

## **Palestine and International Law Conference: Effectiveness and Prospects**

### **Session 1: Cases Under Occupation: The Perspectives of International Law and the Effectiveness of internationalization (Jerusalem and the Prisoners)**

Date: 29 November 2021

(10:40-11:40 a.m.)

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#### **Speakers in this session:**

Sahar Francis, General Director of Addameer Prisoner Support and Human Rights Association

Dr. Munir Nuseibah, Assistant professor of Law at Al-Quds University

**Moderator:** Dr. Ahmed Shehab, Assistant professor of Law at the Islamic University (Gaza)

#### **Introduction:**

**Dr. Ahmad:** Thank you very much Mona. Good morning, everyone.

I welcome you all from all around the world in one of the most important activities and conferences held on the International Day of Solidarity with the Palestinian people. I also welcome the speakers of this first session dedicated to speaking about cases under occupation- the perspective of international law and effectiveness of internationalization.

As we know that internationalization, besides other international mechanisms, aim to hold international community accountable ethically, morally, and legally for not implementing the legal and international resolutions related to achieving Palestinian right to self-determination and the return of refugees and all other unresolved issues.

Besides, adopting legal international frameworks and employing the international pressure to satisfy some of the rights of Palestinian people, and using other militant tools that do not violate international law to resist occupation. The speakers of the first session are:

Sahar Frances, Lawyer and Director of Addameer Human Rights Association, a prominent member in the global movement for defending children (Palestine). She is also a board member of the Agriculture Committees in Palestine.

Francis shall talk about mechanisms, chances, challenges of internationalization of the case of prisoners in the context of international law and international community.

The second speaker is Dr Munir Nuseibah, a Member of the Board of Trustees at Law for Palestine, Assistant Professor of al Quds University and Co-Founder and Director of the legal clinic in al-Quds University, and a policy consultant to Al-Shabaka. He holds a PhD from Westminster University in London.

Attendees and guests, we will dedicate a specific time for discussion and Q and A session, but we shall start first with the first speaker, Sahar, the floor is yours for 15 minutes.

**Sahar:**

Good morning. Thank you very much for this invitation to participate in this important conference I am honored to be a speaker today.

I will focus on prisoners and political prisoners in Palestine, of course the state of occupation from the beginning of its occupation in 1967 employed and used detention as a tool to control the Palestinian community and evolved the military orders and the military system and a whole system of courts, decisions and proceedings to keep the control over the Palestinian people and criminalize all militant acts and resistance against the occupation and also to criminalize a lot of civil activities that are allowed according to the international law but listed as crimes according to the definitions of the occupation state and the military court system.

We, in Addameer Association, in our daily work with prisoners in civil and military courts in the occupation state are monitoring, tracking and documenting the human rights violations that are practiced against prisoners. We can say that this system, that is developed by the occupation state, is far from justice and the values of justice, or fair trials, or guarantees according to international law. For this we say that it is time to fight and resist against the military court and the system that it imposed through non-conventional and non-traditional tools.

The appearance of detainees before these courts is not fruitful and would not bring us any closer toward the goal we want to reach, i.e., ending of the occupation. But before we can talk about what should be done differently, it is important first to scan the system, understand how it evolved, and what are the principal crimes that we can refer to through the application of the system of military courts. Of course, the occupation state instead of respecting Geneva Conventions, specifically the Fourth Geneva Convention concerning civilian prisoners. I have to stress that most of the prisoners in Palestine are listed and covered by the Fourth Geneva Convention and not the Third Geneva Convention related to prisoners of war. There is also the Hague convention of 1907 which is defining what is legitimate for the occupation state when it comes to legalization and the establishment of courts. The occupation state did not respect these treaties and started to legitimize and enact laws through the military governor which is the executive and real governor of the occupied state. There are now 1,800 orders that regulate everything about the daily life aspects of Palestinians, regarding movement, education, building houses, leaving the occupied land and re-entering, cultural aspects, and even granting of professional licenses for lawyers or medical doctors. In short, they intervene in all aspects of daily life of Palestinians. And according to these military orders, they announced and designated Palestinian political parties as illegitimate, they criminalized all labor unions and all student movements and civil society organizations. They targeted Addameer Association and the colleagues in other five associations, which are women committee, Alhaq NGO, union of agricultural committees, and Bissan center for Research.

Since 1967, and because of the international pressure, the occupation state seemed to work towards the developing of the proceedings in Israel to adopt the fair trial guarantee as they claimed, but in the core of our daily life work, we can say that these procedures that were developed by military courts are relying and based on the criminal code of Israel, and in a selective way military courts selected proceedings that helped them impose more control while not respecting core and vital guarantees in international law to provide protection, specifically when it comes to the prosecution of children.

The problem is not only with the definition of the child and the age of up till 16, but also with the standards of how to deal with children during the trial itself, what is considered evidence? What are the defenses that children can use during these trials? There are many details that I cannot sum up all.

What we should focus on is that the violations of the military courts don't respect the fact that the law should be implemented only on the occupied lands. Unfortunately, the occupation implemented these laws and proceedings even for practices committed outside the territory of the occupied lands and this is what allowed the military courts to prosecute activists, Palestinian/ international activists for acts they committed outside the occupied state. Three or four years ago, a Belgian guy, a Palestinian guy who had a Belgian passport, was persecuted in Israel for acts he had done in Belgium, and he was arrested for several months in a military trial.

Also, the definition of crimes is really problematic, as we said, many civil and political rights are defined as crimes in military courts. There are also trials and persecutions for driving offences and other crimes that are not considered from the international law perspective as within the jurisdiction of criminal courts. Entering the occupied lands without authorization is another crime that many hundreds of workers are persecuted for on an annual basis. This means that the military courts are not covering only grave crimes which they are entitled to persecute under international law.

How can we deal with all these violations?

We should focus on that the military system in Israel put the detainee from the outset of the detention, when the violence and torture start through the investigation proceedings. All these processes put the prisoner under oppressive conditions to force the prisoner to reach a deal with the prosecutor to guarantee the least amount of time in the final judgement. More than 99 % of the files end with such deals without looking into the allegations before the courts. All the associations: Al-Aseer Club, The Independent Commission, Addameer and all other institutions who are looking into prisoners' cases, we take advantage of the international mechanisms within the Human Rights Council and the Convention against Torture and Children's rights, and all the other conventions and treaties that allow for reports or individual complaints, but unfortunately, these complaints or reports stay in the field of documentation because as we know there are no mechanisms to force Israel to respect the obligations through these or by these standards.

These organizations also submitted reports and cases to the ICC when the pre-trial Chamber started its investigation and the examination of the situation in Palestine. But, unfortunately, up to this moment there is no clear decision by the Prosecutor to open an investigation related to prisoners, and we see that there are four crimes that are listed practically within the framework of the ICC: torture, arbitrary detention through the employment of administrative detention in a very wide sense, the forced transfer of prisoners to prisons in the occupied lands, and also other crimes that are part of the war crimes and crimes against humanity. We stress that the prosecutor should open an investigation and open the files of prisoners' cases and look carefully into these systematic violations that amount to war crimes and crimes against humanity.

There is also a possibility to take advantage of the universal jurisdiction related to war crimes and crimes against humanity but unfortunately when some organizations and institutions tried, among them, for example, the Center of Human Rights in Gaza, when they tried to file a lawsuit in Spain, the Spanish government actually amended the procedures and closed this door because of political pressure. This happened also in UK, Belgium and other countries.

This leads me to the most important conclusion, which is the impossibility of the imposition of international standards and the loss of international standards without having a real political will from the Palestinian side to put pressure on these states to open the doors for lawsuits and prosecutions. Especially when it comes to torture, arbitrary detention and crimes of deprivation of fair trials. All these countries are signatories to the Fourth Geneva Convention and are obliged to prevent war crimes and to prosecute war criminals. These states and countries are also obliged to satisfy obligations according to international law, the responsibility is not only on the ICC. I believe that Palestine as a state should look into the jurisdiction according to the international treaties, this allows and makes space for the Palestinian state to amend laws to enable them to prosecute war criminals domestically as well. In this case, we should talk about real political will to impose these standards, to have a real deterrence and obligation on the Israeli occupation state to respect the rights of prisoners.

I stop here, and I believe there will be a space for further discussion later.

**Dr.Ahmad:**

Thank you very much. Thank you, Sahar, for this informative intervention. Our second speaker is Dr. Munir Nuseibeh who will talk about mechanisms, chances and the challenges of the internationalization of the Jerusalem case and the international context and international community, the floor is yours.

**Dr.Munir:**

Thank you very much Dr. Ahmad. It is a pleasure for me to be with you in this session and of course I am very much pleased to be with the great and amazing defender of human rights our friend Sahar Francis. I also thank the conveners of this conference for the great efforts to make this success possible.

I will start with saying that we are disappointed as people, inhabitants of Jerusalem and Palestinians because of the fact that the occupation state is not respecting the different

resolutions issued by the UN and other organizations to stop the Israeli violations. We witness on a daily basis forced displacement, building of settlements in Jerusalem and other towns. We witness torture and collective punishment and attacks on all sacred places and repression of civil workers and many other systematic violations. This makes us frustrated because these violations are systematic, and they continued since 1948.

Nonetheless, my words and my speech are not about frustration but about what can be done regarding it. I shall begin first with talking about the fact that Jerusalem as a city that has a special status under international law. Most of the international community still don't recognize Jerusalem as a capital of Israel in its two parts West and East, and it is still considered as occupied. To give an example, the Security Council resolution no.487 stated that all the procedures and legislations that are taken by the occupation state which changed the appearance of Jerusalem, especially the last code are all null and void. This means that all efforts by the Israeli state of land confiscation, forced displacement are not recognized by international law as legitimate. This obliges us to remember that when Palestine got liberated from the apartheid, the situation has to be restored to its pre-occupation status.

It is important to always remember that the international community does not recognize the Israeli sovereignty over Jerusalem. The international community considers Jerusalem as occupied and as a result, there is no sovereignty over Jerusalem.

As civil society, this fact led to work, on a daily basis, to document as much as possible of Israeli violations and provide them to the UN and other institutions to push forward for the adoption of new resolutions that would condemn and highlight the non-recognition of Israeli changes in Jerusalem. International humanitarian law is the general framework that is related not only to Jerusalem, but also West Bank and the Gaza Strip. Therefore, our efforts focused on violations within this framework.

Among the most important legal efforts that we achieved as Palestinians is the advisory opinion of the International Court of Justice in 2004, which confirmed that Palestine is occupied and that the wall which divided Jerusalem and the West Bank and split them

from other regions is illegitimate. This judgement is very important, but unfortunately it failed in providing guarantees or helping Palestinians to regain their rights.

In 2017/2018, Trump's decision to recognize the sovereignty of Israel over Jerusalem and the transformation of the US embassy to Jerusalem, in a clear violation to international law and Security Council resolutions, has encouraged the occupation to commit even more violations to international law. For them, if the US recognized that Israeli practices as legitimate, it does not matter what the rest of the world thinks.

There are lots of Israeli efforts to Israelize Jerusalem and expand its settlements there including put high budgets for educational programs supporting their plans. On the other side, there are the resistance of the inhabitants of Jerusalem who are isolated from the West Bank, almost completely. Moreover, the inhabitants of West Bank whenever able to get to Jerusalem, express their resistance as inhabitants of the land.

To prominent examples of this were the tremendous resistance of imposing electronic gates at Al-Aqsa Mosque in 2017, and the resistance against changing the status quo. The other example is Sheikh Jarrah which resonated and echoed around the world and shed light on the Palestinian question.

There is massive civil society work, in Jerusalem, in the West Bank and Gaza Strip, and also the 1948 regions that are working persistently to focus on the case of Jerusalem. Next, I will shed light on some promising activities that I believe to be important for Jerusalem specifically and for Palestine in general.

First, we are witnessing a shift in the human rights arena internationally and domestically, toward focusing on the framework of apartheid. I talked about the framework of international humanitarian law earlier above, but the shift we are witnessing now adays is that we are no longer talking about international humanitarian law in general, but more about the specific crime of Apartheid. This crime does not mean racial discrimination, a concept which Palestinians were afraid of for many years because of their fear that the answer would be equality. But how equality could be ever possible between a settler and an oppressed Palestinian. I here want to clarify that Apartheid framework is more than



racial discrimination. It is state-oriented systematic repression of a specific racial group to enable another racial group to dominate over and impose control over the first group. This framework is getting recognized more and more. Many human rights organizations, including Israeli institutions such as B'tselem and Eshleem, and also international institutions like Human Rights Watch started to recognize the existence of Apartheid.

Recently, Professor Michael Lynk, the Special Rapporteur that is joining this conference today, issued a call for Palestinian organizations to provide with information for intended report about this topic. I hope that using this framework will bring important improvements for the situation in Jerusalem specifically and for the Palestinian question in general.

All violations that I started my speech with, are facilitating the domination of a specific racial group over another racial group. This framework of apartheid does not delete the first framework of occupation and IHL but both work in parallel.

Another issue that I found promising in international arena is the decision of the pre-trial Chamber of the ICC that was issued in the beginning of 2021, in which it recognized that Palestine is a state that is party to the Rome Statute, and that the land of Palestine extends to the West Bank, including Eastern Jerusalem and the Gaza Strip. So, we know today that the ICC has jurisdiction over East Jerusalem, so a lot of organizations provide the ICC with information on this specific area and I'm optimistic and hopeful that this will be followed by significant achievements. I will stop here because my time is over and maybe add more in the discussion section. Thank you very much.

**Dr. Ahmad:**

Thank you very much dr. Munir for this enriching information and for respecting the time. To the Q and A, I can sum up audience questions into 7 points that I shall divide between Dr. Munir and Sahar.

The first four questions to Sahar are:

- 1- Can you provide us with more information about the ICC and the progresses to the Palestinian cause there so far?
- 2- Are there any evidence provided against the Palestinian civil society organizations accused of terrorism?
- 3- Does Israel justify the arrest of civilians on the provisions of Geneva Conventions? Especially the fifth provision in the Fourth Geneva Convention, which gives a right to arrest civilians if the occupying power suspects them of being involved in acts against its security?
- 4- Unfortunately, there have been no real power for human rights organizations in protecting the Palestinian prisoners' rights, so the question is what is the legal view point regarding Palestinian prisoners in Israel, and what are the guarantees provided by international law to protect their rights?

**Miss Sahar:**

Thank you. Regarding the ICC, there are Palestinian organizations like colleagues from Al-Haq organization and the Palestinian Center for Human Rights and Al-Mizan and in Gaza, all of those are close to the ICC work with regards to identifying the crimes that occurred in the 2014 war in Gaza and the settlement issues. But practically, we can say that an investigation has started and there are files that are being submitted and the Prosecutor's Office's staff are interviewing these organizations and individuals from the official Palestinian side. But I think that Israel will prevent any international investigation team, whether it was from the UN or any other side, to visit the Occupied land to start a field investigation. This raises the importance of the human rights institution's information, and this is one of the reasons that Israel has announced that the six main human rights institutions of Palestine are terrorist organizations. As I have mentioned, Al-Haq institution, Addameer and the international movement to protect children have provided several files to the ICC and we try to keep this case as a priority. And I think, especially Al-Haq institution, that the main reasons for categorizing them as terrorist organizations is

that Minister Gantz knows that he is one of the accused for the war in Gaza and the crimes that have been committed there.

To answer the second question on civil society organizations, there are no evidence and practically the file that was prepared by various ministers and was submitted to the UN in May to convince it that these organizations are terrorist organizations has not convinced the UN and No action was taken. From here, escalation started: with the use of terrorism, revenge act of 2016 and the military order that considered these institutions to be outlawed. As such, we continue to pressure Israel to withdraw these decisions. We think that there are no legal basis and the security imposed on the file represent a fundamental backdrop in achieving effective defense of our rights as human rights institutions and organizations.

As I have mentioned, Israel does not abide by the Geneva Conventions. They consider that they have the right to arrest civilians under international law, but they depend on military laws and orders and Israeli civil laws, and sometimes on Jordanian and Ottoman laws to land cases. But in regard to prisoners, emergency systems, military laws, Jordanian criminal law and Israeli criminal law are what create the case in the military courts. And by military law, Israel can arrest every Palestinian if they suspect him committing anything that affects security. The international law has confirmed in the Fourth Geneva Convention that only the most serious crimes against an occupation power should be considered, but Israel has arrested every student for every student activity, arrests politicians for their belonging to any Palestinian organization, every journalist, every social activist that write any news on social media.

The last question regarding the legal situation, I think we should not lose hope in international law. Even if now, we do not see direct results, this should not prevent us from continue the work, because documentation is important. The fact that we tried using these tools but were shut down, should not stop us from continue the work because history will one day give Palestinians' case justice with regard to their territory, war crimes and crimes against humanity committed against them. Maybe in the future, there will be

chances, that is why we need to prepare files with all details and evidence that proves the credibility of our work on the war and on the crimes that are being practiced against the prisoners and other Palestinians.

**Dr.Ahmad:**

Thank you Miss Sahar, The other questions to Dr. Munir are:

- 1- What are the probabilities for the case of the Palestinian refugees to be presented among the other cases before the ICC?
- 2- Are there any lawful tools that enable the international human rights organizations to defend the rights of the Palestinians, in case the Palestinian government did not present the cases of international law violations to the ICC, are there legal mechanisms that are effective in this regard?
- 3- What are the real benefits of international law in light of Israeli violations of international resolutions and in light of the veto of the UNSC five countries, also in light of the normalization of relations between Israel and Arab countries? Do you still believe as a scholar in international law, in the power of this law for the Palestinian case?

**Dr.Munir:**

Regarding the first question, I should first explain that this court is an international court, which means that the trials are against people in a special geographical space on crimes that have been done during a specific time. The geographical frame that we talk about here is the West Bank including East Jerusalem and the Gaza Strip. Whereas the duration that is being talked about is since 13<sup>th</sup> of June 2014 when Palestine joined the Rome Statute. So, we speak about individuals that have committed crimes, maybe these people are political figures, part of the government, a minister, an internal affairs minister, a military man, or a soldier. But of course, it will not seek to try soldiers, because as we know from the work of the Court, it only seeks to try the most responsible bodies of committing

the most heinous crimes. Does this really have any effect on the case of the refugees returning? No there are no real effects on that. But we have to know that forceful displacement for the refugees is a crime that need to be condemned.

I hope that this crime would be condemned, and the international community to affirm this crime which caused displacement and asylum seeking in 1948 and the continuance displacement.

Regarding the second set of questions, international law does not really have any teeth. I teach international law at Al-Quds University and, unfortunately, I always start by saying and explaining to students and colleagues that international courts do not have any real teeth. Which means that the international community cannot compel countries to abide by international law. But I share Mrs. Sahar's idea that this current fact should not stop us from working in the frame of international law. It is a shared language frame among all countries, we talk, and they understand, which allows us to speak internationally with everyone and not just our people. But we have also to add, as Ms. Sahar has said, that we believe and we know, that apartheid and the occupation will not always be there, and we have to keep believing that or else we cannot be living in our home in Palestine if we do not believe in that. And to believe in justice. I think that someday we will have our freedom, and in that day we will need every document and every record that was written by an activist whether it was a Palestinian organization, international organization or UN organization. We need this archive to return everything to how it was because there is something called transitional justice and this subject gives me high hope because I have read a lot about countries that were under occupation, dictatorship rule, and other types of injustice, and I saw how things have changed. These communities have started by uncovering the truth, by recovering, by showing the victims, and put all the criminals before trials, and by fixing the law. That is what we will do someday, that is why we need the documentations, to prove the injustice that has been committed. And that is why I believe, maybe I have put all my work regarding human rights and international law, because I believe this day will come. But we should only depend on international law with

knowledge that this is very important, because we should not leave Israelis to violate our rights while we are silent because we should always act. But at the same time, we should act politically to what will lead us to freedom. Working in human rights and international law only is not really enough. It will not free Palestine. But we always say that this work is very important for now and absolutely for the future.

**Dr. Ahmad:**

Thank you doctor and I understand what you have said in the beginning of your answer. In the first lecture of international law, I always start with a similar sentence to the students so that we are not always asked about the effect of international law in giving us our rights. I always say to students that we study international law by how it should be because if we look at reality we will be depressed because what we see as Palestinians is injustice. We should keep every tool that can help us in taking our Palestinian rights. There are three ending questions for both of you, but we will keep one minute for every question. So, the first question from Mr. Basil to Dr. Munir what is the importance of the position of Palestine as part of the Rome Statute in international law? Second question to Mrs. Sahar, regarding categorizing your organization as a terrorist organization does this effect the organization and its workers? And the Third question to Miss Sahar, regardless of the political view of countries like Spain and Belgium, and their disapproval of putting Israel under trial, is this against the humanitarian law or is it a legitimate act to refuse to put Israel under trial in Spanish and Belgian courts? Please keep one minute for the answers to each question.

**Mrs. Sahar:**

Thank you, I want to start with the second question. I think that this topic is political and not a legal nor a humanitarian issue. Regardless of bringing the criminals before trial, this does not happen because there is no political will. If there is a political will, the UN cannot force them to bring criminals before trial. As dear Dr. Munir has said this should not stop

us from using these tools, of course while using other tools as well. Regarding the organizations that has been considered as terrorist organizations, this means that the occupying power can close the organizations' offices, like what happened in Al-Arab Al-Sehi organization and the Agricultural Union. It can put the staff management in prison, they can close all bank accounts, they can do everything in their capacity according to the Israeli law and the military orders.

**Dr. Munir:**

There is a great importance for the Palestinian joining the Rome Statute. From one side, this confirms Palestine as a state, putting an end to a highly disputed question in international law. Other benefits include the chances of bringing war criminals before trials and achieving security benefits for Palestinians. For instance, at the beginning of this session, there was a mention of when Fata Bensouda said that emptying Khan al-Ahmar is a war crime, so Netanyahu has decided to stop it. Till this day, he paused a little, not stooped all war crimes but made them less, which gives us some hope.

**Dr. Ahmad:**

Thank you Dr. Munir and Miss Sahar for all the information you have provided today, talking about this subject. By answering these questions, we end this session, and thank everyone that has attended.

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