Israeli politics are incompatible in the completely occupied Palestinian territories with the international humanitarian law and which entails a clear violation of the provisions of the Geneva Conventions and the provisions of the additional Protocols of the Geneva Convention in 1949, such as article 2/54 of Protocol I and article 24 of Protocol II , which do not allow to take control of agricultural areas. At the same time they are a breach of the provisions of the Universal Declaration of Human Rights, particularly article 2/27 of it, which states that no one may be stripped of his arbitrary, and the Security Council resolutions, particularly Resolution No; (446) issued by the Security Council in 1979.⁴⁵¹

Settlement of this work carried out and implemented under the supervision, support and finance by the Israeli government which is clearly inconsistent with the content of article 49 of the Fourth Geneva Convention, which prohibits the relocation of the occupying civilian nationals in the occupied territories.⁴⁵²

There are regular condemnation of the policies and practices of Israel's settlement by the United Nations, the International Committee of the Red Cross and

⁴⁵¹ The PLO Negotiations Affairs Department (NAD), factsheets, " The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

⁴⁵² Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

the European Union, as a major obstacle to achieve a comprehensive peace in the Middle East and contradicted with the international law, particularly the fourth Geneva Convention about the Protection of civilians at the time of war. A set of international resolutions were issued that confirm and deny any legal status of settlement, annexation, demanding its repeal, and the dismantling of settlements, including the settlement of Jerusalem. Therefore it cannot be for Israel to evade its legal responsibility in order to respect the human rights of the inhabitants of the occupied territories in the areas controlled by Israel.⁴⁵³

The most important provisions in the laws and international treaties, which prohibit the settlement:

The Hague Convention 1907 Article (46): territory state can't confiscate private property.

Article (55): State territory serves as a director of land in the occupied country and they must treat the property of the country as private property⁴⁵⁴.

Fourth Geneva Convention 1949 Article (49): No Occupying Power shall transfer its citizens to the territories occupied by, or to perform any action leads to demographic change in them.

Article (53): The entitlement should not be made to the occupation forces personal property or individual or collective, property destruction of individuals or the State or of any authority in the occupied country particularly.

⁴⁵³ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

⁴⁵⁴ There are an additional three articles in the treaty (46, 47 52) defends private property of peoples under occupation.

The Security Council and the General Assembly of the United Nations condemned in several resolutions Israel's policy of settlement and denounced the lack of commitment to the international laws. The group of the international legitimacy resolutions issued to deny any legal status of settlement or annexation, demanding its repeal and the dismantling of settlements, including the settlement in Jerusalem. Since 1967, many decisions issued in this regard, including:

United Nations Security Council Resolutions:

The Resolution No. 446 of 1979, which stressed on illegality of the Israeli settlements and the transfer of the Israeli population to the Palestinian territories. Resolution No. 452 of 1979; eliminates halt settlement activity in Jerusalem and the non - recognition of the annexation of Arab Jerusalem, and demands the dismantling of the settlements. Resolution No. 465 of 1980 also calls for the dismantling of settlements.

United Nations General Assembly Resolutions:

- The UNGA's decision dated 20 Dec 1972, in which it demanded that Israel has to stop a number of procedures and practices, including (the establishment of settlements in the occupied Arab territories and the transfer of its civilian population to the occupied Arab territories).
- The UNGA's decision dated 15 Dec 1972, in which they requested Israel to stop the annexation from any part of the occupied Arab-Palestinian territories and the establishment of settlements in those territories and the transfer of the civilian population from Israel to the occupied Arab-Palestinian territories).
- The UNGA's dated 7 Dec 1973, in which they expressed grave breach to Israel for the violations of the provisions of the Fourth Geneva Convention of 1949,

anxiety and all actions taken by Israel to change the occupied territories landmarks, or demographic composition that, and considered it a violation of international law.

- The UNGA's resolution dated 29 Nov1974, in which they expressed deep concern for the Israel's annexation of some parts of the occupied territories and the establishment of settlements.
- The UNGA's decision dated 15 Dec1975, which consists of four sections, the first section has condemned all actions carried out by Israel in the occupied territories, describing such practices as constituting serious violations of the Charter of the United Nations and an obstacle to achieving a stability, justice and peace in the region, stressing on these actions that they are null and void and has no basis of legitimacy.
- The UNGA's issued on 28 Oct1977, which confirmed in its first clause that all measures and actions taken by Israel in the Palestinian territories and other Arab territories that occupied since 1967, is not true according to law, and is a serious obstruction to the efforts exerted to reach justice and peace in the Middle East, as the GA deeply regrets because of the Israel's continued implementation of these measures and in particular the establishment of settlements in the occupied Arab territories .

Then the General Assembly in several subsequent resolutions affirmed its condemnation of the Israel's settlement policy in the occupied Arab territories, even some of the decisions issued during the eighties of the last century went so far as to the Israeli practices in the occupied territories that they constitute war crimes and are an affront to humanity, and that was taken as the decision in 1983, which

confirmed that the Israeli occupation itself constitutes a gross violation of human rights in the occupied territories, and has condemned Israel's continuity and constant violation of the fourth Geneva Convention of 1949 and that what's committed by Israel of cases of serious breach of the provisions of that Convention is a war crime and an affront to humanity, then the resolution strongly condemned the Israeli policies and practices, particularly the annexation of parts of the occupied territories, including Jerusalem, and the establishment of new settlements and the expansion of the existing settlements in the private and public Arab lands.⁴⁵⁵

Then the GA supported the previous decision with other decisions that confirm the statement on it and they condemn the Israeli settlements policy, including the resolution 40/165 of 1985, resolution No. 41/163 of 1986, resolution No. 42/160 of 1987, resolution No. 44/48 of 1989, resolution No. 45/74 of 1990, resolution No. 46 / 47 of 1991, resolution No. 46 of 1991, resolution No. 52/66 of 1997, and other decisions.⁴⁵⁶

Resolution 194 endorsed the right of Palestinian refugees to choose whether to repatriate to what is called now Israel or to be resettled elsewhere, and codified the accepted principles of customary international law. It has been reaffirmed by the General Assembly every year since its adoption.⁴⁵⁷

The right of return for refugees also is well-established under other international law, including:

⁴⁵⁵ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

⁴⁵⁶ The PLO Negotiations Affairs Department (NAD), factsheets, "The Israeli Settlements in International Law, <https://www.nad.ps/en/publication-resources/factsheets>

⁴⁵⁷ Ibid

- The Universal Declaration of Human Rights (adopted in 1948): “Everyone has the right to leave any country, including his own, and to return to his country” (Art. 13(2)).
- The International Covenant on Civil and Political Rights: “No one shall be arbitrarily deprived of the right to enter his own country” (Art.12 (4)).
- The UN Sub-Commission on Human Rights Principles on Housing and Property Restitution for Refugees and Displaced Persons: “All Refugees and displaced persons have the right to voluntarily return to their former homes, lands or places of habitual residence, in safety and dignity” (Art. 10.1)... “Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property” (Art.10 (3)).
- The UN Committee on the Elimination of Racial Discrimination: “The Committee is concerned about the denial of the right of many Palestinians to return and repossess their land in Israel (Article 5 (d) (ii) and (v)). The Committee reiterates its view expressed in its previous concluding observations on this issue and urges the State party to assure equality in the right to return to one’s country and in the possession of property” (Art. 18).
- The UN Committee on the Status of Refugees 1951, and 1967 Protocol.

Israel’s illegal policies in the OPT systematically violate Palestinian rights, not only do these policies undermine their fundamental human rights – seriously restricting future options – they also affect the long-term development and growth of Palestinian society, contributing to the progressive de-development witnessed over recent years. The simple tragedy of the situation lies in its reversible and preventable nature. It is

only the pervasive impunity granted to Israel by the international community which has allowed these, and other, illegal Policies to persist. the Israeli occupation authorities are willing to complete the project of achieving total domination over both the Palestinian land and the Palestinian human while depriving him from his culture and his history, thus tampering with the collective identity of Palestinians.⁴⁵⁸

The Israeli violations against the Palestinian have exceeded its broad. the Israeli government repressive policies is an attempt of hiding the role that is being handled by the Israeli judicial system of discrimination and violation of rights of Palestinians inside the Green Line areas or what is now called Israel or in the occupied Palestinian territories since 1967 . The Supreme's Court discriminatory and unjust decisions affect and violate Palestinian rights, ignore their human rights, and are contrary to the international laws.⁴⁵⁹

Israel's Supreme Court is the highest forum of litigation regarding issues related to the Israeli state actions, including the occupied lands of 1979 when the court stated that the settlements on lands owned by the members of the Palestinians could not be created under the pretext of "military necessity". Later refused to accept lawsuits against the settlement policies on the basis that the issue of settlement is essentially a political and the court has never issued elimination of illegal settlements under penalty according to the laws of occupation, although they annulled the Israeli government's position that Israel's obligations are under international treaties of

⁴⁵⁸ BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement .Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

⁴⁵⁹ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P26, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

Geneva humanitarian customary do not apply to the occupied West Bank⁴⁶⁰. However, the Court itself has never be able to control the issue of discrimination specifically in the jurisdiction of cases involving Palestinians in the West Bank, but addressed the issue of discrimination when they relate to the state's policies in the occupied territories. In a number of cases, the court ruled against the Israeli army against the background of policies that harm the Palestinian population in the West bank illegally. But in none of these cases, the courts did not address the issue of discrimination, but applied the test of "proportionality" judicial instead, and it raises the question of whether the damage or restrictions commensurate with the stated purpose, without the legality of the policy or practice which is based test of proportionality analysis, or the need to justification of selection for discriminatory treatment on the basis of race, ethnicity or religion.⁴⁶¹

The repeated Israeli Supreme Court's reference to the law of human rights in its decisions on the movements of the Israeli military in the West Bank, it hasn't followed the international covenant standards in it rules and regulations on the political and civil rights. And they did not clearly rule Israel's obligation as an occupying power according to the international law which must be applied to the West Bank⁴⁶². The Israeli government also has refused and ignored the application of the obliged rights over the occupied territories. Moreover, it has ignored the rules of the ICJ in addition to results were shown up by the UN bodies and agencies like, the

⁴⁶⁰ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P26, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

⁴⁶¹ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P28, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

⁴⁶² Aeyal Gross, "Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of : Occupation?", *European Journal of International Law*, 2007 (18) no.1, pp. 1-35, citing among other cases HCJ 7957/04, *Mara'abev*. The Prime Minister of Israel ("we shall assume – without deciding the matter – that the international conventions on human rights apply in the area"), <http://www.ejil.org/pdfs/18/1/212.pdf> (February 24,2016)

committee on the application of the international covenant regarding political, civil, economical, social, and cultural rights as well as the convention of elimination of racial discrimination.

In a report of the (Human Rights Watch), it was explained that the Israeli Supreme Court decisions designed to legitimize clear violations of the obligations of the State of Israel's occupation of international law. In one of the provisions, the court ignored the principles of international law , which prohibits discrimination and , in another provision ignored the private international law by using the occupied territories resources .It was said by Sarah Leah Whitson , executive director of the Middle East division at Human Rights Watch: "In light of these provisions, the Israeli Supreme Court has departed far from being a last resort to ensure the human rights path, which is Collapse of the legal system of controls against the violation of rights , thus another sign of the fall of the protection of rights and freedoms in Israeli measures can be observed ⁴⁶³".

Some of the Israeli Supreme Court decisions ratified the Government's policy of the application of the 'Absentee' Property Law in east Jerusalem. So, the Supreme Court allows confiscation of property in Jerusalem; if the owners of the property live in the WB, this violates their right to property and a violation of the IHL on the occupied Palestinian territories. It is noteworthy that these confiscations took advantage for the goals of the settlement in Jerusalem. In 2008, the Israeli government issued a decree ordering the interior minister not to ratify the reunion requests of Palestinian families if one of the couple is Gaza resident. A Petition in the Supreme Court was demanding the abolition of this decision because it considers all the people of Gaza as a security threat. The Supreme Court rejected the petition which

⁴⁶³ Report of Human Rights Watch, "The provisions of the Israeli Supreme Court undermine human rights", 2012, <https://www.hrw.org/ar/news/2012/01/30/245213> (February 28, 2016)

caused a sweeping of the family constitutional living right. The Supreme court rejected petitions against the Israeli policy of demolishing Palestinian families houses that are suspected or accused in the implementation of operations against the State of Israel, which considered by the petitioners and jurists as a collective punitive contrary to the IHL and international criminal law ⁴⁶⁴.

There are on basis of the foregoing that the settlements of Israel in the occupied Palestinian territories falls within the scope and meaning of war crimes from the provisions of the rules of international law in general and the provisions and rules on the status of belligerent occupation in international humanitarian law, existing body of both the Hague Regulations 1907 and the Fourth Geneva Convention and the provisions of the Geneva Protocol 1 supplementing the four Geneva Conventions . and separating the Geneva Conventions with long series of prohibitions imposed on the occupying power, and its essence (in this case) prohibits the occupier resettlement of the population in the occupied territories, which was reaffirmed by the many resolutions of international legitimacy, both UN Security Council resolutions or General Assembly, and therefore; the creation of a fait by force cannot really win , that means, Israel will continue to carry judicial responsibility for the consequences of its actions and behavior towards the occupied territories, regardless of Israel 's justifications about whether can the situation be defined as the occupation or not ⁴⁶⁵.

⁴⁶⁴ Report of Adalah Center, "Israel's Supreme Court decisions that violate human rights", Dec2015, <http://www.adalah.org/ar/content/view/8707> (February 28, 2016)

⁴⁶⁵ B'Tselem Organization , "Israeli obligations under International Law", http://www.btselem.org/arabic/gaza_strip/israels_obligations (January 23,2016)

4.3. The Implications of the Israeli Settlements on the Civil, Economic, Political, Social and Cultural Rights.

Palestinians and for the last 70 years are living under the Israeli occupation and its practices of resources depletion, destruction and establishment of colonies which have left a devastating impact affected all Palestinian. In addition to the acts of land confiscation and preventing Palestinians from entering and practicing various activities, there are a lot of aspects of the destruction of the Palestinian environment; most notably are the establishment of bypass roads, the construction of the annexation wall, the Israeli expansion, the destruction of biodiversity, the water depletion, air pollution and noise, the destruction of cultural heritage and the destruction of the agricultural sector as well.

Moreover, the confiscation of lands and natural resources for purposes of the settlements constructions, actions of houses demolition and not providing adequacy of shelter, lack of water and electricity and health facility are the main reasons behind the forced migration of Palestinian families, by the Occupying forces, to other places and hence this is a very big violation of the international laws by the Israeli Occupation forces.

Moreover, the systematic discriminatory actions among Palestinian has always made it obvious, Israel forbids the Palestinians from visiting their religious places and to practice their rituals.⁴⁶⁶ Yet, the city of Jerusalem have lately witnessed the most violent actions by the Israeli's forces against Palestinians during the Israeli's attempts of bringing Jews extremists to visit Al Aqsa courtyards, in addition to that, the changes around the city which has given it more of fakeness to hide the old history in front of

⁴⁶⁶ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P26 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

the European and Jews tourists. Old men, women and children are not allowed to enter the Masjid Al Aqsa, settlers daily attacks on the religious places of Jerusalem, Nablus and Hebron which is provided with high security of the IDF, have resulted in the death of more than 300 Palestinians since the beginning of 2016.⁴⁶⁷

Israel acknowledges the discriminatory treatment with Palestinians right by preventing them from using roads reserved for settlers only and subjecting them for barriers and check posts in the WB, it was confirmed that the actions of this kind are necessary to protect Jewish settlers but the Israeli policies restrict Palestinians movements, not on specific targeted individuals but they treat them all as they are a danger to the Israeli security. These policies are implemented by putting Palestinians under the full security burden by showing them as burden on the settler's security. But the burden imposed on the Palestinians is "disproportionate" with other necessities of security and its needs of the settlers.⁴⁶⁸ It was noticed by the United Nations Committee for the Elimination of Racial Discrimination in 2007, that the Israeli policy is targeting a particular national or ethnic group through the wall, checkpoints, restricted roads and the system of granting permits ... which has had a negative impact on the human rights of Palestinians, especially their right of movement, family life, education and health.

The Israeli Settlements and the discrimination wall further restricted the movement of Palestinians, who are already restricted in their movements by the Israeli Army's practices of methods of collective punishment such as the closure of

⁴⁶⁷Ibid

⁴⁶⁸The Israeli Supreme Court addressed directly for discrimination against Israeli citizens and Palestinians, but failed to address the nature of discriminatory restrictions on Palestinians in the West Bank, and that resulted in its orders which addressed the impact of the implementation on the treatment of all Palestinian as a security danger, and not the policies are discriminatory by nature of these policies itself, *ibid*.

towns and villages and the imposition of curfew. Although some gates have been incorporated into its structure, the Settlements illustrate graphically the prison-like reality that is the daily struggle for the Palestinian people. The declared purpose of the Wall is to "isolate" Palestinians from Israelis, but it also serves to isolate Palestinians from each other. The gates that exist are not opportunities for movement but rather tools to further violate the dignity and rights of Palestinians⁴⁶⁹.

The comments of the ICRC, International Committee of the Red Cross, on the restrictions on freedom of movement regards the closures and curfews can be applied equally to the Wall:

The ICRC views the policy of isolating whole villages for an extended period of time as contrary to IHL, particularly with respect to those aspects of IHL which protect civilians in times of occupation. Indeed, stringent closures frequently lead to breaches of Article 55 (free passage of medical assistance and foodstuffs), Article 33 (prohibition on collective punishments), Article 50 (children and education), Article 56 (movement of medical transportation and public health facilities and Article 72 (access to lawyers for persons charged) of the Fourth Geneva Convention.⁴⁷⁰

While accepting Israel has legitimate security concerns, the ICRC stresses that measures taken to address these concerns must be in accordance with IHL. Furthermore, these security measures must allow for a quick return to normal civilian

⁴⁶⁹ Stop the Wall Org, "The Wall's First Phase", Anti-Apartheid Wall Campaign Fact Sheet available at: www.stopthewall.org.

⁴⁷⁰ ICRC, "Israel and Occupied/Autonomous Territories: The ICRC Starts its 'Closure Relief Program,'" February 26, 2001

life. This, in essence, is the meaning of the fourth Geneva Convention which is applicable to the Occupied Territories⁴⁷¹.

Article 12(1) of the ICCPR asserts that everyone has the right to freedom of movement within their own state. As Israel is obliged to ensure that the Palestinians under its jurisdiction enjoy the rights set forth in the ICCPR, the prohibition of movement represented by the construction of the Wall and by the imposition of closures in areas adjacent to it is manifestly illegal and must be reversed.

Palestinians, in the Palestinian territories in general and in Jerusalem in particular, passed through geopolitical changes imposed by the Israeli occupation which also led to demographic changes caused in the increase of natural of fertility mortality, forced migration, which is leading to the emergence to host challenges in the areas of different life styles, the density and the high population , limited opportunities in the labor market , the lack of investments , a decrease of services , the low level life, and the inability to basic service associated with the natural increase of schools, health and social services , exacerbate infrastructure of living conditions , lose of community development opportunities, stability and contributes in the lack of social and societal security⁴⁷².

The repercussions and implications of the Israeli discriminatory policies are more affecting Palestinians living in the cities and towns in the occupied WB. The area (C) is having large quantities of water resources, grazing and agricultural lands, as much as water is required for the fulfillment of the water need, infrastructure and land reserves. The area (C) is the only region adjacent to other areas of the WB, which

⁴⁷¹ Ibid

⁴⁷² Dr.Lo'ay Shabana, "Forty Years of the occupation (Israeli policies and their impact on economic and social infrastructure in Jerusalem)", <http://www.pcbs.gov.ps/Portals/PCBS/Researchs/Jerusalem.pdf> (January 21, 2016)

is isolated from Palestinian towns and cities (which are located outside the region (C)) in the form of pockets or separate spots from each other⁴⁷³, the result is that Israel controls the movements of Palestinian residents⁴⁷⁴. They must cross checkpoints to go through the area (C) to where they want to head off; they need permits for the construction of infrastructure that helps link between the cities, towns and villages (including roads, water, sanitation and electricity pylons). It is usually impossible for cities, towns and Palestinian villages that need more land in order to grow.

Israel has delegated most of the responsibilities of civilian areas in the WB to the Palestinian Authority, but Israel has full control over the construction and buildings in Area (C) which made it difficult for the Palestinian to fulfill their responsibilities of education and health. There is a statistical research conducted in 2009 by the United Nations bodies, it concluded that the PNA is facing "difficulties in obtaining building permits" from the Israeli Civil Administration which impedes the affairs in order to build schools and clinics.⁴⁷⁵

The right of ownership, is one of the fundamental rights affirmed in the Universal Declaration of Human Rights in Article 17 and the International Covenant of economic, social and cultural rights of 1976, as well as IHL and therefore, the occupation authorities are obliged to respect the private property of individuals and the occupation custom prohibits the seizure of the civilians funds during military occupation⁴⁷⁶.

⁴⁷³The Economic Effects of Restricted Access to Land in the West Bank, P4 , <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconomicEffectsofRestrictedAccessstoLandintheWestBankOct.20.08.pdf>

⁴⁷⁴OCHA, The Humanitarian Impact of Israeli Infrastructure in the West Bank, 2007, Chapter 2; B'Tselem, Land Grab: Israel's Settlement Policy in the West Bank, May 2002, P 50, https://www.ochaopt.org/documents/thehumanitarianimpactofisraeliinfractuurethwestbank_full.pdf

⁴⁷⁵Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories" , Dec 2010, P8 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

⁴⁷⁶Nasser Al-Rayes, "grave breaches", guidebook on international humanitarian law, Al-Haq organization ,2005

This ban was confirmed under the fourth Hague Regulations in 1907, where Article (46) is about "respect for the family honor, rights and lives of individuals for practicing own religious beliefs and rituals, as it is not permissible to expropriate private property" and as confirmed by Article (47) of the same Regulation and Article (56) confirmed not to steal or destroy allocated scientific, technical, cultural, historical or religious purposes stuff, and it should be treated as a private property. It is stated in the Fourth Geneva Convention of 1949, where Article 33 is about the prohibition of the seizure of the civilian population funds or violating property rules illegally, as mentioned in its second paragraph that the Pillage is prohibited, while it was banned by Article (53) on the Occupying state to destroy any property of private individuals and groups or social or cooperative organizations except if the military operations require such destruction.

Even in cases of which Israel recognizes the rights of Palestinians in the territories, the landowners cannot exercise these rights because the impossibility of their access to land, the Israeli civil society organizations have shown as based on government documents, that many Israeli settlements are may be partly built on land of Palestinians. Many Israeli relays, through military orders and laws of the land in the WB, by violating limits of its authority as an occupying power, it cannot alter local laws except in the case of necessity in order to maintain stable situation. Israel's confiscation is unjustified and the transfer of ownership of the Palestinians to the settlers, the demolition acts and forced displacement which is discriminatory and violating the ban on land confiscation.⁴⁷⁷

⁴⁷⁷ BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement .Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

Housing and building policies of the Israeli government in the WB including East Jerusalem, violate the state's obligations to non-discrimination policies and, this led to the demolition of homes, they violate the prohibition on forced displacement of the population under the occupation. The fact that Israel, as an occupying power, continuously switching existing legislation in the territory, including planning laws and the destruction of property foreclosed upon only required maintaining good governance of land only peaceful purposes. Therein, the supreme court of Israel stated that some of the applicable procedures against the Palestinian citizens of Israel are illegal because they are discriminatory. The judgment of Court says that some of these violations applied to the Israeli military actions in the WB, such as the path of some parts of the Israeli separation barrier, this is "disproportionate" when it was compared with its advantages in favor of settlers and other Israelis inside the Green Line.⁴⁷⁸

There is no rationale or security logic that justifies the cases of discrimination in the treatment of Palestinians, the denial of permits in order to build or repair their homes, schools, roads and water tanks. Thus, a house or a school reforming cannot be considered as a security threat. In cases where Israel has justified policies that harm Palestinians on security grounds, both of the Israeli's residents or settlers, it is based on policies consider all Palestinians as a security threat because of the reality of their race and national origin not based on the policies for a specific definition of the specific security interests. The discriminatory treatment by the government with

⁴⁷⁸ Report of Human Rights Watch, " Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P4 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

different population groups can sometimes be justified, but only as much as it satisfies the legitimate purpose so that the adverse effects are minimal⁴⁷⁹.

The damages caused to the Palestinians because of Israel's discriminatory policies are disproportionately to a large degree with the stated goal. The Israel's desire to protect its settlers in the WB, East Jerusalem and the citizens inside Israel does not justify the policies that have nothing to do with security or policies that discriminate all Palestinians and consider them all as a security threat. The discriminatory practices frequently violated the rights of Palestinians under the occupation law. Israel; the occupying power in the WB and East Jerusalem is obliged to ensure the rights of Palestinians and reduce the restrictions under the law of occupation as stated in the IHL.⁴⁸⁰

The settlement's policy in the occupied territories involves a clear breach of the principle of equality stipulated in more than one article of the Universal Declaration of Human Rights materials, especially since these set up settlements by Israel are separated and isolated from the rest of the population of the region, because it is only inhabited by Israeli settlers. Moreover; they are subject to a particular legal and judicial system.⁴⁸¹ No doubt that such practice of discrimination and racism is prevented by the international conventions and was denounced by the UN in more than once.

The establishment of Israeli settlements in the occupied territories creates conditions that makes those settlements as a realistic annexation for those lands to Israel which makes it difficult for the Palestinian people right's of self –

⁴⁷⁹Report of Human Rights Watch, " Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P4 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

⁴⁸⁰ Ibid

⁴⁸¹ Report of Human Rights Watch, " Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P4 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

determination and that is because of the bringing of new settlers to stay in, and that would effect on the demographic nature of the occupied territories, especially after the expulsion of the indigenous citizens to bring outsiders in their place .in addition to all that, Israel aims from its settlement policy to make the majority of the population in those territories from settlers where in the future they can take part in the fate of the occupied territories.

The establishment of settlements, on the occupied territories, has completely changed the nature of these lands; which has made it more challengeable for Palestinians to establish their state. They have forced the original residents to leave and change them with settlers come from different parts of the World, admire the interest given by the occupying government. By doing so, Israel now control the resources of these lands, benefit the most out of them, broke the geographical and social linkages between the different villages, towns and cities in addition to the destruction of the basic infrastructures needed for survival. The policies of resources exploitation for the benefit of its residents violate the international norms.⁴⁸²

The water resources are under the control of Israel since 1967, when territories came out from the control of Jordan. Similarly to the ways leads to these resources in the WB. The distribution of water is not just according to the rights of Oslo Agreement 2, which has given the Israelis 4 times the rate Palestinians are given from the groundwater tanks. The imbalanced distribution has given the biggest portion of water usage to the settlements. Israel Provides water to settlers for agriculture and

⁴⁸² BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement .Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

house hold, but Palestinians are supposed to purchase water from water tankers which benefits the Jewish settlers.⁴⁸³

To some extent, Oslo records have given the Palestinian the opportunity to role and manage the water recourses usage, through the establishment of the joint committee between Palestine and Israel, where both have to agree upon the suggested projects for the WB water resources. Unfortunately, the World bank clearly stated that one of the Israeli suggested projects was rejected by the committee and more than half of the Palestinian suggested projects were rejected, however, one third of the agreed upon projects are between stages of completion or just started.⁴⁸⁴

The settlements utilize a large quantity of water resources whether for agriculture use or the companies which are working under the supervision of the Israeli government, similarly a network of natural water resources is kept, which gets water from the deep of natural resources and provide it to the settlers. Except Palestinians, they have approach to only a very few quantity of this on the condition of flow from Israeli side.⁴⁸⁵

The average quantity of water consumption in Israel goes as four times of the Palestinian consumption both in WB and Gaza as stated by WHO. Moreover, nine thousand Israeli settlers live within agricultural settlements where they consume 25% of the total Palestinian consumption of the WB.⁴⁸⁶

One of the inequality causes in the approval of projects is that Israel usually opposes infrastructure projects which need providing water for residential purposes,

⁴⁸³ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P5 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

⁴⁸⁴ Ibid

⁴⁸⁵ Ibid

⁴⁸⁶ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P5 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

only if the purpose is piping water to serve the Israeli settlements. Yet, they don't fully approve the proposed projects and in addition to the approval needed by the Joint Water Committee, the Palestinian water projects in area (C) must be approved by the Israeli civil administration which usually rejects applications for security reasons. The gross water consumption has declined over the years by Palestinians people with the population growth.⁴⁸⁷

The Israeli's restrictions on planning and military orders forced the Palestinians in area (C) to spend about one-sixth of their income to buy water on high costs from small mobile water. The restriction on water has significantly influenced the Palestinian villager communities, many of them are suffering from not having a reliable source of water.

The creation of the water infrastructure to serve the Israeli settlers and kept these sources away from Palestinians. The State of occupation is not taking into account the principle of equality of water resources of the parties and hence it can't be justified under any security concerns or any other necessities. The water deficiency affects tens of thousands of Palestinians and also violates the Israel's obligations as an occupying power on ensuring the welfare of the occupied population.⁴⁸⁸

Israeli settlements were established based on undeclared annexation of the Palestinian land and planting of settlements, confiscation of land and control of water as well as to control the aspects of development and economic growth of these areas. The Israeli state of occupation took an advantage of the WB environmental features. They established agricultural and industrial settlements which has a negative impact on the Palestinian territories, the agricultural settlements fought the Palestinian economy through the seizure of fertile land, the establishment of settlements by

⁴⁸⁷ Ibid

⁴⁸⁸ Ibid

bulldozing and burning uprooting trees, destroying wells and malicious methods ideas of bypass roads that wiped out hundreds of thousands of fruit trees, in addition to the obstacles placed by Israel to extensive damage to Palestinian farmers on exporting their products.⁴⁸⁹

The agricultural commercial sector benefits from the discrimination in the availability of water in the Jordan Valley settlements, which consume a quarter of the annual water consumption in all parts of the WB. The over extraction and the customization discriminatory in the northern WB to serve the agricultural settlements shares the lack of drinking water and the sharp decline in the Palestinians cultivated land. There are also multinational companies, assist the Palestinian natural resources, mainly for the benefit of settlements⁴⁹⁰. They Produce, export and marketing the agricultural settlements products. Companies also benefit from the reduced Palestinian agricultural farms⁴⁹¹.

The industrial settlements are the milestone in the settlement enterprise of the WB, where it formed the first attraction factor for the settlers, and an offer for the overall public and consumer services at a competitive price for the Israeli markets inside its cities. These industrial settlements are provided with the infrastructure needed, offers discounts to the Israelis and foreign investors on the relevant taxes to encourage them to invest in the settlements. Israel deliberately established the industrial settlements near the Palestinian population centers areas, and far to a large degree from the Jewish communities in order to keep the risk of contamination away from the Jewish and settlers population. They created the industrial settlements in the

⁴⁸⁹ BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement .Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

⁴⁹⁰ Yesh Din, citing Justice A. Barak, *Jamait Askan v Commander of IDF forces in Judea and Samaria* (HCJ 393/92, Piskei Din 37(4) 785, pp. 794-795).

⁴⁹¹ Corporate Watch, "Companies trading from Ro'i Settlement."

WB areas of international standards; for the production and export to the world markets, these standards are fading when dealing with the Palestinian labor and with the healthy environment of the Palestinian population around.⁴⁹²

In the "occupation's Commerce" report issued by the Human Rights Watch dated 19Jan 2016, titled "How do the settlements business contribute in the Israel's violation of the Palestinian rights" which documented how companies in settlements facilitate the business development, these companies contribute to the illegal confiscation of Palestinian territories and other resources by the Israeli authorities as they benefit from these violations and the Israel's discriminatory policies that offer privileges to settlements on the expense of Palestinians such as land, water and government aid. It also helps the settlement's companies to deepen the impact of the Israeli discriminatory policies that favors the settlers on Palestinians, although the settler's presence there is illegal" and companies to stop working in the Israeli settlements, as well as financing, servicing and trading with them in order to comply with their responsibilities in the human rights.⁴⁹³

Human Rights Watch Report under the United Nations guidelines for business and human rights states that companies should respect the human rights and to identify any possible negative impact of their work and duty but; because of the illegal nature of the settlements according to the foundation of the Geneva Conventions, companies cannot mitigate their contribution to the Israel's violations as long as it works in the settlements or cooperate in commercial activities related to settlements.

⁴⁹² BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement .Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

⁴⁹³Report of (human rights watch), " Israel Businesses Should End Settlement Activity", <https://www.hrw.org/news/2016/01/19/israel-businesses-should-end-settlement-activity> (January 20, 2016)

Companies are engaged in a number of supporting activities, some participate in the management procedures, Human Rights Watch investigated in an Israeli bank that financed the construction and building of settlements, and in the waste management's company that combines settlement's trash and addressed in the landfill in the Jordan Valley serving exclusively in Israel and Israeli settlements.⁴⁹⁴

Other companies are located in settlements or industrial zones which are usually attracted to settlements; because of the cheap Palestinian labor or the affordable taxes. The Human Rights Watch investigated the fabric maker in a settlement industrial area that provides fabrics for a US major retailer. The factory moved to Israel in October 2015. About 20 industrial settlements area host around 1000 plants, the Israeli settlers supervise on the cultivation of 9,300 hectares of Palestinian lands, industrialists and agricultural producers in the settlements issue, as most of these goods, are typically labeled made in Israel. For that, the Human Rights Watch says that other countries are to ensure that any imports of goods it receives from the settlements should be consistent with its obligation under the IHL and not to recognize the Israeli sovereignty over the occupied Palestinian territories.⁴⁹⁵ This includes the prohibition of goods tagged as being made in Israel.

Companies in the Settlements take advantage of the Israeli army large patches confiscations of land in the WB by turning it into lands for the settlements.⁴⁹⁶ This is a breach of the IHL, which prohibits the occupation power of any use of the occupied land resources for their own benefits. Some of the lands are owned by individuals

⁴⁹⁴ Report of (human rights watch), " Israel Businesses Should End Settlement Activity", <https://www.hrw.org/news/2016/01/19/israel-businesses-should-end-settlement-activity> (January 20, 2016)

⁴⁹⁵ Ibid

⁴⁹⁶ BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement .Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

Palestinians, which remarks another violation of prohibition in IHL, as the Israeli army imposes tight restrictions on the arrival of many Palestinians land owners to neighboring settlements farms.⁴⁹⁷

Arvind Ganesan, the director of human rights and business department at Human Rights Watch said that: "settlement's companies inevitably contribute to Israeli policies which violate the rights of Palestinians and discriminate against them, taking advantage from the Israel's looting of lands and resources. The only way for the companies to respect the human rights obligations is to stop working in Israeli settlements and must take into account the fact that they use the land, water, metals and Palestinian resources into their settlements, and how these operations are not legal, and Palestinians pay high prices for that"⁴⁹⁸.

The World Bank in 2013, stated that the Israeli restrictions on area (C) annually cost the Palestinian economy \$ 3.4 billion or about 33 percent of the Palestinian GDP.⁴⁹⁹ The settlement's companies contribute to these illegal and discriminatory policies and benefit from them. They leave many Palestinians trapped without alternatives but to work in Israel or the settlements using opportunities to work for lower wages without the protection of workers' rights measures.⁵⁰⁰

This system provides for Palestinian workers in the Israeli settlements very few protection measures, Israeli's government officials said that they did not conduct any supervision on Palestinians working conditions in the settlements because of the

⁴⁹⁷ Ibid

⁴⁹⁸ Report of (human rights watch), "Israel Businesses Should End Settlement Activity", <https://www.hrw.org/news/2016/01/19/israel-businesses-should-end-settlement-activity> (January 20, 2016)

⁴⁹⁹ Ibid

⁵⁰⁰ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P5, <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

ambiguous legal status of workers under the Israeli laws, which makes Palestinian vulnerable to be abuse⁵⁰¹. In 2007, the Israeli Supreme Court ruled that the dual legal system in the West Bank, which applies the Israeli civil law to settlers and military laws on Palestinians, which discriminates against Palestinian workers; but the government, has not complied with this provision yet. The Military law provides certain protections, such as the minimum wage, but since 2006, the Israeli Civil government was responsible for this implementation.

Human Rights Watch concluded that the conversion of the Israeli government to the Palestinian territories into illegal settlements, and the restrictions related to settlements are the elements of a broader system introduces discrimination benefits the settlement's companies, while they are destroying the Palestinian economy. The Human Rights Watch documented the settlement's discriminatory system as seen to a large extent, how it hurts too much of the Palestinians and caused forced migration of them from their land, in a report in 2010 entitled "The separation and lack of equality⁵⁰²".

Israeli and multinational companies, and the bodies attached to them are that benefit from the settlements, where the generous aid which that promotes Israeli settlements, play an indirect role in harmful treatment with Palestinians because of discriminatory Israeli policies. Corporate interests in the settlements take several forms. Israeli companies are building, and contribution of companies of which owns

⁵⁰¹Report of (human rights watch), "Israel Businesses Should End Settlement Activity", <https://www.hrw.org/news/2016/01/19/israel-businesses-should-end-settlement-activity> (January 20, 2016)

⁵⁰²Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P4 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

its shares from foreign investors, and through the financing and construction of building settlements and a strong infrastructure.⁵⁰³

These Companies contribute to the violations and discriminations of rights against the Palestinians. For example, through their illegal activities on the Palestinians without the compensation and just in favor of the settlers benefit, or activities consume the natural resources such as water. This also acknowledges the assistance and exemptions of Israeli government from taxes and inequality in the availability of infrastructure facilities, permits and export channels. On the other side, the Palestinian side is prohibited from such exemptions that mostly result in a competition clash with the existing companies working in Palestine, Israel and the international markets.⁵⁰⁴

While the states hold the primary responsibility for the compliance with the IHL and IHR law. In addition to the UDHR, the preamble to each of the Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights and the International Covenant International Covenant, recognize that others opposed to countries, especially individual defendants and responsibilities of human rights, has been extended to legal persons of which companies and businesses, as well as natural persons. Also, there is a universal consensus that companies and businesses bear directly for human rights that amounts to international crimes and of which causes slavery, genocide, war crimes and other crimes and much more. Moreover, it is possible to bear the corporate responsibility to adhere the international standards of human rights, with respect to the criteria entered in the application of national laws

⁵⁰³ Report of (human rights watch), "Israel Businesses Should End Settlement Activity", <https://www.hrw.org/news/2016/01/19/israel-businesses-should-end-settlement-activity> (January 20, 2016)

⁵⁰⁴ Report of Human Rights Watch, "Israel's Discriminatory Treatment of Palestinians in the Occupied Territories", Dec 2010, P4 , <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

and legislation in the countries where the companies operate within the space based on legal framework. The focal official of the Special Representative of the Secretary-General of the United Nations on companies and businesses and human rights⁵⁰⁵, states that the companies are responsible for the "respect" of human rights⁵⁰⁶.the Corporate responsibility to respect human rights and include a commitment to formulate, implement and monitor the implementation of human rights policies, stated in treaties and conventions of the ILO to avoid complicity in violations⁵⁰⁷.

The Information collected by the bodies and missions of the UN, research institutes, and the human rights organizations indicate that businesses have enabled the building and growth of the Israeli colonial project and other related, which raises concerns about the human rights violations and activities and facilitated it and causes violations directly and indirectly⁵⁰⁸. It can be prove that the involvement of companies in violations of the international law, committed by Israel in the occupied Palestinian territory in different ways.

The main form of this involvement includes the participation in industry and agriculture colonies, the construction in the occupied territory and provides services to the colonies, the exploitation of production and resources of the occupied territory, control of the population, private security work in the occupied territory, build the

⁵⁰⁵The framework agreement was published in 2008, certified by the United Nations Human Rights Council.

⁵⁰⁶John Ruggie, "Respect, Protect and Remedy: A Framework for Business and Human Rights," A/HRC/8/5, April 7, 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (February 25,2016)

⁵⁰⁷Ibid

⁵⁰⁸Human Rights Council of the United Nations, "Report of the International Independent- Fact finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem", section 96

annexation wall, as well as providing specialized equipment and services for other purposes⁵⁰⁹.

Moreover; the session of the Russell Tribunal on Palestine held in London divided the companies attributed activities which have been described as a support for the violations of the international law in three categories of offenses:

1. by supply of equipment and materials for military vehicles used by Israel during the aggression on Gaza and the provision of the security equipment used at checkpoints on roads leading to the construction of the annexation wall, and to supply security equipment to the Israeli settlements in the Occupied Territories.
2. Various types of assistance to the Israeli settlements in the occupied territory.
3. Different Forms of assistance in the construction of the annexation wall in the occupied territory.

Israel continues to strengthen and consolidates its colonial activities according to the report of the UN fact-finding mission, issued in 2013 through measures relating to infrastructure and security, in violation of the IHRL and IHL and crippling at the same time to create a contiguous Palestinian state, which viably undermines the right of the Palestinian people to find their fate. The mission also concluded that the settlements are seriously an effect on the rights of the Palestinians, including: the right to self-determination, non-discrimination, freedom of movement, equality, fair trial, freedom from arbitrary arrest, the freedom and security of their people, freedom of expression, freedom of access to places of worship, the right to education, housing

⁵⁰⁹Center of Israeli Researches , "Who Profits from Occupation", in violation through exposing the involvement in business companies in Palestinian and Syrian territories controlled by Israel, for more details see: <http://www.whoprofits.org>

and adequate standard of living, property and access to natural resources, while these rights are violated consistently and on a daily basis.

For deep details of the construction sector in the Israeli settlements, it is necessary to look carefully at some of the business and industries such as real estate, housing construction, infrastructure projects, building materials and equipments. The construction and real estate can strengthen the Israeli colonialism in furtherance directly. Moreover, the participation of companies in the colonial project include the provision of services and facilities, such as construction, demolition, and surveillance equipment, services, security, tools, construction materials, heavy machinery, and many others.

Recent reports issued by focusing on a number of the UN bodies their attention on the possibility of corporate complicity in international crimes related to the Israeli colonies in the WB, including East Jerusalem⁵¹⁰. For example, in May 2013, the Special representative of the UN called for an immediate halt to break a highway for the colonial purposes, which would cause irreparable harm through banditry and prevent access to kindergartens, schools, health clinics, offices and places of worship. He stressed on that the establishment of the public highway involved illegal acts and the companies should bear the responsibility.

As there is a great deal of the annexation wall and apartheid path inside the WB, which takes into account this additional track expansionist designs of the colonial assemblies. Through the construction of the annexation wall, Israel is denying the Palestinians access to their land, violate their property rights, and shows adherence to a serious degree of freedom of movement, in violation of Article 12 of

⁵¹⁰Human Rights Council of the United Nations, "Report of the Special Rapporteur on the situation of human rights in the Palestinian occupied territories since 1967, Richard FALK, section 39,(January 13, 2014).

the International Covenant on Civil and Political Rights. Moreover, the International Court of Justice in its advisory opinion says, which confirmed the illegality of the construction of the Wall and its associated regime and to which it has already referred as earlier in this study. The referee pointed to the responsibility of States by saying that:

(....) All States have the obligation not to recognize the illegal situation resulting from the construction of the Annexation Wall in the Occupied Palestinian Territory, including East Jerusalem and its environs. All of which are also obliged not to render aid or assistance in maintaining the output by such construction⁵¹¹.

Its resolution (ES-10/15) UNGA endorsed the advisory opinion of the International Court of Justice which not condemns only the companies participated in the construction of the illegal annexation wall, 53 companies participated not only on the actual construction of the wall but also include investments. The participation of banks and other financial services as same, which is another form of maintenance and support for the industry and the colonial activities, both have been implemented through the provision of loans to homebuyers and the construction projects in the colonies, or by providing financial services to Israeli local authorities in the WB⁵¹².

Doing business with companies located in Israeli settlements, or with their products considered as a participation in the Israeli settlement. The agricultural export represents one of the most profitable sectors in the Israeli market, noting that many of these products are exported from Israel are grown settlements on the land of

⁵¹¹ International Court of Justice, Advisory Opinion

⁵¹² BADIL Resource Center for Palestinian Residency and Refugee Rights, "Financing the Israeli Occupation: The Direct Involvement of Israeli Banks in Illegal Israeli Settlement Activity and Control over the Palestinian Banking Market", <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

Palestinian territory, exploiting the land, water and other natural resources of this land⁵¹³. In addition to the industrial settlements that already have been discussed about ,which occupies economic importance and is indispensable to the State of the occupation, while these industries take support from the State of the occupation through the low rental rates, and tax incentives, and tolerated in protecting the environment and labor laws. In addition to the theft of Palestinian natural resources by Israeli companies in the WB, such as the Israeli water company that is stealing water and supplying of all Israeli settlements with the Palestinian water.⁵¹⁴

Based on the above information and in addition to the IHRL and IHL including the law of occupation, which is applicable on corporate offices and bodies. Nuremberg America military tribunals of 1948 carried the officials of personal liability of companies for the confiscation of property under the rules of IHL and other laws⁵¹⁵. Commitment to the principles of human rights that would, at a minimum, required from companies to determine till when the procedures of involvement in the violation of rights of Palestinian humanity will take place, including, for example, industrial processes and agricultural as well on Palestinian lands which are confiscated by the Israeli authorities in violation of the laws of armed conflict and based on discriminatory policies.

⁵¹³ "Corporate Complicity in International Crimes Related to Israeli Settlements in Occupied Palestine."

⁵¹⁴ Rabi, " Water Apartheid in Palestine- a crime against Humanity?",
<http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-ar.pdf>

⁵¹⁵ The Court declared responsible on the officials of Krupp Group for the confiscation and use of property "based on German laws which are hostile to the Jews" in breach of Article 48 of the Hague regulations "that requires respect for the laws of the occupied countries," and Article 46 of the Hague regulations "which requires that respects for private property: Trials of War Criminals before the : "Nuremberg Military Tribunals, Vol. IX, United States Government Printing Office, Washington, 1950, pp. 1351-2

5. Conclusion

The fact that the recognition of the state of Palestine and gaining full membership in the United Nations, opens the door widely to prosecute the Occupying power state and its officials for committing un – humanitarian acts and war crimes against the Palestinian people. Hence and for the protection of those human rights that deeply shock the conscience of humanity that threatens peace, security and well-being of the world and which are serious concerns of international community. This was a step for the prevention of crimes and lays a duty on every state to exercise its criminal jurisdiction over those responsible for international crimes. It guarantees that there will be an international and permanent international jurisdiction that operates effectively and with legitimacy. The ICC organs and especially the office of the Prosecutor, must carry out their mandates independently, impartially, and objectively.

The situation on the ground stands testament to the continuation of the colonization's and annexation's policies, which aim on denying the Palestinian People from exercising their inalienable right to self-determination and the illegal settlement activities in the oPt, which were altering the demographic and cultural composition of the territory, especially in occupied east Jerusalem.

War Crimes are serious violations of the rules of treaty and customary law regarding the international humanitarian law giving rise to individual criminal responsibility. Examples of war crimes include deportation of civilian residents of an occupied territory to slave labor camps.

The Israeli occupying power settlement's activity in the occupied territories, including Jerusalem, represents a flagrant violation of the international conventions.

All its settlements in the occupied territories, under the international law, are contrary to all international principles and the Fourth Geneva Convention of 1949.

Israel and in the occupied Palestinian territories is pursuing a series of policies and practices that take the form of colonialism, such as the establishment of settlements in the West Bank, including East Jerusalem, in addition to the network of bypass roads, agricultural and industrial projects booming and that benefits only the settlers but not others. They took advantage of the presence of these settlements to give legitimacy to a series of violations committed against the rights of Palestinians, of these rights, the right to life and rights to freedom of movement. The drastic change that they have done on the map of the West Bank prevents any real possibility of an independent Palestinian state within the right of self-determination.

Israel is an occupying power and during its settlements permanent expansion, the construction of the annexation wall, the expansion and racial associated regime to ensure that Jewish settlers are enjoying the privileges and benefits from the Occupied Palestinian area which is rich in natural resources. Therefore, the policies and the practices which are based on apartheid basis should be considered void, as they are contrary to the rules of international laws and conventions.

Article 53 of the Fourth Geneva Convention, prohibits the occupying power to destroy any private property, fixed or movable relating to individuals or groups, or to other public or to social or cooperative organizations, unless the military operations require this and, Article 46 of the Hague Regulations, prohibits the confiscation of private property in the territory under occupation.

The seizure policy implemented by occupying powers of Palestinian land in the occupied Palestinian territory, involves a comprehensive and systematic practice justified on security grounds and military necessity. The confiscation's policies pursued by the Occupying powers of Palestinian land are not in line with the military necessity standards, approved by the belligerent occupation. The confiscated territories are allocated for the use of the Occupying power's settlers and not others, they never mind for the seizure of agricultural resources and water basins or to destroy it. These practices can not be accepted as they come in response to the needs of the military forces of the occupying power in the occupied Palestinian territory. Thus, they constitute a breach and violation of the provisions of articles (55), (46), (52) of the Hague Regulations.

This study has shown how the Occupying power and through a variety of strategies of legitimisation, has steadily expanded its settlements inside the occupied territory. Also, it has shown that the most dangerous shift in the course of settlement's construction is its blatant role in turning the occupation permanent.

In fact, Palestinians have exhausted their ability to withstand the suffering caused by settlers along with the occupation army in the provinces of the occupied West Bank, which is now going without the punishment from the competent occupying power's authorities where they do not take the Palestinian's complaints seriously in respect of settlers attack and making an effort to carry out serious investigations to prevent crime and assault. Although, the international humanitarian law obliges the occupying power to provide protection for Palestinian civilians living in the territories it occupies, but that the facts taking place on the ground indicate that they feed the settlers violence in the occupied West Bank and encourage settlers to

commit crimes in order to create a state of fear and panic among residents of the Palestinian villages and eventually push them to leave.

Al-Aqsa Mosque is mostly influenced, attacks on worshipers in addition to run-over operations carried out by the settlers, the verbal abuse and the severe beating. It should be noted that the most radical and extreme settlers are those living in neighborhoods settlements that surround the city of Jerusalem and the old city, which explains the large number of attacks.

The International Community, has viewed this policy as patently illegal, based on the provisions of the Fourth Geneva Convention that prohibits moving of populations to or from territories under occupation. For obvious reasons, a decision on the legality of the settlements would have put the Occupying power Supreme Court in an extremely difficult situation, acknowledging the legality of the settlements does not seem to satisfy the relevant provisions of the international law. At the same time, denying their legality would invite confrontation with the Occupying government as well as with significant segments of the Occupying polity. In practice, the Court managed this very delicate matter by systematically avoiding any decision on the legality, as such, of the settlements policy. Although the Court exercised its jurisdiction in numerous petitions originating in the occupied territories, including military operations and security measures, the one matter it never addressed was the settlements' legality. The Court dismissed petitions attacking the settlements policy for being "general," that is, running counter to the judicial legacy of deciding petitions on specific matters, and even as non justiciable⁵¹⁶.

⁵¹⁶ HCJ 4481/91 Bargil v. Government of Occupying power [1992] IsrSC 47(4) 210

Indeed, the Court has decided questions of legality regarding several settlements, but only when the issue concerned specific issues of location, as in its famous decision to overrule the establishment of a settlement on land taken from private Palestinian landowners⁵¹⁷. At the same time, the Court has systematically stated that a general ruling on the settlements' legality was not needed for the purposes of deciding any of the particular petitions it did consider. Occasionally, the Court has also noted that the fate of the settlements will be decided in future peace agreements between Occupying power and its neighbors⁵¹⁸.

All what has been mentioned and because of the ICC purposes in fighting of impunity against the most serious crimes of concern to the international community as a whole must not go unpunished and put an end to impunity for the perpetrators of these crimes and, thus to contribute to the prevention of such crimes, it has become the duty of the public prosecutor's office to face all the gaps that have prevented over the last decades the Palestinian people of resorting to the international Criminal Court, which prevented a fair and clear position to the Palestinian issue and thus it prevents every member of the Occupying power, whether planned or participated or carried out of impunity.

After deeply searching into the serious violations by the Occupying power perpetrated on daily basis in the occupied Palestinian territories, the most important is the Zionist enterprise settlements and the gradual procedures associated with it; very dangerous for the Palestinian presence in the WB and is dangerous in its eagerness to continue and expand. They control the Palestinian land, its natural resources, the crossing borders and the restrictions on the Palestinian citizens of their land and their homes and deprived of all rights guaranteed by all international conventions.

⁵¹⁷ HCJ 390/79 Dweikat v. Government of Occupying power [1980] IsrSC 34(1) 1.

⁵¹⁸ HCJ 610/78 Oye v. Minister of Defense [1979] IsrSC 33(2) 113, 131, 134

Recommendations

Based on what was introduced through out the research, the most important findings can be summarized as:

- It is not only the Israel's refusal to comply with the international legitimacy to the implementation of the UN Security Council resolutions and the international conventions related to the Israeli occupation of the Palestinian territories and, the building of settlements, the construction of the annexation wall, the Fourth Geneva Convention and the Paris Economic Convention; but it's ongoing Judaization procedures against the Palestinian land in East Jerusalem and the WB alike.
- These Israeli settlements are illegal and threaten the possibility of implementing a solution based on two states. As a part of this solution, all Israeli settlements must be evacuated and emptied, including those in occupied East Jerusalem. One of the ways to achieve a peaceful evacuation of the settlements is if the Government of Israel withdraws all economic incentives and other incentives that attract Israelis to live in the occupied territories. Israel should offer financial compensation to the Palestinians for the Palestinian properties that were robbed or destroyed.
- The provisions and rules of international humanitarian law are obligatory and must be applied and adopted in judging the actions of the Israeli occupation in the Palestinian territories.
- The absence of spatial jurisdiction does not preclude without Palestine's accession to the Rome Statute as the independent validation has been previously accepted with a similar situation, such as the Cook Islands entities (Cook Islands) which is a subsidiary entity for New Zealand.
- Although there are some drawbacks, but the extent of the need for the International Criminal Court can not be questioned and, we hope that the court and within the

framework of neutrality and independency achieves the aspirations of the people justly and fairly.

- Because the International Criminal Court will not consider the crimes committed only after Palestine's accession to the Rome Statute, the issue of the Israeli occupying power settlements must be raised as an international crime.
- The Settlement construction violates the rights of the occupied peoples enshrined in the international law with regard to human rights. Among the violated rights, the right to self-determination, equality, property, a decent standard of life and freedom of movement.
- The Israeli occupying power's construction and expansion of the settlements in the occupied territories is an infringement on the rights of the people and the territorial integrity and a violation of the international laws.
- The Foreign governments are supposed to ensure that the laws and regulations that give taxes breaks for charitable donations or charitable organizations that support settlements, are laws and regulations consistent with the obligations of governments to ensure respect for the international law, including the international law on banning discrimination. For example, many of the American charitable tax exempted organizations funds the created settlements through the illegal land seizures, acts of planning and construction with the exclusion of Palestinians from benefits and similar aid and, continues to violate the human rights of the Palestinian population in the WB by the continued expansion and land confiscations, and continued restrictions on freedom of movement and other practices. The US Congress shall ask the General Accounting Office to prepare a report on the final amounts and uses of tax-free and transferring funding to the

settlements and the legality of tax exemptions of support in cases of this type, in accordance with the international obligations of the United States.

- Companies that benefit directly from discrimination promptly and impartially has to review the effects of their activities on Palestinian human rights and to set up plans to prevent and mitigate these violations, consistently with its own standards of ethics and with the international standards, such as prepared by the representative of the Secretary General of the United Nations on companies and human rights, and the economic cooperation Organization evidence and development guidelines for the multinational Enterprises, which calls for companies to respect the human rights of the affected by the companies activities.
- For Israel and instead of issuing demolition orders, adhere to "facilitate the work" in the educational institutions. The human rights obligations on Israel as an occupying power demanding not to destroy the homes but only as a last resort and to provide residential alternatives at least equal to what was demolished. In the rights of individuals at risk of forced displacement, Israel is obliged to pay compensation for the displaced persons and to allow them to return to their lands.
- Israel has to accept its obligations as an occupying power to refrain from supporting and providing assistance and incentives for settlers and settlements and regional councils in the WB, including East Jerusalem, to dismantle the settlements, and guarantee the rights of the Palestinian population.
- An immediate end to the discriminatory policies of settlement that works for the benefit of settlers and harm the Palestinians and to treat them at least equally as settlers is treated.

- Requests of an invalidity membership of the so-called Israel in the United Nations for not fulfilling the terms of this membership since 1949, the date of joining the United Nations, the Partition Resolution 181.
- There are interim steps that must be done immediately to reduce the touch of human rights and violations of the international law as much as possible. This also requires the governments of the Occupying power to stop the new constructions, whether in order to establish new settlements or to expand the existing settlements; and to freeze the new bypass roads, to stop the confiscation of land for these purposes, the return of all non-built-up lands of the Palestinian villages and cities, the abolition of planning committees for settlements, thus practically negate the powers of local authorities, including the preparation of structural and on the issuance of building permits schemes; desist from encouraging Jewish settlers to move to live in the settlements originally Palestinian lands.

6. Appendix

• APPENDIX -1

The most prominent stages of the Palestinian cause in the United Nations:

Every year, the United Nations General Assembly adopts resolutions, confirming the inalienable rights of the Palestinian people's, including the "right to self-determination and establish their independent state," the "right of return," "sovereignty over natural resources," and the "illegality of settlements."

- Nov29, 1947: The United Nations General Assembly adopted the Resolution 181, provided the partition of Palestine which at that time was under the British Mandate; for the establishment of two states: (Palestine, and Israel)
- Dec11, 1948: the United Nations General Assembly adopted the Resolution 194 which protects the Right of Return and Compensation for Palestinian Refugees.
- Oct14, 1974: the United Nations General Assembly adopted a Resolution recognized the right of Palestinian people to self-determination and independence.
- Nov22, 1974: the United Nations General Assembly adopted a resolution to recognize the PLO as legitimate representative of the Palestinian people; where the organization has obtained the observer status at the United Nations, as "National Liberation Movement".
- Nov 2, 1977: the United Nations General Assembly adopted the resolution (B 40/32) that consider Nov 29 of every year a day of global solidarity with the Palestinian people.

- Aug 20, 1980: the Security Council adopted the Resolution 478, which refused to recognize Israel's decision to annex Jerusalem; and considered it a null, void and illegal.
- Nov15, 1988: The National Council of the PLO declared an "independent State of Palestine" and accepted the United Nations Resolutions 242 and 383, which call for Israel's withdrawal from the Occupied Palestinian Territory in 1967; at that time, the National Council instructed the Executive Committee of the Palestine Liberation Organization to undertake the Government tasks of the State of Palestine. Based on the Declaration of Independence, the United Nations General Assembly adopted a Resolution to replace the nomination of Palestine in the United Nations from the PLO Mission to Palestine Permanent Observer.
- Jul 9, 2004: the International Court of Justice issued an advisory Opinion which confirmed that the Israeli wall in the occupied Palestinian territory is illegal and, Israel must remove and dismantle it and; affirmed the legal responsibility of the international community to embody the Palestinian right to self-determination.
- Mar 22, 2012 the Human Rights Council of the United Nations decided to establish an international investigation mission on the implications of the construction of the Israeli settlements on the Occupied Palestinian Territory, including East Jerusalem.
- Nov 29, 2012: the United Nations General Assembly voted to raise the status of Palestine at the United Nations to an observer state.

• APPENDIX -2

The most particular United Nation's resolutions regarding the Palestinian cause:

- 29 Nov, 1947 the United Nations General Assembly adopted the Resolution 181 on the future government of Palestine. The resolution provides for the equality between the two nations while respecting each other's rights in the establishment of the two states on the territory of Palestine, which was under the British Mandate, and both countries must respect the minorities and the special legal status of Jerusalem.
- 11 Dec, 1948 the United Nations General Assembly adopted the Resolution 194, which emphasizes that refugees should be allowed to return to their homes as soon as possible and, the need to provide compensation for any caused damages, as well as the right to resettle Palestinian refugees who choose not to return and compensation for their losses. The United Nations has decided to establish the United Nations Committee in order to defend the rights of Palestinian refugees.
- Nov 22, 1967 The UN Security Council Resolutions 242 and 338 October 22, 1973 calling for the withdrawal of Israel from the territories that were occupied during the 1967 and 1973 wars, and calling for a just settlement of the refugee problem.
- Dec 6, 1979 the United Nations General Assembly Resolution 34/70, which emphasizes the need for any solution to the conflict, in conformity with the right to self-determination, regardless of whether the parties will negotiate on?

- Dec 15, 1988 The General Assembly resolution 43/177, which recognizes the Palestinian announcement in 1988 of a Palestinian state in line with the UN Resolution 181?
- Security Council resolutions 476, 480, 1322, 1397, 1402 and 1403 for the years (1980, 1980, 2000, 2002, 2002, 2002), respectively, which reaffirms on the fundamental principle of the international law and the United Nations, where acquisition, possession or conquest of territory by force is not acceptable, in addition to the unconditional application of the fourth Geneva Convention on the civilian population in the occupied territories. The resolutions 1405 on Apr 2002, 1435 of Sep 2002, 1515 Nov 2003, 1544 May 2004, 1850 of 2008, and 1860 of 2009 are also of great relation to the Palestinian cause.
- The 63rd session of the General Assembly of the United Nations adopted a number of resolutions on the Palestinian issue. These important resolutions are related to : the permanent sovereignty over the natural resource in the occupied Palestinian territories⁵¹⁹, the right of the Palestinian people to self-determination⁵²⁰, the Palestinian refugees⁵²¹, the displaced persons in 1967⁵²², the work of the Special Committee to Investigate Israeli Practices⁵²³, the applicability of the Fourth Geneva Convention⁵²⁴, the

⁵¹⁹ A/RES/63/201

⁵²⁰ A/RES/63/165

⁵²¹ A/RES/63/91

⁵²² A/RES/63/92

⁵²³ A/RES/63/99

⁵²⁴ A/RES/63/96

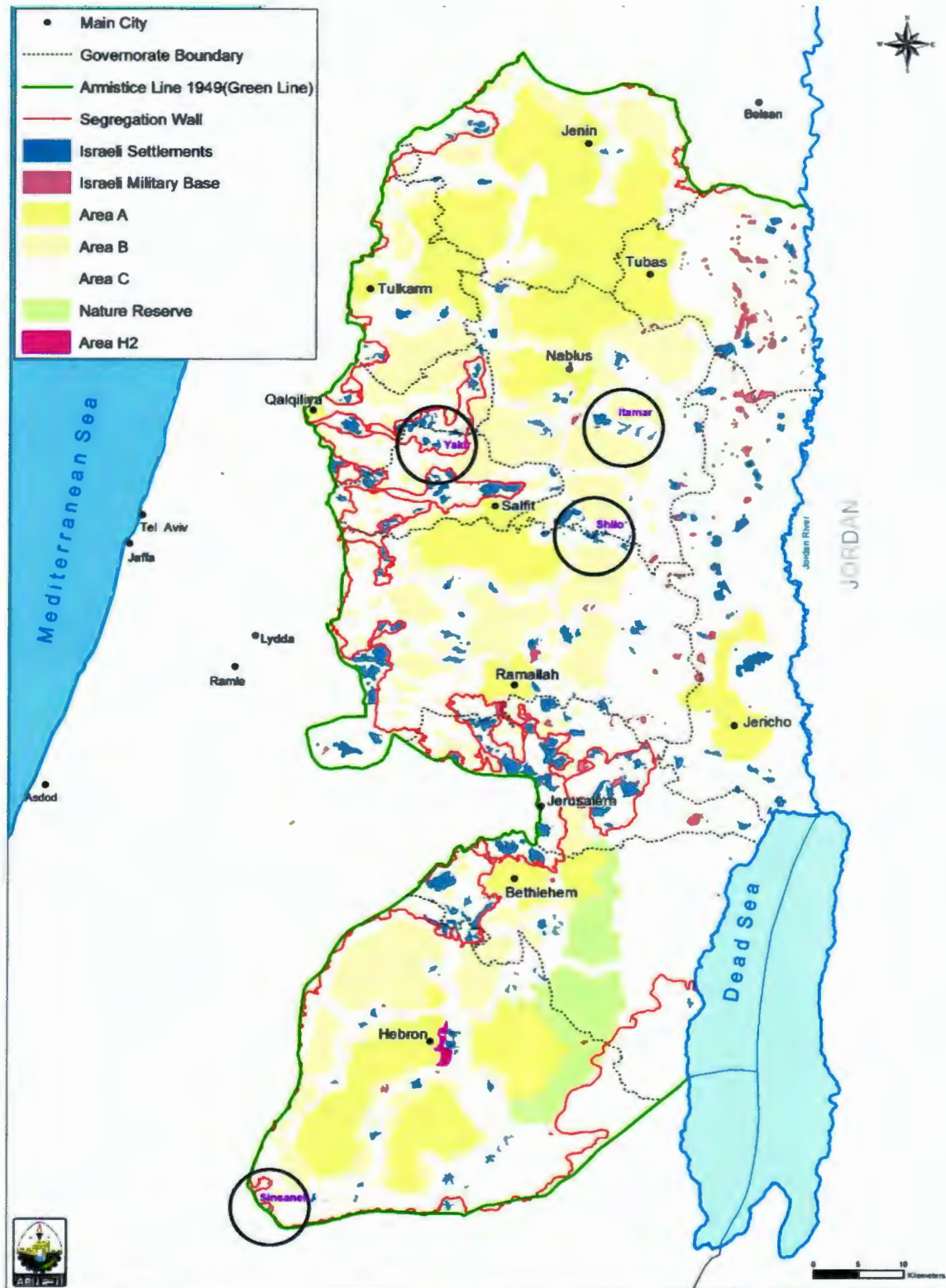
peaceful settlement of the Palestinian issue⁵²⁵, the Israeli settlements⁵²⁶ and the Israeli practices in the occupied Palestinian territories⁵²⁷.

⁵²⁵ A/RES/63/29

⁵²⁶ A/RES/63/97

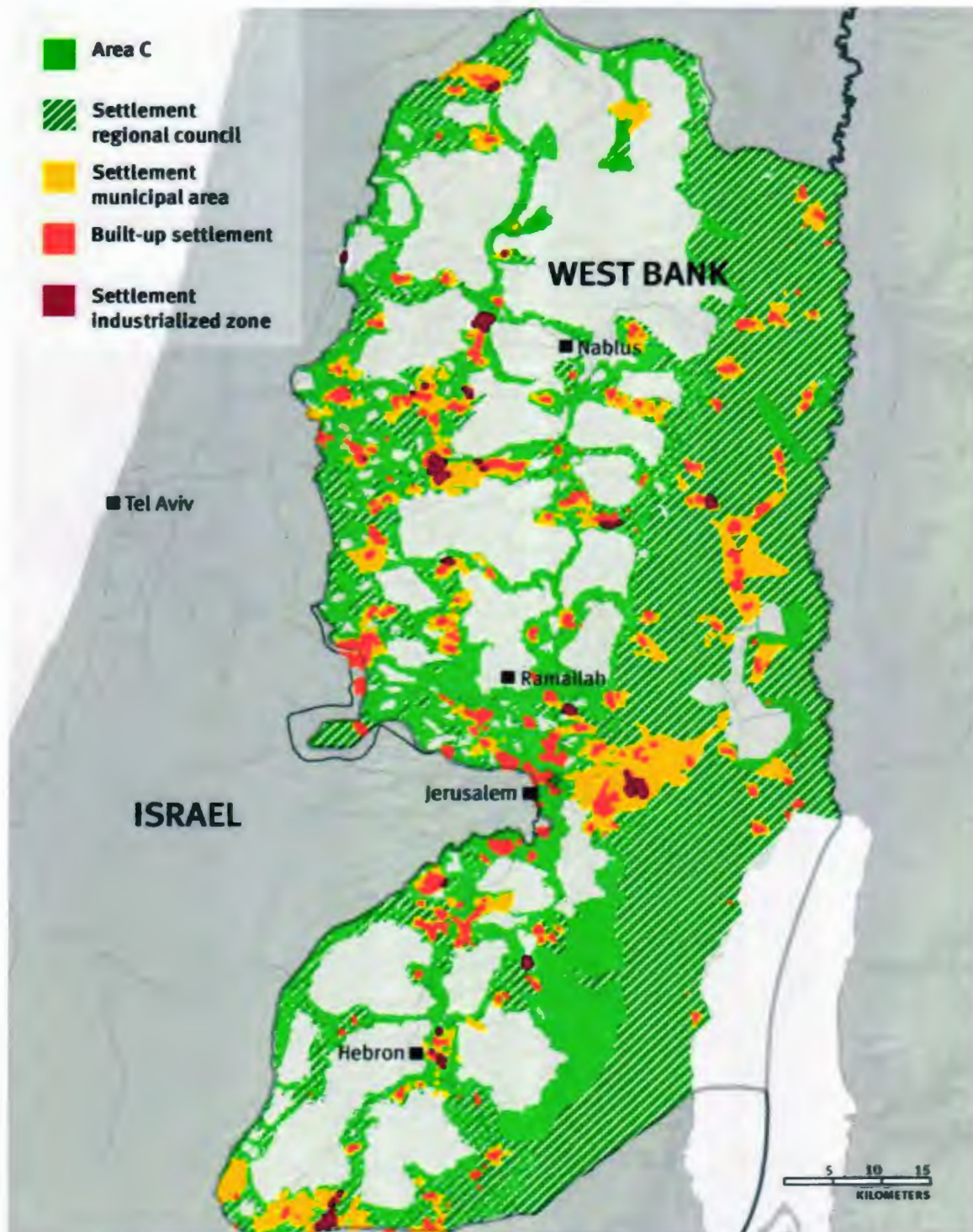
⁵²⁷ A/RES/63/98

• APPENDIX -3



• APPENDIX -4

There are now more than 500,000 Israeli settlers living in 237 settlements in the Israeli-occupied West Bank including East Jerusalem. Israel prohibits Palestinians from developing the areas it designates for settlement regional councils, which make up 70 percent of the part of the West Bank under its administrative control, called Area C.



Source: Btselem, February 2008, except the settlement industrial zones, which are based on geographic coordinates Israel's Civil Administration provided to Dror Etkes in November 2014.

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