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**The Significant Matters to Know about the International Court of Justice and the International Criminal Court as well as the Mechanism Applied to Prosecute Israel for its Crimes before the International Forums and/or Foreign National Judiciaries.**

Unlike the International Court of Justice, the International Criminal Court is not considered a United Nations' body while both courts contribute to resolving disputes of an international nature in principle. Yet, the most prominent difference between them, in terms of mandate, is that the jurisdiction of the International Court of Justice is limited to resolving disputes between states while the authority of the International Criminal Court is limited to crimes committed by individuals only. Further, the International Court of Justice also does not have direct criminal jurisdiction but it may be relied upon to claim the resulting financial compensation in the event of success in proving the alleged crimes while the International Criminal Court is competent for issuing criminal rulings and imposing penalties on "individuals" proven guilty of crimes subject to its jurisdiction.

**First: the International Court of Justice:**

It is the main judicial body of the United Nations and is headquartered in the Peace Palace in the Hague, Netherlands - making it the only body among the six United Nations' bodies not located in New York – i.e. the General Assembly, the Economic and Social Council, the Trusteeship Council, the Security Council and the Secretariat. Actually, the Court began working in 1946 in accordance with the provisions of the United Nations **to adjudicate legal disputes that arise between countries on the one hand and to provide advisory/consultory opinions** on the other hand. Yet, its Statute is an integral part of the Charter of the United Nations.

**The duties and jurisdiction of the Court:**

The Court has a double role: either in resolving legal disputes referred to it exclusively by states in accordance with international law or providing advisory/consultory opinions on legal matters referred to it by any of the other five United Nations' bodies in addition to the exclusively authorized international agencies – to the exclusion of states [the Court's specific/substantive jurisdiction]. However, both roles are limited to resolving disputes between states and/or providing advice exclusively regarding states [personal jurisdiction of the Court] whereby it cannot resolve disputes emanated between international organizations, political entities or other entities on the one hand and the states on the other hand nor does it consider their petitions.

In fact, the Court cannot entertain a dispute unless the states concerned have accepted its jurisdiction. Further, it does not entertain any dispute, regardless of its importance or seriousness, on its own initiative. Rather, it must be referred to it - by both disputing states - as the Court's jurisdiction is optional. Yet, and when there is a dispute over the Court's jurisdiction to entertain a case, it is the Court itself that decides based on the following: the existence of an agreement concluded between the states concerned to refer the dispute to it, the existence of a clause in another international convention that allows its parties to resort to the Court in the event of a dispute or the existence of a unilateral statement/declaration in which willing states acknowledge

the mandatory nature of the Court's jurisdiction vis-à-vis any other state that accepts the same obligation - with the possibility that such a statement/declaration may include any reservations or exclusions to the scope of the Court's jurisdiction in relation to certain disputes.

## Sources of applicable law:

According to Article 38 of the Statute of the International Court of Justice, the Court's rulings shall be taken in accordance with applicable international conventions and agreements in addition to international custom, general principles of law, judicial rulings and the doctrines of major authors in international law.

## Deliberation and rulings:

After the verbal proceedings, the Court deliberates in secret sessions before issuing its ruling in a public session. Yet, the Court's ruling shall be final, being not subject to appeal. In fact, the Security Council may be resorted to in the event of non-compliance by the sentenced state. Actually, and since 1946, the Court has heard 186 disputes related to several issues regarding land and/or maritime borders, the territorial sovereignty, the non-use of force between states, the non-interference in the internal affairs of states, the violations of international humanitarian law, the diplomatic relations, the hostage-taking and otherwise. In fact, and among the most prominent issues being heard is the transfer of the US Embassy to Jerusalem (Palestine vs. the United States of America<sup>1</sup>) and also the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia vs. Myanmar).

## Composition of the Court:

The court consists of 15 independent members/judges who do not represent their governments and are elected for a term of nine years. Further, it may not include more than one judge of the same nationality. Furthermore, judges must have the qualifications required in their countries for appointment to the highest judicial positions. Yet, and if the Court does not include a judge of the nationality of a state party to a case heard before it, then that state may appoint a judge assigned to that case.

The Statute of the International Court of Justice in addition to the Charter of the United Nations:

<https://www.un.org/ar/about-us/un-charter/statute-of-the-international-court-of-justice><sup>2</sup>

<https://www.un.org/ar/about-us/un-charter/full-text><sup>3</sup>

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<sup>1</sup> ماذا حدث لدعوى محكمة العدل الدولية بخصوص سفارة أمريكا (arabi21.com)

<sup>2</sup> Article 34: "1- Only states may be parties to cases brought before the court..." Article 36: "1 - The jurisdiction of the Court includes all cases referred by the parties to it and all matters specifically stipulated in the Charter of the United Nations or in the treaties and agreements in force. 2 - The States Parties to this Statute may declare at any time that they recognize the jurisdiction of the Court in All legal disputes concerning: 1. the interpretation of a treaty; 2. any question of international law; 3. the existence of any fact, if established, that would constitute a breach of an international obligation..." Article 38: "The sources of international law are: (a) international agreements; (b) international customs; (c) general legal principles (d) judicial rulings and decisions such as decisions of the International Court of Justice and arbitration awards." Article 40: "1- Cases shall be brought to court, as the case may be, either by announcing the special agreement or by a written request addressed to the Registrar. In both cases, the subject of the dispute and the parties must be determined..." Article 53: "1- If one of the parties does not appear before the court, or does not defend its case, the other party may ask the court to decide in favor of its claim. 2. The court must before that verify not only its jurisdiction in accordance with Articles 36 and 37, but also the lawsuit is based on sound foundations in fact and in law."

## **Second: the International Criminal Court:**

It was established under the Rome Statute of 1998 which entered into force in 2002 and is headquartered in the Hague, Netherlands. Actually, it aims to hold accountable those responsible for the most serious crimes arising from some of the world's most heinous conflicts. It was ratified by 123 countries as of January 6, 2015 (with no further ratifications to date) the majority of whom are from Europe and South America [not including the United States of America and Israel], whom the Court relies on to a large extent in procedural matters and in implementing the rulings issued thereby as it does not have its own judicial police or special executive authority.

### **The duties and jurisdiction of the Court:**

The court specializes in crimes that are so serious as to have international dimensions - especially if they are the result of a systematic criminal policy on a certain scale of people. **(It does not prosecute states, but only individuals)**. The court also does not recognize any political, diplomatic and/or military immunity enjoyed by the accused (Article 27) of the Statute **[the personal jurisdiction of the Court]**.

As for the **specific/substantive jurisdiction of the Court**, Article (5) of its Statute specifies the following crimes: **1-The crime of genocide:** the same includes acts prohibited by the Rome Statute – e.g. murder or severe harm committed to destroy a national, ethnic, racial, or religious group in a form constituting a total or partial destruction regardless of whether being committed in time of peace or war; **2- Crimes against humanity:** the same includes acts prohibited by the Rome Statute when committed in a systematic manner against any population group, e.g. murder, rape, sexual slavery, deportation, persecution and inhumane acts that intentionally cause great suffering or serious harm to mental or physical health [as a result of deprivation of the right to return, for example] or forced population transfer and the crime of racial discrimination ... etc. regardless of whether being committed in times of peace or war; **3- War crimes:** the same includes any violations of the 1949 Geneva Conventions and any other serious violations of the laws of war including the illegal transfer of populations when committed on a large scale within the framework of an international or internal armed conflict; **4- The crime of aggression:** noting that the Court's jurisdiction here is currently suspended until the definition given to it at the 2010 Kampala conference is adopted<sup>4</sup> - within the Statute of the Court like the rest of the crimes set above.

Actually, the Court's ability is restricted to entertaining crimes committed after the date of its establishment, i.e. July 1, 2002, when the Rome Statute of the International Criminal Court entered into force [the Court's temporal jurisdiction]. However, the members' attempts to establish the Court's universal jurisdiction were not successful, and thus it was limited to territorial jurisdiction: 1. If the accused is a citizen of one of the member states (or if the

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<sup>3</sup> Article 93: 1- All members of the United Nations are parties to the Statute of the International Court of Justice. 2- A state that is not a member of the United Nations may join the Statute of the International Court of Justice under conditions determined by the General Assembly for each case based on the recommendation of the Security Council.

<sup>4</sup> 111 states parties to the Rome Statute - as well as observers from United Nation countries and civil society organizations - participated in formulating a specific concept of the acts that constitute this crime.

accused's state agreed to try him) – for which, unfortunately, the territorial jurisdiction does not include the victim's state! 2. If the alleged crime occurred in the territory of a member state of the Court - as is our case in Gaza and all of Palestine - (or if the state on whose territory the crime occurred allows the Court to hear the case) - unless the case/complaint is referred to the Court by the Security Council directly.

Finally, and as Articles (17 and 20) of the Rome Statute provide that the Court's role is conducted only in the event that the national courts fail to try the accused parties [**the Court's supplementary jurisdiction**], otherwise the complaint will be dismissed in form. Hence, it must be proven to the International Criminal Court - when filing a complaint - that none of the countries with jurisdiction are willing or able to prosecute the accused or that the trial held against him/her before the Courts of the relevant state - even if a ruling was issued - was sham, unfair, or aimed to circumvent jurisdiction of the International Criminal Court while protecting the accused person against responsibility held before them.

### **Sources of applicable law:**

The Statute of the Court, the international conventions and the domestic laws of the relevant states in accordance with Article 21 of the Statute of the Court - especially those related to the rules of public international humanitarian law that are not established for the individual interest of a state, but rather for the best interest of humanity as a whole.

### **Complaint filing mechanism:**

The complaint may be filed before the International Criminal Court either through 1- The Public Prosecutor of the Court: as the Public Prosecutor has the right to initiate investigations on his own initiative into crimes that fall within the jurisdiction of the Court - Article (15) of its Statute. Yet, the prosecutor may collect information from United Nations agencies, intergovernmental or non-governmental organizations or any other reliable sources he deems appropriate. 2- The member states of the Rome Statute exclusively – pursuant to Article (14) of the Statute of the Court [so that the state that has territorial jurisdiction - the state of the accused or the location of the crime - submits a petition to prosecute the complaint directly by the Public Prosecutor. Otherwise, the role of those states is limited to reporting to the Public Prosecutor about their knowledge of the existence of a specific crime in another member state for the latter to determine his position on filing a complaint.]. The provisions of Articles (14, 15) above have been criticized for not making it obligatory for the prosecutor nor the Court to move forward with the complaint, but left it to their personal decision instead. 3- Finally, **the Security Council**: as it may refer any case in which it has taken a resolution that it is a threat to international peace and security to be referred to the Prosecutor of the Court in accordance with Chapter Seven of the Charter of the United Nations (Article 13) – which is considered the only obligatory trigger upon the Court and the Prosecutor unlike Articles (14, 15) above.

## Composition of the Court:

According to Articles (34 and 36) of the Rome Statute of the Criminal Court, it mainly includes the Office of the Public Prosecutor and the trial panel consisting of 18 judges in addition to the Registry Bureau of the Court and the necessary procedural departments.

## Rome Statute, Statute of the International Criminal Court

<https://www.icrc.org/ar/doc/resources/documents/misc/6e7ec5.htm>

### Third: the Possibility of Suing Israel before the International Courts and Forums and/or Foreign National Judiciaries:

#### 1- In terms of the jurisdiction of both international courts to entertain any dispute between Israel and Palestine:

1- International Court of Justice: relevant legal provisions

A- Article 34/1 of the Statute of the Court provides that “Only states may be parties to cases filed before the Court...”. Therefore, and in light of the official recognition of the “occupying Zionist entity, Israel” as a state, defining the legal title of “Palestine”<sup>5</sup> at the United Nations has become crucial.

B- Article 93/1 of the United Nations Charter also provides that “all members of the United Nations shall be deemed, by virtue of their membership, to be parties to the Statute of the International Court of Justice...”. Therefore, and for the purposes of considering “Palestine” as a party to the Statute - as a condition for admission to litigation before the Court - the legal nature of the membership granted to “Palestine” as a “non-member observer” - in terms of its fulfillment of the necessary conditions for the membership intended in this article - also becomes crucial.

C- As for the last question that we must address in order to determine the extent of the International Court of Justice’s jurisdiction to hear cases brought by and/or against “Palestine” [assuming that the above two conditions are overcome], then it is related to the established interpretation of the entire text of Article 36 of the Statute, considering that the Court’s jurisdiction is optional and not binding on any member state of the United Nations unless it declares its acceptance and unless the same is being subject to any reservations lodged by it. Hence, it must be determined whether Israel has officially registered its acceptance of the Court’s jurisdiction to hear any judicial disputes that may be presented to it [especially if they relate to “Palestine” specifically] without any reservations in this regard.

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<sup>5</sup> The reference to “Palestine” was stripped of the title of state for the purposes of simplifying the legal debate on this point in a purely objective manner, without this reflecting the researcher’s conviction.

**To answer question (A) above**, we begin with the definition of “State” contained within Article (1) of the **Montevideo Convention on the Rights and Duties of States of 1933** which provides that “the State, as an entity subject to international law, must have the following qualifications: A- Permanent population B- A specific territory C- Government D- Ability to enter into relations with other countries”. In fact, and by comparing this definition, it becomes clear that all four of its elements apply to the State of Palestine<sup>6</sup>. Indeed, it has been recognized by 138 countries out of 193 members as of 2023 on this basis. However, the countries that are delaying their recognition of “Palestine” as a fully sovereign state and member of the United Nations, such as the United States and some European Union countries, claim that “Palestine” - in its current form - does not meet those elements without specifying the basis they rely on to justify their position (in which they rely on the title of “The Palestinian National Authority” as a temporary administration of self-government in the Palestinian territories based on the title contained in the Oslo Agreement signed between Israel, and the Palestinian Liberation Organization in December 1993 when referring to “Palestine.”<sup>7</sup> Yet, what must be relied upon in this regard to refute the claims of these countries about denying the sovereignty of the State of Palestine, we find that the annual report issued by the International Court of Justice for the years 2019-2020 and 2021-2022,<sup>8</sup> respectively, referred to the lawsuit filed by the Palestinian National Authority to complain about the transfer of the American embassy to Jerusalem as being filed by the “State of Palestine” [in Arabic and English] which proves that Palestine fulfills the “State” condition.

**As for question (B) above**, which is related to the condition of “membership” to ensure adherence to the statute of the Court and the permissibility of litigation before it, we find that the State of Palestine fulfills the substantive conditions for membership in the United Nations as set in Article (4/1) of the Charter of the United Nations<sup>9</sup>. However, the ambiguity in this regard results from not fulfilling the formal condition contained in the second paragraph of the same article - which is the necessity of issuing a resolution from the General Assembly for that purpose based on a recommendation from the Security Council! Consequently, the 138 recognitions of the State of Palestine’s accession to the United Nations was limited to the capacity approved by the General Assembly in its Resolution No. (19/67) dated 9<sup>th</sup> of November 2012 to adopt Palestine as a “non-member observer state”<sup>10</sup> - and therefore, the legal question re-enforces itself regarding whether this “imperfect membership” to the United Nations fulfills the condition of “membership” intended in Article 93/1 of the United Nations Charter necessary to prove the accession of the State of Palestine to the Statute of the International Court of Justice?<sup>11</sup>

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<sup>6</sup> Including paragraph (b/specific territory). Whereas the approved border for the State of Palestine is the 1967 borders - which were paved for in Appendix No. 1 of the Rhodes Agreement of 1949.

<sup>7</sup> Note that Australia alone has renamed the occupied territories “Palestine” as of August 2023.

<sup>8</sup> <https://www.icj-cij.org/public/files/annual-reports/2019-2020-ar.pdf> and <https://www.icj-cij.org/sites/default/files/annual-reports/2021-2022-en.pdf>

<sup>9</sup> Article 4: “1. Membership in the United Nations is permitted to all other peace-loving states, which undertake the obligations contained in this Charter, and which the body deems themselves capable and willing to implement these obligations. 2. Acceptance of any of these states to membership “United Nations” is carried out by a decision of the General Assembly based on the recommendation of the Security Council.

<sup>10</sup> Because of the American-European opposition within the Security Council to recognize the full and undiminished membership of the State of Palestine as a fully sovereign state within the United Nations.

<sup>11</sup> Note that Article (93/b) stipulates that a state that is not a member of the United Nations may join the Statute of the International Court of Justice on the condition of the recommendation of the General Assembly and the recommendation of the Security Council - something that we did not find evidence of in favor of Palestine among the references that we reviewed - despite the conditions for obtaining the recommendation of the General Assembly and the recommendation of the Security Council [issued unanimously by the Security Council in its Resolution No. 9/1946] are available in Palestine, and they are represented by a pledge to implement the rulings issued by the court, in addition to bearing all the expenses incurred by the court to consider the dispute and rule on it!

While we stress that there is no final say to answer this question - especially in light of the failure to issue a final ruling by the International Court of Justice in the “case of transferring the American embassy to Jerusalem” due to the Palestinian National Authority temporarily suspending it in April 2021 -, yet we reiterate our adherence to what was stated in the statement of the International Court of Justice, in its annual report for the year 2021-2022, as follows: “ ... In this regard, it should be noted that the number of State parties to the Statute of the Court reached, as of July 31, 2021, 193 State Parties that, in this capacity, have the possibility of resorting to the Court. In addition, the State of Palestine submitted a declaration to the Registry of the Court on July 4, 2018, which reads as follows: The State of Palestine declares that it accepts with immediate effect the jurisdiction of the International Court of Justice to entertain all current disputes that may arise in the future, covered by Article 1 of the Optional Protocol of the Vienna Convention on Diplomatic Relations concerned with the Compulsory Settlement of Disputes of 1961 to which the State of Palestine acceded on March 22, 2018”.

When inferring the literacy of the text, we find that it affirmed that the joining of the member states in the United Nations body in the statute of the International Court of Justice is assumed by virtue of their membership. It is also inferred from the Court’s acceptance of the filing of that “declaration” - which Palestine submitted in support of the text of Article 36/2 of the Court’s Statute - that the State of Palestine may resort to litigation before the International Court of Justice in terms of the law while it also confirms Palestine’s acceptance of the Court’s jurisdiction under that declaration with regard to that case.<sup>12</sup>

**Moving on to the last question (C) above**, what appears from the research is that Israel has not filed any unilateral statement on its part under Article 36/2. It also never acknowledged - in any direct way - any absolute authority of the International Court of Justice to entertain any lawsuit filed or to be filed in the future against it by Palestine. Therefore, and since the Court’s jurisdiction is optional and requires acceptance by both parties to the dispute, the answer to this question is negative! Yet, and despite the above, the researcher of international agreements related to human rights, whose provisions include a text obligating their parties to resort to the International Court of Justice in any dispute that arises between them, will find what helps our research in the text of Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948<sup>13</sup> to which both Israel and Palestine are considered parties. In fact, Article 9 provides that “disputes arising between the Contracting Parties regarding the interpretation, application or implementation of this Convention, including disputes related to the responsibility of a State for genocide or for any of the other acts mentioned in Article Three<sup>14</sup> should be referred to the International Court of Justice based on the request of either disputing party”.

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<sup>12</sup> The State of Palestine initially ratified the Optional Protocol to the Vienna Agreement on Diplomatic Relations relating to the Compulsory Settlement of Disputes of 1961 (which the United States of America joined in 1972) as a pre-emptive step for it to resort to suing the USA - whose move of the embassy represents a violation of the provisions of this agreement. However, it should be noted that the Palestinian side, unfortunately, submitted a request to postpone the oral argument that was scheduled to take place on June, 1<sup>st</sup> 2021, in order to provide the two parties with an opportunity to find a solution to the conflict, and the USA accepted it! It should also be noted that the USA challenged the court’s jurisdiction and even withdrew from the protocol. Therefore, in light of the suspension of the case, the court and observers did not have the opportunity to confirm whether or not it had jurisdiction by official ruling.

<sup>13</sup> Texts of the genocide agreement: <https://www.icrc.org/ar/doc/resources/documents/misc/62sgrn.htm> and interpretation by William Schabas in relation thereto [https://legal.un.org/avl/pdf/ha/cppcg/cppcg\\_a.pdf](https://legal.un.org/avl/pdf/ha/cppcg/cppcg_a.pdf)

<sup>14</sup> Article 3: The following acts shall be punished: A- To commit genocide B- Conspiracy to commit genocide C- Direct and public incitement to commit genocide D- Attempt to commit genocide E- Participation in genocide.

Therefore, it is clear that the Court has jurisdiction to prosecute Israel for the crime of genocide that the latter is currently committing against the Palestinians in accordance with its commitment to the text of Article 9 above, especially in light of the current daily crimes committed by Israel against Gaza and its people within all of Palestine for which one who examines the definition of the crime of genocide concludes that it applies directly to those crimes<sup>15</sup>. Actually, it is worth saying here that the crime of genocide is considered one of the most difficult crimes in terms of the ability to prove criminal intent “to cause the total or partial destruction of a specific group” - according to its definition. However, the evidence here is represented by what was stated by senior officials of Israel starting with its president, the prime minister, and the minister of defense as well as its chief of command made direct hostile statements threatening Gaza and its people with total destruction and calling them human animals.<sup>16</sup>

Then, comparing their statements with the actual reality on the ground in Gaza leaves no doubt that the material element of the crime, represented by murder and comprehensive destruction, has been achieved other than the moral element, which is represented by prior public statements together with the causal relationship between them that leads to the genocide and destruction which the people of Gaza/Palestine are suffering today as a result of this aggression.

**Yet, and to end our discussion of this section, it is worth noting two other options** for prosecuting Israel and/or revealing its crimes as follows:

A- The option to prosecute Israel for the crime of genocide - specifically - by a state other than Palestine, according to the same Article 9 of the Genocide Convention above based on the inference of the ruling issued by the International Court of Justice in July 2022 to accept the lawsuit filed by Gambia against Myanmar for the crimes of genocide against the Rohingya minority and the transfer, killing and torture they were subjected to - where Myanmar appealed the Court’s lack of jurisdiction and the absence of Gambia’s interest in filing the lawsuit, where the Court dismissed the appeal on the grounds that both of them are parties to the above agreement. Rather, Gambia was considered to have an interest in filing the lawsuit on the basis of the duties assigned to all parties to the Convention to combat the crime of genocide - even if it was not originally represented in the alleged genocide crimes - as long as it occurred within the jurisdiction of another state party to the Convention. Therefore, if the right of the State of Palestine to file a lawsuit before the International Court of Justice is denied on the basis of the false assumption that it is not a “state/member” of the United Nations in the intended sense, then any other state party to the Convention on the Prevention and Punishment of Genocide has the right to prosecute such lawsuit noting that there are 16 Arab countries that are parties;<sup>17</sup>

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<sup>15</sup> Article 2: Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: a - killing members of the group, b - inflicting serious physical or mental harm on members of the group, C - Deliberately subjecting the group to living conditions intended to destroy it completely or partially physically, D - Imposing measures aimed at preventing the birth of children within the group, E - Forcibly transferring children from the group to another group.

<sup>16</sup> The necessity of documenting their public statements in this regard, especially after the “Al-Aqsa Flood” operation on October, 7<sup>th</sup> 2023 [Complaint DCI-Pal-v-Biden\\_wv.pdf \(ccrjustice.org\)](https://www.ccrjustice.org/Complaint_DCI-Pal-v-Biden_wv.pdf)

<sup>17</sup> Yemen, the United Arab Emirates, Syria, Sudan, Bahrain, Iraq, Egypt, Saudi Arabia, Tunisia, Morocco, Libya, Lebanon, Kuwait, Palestine, Jordan, and Algeria [in addition to Turkey, Malaysia, Pakistan, Ireland, Belgium, Spain, South Africa, Bangladesh, Bolivia, Djibouti, and other countries friendly to Palestine]. Note that Algeria, Morocco, Bahrain & Yamen, made reservations to the scope of Article 9 of the Genocide Agreement, and therefore they must first [if they wish to file a lawsuit on behalf of Palestine] waive their aforementioned reservations in accordance with Article 22 of the Vienna Agreement on the Law of Treaties of 1986, which states: “1. Unless the treaty stipulates otherwise, a

B- The second option is to focus diplomatic efforts to urge the United Nations General Assembly to resort to the International Court of Justice to request advice/consultation [which may not be provided by states but rather by the five United Nations organs and authorized international agencies exclusively] - by exploiting the second role of the International Court of Justice in addition to its role in resolving disputes between countries<sup>18</sup>- to expose the crimes of Israel and/or revealing its lies which include what was issued in its advisory opinion issued by the International Court of Justice in 2004 regarding the illegality of the separation wall erected by Israel, and thus refuting the claims of Israel of its right to self-defense - as the Court made clear at the time that the right to self-defense is assumed exclusively in foreign aggression coming from outside the country but does not include resistance coming from within it that is already subject to the authority of Israel and its commitment to deal legally with it instead of breaching the rules of international law by erecting that separation wall<sup>19</sup>. In fact, the United Nations General Assembly also resorted to the Court again in December 2022 to request another advisory opinion on “the legality of the long-term occupation to date and the extent of the impact of the practices of Israel on the human rights of the Palestinians” which request is still under consideration hoping to reach a positive result regarding the State of Palestine<sup>20</sup>.

**The conclusion then, Palestine has the right to resort to litigation before the International Court of Justice as it fulfills the condition of “statehood” and the condition of “membership in the United Nations” - despite the unjustifiable insistence of the United States of America and those who support it<sup>21</sup> - who are few at the international level - to maintain this “membership” restricted to observer status! Further, it has also been proven that the International Court of Justice has jurisdiction to hear lawsuits filed by the State of Palestine in principle. However, this jurisdiction is restricted by the approval of Israel in matters other than crimes related to genocide – as Israel has confirmed its approval of the jurisdiction of the International Court of Justice to hear cases brought by it or against it in relation to this crime specifically in accordance with Article 9 of the Convention on Preventing Genocide and among all its parties of which the State of Palestine stands as one of them. Hence, we conclude by pointing out the permissibility of resorting to the Security Council in the event of non-compliance by the state sentenced to execution - although we are convinced, by experience, that this resort will be disrupted by the use of the veto power by the United States but this will not prevent revealing the crimes of Israel in front of world public opinion, at the very least.**

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reservation may be withdrawn at any time and for this purpose the consent of the State that has accepted the reservation is not required... 3/A Withdrawal of a reservation shall not become effective with respect to another Contracting State unless it has been notified to that effect; (b) Withdrawal of the objection to the reservation shall not become effective unless the reserving State has been notified thereof.”

<sup>18</sup> Article 65: 1. The Court may issue an advisory opinion on any legal question upon the request of anybody authorized by or in accordance with the Charter of the United Nations to make such a request...

<sup>19</sup> Text of the International Justice Ruling in the Separation Wall - Case 2004: [Microsoft Word - ?? ??? ???? ???? ???? ? ???? \(palestine-studies.org\)](#)

<sup>20</sup> [Commission of Inquiry welcomes General Assembly resolution requesting an ICJ Advisory Opinion relating to the Israeli occupation of Palestinian territory | OHCHR](#) [و الاحتلال الإسرائيلي غير قانوني، وفتوى العدل الدولية المرتقبة سوف تستدعي المسؤولية الدولية لإنهائه | OHCHR \(law4palestine.org\)](#)

<sup>21</sup> For example, the statement of the Republican legislative representative in the US Congress, Max Miller (and many others), about his opinion that Palestine “is not even a state”!

<https://www.semafor.com/article/10/27/2023/ilhan-omar-slams-max-miller-palestine-parking-lot-comment>

## II. International Criminal Court: relevant legal provisions

The crimes falling within the subject/substantive jurisdiction of the Court under Article 5 of the Statute are: **genocide** – e.g. murder or serious harm committed to destroy, in whole or in part, a national, ethnic, racial or religious group. **crimes against humanity** - such as rape, deportation, persecution and other inhumane acts of a similar nature that intentionally cause great suffering or serious injury to body, mental or physical health [which are direct consequences of, for example, depriving Palestinians of the right to return<sup>22</sup>] or forcible transfer of the population, racial and other discrimination. **War crimes** - including any serious breaches of the laws of war in violation of the provisions of the four Geneva Conventions of 1949 and their Protocols of 1977. Finally, **the crime of aggression** - noting that the powers of the Court to entertain the crime of aggression are suspended until its definition is approved as we mentioned in the clause “Second/tasks and powers of the Court” above - which is what the Statute specified in detail regarding the first three crimes under Articles (6, 7, and 8) thereof.

As for temporal jurisdiction, it begins from the date of entry into force of the Statute on July 1<sup>st</sup> 2002 - or the date of any country’s accession to the Statute, whichever is later - without the Court’s jurisdiction to look into any previous alleged crimes - Article (11) of the Statute. While Article (29) provides that crimes committed after its entry into force shall not be subject to the lapse of time in any way.

The Criminal Court is also considered competent to entertain any criminal complaint or suspicion of the commission of any of the previous crimes - whether upon a direct request from the Security Council in accordance with Chapter Seven of the Charter of the United Nations (Article 13 of the Court Statute). Or, upon the request of the state party to the Rome Statute exclusively - so that the state that has territorial jurisdiction [the state of the accused or the venue of the crime] shall file a request to prosecute the complaint directly by the public prosecutor (a mere petition to refer the complaint to the Court – Article 14); Otherwise, such petition is to be considered as a mere request submitted from a state party (that lacks jurisdiction) based on its knowledge of a crime being committed within another<sup>23</sup> state party for the prosecutor’s mere consideration. Finally, and through the Public Prosecutor himself, in accordance with his direct powers, so that he is entitled to collect information from United Nations agencies, international governmental or non-governmental organizations or any other reliable sources that he deems appropriate (Article 15). However, Articles (12, 14, and 15) of the Statute – relating to State Parties and the Prosecutor – are criticized for not making it mandatory on the Public Prosecutor/Court to process the complaint (unlike Article 13, Security Council) without justification! Furthermore, the above territorial jurisdiction is also required to allow the Public

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<sup>22</sup> For further details on establishing that depriving the Palestinian people of the right of return [General Assembly Resolution 194] constitutes a crime against humanity as it constitutes an established state of persecution and other inhumane acts of a similar nature that intentionally cause great suffering or serious injury to body or Mental or physical health [Articles 7/1-H+K of the Rome Statute] Please review the following study by international criminal law expert Lawyer John Quigley: <https://link.springer.com/article/10.1007/s10609-022-09450-8>

<sup>23</sup> An example of this is what the five countries [South Africa, Bolivia, Bangladesh, Djibouti and the Comoros] did in informing the Public Prosecutor of the necessity of moving to investigate the Israeli crimes in Gaza against the backdrop of the “Al-Aqsa Flood” operation, while the only action taken with direct jurisdiction represent itself in Palestine’s request of the Public Prosecutor to add the crimes currently committed by Israel to the original complaint filed by Palestine before the ICC back in 2018 – which the Court began examining after confirming its jurisdiction in February/March 2021. The Court also confirmed that its jurisdiction includes Gaza and the West Bank, in addition to East Jerusalem.

Prosecutor to carry out his work unless the non-member state accepts this - Articles (12 and 14) of the Statute of the Court.

Finally, the Court's jurisdiction remains dependent on the competent national judiciary not taking the initiative to investigate and prosecute on its own - unless that trial is merely sham with the aim of preventing the complementary jurisdiction of the International Criminal Court as provided for in Articles (17 and 20). In fact, the jurisdiction of the Court is not established except after proving the inability or unwillingness of the national judiciary to proceed with examining the complaint or that the said initiation is fraudulent as described above. Yet, the matter of deciding on whether or not the Criminal Court has jurisdiction remains up to the International Criminal Court itself (Articles 17 and 19).

Article (21) also specifies the applicable law includes the Statute of the Court in addition to the applicable treaties and the principles of international law as well as customary international law, otherwise, what the Court extracts from the national laws of the legal statutes in the world - especially those related to the rules of international humanitarian law concerned with the best interest of all humanity and other things that have been recognized as peremptory international humanitarian rules. The trials are also held at the Court's headquarters unless otherwise decided (Article 62) without the Court's jurisdiction recognizing any diplomatic, political, and/or martial immunity that the accused may claim in accordance with Article (27) of the Court's Statute.

Hence, and in light of the above, in principle, and since it was accepted that the State of Palestine would join the Rome Statute/Statute of the International Criminal Court in mid-2014 – i.e. the date of the start of temporal jurisdiction over Palestine - and since all the elements of the Court's territorial and personal jurisdiction are available on the basis that the crimes alleged against the Palestinian people, after 2014, was carried out on the land of Palestine and directly against its people being the place where the crimes in question were committed, and since no trials were held regarding those crimes before the Israeli judiciary or that the trials which took place were not characterized by integrity or objectivity, but rather aimed to acquit the Israeli defendants in order to prevent them from being tried at the international level - which proves the complementary jurisdiction of the Court – then both the Public Prosecutor directly and/or the State of Palestine on the other hand are qualified to file a complaint against Israel.

**On the other hand, and despite proving the Court's jurisdiction to entertain these crimes, the practical dilemma lies in the following:**

A- The difficulty for the State of Palestine and/or the Public Prosecutor to prove the applicability of the rules of jurisdiction, when actually prosecuting a complaint on the ground, especially in light of the complementary jurisdiction related to the intention and/or objectivity of the trials that have taken place or may take place before the internal judiciary of the occupying entity, taking into account the false reputability on the global level of the Israeli judicial justice;

B- The difficulty of finding facts in light of the occupying entity's control over the land, the media and technology sphere and means of communication. Consequently, it is difficult to prove the completeness of the elements of crimes committed by Israel against Gaza and all of Palestine.

C- The difficulty of dealing with double standards<sup>24</sup> in terms of the influence of the western countries dominant on the rulings issued by the Criminal Court and the politicization of its leaders according to their political desires - an example of which is the clear bias in the press statement issued by the Court's prosecutor on October 30<sup>th</sup> 2023 in light of the "Al-Aqsa Flood" operation, [reflected in his haste to condemn "the criminal acts committed by Hamas within 7 hours or more of the October 7<sup>th</sup> 2023 attack," forgetting, in return, more than 70 years of the suffering of the Palestinian people under occupation. Rather, he contributed to repeating the allegations of Israel regarding executions, arson, kidnapping, rape of women and killing of children without basis while he spoke about the right of the occupying entity to self-defense before referring to the rights of the Palestinian people to protection as if they were a cause for pure pity but not as a matter of legal and human rights due under the rules of the public international law];<sup>25</sup>

D- The difficulty in enforcing the rulings from **a practical realistic perspective**. Actually, and even if these crimes are proven, and even if a ruling is obtained condemning it in favor of the State of Palestine, such a ruling will remain without any real effect - other than enlightening world public opinion - due to the inability to enforce it [unless the member states of the Court enforced it against any convicted person who transits through its territory and being within its territorial jurisdiction]; since Israel is not a party to the Rome Statute/Statute of the Court - and **therefore, there is nothing that compels it to implement its obligations towards the Court;**

E- Finally, the necessity to prepare for the worst scenario, which may be represented by the Court's prosecutor convicting the State of Palestine for "criminal acts committed by Hamas during the October 7<sup>th</sup> 2023 attack," considering the possibility that the definition of crimes stipulated in Articles (6, 7, and 8) of the Court's Statute applies to those acts in addition to proving that the Public Prosecutor has jurisdiction to look into these "acts" as well as the matter that any punishment/ruling issued by him regarding them is mandatory because they were committed on the territory of a state party to the Rome Statute and the Statute of the Court "Palestine"! Therefore, we must work seriously on the following:

- The advance preparation for defense with a focus on the responsibility of Israel, even for those alleged acts against Hamas/Palestine that have not been proven - instead of the responsibility of the State of Palestine represented by the Palestinian National Authority – based on the international legal rule that places the burden on the occupying authority as it is the controlling authority in the absence of any actual authority for the State of Palestine over the Gaza Strip ... etc.;<sup>26</sup>

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<sup>24</sup> The court continued to fabricate arguments to delay the Public Prosecutor's initiation of investigations [despite Palestine's registration of a complaint in 2018], by sometimes justifying jurisdiction [despite Palestine's accession in 2014] and sometimes due to the lack of sufficient funding - until Belgium did so on November 9<sup>th</sup> 2023 by donating 5 million euros to the court

<https://www.belgnewsagency.eu/federal-government-provides-funding-to-investigate-war-crimes-in-israel-and-palestine>

<sup>25</sup> <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>

<sup>26</sup> The duties of the occupying power are mainly defined in the 1907 Hague Regulations (Articles 42-56) and the Fourth Geneva Agreement (GCIV, Articles 27-34 and 47-78), as well as some provisions of Additional Protocol I and customary international humanitarian law. Agreements concluded between the occupying power and local authorities cannot deprive the population of the occupied territory of the protection afforded by international humanitarian law (Article 47 of the Fourth Geneva Agreement), nor may protected persons themselves waive their rights in any circumstances (Article 8 of the Fourth Geneva Agreement). The main rules of law in the case of occupation stipulate the following principles A. The occupying power does not acquire sovereign rights over the occupied territory. Therefore, it cannot bring about

- Discussing securing a fair trial or opening an investigation into Hamas' actions before the Palestinian judiciary which prevents the requirement of complementary jurisdiction for the Public Prosecutor/International Criminal Court to be met to look into the crimes allegedly attributed to them in light of the bias and clear lack of impartiality we are witnessing which will prevent ensuring the pure legal impartiality and objectivity of the Public Prosecutor - especially in light of the statements issued by Hamas denying the crimes attributed to it.<sup>27</sup>

**We therefore conclude that it is permissible for the Public Prosecutor and/or the State of Palestine to initiate a complaint to prosecute the accused leaders of Israel and/or its individuals – without immunity nor lapse of their crimes - before the International Criminal Court due to fulfilling all rules of jurisdiction - based on Palestine's ratification of the Rome Charter and the commission of crimes on its lands and its people from 2014 until the present. However, the practical problem is evident in the difficulty of being able to investigate and prove facts in a professional manner, and favoritism on the one hand<sup>28</sup>, and then the impossibility of enforcing rulings/punishments issued by the Court in light of Israel's admittance to the jurisdiction of the court on the other side<sup>29</sup>. Rather, Israel is working hard to deprive Palestine of the last and only benefit it may gain from such rulings - being the chance to reveal its crimes to world public opinion by indirectly imposing its control [through dominant western countries such as the United States of America, Britain and others] over the convictions and decisions of the Prosecutor of the International Criminal Court according to the reality of the unfortunate situation we are witnessing today!**

## **2- In terms of the jurisdiction of the foreign national judiciary [including Arab and Islamic countries] to entertain a criminal complaint against Israel for these crimes:**

This study will briefly approach the concepts related to the principle of universal jurisdiction or universal criminal jurisdiction in order to complete the presentation of the options available - in principle - to prosecute the occupying entity before the foreign national judiciary as follows:

Since its inception, the International Court of Justice - and then the International Criminal Court - has contributed to defining international principles related to human rights. Further, the global momentum throughout history - especially recent history - has also contributed to the necessity of providing global protection for those principles and agreeing on their definition to the extent

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changes in its intrinsic characteristics. B. The occupation is a temporary situation. In this regard, the occupying power must maintain the status quo and not adopt policies that would lead to permanent changes, especially in demographic areas. Finally C. The principle of always maintaining a balance between the occupier's own military interest and the needs of the local population in return. This application was reaffirmed by the International Court of Justice in 2004 in the Separation Wall case, when it confirmed that Israel exercises jurisdiction over the occupied Palestinian territory as the occupying power, and is bound by human rights with respect to the local population. This has also been consistently expressed in General Assembly resolutions and in reports of the High Commissioner for Human Rights, the Human Rights Council, United Nations bodies, and commissions of inquiry. Note that the occupying entity "Israel" ratified the four Geneva Agreements on July 6, 1951 - in addition to 196 other countries that did so - but it did not ratify the first and second protocols to the 1977 agreements, which relate to the protection of civilians, property, and the environment during war.

<sup>27</sup> <https://en.tempo.co/read/1805568/hamas-rejects-rape-accusations-during-oct-7-attack> [msn.com](https://www.msn.com) اتهامها بالعنف الجنسي بهجومها على إسرائيل "أكاذيب" وحماس ترفض

<sup>28</sup> Otherwise, the court/prosecutor would have issued an arrest warrant for Netanyahu with the same speed and with the same justification that it issued an arrest warrant for President Putin due to the military operation against Ukraine!

<sup>29</sup> In addition to the difficulties that will accompany the implementation of these rulings - if issued - by the member states of the Court - in the event that any convicted Israeli official passes through their territories - due to the practical and political challenges raised by some dominant Western countries, such as the United States of America, to prevent this.

that those principles began to threaten the principle of the immunity of states and their exclusive sovereignty over their territories, members ... etc. Consequently, the norms represented by the positions of people of public international law on states and entities gradually evolved until the principle of universal criminal jurisdiction has been established.

In fact, the principle of universal criminal jurisdiction allows the **national judiciary** of any state - based on the principle of consolidating the principle of universal protection of human rights - to bypass the rules of territorial and personal jurisdiction when extending its oversight [its criminal jurisdiction] over any crimes committed against humanity - even if they are committed outside its territory and/or by or against other than non-citizens provided that it is so serious that its impact includes global societal security and peace. Accordingly, “the state itself is not directly linked to the crime through the nationality of the perpetrator, the nationality of the victim or the place of its commission. Further, the criminal prosecution in this case is not based on the presence or absence of a private interest of the state, but rather the basis and public interest is to protect the international communities against crimes as a whole being among the most deadly crimes against humanity and at the global level which is the primary driver for exercising this jurisdiction through the national judiciary.” Therefore, there has been consensus that these crimes include all forms of **genocide, war crimes, crimes against humanity and crimes against basic human rights - so that the sum of the above crimes includes systematic torture, systematic murder, slavery, enslavement and other crimes committed against basic human rights, ensuring their dignity and preventing intimidation.**

Yet, stable international customary law has increasingly contributed, especially in modern history, to consolidating the principle of universal criminal jurisdiction in prosecuting and trying perpetrators of international crimes by recognizing the authority of the national judiciary of states to suppress international crimes that threaten the common interests of all humanity, in addition to confronting acts that constitute international crimes in the concept of international criminal law and prosecuting their perpetrators regardless of the nationality of the perpetrator or victim or even the place where the crime was committed. Moreover, the relevant international humanitarian law conventions also contributed to defining the necessary form of protection and establishing the universality of jurisdiction over them, e.g. the four Geneva Conventions of 1949, the international conventions related to combating international terrorism, the United Nations Convention against Torture of 1984 and others.

**However, and despite the foregoing,** we find that this “universal criminal jurisdiction” requires that the concerned states grant it the necessary formal admissibility as a precondition for the purposes of its application. In fact, this form is represented by including that jurisdiction directly within its national legislation<sup>30</sup> - whether by directly stipulating the legal rules that govern it

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<sup>30</sup> Examples include what was included in the French and then Belgian Criminal Procedure Code, followed by the Swiss and German legislators and other provisions that explicitly acknowledge the jurisdiction of the national judiciary to prosecute crimes of a global nature. It is worth noting here the need to study these and other legislations and the amendments that have occurred to them, from the legislation of foreign countries, by qualified lawyers for the purposes of answering the possibility of the Palestinian state to benefit from them in revealing the crimes of Israel and imposing the resulting penalties, respectively.

within national legislation specific to each crime separately or by joining the international agreements that detailed it - after ratifying them within the national legislation<sup>31</sup>.

**It should also be noted that** the aforementioned “principle of universal criminal jurisdiction” remains subject to the condition of fulfilling the complementary jurisdiction. This means that universal jurisdiction loses its legitimacy if it is proven that any of the crimes mentioned above were addressed by the competent national judicial system in accordance with the rules of regional, personal and substantive jurisdiction ... etc. - with the accompanying difficulty in proving the extent of its integrity, impartiality and/or objectivity of that judicial system. This in turn reveals that the universal criminal jurisdiction of the national judiciary remains, in the end, a complementary - not original - jurisdiction of the national judiciary<sup>32</sup>!

**The conclusion then imposes itself in that it is of utmost importance to make competent legal efforts by specialized lawyers and jurists authorized to practice the profession and interpret the relevant legal provisions within the scope of foreign countries [any country other than the State of Palestine including all Arab, Islamic and/or other countries] whose just judiciary may contribute to revealing the crimes of Israel - if it is proven to have the right to adhere to universal criminal jurisdiction within its internal legislation. However, any achievement in this context remains dependent on proving the failure of that entity to extend its judicial oversight over these crimes on the one hand, and/or its failure to issue “fair, objective and impartial” rulings against the accused among its leaders and/or individuals, and thus the ability to implement the judgments/punishments issued.**

**Fourth: the Role expected from any of the Peace-Loving Countries that Believe in the justice of the Palestinian Cause and its Relationship to International Humanitarian Law - Led by the Hashemite Kingdom of Jordan:**

In light of the rules of jurisdiction that we mentioned in this study above, and in addition to the relevant international legal/customary provisions, this study places, before the countries that are friendly to Palestine and believe in the justice of its cause, three actions/judicial procedures and/or diplomatic/media procedures that may contribute to achieving the right and raising the issue of injustice against Palestine and its people, as follows:

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<sup>31</sup> This is what the Permanent Court of International Justice established in the Lotus case in 1927 when it affirmed “the right of each state to choose the rules of jurisdiction that suit it, and that there is nothing in international law that prevents states from determining their territorial jurisdiction in accordance with their interests.”

<sup>32</sup> It should be noted in this regard that a criminal complaint has currently been registered against US President Joe Biden, his Secretary of State, Anthony Blinken, and his Secretary of Defense, Lloyd Austin, on November 13, 2023, by a group of American lawyers, some of whom are of Arab origin, accusing them of their inability and negligence in preventing genocide crimes. Which is committed by the occupying entity in violation of the “Genocide Agreement” against Gaza and all of Palestine, in addition to the blind American support for the Israeli aggression as a result of the Al-Aqsa Flood operation carried out by Hamas on October 7<sup>th</sup> 2023. [Complaint DCI-Pal-v-Biden ww.pdf \(ccrjustice.org\)](#). Note that this complaint is not considered a complaint based on universal jurisdiction, as it is filed before the American judiciary against defendants of American nationality and regarding crimes/accusations that were committed within the regional geographic scope of the United States of America as the place of making the decision/crime/accusation with participation above.

## **1- Filing a judicial complaint before the International Criminal Court regarding Israel committing a crime against humanity by depriving diaspora Palestinian refugees of the right of return to their homes according to the legal foundation below:**

The right to freedom of movement, travel and safe return to the homeland - which is stipulated in a peremptory and explicit manner in Article 13 of the “Universal Declaration of Human Rights of 1948”<sup>33</sup>, which is based on the peremptory rules of international custom - is considered one of the human rights established under the peremptory rules of international custom and binding on all states without a need to ratify any international treaties regarding it – i.e., it is legally binding on Israel. Further, these rights were also stipulated in Article 5/D of the “International Convention on the Elimination of All Forms of Racial Discrimination of 1965” and Article 12 of the “International Covenant on Civil and Political Rights of 1966”<sup>34</sup> - both of which Israel has ratified and committed to their terms respectively. Therefore, all of these contractual and customary legal provisions fall within the scope of international laws adopted by the International Criminal Court as binding provision for adjudicating complaints brought before it under Article 21 of its Statute. Yet, it is worth noting that one of the Court’s bodies had confirmed, in 2019, that deprivation of the right to return was considered a crime against humanity under the rules of international customary law, regarding the transfer to which the Rohingya minority was subjected from Myanmar to Bangladesh<sup>35</sup>.

**In fact, and when reviewing the rules of jurisdiction mentioned in this study above regarding the crime of depriving diaspora Palestinians of their right to return - as a crime against humanity – then the following is shown:** Article 7/1 of the Criminal Court Statute provides that “**for the purpose of this Statute, any of the following acts constitute “a Crime against humanity” when committed as part of a widespread or systematic attack directed against any civilian population and with knowledge of the attack:... K- Other inhumane acts of a similar nature that intentionally cause great suffering or serious injury to body, mental or physical health.**” Therefore, it appears from the text of the above article that systematic acts that reflect an intentional policy of a particular authority or political system to inflict severe suffering or serious harm, whether to the body or mental health of a specific group of civilians, constitute one of the forms of crimes against humanity.

Yet, Article 7/2 also provides that “**A. The expression “*attack directed against any civilian population*” means (a course of conduct that includes the repeated commission of the acts referred to in paragraph 1 against any civilian population) pursuant to a State or organizational policy requiring the commission of such an attack or in furtherance of this policy**”. So, it appears from the above article that the “attack” constituting any crime against humanity does not require it to be a military attack - as stated by one of the criminal court panels<sup>36</sup> - as “it is sufficient for that attack to come in the form of systematic pressure campaigns

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<sup>33</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>34</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>35</sup> <https://www.icc-cpi.int/news/icc-prosecutor-fatou-bensouda-requests-judicial-authorisation-commence-investigation-situation>

<sup>36</sup> Regarding investigations relating to the humanitarian situation in the Central African Republic in the case [Prosecutor v. Jean-Pierre Bemba Gombo] [ElementsOfCrimesEng.pdf \(icc-cpi.int\)](#)

[social, political ... etc.] against a specific civil group over extended periods of time by the aggressor party”.

**Therefore, and since it has been proven that the attack intended in the text of Article 7/2-A does not require that it be military and as is also established in Article 7/1-K that systematic inhumane acts issued by a dominant authority such as Israel which harm the physical or mental health of a civilian group such as Palestinians in the diaspora, are considered a crime against humanity. Yet, it only remains to prove that Israel imposing and adopting a policy of depriving transferred civilians of their right to a safe return to their homeland, Palestine, constitutes a violation of their physical and mental health based on the severe suffering which most of them experience, or the serious harm inflicted on them and their mental or physical health in exile camps - which is proven through international experience reports (after examining these camps in Jordan and Lebanon, for example) as well as the international judicial precedents, the available academic and jurisprudential works which prove beyond any doubt the extent of the suffering as well as the psychological and mental pressures that are inflicted on communities living in camps of refugees due to their illegal deprivation of safe return to the homeland and the accompanying loss of security, belonging, sense of community, citizenship, need, loss of property ... etc. - which is the matter/jurisprudential stability that some criminal court bodies themselves recently emphasized when approaching the suffering of the Rohingya minority as a result of their deprivation of return after their transfer to Bangladesh according to what we mentioned above<sup>37</sup>.**

**Turning to the temporal jurisdiction,** we find that although the transfer policy pursued by Israel against the Palestinians since 1948 began before the emergence of the Court’s temporal jurisdiction when it was established in 2002. In fact, the crime against humanity that is the subject of this research relates to a renewed act represented by the recurring deprivation of the right to return. Therefore, the Court will have jurisdiction as of the date of accession of the state that will file the complaint against the occupying entity regarding this crime [for example, if Jordan initiates it, then the Court will have jurisdiction as of the date of ratification on April 16<sup>th</sup> 2002]<sup>38</sup>.

**As for territorial jurisdiction,** it exists for any state party to the Court’s Statute as long as it houses camps for Palestinian refugees deprived of the right of return - as it is the state of the place where the crime was committed based on the criminal rule that makes the place where the crime was committed **extend to the place where the effect occurred** [for example, a case of

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<sup>37</sup> There are many academic articles documenting the extent of the suffering of refugee camp residents deprived of the right of return. It is also worth following the developments of the recent case related to the International Court of Justice issuing its binding decision on Azerbaijan on November 17<sup>th</sup> 2023 to safeguard the right of return for Armenians displaced from the Nagorno-Karabakh region, and the outcome thereof, in order to benefit from it in supporting the right of return for Palestinians in the diaspora. [The Court indicates provisional measures \(ici-cij.org\)](#).

<sup>38</sup> Noting that Article 8 of the Jordan-Israel peace treaty of 1994 (re refugees) does not contradict with the option to refer to the ICC since Israel acknowledges “the necessity to resolve the refugee issue within the provisions of the international law”, in addition to referring to “negotiations” without limitation. However, we believe that such means to resolve the refugee issue does not, in itself, negate that all the elements of the crime against in humanity referenced above have been established – specially in the failure of any negotiations that have taken place to resolve the issue to date, and especially in light of Netanyahu’s declaration to the US congress in 2012 that “the issue of Palestinian refugees will be resolved outside the borders of Israel”. Therefore, and since crimes against humanity are recognized under customary international law, Israel is obliged to adhere to the criminal responsibility referenced under Article 7/1K above. Also, as for Article 29/2 of the convention (re dispute resolution) also does not affect Jordan’s right to refer to the ICC since such criminal accusation falls outside the scope of arbitration.

shooting on the border resulting in the death of a person within the jurisdiction of the opposing state makes both states as being considered a place where the crime was committed for the purposes of determining territorial jurisdiction]. In fact, one of the Court's bodies explicitly confirmed the above when it accepted jurisdiction to look into the crime of transferring the Rohingya minority to Bangladesh and depriving them of return despite Myanmar (the country of the aggressor from which they were transferred, as the place where the criminal act was committed) has never ratified the Rome Statute or joined the Court! However, the Court derived its territorial jurisdiction [based on Article 12/2 of the Statute] when it affirmed that the scope of the "place of the crime was committed" extended to the state in which "the impact of the crime emanated," which is the country to which the deportation took place, Bangladesh – that is considered a party to the Statute of the Court<sup>39</sup>.

In conclusion, the Prime Minister of Israel, Benjamin Netanyahu, stated in a speech before the US Congress in 2011 that "the Palestinian refugee issue will be solved outside the borders of Israel"<sup>40</sup> which statement is a confirmation of the policy that Israel has continued to follow since the Nakba in 1948 until the date of this study - without any signs or even political/diplomatic expressions suggesting the intention of Israel to implement United Nations General Assembly Resolution No. 194 or even the respect the peremptory rules of international law - stated within the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights - regarding the right of safe return of all refugees who were forcibly transferred from Palestine.

**Hence, and based on the above** - and while Palestine [the country of the victim who was transferred before 2014] lacks the territorial jurisdiction [unlike the country of the accused or the country where the crime was committed] to add the crime of preventing the right of return as a crime against humanity to the scope of crimes called on by the Public Prosecutor to investigate since 2018 – **then it is shown that the International Criminal Prosecutor has the assumed jurisdiction on his own initiative** [despite our prior knowledge of the impossibility of him exercising it due to the clear double standard we are witnessing in the application of the International Court of Justice standards]; **in addition to the jurisdiction of any of the state parties to the Rome Statute that host Palestinian refugee camps [such as Jordan and Lebanon], to file an independent complaint against Israel to accuse it of committing a crime against humanity represented by depriving the Palestinians of the diaspora of the right to return, and the resulting grave physical and mental suffering that violates established international custom and peremptory norms claiming in conclusion of criminalizing the leaders of Israel for these acts, and working to guarantee the right of the Palestinians in the diaspora to safely return to their homeland<sup>41</sup>, especially since filing a complaint from another state with inherent jurisdiction [compared to the mere right of notification from a state party that lacks jurisdiction] other than Palestine, in this case in particular, contributes to alleviating the impact of the defects of the International Criminal Court mentioned in this study under clause [Third/1-II] above for the following:**

<sup>39</sup><https://www.icc-cpi.int/news/icc-prosecutor-fatou-bensouda-requests-judicial-authorisation-commence-investigation-situation>

<sup>40</sup> <https://www.jewishvirtuallibrary.org/speech-by-pm-netanyahu-to-joint-session-of-the-u-s-congress-may-2011>

<sup>41</sup> For more details, please review the comprehensive study by international criminal law expert Attorney John Quigley: <https://link.springer.com/article/10.1007/s10609-022-09450-8>

**A- The ease of proving territorial jurisdiction - in light of the evidence we mentioned under this clause above - in addition to refuting any allegations by Israel to avoid the jurisdiction of the International Criminal Court through its claim that its internal judiciary is examining this crime [for supplementary jurisdiction]. It shall be extremely difficulty for any judicial ruling by Israel to negate the right of return to the Palestinians of the diaspora, especially in light of all the provisions of the customary international law mentioned above.**

**B- Ease of finding facts and collecting the elements of the crime as well as the manifestations of the great physical and mental suffering of Palestinians in the diaspora as a result of living in camps, being denied return to their homeland. As all of these facts are not subject to the control and/or scope of Israel as an occupying entity. In addition to the ease of controlling double standards - which the current Public Prosecutor, Karim Khan, did not hesitate to show - especially in light of the official statements and decisions issued by some of the same criminal court bodies regarding similar crimes that the Rohingya minority was subjected to when they were transferred from Myanmar. Finally, the desired goal of revealing the crimes of Israel to world public opinion shall be achieved when it is condemned, even in the absence of the real ability to implement the same.**

**2- Filing a lawsuit before the International Court of Justice regarding Israel's crime of genocide against the people of Gaza, amongst Palestine, in the context of the Operation of "Al-Aqsa Flood" according to the legal foundation below:**

The crime of genocide is considered one of the most serious crimes that threaten international peace and security other than that it violates the human rights of all humanity. Therefore, the United Nations General Assembly did well to adopt a unanimous resolution in December 1946 obligating the member states of the United Nations to combat the crime of genocide and work to prevent and punish its perpetrators. In fact, this resolution was considered a statement or declaration of the establishment of the customary rule in this regard, which makes it a **legal/customary rule binding on all countries regardless of any international agreements regarding the same**<sup>42</sup>. However, and in addition to the above, the International Convention "**For the Prevention and Punishment of the Crime of Genocide of 1948**" was concluded which entered into force in 1951 with 153 countries having ratified it to date.<sup>43</sup> Israel ratified it in 1950 while Palestine joined in 2014.

To talk about the essence of the crime of genocide and the elements that must be fulfilled to constitute this crime on the ground, it is worth noting that it is considered **one of the crimes that requires proof of "specific criminal intent."** That is, its elements cannot be met - as a crime of genocide specifically - unless the "specific intent" intended to be achieved by the perpetrator of that crime, set in Article 2 of the Convention, is established. In fact, the importance of the above is that in the event of an inability to prove that intent, all forms of killing, destruction,

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<sup>42</sup>[https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F96\(I\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F96(I)&Language=E&DeviceType=Desktop&LangRequested=False)

<sup>43</sup> Article 1 of the Agreement: "The Contracting Parties ratify that genocide, whether committed in peace or during war, is a crime under international law, and undertake to prevent and punish it." That is, the scope of the mandate includes the obligation of States Parties to take what is necessary for the purposes of "preventing" the commission of the crime. Before "punishing" her.

annihilation and other forms that we are witnessing today among our people in Gaza and in all of Palestine are considered nothing more than unfortunate results of a military operation, and are punishable through other separate rules of international law, if proven. The greatest loss then is represented by the inability to resort to the International Court of Justice based on Article 9 of the Convention as we mentioned in this study under clause [Third/1-I] above.

Hence, and by moving to the definition of specific criminal intent for the crime of genocide, then Article 2 of the Convention provides that “the crime of genocide means any of the following acts, committed with intent **to destroy, in whole or in part, a national, ethnical, racial, or religious group**, as such: A. Murder of members of the group; B. Inflicting serious physical or mental harm on members of the group; C. Intentionally subjecting the group to living conditions intended to bring about its physical destruction, in whole or in part; D. Imposing measures intended to prevent the birth of children within the group; E. Removing children from the group, forcibly, to another group.”. Which means, **the crime of genocide’s material and moral components may not be established, in any of the forms of crimes referenced above, unless after establishing the specific criminal intent to demolish, in whole or in part, a national, ethnical, racial, or religious group.**

By comparing the forms of the crime of genocide mentioned in points (A-E) of Article 2 above, we find that most of these forms are realized on the ground in the crimes we are witnessing today committed by Israel against the people in Palestine, the most prominent of which is the systematic killings that are also evident from the amount of explosives and destruction that included all parts of the Gaza Strip, and even not excluded schools, hospitals or places of worship. It also makes it easier to prove all forms of inflicting serious physical and psychological harm and revealing the entire population of the Gaza Strip to living conditions that are impossible to live in light of controlling sources of energy, water, food, supplies, ambulance, means of communication and internet, or even calling for help, or cutting them all off, all of which lead to inevitable living conditions that result in slow death after enduring all forms of torture, intimidation and suffering.

As for moving to prove the specific criminal intent against Israel and its leaders, all statements made by its senior representatives – e.g. its president, prime minister, defense minister, chief of staff, minister of finance and others<sup>44</sup> - issued since time immemorial - especially since October 7<sup>th</sup> 2023 - regarding their hatred of the people of Palestine and calling them human animals, come to prove, beyond any doubt, the criminal intention of Israel to achieve [total or partial destruction<sup>45</sup>], especially when compared to the reality represented by the barbaric military attacks in such a way that the same does not exclude anyone in Gaza - until the date of this study - without distinction between civilian and military, man and woman, or children of all ages

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<sup>44</sup> All such statements must be documented. We can use: [الجزيرة نت | الجريدة الدولية؟ | الجريدة الدولية؟ \(aljazeera.net\)](https://www.aljazeera.net) & [Complaint DCI-Pal-v-Biden ww.pdf \(ccrjustice.org\)](https://www.ccrjustice.org) & <https://www.justiceforall.org/wp-content/uploads/2023/12/Brief-on-Palestine-Israels-War-Crimes-in-Gaza.pdf>

<sup>45</sup> As the international legal and judicial expert William Schabas [who is the most prominent figure to have written on this crime and its interpretation, and is classified as the top expert in his field around the world] explained in the expert opinion submitted by him in the lawsuit filed against Joe Biden [please review FN32 above] that criminal intent achieved in its entirety - if the discussion is limited to the residents of Gaza. It is also achieved in its partial form [if the proportion constituted by the population of the Gaza Strip is compared to the whole of Palestine, such that the 2 million Palestinians of the population of Gaza constitute approximately 40% of the population of Palestine as a whole, being considered a fundamental partial proportion sufficient to achieve the intended partial destruction intended by Article above].

[national, ethnic, racial or religious group] which fulfills all the elements of the material and the moral components of the crime of genocide.

It should also be noted in conclusion that **the scope of the mandate** contained within the Convention on “Preventing and Punishment of the Crime of Genocide” is not limited only to punishing Israel for committing this crime that we live today without deterrence, rather, **the scope of the mandate** explicitly provides that all state parties to the Convention are obligated to take all necessary measures to “prevent” the commission of the crime in the first place, which **scope of mandate/obligation is more comprehensive than just punishment**. Therefore, and **even based on the false assumption** followed by most western countries in their justification for the military operation launched by Israel today against “Hamas” as a result of “Al-Aqsa Flood” operation, while turning a blind eye to all previous crimes of Israel, yet, they should not have allowed Israel to use that operation as an excuse to commit genocide against the entire population of Gaza, without distinction, in full view of the entire world [instead of limiting its attack to special military operations, for example]! Therefore, **and in light of the forgoing**, this study confirms that all legal basis for prosecuting countries that supported Israel’s military operation [whether with weapons and/or money] despite the genocidal form that the military operation took, which is difficult to deny<sup>46</sup>, has been established.

Based on the above - and in addition to Palestine’s right [in principle, according to what we mentioned in [Third/1-I] above] **to sue Israel for the crime of genocide against the population of Gaza before the International Court of Justice, and/or suing the state parties to the Genocide Convention which have not exercised their effective powers/capabilities to prevent the commission of that crime<sup>47</sup> - then it is clear that jurisdiction exists for any state party to the Convention on the Prevention and Punishment of Genocide** [such as Jordan and/or any other country among the 16 Arab countries that are parties or countries that believe in the justice of the Palestinian issue, such as Turkey, South Africa, Bangladesh, Belgium or Spain, for example] **based on the scope of the mandate contained within Article 1 of the agreement** [which explicitly states at the duty of all state parties to take the necessary measures to prevent the crime of genocide before it is committed in addition to punishing it, should it fail to prevent it]. **In fact, this study hopes that any of the countries with the above jurisdiction will file an independent lawsuit against Israel before the International Court of Justice to charge it with committing the crime of genocide against the people of Gaza, and all of Palestine, by embodying all of its hostile statements and prior intentions to annihilate the Gaza Strip,**

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<sup>46</sup> Similar to the legal basis adopted by the International Court of Justice in its ruling in 2007 convicting Serbia as a result of its failure to prevent the commission of the crime of genocide against the Muslims of Bosnia outside its borders [Bosnia v. Serbia]. Whereby by the Court did not find enough evidence to establish Serbia’s participation in the genocide. But on the other hand, it found evidence of the latter’s failure to prevent the commission of the crime despite its ability to do so [despite the dissenting decision issued by the Jordanian judge, Aoun Al-Khasawneh, who considered that Serbia was also responsible for the genocide Not just failure to prevent it].

<sup>47</sup> Whereas the standard for determining the extent to which State Parties fulfill their obligations to prevent the crime of genocide is a standard based on the judicial precedents of international courts - most notably what was stated by the International Court of Justice in the case [Bosnia v. Serbia 2007 when the court declared that there was insufficient evidence to prove Serbia’s participation in the genocide against Bosnian Muslims - and therefore it was not prosecuted for genocide]; However, the court emphasized that Serbia’s commitment was not limited to not committing genocide; But by taking the necessary measures to prevent it in the first place. Whereas the court found sufficient evidence that Serbia had effective means of pressure capable of deterring the military commanders attacking Bosnian Muslims from committing the crime, and did not exert that pressure to prevent its commission. The court convicted it of not adhering to the duty to prevent the crime from being committed in the first place. Comparing this with the influential ability of the United States of America, Britain, and others to put pressure on Israel and prevent the crime of genocide against Gaza and its people without exercising that pressure, opens the door wide to prosecute them before international justice.

**and those therein on the ground, through the barbaric attack targeting all residents of the Gaza Strip without discrimination.**

In addition, this study also clarified the possibility of any of the above-mentioned state parties resorting to suing western countries that still insist on supporting Israel with money, equipment and intelligence despite its certainty - according to the reality of the situation on the ground - that the crimes of Israel being committed against Gaza amount to genocide, going beyond any imaginary claims of self-defense. Rather, it directly supports all of Israel's statements and its prior intention to genocide against the entire population of the Gaza Strip<sup>48</sup> instead of its commitment to take the measures necessary to prevent the commission of that crime - in accordance with Article 1 of the Convention on the Prevention of Genocide.

**3- Revealing the crimes of Israel against Palestine and exercising diplomatic efforts to demand the withdrawal of its membership from the United Nations, unless it complies with the condition of membership, that is "love of peace and commitment to the laws and principles of the United Nations" [Article 4 of the United Nations Charter] in accordance with the foundation set forth below:**

Israel's breach of all United Nations resolutions and recommendations in favor of Palestine, with no exception whatsoever, is not considered a secret or a surprise. Such breach and violation of the rules of international law, represent the only political approach that Israel has continued to follow since the inception of the United Nations until today without any deterrence<sup>49</sup>!

Therefore, it is necessary to confront the "political impudence" with which Israel deals with United Nations resolutions, at least by mobilizing to gather support and demanding the withdrawal of Israel's membership from the United Nations, on the grounds of its failure to adhere to the condition of "**love of peace**", and the condition of "**adherence to the rules of the Charter of United Nations**" as obligatory conditions for membership and joining. It is also considered necessary to declare these efforts publicly in order to attract the attention of international and western public opinion in particular – **being the "authority" that this study considers to be the judicial police and the real and actual executive authority to ensure the application of the rules of international law**<sup>50</sup> - as well as to raise its awareness of the suffering being sustained by the people of Palestine that have been uncontrolled since the Nakba - even if membership or actual interaction by the dominant countries has not been withdrawn with that request.

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<sup>48</sup> For more details, please review the powerful study prepared by international legal and judicial expert William Schabas in the expert opinion submitted thereby in the lawsuit filed against Joe Biden [Kindly Review FN32 above] [[Declaration Expert William Schabas w.pdf \(ccrjustice.org\)](#)].

<sup>49</sup> The most prominent UN resolutions against Israel:  
<https://www.aljazeera.net/encyclopedia/2017/12/17/%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%A3%D9%85%D9%86-%D9%88%D8%A7%D9%84%D9%82%D8%AF%D8%B3-%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA-%D9%83%D8%AB%D9%8A%D8%B1%D8%A9-%D8%A8%D8%AF%D9%88%D9%86>

<sup>50</sup> Neither the United States of America and Britain, for example, would have been forced to lie about weapons of mass destruction to justify their military attack on Iraq in 2003, nor many other countries supporting Israel today would have repeated the lie of Israel's right to self defense, despite the advisory opinion of the ICJ of 2004.

**Accordingly, we must work seriously to develop a diplomatic/media strategy capable of keeping up with the misleading media power of Israel<sup>51</sup>, refuting its allegations at the level of world public opinion, and preventing it from playing the role of the victim. Rather, an effort should be made towards revealing the two most prominent lies that it has always relied on to mislead world public opinion, and to justify its crimes against Palestine and its people, namely:**

1- The first lie that is the “right to self-defense” alleged by Israel:

Israel has been repeating the lie of self-defense since the beginning of the Palestinian/Arab conflict on the one hand and the Israel on the other hand [to the extent of calling its army as the Defense Army out of insinuation and cunning!], a lie that increased in frequency after Israel withdrew from the Gaza Strip in 2005, evacuating all of its settlements one by one and handing over the reins to the leadership of the Hamas movement. In fact, what is striking about the timing of that withdrawal and Israel’s subsequent claims of the right to self-defense is that it came after the International Court of Justice had issued its advisory opinion in the case of the 2004 apartheid wall [without any media coverage by supporters of the Palestinian cause, unfortunately] which denies the fact that Israel, as an occupying entity, directly and bluntly, does not accept any interpretation of any alleged right on its part to self-defense because the right to self-defense, as stated by the Court, is presumed in military aggression coming from outside the borders of the state and not by its citizens<sup>52</sup>.

Consequently, and after the withdrawal from the Gaza Strip, Israel treated this event [for the purposes of world public opinion] as the starting point of the conflict. It began to appeal to international public opinion - and western ones in particular - by claiming that it was defending itself in the face of “random missile attacks that threaten the lives of the population without prior warning, and without distinction between civilians and the military in flagrant violation of all rules and literature of war under public international law,” as it describes. Yet, it also persisted in recalling its withdrawal from the Gaza Strip to emphasize that the aggression was coming from outside the geographical borders controlled by Israel as an occupation. Yet, it should be noted that it has largely succeeded in confirming this lie in the minds of the western public opinion - taking advantage of the successful strategic and systematic policy of dealing with the western media - especially with the leaders of the West and most of the dominant countries repeating it successively despite the official advisory opinion issued by the International Court of Justice set above.

**In fact, and to refute that lie, this study shows the following:**

A- The right to self-defense - as an instinctive and lawful act - presupposes “the commission of an unlawful act in order to address an unlawful act preceding it.” Article 51 of the United Nations Charter<sup>53</sup> came to regulate and restrict the customary preemptory rule “the legitimate

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<sup>51</sup> To demonstrate the cunning of the media machine of Israel, [International law guarantees Palestinians the right to resist \(trtworld.com\)](http://trtworld.com)

<sup>52</sup> Text of the International Justice Decision in the Apartheid Wall Case, 2004 [Microsoft Word - ?? ???? ????? ?????? ??????? ?? ?????? \(palestine-studies.org\)](http://www.microsoft.com)

<sup>53</sup> Article 51: “Nothing in this Charter weakens or detracts from the natural right of states, individually or collectively, to defend themselves if an armed force attacks a member of the United Nations, until the Security Council takes the necessary measures to maintain international peace and

right of states to self-defense” to confront any military aggression from abroad as stipulated in Article 10 of the Fifth Convention of the 1907 Hague Conventions regarding the rights and duties of states and neutral persons in situations of land war<sup>54</sup> which is also the case of Article 2 of the Geneva Protocol of 1924<sup>55</sup>. However, Israel bases its lies on manipulating the facts and claiming injustice which we must all correct. Therefore, Israel must be exposed by reminding world public opinion that it is an occupying state under the provisions of international humanitarian law, and that, in such capacity, it represents the aggressor party against which the Palestinian resistance [and its internationally guaranteed right to self-determination] has the right to defend itself, not the other way around<sup>56</sup>;

B- The right to self-defense is restricted by certain conditions, such as being a military attack that is of a degree of seriousness and threat; coming from across the border (as compared to internal violence); in addition to it being continuous and evolving [alternatively, it turns into a mere revenge]; and finally, the basic condition for the validity of the right to defense is that the aggression be unlawful [unlike resistance]. Legitimate defense must also be characterized by certain controls including that it be temporary until the Security Council intervenes, or the aggression stops; that it be directed exclusively towards the aggressor and that it represents the only legitimate means of stopping the aggression without the attacked person giving up any of its rights. It is also required that defense actions be consistent with the rules of international law in terms of proportionality to the severity of the aggression and to the extent necessary to repel it without affecting civilians and their facilities, e.g. hospitals, schools, places of worship ... etc. and not to use internationally prohibited weapons such as white phosphorus, cluster bombs and the like.

C- Finally, Israel’s attempt to deny its occupation of the Gaza Strip [after its withdrawal in 2005 to circumvent the 2004 International Court of Justice Advisory Opinion and mislead world public opinion with rhetoric of victimhood and self-defense] is an invalid attempt under the international law in light of its actual and complete control over land, sea and air ports and even the flow of water, electricity, internet and means of communication throughout the Strip - which negates the alleged right of defense of it!

**2- The second lie is that** Israel claims that it is confronting terrorist groups that require it to become more stringent in its military response:

Israel began planting these suggestions in world public opinion after the September 11 attacks with a systematic, gradual and escalating speech until it reached what it has reached today, in terms of a speech of its oppression and sympathy from western public opinion in particular. It also alleges that it is impossible to deal with such groups in any civilian way except through the firmness and brutality shown by Israel in its current attacks on the Gaza Strip - including

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security.” This article is considered a legal exception to the prohibition of the use of military force between states in accordance with Article 2/4 of the Charter.

<sup>54</sup> Article 10: “An act undertaken by a neutral state cannot be considered an act of hostilities, even if it includes the use of force to repel an attack on its neutrality.”

<sup>55</sup> Article 2: “The signatory states have agreed that they will not resort to war as a means of resolving disputes in any case, except in the case of resistance to acts of aggression.”

<sup>56</sup> In its ruling against Nazi war criminals after the end of World War II, the Nuremberg Court affirmed that “whoever resorts to aggressive war loses the right to claim the right to self-defense, based on the principle of criminal law that the claim of self-defense is not valid in the face of self-defense.”

civilians in it without discrimination. There is no evidence of the success of its cunning policy than what we are witnessing today in the failure of the dominant countries - either with brutal intent or obscene ignorance - to defend the human rights that are being violated over the minutes and hours!

## **To refute that lie, this study shows the following:**

A- It is necessary to familiarize international public opinion with the concept of the struggle waged by national liberation movements for self-determination, and to clarify its established rules within the provisions of public international law, and the adopted international custom, where the right of peoples under occupation to legitimate and armed resistance<sup>57</sup> was recognized within the provisions of the international law [for example: Article 2 of the Declaration of the Rights of Human and of the Citizen 1789 affirmed that “the goal of political organizations is to guarantee natural rights that cannot be retrieved ... these rights are freedom, property, security and resistance against injustice.” The Hague Convention of 1907 also stipulated the legitimacy of carrying arms to resist the occupier while the Third Geneva Convention of 1949 and the First Protocol of 1977 added the status of prisoner of war to the resistor who is arrested].

This right has been also supported and countries were called upon to support it in all UN resolutions issued in this regard throughout history [including the Resolutions 1514/1960, 2105/1965, 2625/1970, 2649/D-25 of 1970, 2852/D-26 of 1971, 3070/1973, 3103/D-28 of 1973, and finally 37/43 for 1982], in addition to the resolutions issued specifically in favor of the Palestinian resistance [including the Resolutions 2649/1970<sup>58</sup>, 3236/1974<sup>59</sup> and 38/17 of 1983<sup>60</sup>, concluding with the UN resolution issued by an overwhelming majority of 168 countries on December 2022 and 172 states on December 2023 to acknowledge the right of the Palestinian resistance to self-determination]. Therefore, resisting the occupation is a fundamental right, while its Israel that is demanded not to suppress the resistance, not the other way around.

B- It is necessary to apply the correct legal description to all acts of resistance that take place on the ground<sup>61</sup> as resistance is a reaction to refute a long-term occupation which represents a state of continuous aggression<sup>62</sup>. That is, the resistance is the one who has the right to self-defense, especially in light of the expansionist settlement policy that breaches all relevant United Nations laws and resolutions. On the other hand, it is necessary to expose the organized terrorism directed by the Israeli war machine called the Defense Forces against defenseless civilians to world public opinion [with more than 20 thousand martyrs and the massive destruction in Gaza up to this point being referred to as merely “unfortunate collateral damage” in a disgusting double standard], in addition to confiscating their property and detaining their freedoms illegally!

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<sup>57</sup> This is as an exception to the rule of non-use of force in international relations under Article 2/4 of the United Nations Charter - as well as Article 51.

<sup>58</sup> Which "explicitly condemned the denial of the right to self-determination, especially to the peoples of South Africa and Palestine."

<sup>59</sup> Which states that the United Nations “also recognizes the right of the Palestinian people to regain their rights by all means in accordance with the purposes and principles of the United Nations Charter (...) and calls upon all countries and international organizations to extend their support to the Palestinian people in their struggle to regain their rights, in accordance with the Charter.”

<sup>60</sup> Which condemned Israel's expansionist settlement policy and its undermining of the Palestinian resistance's right to self-determination.

<sup>61</sup> Especially in light of its arbitrary description of “terrorism” despite the facts that non of the allegations that accompanied the “Al-Aqsa Flood” operation have been verified by any independent body; moreover, there is no unified definition of “terrorism” to date!

<sup>62</sup> This is a matter currently pending before the Court of International Justice [please see FN20 above].

**Fifth: the conclusion of this study:**

This study concluded that the International Court of Justice does not have jurisdiction over Israel unless the latter explicitly declares its consent - which is considered a form of fantasy - regarding any attempt by Palestine to prosecute it for its crimes [in general] against Palestine and its people - in accordance with the above. It also concluded that, regardless of the proven jurisdiction of the Public Prosecutor and/or the State of Palestine to file a complaint before the International Criminal Court in principle, it is marred by many defects in application including double standards and the impossibility of implementation in practice - unless that entity joins and ratifies the Rome Statute/Statute of the Court which is also considered a kind of fantasy. It has also finally reached the permissibility of working to prosecute Israel before the national judiciary of any country in the world other than the State of Palestine based on the principle of universal criminal jurisdiction. However, this is conditional on fulfilling the formal admissibility within the legislation of the national judicial system concerned to begin with and then verifying the availability of the jurisdiction requirement of the complementary jurisdiction of that national judiciary and then facing the dilemma of implementing rulings/punishments - assuming they are issued - in the face of Israel!

**However, and despite the above, this study also concluded that** – and as a result of Israel’s mistake by exposing its real criminal intention through its official statements and releases, followed by committing the crime of genocide on the crime of Gaza - by confirming that there is a genuine opportunity to prosecute Israel before the International Court of Justice for its crimes against Palestine, which are exclusively related to what we are witnessing today of Genocide against the people of Gaza in accordance with Article 9 of the Genocide Convention. Additionally, the existence of a serious opportunity - characterized by difficulty in being refuted by Israel - to prosecute it before the International Criminal Court for a crime against humanity, represented by depriving the Palestinians of the diaspora of the right to return - according to what is stated in this study above<sup>63...64</sup>.

**Researcher, Advocate Bassam Mohammad Abu Rumman**



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<sup>63</sup> This study emphasizes the necessity of resorting to international law and not losing hope despite the inability of that law to achieve its intended goal of supporting the Palestinian cause to date. The defect of international law, from the researcher’s point of view, lies in the double standards and the ability of dominant countries to exploit its loopholes without explicitly acknowledging their violation. However, this does not necessarily mean that “less powerful” countries are unable to invoke it! The practical answer, from the researcher’s point of view, requires that all vulnerable countries work to build their military, economic, cultural, and scientific capabilities, in addition to building real fruitful alliances with peace-loving parties that believe in human rights, for the purposes of guaranteeing them, even for a small acceptable amount, by applying international law to protect their interests. Until then, these countries must not violate international law and strive to interpret it in international forums in the correct manner, relying primarily on the role of the fourth estate/the free and impartial global media to reveal the facts and force the dominant countries to adhere to its rules. However, if the “less powerful” countries waive their right to resort to international law on the pretext of the unfairness of the dominant countries in applying it, then this is tantamount to giving those dominant countries the legal pretext they need to continue their crimes and their violation of international law. In addition to making it easier for them to justify their aforementioned crimes to their people and to global public opinion, and to escape punishment. Therefore, this study emphasizes the necessity of resorting to the rules of international law to demand the rights of Palestine and its people by guaranteeing the right to life, the right of return, the right to resistance towards freedom, the right to self-determination and sovereignty, and many others, and to prevent Israel from falsifying the facts and misleading global public opinion, thereby abandoning all decisions. International law and the rules of international and humanitarian law - which requires intensifying all diplomatic and media efforts within a systematic strategy to address world public opinion and refute the claims of Israel and remind it of the justice of the Palestinian cause.

<sup>64</sup> Dedicated with thanks and gratitude to the professor of public international law, Dr. Mohammad Yousef Alwan, Dr. Anis Al-Qassim, and Dr. Shahn Al-Hamouri for their efforts in guiding and criticizing this study.