



كلية الشريعة والقانون بدمنهور



جامعة الأزهر

مجلة البحوث الفقهية والقانونية

مجلة علمية محكمة
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**Protect Civilians from the Crime of Forced Displacement
Under Ihl An Analytical Study**

**حماية المدنيين من جريمة التهجير القسري بموجب القانون الدولي الإنساني
"دراسة تحليلية"**

Doctor

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مجلة البحوث الفقهية والقانونية
مجلة علمية عالمية متخصصة ومُحكّمة
من السادة أعضاء اللجنة العلمية الدائمة والقائمة
في كافة التخصصات والأقسام العلمية بجامعة الأزهر

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وتصنيف Q2 في تخصص القانون حسب تقييم معامل "ار سيف Arcif" العالمية

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سعادة أ. د. رئيس تحرير مجلة البحوث الفقهية و القانونية المحترم
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يسر معامل التأثير والاستشهادات المرجعية للمجلات العلمية العربية (أرسييف - ARCIF)، أحد مبادرات قاعدة بيانات "معرفة" للإنتاج والمحتوى العلمي، إعلامكم بأنه قد أطلق التقرير السنوي التاسع للمجلات للعام 2024.

يخضع معامل التأثير "Arcif" لإشراف "مجلس الإشراف والتنسيق" الذي يتكون من ممثلين لعدة جهات عربية ودولية: (مكتب اليونيسكو الإقليمي للتربية في الدول العربية ببيروت، لجنة الأمم المتحدة لغرب آسيا (الإسكوا)، مكتبة الاسكندرية، قاعدة بيانات معرفة). بالإضافة للجنة علمية من خبراء وأكاديميين ذوي سمعة علمية رائدة من عدة دول عربية وبريطانيا.

ومن الجدير بالذكر بأن معامل "أرسييف Arcif" قام بالعمل على فحص ودراسة بيانات ما يزيد عن (5000) عنوان مجلة عربية علمية أو بحثية في مختلف التخصصات، والصادرة عن أكثر من (1500) هيئة علمية أو بحثية في العالم العربي. ونجح منها (1201) مجلة علمية فقط لتكون معتمدة ضمن المعايير العالمية لمعامل "أرسييف Arcif" في تقرير عام 2024.

ويسرنا تهنئكم وإعلامكم بأن مجلة البحوث الفقهية و القانونية الصادرة عن جامعة الأزهر، كلية الشريعة و القانون، دمنهور، مصر، قد نجحت في تحقيق معايير اعتماد معامل "أرسييف Arcif" المتوافقة مع المعايير العالمية، والتي يبلغ عددها (32) معياراً، وللاطلاع على هذه المعايير يمكنكم الدخول إلى الرابط التالي: <http://e-marefa.net/arcif/criteria>

وكان معامل "أرسييف Arcif" العام لمجلتكم لسنة 2024 (0.3827). ونهنتكم بحصول المجلة على:

- **المرتبة الأولى** في تخصص الدراسات الإسلامية من إجمالي عدد المجلات (103) على المستوى العربي، مع العلم أن متوسط معامل "أرسييف" لهذا التخصص كان (0.082). كما صنفت مجلتكم في هذا التخصص ضمن الفئة (Q1) وهي الفئة العليا.
- كما صنفت مجلتكم في تخصص القانون من إجمالي عدد المجلات (114) على المستوى العربي ضمن الفئة (Q2) وهي الفئة الوسطى المرتفعة، مع العلم أن متوسط معامل "أرسييف" لهذا التخصص كان (0.24).

راجين العلم أن حصول أي مجلة ما على مرتبة ضمن الأعلى (10) مجلات في تقرير معامل "أرسييف" لعام 2024 في أي تخصص، لا يعني حصول المجلة بشكل تلقائي على تصنيف مرتفع كصنيف فئة Q1 أو Q2، حيث يرتبط ذلك بإجمالي قيمة النقاط التي حصلت عليها من **المعايير الخمسة المعتمدة** لتصنيف مجلات تقرير "أرسييف" (للعام 2024) إلى فئات في مختلف التخصصات، ويمكن الاطلاع على هذه المعايير الخمسة من خلال الدخول إلى الرابط: <http://e-marefa.net/arcif>

وبإمكانكم الإعلان عن هذه النتيجة سواء على موقعكم الإلكتروني، أو على مواقع التواصل الاجتماعي، وكذلك الإشارة في النسخة الورقية لمجلتكم إلى معامل "أرسييف Arcif" الخاص بمجلتكم.

ختاماً، في حال رغبتكم الحصول على شهادة رسمية إلكترونية خاصة بنجاحكم في معامل "أرسييف"، نرجو التواصل معنا مشكورين.

وتفضلوا بقبول فائق الاحترام والتقدير

أ. د. سامي الخزندار

رئيس مبادرة معامل التأثير

"أرسييف Arcif"



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Abstract:

The study seeks to clarify the concept of forced displacement, its effects, and shed light on international protection mechanisms for civilians from forced displacement under international humanitarian law, and the extent of the adequacy of criminalization provisions in public international law, whether in times of peace or war, for the crime of forced displacement with the intention of changing the demographic composition of a particular region for racial or similar reasons, and the extent of its activation through international courts, especially since the present era is witnessing many cases of forced displacement.

Keywords: The Crime of Forced Displacement, Protection of Civilians, International Humanitarian Law.

حماية المدنيين من جريمة التهجير القسري بموجب القانون الدولي الإنساني " دراسة تحليلية "

إعتصام العبد صالح الوهيبي

قسم القانون، كلية إدارة الأعمال، جامعة الحدود الشمالية، عرعر، المملكة العربية
السعودية، وجامعة عدن، كلية الحقوق، الجمهورية اليمنية.

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ملخص البحث:

تسعى الدراسة إلى توضيح مفهوم التهجير القسري وآثاره، وتبسيط الضوء على آليات
الحماية الدولية للمدنيين من التهجير القسري في القانون الدولي الإنساني، ومدى كفاية
نصوص التجريم في القانون الدولي العام، سواء في زمن السلم أو الحرب، لجريمة التهجير
القسري بقصد تغيير التركيبة السكانية لمنطقة معينة لأسباب عرقية أو ما شابهها، ومدى
تفعيلها من خلال المحاكم الدولية، لا سيما وأن العصر الحالي يشهد العديد من حالات
التهجير القسري.

الكلمات الرئيسية: جريمة التهجير القسري، حماية المدنيين، القانون الدولي الإنساني.

INTRODUCTION

Crimes are generally considered serious threats to the lives of people and countries. Due to the development and interconnectedness of international relations, international crime has emerged, the impact of which exceeds state borders and disrupts the global order as a whole, including the crime of displacement and forced population transfer. One of the goals of the United Nations was to reject and prevent all actions that would infringe on these rights. However, forgetting and violating the latter, and the lack of deterrence, accountability, and punishment for those who violate them, led to barbaric acts that harmed the public conscience of all humanity, such as what the Israeli occupation forces are currently doing in the Gaza Strip.

The importance of the study lies in its discussion of the forced displacement of civilians in international humanitarian law during armed conflicts, which results in flagrant violations of human dignity against civilians and their forced displacement.

In view of the danger this crime represents to humanity, the violation of human dignity it entails, and the consequences that may result from it being the displacement of a large number of people or their asylum in neighboring countries, the international community has worked to address it through international humanitarian law, which was based on the four Geneva Conventions of 1949, especially those related to the protection of civilians in times of international armed conflicts and the two Additional Protocols issued by the United Nations in 1977 relating to the protection of civilians in times of internal and international armed conflicts.

The international community also worked to address the crime of forced displacement through temporary International Criminal Courts that the Security Council was establishing to confront a specific international crime when it was committed, such as the Nuremberg Tribunal or the former Yugoslavia (ICTY). The international community, in this field, ended up establishing a permanent international criminal court that addresses the most serious crimes against humanity, such as war crimes, genocide, and crimes against humanity. Which led to the crystallization of international criminal law, which sought to prevent perpetrators of international crimes from escaping punishment .

METHODOLOGY

The study relied on scientific methods required by the nature of the study, with the aim of enriching the subject and covering all its aspects. Therefore, a descriptive and analytical approach was adopted to address the concept of the crime of forced displacement of civilians, clarify the mechanisms for protecting civilians from the crime of forced displacement, analyze the principles related to the crime of forced displacement, and the extent to which states adhere to the rules of international humanitarian law regarding the forced displacement of civilians.

1. The Concept of Forced Displacement and its Resulting Effects:

The crime of forced displacement is not a modern crime or one that is incident to human life. Rather, it is a crime as old as man himself, and it will continue as long as there is a struggle between humans over resources, wealth, and power. However, in the past it was unpunished and the defeated was subject to the will of the victor and his will in everything. However, the development of the international community and the endeavor to limit the effects resulting from wars and alleviate the pain of humanity has made the international community, its jurists, and its courts stand up to this crime by criminalizing forced displacement by defining it, defining its meaning, and highlighting its effects of displacement and asylum, leading to legislating an international criminal law that punishes this crime.

Forced displacement is a three-pronged crime. According to the norms of the International Criminal Court, it is considered a crime against humanity, which is committed for political, ethnic, or religious purposes within the framework of a large-scale attack. The crime of forced displacement is also considered part of the group of crimes of genocide, because it causes the forcible transfer of civilians and their children to other groups and regions with the aim of causing their total or partial destruction.

1.1. Definition of International Jurisprudence and Criminal Justice of Forced Displacement:

Understanding the concept of forced displacement and knowing its nature, its causes, and the method of its practice necessitates the need to understand the definition of this crime by

jurists and international criminal justice, both temporary and permanent.

1.1.1. Jurisprudence Definition of Forced Displacement:

Some jurists define forced displacement as “the transfer of civilian populations to and from places other than their original places, or it is the deportation of civilians from one occupied area to another area. Deportation is considered internal if the deported persons are transferred to another location in the same country”¹, while some jurisprudence distinguishes between deportation and forced transfer and believes that deportation takes place beyond the borders of the state, while forced transfer takes place within the territory of the state itself², while others see that the concept of displacement and defining its meaning differs in the case of international armed conflicts from the case of internal armed conflicts. In the first case, it is defined as “individual or collective forced transfers and the deportation of persons residing in the occupied territories to the lands of the occupying authority or the lands belonging to another state, whether occupied or not, regardless of the facts”³. As for the second case, it is “forcing a group of residents legally residing on their land and in their homes to move to another area within the same state Or outside it based on the methodology, planning and supervision of the state or its affiliated groups or other stronger groups in an effort to cleanse based on ethnic, Athenian, national or religious discrimination or even political orientation in that region from which the population

¹ Omar Saadallah, A Dictionary of Contemporary International Law, Office of University Publications, Algeria, 2007, p. 6 et seq.

² Sherif Atlem, International Humanitarian Law Academia Guide, Cairo, 2006 p. 12.

³ François Bouchet-Solin, Scientific Dictionary of International Humanitarian Law, translated by: Ahmed Masoud, Dar Al-Millayen, Beirut, 2006, p. 198.

is removed”.⁴ In general, and regardless of the difference in defining the concept of forced displacement, it does not deviate from the fact that it is a planned policy of the government of a state that aims to forcibly exclude the civilian population subject to its authority outside the borders of their homeland, whether this is done directly individually or collectively, or by planting settlers with the aim of forming a demographic structure or imposing a new political reality on that territory⁵, Most displacement operations often involve bringing in settlers to replace the original residents who were displaced and live in the same homes as them. The new settlers may be from the same country or outside it, but they differ from them in race, sect, or other reasons that led to their displacement, thus seizing their homes and occupying them without a contract or prior permission.⁶ A large section of international criminal law jurists have agreed that the term deportation or forced transfer, as well as forced deportation, in fact express one concept⁷.

In furtherance of the above, it can be said that forced displacement is the process of forcing a human group living in a certain geographical space to leave it to another place, whether this place is inside or outside the country. The goals of displacement are multiple and may be economic, social, cultural, historical or political.

⁴ William Naguib Nassar, The Concept of Crimes against Humanity in International Law, Center for Arab Unity Studies, 1st edition, Beirut, 2008, p. 364.

⁵ Rashad Al-Sayyid, Deportation and forced deportation in the light of international humanitarian law, Egyptian Journal of International Law, vol. 51, 1995, p. 238.

⁶ Nadia Abdel Latif, Criminal Protection of Civilians from Forced Displacement, A Comparative Study, Master's Thesis, Faculty of Law, Tikrit University, Iraq, 2009, p. 67.

⁷ Abdel Fattah Bayoumi Hegazy, International Criminal Court, Dar Al Fikr University, Egypt, Alexandria, 2004, p. 5.

1.1.2. International Criminal Justice Definition of Forced Displacement:

Forced displacement, which is an umbrella term for deportation and forcible transfers, constitutes the uprooting of individuals by coercive expulsion or other coercive acts from the territory in which they are lawfully present without grounds under international law, and it is prohibited under international humanitarian and international criminal law.⁸

The Nuremberg Tribunal was formed by the victorious countries in World War II, to try major German war criminals in accordance with the London Agreement on 8/8/1945 between representatives of the United States, the former Soviet Union, and Britain, and then nineteen allied countries joined it⁹. The Nuremberg Tribunal was known forced displacement is considered a crime against humanity, and it considered in Article (6/C) of its Statute that crimes against humanity mean “... deportation and other inhumane acts committed against any group of the civilian population before or during war, or persecution for political, racial, or religious reasons...” In accordance with the same concept, the Tokyo Court considered ICTR The Tokyo Tribunal was formed based on the decision of the Commander-in-Chief of the Allied Forces in Japan to try Japanese war criminals for the crimes and massacres they committed on January 19, 1946. Forced displacement is one of the crimes against humanity, as Article (5/c) of its statute states that “crimes against humanity are... deportation and other inhumane acts committed against any civilian assembly

⁸ Guido Acquaviva, ‘Forced Displacement and International Crimes’, Legal and Protection Policy Research Series, June 2011. Available online at: <https://www.refworld.org/reference/lpprs/unhcr/2011/en/79049>

⁹ See Muhammad Mohieddin Awad, Studies in International Criminal Law, Law and Economics, Faculty of Law, Cairo University, Volume 35, Issue 3, 1965, p. 847-972.

before or during war or persecution based on political or racial grounds in implementation of any crime...”.

The ICTY and ICTR Statutes list among crimes against humanity: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds and other inhumane acts.¹⁰ ‘Deportation’ is defined as the forced displacement of persons beyond a State (or State-like) border, even in the absence of the intent to displace the persons on a permanent basis. In this context, deportation as a crime against humanity is substantially similar to the corresponding war crime (which in turn diverge slightly between ICTY and ICTR) constitute the main differences.

It was considered the International Criminal Tribunal for the former Yugoslavia ICTY considered forced deportation to be “of persons protected by expulsion or other coercive methods from the places where they are legitimately present without justifications permitted by international law”¹¹, in the case related to General Radselv Krstic, the court also distinguished between deportation and forced transfer and considered that deportation requires deportation outside the borders of the state, while forced transfer includes internal displacement of the population within the borders of the state itself.¹²

As for the Statute of the Permanent International Criminal Court, it included the terms deportation and forcible transfer among the acts constituting crimes against humanity in Paragraph (1/d) of

¹⁰ Article 7(1)(d) of the ICC Statute includes as a crime against humanity ‘[d]eportation or forcible transfer of population’.

¹¹ Sabah Hassan Aziz, The Crime of Forced Displacement, A Comparative Study, Master’s Thesis, Faculty of Law, Al-Nahrain University, 2015, p. 46.

¹² Sherif Atlam, op. cit., p. 114 et seq.

Article Seven, while Paragraph (2/d) of the same article considered that deportation or forcible transfer is “the forcible removal of protected persons from the area in which they are lawfully present by expulsion or any other coercive act without justifications permitted by international law.” Which laid the foundation for the criminalization of forced displacement .

International criminal justice considered forced displacement to be a crime against humanity committed to remove a group of people from their original homeland to another place for political, racial, or religious purposes...etc.

International humanitarian law defines forced displacement as (the illegal eviction of a group of individuals and populations from the land on which they reside) and also defines forced displacement as “a systematic practice carried out by governments, or paramilitary forces, Or groups that are fanatical towards ethnic, religious or sectarian groups, with the aim of evacuating certain lands and replacing them with other population groups. It is a process of forcing the civilian population and forcing them to move away from their original places using means of pressure, intimidation and persecution, and transferring them to new places within the territory of the same state or taking them out of the country to another state, according to well-planned policies, in order to exclude the indigenous population, Changing the demographic structure, imposing a new reality, or replacing them with settlers.

1.2. Effects Resulting from the Crime of Forced Displacement:

Forced displacement causes people to abandon their homes, their jobs and their families. This has significant personal, social and economic consequences. Moreover, they are usually in a

precarious situation and may have limited access to food, water, shelter, clothing, healthcare and money. This also places pressure on state and non-state armed groups who are under an International Humanitarian Law (IHL) obligation not to cause harm to civilians. It also has flow-on consequences for the civilians: their education or employment may be disrupted and it can entail significant effects on psychological wellbeing. Forced displacement presents a challenge not only for the civilians who have been displaced, but also for the civilians who live in the area to which the displaced civilians go. There may already be scarce resources in that area and a higher number of civilians will only increase pressure on supplies and allocation of resources. This may also result in resentment and tension between the various civilian populations. This increased vulnerability of the civilian population exacerbates the risk that already vulnerable civilians, such as women and children, may be exploited just to have access to basic necessities.

It can be said that one of the most important effects resulting from forced displacement is the displacement of displaced persons from their original homeland, or their transformation into refugees. Given the difference in the legal status of the displaced person and the refugee, we will clarify the concepts of displacement and asylum as an effect of forced displacement and highlight the difference between them.

1.2.1. Forced Displacement and Displacement (internal displacement):

According to the United Nations Guiding Principles, displaced persons are defined as “persons or groups who have been forced into war, or have been forced to leave their homes or places of habitual residence, particularly as a result of or in an effort to avoid

the effects of armed conflict, situations of generalized violence, violations of human rights, natural or man-made disasters and who have not crossed an internationally recognized state border”.¹³

Paragraph (17) of the analytical report of the Secretary-General of the United Nations in 1992 defined forcibly displaced persons within their countries as “people who were forced to flee in large numbers from their homes suddenly and unexpectedly as a result of armed conflict, internal disturbances, continuing violations of human rights, or natural or man-made disasters and who are still present in the territory of their countries”.¹⁴ Some call these people internally displaced people, or those displaced within their homelands. As citizens, the displaced retain all their rights, including the right to protection in accordance with human rights laws and international humanitarian law.¹⁵ If their displacement was in time and because of war, they are subject to international humanitarian law as civilians, and if their displacement was in time of peace and other than in a state of war, then they are subject to the protection of international human rights rules.¹⁶

Forced displacement is due to persecution, conflict, violence, human rights violations or events that seriously disrupt public order.

The total number of people forcibly displaced – both within countries and across borders – as a result of persecution, conflict, generalized violence, human rights violations or events seriously

¹³ Sabah Hassan Aziz, op. cit., p. 62.

¹⁴ Muhammad Safi Youssef, *International Protection for Forced Displaced Persons within their Countries*, Arab Renaissance Publishing and Distribution House, Cairo, 2004, p. 15.

¹⁵ Report of the United Nations High Commissioner for Refugees, formerly displaced persons, displaced within their homelands, 2014.

¹⁶ François Bouchet Soulet, op. cit., pp. 119 , 200.

disturbing public order almost doubled over the past decade. While there were 59.5million forcibly displaced people as of the end of 2014,¹⁷ the figure was 117.3 million by the end of 2023.¹⁸ This is the highest number available on record and an 8 per cent increase from 2022, following the trend of annual increases for the last 12 years.¹⁹ An estimated forty per cent of all forcibly displaced people at the end of 2023 were children.

United Nations High Commissioner for Refugees (UNHCR) operational data estimates that forced displacement had likely already exceeded 120 million by the end of April 2024.²⁰ The drastic increase of total forced displacement - both within countries and across borders . An estimated forty per cent of all forcibly displaced people at the end of 2023 were children.

We conclude from the above that displacement is one of the most important effects of forced displacement, and it occurs within the borders of the country. The displaced person enjoys the rights guaranteed to him by national law, due to his continued enjoyment of citizenship. He also enjoys the human rights included in international agreements and covenants.

1.2.2. The Relationship between Forced Displacement and Asylum:

Article 1 of the 1951 Refugee Convention defines a refugee as “every person who, as a result of events occurring before 1 January 1951 and because of a well-founded fear of being persecuted on

¹⁷UNHCR 2015 Global Trends: UNHCR Global Trends 2014. Available <https://www.unhcr.org/uk/media/unhcr-global-trends-2014>online at:

¹⁸UNHCR 2024 Global Trends: Forced Displacement in 2023. UNHCR, Copenhagen. Available online at: <https://www.unhcr.org/global-trends>

¹⁹ Ibid.

²⁰ Ibid.

account of his race, religion, nationality, membership of a particular social group, or political opinions, is outside the country of his nationality and who is unable or unwilling, owing to that fear, to avail himself of the protection of that country, or every person who does not have a nationality and is outside the country of his former habitual residence as a result of such events, he cannot or does not want, due to fear, to return to that country.” According to the Protocol relating to the Status of Refugees issued in 1966 by the United Nations, the time limit has been exceeded, as the status of refugees who meet the definition contained in the agreement has become equal without restriction.

Asylum is considered one of the consequences of forced displacement and its consequences. Asylum differs from displacement in that civilian persons become internationally recognized refugees when they cross international borders to seek refuge in another country, while internally displaced persons for any reason remain in their own countries. Thus, the legal status of refugees is better than that of internally displaced persons, as there are international laws and agreements that address their legal status, as for the internally displaced, they are often considered enemies of the state.²¹

We conclude from the above that asylum is one of the effects of forced displacement and occurs by leaving the borders of the homeland abroad. The legal status of the refugee is subject to the national laws of the host country, and to what is stipulated in international laws related to asylum.

²¹ Sabah Hassan Aziz, op. cit., p. 66.

2. Mechanisms to Protect Civilians from Forced Displacement under International Humanitarian Law:

The crime of forced displacement is a flagrant violation of human rights, and violates a wide range of civil, cultural, economic, political and social rights, as United Nations literature indicates that it conflicts with the right to life and the right not to be subjected to cruel, inhuman or degrading treatment. It also deprives people of their right to security and life to an adequate standard of living.

The forced displacement of civilians represents a gross violation of human rights and international humanitarian law, through the displacement of the Palestinian people in Gaza from their land without their consent or approval, and depriving them of the right to self-determination and the establishment of their independent state. Forced displacement is also an international crime that affects human rights and fundamental freedoms, according to the text of Article (7) of the Statute of the International Criminal Court, and Article (49) of the Fourth Geneva Convention of 1949.

Article (1) of the International Covenant on Civil and Political Rights states that: "No one shall be arbitrarily deprived of his right to housing." Therefore, the forced displacement practiced by Israel against Palestinians constitutes a violation of the right to return to their homeland. Consequently, the forced displacement of Gaza residents is also a violation of human rights.²²

The attempt to displace the residents of Gaza to Sinai in Egypt is an attack on Egypt's sovereignty and the treaties concluded

²² International Covenant on Civil and Political Rights 1966m Article 12/1.. Available online at: <https://www.ohchr.org/ar/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

between Egypt and Israel. It also contradicts the principle of non-interference in the internal affairs of states, as one of the principles of the United Nations, and also contradicts the common interests between the two countries, as the displacement of the residents of Gaza to Egypt will weaken Egypt's role as an important mediator in the Israeli-Palestinian conflict, and goes beyond the limits of security cooperation that is based on respect for the 1979 borders and ensures stability in the region. ²³

There is no doubt that Violating legal rule does not mean its lack of existence, so distinction must be made between the existence of the legal rule and its effectiveness because the violation affects the effectiveness of the legal rule and not its existence, and this applies to all branches of law, including international humanitarian law. ²⁴

On the other hand, the crime of forced displacement involves a state of coercion and coercion that threatens the lives of civilians, their access to food, health and educational services, in addition to their loss of their property, savings, jobs, identification papers and possessions. It also carries a clear discriminatory aspect, as it targets indigenous populations and peoples with the aim of creating a new reality, and these indigenous groups are often marginalized, poor, deprived of rights, and have been subjected, over long periods, to many pressures to eventually compel them to comply with this crime.

²³ Ibrahim Al-Sayed Ramadan, (2024). The Forced Displacement of Palestinians: A Legal Perspective, International Politics Journal, Vol. 59, No. 235, January, pp. 165-166.

²⁴ Alwheebe, Etesam Alabd, S. The role of the international criminal court in the implementation of the international humanitarian law: An applied study. International Journal of Advanced and Applied Sciences, 8(10) 2021. P.P 131-150.

In view of the threat that the crime of forced displacement poses to the security and stability of the international community and the lives, values, culture and dignity of peoples, international humanitarian law has been concerned with confronting this crime through various possible means and mechanisms in order to prevent it, or limit its spread and expansion.

Notwithstanding this, and irrespective of the form that forced displacement takes, a much-neglected element of this crime is the denial of the right of the displaced to remain in such territory which is perpetuated through prevention from returning. This issue, which is considered next, bears significant ramifications on determining ICC territorial and temporal jurisdiction and is closely linked to the question of whether forced displacement is considered completed as soon as the displaced are forced out of specific territory, or whether it continues for as long as prevention from returning is sustained.²⁵

2.1. The Role of the International Committee of the Red Cross in Providing Protection Against forced Displacement:

The International Committee of the Red Cross (ICRC) is a neutral, independent organization carrying out a humanitarian mission of protecting the lives and dignity of victims of armed conflicts. Its work is guided by the principle that requires the control of war, that is, the control of acts of war and the conduct of soldiers. The Committee bases its work on the four Geneva Conventions of 1949 and their Additional Protocols of 1977, and the Statutes of the ICRC Movement and the decisions of the International Conferences of the Red Cross and Red Crescent.²⁶

²⁵ Elena Katselli Proukaki, Forced Displacement, Prevention from Returning and the Jurisdiction of the International Criminal Court, *Nordic Journal of International Law* 91, (2022), p. 363.

²⁶ Mustafa Ahmed Fouad, and Ahlam Ali Muhammad Al-Aqra', the crime of deportation and forced deportation of civilians in international criminal law,

The ICRC played an important role in protecting civilians from forced displacement as the guardian of international humanitarian law, whether in setting rules to protect civilians from forced displacement, or drawing the attention of states to the violations to which civilians are exposed.

2.1.1. The Extent to which the International Committee of the Red Cross Contributes to Prohibiting Forced Displacement:

The International Committee of the Red Cross (ICRC) sought to limit the Forced Displacement of civilians by proposing an international agreement to the international conference held in Switzerland in 1940, which included the neutralization of enemy civilians present in the territory of a belligerent state, and also the neutralization of civilians present in the territory of a belligerent state. However, it failed to do so due to the circumstances of World War II, so it took the initiative to propose to the parties to adopt the Tokyo Project Paragraph (b) of Article 19 thereof prohibits the deportation of the civilian population outside the territory of the occupying state unless the evacuation is carried out due to military operations to ensure the security of the civilian population. However, this demand was rejected again by the parties involved in the war, and Nazi Germany committed the most horrific practices of forced displacement against the civilian population in the absence of an agreement to protect against displacement.

As a result of the scourges that befell humanity as a result of World War II, the Fourth Geneva Convention of 1949 was established, which in Article (49) prohibited the deportation or deportation of civilian populations or their exile. The protection of civilians was also strengthened and the prevention of their forced

displacement was achieved through the First Additional Protocol of 1977, which was devoted to international armed conflicts, and in Article (85/4/A) of which it was considered a grave violation for the occupying state to transfer some of its civilian population to The territories it occupies or deport or transfer all or some of the population of the occupied territories within or outside the scope of those territories in violation of Article (49) of the Fourth Convention regarding the Protection of Civilians.²⁷ This protection was also strengthened through the Second Additional Protocol of 1977, which was designated for non-international armed conflicts and which stipulated in Article (17) of It is: “1. the deportation of the civilian population may not be ordered for reasons related to the conflict unless this is required by the security of the civilians concerned or urgent military reasons. If circumstances require such deportation, all possible measures must be taken to receive the civilian population in satisfactory conditions in terms of shelter, preventive and curative health conditions, safety and nutrition.

2. Individual civilians may not be forced to leave their lands for reasons related to the conflict.”²⁸

Thus, the I.C.R.C played an important historical role in the international community reaching the Fourth Geneva Convention and its Additional Protocols and in developing legislation

²⁷ ICRC, 1977a: Article (85/4/A): The following acts, in addition to the grave violations specified in the previous paragraphs and in the Conventions, shall be considered grave violations of this Appendix “Protocol,” if committed intentionally, in violation of the Conventions or the Appendix “Protocol”:

a) The occupying State transfers some of its civilian population to the territories it occupies, or deports or transfers all or some of the population of the occupied territories within or outside the scope of those territories, in violation of Article 49 of the Fourth Convention.,

²⁸ ICRC, 1977b: Article (17).

preventing the forced displacement of indigenous people from their homes, whether the displacement was due to international or internal armed conflicts, which had a major impact on the birth of the International Criminal Court and the emergence of international criminal law.

2.1.2. The Role of the International Committee of the Red Cross in Drawing the Attention of the International Community to the Violations Against Civilians:

The International Committee of the Red Cross spreads and deepens knowledge of international humanitarian law, supports its application at the national level, reminds parties to conflict of their obligations, and develops the rules of international humanitarian law,²⁹ to be able to do this, the International Committee is working to deploy its delegates in conflict areas to monitor violations committed against civilians. In the event of any violation occurring, it is the duty of the delegates to draw the attention of the authorities to it and make suggestions to avoid repetition. The delegates must do their best to investigate the facts without searching for the perpetrator of the violation because it is the duty of states and parties to the conflict, the Committee also receives complaints from parties to the conflict or any other parties that expose any violation of the rules of international humanitarian law. The Committee also makes completely confidential efforts with the parties to whom allegations of violations have been directed, but if violations are repeated, the Committee issues a public call to stop the violations,³⁰ an example of the Committee's departure from secrecy is its exposure of violations committed by parties to the conflict in

²⁹ Sabah Hassan Aziz, op. cit., p. 66.

³⁰ Mustafa Ahmed Fouad and Ahlam Ali Muhammad Al-Aqra', op. cit., pp. 27.28.

Yugoslavia, and it provided reports and information to the Security Council on crimes committed by parties to the conflict pursuant to its Resolution No. (771) of 1992, in which it called on international humanitarian organizations to provide the documents they have on crimes committed by parties to the conflict, including ill-treatment of civilians and forced displacement of civilians.³¹

From the above, it can be said that the ICRC response to the crime of forced displacement and its support of the international criminal judiciary in this matter is done by drawing the attention of states to these violations and reminding them of their international and humanitarian duties, which constitutes moral pressure on these states and benefits the international criminal judiciary in collecting information and initiating legal prosecution of the perpetrators of forced displacement crimes.

2.2. International Criminal Justice and the Crime of Forced Displacement:

International criminal justice played an important role in punishing the crime of forced displacement through international criminal courts that prosecute international criminals. The matter has evolved from what it was in the past, as the U.N Security Council established temporary criminal courts specializing in some international crimes, but currently the matter has ended in To the establishment of the permanent ICC, which was the result of the struggle of peoples and the efforts of the international system to confront international crimes, including the crime of forced displacement.

³¹ Walid Ben Shaira, Deportation and forced deportation of civilians in light of international humanitarian law, unpublished master's thesis, University of Batna, Algeria, 2010, p. 114.

The rights not to be displaced and to return constitute fundamental human rights under international law violation of which may give rise to individual criminal responsibility,³² illustrating the close interaction between international criminal law and international human rights.

2.2.1. Temporary Courts and their Role in Punishing Forced Displacement:

Among the temporary courts that criminalized acts of deportation and forced displacement was the Nuremberg Court, which specialized in crimes against peace, war crimes, and crimes against humanity. It included the crime of forced displacement among the crimes committed against humanity in accordance with what was stipulated in its statute.³³ One of the most significant gains achieved by the Nuremberg Court is the emergence of the concept of crimes against humanity,³⁴ as well as the Tokyo Court, whose jurisdiction was similar to the jurisdiction of the Nuremberg Court and also considered forced displacement a crime against humanity,³⁵ and the Court of the Former Yugoslavia, whose jurisdiction included accountability for grave violations of the four Geneva Conventions of 1949 and violations of the laws and customs of war, genocide, and crimes against humanity. Article (4, paragraph 2 e) of the court system considered that forcibly transferring the children of the group to another group falls within

³² Katselli, Proukaki, E. 'The Right not to be Displaced by Armed Conflict under International Law' in E. Katselli Proukaki (ed.), *Armed Conflict and Forcible Displacement: Individual Rights under International Law* (London: Routledge, 2018) 1–45; E. Katselli Proukaki, 'The Right to Return Home and the Right to Property Restitution under International Law' in E. Katselli Proukaki (ed.), *Armed Conflict and Forcible Displacement: Individual Rights under International Law*, London: Routledge, 2018, 46–83.

³³ Article (6/c) of the Nuremberg Court Statute of 1945.

³⁴ Abdel Fattah, Hegazy, op. cit., p. 441.

³⁵ Article (5/c) of the Statute of the Tokyo Court of 1945.

the category of crimes of genocide. The court also punished the crime of deportation in Article (5/d) of the court system, as a crime against humanity. What is considered one of the temporary criminal courts is the Rwanda Court, which was established pursuant to UN Security Council Resolution No. 955/94 on 11/8/1994 to examine crimes against humanity, genocide, serious violations of the 1949 Geneva Conventions, and violations of the laws and customs of war. As a result of the conflict between the Tutsi and Hutu tribes and the resulting killing and displacement that claimed the lives of about one and a half million people, the Statute of the Tribunal was based on the same foundations on which the Statute of the Tribunal of Yugoslavia ICTY was based, which in turn was based on the Charter of the Nuremberg Tribunal.³⁶

Paragraph (e) of Article (2) of the Statute of the Court considered that the term genocide includes “the forcible transfer of children from one group to another group.”

Considering the above, we see that the international criminal judiciary, represented by the temporary international criminal courts established by the international community, such as the Nuremberg Tribunal, the Tokyo Tribunal, the former Yugoslavia Tribunal ICTY, and others, played an important role in punishing the crime of forced displacement and constituted the beginnings of the birth of international criminal law.

2.2. 2. Punishment of Forced Displacement in the International Criminal Court:

The International Criminal Court Statute included the most comprehensive and up-to-date definition of relevant international

³⁶ See the Statutes of the Tribunals for Rwanda of 1994 and Nuremberg of 1945.

crimes whose components primarily constitute violations of international humanitarian law.³⁷

The ICC considered forced displacement an internationally punishable crime and classified the crime of forced displacement among the crimes of genocide, which is manifested by the forcible transfer of the children of a group to another group with the aim of completely or partially destroying a national, ethnic, racial or religious group,³⁸ it also considered forced displacement a crime against humanity when it was committed as part of a widespread or systematic attack directed against any group of civilians and with knowledge of the attack³⁹, and also a war crime,⁴⁰ as a grave violation of the four Geneva Conventions dated August 12, 1949 when committed against persons protected by the Geneva Conventions.

From the above, it is clear that international criminal justice has stabilized and its rules for punishing forced displacement have been established, with the birth of the permanent International Criminal Court, which has taken upon itself and among its jurisdictions is to address the crime of forced displacement as a war crime, a crime against humanity, and the crime of genocide.

There is no doubt that the crime of forced displacement increases the state of discrimination and isolation, perpetuates poverty and inequality, contributes to fueling social conflict, and deprives a segment of the population of a package of rights directly or indirectly, and in addition to that it is accompanied by inhuman and degrading treatment, accompanied by violence and exposure to

³⁷ ICRC, 2021b: Articles (6, 7, 8) of the Statute ICC.

³⁸ Article (6/E) of the Statute ICC.

³⁹ Article (7/d) of the Statute ICC.

⁴⁰ Article (8/A2/7/) of the Statute ICC.

harassment, beatings, kidnapping, arrest, extortion, or even sexual exploitation, the impact of the displacement experience is clearly evident on women and children who have lost housing, protection, and privacy. They have been exposed to double doses of terror, fear, loss, and a state of uncertainty, and are forced to live in camps, gatherings, and conditions in which the minimum requirements for a decent life are not available.

CONCLUSION AND RECOMMENDATIONS:

The ICC considered forced displacement an internationally punishable crime and classified the crime of forced displacement among the crimes of genocide, which is manifested by the forcible transfer of the children of a group to another group with the aim of completely or partially destroying a national, ethnic, racial or religious group.

At another level, criminal justice measures may reinforce or be in tension with efforts to achieve durable solutions to displacement, depending on the context. Prosecuting those responsible for crimes of forced displacement or other abuses may facilitate return and sustainable reintegration processes by improving returnees' sense of safety and reducing the likelihood that displacement will recur. On the other hand, though, the threat of criminal prosecution may hinder return processes by creating a disincentive for those who think they may be implicated, perhaps falsely, in past crimes, especially when criminal justice processes are perceived to be one sided or lack adequate due process. In any event, it is important from a broader perspective to consider the ways in which criminal justice and other transitional justice processes may interact, directly or indirectly, with other types of interventions addressing displacement.

At the conclusion of this study, we present a set of recommendations that we consider important regarding the crime of forced displacement, which are:

1. The international community must do everything in its power to prevent further forced displacement of Palestinians, and change the permanent displacement status of all Palestinians by enabling them to effectively exercise their right to return.

2. The need to oblige states to respect the rules of international criminal law and criminalize and punish forced displacement in their national laws.
3. Activating the role of the International Criminal Court in punishing the crime of forced displacement and keeping it away from political tensions between countries to enable it to exercise its role and make it neutral, independent and objective.

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