

# THE NATURE OF CRIMES COMMITTED AGAINST PALESTINIANS IN LIGHT OF THE ROME STATUTE -THE CRIME OF GENOCIDE AND CRIMES AGAINST HUMANITY-

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## **Abstract:**

The Israeli occupation has excelled in committing the most heinous crimes that the International Criminal Court has jurisdiction to consider - the crime of genocide and crimes against humanity - thus declaring a violation of the rules of international humanitarian law, international human rights law, and all international covenants, charters and norms.

Addressing this topic has demonstrated the correct legal classification of these crimes-The crime of genocide and crimes against humanity-, with the aim of contributing to limiting the crimes of the Israeli enemy in Palestine, given the utmost importance of this matter from the perspective of international criminal law, at a time when it is time to hold Israel accountable for the serious violations in Palestine.

**Keywords:** Palestine ; Human rights ; Israeli occupation ; Rome Statute.

## **INTRODUCTION**

Despite the tireless efforts made by countries, international organizations and individuals to establish the concept of friendly relations between countries and peoples of the world, and everyone has been keen to adhere to what has been confirmed by the United Nations Charter and international law and custom in order to resolve international disputes and differences peacefully, we nevertheless find many violations of these legal rules, which called for the acceleration of the establishment of the International Criminal Court to prosecute persons who commit crimes against victims of wars, and so that immunity does not prevent the prosecution of those responsible for these crimes.

The Israeli violations of the rights of the Palestinian citizen have reached a level of seriousness that the world cannot remain a spectator, and the Israeli occupation continues to disregard all international legitimacy resolutions, and refuses to assume its responsibilities imposed on it by the Geneva Conventions as an occupier regarding the protection of civilians. At a time when it is time to hold Israel accountable for the serious violations in Palestine.

Talking about international responsibility, whether criminal or civil, for what the Israeli authorities have committed in Palestine must be preceded by the issue of classifying these actions as international crimes. This is done by matching the actions with the criminal texts found in the international agreements that deal with this.

Through this research, we will briefly explain the meaning of the crime of genocide and crimes against humanity, applying them to the facts available to us, then discussing them in light of the events that occurred, i.e. we will provide an initial classification of the facts.

This research aims to identify crimes of genocide and crimes against humanity and the acts included under this name by international criminal law, and to contribute to answering the following problem: To what extent are crimes of genocide and crimes against humanity committed by the Israeli occupation against the Palestinians considered international crimes?

The main pillar of the research methodology was based on using the analytical and foundational method of the legal texts that organized this study; to understand their dimensions and the purpose behind them, by shedding light on them objectively; with the aim of revealing their truth.

## 1. The crime of genocide committed against the Palestinians:

Genocide is considered the most serious international crime because it threatens human life, health and dignity. Its seriousness becomes more apparent when we know that it does not threaten the extermination of a single individual or a group of individuals, but rather threatens an entire group or groups for reasons of nationality, ethnicity, race or religion. Even if they are not subjected to direct physical liquidation, they may be subjected to psychological illnesses that limit their energies and make them victims for life.

### 1.1. Definition of the crime of genocide:

The crime of genocide can be defined as: the extermination of the human race, and it is represented by committing acts to destroy a specific national, ethnic or religious group by killing and causing serious bodily or mental harm to members of the group, or taking measures to prevent their reproduction, or transferring the children of one group to another group.<sup>1</sup> There are a set of definitions of the crime of genocide that can be summarized in a set of points:

#### 1.1.1. Definition of Article 06, paragraph c, of the Nuremberg Charter<sup>2</sup>

Considering it a crime against humanity at that time, it stated the following: "...and persecutions on political, racial or religious grounds, when committed in conjunction with or in connection with a crime within the jurisdiction of the Court, and regardless of whether such acts constitute a violation of the national law of the State in whose territory they were first committed."

#### 1.1.2. Definition of the Convention on the Prevention and Punishment of the Crime of Genocide<sup>3</sup>

Article 2 of this Convention states: "Genocide means any of the acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group."

According to the text of this article, the criminal acts are as follows:

- A- Killing members of the group.
- B- Seriously harming the physical or mental integrity of members of the group.
- C- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in part or in whole.
- D- Imposing measures intended to prevent the population within the group.
- E- Forcibly transferring children from one group to another.<sup>4</sup>

The war of extermination waged against the defenceless Palestinian people in the Gaza Strip by Israel is the best evidence that it is an ethnic, religious war whose goal is to eliminate the Muslim and Christian Palestinian people in favour of the Jewish people. Prominent examples include the massacre committed in Beit Lahia, Khuza'a, Jabalia, Rafah, Deir al-Balah and all areas of the Gaza Strip.

#### 1.1.3. Definition of the Statute of the International Criminal Court<sup>5</sup>

Despite the importance of the Convention on the Prevention and Punishment of the Crime of Genocide, the most important development recorded at the level of international criminal law was the adoption by the international community of the statute of the International Criminal Court in 1998.

Indeed, the Statute specified in Article 5 the types of international crimes that fall within the jurisdiction of the International Criminal Court, including the crime of genocide.

According to the text of Article 6, genocide means: "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- A- Killing members of the group.
- B- Causing serious bodily or mental harm to members of the group.
- C- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- D- Imposing measures intended to prevent births within the group.
- E- Forcibly transferring children of the group to another group"<sup>6</sup>

The phrase "total or partial" means that the perpetrators of the crime deliberately destroyed an entire group or part of it, such as: its educated members or members living in one area. The perpetrator is considered to have committed it; even if he killed one person from the group, as

long as he knew that he participated in a broader plan aimed at destroying the group in whole or in part. There is no specific criterion for the number of victims to prove the crime, what is important is the direction of the perpetrator's will towards destroying large numbers of members of that group<sup>7</sup>.

It is noteworthy that the Rome Statute clearly and distinctly protects certain groups<sup>8</sup>, namely: national, ethnic, racial and religious. National groups mean: a group of individuals whose common identity is determined by the nationality of a particular country or by a common national origin. As for the ethnic group, it is a group of individuals whose identity is determined by common cultural traditions, a common language or a common heritage. As for the ethnic group, it means a group of individuals whose identity is determined by physical characteristics, and finally the religious group, which means: a group of individuals whose identity is determined by a common religious belief or common beliefs, doctrines, practices or rituals.

### **1.2.Elements of the crime of genocide<sup>9</sup>**

For criminal liability to be established, the crime of genocide must have three elements: the material element, the moral element, and the international element, as follows:

#### **1.2.1.material corner**

The material element of the crime of genocide includes everything that forms its composition and has a material nature. The material element of this crime is represented by one of the acts that constitute criminal conduct. These acts are exclusively specified in the definition of the crime of genocide in Article 6 of the Rome Statute, and take the following material forms and images:

**A.Killing individuals (members) of the group:** This act is well-known and prevalent in this crime, and it is the quick way to get rid of the group that is to be purified, so that it falls on all individuals without discrimination between men, women, elderly, and children, and by any means, and it is the same whether it is positive or negative behavior, and it is sufficient that it falls on some members of the group, and it does not require a specific number of dead, and it is carried out according to a systematic plan by the occupier. <sup>10</sup>

An example of mass killing is the Rafah massacre or the Khiam massacre, which was committed by the Israeli occupation air force on the eve of May 26, 2024. It targeted various areas in the city of Rafah, and these raids were launched simultaneously. This Israeli attack resulted in the death of at least 45 Palestinians, a large number of whom were children and women, most of whom were displaced. Dozens were also injured with amputations and severe burns. The situation worsened in light of the ongoing Israeli siege on the Strip, preventing the entry of sufficient medical aid, at least, and in light of the cessation of most of the Strip's hospitals from working as a result of the Israeli targeting.

The Fajr Massacre was a massacre committed by the Israeli occupation army on the morning of August 10, 2024, when it raided the Tabeen Sharia School, which housed hundreds of displaced persons, and was located in the Daraj neighborhood east of Gaza City. The violent airstrikes targeted the prayer hall where many Palestinians were, causing a horrific massacre that resulted in the deaths of at least 100 Palestinian civilians and the injury of dozens more, in addition to a number of missing persons.

During the beginning of 2024, the Israeli occupation committed several massacres, including: the Kuwait Roundabout massacres, the Nuseirat and Mawasi camps massacres, the Hamama School massacre, the Al-Awda School massacre, and the Al-Sardi School massacre. And many others.

**B.Individual killing:** Israel has practiced and continues to practice individual killings of civilians since its inception. The killings have come in the context of either taking revenge on the Palestinians and terrorizing and intimidating them, or with the intention of eliminating some elements of the Palestinian resistance. It has also come and continues to come in the form of assassinations inside or outside the country. Although the forms of killing have come there in an individual context, the repetition of its daily practice has made them massacres that approach the form of mass killing: <sup>11</sup> These crimes have multiplied and formed an integrated Israeli system, as many Palestinian martyrs have been killed in this way, including: Ismail Haniyeh, head of the political bureau of the Hamas movement, President Yasser Arafat, Sheikh Ahmed Yassin, the martyr

Abu Ali Mustafa, the martyr Khalil al-Wazir, Dr. Abdul Aziz al-Rantisi, and MP Saeed Siam... The list is long in this regard.

**C.Genocide by causing:** serious bodily or mental harm: This is the second form of the material element of the crime of genocide within the jurisdiction of the International Criminal Court, and represents an attack on the physical and mental integrity of the members of the group. This act is achieved by any means, whether physical or moral, such as: beating, wounding, and mutilation that leads to permanent disabilities. These previous acts are considered slow genocide, and this is evident from the effects of the injured persons and the number of disabilities among them.

**D.Genocide by imposing living:** conditions intended to cause physical destruction: This act is also a slow genocide, and it is intended that the perpetrator of the crime impose certain living conditions on one or more persons, i.e. the sum of means and methods that lead in the long term to total or partial destruction by depriving the group of basic and indispensable resources, such as water, food and medicine, or living in harsh climatic conditions that bring about diseases without treatment, demolishing hospitals, cutting off electricity supplies, etc.

On February 29, 2024, 112 Palestinian civilians were killed and at least 760 others were injured in what was described as the Flour Massacre, when Israeli forces opened fire on civilians as they tried to obtain food supplies from aid trucks on Rashid Street at the Nabulsi roundabout, west of Gaza City.

This form of genocide can be achieved by a siege imposed on a group for a certain period of time, which is what is happening in Gaza now, as a siege has resulted in the death of many children and women, due to the lack of food, medicine, essential materials, and other things. All of these actions have happened before in Palestine and continue to happen.

**E.Genocide by imposing measures:** aimed at preventing reproduction: Jurisprudence calls this form of genocide the form of obstructing the offspring of the group, and this act involves the biological extermination of the members of the group because it prevents them from reproducing and prevents their growth, increase and continuation, by separating women from men, aborting pregnant women, amputating the reproductive organs, or sterilizing one of the sexes (castrating males, while women take drugs), preventing mating after demolishing homes. The form of preventing reproduction includes killing infants and young children.

**F.Genocide by forced:** transfer of children: This image is achieved when children are forcibly transferred from one group to another, with the intention of separating them from their original groups, in order to sever any connection to their original roots. This involves, to some extent, cultural genocide, as these children represent the cultural future of the group and its social continuity, since they do not learn the language of their group, its religion, its customs, or its traditions. It is the same whether they are transferred to a group that provides them with health, social, and cultural care or not. In this case, physical genocide is achieved alongside cultural genocide.

The Euro-Mediterranean Human Rights Monitor said that it documented the Israeli army's execution of 13 Palestinian children in Al-Shifa Medical Complex within one week, in a flagrant violation of the rules of international humanitarian law.

### 1.2.2.Moral corner

The moral element is an essential element in the crime of genocide, in addition to the material element. The Statute of the International Criminal Court has emphasized the importance of the moral element according to the text of Article 30 of the Statute: "A person shall not be criminally responsible or liable for punishment for a crime within the jurisdiction of the Court unless the material elements are fulfilled with intent and knowledge."

The same article defined intent as a person committing a legally criminal act and causing the result that his act produces.<sup>12</sup>

There must be a causal relationship between the will of the perpetrator and the act or conduct that he has committed. The person is questioned and punished for the actions that he has committed of his own will. This will is not considered criminal unless it is conscious and based on the ability to distinguish between prohibited and permissible actions. The moral element is a

relationship between the physical appearance of the crime and the personality of the perpetrator. This relationship shows the perpetrator's control over the act and its effects.<sup>13</sup>

This relationship is expressed by criminal intent, which takes the form of general criminal intent and special criminal intent. General criminal intent consists of knowledge and will, i.e. the perpetrator's knowledge is that the act involves targeting a specific group with murder or serious physical or mental harm.

General intent alone is not sufficient to constitute the moral element of the crime of genocide. Rather, there must be a specific intent with respect to the general effects of the prohibited acts, such as the intent to destroy or annihilate the group, which is the characteristic that distinguishes the crime of genocide from the ordinary crime of murder. This crime occurs and is realized when the intent is to eliminate an individual or individuals belonging to or associated with a specific group.

Therefore, the decisive criterion for determining the occurrence of the crime of genocide is the affiliation or membership of the victim or victim to a specific group, not the identity of that individual. Therefore, if one individual is killed with this specific intent, the crime of genocide is achieved.

The International Law Commission adopted this position and considered that: "The general intent to commit one of the enumerated acts is not sufficient for the crime of genocide. The definition of this crime requires a special intent with respect to the general effects of the prohibited acts."<sup>14</sup>

The International Tribunal for the former Yugoslavia<sup>15</sup> defined what is meant by specific intent during the trial of a number of Serbian defendants, stating that: "The crime of genocide is a crime committed against individuals belonging to a specific group, and this group is targeted because of that affiliation. What is important in this regard is the intent in selecting and identifying this group targeted for genocide, on the basis of the ethnic, racial, or religious characteristics of its members."<sup>16</sup>

It is worth noting that the specific criminal intent is considered one of the most difficult elements to prove, as the evidence available to prove the crime of genocide is often indirect or circumstantial evidence. Special international courts have attempted to establish some standards that can be referred to to prove the specific criminal intent in the crime of genocide.

### **1.2.3. International Corner**

In the crime of genocide, it means committing it based on a plan drawn up by the state, implemented by its senior officials or encouraged to be implemented by employees or ordinary individuals, against a group with common ties: religious, national, ethnic.

It is not necessary for the victim to be a citizen of another country, as he may be a citizen of the same country with the intention of eliminating him because he may be an opponent of the ruling regime or cause problems.<sup>17</sup> It is the same whether the crime of genocide occurs in times of peace or in times of war.<sup>18</sup>

## **2. Crimes against humanity committed against Palestinians**

International criminal law does not punish all international crimes, but rather punishes the most serious crimes that affect the supreme values of the international community as a whole. The seriousness of these crimes stems from the fact that they are committed regularly and on a large scale. In order to define the concept of a crime against humanity punishable by international criminal law, and in order to be able to distinguish it from other crimes, this must include its definition, as well as the elements that constitute its general pillars. This section concludes by discussing some forms of crimes against humanity committed by the Israeli occupation in Palestine.

### **2.1. Definition of crimes against humanity**

Crimes against humanity are relatively new on the international level, and in some national laws. After World War I, the Allies established in 1919 a commission of inquiry into war crimes committed by the Germans. In addition to these crimes, the commission also found that they had committed crimes against humanitarian law, as they had killed citizens and civilians during the war. The United States and Japan strongly objected to criminalizing such acts, on the grounds that crimes



against humanitarian law are violations of moral law, not positive law.

Crimes against humanitarian law did not have a separate definition from war crimes until after World War II<sup>19</sup>, when Article 6, paragraph (c) of the Charter of the Nuremberg Military Tribunal addressed them, defining them as follows: “Wilful murder, extermination, enslavement, and other inhumane acts committed against any civilian population before or during the war, or persecutions on political, racial or religious grounds, in the execution of any of the crimes within the jurisdiction of the Court and in connection with such crimes, whether or not they constitute a violation of the national law of the State in which they were committed.”

The Statute of the International Criminal Tribunal for the former Yugoslavia defined crimes against humanity in Article 5 as follows: “This International Tribunal shall have the authority to prosecute persons who have committed the following crimes, whenever committed in the context of an armed conflict, regardless of whether it is domestic or international in character, as long as they are committed against any civilian population: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial or religious grounds, and any other inhumane acts.”<sup>20</sup>

This crime was defined in Article 3 of the Statute of the International Tribunal for the Prosecution of War Criminals in Rwanda<sup>21</sup> as follows: “The International Tribunal for Rwanda shall have the authority to prosecute persons responsible for the following crimes, when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial or religious grounds, and any other inhumane acts.”<sup>22</sup>

Thus, we find that this article added the crimes of imprisonment, torture, and rape that were not mentioned in the Nuremberg Military Tribunal system. The same previous crimes were mentioned in the statute of the International Criminal Tribunal for Rwanda in Article 3, which included a definition of crimes against humanity, which differs from its predecessor in not mentioning the phrase “armed conflict,” but rather requiring the existence of a “large-scale attack.”

While both charters provide for the existence of persecution, taking the form of a crime against humanity, the difference between them is that the Yugoslav regime considers persecution for political, racial or religious reasons to be merely a form of it, like torture, rape and slavery, unlike the Rwandan regime, which considers these reasons to be an element of the crime<sup>23</sup>, i.e. the organized attack on civilians is in accordance with these reasons<sup>24</sup>.

Jurisprudential efforts have continued in defining crimes against humanity and developing their concept. International conferences and specialized committees have continued to strive to find a comprehensive definition, so that it would be considered a fixed reference for the concept of crimes against humanity to be implemented as international legislation, until international efforts were crowned by reaching the International Criminal Court system, which created a comprehensive definition through Article Seven, in which it listed the acts that constitute a crime against humanity when committed within the framework of a widespread or systematic attack directed against any group of civilians.<sup>25</sup>

The Statute of the International Criminal Court did not stipulate in Article 7 that the acts constituting the material element of a crime against humanity be committed within the framework of an international armed conflict, which constitutes a development in its concept, which was formulated and defined by previous customary rules. What we can conclude from the text of this article is that crimes against humanity may be committed in times of peace as well as in times of war, and thus the error that was included in the texts of previous international courts that stipulated the existence of a state of war for the commission of crimes against humanity has been corrected<sup>26</sup>.

## **2.2.Elements of crimes against humanity**

In order for this crime to be committed, it must have the following general elements:

### **2.2.1.material corner**

It is represented in performing a certain behavior that may be positive or negative, and this behavior must be illegal, because the law criminalizes it, and thus it gives it the characteristic of

illegality, and the characteristic of illegality of behavior is the material element of the crime. The International Criminal Court system has listed criminal behaviors, the commission of which constitutes the material element of a crime against humanity, as they came as an example and not limited to, and they are represented in:

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

#### **2.2.2.Moral corner**

A crime against humanity is an intentional crime, the moral element of which takes the form of criminal intent in its two aspects, general and special. General intent requires knowledge and will. The perpetrator must know that his act involves a serious assault on basic human rights, either in the form of a total waste of them or in the form of diminishing their value. His will must also be directed towards this act. As for special intent, it is the violation of the basic rights of a specific group whose members are linked by a specific unity: religious, ethnic, political, etc.

It is noted that the presence of specific intent is not required, and general intent is sufficient if the act committed by the perpetrator is slavery. The crime against humanity occurs if the perpetrator's will is directed towards trafficking in persons, regardless of their affiliations or connections.

#### **2.2.3.International Corner**

For the international element of a crime against humanity to be present, it is sufficient that it occurred in execution of a state-planned moment, against a human group united by a certain belief or a certain bond.

It is the same whether that group holds the nationality of the state or not, meaning that the matter is the same whether the victim of that crime is a citizen or a foreigner<sup>27</sup>.

#### **2.2.4.The legal corner**

Unlawful conduct committed with criminal intent by a person and in the name of, with the consent or encouragement of, the State must be criminal and punishable under international law, particularly under international criminal law through criminal sanctions.<sup>28</sup>

The acts that violate international human rights rules are acts that constitute serious international crimes, especially since they affect the supreme values of the international community. To determine the crimes committed against humanity, which together constitute crimes against humanity, we must consider the jurisdiction of the International Criminal Court by examining Articles 6 to 8 of the Statute of the International Criminal Court, where we find that it is only competent to consider serious and grave crimes, while other less serious crimes have been left to other international or domestic courts to consider.<sup>29</sup>

#### **2.3.Some pictures of crimes against humanity committed by Israel in Palestine**

Given the reality we live in, we find that Israel has committed against the Palestinian people most of the crimes stipulated in the Statute of the International Criminal Court, especially crimes against humanity, the acts and forms of which are mentioned in Article 7 of the Statute of the International Criminal Court, and they are represented by acts of blatant inhuman aggression that

affect the essential interests of a person or a group of persons or the civilian population, disregarding all of those texts.

### **2.3.1. Willful killing**

Among the crimes against humanity committed by Israel against the Palestinians, we find the Mawasi Khan Yunis massacre, a massacre committed by the Israeli Air Force on the morning of July 13, 2024, when it bombed dozens of tents for displaced people and some buildings in Mawasi Khan Yunis, located west of Khan Yunis city in the Gaza Strip. This massacre resulted in the death of at least 90 Palestinians and the injury of more than 300 others, according to the Ministry of Health in Gaza. Israel claimed through its media and later officially that the target was Muhammad Deif, the commander-in-chief of the Izz ad-Din al-Qassam Brigades, the military wing of Hamas and the main actor in Operation Flood of al-Aqsa and in the war between the resistance factions in Gaza and Israel.

And the Sabra and Shatila massacres of 1982, which claimed the lives of more than 1,800 Palestinian and Lebanese men, women and children, then the Jenin camp massacre in Palestine in 2002, and the Israeli army's continued and successive murders in the Gaza Strip in the years 2008, 2009, 2012, 2014, 2023, 2024, as the crimes of premeditated murder committed by Israel in the Gaza Strip are considered crimes against humanity, especially since it knows that this attack will result in loss of life or injuries among civilians.

### **2.3.2. Genocide**

Israel's practices constitute a flagrant violation of the rules of international humanitarian law and constitute a crime of genocide according to Article 7 of the Statute of the International Criminal Court, as its air strikes, ground artillery shelling and naval missile shelling of innocent civilians and their places of residence in Gaza aim to kill the largest number of women, children and elderly people, which means exterminating the largest number of Palestinians.

Despite international appeals to Israel to stop its aggression against the Gaza Strip, it continued its aggression against various areas of the besieged Strip, as the siege imposed by Israel on it and its prevention of the arrival of necessary food and medicine to it is genocide in itself<sup>30</sup>.

### **2.3.3. Torture**

The Israeli occupation forces have practiced forms of torture and mutilation of Palestinians by cutting off limbs and slitting open the bellies of pregnant women, in addition to slaughtering operations, starting with the events witnessed by Palestinians in the Sabra and Shatila camp, and Jenin in 2002, up to what happened in the Nuseirat camp in July 2024, in addition to the killing, torture and burning of children and women. Israel has also excelled in using internationally prohibited weapons, as these weapons cause the lower limbs of their victims to be amputated in a brutal manner, leaving unusual wounds containing small shrapnel that even X-rays cannot detect. This indicates the use of high-density weapons that lead to the immediate amputation of limbs and burning as well.<sup>31</sup>

### **2.3.4. Forced sterilization crime**

It is one of the crimes included in the Statute of the International Criminal Court, as it was classified as a crime against humanity due to its seriousness. In order for this crime to be committed, there must be no medical or therapeutic justification for it, and it must not be issued with the real consent of the accused, and the behavior must be committed as part of a widespread or systematic attack directed against any group of the civilian population, with the perpetrator knowing that this behavior is part of the widespread or systematic attack directed against any group of the civilian population.<sup>32</sup>

Reports by Italian experts have revealed evidence of the use of internationally banned lethal weapons by Israeli forces, which leave strange symptoms in Palestinian wounded and martyrs. Most of these weapons are chemical and nuclear weapons, which penetrate the body's tissues and cause fetal deformities<sup>33</sup>.

### **2.3.5. Persecution**

The crime of persecution is a racist crime against humanity, in which the perpetrator deliberately



deprives the victims of their basic rights guaranteed by international covenants and treaties, including the right of a person to move, his freedom to express his opinion, his freedom to litigate before the courts, and assigning him hard work beyond his capacity, or discrimination between people on the basis of race or sects.<sup>34</sup> Persecution also appears clearly in nationalities and discrimination between them in an oppressive manner, such as favoring one group over another. Israel has persecuted the Palestinian people, and this crime is represented in depriving them of their basic rights, by imposing a siege on them and preventing them from receiving food and clothing.

Despite the fact that crimes against humanity are stipulated in the statute of the International Criminal Court and are criminalized, major countries prevent their commission from being limited by the protection and support they provide to countries that commit them.<sup>35</sup>

### CONCLUSION

At the end of this study, and based on the above, we conclude that the violations committed by the Israeli occupation against the Palestinian people are considered international crimes according to the texts and criminal articles found in international agreements (the Four Geneva Conventions and the Rome Statute), as the crime of genocide applies to the behavior of the Israeli occupation according to Article 6 of the International Criminal Court Statute because one of its characteristics is that it is a deliberate crime that is not committed by mistake, and was carried out against an ethnic group in Arab Palestine with the intent to destroy them in whole or in part. This in turn applies to Israeli crimes, as the Israeli forces deliberately bombed and targeted civilian neighborhoods in a concentrated manner using warplanes, tanks, artillery, and battleships stationed at sea, in addition to the crimes committed by infantry units that penetrate the Palestinian territories.

By reviewing and examining the details and components of crimes against humanity and their specific definition, their material element, which the Rome Statute addressed through the text of Article 7, has been achieved through Israeli behavior on the ground towards the Palestinians. Israeli forces have been involved in premeditated murder, genocide, and population displacement, including the displacement of Palestinians from their villages and cities, such as the displacement of Palestinian refugees, the displacement of some residents of Jerusalem, the displacement of released prisoners from the West Bank to the Gaza Strip, and the displacement of others outside Palestine. The state of imprisonment and deprivation has been achieved, as thousands of prisoners are languishing in Israeli prisons in difficult and harsh conditions, in addition to the torture of detainees and prisoners, in addition to persecution and deprivation of Palestinians from basic rights on a discriminatory basis for political motives, as well as the achievement of apartheid behavior through the wall that Israel built, which cut off a large part of Palestinian lands, and caused the severing of communication between villages and formed barriers to their movement and passage and worsened their humanitarian conditions.

The moral element was also achieved through the availability of knowledge and will to implement this behavior on the ground, and the intention, direction and purpose of the Israeli forces were to take lives, cause suffering and exert maximum pressure on the lives of the Palestinians. The international element also applies to the criminal Israeli behavior because its various forms constitute the principles and provisions upon which this international crime was based.

Therefore, the countries of the world must unite and strive, regardless of their strength or status, to appear as if they respect international law and comply with its provisions, and that they are trying to establish international justice, maintain international peace and security, pursue those who violate the law, try those who commit international crimes, and determine international responsibility, both civil and criminal, for Israeli violations in the territories of Palestine.

Finally, we offer the following recommendations:

1-We request the Prosecutor of the International Criminal Court to move quickly to initiate investigations on his own initiative, regarding the crimes committed by the Israeli occupation forces against the Palestinians, which fall within the jurisdiction of the Court, based on the authority

granted to him under Article 15 of the Rome Statute of the International Criminal Court.

2- Requesting the United Nations Security Council<sup>36</sup> to work on establishing a temporary special court similar to the Yugoslavia and Cambodia Court and the Special Court for the Assassins of President Hariri, to open an investigation into Israeli crimes against the Palestinians.

3- We urge all government agencies and institutions to work on documenting the crimes of the Israeli occupation in files that show: the perpetrator, the victim, the crime committed, the legal basis for punishing the crime, and evidence of the commission of the crime.

4- International human rights organizations and Palestinian civil society organizations should continue to monitor the work of the International Criminal Court and the Office of the Prosecutor. Although the International Criminal Court may be sidelined by political influences, there is still hope that the court will hold Israeli officials accountable for their crimes. Although this may take many years, there is still hope for justice for the Palestinians who are victims of Israeli violations and crimes.

#### Footnotes:

<sup>1</sup>-Muhammad Fahd Al-Shalalkeh: (2005), International Humanitarian Law, Dar Al-Fikr Al-Arabi Library, Cairo, p376.

<sup>2</sup>- The Nuremberg Tribunal was established by the London Agreement of August 8, 1945, which provided for the establishment of a military tribunal to try major war criminals.

<sup>3</sup>- The Convention on the Prevention and Punishment of the Crime of Genocide was adopted and opened for signature, ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948, entry into force date: 12 January 1951. Israel ratified this Convention on 09/03/1950 and signed it on 17/08/1948.

<sup>4</sup>-Ayman Abdel Aziz Salama: (2006), Responsibility for Committing the Crime of Genocide, Dar Al-Ulum, Cairo, p 421.

<sup>5</sup>-The Statute of the International Criminal Court was adopted in Rome on 17 July 1998 as a result of an international diplomatic conference organized under the auspices of the United Nations and entered into force on 1 July 2002. In 2014, Palestine joined the Rome Statute establishing the International Criminal Court, and the Convention entered into force for the Palestinians on 1 April 2015. With this announcement of acceptance of accession, the State of Palestine becomes the 123rd member of the court, which was established in 2002, and thus the Palestinian territories occupied in 1967 fall within the scope and work of the Criminal Court.

For more details see: Saeed Talal Al-Dahshan: (2017), How do we sue Israel? International prosecution of Israel and its leaders for their crimes against the Palestinians, first edition, Al-Zaytouna Center for Studies and Consultations, Beirut, p175.

<sup>6</sup>- Ali Abdul Qader Al-Qahouji: (2001), International Criminal Law: The Most Important International Crimes, International Criminal Courts, Al-Halabi Legal Publications, Beirut, p360.

<sup>7</sup>-William A. Schabas :(2001), An Introduction To The International Criminal Court,Cambridge University, UK, p37.

<sup>8</sup>- Malcolm N. Shaw:(1997),International Law, Cambridge Low Price Editions, Fourth Edition, UK, p 209.

<sup>9</sup>- In the field of international law, there are those who reject the idea of the legal element of the crime of genocide and consider it a legal basis only, and not the element, but if we consider it as such, then it is represented in the legal text criminalizing that crime and punishing it, as it is subject to the principle of objective legitimacy and why not procedural legitimacy.

<sup>10</sup>- Hossam Ali Abdel Khaleq Al-Sheikha: (2001), Responsibility and Punishment for War Crimes, PhD Thesis, Cairo University, Cairo, p555.

<sup>11</sup>- Ismail Abdel Rahman Muhammad: (2000), Criminal Protection of Civilians in Times of Armed Conflict, PhD Thesis, Mansoura University, Cairo, p560.

<sup>12</sup>- Ali Abdul Qader Al-Qahouji, op. cit, p384.

<sup>13</sup>-Ayman Abdel Aziz Salama, op. cit, p127.

- <sup>14</sup>- Ayman Abdel Aziz Salama, *ibid*, p13.
- <sup>15</sup>- It is a commission established by the United Nations to try war crimes committed in the former Yugoslavia. The court operates independently and is based in The Hague. It was established by Security Council Resolution 827 of 25 May 1993.
- <sup>16</sup>- Ayman Abdel Aziz Salama, *ibid*, p141.
- <sup>17</sup>- Ali Abdul Qader Al-Qahouji, *op. cit*, p138.
- <sup>18</sup>- The crime of genocide also derives its international character from two things:
- First: The type of interest attacked: Preserving the human race and maintaining its interests is of interest to the international interest, as it derives its protection from the international community.
  - Second: This crime is criminalized in all the laws of peoples
- <sup>19</sup>- See: Article 02 of the Statute of the Nuremberg Military Tribunal.
- <sup>20</sup>- Murshid Ahmed Al-Sayed and Ahmed Ghazi Al-Harmazi: (2002), *International Criminal Justice: An Analytical Study of the International Criminal Tribunal for Yugoslavia in Comparison with the Courts of Nuremberg, Tokyo and Rwanda*, First Edition, International Scientific House, Jordan, p122.
- <sup>21</sup>- The Statute of the International Criminal Tribunal for Rwanda consists of 32 articles, most of whose provisions and texts are taken from the Statute of the International Criminal Tribunal for the former Yugoslavia of 1994.
- For details see: BakhtaLaatab: (2017), *International Criminal Justice and its Role in Reducing Violations of International Humanitarian Law*, PhD Thesis, University of Tlemcen, Algeria, p137.
- <sup>22</sup>- Adel Abdullah Al-Masdi: (2002), *The International Criminal Court: Jurisdiction and Referral Rules*, First Edition, Dar Al-Nahda Al-Arabiya, Cairo, p72.
- <sup>23</sup>- Abdul Qader Al-Baqirat: (2011), *The Concept of Crimes Against Humanity*, Office of University Publications, Algeria, p26.
- <sup>24</sup>- Article 50 of the First Additional Protocol to the Geneva Conventions of 1977 defines civilians and the civilian population, stating that:
- 1- A civilian is any person who does not belong to one of the categories of persons referred to in Article 4, paragraph (a), paragraph (a), paragraph (a), of the Third Convention and Article 43 of this Protocol. In case of doubt whether a person is a civilian or not, that person shall be considered a civilian.
  - 2- The civilian population includes all civilians.
  - 3- The civilian population shall not be deprived of its civilian character by the presence among it of individuals who do not fall within the definition of civilians.
- <sup>25</sup>- See the text of Article 7 of the Statute of the International Criminal Court.
- <sup>26</sup>- Sabrina Khalaf Allah: (2007), *War Crimes before International Criminal Courts*, Master's Thesis, University of Constantine, Algeria, p96.
- <sup>27</sup>- Ali Abdul Qader Al-Qahouji, *op. cit*, p126.
- <sup>28</sup>- Fattouh Abdullah Al-Shazly: (2002), *International Criminal Law: The Priorities of International Criminal Law: The General Theory of International Crime*, University Publications House, Alexandria, p209.
- <sup>29</sup>- Abdullah Ali Abu Sultan: (2010), *The Role of Criminal Law in Protecting Human Rights*, Dar Dijlah, Jordan, p96.
- <sup>30</sup>- Mustafa Abu Al-Khair: (2005), *The Statute of the International Criminal Court, the Rules of Procedure and Evidence and the Elements of International Crimes*, First Edition, ETRAC, Egypt, p219.
- <sup>31</sup>- Amina Halilali: *Israel's Responsibility for Crimes Against Humanity in Palestine*, *Journal of Legal Studies*, University of Medea, Algeria, Issue 1, January 2010, p278.
- <sup>32</sup>- Ali Abdul Qader Al-Qahouji, *op. cit*, p120.
- <sup>33</sup>- Amina Halilali, *op. cit*, p279.
- <sup>34</sup>- Mahmoud Dhari Khalil and Youssef Basil: (2007), *The International Criminal Court - The Dominance of Law or the Law of Dominance - Maaref Establishment*, Alexandria, p223.
- <sup>35</sup>- Mahmoud Dhari Khalil and Youssef Basil, *ibid*, p223.

<sup>36</sup> For details of the general tasks of the Security Council, see: Mohamed DjelloulZaadi: The role of the UN Security Council in protecting the natural environment ,Journal of Science and Knowledge Horizons,University of Laghouat, Algeria, Issue 1, Vol 4,2024,p405.

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