

APPLICATION OF THE RULES OF INTERNATIONAL
HUMANITARIAN LAWS TO PALESTINIAN PRISONER
IN ISRAEL

BY

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ABSTRACT

With the beginning of the Israeli occupation of Palestine, several forms of Palestinian resistance erupted to confront this occupation, resulting in the capture of many Palestinians, where the Israeli occupation has carried out systematic policies on detainees to destroy the will of the Palestinian people to achieve their freedom and self-determination. This has made the issue of prisoners one of the most important issues that Palestinians suffer in their daily lives. Therefore, this study aimed to clarify the role of international humanitarian law in protecting prisoners, the rights granted to prisoners by international treaties and conventions, and the Israel's application of the rules of international humanitarian law to Palestinian prisoners and implications of non-compliance with the international law to the Palestinians in Israel prisons. The research is based on doctrinal and qualitative methods, which use the sources of international humanitarian law in relation to prisoners' rights, which is one of the branches of international law. The study highlights the rights of Palestinian prisoners and psychological, physical and legal violations committed against them in Israeli prisons, the possible legal mechanisms in defend their rights. The study dealt with the history of the Palestinian-Israeli conflict. It also provides a general classification of prisoners of war and who were entitled to describe prisoners of war and the rights granted to them in accordance with the Third and Fourth Geneva Conventions and its protocols. also discusses the violations committed by the Israeli occupation against Palestinian prisoners, which are the inhuman treatment they are subjected to, and the passage of a group of laws that violate rights of Palestinian prisoners. As well as, the possible legal mechanisms in defending the issue of Palestinian prisoners, both at local level by activating the diplomatic, legal and media role in supporting the issue of Palestinian prisoners, and activate the role of official and informal local institutions and at international level by activating the role of the Security Council in the implementation of the rules of international law and human rights bodies. In view of Israel's claim of application international humanitarian law and its ratification of the Geneva Convention, the study concluded that Israel denies Palestinian of rights as prisoners of war, describes them as illegal combatants and claims that the Convention does not apply to the occupied Palestinian territories, although international humanitarian law under the Geneva Convention includes members of the resistance and organized armed forces. therefore, Palestinian prisoners are considered prisoners of war.

خلاصة البحث

اندلعت مع بداية الاحتلال الإسرائيلي لفلسطين أشكال عدة من المقاومة الفلسطينية؛ لمجابهة هذا الاحتلال، وأسفرت عن وقوع عدد من الفلسطينيين في الأسر، وقد مارس الاحتلال الإسرائيلي السياسات المنهجية على المعتقلين للقضاء على إرادة الشعب الفلسطيني في تحقيق حريتهم وتقرير مصيرهم، مما جعل قضية الأسرى من أهم القضايا التي يعاني منها الفلسطينيون في حياتهم اليومية، ومن ثم جاء هذا البحث لتوضيح دور القانون الدولي الإنساني في حماية الأسرى وحقوقهم من خلال المعاهدات والاتفاقيات الدولية، ومدى تطبيق إسرائيل قواعد القانون الدولي الإنساني على الأسرى الفلسطينيين، وانعكاسات عدم امتثال إسرائيل للقانون الدولي الإنساني في معاملة الأسرى الفلسطينيين، ويعتمد البحث المنهج العقائدي النوعي في استخدام المصادر الأساس للقانون الدولي الإنساني، وتتلخص أهمية البحث في بيان حقوق الأسرى الفلسطينيين والانتهاكات النفسية والجسدية التي يتعرضون لها في السجون الإسرائيلية ودراسة الآليات الممكنة للدفاع عن حقوقهم، وقد تناول البحث تاريخ الصراع الفلسطيني الإسرائيلي، وناقش التصنيف العام لأسرى الحرب ومن يحق لهم وصف "أسير الحرب"، وحقوقهم وفق اتفاقيتي جنيف الثالثة والرابعة، والبروتوكولات الملحق بها، كما ناقش الانتهاكات التي يرتكبها الاحتلال الإسرائيلي ضد الأسرى الفلسطينيين متمثلة في المعاملة غير الإنسانية التي يتعرضون لها، وإصدار قوانين تنتهك حقوقهم كأسرى حرب، وكذا ناقش البحث الآليات القانونية المتاحة للدفاع عن حقوق الأسرى الفلسطينيين؛ على المستوى المحلي من خلال تنشيط الدور الدبلوماسي والقانوني والإعلامي وتوجيهه من أجل الدفاع عن حقوق الأسرى الفلسطينيين، وعلى المستوى الدولي من خلال تنشيط دور مجلس الأمن في تنفيذ قواعد القانون الدولي وهيئات حقوق الإنسان، ونظرًا إلى ادعاء إسرائيل تطبيقها القانون الدولي الإنساني وتوقيعها اتفاقية جنيف؛ خلص البحث إلى أن إسرائيل تحرم الأسرى الفلسطينيين من حقوق أسرى الحرب، وتصنفهم بأنهم مقاتلون غير شرعيين، وتزعم أن اتفاقية جنيف لا تنطبق على الأراضي الفلسطينية المحتلة؛ على الرغم من أن القانون الدولي الإنساني بموجب اتفاقية جنيف؛ يشمل أفراد المقاومة والقوات المسلحة المنظمة، وعليه؛ كان الأسرى الفلسطينيون أسرى حرب.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative Laws.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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LIST OF ABBREVIATIONS

WZO	World Zionist Organization
IHL	International Humanitarian law
IHRL	International human rights law
BDS	The Boycott Movement, Divestment and Real Estate
ICRC	The International Red Cross
UN	United Nations
UPR	The Universal Periodic Review
IACHR	The Inter-American Commission on Human Rights
UNSCOP	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
PLC	Palestinian Legislative Council
ICC	The Interstate Commerce Commission
HRC	The Human Rights Council
HRW	Human Rights Watch
ect.	Et cetera
vol.	Volume
edn.	Edition
GCIII	Third Geneva Convention
API	Additional Protocol I
APII	Additional Protocol II

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Human right law is based on a set of principles emanating from conventions and customary and provisions, which apply to armed conflicts, including resistance to occupation, in which peoples' struggle for freedom, self-determination and resistance against racist regimes.¹

Since the beginning of the Israeli occupation of Palestine, there has been resistance to the rejection of the occupation and resulted in the incidence of many members of the resistance in captivity, leading to the helpless of prisoners Palestinians in the Israeli prisons. "The Israeli occupation authorities²" practice the systematic policy of the Palestinians arrest in order to eliminate the will of the Palestinian people to achieve their freedom and "self-determination³".

Until today, the Israeli occupation still captures more than 10,000 Palestinians in tragic circumstances⁴, which are incompatible with international law resumes on prisoners in Israeli occupation prisons are subjected to the worst forms of torture and ill-treatment at the hands of interrogators. Israel denies the right of Palestinian prisoners

¹ Maher Maghari, "The Legal Status of Palestinian Prisoners in Israeli Prisons," (Master dissertation, Al-Aqsa University of Palestine, 2017), 2.

² Israeli occupation authority: Which was established based on the "decision to partition Palestine" on 14 May 1948.

The Resolution on the Partition of Palestine: Is the name given to UN General Assembly Resolution 181, issued on November 29, 1947, after a vote (33 Agreed to the resolution, 13 against the resolution, 10 abstentions).

³ Self-determination: Is a term in international law that means giving people or local people possibility to decide the form of power they want and the way to achieve it freely and without outside interference.

⁴ Wafa News Agency, "More than 10,000 prisoners are still held in the prisons of the occupation in inhumane conditions," Wafa News Agency, http://www.wafa.ps/ar_page.aspx?id=kumc4ha140104703871akumc4h (accessed 15 April, 2018).

to international conventions on prisoners of war such as the Third Geneva Convention and Israel does not consider the Palestinians prisoners of war, and despite the international community's consensus that prisoners should enjoy many of the rights guaranteed to them in accordance with the humanitarian law.

The issue of prisoners occupies a special place for the Palestinians, because of its humanitarian significance in legal and political aspects. Where prisoners are subjected to an organized attack that affects all aspects of their lives, by an official Israel decision at the highest level and by legislation from the Israel courts to impose more sanctions against the Palestinian prisoners and to double their suffering and leaving them to diseases that tear their weak bodies, which led to the death of many prisoners in Israel prisons. As well as disregard for the lives of prisoners who have been on “hunger strike⁵” for months and they may die at any moment. This does not conform to all divine laws and international laws that protect the prisoners and call to treat them humanely.

Although Israel is a signatory to “the Geneva convention⁶”, the Palestinian prisoners are excluded from rights included in the convention. The protection envisaged in international humanitarian law not protection against the violence of war itself, but rather protection from the control power acquired by the parties to the conflict. In view of the foregoing, the Palestinian prisoners are of great symbolic significance to the Palestinian people in particular, to the Arab and Islamic nations in general and all

⁵ Hunger strike: a prolonged refusal to eat, carried out as a protest by prisoners.

⁶ Geneva Convention: These are four international conventions, the first of which was signed in 1864 and the last one in 1949, which deals with the protection of fundamental human rights in the event of war, how to take care of wounded, sick and prisoners of war and the protection of civilians on the battlefield or in an occupied area.

humanity because they were imprisoned because of their resistance to the occupation and for their freedom.

1.2 STATEMENT OF THE PROBLEM

The issue of prisoners is one of the most important issues for the Palestinians. The international humanitarian law has defined a set of rights for prisoners and the protections available to them. Despite of the availability of rights granted to prisoners of war, Israel continues to deny the rights of the Palestinian prisoners as the Israeli does not regard them as prisoners of war hence international human rights standard does not apply to them. For this purpose, Israel has established a set of regulations according to their whims and fancy. The regulations Israel has given to the Palestinian prisoners are new concepts such as terrorists and illegal combatants. As a result, Palestinians in the Israeli occupation prisons suffer from various different types of psychological, physical and religious abuses at the hands of their jailers, without the slightest types of international control, and the Israeli occupation always tries to make the issue of Palestinian prisoners, far from the eyes of the media and the international community.

1.3 SIGNIFICANCE OF STUDY

The issue of Palestinian prisoners still a central matter, since everyday there are Palestinian turns into prisoners by Israeli forces. in addition, the daily suffering of Palestinian prisoners as a result to Israeli practices against them. This is what makes the study significant as it highlights the rights of the Palestinian prisoners, as well as the Israeli violations daily against of Palestinian prisoners in Israeli prisons.

1.4 OBJECTIVE OF THE STUDY

This research is embarked upon for achieving the following objective:

1. To investigate the history of the Palestinian - Israeli conflict.
2. To examine the legal concept of the right of prisoners under international humanitarian law.
3. To analyze to what extent the Israeli occupation applies the rules of international humanitarian law to the Palestinian prisoners in Israeli prisons through the presentation of violations which they are subjected.
4. To examine the possible legal mechanisms for the defense of Palestinian prisoners in Israeli prisons.

1.5 SCOPE AND LIMITATIONS OF THE STUDY

The study consists of the legal concept of a prisoner of war and the protection as enshrined in international humanitarian law for prisoners of war through the Third and Fourth Geneva Conventions. The study covers violations against Palestinian prisoners in Israeli prisons since the beginning of the capture and during the prison term. The study will discuss possible legal mechanisms for the defense of Palestinian prisoners.

The study is limited to Palestinian prisoners in Israeli prisons on the Occupied Palestinian Territories. This study is limited to library-based research, encompassing content analyses and comparative methods of research to achieve its objective, without the interviews or questionnaires on the sample in question because it is hard.

1.6 RESEARCH METHODOLOGY

The research is purely based on doctrinal method qualitative. Methods of doctrinal research include the use of the basic sources of International humanitarian law, consisting of International custom, the fundamental principles of international law on Law of Armed Conflict and international conventions. The research refers to the Third and Fourth Geneva Convention on the Rights of Prisoners of War and its additional protocols. The author is studying the International humanitarian law, referring to law textbooks and theses, especially on the rights of prisoners of war and Palestinian prisoners, articles in international conventions and materials downloaded from internet were consulted for this study. The study used the doctrinal method qualitative in writing the research, which depends on:

Describing Israeli practices on Palestinian prisoners in Israeli prisons. The analytical approach to the research is based on an analysis of these practices in the light of the rules of international humanitarian law and the extent of their implementation on Palestinian prisoners in Israeli prisons.

1.7 LITERATURE REVIEW

There are indeed a good number of literatures that are relevant to the theme and scope of this research. A few of these materials are included in the research while others are useful but are not directly related to the subject of the research. There are many works by other researchers whose books are very useful to this study. They are:

Eyad Shana'a, in his article, "The Status and Suffering of Palestinian Prisoners women and Children in Israeli Prisons⁷", discusses the situation and suffering of women prisoners and children held in Israeli prisons and detention centers from 1967 to 2012, and the living conditions for women prisoners and children in the Israeli detention centers, and the various practices of the Israeli occupation authorities. The study concluded that the living conditions of prisoners of child and women in Israeli prisons are extremely difficult and the most severe types of physical and psychological were torture practiced against them.

Ali Hellas, in Master dissertation, "Protection of War Prisoners and Detainees in the Occupied Palestinian Territories: Analytical and Practical Study in Light of the Third and Fourth Geneva Conventions of 1949⁸", addresses Protection of prisoners of war in the 1949 Geneva Convention and determine the historical development of the protection of prisoners of war and The violation of the rights of Palestinian prisoners in their prisons and detention centers, the practice of medical neglect, the isolation and the conduct of medical experiments on prisoners. The study concluded that the Third Geneva Convention applies to members of the Palestinian resistance, so that they are considered prisoners of war, must be treated as such, and must be adhered to by contracting states.

Mohammed Al-Nahhal, in his article "International legal protection for Palestinian detainees in Israeli prisons⁹", addresses the concept of prisoners and the

⁷ Eyad Shana'a, "The Situation and Suffering of Prisoners Women and Children Palestinian in Israeli Prisons 1967-2012 Geographical Study", paper presented at the Palestinian Prisoners Conference in Israeli Prisons, (Gaza: Al-Quds Open University, June 6, 2013).

⁸ Ali Helis, "Protection of War Prisoners and Detainees in the Occupied Palestinian Territories: Analytical and Practical Study in Light of the Third and Fourth Geneva Conventions of 1949," (Master dissertation, Islamic University of Gaza, 2010).

⁹ Mohammed Al-Nahhal, "International Legal Protection for Palestinian Detainees in Prisons Israel", Working Paper, Gaza, 2010.

international legal status of the Palestinian Authority, the legal adaptation of Palestinian detainees in Israeli prisons, and pictures of Israeli violations of the rights of Palestinian detainees. The article concluded that military decisions and the laws of occupation violate international standards in dealing with the population of the occupied territories, and that Israeli practices against Palestinian prisoners are a war crime that must be punished in accordance with the statutes of the International Criminal Court.

Report submitted by the Palestinian Center for Human Rights in Palestine for 2010, entitled: “Conditions of Palestinian Prisoners in Israeli Prisons¹⁰”, the report included identifying prisoners in international law and international conventions, conditions of Israeli prisons, conditions of prisoners and child prisoners, conditions of detention, family visits and isolation. The report concluded that Palestinian prisoners in Israeli prisons suffer difficult conditions, and Israel commits many repressive methods against them, and the Israel is bound by the Geneva Convention because it is one of the countries that has ratified it.

Majid OMawat, in his Master dissertation, entitled: “mechanisms for the protection of prisoners of war¹¹”, examines at identifying persons who are prisoners of war, their protection, and mechanisms for implementing the rules established for their protection. The study discussed prisoners of war in general and their means of protection and mechanisms to implement the objective rules for their protection. The study concluded that the armed struggle by the national liberation movements against

¹⁰ Palestinian Center for Human Rights, Conditions of Palestinian Prisoners in Israeli Occupation Prisons in 2010 (Gaza: Palestinian Center for Human Rights, 2010).

¹¹ Majid Mawat, “Mechanisms for the Protection of Prisoners of War,” (Master dissertation, University of Batana- Hadj Lakhdar, 2010).

foreign occupation as an international armed conflict, so the freedom fighters qualifies for the status of prisoners of war.

Abdul Rahman Ali Ibrahim Ghunaim, in his book, “Legal Protection of Prisoners in accordance with the provisions of International Humanitarian Law¹²”, discusses the position of international humanitarian law on the protection of prisoners as a result of war. The study included the status of Palestinian prisoners in international humanitarian law, the status of Palestinian prisoners in Israeli occupation prisons, Israeli violations of the rights of Palestinian prisoners, including psychological and physical violations of prisoners and laws restricting Palestinians, and international responsibility for Israeli violations of the rights of Palestinian prisoners.

Abdel-Wahed Al-Far, in his book, “Prisoners of War: A doctrinal and Applied Study in the Field of Public International Law and Islamic Law¹³”, examines the general classification of prisoners of war, its differentiates between the persons to whom the description of prisoners of war applies and those who do not, the historical development of the legal status of prisoners of war and their guarantees under Geneva Convention, the means of control in the application of international legal provisions in the treatment of prisoners of war in terms of internal control by the Detaining Power and international control. Finally, the international responsibility for violating the provisions of the prisoners of war rules.

¹² Abdul Rahman Ghunaim, *Legal Protection of Prisoners in Accordance with the Provisions of International Humanitarian Law*, (Berlin: Arab Democratic Centre for Strategic, Political and Economic Studies, 2018).

¹³ Abdel Wahed Al-Far, *Prisoners of War: A Doctrinal and Applied Study in the Field of Public International Law and Islamic Law*, (Cairo: World of Books, 1975).

Qudus Mumuney, in his article “International Humanitarian Law and Prisoners of War¹⁴”, discusses the definition of prisoners of war in accordance with the Third Geneva Convention, the status determination of prisoners of war to whom the classification of prisoners of war applies, then defines the responsibility of the Detaining Power to commit to treating prisoners humanely, protecting them from danger, respecting their rights as prisoners of war and ensure a fair trial for them.

Sandra Fabijanić Gagro, in her article, “Defining and recognizing prisoners of war in contemporary armed conflicts¹⁵” discusses the distinguishes between international and non-international armed conflict, identify prisoners of war in contemporary armed conflicts, individuals entitled to prisoner of war status, and the differentiate between combatants and civilians in armed tendencies. She also has discussed the potential convergence between international and non-international armed conflicts and whether the concept of prisoner of war can be extended to the insurgents of non-international armed conflict in contemporary international humanitarian law. The study concluded that the development of international law, international human rights law and international criminal law, as well as the ICRC's humanitarian activities, encourages the strengthening of legal systems in a way that necessarily affects international humanitarian law.

¹⁴ Qudus Mumuney, “International Humanitarian Law and Prisoners of War,” ResearchGate, [https://www.researchgate.net/publication/228227986 International Humanitarian Law and Prisoners of War](https://www.researchgate.net/publication/228227986_International_Humanitarian_Law_and_Prisoners_of_War) (accessed 20 April, 2018).

¹⁵ Sandra Fabijanić Gagro, “Defining and Recognizing Prisoners of War in Contemporary Armed Conflicts”, *International Journal of Social Sciences*, vol. 3, no. 5 (2014).

1.8 RESEARCH GAP

There were article and books conducted about the status of prisoners of war in accordance with international humanitarian law. All the above - cited have addressed the situation of prisoners of war in general, and some studies have talked about a certain category of prisoners and not all categories of prisoners and violations against them. Some articles only addressed the legal status and classification of prisoners of war in general, and they did not include Palestinian prisoners and Israeli violations against them. Some others discussed the legal mechanisms to deal with Israeli violations against Palestinian prisoners but did not address the legal adaptation of Palestinian prisoners, the general classification of prisoners of war and the rights granted by international humanitarian law to them. Therefore, due to the lack of researches covering all aspects of the condition of Palestinian prisoners, violations agents them and it is position under international law. It is very significant and timely to conduct a research addressing on this topic, in filling the gaps and providing another platform for future research.

CHAPTER TWO

HISTORY OF THE PALESTINIAN-ISRAELI CONFLICT

2.1 ORIGIN OF PALESTINE: AN INTRODUCTION

Palestine located in the south-western part of the Levant “Sham”, in western Asia, on the eastern coast of the Mediterranean Sea. Palestine has an important strategic location between Asia and Africa, and a meeting point of the two sides of the Islamic world. The earliest known name of this land is “The Land of Canaan”, because the first people who inhabited this land were historically known as the Canaanites, who came from the Arabian Peninsula from 2500 BC.¹⁶ Palestine's geographic boundaries were defined precisely after the British occupation of Palestine, especially during the period 1920-1923. The boundaries of the land of Palestine have been narrowed and expanded throughout history, generally it was expressing the land between the Mediterranean Sea and the Dead Sea and the Jordan River.¹⁷

In the Islamic era, Bilad al-Sham was divided into parts, extending the land of Palestine from Rafah on the Egyptian border with Sinai to Al-Lajjun, 18 km northwest of Jenin. Whatever the divisions in Islamic periods, expanding or narrowing, does not change anything from the fact that people feel that they are a one nation. However, the space of Palestine is 27009 km square according to contemporary subdivision.¹⁸

¹⁶ Ahmad Al-Marashly, *The Palestinian Encyclopedia*, (Acre: Dar Al-Aswar, 1986), 273-279.

¹⁷ *Ibid.*, 117-129.

¹⁸ *Ibid.*

2.2 PRE-BRITISH INTERVENTION

It should be noted that the “Jews¹⁹” at this time occupy Palestine on religious and historical grounds, claiming that Allah promised them this land, and they have a historical and spiritual relationship with this land, and because they ruled Palestine for a period of time in the past, and they exist on this land nowadays it belongs to them. However, Muslims believe that Jews have freedom of religion, and no one has the right to force them to change what they believe, but they have no right to displace people from their homes and usurp their lands, property and holy places under false religious claims.²⁰

Since the 16th century, a religious Reform Party was founded “Protestant party”, where many of the Protestants believed in the millennium prophecy, that the Jews would meet again in Palestine, in preparation for the return of Christ who would Christianized them, then lead them in the battle of “Armageddon”, defeat his enemies, and then begin the era of 1,000 years of happiness. The majority of the Protestant church's followers are British, American, Dutch and about half of Germany's population. Thus, “Jewish Zionism²¹” emerged especially among these Protestants, who supported the Zionist project on religious background.²²

With the political changes that took place in Europe in the 19th century, the Russian government's hostility against the Jews increased because of their different political views, and the hostility became apparent after Russia accused Jews of the

¹⁹ Jews: It is called to anyone who believes in Judaism and practices its rituals.

²⁰ Mohsen Saleh, *The Palestinian Cause Historical Backgrounds and Contemporary Developments*, (Beirut: Zaytouna Center for Studies and Consultations, 2012), 21.

²¹ Zionism is the nationalist movement of the Jewish people that espouses the re-establishment of and support for a Jewish state in the Palestinian territory as the historic Land of Israel.

²² Regina Al-Sharif, *Non-Jewish Zionism, Its Roots in Western History*, translated from Hebrew by Ahmed Abdullah Abdulaziz (Kuwait: National Council for Culture, Arts and Letters, 1985), 28-32.