

## De Facto Authorities under Scrutiny: Legal and Humanitarian Obligations toward Civilian Populations under International Law

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**Abstract:** This study aims to contribute to enriching political and legal knowledge concerning the responsibility of de facto authorities toward civilian populations under international law during armed conflicts. This comes in light of successive conflicts that scarcely subside in one place before erupting anew elsewhere, driven by political or economic objectives or by ambitions to impose control over a specific territory through the use of force.

The importance of this study lies in its approach, which highlights the significance of the principles and rules of international humanitarian law and international human rights law as instruments for safeguarding legitimate rights, protecting human existence, and shielding it from all forms of aggression or armed conflict, whether in occupied territories or elsewhere.

The study concludes that de facto authorities, regardless of their designation, bear extensive obligations, including the duty to treat humanely all persons who do not take a direct part in hostilities. This includes members of armed forces who have laid down their arms, as well as persons who are hors de combat due to sickness, injury, detention, or any other reason. International law further obliges all parties to make a clear distinction between civilians and combatants, and it regulates and legitimizes defensive measures and attacks strictly against military objectives, excluding objects of a civilian nature. It also prohibits torture, killing, looting, and inhuman treatment, and bans the use of weapons that cause excessive material or human damage or that harm the environment.

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Moreover, serious violations of international humanitarian law and international criminal law previously prohibited fall within the material jurisdiction of the International Criminal Court, as they constitute crimes stipulated in the Rome Statute and therefore entail accountability. This justifies the employment of principles of international law as one of the most important and strategic legal mechanisms for confronting policies driven by power imbalances.

**Keywords:** *International Humanitarian Law; Human Rights; De Facto Authorities; Protection of Civilians; International Criminal Court.*

### 1 Introduction

Reliance on current international transformations that call for a multipolar world has, at least for the time being (2025), proven ineffective, as fragmentation and humanitarian and economic crises dominate the global landscape, exacting a high human and political cost.

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This prevailing international situation compels all actors to reassess their humanitarian struggle, evaluate their performance and outcomes, and review their methods and strategies in a manner that ensures care and protection for civilian populations and civilian objects. It also contributes to preserving the distinct status of civilians and civilian objects and shielding them from imminent dangers in issues and armed conflicts that are condemned by international charters, treaties, and resolutions of international legitimacy.

The positions adopted by some states reveal a new shift in their vision regarding the care and protection of civilian populations and civilian objects during armed conflicts. These positions are often driven by narrow perspectives linked to internal challenges and external calculations, which are reflected in their stances toward any potential conflict. Nevertheless, peoples continuously seek solutions in accordance with their collective perceptions in a way that guarantees their fundamental rights<sup>1</sup>, even when major powers attempt to alter the balance of power such as China, which is regarded as an advanced state within a chaotic global order seeking to create global equilibrium<sup>2</sup>. This progress has disturbed and concerned the world's leading power, yet it has remained under control, at least during the current phase<sup>3</sup>.

Despite this new transformation, which tends to outline political rather than legal solutions to existing or future global conflicts through the consent of the parties to relinquish rights granted under international law by means of reciprocal concessions and trade-offs international law, particularly its fundamental rules known as *peremptory norms (jus cogens)*, must be taken into account. This is not only for "legal" reasons, often perceived as irrelevant to the political dynamics of conflict, but because these norms embody core principles of justice. International law does not permit states to disregard such norms in the conduct of their international relations, nor does it allow them to conclude agreements that contravene them.

In this context, two peremptory norms have the most profound implications for any proposed resolution to any issue: the prohibition of the acquisition of territory by force and the right to self-determination under international law<sup>4</sup>. It is essential to consider what international law can realistically achieve; from some perspectives, it remains below expected standards, and its value is not regarded as superior to national constitutions. Consequently, there are still voices calling for the harmonization of all international legislation with the national laws of all states<sup>5</sup>.

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<sup>1</sup> Saeed Khaled Al-Hassan, *An Introduction to the Theory of Collective Perceived Values*, Dar Al-Aman, 1st edition, Rabat, 2015.

<sup>2</sup> Rabah Zaghouani, *China's Strategy toward the Arab World: The Transition from Geoeconomics to Geopolitics*, in *Arabs and China: The Future of the Relationship with a Rising Power*, Arab Center for Research and Policy Studies, 1st edition, October 2019, p. 328.

<sup>3</sup> Mohammed bin Saqr Al-Salmi, *U.S.–Chinese Competition and Its Implications for the Middle East*, International Institute for Iranian Studies, April 2021, p. 4.

<sup>4</sup> Mohammad Adnan Ali Al-Zabr. (2022). *Achieving International Criminal Justice: A Study within the Scope of National Jurisdiction*. Arab Center for Research and Policy Studies.

<sup>5</sup> Marauhn, Thilo, 'The International Rule of Law in Light of Legitimacy Claims', in Heike Krieger, Georg Nolte, and Andreas Zimmermann (eds), *The International Rule of Law: Rise or Decline?* (Oxford, 2019; online edn, Oxford 2025 @ Copyright

## 2 Research Problems

This study is grounded in a central question:

Has international law lost its ability to compel de facto authorities to protect civilians, or is the international community unable to translate these obligations into practical measures?

From this main problem, several sub-questions arise, including:

1. How can civilian populations and civilian objects be protected during armed conflicts or during the occupation of a territory in light of international law?
2. Is it permissible under international law to use any type of weapon to eliminate colonialism for the purposes of national liberation?
3. May liberation movements target civilians who are nationals of the occupying power under the pretext of resistance, or do the laws of war apply to them as well? Is there also a restriction on the types of weapons that may be used against an occupying power?
4. Where does the legitimacy of restricting the use of weapons manifest itself in international law?
5. Is the protection of civilians under occupation a purely legal matter, or is it contingent upon political balances and the interests of major powers?

## 3 Previous Studies

*Military Occupation under Public International Law* (2016): Zaabal, Mohammed, *Prince Abdelkader Journal of Humanities*, Issue 30, Volume 2, pp. 415–440.

The study by Mohammed Zaabal aimed to clarify the issue of the legality of war in both ancient and modern eras in accordance with legal provisions. The study concluded that war in ancient times was considered a legitimate means under international law and, consequently, was not subject to any legal constraints. However, under the rules of modern international law, war has become an unacceptable means of resolving international disputes, as this contradicts the provisions of the United Nations Charter. The same principle applies, in general, to military occupation; nevertheless, in cases where such occupation occurs, the international community has established a set of legal rules to regulate this situation through numerous international instruments.

**The Legal Nature of the Rules for the Protection of Civilian Populations During Armed Conflicts (2016):**

Fathi Mohammed Fathi Al-Hayani, *Algerian Journal of Legal Studies and Research*, Issue 1, Volume 1, pp. 46–66.

The study by Fathi Al-Hayani aimed to examine and analyze the nature and characteristics of the legal rules established to protect civilians during armed conflicts, particularly in terms of the rights and obligations enshrined by each legal rule, based on the characteristics applicable to them. In exploring

this legal nature, the researcher relied on relevant legal texts and the judicial rulings derived therefrom, as well as on state practice toward these rules, given that states are the primary actors responsible for their implementation on the ground. The research adopted both deductive and inductive methodologies, moving between description and analysis in a manner that served the objectives of the study and ensured methodological rigor.

**Dr. Sorour Talbi Al-Mal, 2015, *International Human Rights Law*, Scientific Lecture Series, Jil Center for Scientific Research, Tripoli, Lebanon.**

The study by Sorour Al-Mal sought to demonstrate the importance of the issue of human rights during armed conflict, as it is among the most significant contemporary issues occupying international public opinion and humanitarian organizations, in light of the prevalence of violations, injustice, and wars affecting humanity. The study highlighted a set of rules that protect persons who do not participate in hostilities or who are no longer able to take part in them during armed conflicts, and clarified that the primary objective of this body of law is to limit and alleviate human suffering in times of armed conflict.

The study also traced the historical development of international humanitarian law, beginning with the First Geneva Convention of 1864, which focused on improving the condition of wounded members of armed forces in the field. Over a period exceeding one hundred and thirty years, numerous conventions emerged that established rules for the protection of victims of armed conflicts and for limiting the means and methods of warfare, culminating in the establishment of the permanent International Criminal Court pursuant to the Rome Statute of 1998. All of these conventions aim to reduce the effects of war on persons and objects.

Furthermore, the researcher distinguished between points of convergence and divergence between international human rights law and international humanitarian law. Human rights are inherent to human nature and protect individuals at all times, in both war and peace, whereas international humanitarian law applies exclusively in situations of armed conflict. Consequently, international human rights law and international humanitarian law operate in a complementary manner during armed conflicts.

**Crimes against Humanity under International Law: A Comparative Study (2017)**  
Jawad Kazem Tirad Al-Surayfi, Arab Center for Publishing and Distribution, Egypt, 1st ed., 334 pages.

The author aimed to elucidate crimes against humanity committed by individuals against others, which affect the interests of the society in which they occur and harm the interests of humanity as a whole. The study explains the concept of crimes against humanity, their various forms, and the procedures for initiating proceedings and enforcing judgments related to such crimes, through a comparative analysis of crimes against humanity in light of the provisions of international law.

**International Responsibility for the Violation of the Rules of International Humanitarian Law (2017)**

Abdul Ali Mohammed Sawadi, Arab Center for Publishing and Distribution, Egypt, 1st ed., 306 pages.

In this book, the author seeks to clarify the concept of international humanitarian law and the importance of its application, as well as to define the responsibility of states and international organizations in cases of violations of the rules of international humanitarian law. This comes at a time when the world is witnessing an unprecedented number of bloody armed conflicts occurring simultaneously since the end of the Second World War. The author highlights the importance of the book in explaining the rules of international humanitarian law, which have proven insufficient to alleviate the suffering of the vast number of victims of these conflicts. The Geneva Conventions have neither been seriously neglected nor have the rights of victims been treated with tragic disregard as is the case today. At a time when war should be excluded as a means of resolving disputes being a negation of contemporary international law the author notes that violent confrontations are increasing across the globe.

**The Basis of the Binding Force of the Rules of International Law and State Sovereignty** (2017)  
Mohammed bin Lakhdar, *Journal of Law*, Algeria, Volume 6, Issue 1, pp. 169–186.

The study aimed to demonstrate the rejection by international legal scholarship of skeptical views questioning the very existence of international law. The author discussed the intense debate surrounding whether the rules of international law constitute peremptory legal norms, based on the argument that there is no law to which sovereign states can be subject or that can be imposed upon them, given the absence of an international legislative authority empowered to enact such law, a supranational executive authority capable of enforcing it even by force if necessary and an effective international judicial system capable of applying it and resolving disputes arising from its rules. The study concluded that there are binding rules and peremptory norms that may not be violated or agreed upon in contravention thereof, thereby disproving the claims of skeptics in this ongoing debate.

#### 4 Research Methodologies

The study relied on several methodologies, chosen according to the nature of the subject. The **descriptive-analytical method** was employed to analyze legal texts, contributing to a deeper understanding of them within their context. This approach allows viewing the texts from a broader perspective that integrates both the legal and political dimensions of international law principles, and it explores the analytical potential of these principles to interpret the legal reality in interaction with the political reality on the ground.

Additionally, the **historical method** was utilized to gain a deeper understanding of the historical circumstances and continuities of wars and conflicts among humans, and to comprehend the surrounding complexities. Examining the past helps to understand the present as a result of historical developments and to anticipate future trends.

#### 5 Study Structure

The researchers divided the study into two main sections; The first section focuses on the position of international law regarding de facto authorities and its use in balancing power in contemporary reality. The second section centers on clarifying the stance of international law concerning the protection of

civilian populations and civilian objects, through an examination of relevant international legislation and treaties. It also addresses the issue of the acquisition of territory by force and the criminalization of occupation under international law.

## 1. De Facto Authorities: A Study of the Contradiction Between Law and Practice

Regardless of these positions and orientations, the issue of protecting and safeguarding civilian populations and civilian objects has always been, and remains, a focal point of contention among major and minor powers, between East and West, and among all empires that have ruled the world throughout history and will continue to do so. This is not out of altruism, but for the same objective pursued by past colonial powers and which subsequent powers will also pursue: the welfare and assistance of peoples. History repeats itself, albeit in a different guise, through political policies that often distort and obscure the true history of any colonized territory, imposing a new reality and structure dominated by the institutions and culture of de facto authorities<sup>6</sup>.

It is important to note that the annexation of territory or the confiscation of property and lands does not alter the legal reality; such acts constitute violations of international law. All administrative and legislative measures taken by the occupying authority are considered null and void under international law<sup>7</sup>. In practice, any state seeking to enhance its status through the principle of protection and care for civilians during armed conflicts often does so to obscure its broader crimes, particularly in cases of occupation through settlement policies. Such policies represent a core element of power, creating a new reality in the occupied territory while ostensibly promoting civilian protection<sup>8</sup>. International law and legitimacy constrain the behavior of conflicting parties, requiring engagement with the United Nations and its various institutions, as well as with international organizations aligned with similar objectives that promote the maintenance of international peace and security and the prevention of threats thereto<sup>9</sup>.

Although the UN Charter, in Articles 39–51, grants the Security Council broad powers, including the authority to maintain international peace and security through peaceful means as well as military measures and sanctions under Chapter VII, these powers remain subject to the interests, balances, and orientations of global powers<sup>10</sup>.

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<sup>6</sup> Rona Sela, *To See the Palestinians: The Public in the Israeli Military Archives*, translated by Alaa Halayel, Palestinian Center for Israeli Studies (MADAR), Palestine, June 2018, pp. 17–24.

<sup>7</sup> Khaled Al-Daif Shibli, *The Constitutional Status during Belligerent Occupation*, Al-Halabi Legal Publications, Beirut, 1st ed., 2016, pp. 220–221.

<sup>8</sup> Alaa Amer Mousa Al-Jaab. (2016). *Palestinian Refugees' Attitudes toward Permanent Status Issues: Rafah Governorate as a Case Study* (Doctoral dissertation).

<sup>9</sup> Nadia Al-Hawas, *A Concise Guide to International Organizations: An Attempt to Assess Their Effectiveness in the International Reality*, Maraya Publishing, 1st ed., Rabat, 2005, p. 19.

<sup>10</sup> Moataz Abdelkader Mohamed Al-Jabouri, *UN Security Council Resolutions: An Analytical Study*, Dar Shatat for Publishing and Software, Dar Al-Kutub Al-Qanuniya, Egypt & UAE, 2012, pp. 25–29.

The Charter, however, preserves several fundamental principles, including: the prohibition of acquiring territory by force, the right to self-determination, the legitimacy of self-defense, the criminalization of the use or threat of force, and the principle of equality among states<sup>11</sup>.

International jurisprudence has consistently affirmed the prohibition of annexing occupied territories, considering such acts illegal even if they provide special protection for civilians, and recognized that they carry no legal effect<sup>12</sup>. Consequently, the state or authority that annexes a territory remains occupying power subject to the law of war. Numerous United Nations resolutions have condemned and criminalized the seizure of territory by force<sup>13</sup>, reinforcing the principle of prohibiting the use of force and urging states to adhere to general principles of international law and respect the sovereignty of other states<sup>14</sup>.

International legal scholars and authorities agree that when a territory is occupied, occupation does not transfer sovereignty outright to the occupying state. Rather, its effect is limited to establishing **temporary effective control** by the occupying military forces, which exercise authority over the territory without the consent of the defeated government<sup>15</sup>. This principle is affirmed by the **Hague Regulations**, the **Fourth Geneva Convention**, and other relevant treaties<sup>16</sup>.

In essence, no law or legislation permits violations against the safety and lives of civilian populations. The **Fourth Geneva Convention of 1949** explicitly prohibited several acts by occupying or warring forces against civilians, including: attacks on life or physical integrity, cruel or inhuman treatment, taking hostages, forced displacement, discrimination, and issuing judgments or enforcing punishments without fair trial<sup>17</sup>.

However, in practice, the prevailing approach has often been to manipulate international law and the institutions of international legitimacy to serve the interests of major powers. This has contributed to a weakening and aging of international legal institutions, limiting their ability to effectively maintain international peace and security. As a result, weaker states have often turned to the **United Nations General Assembly**, seeing it as the most equitable forum, despite its resolutions being non-binding.

<sup>11</sup> Nabil Al-Ramlawi, *Palestinian Diplomacy and Israeli War Diplomacy before International Law*, Dar Al-Shorouk for Publishing and Distribution, 1st ed., Ramallah, 2014, p. 179.

<sup>12</sup> Fadi Shadid, *Protection of Civilians under Military Occupation*, Fadaat for Publishing and Distribution, 1st ed., Amman, Jordan, 2011, pp. 292-293.

<sup>13</sup> Mostafa Ahmed Abu El-Kheir, *The Separation Wall Fatwa and International Law*, Eitrak for Printing, Publishing, and Distribution, 1st ed., Heliopolis, Egypt, 2006, pp. 118-119.

<sup>14</sup> Laith Mahmoud Al-Mubaydeen, *The American Occupation of Iraq from the Perspective of International Legitimacy*, Dar Al-Hamed for Publishing and Distribution, 1st ed., Jordan, 2012, pp. 101-109.

<sup>15</sup> Rajab Abdel Moneim Metwally, *The Principle of the Prohibition of the Acquisition of Territory by Force in Light of Contemporary International Law, with an Applied Study of the Iraqi Aggression against Kuwait*, Al-Omraniya Offset Printing Press, 1st ed., Giza, 1999, p. 326.

<sup>16</sup> Milano, E. (2017). Occupation. In J. Schechinger (Author) & A. Nollkaemper & I. Plakokefalos (Eds.), *The Practice of Shared Responsibility in International Law* (Shared Responsibility in International Law, pp. 733-760). Cambridge: Cambridge University Press. doi:10.1017/9781316227480.029

<sup>17</sup> Montasser Saeed Hamouda, *Contemporary International Law*, Dar Al-Fikr Al-Jami'i, 1st ed., Alexandria, 2008, p. 429.

These resolutions, however, preserve hope and serve as instruments of pressure and moral accountability<sup>18</sup>.

Nonetheless, this does not diminish the importance of the **United Nations**, international treaties, and conventions, which recognize one of the UN's objectives as promoting friendly relations between states based on the **right to self-determination**. Consequently, numerous UN resolutions have reaffirmed the full protection of civilian populations and civilian objects during armed conflict or lawful self-defense. Furthermore, the **International Covenant on Civil and Political Rights (1966)**, the **UN Security Council**, and the **International Court of Justice** through its advisory opinions have all contributed actively to the implementation and safeguarding of these rights<sup>19</sup>.

Under international humanitarian law, occupation is considered a stage of armed conflict or war that is **unlawful in origin**<sup>20</sup>, whereby effective and practical control is established over part or all of a territory and is administered temporarily in accordance with the principles of international humanitarian law<sup>21</sup>. This occurs **with full adherence to the rights and obligations imposed on de facto authorities toward civilians and their property**<sup>22</sup>, once the occupied territory comes under the actual control of the occupying authority<sup>23</sup>. Importantly, the occupying power does **not acquire sovereignty** over the occupied territory.

Dr. Ahmed Abu Al-Wafa supports this understanding, defining an occupied territory<sup>24</sup> as one in which **effective and practical control, exercise of authority, and maintenance of security** constitute the core of the occupation process<sup>25</sup>. This aligns with **Article 42 of the 1907 Hague Regulations**, which addresses temporary acquisition and administration of any part or the whole of a territory<sup>26</sup>. The purpose of occupation is the temporary control of the armed forces over the territory of a foreign state to achieve specific objectives<sup>27</sup>.

<sup>18</sup> Orouba Jabbar Al-Khazraji, *International Human Rights Law*, Dar Al-Thaqafa for Publishing and Distribution, 1st ed., Amman, Jordan, 2010, pp. 121, 139, 488–489.

<sup>19</sup> Hakim Al-Touzani, *Problematics of the Principle of Peoples' Right to Self-Determination in Light of Developments in Public International Law*, **Alam Al-Fikr**, Kuwait, Issue No. 174, April–June 2018, pp. 25–29.

<sup>20</sup> Tayyibi Wardah, *The General Principles of the Law of Belligerent Occupation and Their Application in the Occupied Palestinian Territories*, **Jil Journal of Human Rights**, Issue No. 27, February 2018, p. 121.

<sup>21</sup> Ziad Abdel Latif Al-Quraishi, *Occupation in International Law: Rights and Duties with an Applied Study on the Case of Iraq*, Dar Al-Nahda Al-Arabiya, Cairo, 1st ed., 2007, p. 28.

<sup>22</sup> Taybi Warda, “The General Principles of the Law of Belligerent Occupation and Their Applications in the Occupied Palestinian Territories,” *Jeel Human Rights Journal*, Issue No. 27, Lebanon, February 2018, p. 121.

<sup>23</sup> Khalaf Ramadan Al-Jubouri, *Acts of the State under Occupation*, Dar Al-Jami‘a Al-Jadida, 1st ed., Cairo, 2010, p. 22.

<sup>24</sup> Khaled Al-Deif Shibli, *The Constitutional Status under Belligerent Occupation*, Al-Halabi Legal Publications, 1st ed., Beirut, 2016, pp. 53–55.

<sup>25</sup> Ahmed Abou-El- Wafa. The Occupation Bellica (Military Occupation). Recent Trends. Review Egyptian of the International law .Vol. 64.2008. P2.

<sup>26</sup> Ahmed Ismail Al-Omari, *The Entry into Force of Treaties under Military Occupation*, Dar Al-Kutub Al-Qanuniyya and Dar Shetat for Publishing and Distribution, 1st ed., Egypt–UAE, 2014, p. 28.

<sup>27</sup> Abdel Rahman Abu Al-Nasr, *The Fourth Geneva Convention for the Protection of Civilians 1949 and Its Application in the Occupied Palestinian Territories*, Rashad Al-Shawa Cultural Center Press, 1st ed., Gaza, 2000, p. 368. See also: Arnold Duncan McNair and Arthur Desmond Watts, *The Legal Effects of War*, Cambridge University Press, 4th ed., 1966, p. 366.

These definitions also emphasize the **inability of the sovereign state to exercise its authority** over the territory<sup>28</sup>. Contemporary international law does not recognize occupation as a legitimate act but rather regulates its realities and consequences<sup>29</sup>. Occupation is not limited to colonial powers; it can also be undertaken by armed groups or militias, as exemplified in 2001 when an armed group attempted to occupy one of the Comoros islands<sup>30</sup>.

It is important to distinguish between **military occupation** and **war**. Military occupation is a “temporary phase following armed aggression and war,” whereas war represents the stage of “combat and engagement on the battlefield to achieve political or economic objectives<sup>31</sup>. ” Accordingly, since occupation represents a temporary factual center without sovereignty over the territory, the application of the laws of the legitimate sovereign particularly judicial, criminal, and administrative laws remains applicable to maintain security and public order, unless there is an overriding impediment<sup>32</sup>.

In short, occupation is a temporary and unlawful phenomenon, even if it exists and is legally recognized as a factual reality. To be considered such a situation under the meaning of international law, two essential conditions must be met: **effective control and actual acquisition of the territory**, and the **establishment of a temporary authority to administer it by force**, enabling it to exercise all the powers granted to it under the provisions of the law of military occupation, and to fulfill the international obligations incumbent on the occupying state toward the civilian population in the territory, even if these powers and responsibilities are limited.

## 2. Occupation and Its Legal Responsibilities Toward Civilians: A Review of International Frameworks

Scholars and lawmakers foresaw that the future international system would be built on major alliances according to their vital interests, often with little regard for the oppressed populations. As a result, legislators succeeded in codifying special protections and guarantees for civilian populations, regardless of the conflicting parties, and prescribed deterrent sanctions against violators who disregard the rules and principles of international human rights law, particularly in occupied territories. Standards for protection and monitoring were therefore established.

In this regard, numerous international treaties and regulations reflect these principles. The **1907 Hague Convention** explicitly outlines the duties of the occupying power toward civilians in the occupied

<sup>28</sup> Worida Jandali, *Forced Displacement of Civilians during Armed Conflicts*, Arab Office for Knowledge, 1st ed., Cairo, 2018, p. 103.

<sup>29</sup> Walid Bitar, *Public International Law*, Majd University Foundation for Studies, Publishing, and Distribution, 1st ed., Beirut, 2008, p. 801.

<sup>30</sup> Suhail Hussein Al-Fatlawi, *International Terrorism and the Legitimacy of Resistance*, Dar Al-Thaqafa for Publishing and Distribution, 1st ed., Amman, 2009, pp. 116-117.

<sup>31</sup> Khalid Al-Dhaif Shibli, *The Constitutional Situation during Military Occupation*, previous reference, p. 48. Ahmad Abou El-Wafa, *A Manual on the Law of International Organizations*, ibid., p. 42.

<sup>32</sup> It should be emphasized that compliance by an occupying power with the provisions of international law does not, by nature, negate the illegality of the occupation act itself. For further reference, see: Abdel Rahman Abu Al-Nasr, *The Fourth Geneva Convention for the Protection of Civilians, 1949, and Its Application in the Occupied Palestinian Territories*, previous reference, pp. 369-370; and also: O. Ben-Naftali, A. M. Gross, and K. Michaeli, “Illegal Occupation: Framing the Occupied Palestinian Territory,” *23 Berkeley Journal of International Law* (2005), p. 552.

territory through **Articles 45, 46, 47, 50, and 52**. Building upon this, the **Fourth Geneva Convention of 1949** devotes **Part III (Articles 27–62)** to the status and treatment of protected persons, including prohibitions on torture, reprisals, hostage-taking, and forced displacement. The Convention obliges the occupying state to provide special protection for women, children, and the elderly, while safeguarding the physical and mental integrity of civilians.

Consistent with these principles, subsequent instruments emphasized the **care and protection of civilian populations and victims**, even outside the context of international conflicts, recognizing the inherent dignity of the human person as protected by humanitarian principles and public conscience before treaties and laws. This is reflected in **Additional Protocol II of 1977**, which stresses the need for the occupying power to fully implement its obligations toward civilians without discrimination, taking into account the nature of the armed conflict or its origin. Similarly, the **preamble of Additional Protocol I (1977)** reinforces these commitments<sup>33</sup>.

To uphold international peace and security and prevent undesirable consequences in asymmetrical armed conflicts, civilized nations have regulated the means and methods of warfare. Specifically Protected persons cannot waive, wholly or partially, the rights granted to them under international treaties and laws. The use of weapons causing excessive material or human harm, or significant environmental damage, is prohibited, in accordance with Article 35 of Additional Protocol I (1977) and Article 8 of the Fourth Geneva Convention (1949)<sup>34</sup>.

It should be noted that the use of force is restricted to two essential cases: legitimate self-defense and authorized action under Chapter VII of the UN Charter. Any other use constitutes illegal action, incurring legal responsibility<sup>35</sup>.

Accordingly, and to limit violations of the fundamental rules of human conduct, international law has defined the **responsibilities and duties of the occupying power toward the civilian population in the occupied territory**<sup>36</sup>.

<sup>33</sup> See the Preamble of the *Additional Protocol II of 1977*.

<sup>34</sup> See Article 35 of the *Additional Protocol I of 1977*.

<sup>35</sup> Al-Sayyid, Muhammad Rafiq, and Ghaib, Ali Almas, “The Responsibility of the Occupying State for Compensating Civilian Damages,” *Journal of the College of Law and Political Sciences*, University of Kirkuk, Iraq, Vol. 7, No. 76, 2018, p. 291.

<sup>36</sup> Paragraph 3 of Article 85 of the 1977 Additional Protocol I provides that the following acts, in addition to the grave breaches defined in Article 11, shall be considered grave breaches of this Protocol if committed intentionally, in violation of the provisions of this Protocol, and cause death or serious bodily or health harm:

- a) Making civilians or individual civilians the object of attack;
- b) Launching an indiscriminate attack that affects civilians or civilian objects, knowing that such an attack will cause significant loss of life, injuries to civilians, or damage to civilian objects, as referred to in paragraph 2(1) thirdly of Article 57;
- c) Attacking works or installations containing dangerous forces, knowing that such an attack will cause significant loss of life, injuries to civilians, or damage to civilian objects, as referred to in paragraph 2(a) thirdly of Article 57;
- d) Making undefended localities or demilitarized zones the object of attack;
- e) Targeting a person knowing that they are hors de combat (unable to fight);
- f) Treacherous use in violation of Article 37 of the distinctive emblems of the Red Cross, Red Crescent, Red Lion and Sun,

The **Fourth Geneva Convention of 1949** dedicates its **Second Part** to the **general protection of the population from certain consequences of war**, with Article 13 stating: *"The provisions of this Part apply to the entire population of countries involved in the conflict, without any adverse distinction based on race, nationality, religion, or political opinions, and are intended to alleviate the suffering caused by war."*

Similarly, according to **Article 46 of the 1907<sup>37</sup> Hague Convention**, the occupying power is responsible for **respecting the honor, conscience, and dignity of protected civilians**, as well as **their family rights, beliefs, customs, and traditions**, protecting them against all forms of violence and coercion. This is further affirmed in **Article 27 of the Fourth Geneva Convention<sup>38</sup>**, as well as in **Paragraph 1 of Article 23 of the International Covenant on Civil and Political Rights<sup>39</sup>**, and the general human rights provisions enshrined in the **Universal Declaration of Human Rights**.

Respecting the dignity of civilians requires that they not be subjected to any punitive or humiliating acts. Therefore, the occupying power is **obliged to respect all protected persons without any harmful discrimination based on race, religion, or political opinions**.

International conventions and treaties have **prohibited torture, killing, looting, and inhumane treatment** of the civilian population in occupied territories. The **Fourth Geneva Convention** explicitly bans such acts in **Articles 31 and 32<sup>40</sup>**, prohibiting the killing of civilians, whether **direct or indirect**, and regardless of the type of weapon used—including chemical, biological, atomic, or hydrogen weapons. Even the use of otherwise permissible weapons is forbidden against civilians if they are potentially lethal.

The Convention also prohibits **passive killings**, such as leaving the wounded, sick, or incapacitated to die due to lack of assistance. Instead, the occupying power must provide means to **protect their lives and ensure survival**. This principle is reinforced in **Article 147 of the Fourth Geneva Convention (1949)**, which establishes general protection for populations and property, taking into account the principles of **necessity and proportionality**, and forbidding abuse of authority.

Legal frameworks also establish rules to address potential violations during armed conflicts. They **mandate a clear distinction between civilians and combatants**, and **authorize attacks solely against military objectives**, not civilian objects. A **military objective** is defined as one that effectively contributes to military action, whether by its nature, location, purpose, or use, and whose complete or partial destruction, capture, or neutralization offers a definite military advantage<sup>41</sup>.

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or any other protective signs recognized by the Conventions or this Protocol.

<sup>37</sup> See the text of Article 46 of the 1907 Hague Convention.

<sup>38</sup> See the text of Article 27 of the Fourth Geneva Convention of 1949.

<sup>39</sup> See the text of paragraph 1 of Article 23 of the International Covenant on Civil and Political Rights (ICCPR) of 1977.

<sup>40</sup> See Articles 31 and 32 of the Fourth Geneva Convention of 1949.

<sup>41</sup> Hisham Mustafa Muhammad, *Human Rights in Arab Legislation and International Charters*, Dar Al-Matbou'at Al-Jamia'iyya, 1st edition, Alexandria, 2016, p. 223.

Civilians **must not participate in military operations**, otherwise they lose their protected status, a principle that also applies to civilian objects<sup>42</sup>.

Furthermore, international conventions and treaties highlight the **occupying power's responsibility to ensure public health and sanitary conditions**, providing **adequate food, medical care, and humanitarian assistance** to the population in occupied territories, as stipulated in **Articles 55 and 56 of the Fourth Geneva Convention**<sup>43</sup>.

In the same context, the occupying power is obligated, as noted above, to **allow personnel of the International Committee of the Red Cross (ICRC) and the Red Crescent to carry out their humanitarian activities**, providing the population of the occupied territories with adequate **food, medical supplies, and services** through humanitarian projects. This, however, **does not relieve the occupying power of its own responsibility** to ensure the provision of food, medical supplies, and services to the local population to the maximum extent of the resources at its disposal<sup>44</sup>.

According to **Article 50 of the Fourth Geneva Convention**, regarding education and the care and welfare of children, the occupying power is responsible for **maintaining and supporting educational institutions**, including providing adequate staff, supplies, equipment, and all material requirements necessary for the proper functioning of these institutions. The occupying state must also take all necessary measures to **ensure the care and education of children who have been orphaned or separated from their parents due to war**, thereby assuming the responsibility of guaranteeing the education and welfare of children displaced by war or military occupation<sup>45</sup>.

Furthermore, **Article 44 of the 1907 Hague Convention** stipulates that: "*No party to the conflict may compel inhabitants of occupied territories to provide information about the armed forces of the opposing side or the means of defense employed by these forces.*" Similarly, **Article 45** prohibits forcing inhabitants to swear allegiance to the occupying power or to directly participate in its military efforts, and forbids compelling them to provide information regarding their security interests. **Article 51 of the Fourth Geneva Convention (1949)**<sup>46</sup> reinforces this, clarifying that the exceptional obedience of the civilian population is limited to **following lawful orders of the occupying authority without harming its security**. Therefore, civilians **have no obligation to pledge loyalty or obedience to the occupying power**.

Thus, the rules of military occupation **safeguard the right to work for the civilian population in occupied territories** by maintaining legislation that guarantees working conditions, including wages, rest periods, bonuses, initial training, and compensation for workplace accidents. These laws must be

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<sup>42</sup> Ahmed Obais Al-Fatlawi & Rabab Al-Kasari, "The Obligation to Remove Civilians from Hostilities in Light of International Humanitarian Law," *Journal of Al-Kufa Studies Center*, Iraq, Vol. 1, No. 56, 2020, p. 90.

<sup>43</sup> See Articles 55 and 56 of the Fourth Geneva Convention of 1949.

<sup>44</sup> See Article 59 of the Fourth Geneva Convention of 1949.

<sup>45</sup> See Article 50 of the Fourth Geneva Convention of 1949.

<sup>46</sup> See Article 51 of the Fourth Geneva Convention of 1949.

applied while prohibiting any work that serves the occupier, meaning civilians cannot be compelled to perform labor that would strengthen the occupying power's military capacity against their own state<sup>47</sup>.

Furthermore, **Article 49 of the Fourth Geneva Convention (1949)** prohibits the occupying power from **forcibly transferring or deporting the population, whether individually or in groups, within or outside the occupied territory**, establishing an absolute ban on forced transfers without exception. This is reinforced by **Article 17 of Additional Protocol II (1977)**<sup>48</sup>.

Although Article 49 allows evacuations or transfers **if necessary for the welfare of the civilian population**, it requires the occupying power to **provide suitable accommodations for protected persons**. The occupying power is also **prohibited from transferring its own nationals into the occupied territory**, as settlement constitutes an international crime<sup>49</sup>.

Moreover, under **Article 33 of the Fourth Geneva Convention (1949)**, the occupying power is forbidden from imposing **collective punishments on protected persons**. **Article 75(2)(d) of Additional Protocol I (1977)** further emphasizes that **collective punishments are prohibited at all times and in all places**, whether carried out by civilian authorities or military personnel.

Accordingly, **collective punishments carried out by the occupying power against the civilian population are prohibited**, as they constitute **war crimes punishable under international law**. Acts of **reprisal against protected persons or their property** are also forbidden, reinforcing the principle of **distinction between combatants and non-combatants**, in accordance with the principle of the **“personal nature of punishment.”**

Under **Article 34 of the Fourth Geneva Convention (1949)**, the occupying power is also **prohibited from taking hostages** from the citizens of the occupied state, explicitly stating that *“taking hostages is prohibited.”* Similarly, **Article 75/2 of Additional Protocol I** affirms that *“taking hostages is prohibited,”* recognizing that such acts constitute a **violation of personal liberty**, are **criminal acts**, and represent **atrocities infringing on the right to life**. They are considered a form of **collective punishment** and a breach of **international humanitarian law**.

The occupying power is obligated to **treat humanely all persons who do not take a direct part in hostilities**, including members of the armed forces who have laid down their arms, as well as persons hors de combat due to sickness, wounds, detention, or any other cause. This obligation is derived from **Article 3/1 of the Fourth Geneva Convention of 1949**. This is also consistent with **Article 37 of the same Convention**, which addresses the humane treatment of protected people during detention and pretrial confinement.

<sup>47</sup> Fadi Shadid, *Protection of Civilians under Military Occupation*, previously cited reference, p. 166.

<sup>48</sup> See Article 17 of the Second Protocol of 1977.

<sup>49</sup> See Article 49 of the Fourth Geneva Convention of 1949.

Consequently, the parties to the conflict are required to establish **organized arrangements** to allow the passage of religious personnel and medical missions, with the aim of facilitating the evacuation and transport of the sick, the infirm, women, and the wounded from areas besieged by military forces due to ongoing hostilities, in accordance with **Article 17 of the Fourth Geneva Convention of 1949**.

This is further consistent with **Additional Protocol I of 1977**, relating to the protection of victims of international armed conflicts, which provides **special protection** to medical personnel, religious personnel<sup>50</sup>, and persons accompanying the armed forces without being members thereof, such as civilian aircraft crews, food supply personnel, war correspondents, and journalists. All such individuals are considered **protected people**, provided they hold authorization from their forces, and must be treated as **prisoners of war** if captured<sup>51</sup>. The same protection applies to aircraft transporting the wounded, sick, and infirm along previously agreed routes, as stipulated in **Article 22 of the Fourth Geneva Convention of 1949**, and reaffirmed in **Article 27 of Additional Protocol I of 1977**<sup>52</sup>.

In this context, there is ongoing debate regarding the concept of the state and its constituent elements whether a state is internationally recognized or not, whether it exists, and whether it possesses sovereignty, all of which are addressed in the **Montevideo Convention of 1933**. Accordingly, the principles of **international accountability and individual criminal responsibility** have been adopted by the **International Court of Justice**, which adjudicates disputes between states, and by the **International Criminal Court**, which has jurisdiction over the prosecution of individuals and leaders<sup>53</sup>. However, this development is **not contingent upon the principle of the right to self-determination**, which is a peremptory norm granting people the right to liberation from domination and colonialism; such peoples are likewise bound by the relevant legal norms<sup>54</sup>. There is also a **clear legal basis for distinguishing** between acts of resistance undertaken in pursuit of freedom and national self-determination, and **blind, ideological, and unlawful terrorism**, which contravenes all divine laws and international legal instruments<sup>55</sup>.

Accordingly, **penalties have been imposed for grave violations committed against civilians**, as such acts require accountability and prosecution in light of the relevant rules and principles of international law, foremost among them the **Rome Statute of the International Criminal Court of 1998**. To

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<sup>50</sup> See Article 8 of the First Additional Protocol to the Geneva Conventions of 1977.

<sup>51</sup> See Article 9 of the First Additional Protocol to the Geneva Conventions of 1977.

<sup>52</sup> See Article 22 of the Fourth Geneva Convention of 1949, and Article 27 of the First Additional Protocol of 1977.

<sup>53</sup> Johnny Assi, Morsi Abdel-Razek, "The Transfer of the U.S. Embassy to Jerusalem before the International Court of Justice," *Al-Mustaql Al-Arabi Journal*, Arab Center for the Study of Arab Unity, Beirut, Issue 522, August 2022, pp. 55-57.

<sup>54</sup> Morsi Abdel-Razek, Ismail Al-Razawi, "The Right to Self-Determination from the Perspective of International Legitimacy," *African Journal of Advanced Studies in Humanities and Social Sciences*, Libya, Vol. 2, Issue 1, (January–March) 2023, p. 307.

<sup>55</sup> Morsi Abdel-Razek, *Resistance and Terrorism in the Light of International Humanitarian Law, Journal of Extremism and Armed Groups*, Arab Democratic Center for Studies, Berlin, Germany, Issue 11, May 2023, p. 309.

conclude, the **Fourth Geneva Convention** obliges the parties to a conflict to **distinguish between the civilian population and combatants**<sup>56</sup>, as stipulated in **Articles 3 and 4** of the Convention<sup>57</sup>.

The same principle applies with respect to the **right to life**, whereby the crime of **genocide has been prohibited under international law and international legislation**. This was affirmed by the **International Court of Justice** in the **Genocide Convention case of 2007 (Bosnia and Herzegovina v. Serbia and Montenegro)**<sup>58</sup>, in which the Court ruled that "*the obligation not to commit genocide applies to a State wherever it acts or may be able to act*," in a manner **not restricted by territorial boundaries**<sup>59</sup>.

In the same context, the protection of human beings from all surrounding threats foremost among them the **right to life** is a **collective matter** that concerns each state individually and, at the same time, constitutes a responsibility of the **international community as a whole**<sup>60</sup>.

It should be noted here that an occupying power may resort to the use of **private security companies**, which are profit-oriented commercial entities; however, such companies may incur serious losses and damage to their reputation, particularly if they are accused of **complicity in the commission of war crimes**, especially in cases involving **human rights violations at checkpoints or elsewhere**. In such circumstances, **employees of these companies may be held criminally liable and prosecuted**<sup>61</sup>.

In light of the foregoing, the researcher concludes with a set of findings and recommendations.

Occupation constitutes a temporary factual situation that does not transfer legal sovereignty; therefore, two forms of sovereignty coexist: a de facto sovereignty exercised by the occupying power and a legal sovereignty that remains vested in the original population. The effects of occupation are limited to the actual administration of the territory after it has been brought under control by force and following the withdrawal or flight of the legitimate government, whereby the occupying power assumes administrative functions in accordance with the law of belligerent occupation.

The occupying state bears legal responsibility toward the population of the occupied territory, including the maintenance of security and public order, the protection of public health, the provision of

<sup>56</sup> *International Humanitarian Law and the Protection of Civilians during Armed Conflicts*, *International Humanitarian Law Series*, No. 3, 2008, p. 3.

<sup>57</sup> A civilian is considered, according to Article 3/1 of the Fourth Geneva Convention, as "any person who does not directly 'take part in hostilities.'" Article 4/1 of the same convention further defines protected persons, stating that "the persons protected by this Convention are those who, at any given time and in any manner, find themselves, during a conflict or occupation, under the authority of a Party to the conflict of which they are not nationals, or of an Occupying Power of which they are not nationals."

<sup>58</sup> Dinstein, Y. (2019). Protection of the Civilian Population under Belligerent Occupation. In *The International Law of Belligerent Occupation* (pp. 160-193). Cambridge: Cambridge University Press. doi:10.1017/9781108671477.008

<sup>59</sup> Dinstein, Y. (2009). Protection of the civilian population under belligerent occupation. In *The International Law of Belligerent Occupation* (pp. 146-179). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511818257.008

<sup>60</sup> Miller, D. (2009). The responsibility to protect human rights. In L. Meyer (Ed.), *Legitimacy, Justice and Public International Law* (pp. 232-251). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511691720.009

<sup>61</sup> Darcy, S. (2023). "Chapter 12 Private Sector Responsibility for the Treatment of Palestinian Prisoners and Detainees in Light of the Law and Policy of the International Criminal Court". In *Prolonged Occupation and International Law*. Leiden, The Netherlands: Brill | Nijhoff. doi: [https://doi.org/10.1163/9789004503939\\_014](https://doi.org/10.1163/9789004503939_014)

education and child welfare, and the supply, to the fullest extent permitted by the means at its disposal, of food, medical care, and other humanitarian needs, as well as allowing the staff of the International Committee of the Red Cross and the Red Crescent to carry out their humanitarian activities.

Furthermore, the occupying power is obliged to treat humanely all persons who do not take a direct part in hostilities, including members of the armed forces who have laid down their arms and persons hors de combat due to illness, injury, detention, or any other cause.

International law mandates a strict distinction between civilians and combatants, and it defines and regulates means of defense and attacks so that they are directed exclusively against military objectives, excluding objects of a civilian nature. It prohibits torture, killing, pillage, and inhuman treatment of the population of occupied territories, and forbids the use of weapons that cause excessive material or human damage or that harms the environment.

The occupying power bears the responsibility to respect the honor, conscience, and dignity of protected civilians, as well as their family rights, beliefs, customs, and traditions, and to protect them from all forms of violence and coercion. Serious violations of international humanitarian law and international criminal law committed by any military forces whether belonging to a state, a liberation movement, or any organization against civilian populations and civilian objects, which are prohibited under these rules and laws, fall within the subject-matter jurisdiction of the International Criminal Court, as they constitute crimes provided for under the Rome Statute.

All weapons used in conflicts and wars, including those employed for purposes of liberation, are restricted and regulated under international law. All rules and provisions of international law applicable to occupation including the Fourth Hague Convention of 1907, the four Geneva Conventions of 1949, and their Additional Protocols apply to all cases of partial or total occupation, even if the occupation does not face armed resistance or if one of the parties to the conflict is not a party to those conventions.

In the context of armed conflicts, civilian populations face significant challenges in accessing essential resources such as water, food, and medicines. This process can be analyzed through the design of safe and efficient humanitarian supply chains, which involves identifying suppliers, transportation routes, and distribution centers while assessing potential risks to civilians at each stage. By using risk analysis tools such as Failure Mode and Effects Analysis (FMEA)<sup>62</sup> and simulation models, it becomes possible to estimate the likelihood of resource shortages or delivery delays and to design distribution routes that minimize civilian exposure to harm. In addition, performance indicators can be developed to measure distribution efficiency, including resource safety, delivery speed, and the number of civilians served with the lowest possible level of risk. This methodology ensures that logistical planning aligns with the obligations of de facto authorities under international humanitarian law and enhances civilian

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<sup>62</sup> Kovács, G., & Spens, K. Humanitarian logistics in disaster relief operations. *International Journal of Physical Distribution & Logistics Management*, 2007.

protection by enabling data-driven and well-informed decisions that guarantee fair and safe access to essential resources<sup>63</sup>.

### **Recommendations:**

Obligating all states, through the United Nations (which would require an amendment to its Charter), to accede to and sign the Rome Statute establishing the International Criminal Court, and to harmonize international conventions with national legislation.

### **6 Conclusions**

It has become clear beyond any doubt that direct or indirect attacks against civilians and civilian objects, resulting from deliberate or indiscriminate bombardment carried out without regard to applicable legal regimes and regulations, constitute serious violations that have been expressly prohibited under the rules of international humanitarian law, in addition to Articles 5 through 8 bis of the Rome Statute. This leads us to conclude that such acts fall within the subject-matter jurisdiction of the International Criminal Court, as they constitute crimes among those stipulated in the aforementioned provisions.

It is of particular importance to emphasize that these grave violations committed by the armed forces of a state against civilian populations and civilian objects may be regarded as among the most serious breaches of international humanitarian law and international criminal law, especially with regard to acts of mass and individual killings and the destruction of civilian property as a result of brutal practices and indiscriminate military bombardment. In such cases, the mental element of criminal intent required for the crimes set forth in the Rome Statute is clearly established.

**Accordingly**, we consider it incumbent upon all relevant parties to intensify efforts to make effective use of the provisions of the Rome Statute establishing the International Criminal Court. Accountability in this context applies to all parties, encompassing all individuals responsible for such crimes, including leaders and subordinates alike, regardless of their titles or designations. In this regard, all weapons used in conflicts and wars, including those employed for purposes of liberation, are subject to and restricted by international law.

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