REPUBLIC OF TURKEY
ISTANBUL GELISIM UNIVERSITY
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Department of Political Science and Public Administration

THE EFFECTIVENESS OF INTERNATIONAL LAW IN THE IRAQI POLITICAL CRISES BETWEEN 2005-2020

Master Thesis

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DECLARATION

I hereby declare that in the preparation of this thesis, scientific ethical rules have been followed, the works of other persons have been referenced in accordance with the scientific norms if used, there is no falsification in the used data, any part of the thesis has not been submitted to this university or any other university as another thesis.

Osamah AL-HADEETHI

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ABSTRACT

The events following the US occupation of Iraq in 2003 proved that Iraq was to suffer various crises, most of which resulted from the struggle for power by multiple factions. These crises have burdened the country with a legacy of internal conflicts and wars. All of this was due to the catastrophic mistakes committed by multiple parties, including the United States. Additionally, the crises allowed politicians to divide the people on an ethnic sectarian basis, which threatened the country's unity more than once, most notably during the sectarian wars in 2006 and the occupation of ISIS to more than two-thirds of the area of Iraq in 2014. After all these events, an important question had to be raised: What is the role of International Law in what is happening and taking place in Iraq, especially since its territories have seen the commission of crimes that have been classified as crimes against humanity. International Law denies them and seeks to prevent their occurrence. In addition to the exposure of civilians to danger, whose protection is closely related to International Humanitarian Law, it is known that International Law was put in place more than 100 years ago, but the extent of its effectiveness depends on the parties committed to its provisions. These provisions are characterized by being general and abstract matter rules that come from international customs and treaties, including the Geneva Convention of 1949 and The Hague Convention of 1899, 1907. This topic has been analyzed in this study through the nature of International Law, its divisions and the extent of its effectiveness, as well as the presentation of the most prominent crises that occurred in Iraq from 2005-2020, and the position of International Law and society regarding the armed crises that pushed Iraq to disaster.

Key Words: International Law, International Humanitarian Law, armed conflict, consensual democracy, occupation, genocide, crimes against humanity, Iraq, sectarianism

ÖZET

ABD'nin 2003'te Irak'ı işgal etmesinin ardından yaşananlar, Irak'ın, çoğunluğunu birçok grubun güç arayışının oluşturduğu farklı krizler ile baş etmek zorunda bırakmıştır. Bu krizler ülkeyi savaş ve iç çatışmalar ile dolu bir geleceğe sürüklemiştir. Tüm bunlar, aralarında Birleşik Devletler'in de olduğu birçok tarafça yapılan yıkıcı hatalar sebebiyle gerçekleşmiştir. Dahası, bu krizler ülkenin politikacılar tarafından etnik mezhepçi bir eksende bölünmesine yol açmış, bu da özellikle 2006'daki mezhep çatışmaları ve 2014'te IŞİD'in Irak'ın üçte ikisini işgal etmesi gibi bir çok unsurun ülkenin bütünlüğünü tehlikeye atmasına sebebiyet vermiştir. Tüm bu olaylardan sonra, önemli bir soru ortaya çıkmaktadır: İnsanlık suçu olarak sınıflandırılan suçların işlendiği topraklara sahip Irak'ta yaşananlarda Uluslararası Hukuk'un rolü nedir? Uluslararası Hukuk bu suçları reddetmekte ve gerçekleşmelerini engellemeye çalışmaktadır. Uluslararası İnsancıl Hukuk'a bağlı olarak korunan sivillerin maruz kaldığı tehditlerin yanı sıra, 100 yıldan daha uzun bir süredir yürürlülükte olan Uluslararası Hukuk'un etkililiğinin, hükümlerini benimsemeye çalışan partilere bağlı olduğu bilinmektedir. Bu hükümler, 1949 Cenevre Sözleşmesi'ni ve 1899 Lahey Sözleşmesi'ni de içeren uluslararası gelenek ve antlaşmalara dayanan genel ve soyut kurallar olarak nitelendirilmektedir. Bu konu, Uluslararası Hukuk'un doğasını, kısımlarını ve etkililik düzeyini; 2005-2020 arasında Irak'ta yaşanan en önemli krizleri, ve Irak'ı felakete iten silahlı krizlerde Uluslararası Hukuk'un ve toplumun pozisyonunu ele alan bu çalışmada incelenmiştir.

Anahtar Kelimeler: Uluslararası Hukuk, Uluslararası İnsancıl Hukuk, silahlı çatışma, oybirliği demokrasisi, işgal, soykırım, insanlık suçu, Irak, mezhepçilik

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ABBREVIATIONS

DTM	:	Displacement Tracking Matrix
ICRC	:	The International Committee of the Red Cross
ISIL	:	Islamic State of Iraq and the Levant
ISIS	:	Islamic State in Iraq and Syria
SOFA	:	"Status of Forces Agreement" Between the United States of America and the Republic of Iraq
UNAMI	:	UN Assistance Mission for Iraq
US	:	United States
USA	:	United States of America

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ACKNOWLEDGMENT

INTRODUCTION

Civilizations throughout global history have endured conflicts and crises over and over again, most of which were driven by the humanly desire to dominate and control socio-economical resources despite the differences in times and places. The development of war tools across generations, as well as of analysis and interpretation of the dynamics of power, resulted in catastrophic circumstances in which human rights and the rights of non-participants were often violated. As armed conflicts proved inevitable and non-negligible, authorities and administrations took it upon themselves to humanize the methods and so-called rules of war to give way to signs that called for justice towards the non-participants. International Law, which represents a set of internationally agreed principles and rules, aims to limit the use of violence during a political crisis or armed conflict. The devastation in Iraq following the US occupation of 2003 exhibited similar patterns, though the local population witnessed an oscillation from crises to agreements, to peace, and to war again. Intellectual, societal, military, economic, and even geographical threads of the fabric of Iraq's very being have been irreversibly affected. This outcome, naturally, calls for a legal attempt at redefining the dimensions of these crises and seeking to put an end in agreeable means. However, the issue of applying International Law in general and in relation with the International Humanitarian Law in particular remains on the table. This is mostly because the aforementioned elements of Iraq's make-up prove too individually different for them to be viewed within an all-encompassing scope. This study presents itself as an objective look into how applicable the International Law is when it comes to the Iraqi political spheres following 2005.

As a research field, the post-occupation Iraqi situation has not been sufficiently handled. For this reason, this work aims to establish a general understanding of: (i) the historical development of international and humanitarian law, as well as its conventions and mechanisms; (ii) whether the rules of general and humanitarian International Law, along with the developments that the international community built, are sufficient in protecting a sovereignty and its people; (iii) the extent to which the application of International Law has been applied in the armed crises of Iraq following the US

occupation, (iv) the historical roots and signs of the crises that ensued following the occupation, and how the international community chose to deal with these crises.

To address these matters and the questions that stem from them, this research starts from the following hypotheses:

• Bodies mandated to apply international and humanitarian law in crises often seek to protect those not involved in armed conflict.

• The rules of International Humanitarian Law are designed to apply in non-international armed conflicts, such as sectarian crises and the ISIS war in Iraq, and in the event of serious violations of International Law.

• The rules of International Law may not be sufficient to activate the protection imposed by its rules, which was confirmed by the reality of the situation in the Iraqi crises.

This thesis establishes its boundaries by crystallizing on the international community's handling of the crises within Iraq. The time period is set from 2005 to 2020. The study is within the framework of examining the application of the rules established for resolving crises, especially the non-international armed conflict in Iraq, because the parties to the conflict are located in one country, and the actors are the government forces and armed groups.

Among the objectives of this thesis are a description of the conceptual framework and the agreements signed in order to implement and develop International Law, whether in armed, international and non-international conflicts, with knowledge of the scope of its application and the mechanisms by which the law is applied; the disclosure of the reasons and circumstances of the crises in Iraq, outlining the effectiveness of the implementation of International Law in Iraq, and presenting scientific results that prove that civilians were not protected in the Iraqi crisis. The discussion of the effectiveness of International Law in the Iraqi crises between 2005-2020 has been accompanied by several difficulties, including the lack of references dealing with the effectiveness of the application of International Law: especially those that examine the extent of application of the rules of International Humanitarian Law in the Iraqi crises.

The thesis relies on mainly two approaches: a historical approach that introduces the roots of both the International Law and the Iraqi situation, and a descriptive and analytical approach that allows the case of the study to be better understood by utilizing historical facts, events and legal texts, and critical analyses.

CHAPTER ONE

THE EFFECTIVENESS OF INTERNATİONAL LAW IN SOLVING POLITICAL CRISES

1.1.   The Concept of International Law

International Law addresses people, international systems, or international organizations based on the rules they set by their common will. It is concerned with organizing relationships that arise in an environment in which sovereigns are adjacent to each other and not subordinate to each other. States must strive to achieve that balance, because the International Law represents the point of perfection in international political development. The names given to this law by jurists and scholars differ: some refer to it as International Law, while the law of nations (Al-Ghunaimi & Al-Dakkak, 1991, p. 1) or the law of peoples (Serhal, 1993, p. 12) are also common. There are also those who prefer the law of war and peace. As the names differ, the definitions change.

International Law is defined as a set of legal rules that govern the relationships between people, and clarify their rights and obligations on a multi-national level (Samtan, 1984, p. 22). It can be understood that when international affairs are concerned, International Law is one of the phenomena the rules of which have clear effectiveness in managing those affairs, because international action indicates that states acknowledge the existence of International Law and recognize its binding nature (Al-Ghunaimi, 1977, p. 45). However, International Law, recognized by most International Law scholars and writers, lacks central authority and a higher legislature, and is characterized by the primitive element of punishment in it and insufficient oversight over the correct application of rules, as assessing their legitimacy as a general principle is not subject to binding judicial jurisdiction (Article 94, Paragraph 2).

A clear lack of self-censorship of its legitimacy and the progression in its legal system exists because its basis is built on mutual consent on the part of its main persons, namely the states from which sovereign equality and the regional, personal and functional rights and competencies are derived (Hamdi, 1984, p. 2). International Law, just as it regulates relations among states, is also concerned with handling the dynamics between

international organizations or certain entities that are not considered states, hence the generalized name. The human being is in constant need of cooperation with their fellows as an evolutionary trait. In similar manner, as a collective, the state cannot remain in complete isolation from its counterparts. The need for exchange drives it to enter into relations with other states, where International Law is the guarantor of regulating these relations (Al-Majzoub, 1994, pp. 5-24). International Law is involved with addressing the relationships that arise in an environment in which sovereigns are adjacent to each other and are not subject to one another, while relations within the scope of domestic law are characterized by relations of dependence and subordination, and in a law of this kind, the control over the proper application of rules over the centers that govern them is political self-censorship. First and foremost, it is not legal or made of enforceable penalties except as an exception (Al-Anbaki, 1992, p. 50).

What especially cannot be overlooked are the violations committed and the violations that are recorded; the unparalleled attacks on weaker collectives, the breach of the terms of international treaties or agreements, and the interference in the internal affairs of other countries (Van Glen, 1970, p. 33), especially after the expansion of the concept of preventative defense as it transformed from a pre-emptive armed measure used for dealing with rare cases that directly affect the security and sovereignty of the state to a situation related to justifications of the so-called spread of democracy, the promotion and protection of human rights, and the fight against weapons of mass destruction and terrorism through multiple armed and unarmed means. These justifications constitute a serious threat to the national security of certain countries and the vital interest of the international community.

This shift came with risks reflected upon international organization and law, mainly the marginalization of the role of the United Nations, as well as the monopoly of interpreting the rules of International Law, and other dangers that violate many international rules that had been stabilized throughout the stages of the development of the international community (Al-Khattabi, 2004, p. 66).

Among the other forms of International Law is the subset International Humanitarian Law, which is defined as a branch of Public International Law, whose

customary and written rules aim to protect people affected in the event of an armed conflict due to the suffering that the conflict has resulted in, and also aims to secure economic factors that have nothing to do with it (Zamali, 1997, p. 7).

> It was also known as the large sector of general International Law that inspires human sentiment and focuses on protecting the individual. (Paktya, n.d. p. 33)
>
> …
>
> Others defined it as: The set of international rules that are intended in particular to mitigate the effects of armed conflicts on persons and property. (The International Committee of the Red Cross, n.d. p. 11)

One opinion holds that International Humanitarian Law is the entirety of the legal rules that states are obligated to respect, aimed at providing protection to victims of armed conflicts, both international and non-international (Duttley, n.d. p. 453), and contrary to the previous definitions, Dr. Muhammad Shoukry considered International Humanitarian Law a branch of International Law for human rights, the purpose of which is to protect affected people in the event of armed conflict (Shoukry, 1991, pp. 3-93).

In addition to the rules of general International Law, there is a set of rules, principles, customs and unlawful norms that states have taken into account in their external behavior, such as the duty of decency in line with the requirements of international work, even though they are violated or not committed to implementing one of these principles. This does not lead to any legal liability. These rules governing governmental behavior are defined below:

1.1.1. Rules of Natural Law

Natural laws are a set of objective rules states should follow and adhere to in order to establish justice, considering that it is the natural and logical state of what international relations should be in terms of ideals and higher values.

It is worth noting that the international judiciary does not resort to applying the rules of natural law as the rules dictated towards absolute justice, except when the parties of the conflict agree to apply them (Serhal, 1993, p. 26). This is what was referred to in the second paragraph of Article 38 of the Statute of the International Court of Justice in the text. The aforementioned text does not result in any breach of the court's authority to

decide the case in accordance with the principles of justice and fairness if the parties agree to this.

1.1.2. International Courtesy Rules

International courtesy rules are what the states are obliged to follow out of a desire to strengthen their relations with each other. They are non-binding rules and have nothing to do with ideals. The most important examples are the reception ceremonies for heads of state and ambassadors and the maritime salute.

It is noted that the rules of international courtesy may turn into international rules when it acquires the description of legal obligation from one of its sources, such as a custom, agreement, or decision issued by an international organization within the limits of its jurisdiction.

1.1.3. International Ethics Rules

Global norms and conscience restrict the actions of states according to standards of virtuous morality, vision and magnanimity, not according to considerations of legal imperative. Examples of these ethical rules are those requiring the use of clemency in wars, avoiding lies and deceit in international relations, and providing aid and relief to the afflicted countries.

Thus, a general look into International Law is concluded.

1.2.   Effectiveness as a Concept

To know the concept of effectiveness within the scope of International Law, it is necessary to define effectiveness, and then to know the nature and the conditions that must be met, which are considered the factors on which the international rule depends. Efficacy is the inherent power of a thing (Mor & Jintnau, 1964, p. 71). It is associated with the process of influence as the default unit of measurement to see the characteristic nature of a force in modeling behavior and determining the process of interaction (Atwan, 2003, p. 1).

Effectiveness as a general concept can be addressed within the scope of International Law, as the inherent ability of the rules of general International Law in responding to the requirements of the stage that the international community is going through during a

certain period of time, and the extent of the impact of those rules on the behavior of its member states (such as the response shown by a country to the effect of an international legal rule certain in it) is a result of the effectiveness of that rule in terms of the ability to influence, that is, it expresses the size of the influence of the legal base and is perceived by that state, in addition to being a form of that state's need as a basis for adherence to the international rule.

Those subject to International Law themselves are the ones who legislate the law; they are the ones who represent the supreme authority to interpret and clarify the specific meaning of what they enact in terms of legislation by supporting their own international policies, and to weaken the binding power they contain, applied to everyone without them, if this is found in them. Despite the ambiguity in some rules of International Law, the danger has become very clear: major powers have control over the reality of the international community, and in this regard, it was said that the basis for binding International Law is limited to issuing from the will and enjoyment of the dominant group of states. With respect to the penalty provided to a party by these states, given the expression of what they deem appropriate to protect them from the interests of their concern, and this dominant group of states may exercise the function of legislation for the international community by concluding treaties that have no such description other than the name and the form (Abdel-Hamid, 2000, p. 88).

The effectiveness of the rules of International Law depends, in fact, on several factors, which by themselves represent conditions that the International Law cannot operate in congruence with, unless the Law is active in their creation (Al-Ghunaimi, n.d. p. 49). International Law guides the creation and definition of the framework for international behavior. It seeks to create a permanent state of peace between peoples and to eliminate war as a means of settling international disputes. It attempts to develop a mandatory basis for International Law. Finally, It strives to implement an effective system of punishment for the wrongful act.

Effectiveness, as the inherent ability of the rules of International Law in responding to the requirements of the stage that the international community is going through in a certain period of time, cannot be distinguished from the general framework of

International Law as a primitive set of legal rules. The primary aspect of this model is that it is completely decentralized, as an inevitable result of the decentralized structure of the international community, where there is no sharing of interests and no balance of power. This gives way to a natural difficulty in applying the rules of International Law (Mor Jinthao, n.d., p. 75). Every legal system has rules and provisions, so the punishment in this case does not play a role unless these legal rules are violated, so the effectiveness of any legal rule requires first the actual existence of such a rule, and second, the enforceability of the rule in a specific sphere and at a certain time (Inch, 1975, p. 11).

In order to provide a correct understanding of the effectiveness of international rules within the framework of practice and to reveal the reality of what International Law wants to achieve through the priorities it provides for solving international problems as well as the scientific logical hierarchy, it is necessary to understand the reality of application of international legal rules that are in an independent demand considering that International Law constitutes a decentralized legal system. Because most of the rules are not binding in principle except for those states that have approved and agreed to them, and because the bulk of them is characterized by ambiguity, which leads to them being subjected to many reservations, individual states are allowed with a great deal of freedom of action when required to abide by the provisions of International Law (Mor Jinthao, n.d. p. 12).

Countries and international organizations of all kinds, including the United Nations, must comply with this law, as states address the provisions of this law and they must abide by its rules; simply put, they are not above the law, but rather are subject to its provisions, the most important of which is the principle of non-interference in internal affairs and the principle of respect (Omar, 2005, p. 337).

International organizations must also submit to the rules of International Law and abide by what is stated in international conventions, interventions, and their purposes within legitimate limits, free from prejudice and distinctions between individuals and parties. The humanitarian operation in terms of assistance and protection should not be enjoyed by an individual or party without equal adherence to impartiality, integrity, justice and objectivity, and without bypassing these notions for the sake of politicizing crises or rights which are considered outside the legitimacy of even the United Nations itself,

because the intervention of these countries in this way is not based on considerations of humanitarian need, but rather subject to political considerations, and the requirements of the limits of legitimate intervention must be commensurate with the size of the legal breach. In this regard, it is unreasonable to resort to military intervention in response to a diplomatic kidnapping. The human value must be the motivation for the intervention in order to protect human rights, whatever and wherever, and in parallel with that, there are other rights that require attention, and the argument for resorting to non-intervention appears. Military intervention would then be the last resort in the event of failure of non-military means (Saleh, 2011, p. 123).

It is noted that in recent times the United Nations and other international organizations and regional blocs have given themselves the right to intervene in matters that were considered by classical jurisprudence as internal matters, which prompted some jurists to set conditions for this intervention (Omar, 2005, p. 22). This commitment is generated as a result of international treaties and conventions, which states have concluded with their free will, and it is for those states to implement those obligations under these conventions and treaties. Therefore, the states joining these agreements implicitly waive some of their internal competencies (Saleh, 2011, p. 117).

A state's respect for International Law and its international obligations does not undoubtedly detract from its sovereignty and internal jurisdiction, nor does it affect its independence. All states are equally committed to fulfilling these obligations, the implementation of which is a necessary condition for achieving peace, international security and human well-being, and preserving its dignity and humanity.

This sovereignty does not detract from the performance of the obligations decided upon by the United Nations Organization in implementation of its principles contained in the Charter or those contained in the international agreements such as conventions on civil and political rights or the conventions of economic and social rights in 1966 in the sense of conventions on human rights. Therefore, the intervention of the United Nations Organization and the discussion of human rights situations in certain countries through its bodies such as the General Assembly or the Security Council is not considered interference in internal affairs and does not fall within the framework of the prohibition

contained in Article 7/2 of the United Nations Charter, because human rights are outside the scope of issues. The Interior Ministry has become part of the core work of the international community, which must ensure its protection.

1.3. Branches and Sources of Public International Law

1.3.1. International Law Subsets

The rules of public International Law emerged as a general basis for regulating relations between states, nations and peoples in order to maintain international peace and security, and the conduct of relations without international and local disputes. Below are some of the branches of public International Law:

International human rights law

International regulation law

International environmental law

International humanitarian law
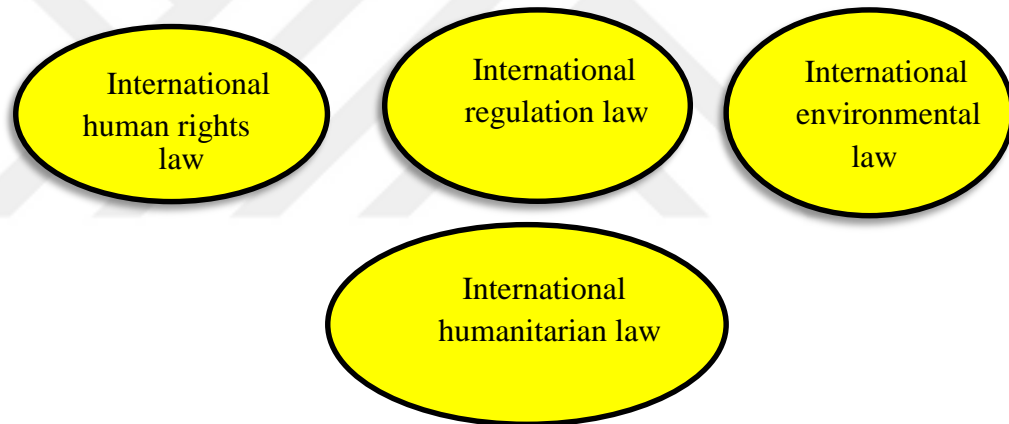
Figure 1: Branches of International Law (Al-mul, 2015)

International Humanitarian Law is the most important of these branches in public law because it pays great attention to managing armed conflicts existing around the world, whether international or non-international, and organizes them and defines their rules. Several private international bodies supervise this, and the International Committee of the Red Cross ensures its implementation. This law did not originate from ancient times: historically, there were no rules governing the behavior of the belligerents, but only brutality and the law of the jungle prevailed. In the past, man knew tribal warfare of individuals, empires, and religions; they were marked by aggression and the exaggeration

in oppression. Parties did not differentiate between the battlefields and between the combatant and the non-combatant, and it remained the same until its rules were more broadly and clearer in the later times.

International Humanitarian Law is defined as the law that focuses on protecting people affected by armed conflict, regardless of the legality of the use of force by the conflicting parties (Ibrahim, 2013, p. 168). This definition was characterized by a kind of comprehensiveness in clarifying the meaning of International Humanitarian Law through its discussion of the protection categories in the law and the status of its application. As for another saying, which he describes as: These are the Geneva laws or regulations that are concerned with protecting the military from other killers or outside of military operations, such as the wounded, sick and prisoners, and which also concern civilians and keeping them outside the boundaries of military operations (Hamidani, 2016, p. 422).

The second definition is the most comprehensive of International Humanitarian Law, as it focused on the regulations by which the status of International Humanitarian Law, namely the Geneva Conventions, was relied upon, as well as the categories of protection and the manner of dealing with them.

We find in another definition phrase that a branch of public International Law whose customary rules and convention aim to protect affected people in the event of an armed conflict, as well as to protect property that is not directly related to military operations., (Ibrahim, 2013, p. 169).

The International Committee of the Red Cross states that International Humanitarian Law regulates relations between states, international organizations and other subjects of International Law, and that it is a branch of general International Law that consists of rules that seek to protect people who are not participating or who have ceased their participating in hostilities, and to restrict the means and methods of warfare. In other words, International Humanitarian Law consists of the rules of international treaties or customary rules that emerged from state practices and came out of their sense of obligation that specifically aim to resolve humanitarian issues directly arising from armed conflict, whether international or non-international in nature (Hamidani, 2016, p. 422).

By means of the previous definitions of International Humanitarian Law, we can summarize a general concept of this branch that branch of Public International Law, which is applied in the event of armed conflicts, aims to protect civilians, prisoners of war and the wounded, and this is done through international bodies legally authorized in accordance with conventions and international treaties.

1.3.2. Categories of International Humanitarian Law
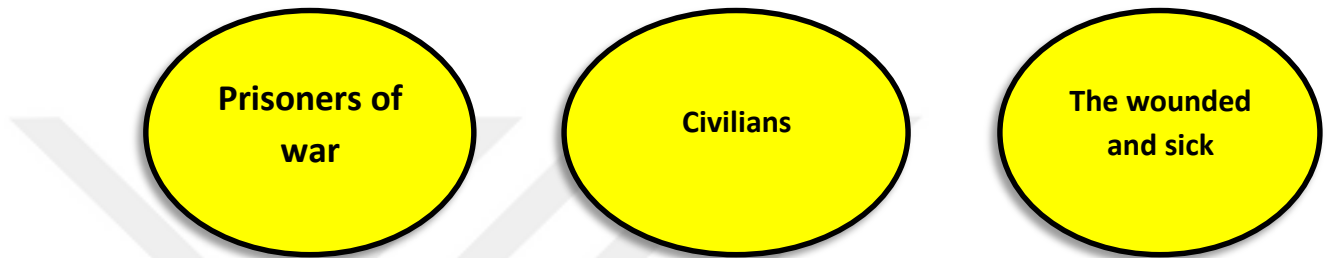
Figure 2: Categories of International Humanitarian Law (Al-Mul, 2015)

These groups are protected by International Humanitarian Law in light of international and non-international armed conflicts.

1.3.3. Sources of International Humanitarian Law

Two main sources provide the Law: documented rules, which are the written agreements that combine the Hague Conventions, the Geneva Conventions, and the two protocols attached to them; secondly, international customary rules stemming from the principles of humanity and public conscience, in accordance with the text of Article Two of the First Additional Protocol of 1977 (Talbi, n.d. pp. 15-18).

1.3.4. Principles International Humanitarian Law

The principles of the Hague Law and the Geneva Convention that came to be in the St. Petersburg Declaration in 1868, in addition to The Martens Clause stipulate that in cases not mentioned in the provisions of the Convention, the population and combatants remain under the protection of the authority of the principles of the law of peoples in the manner reached by stable methods of dealing between civilized nations.

1.3.5. Scope of Application of International Humanitarian Law

The application of International Humanitarian Law is handled in accordance to different scales, as it is applied according to the temporal, personal and material scales that follow:

1.3.5.1. The Time frame for the Application of International Humanitarian Law

The time frame for the application International Humanitarian Law is represented in the international and non-international armed conflict and in the case of occupation (Bouazouz, 2011, p. 21):
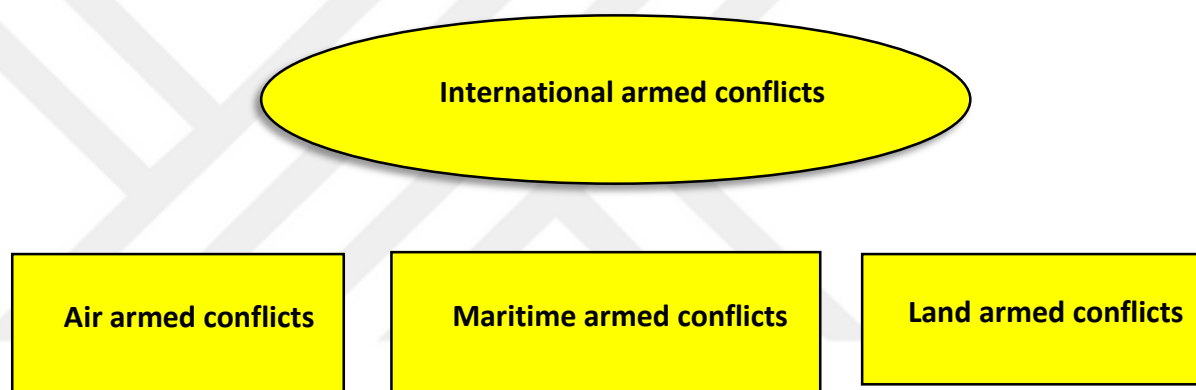
Figure 3: Forms of international armed conflict (Al-Mul, 2015)

1.3.5.2. Non-International Armed Conflicts

Non-international armed conflicts are defined through Article I (1) of the Second Additional Protocol of 1977 on Non-International Armed Conflicts, which developed and supplemented Article Three (3) common to the four Geneva Conventions, as (all armed conflicts taking place on the territory of one of the Highest Parties) contracting between its armed forces and dissident armed forces or other regular armed groups exercising, under responsible command, control over a part of its territory so that they can carry out continuous and coordinated military operations, and so that they can implement this protocol) (Naame Sham Report).

1.3.5.3. Personal Scope of Application of Humanitarian Law

The personal sphere is the identification of persons benefiting from the provisions of International Humanitarian Law. Persons benefiting from protection have been divided into two main categories: combatants and non-combatants.

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                    ┌─────────────────────┐
                    │  Classes of fighters │
                    └─────────────────────┘

┌──────────────────────┐        ┌──────────────────────────┐
│ Other militia members │        │ Members of the armed forces of │
│                       │        │      a party to a conflict    │
└──────────────────────┘        └──────────────────────────┘
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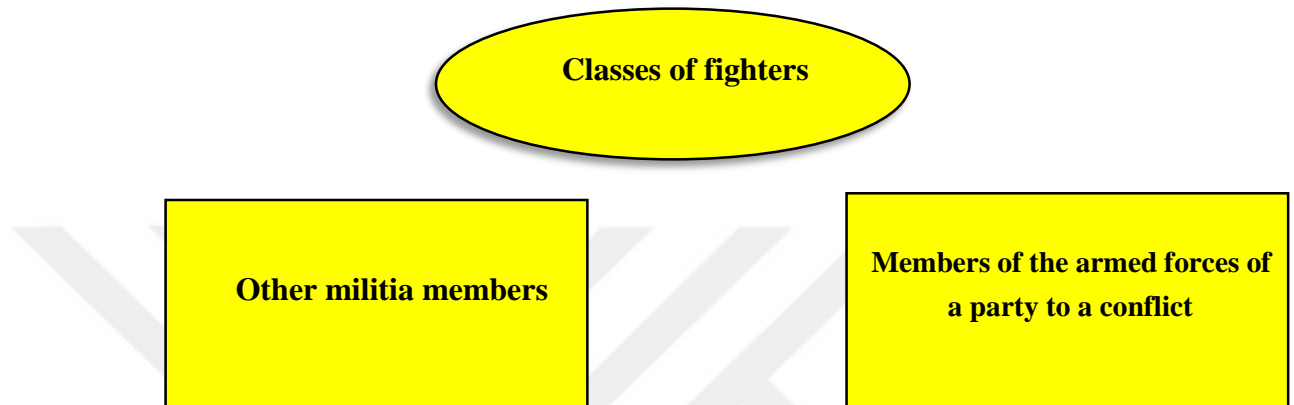
Figure 4: Classes of fighters (Al-Mul, 2015)

Combatants refer to the persons who are entitled to conduct hostilities, and then they are the only ones whom the other party may kill, wound, or capture. In accordance with the restrictions established by the law that governs combat operations, the wounded, the sick, the shipwrecked, and the prisoners fall into this category.

1.3.5.4. Categories of Non-c-Combatants

Non-combatants are people who are not entitled to conduct hostilities, and therefore it is prohibited for the enemy to initiate hostilities against them and is obligated to respect their freedoms and property as long as they stand in a passive position on their side and do not come against the opposing forces as an act of hostility that harms the members of the hostile armed forces or their war effort.
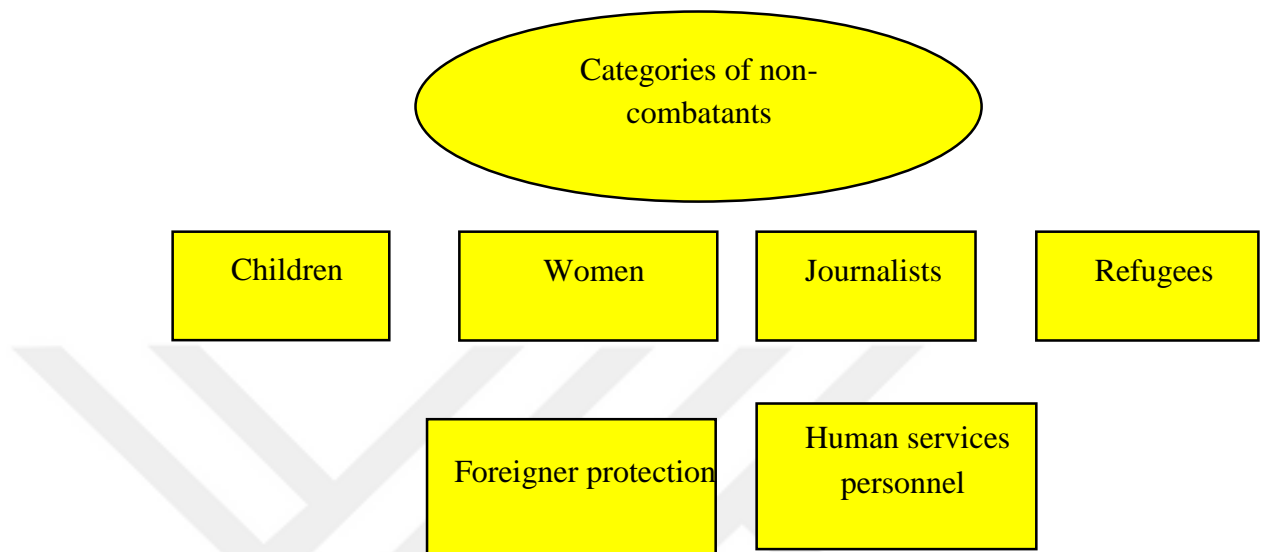
Figure 5: Categories of non-combatants (Al-Mul, 2015)

1.3.5.5.   The Physical Scope of Application of Humanitarian Law

The material scope is represented in the application of International Humanitarian Law in material matters, which is the natural environment and property of all kinds.

1.3.5.6. Conditions of Application of the International Legal Rule

It is well established that there is a need in every society for legislature, regardless of its diagnosis in rules, which is a natural phenomenon vital for the establishment of society as a component of social character. Society utilizes these laws to determine their behavior and activity in a binding way, because it consists of the rulings that the members of society settle upon and acknowledge them as binding, in order to achieve the idea established in its persons, which is the necessity of the law for their society (Al-Ghunaimi, 1977, p. 38). The international legal rule performs a specific and limited function, which is to result in the occurrence of an incident having legal effects, and the application of the rule even though the fact or the limited link is based on a specific legal rule in particular.

1.3.5.7. The Emergence of a Specific Incident or Link

Society in all stages of development passes through various relations, sometimes it is power relations, tension, dissonance and wars, and at other times it is relations of solidarity, cooperation, solidarity and peace, and the international community is not only governed by phenomena of chastity, tension, excessive use of force, and international imbalance means of chaos, but it is also governed by relations of cooperation and solidarity and stability. In the reality of the international community, it aligns in favor of the first case, because within 3400 years of known history, humanity has only enjoyed 205 years of relative peace (Abdali, 1994, pp. 19-20).

The emergence of the incident or association, then, is a calling event that leads to certain consequences related to one or more persons of the legal system. The application of the international legal rule requires precisely the emergence of the fact or association subject to the right or obligation. If it is said that it is permissible to establish or create international rules on the basis of a certain assumption, it is possible that it will occur and the international legal rule cannot be applied. On the basis of assuming the occurrence of the incident except in a limited framework, and most of us violates the rules of international legitimacy, it is required, for example, to determine the amount of compensation resulting from a specific damage, by means of the procedures stipulated in a specific international rule, to ensure that the damage is specifically confirmed (Mohsen, 2011, p. 11).

1.3.8. The Existence of a Legal Basis for the Incident or Association

Verifying the existence of the international legal base to which the incident is attributed does not raise any serious difficulty compared to the origin of the incident or the association itself, because this is related to the sources of the international legal rules themselves. Verifying the existence of the international legal rule on the same grounds that determine the existence of legal provisions in domestic legislation (i.e. what is stipulated in international treaties) and agreements according to which international actions are defined and codified in various legislations, and on the basis of which states have acquired rights and assumed obligations and commitments. This applies to the remaining persons of International Law.

1.3.9. Determining the meaning of the legal rule that follows from attribution

After the emergence of the international incident and the assurance of the existence of the international legal base that is attributed to it, it is necessary to examine the accurate interpretation of the content of the international rule, and to determine the legal effects assigned to it. Whether they are rights acquired or obligations borne by the parties, they is recognized.

The application of international rules may raise a difference in views about the meanings of their wording among its parties, and then the process of defining the meaning of those texts comes as a technical process that relies on significant rules when the expressions of the texts do not disclose the intentions of their authors in a way that defines the meaning of the international rule that it contains due to ambiguity and the imperfection and contradiction involved in it (Judge, 1971, p. 8).

The international rules still suffer from the injustice of defining the exact meaning of their content due to their submission and the international community to the will of the major powers, which are always used to throw aberrations of ambiguity on international rules by mediating words that they use in formulating international rules and decisions in order to interpret them in a way that achieves their own interests.

This chapter, with its three topics, discussed the answer to the problem that was raised in the introduction to the discussion on the subject of the effectiveness of International Law in general and International Humanitarian Law. Additionally, it touched on the historical development of international and humanitarian law and the most important agreements on which the implementation mechanisms of this law depend.

CHAPTER TWO

THE IRAQI CRISIS STRATEGY

2.1. Crisis and its Nature

A crisis is an inherent human phenomenon and arises mostly within unforeseen circumstances due to internal or external factors and results in a threat to the state or the individual, which requires work to eliminate or reduce. The crisis has become a feature of contemporary societies and countries, which has led to interest in its management and the work to create preventive methods before and during the occurrence of the crisis. Crises may be political, economic, or health-related, as well as internal, regional and even international (Al-Ruwaili, 2011, p. 1).

2.1.2. Crisis as a Concept

The definitions have varied that dealt with the nature and concept of the crisis as it is a critical and sensitive moment related to the fate of the state entity and a difficult problem facing the decision maker and his expectation of extreme difficulty in making a correct decision that reduces the negative consequences that may be caused by trying to contain it. The origin of the term crisis goes back to Greek thought, which defined it as a turning point in fatal diseases, the result of which is either complete cure or inevitable death (Lucerne, 2006, p. 22).

Stephen R. Van Hook clarifies that the word crisis stems from from the Greek *krisis* [decision]; a moment that everyone has passed through, when under pressure and tension, to make a set of fateful decisions (Van Hook, 2010). The Merriam-Webster Dictionary defines crisis as "a turning point, which is a decisive moment, or a difficult time, that is, a situation that has reached a critical stage." [1]

Laurence Barton asserts that a crisis is a set of events that lead to the occurrence of a sudden situation that threatens the main interests of the state, which requires making quick decisions within a limited time and exceptional circumstances to prevent the eruption of the crisis (Barton, 1993, p. 2).

Likewise, the crisis is defined by Ahmed Amer as "an unexpected event that is difficult to deal with, and therefore requires the search for ways and solutions to limit

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[1] https://www.merriamwebster.com/dictionary/crisis

its negative effects" (1989, pp. 2-11). I. I. Mitroff provides that the crisis contains five phases: firstly, discovering them early, then preparing for them in order to contain the crisis, later increasing the positives, then restoring activity, and finally gaining experience (Mitroff, & Persone, 1991, pp. 13-15).

> As for the concept of crisis in terms of its international significance, Trixa defined it as that severe intensification of instability within the international system, while both Winner and Kahn define it as characterized by a sudden and unexpected seriousness. As for Boulding, he sees it as a turning point between two modes. (as cited in Saddam, 2017, p. 24)

Amin Howidi defines it as a set of interactions and events between two or more states passing through a conflict that may lead to the possibility of a war, and decision-makers face a situation that affects the interests of the homeland in a short time (Howidi, 1997, p. 137). By designating the crisis as political, a new definition of political crisis arises, which is "a sudden event that threatens a complete change and transformation in the existing political situation due to surprise and lack of time for decision-making" (Ibrahim, 1993,).

The political crisis is characterized by several advantages in terms of being a turning point in the current situation and an event that requires an urgent decision and swift action, such as immediate intervention to prevent a catastrophe that is threatening the existing system. Its management may lead to an increase in tension between the parties to the crisis (Bakr, 2007, pp. 100-101). By extrapolating the previous definitions, it can be understood that the crisis is a sudden state that threatens the system, and the time available to deal with it is very short, in addition to the severe pressure that accompanies it.

2.1.3. Distinguishing Between Crisis and Other Related Terms

Crisis converges with other concepts such as problem or disaster due to the presence of common features between them that lead to an overlap in concepts, so it is best to focus on the most prominent points of difference between them:

2.1.3.1. *Problem and Crisis*

A problem expresses the main motivation that leads to the emergence of an unwanted situation. The problem may be the cause of a crisis, but it is not the crisis in itself. The crisis is usually a complex phenomenon caused by the problem, which needs to be dealt with quickly in a short time. Every crisis is a problem; of course, not every

problem is a crisis, and the term crises is used for complex problems that may threaten the individual's life, security and political goals in life (Al-Khudairi, 1993, p. 62).

2.1.3.2. *Disaster and Crisis*

Disaster is one of the most ambiguous terms to be mistaken for crisis. The Oxford Dictionary defines disaster as an event that causes widespread destruction and deep suffering, which is great misfortune. [2]

To clarify the difference between disaster and crisis, Hassan Makawi declares the following:

> 1. The disaster results in innocent victims who are not required to be in the crisis.
>
> 2. The disaster is receiving public attention, which raises sympathy for its victims and the provision of aid to them, in contrast to the crisis, where it is accompanied by popular and official criticism.
>
> 3. The media are positively interested in the disaster, unlike the crisis, where the media's interest in it is negative and criticism is directed at the person responsible.
>
> 4. Often times the disaster recurs without preludes and it is impossible to predict. As for the crisis, it occurs as a result of accumulations of errors and the exacerbation of problems.
>
> 5. The main goal of dealing with rigor is to seek to reduce its dangers and try to control it. As for the aim of dealing with the crisis, it is to protect the reputation of the regime, and it is sought not to lose its credibility. (as cited in Al-Khudairi, 1993, p. 62)

2.1.4. Crisis Properties

After reviewing the most important definitions that address crisis and differentiating it from similar terms, it is necessary to address the most important characteristics that characterize the crisis. Hanane Bouzaouz defined the main characteristics of the crisis as follows:

> 1. The surprise when it occurs and the interest of all individuals and institutions in it.
>
> 2. The overlap in its elements and the intertwining of its factors and causes.
>
> 3. The lack of a clear vision for the decision-makers, as the scene tends to walk towards the unknown due to the lack of information and its scarcity.
>
> 4. Lack of sufficient time as the sudden event does not allow enough time to deal with it, so the response must be quick. (Bouazouz, 2011, p. 28)

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[2] https://www.oxfordlearnersdictionaries.com/definition/english/disaster?q=disaster

2.1.5. Reasons for the Emergence of Crises

Crises may emerge because of their varying natures and fields, times, and places of occurrence. However, the general causes that the crises share can be addressed as below:

Catastrophic reasons can be summed up in three sections:

 1. Reasons related to the act of nature that is outside human will, such as earthquakes, volcanoes and floods.

 2. Industrial causes, in which human action has a hand but is not directly responsible for them, such as radioactive pollution and gas leakage.

 3. Purely human causes, for which he is directly responsible, such as wars and armed conflicts.

Political reasons follow as:

 1. The struggle for power.

 2. Adherence to governance and the absence of a peaceful transfer of power.

 3. Border conflicts and armed conflicts.

 4. Regional and international changes.

The crisis that is caused by politics is characterized by several features, most notably

 1. The presence of pressure forces that constitute a threat

 2. The usual ways to deal with the crisis go out

 3. The crisis results in exceptional behavior, such as fear, anticipation, and intense tension.

And finally, economic reasons are as follows:

 1. Poverty

 2. High prices

 3. The high cost of living and widespread unemployment

 4. Low level of income

Poor distribution of wealth.

2.1.6. Differing Dimensions of the Crisis

The occurrence of a crisis is accompanied by several interactions at various levels of life, including economic, political, security and social, and the crisis produces negative repercussions that may last for a long time, threatening the entity of the state, organization or individual:

2.1.6.1. The Political Dimension

One of the most dangerous crises that threaten the state is a crisis with a political dimension due to its connection locally, regionally and internationally, where the interests of the state are affected and the voice of opposition is louder. This leads to the creation of a situation described as instability and political balance between political forces. This imbalance leads to infuriating the populace and segments of society, which leads them to protest, demonstrate, and even exhibit civil disobedience. All this is considered a direct threat to the regime in the state.

The crisis may go beyond its local scope after its inflation and inability to control it, which requires international intervention, as the crisis becomes more complex. Certain terms appeared related to the political crises in the Middle East; most notably the term Somalization, used throughout the 1990s and early 2000s to describe countries that have suffered from crises and civil wars like the one that Somalia has suffered. For example, a report by the United Nations Security Council in March 2001 regarding the peace process in Burundi, described African countries facing internal crises as being on the brink of Somalization (Daily Sabah, website).

Likewise, some crises may require UN decisions and sanctions, as seen as in the response to the Iranian nuclear program and that of North Korea. On the other hand, some crises require the provision of UN aid, such as crises resulting from natural disasters.

2.1.6.2. The Economic Dimension

The economic movement in countries is linked to stability: if any crisis of any kind occurs, it may have a negative impact on the economy, which leads to negative economic dependencies such as recession. A sufficient example of this is what happened in the world between 2008 and 2009 during the political crises that caused major economic disasters such as the collapse of global stock markets, and also led to an increase in unemployment cases and the price of oil exceeding 80 USDs per barrel. The International Monetary Fund (IMF) published its report for 2009 in which some analysts expected the decline in economic activity to have a significant impact on the Middle East region. (Glanz, 2009, p. 3).

2.1.6.3. The Security Dimension

Crises are often accompanied by instability or confusion. They may also be accompanied by the spread of rumors due to lack of clarity of vision and lack of information, which leads to chaos that further arises from the crises themselves (Al-Ruwaili, 2011, p. 21). Below are the types of threats that may be introduced to the security of a population following a crisis:

a. Political violence: It is possible that some political forces will take advantage of the crisis that the country is going through in order to start operations that can be called settling accounts, taking advantage of the exceptional circumstances or instability that the state is going through, as it has been repeated multiple times in Iraq and Lebanon.

b. Social violence: Threats to society increase in sectarian tension, ethnic quarrels and racial segregation, as happened in the Iraqi capital, Baghdad, in 2006, after the sectarian fighting occurred that killed thousands of innocent civilians and sectarian armed groups spread after the government was unable to control the situation.

c. Organized crime: Armed groups may find the atmosphere suitable for them to expand their activities and organize their crimes, as has occurred in Somalia in 2011.

d. Terrorism: The terrorists exploit the preoccupation of the state apparatus, so that they learn about the increase in their terrorist activities and may present themselves and assume the role of the savior, as ISIS did during its invasion of a number of Iraqi provinces.

With the list above in mind, the security dimensions are among the most important challenges facing the state while it is going through crises, and it must make all efforts to avoid any security breach or loophole that might lead the country to the abyss.

2.1.6.4. The International and Regional Dimension of Crises

Crises have an international and regional dimension that mainly affects countries in the region, and may even extend beyond their scope to include other countries outside the region. For example, the Iranian nuclear program crisis is a cause of concern and inconvenience for the countries of the region. It has also become a source of concern for the countries of the European Union and America. Also, energy and

security crises have become threatening for the global security and peace, prompting the whole world to devote efforts to combat and reduce crises and work to control them and reduce their negative effects by combating terrorism, human and drug trafficking, and developing forms of economic cooperation to avoid economic crises through the signing of international agreements as well as the spread of organizations or international works to resolve crises and intervene immediately.

2.2.   Crises that Affected Iraq in the period of 2005-2020

2.2.1. Historical Background

Iraq's political crises would first emerge after the coup that occurred at the Iraqi monarchy in 1958. Later, the region would see ethnic crises between the period of 1960 to 1970 as well as the presence and military clashes between Baghdad and the Kurd populations. In 1979 and after Saddam Hussein came to power in Iraq, a revolution against the Shah occurred in Iran in the same year, which brought a new revolutionary regime to Iran; a regime that was hostile to Iraq for religious reasons. Saddam Hussein launched a military war against Iran in 1980 and this war continued until 1988, accepted as many to be one of the bloodiest wars of recent times. Iraq emerged from this war with a large debt to Kuwait and Saudi Arabia. As the calendars marked 1990, Saddam Hussein invaded Kuwait to pressure Saudi Arabia to exempt Iraq from its debts and resolve the dispute over Kuwait's oil. Saddam's invasion of Kuwait faced widespread international rejection. As a result, the United Nations decided to approve the expulsion of Iraqi forces from Kuwait. The American forces launched a military campaign against the Iraqi forces in Kuwait in alliance with the Saudi forces, called Operation Desert Storm, the result of which was the liberation of Kuwait. The United States of America and its allies were to establish a no-fly zone on Iraq, and the Security Council also decided to impose an economic blockade on Iraq to force Saddam to get rid of his remaining missiles and stop military modernization, until another coalition of the United States invaded Iraq and ended Saddam Hussein's regime in 2003 (Cordesman & Khazai, 2014, p. 1). The American invasion of Iraq in 2003 led to a political and administrative change in that the Republic of Iraq began to adopt the decentralized system in Iraq and turn Iraq into a complex state after it was a simple state. The United Nations, in its Resolution No. 1511 issued by the Security Council, demanded that the necessary steps be taken to write a new constitution and return power to the Iraqi people (Jabr, 2011, p. 110). Following the UN decision, the

Governing Council, established by the American civil administrator Paul Bremer, issued the Interim Iraqi State Administration Law of 2004, which stipulated the formation of an elected Iraqi government according to a constitution written by an Iraqi National Assembly and voted on by the Iraqi people. The Iraqi constitution was adopted in 2005, which stipulated that the system of government is a federal system, as stated in its first article, that Iraq is a single federal republic that enjoys complete sovereignty, and the system of government in it is a representative republic (The Constitution of the Republic of Iraq, 2005, Article 1).

2.2.2. The Crisis in Iraq Between 2005 – 2010

During the period of 2005 and 2010, Iraq passed through multiple crises, as explored below:

2.2.2.1. The Crisis of Consensual Democracy in State Administration

Following the American occupation of 2003, unprecedented political currents have appeared in the Iraqi political arena, all of which want to participate in the new political system after the passage of the permanent constitution of Iraq of 2005. The principle of consensual democracy was presented as a solution to the crisis of participation in the new political system (Hassan, 2016, p. 44). However, adopting the principle of consensus requires important factors that must be met in order to prevent the outbreak of conflicts that may take a violent form, and perhaps the most important of these factors is the primacy of the state's interest over the interest of the regime (Al-Eidani, 2012, p. 120). Soon, consensual democracy in Iraq turned into a sectarian quota system, whereby the political forces believed that the quota system is a national entitlement for the components that suffered persecution under the Ba'athi party regime; thus, it could not be waived, which led to the adoption of a new policy based on societal components and not on the basis of political ideas. In other words, the adoption of a state of components, not a state of citizenship (Mahdi, 2013, p. 141). This inevitably led to the sectarian division of society.

2.2.2.2. The Sectarian War Crisis

After the political elite failed to persuade the Iraqi society to interact positively with the new quota system, they sought to mobilize the sectarian streets towards their vision and goals to obtain popular support for themselves based on ethnic sectarian foundations instead of a collective national identity. The sectarian mobilization of

society and the great security and military vacuum that entered Iraq after the American civil administrator Paul Bremer's decisions. The Iraqi army and security services were to a sectarian tension that would reach its maximum levels. The issue was further complicated by the crisis of forming a government more than two months after the first elections that took place after the approval of the 2005 constitution. Political parties did not succeed in establishing understandings regarding the establishment of the government (Abdullah, 2019).

On February 22, 2006, huge explosions rocked the city of Samarra in Salah al-Din Governorate. These bombings targeted the shrines of Imams Ali al-Hadi and Ali al-Askari, which are considered holy sites for the Shiite Muslims. The choice of the city of Samarra was carefully considered by the players on the sectarian chord inside Iraq to spark sectarian fighting, because the city of Samarra is predominantly Sunni and includes two shrines that are frequently visited by Shiites from all over Iraq (Muhammad, 2006, p. 125) these bombings led to killings over the sectarian identity that left thousands of innocent people dead, and the targeting of places of worship, mosques and churches increased, especially in Baghdad. The United Nations report stated that the number of Iraqis who were displaced from their homes after the Samarra bombing reached about 150,000 by June 30, 2006, and all the reasons behind this displacement were sectarian threats. The report also confirmed that the number of civilians killed was around 14,338 and the wounded 13,256 in the period between January and June 2006 (United Nations, 2006, published report).

2.2.3. The Iraqi Crises of 2011-2016

Important transformations affected the Iraqi-American relations after the signing of a Strategic Framework Agreement (SOFA) at the end of 2008 that included charting future relations between the two countries, and it stipulated that the withdrawal of US forces from Iraq would be completed in 2011. The United States withdrew its forces from Iraq at the end of 2011, leaving Iraqi forces weak and unable to fill the security vacuum left by the American forces, which led to the return of sectarian tension and the emergence of local militias. Frequency of attacks against police forces, the Iraqi army and civilians increased until 2013, when it peaked (Cordesman and Khazai, 2014, p. 19).

The government of former Prime Minister Nuri al-Maliki resorted to taking a harsher approach against his Sunni Arab opponents, and at times resorted to collectively punishing entire villages and cities.

The most important reasons that led to the increase in violence after the year 2011 can be summarized as follows:

1.   The withdrawal of US forces from Iraq at the end of 2011, leaving Iraqi forces unable to impose security;

2.   Prime Minister Nuri al-Maliki's attempt to exclude his opponents in the political process on a sectarian basis,

3.   Severe political tensions between the government of Nuri al-Maliki in Baghdad and the Kurdistan Regional Government,

4.   The spread of corruption, the politicization of independent institutions, and the government's inability to provide basic social services have exacerbated the security crisis in Iraq.

2.2.3.1. The Crisis Following the ISIS Occupation of Northern and Western Iraq

What increased the tension even more was the Maliki government's use of military force to remove the tents of the protesters calling for regime change since the beginning of 2012 in the Sunni-majority provinces (Anbar, Salah al-Din, Diyala, Nineveh, Kirkuk, and the Sunni majority areas in the capital Baghdad). This led to the further deterioration of the situation in those provinces until the self-proclaimed Islamic State of Iraq and Syria entered the city of Mosul as well as established its control over other cities in Central and Northern Iraq. Coinciding with these operations, numerous Iraqi army leaders and members fled from those areas, leaving their weapons until ISIS took control of them and used them in breaking into the rest of the other areas (Arab Crisis Team, 2015, p. 5). ISIS succeeded in controlling the main cities in the northern and western governorates, seizing oil fields and military bases, and tightening control over the border crossings between Iraq and Syria. The United States led an international coalition to confront ISIS in Iraq and launched Operation Inherent Resolve, where the mission was to defeat the organization and limit its expansion.

ISIS has committed horrific violations, according to the United Nations (UNAMI) report, which amount to war crimes and clear violations of International Humanitarian Law. The report also affirmed that the death penalty killing of civilians, the suffering inflicted on families and the unjustified destruction of property are matters that can never be tolerated in any conflict armed. (UNAMI, Report Online version).

2.2.3.2. *The Crisis of Displacement Following the ISIS Occupation of the Northern and Western Governorates of Iraq*

The year 2014 was proved difficult due to the displacement crisis in Iraq, as DTM recorded 212,340 displaced people spread over more than 2,000 sites in 17 Iraqi governorates, all of whom fled from the areas controlled by ISIS. The most prominent of these displacement sites was the Nineveh Governorate, where the percentage of displaced persons reached 40%, followed by Anbar Governorate by 32%, and Salah al-Din Governorate by 15% in 2016 (Hegel, 2016, p. 5). According to the estimates of the International Organization for Migration, the number of displaced people inside Iraq reached 146,643 between 2014 and 2016. The United Nations also indicated in a report that in the period between October 17, 2016, and March 11, 2017, approximately 292,848 people were displaced from Mosul, of whom 68,550 returned to their original areas of residence after the liberation of their areas, and 298,224 others still live in tents. Because of the massive destruction caused by the military operations against ISIS to their residential areas and the lack of health services there. Therefore, this displacement crisis was the biggest crisis after the crisis of ISIS's occupation of large areas of Iraq, as Iraq had never seen anything like it in its contemporary history (Khazar, 2019, p. 65).

2.2.4. The Crisis in Iraq Between 2017-2020

2.2.4.1. *Crisis of Children and Families of ISIS Fighters*

As soon as the military operations against ISIS in Iraq ended at the end of 2017, a new crisis arose regarding the families of ISIS affiliates. This term appeared after the end of the military operations and refers to families whose members belonged to ISIS. Most of these families could not return to their areas liberated from ISIS control, for fear of retaliation and tribal revenge; thus, some of them remained in the camps, and the others managed to emigrate outside Iraq.

Human Rights Watch confirmed that thousands of women and children from ISIS families have been classified as pariahs and are being treated very poorly in displacement camps and that the authorities are preventing them from returning to their original areas of residence and reintegrating them into society. In some cases, women fall victim to sexual assaults, which heralds a catastrophe threatening the future of Iraq, as it will create a new generation that feels deprived of its rights and becomes vulnerable to recruitment again into extremist groups (Human Rights Watch, journalist report, 2019). In addition to the camps that include ISIS families inside Iraq, the al-Hawl camp, which is located on the Syrian territory, includes about 30,000 displaced Iraqis, and the Iraqi authorities have so far refused to receive them out of a total of 62,000 people of different nationalities, including children estimated at about 27,00. The al-Hawl camp has become the hotspot of violence in northern Syria since the dismantling of ISIS in early 2019. It is noteworthy that this camp was established in 1991 during the Gulf War to shelter Iraqis fleeing the battles, as it was rehabilitated in 2016 during the war of the coalition forces against ISIS to become a hosting place for Syrian and Iraqi refugees fleeing ISIS-controlled areas. However, the families of the ISIS fighters who were captured have also become detained, and currently the camp is divided into nine gatherings, eight of which are for the displaced Syrians and Iraqis, with the ninth settlement being designated to the families of ISIS affiliates (Rosen, 2021).

2.2.4.2. The October 2019 Demonstrations

On 25th of October 2019, massive popular demonstrations were distinguished from the demonstrations that preceded them in terms of the type of demands. It was not just the overthrow of the regime, but the rejection of all parties and participants in the political process after 2003, especially the religious parties. The protesters demanded an end to the Iranian interference in the internal affairs of Iraq, which became clear and direct after the defeat of ISIS and its expulsion from the Sunni provinces. The demonstrations extended to include the central and southern governorates of Iraq, and were characterized by the participating age groups, which were dominated by the youthful character (Faris, 2019, p. 2)

The October demonstrations were also distinguished by being spontaneous demonstrations without a leader or negotiators. However, this spontaneity was not meet with respect and interaction by the political system, as the authority in Iraq was

not known for its respect towards demonstrations and protests that are not supported by personalities or political parties (Al-Hashemi, 2019, p. 7).

Despite the permanent constitution of Iraq of 2005 which guaranteed freedom of peaceful protest (Constitution of Iraq, 2005, Article 38), government headed by former Prime Minister Adel Abdul Mahdi faced the demonstrations with excessive violence that led to dozens of deaths and injuries. The ruling authority proved its sectarianism by targeting the demonstrators because they demanded a city state and a change in the nature of the regime dominated by sectarian religious parties fully supported by the Islamic Republic of Iran

The most important demands of the October demonstrations can be summarized as:

1. A change in the sectarian quota system that followed the political process after the approval of the permanent constitution of Iraq in 2005.

2. Dissolving the armed militias that operate outside the framework of the state and reforming the military establishment.

3. Providing services and ending the electricity crisis that Iraq has suffered since the 1991 Gulf War.

4. Supporting the poor and eliminating unemployment by reactivating the private sector.

5. Holding parliamentary elections under the direct supervision of the United Nations and adopting a non-sectarian election law.

6. Combating corruption and favoritism, especially in job grades and state positions.

7. To oblige Iraq to be neutral towards the Iranian-American conflict and to limit Iranian interference in Iraqi internal affairs. (Arab Crisis Team, 2020, p. 10)

2.2.5. Crisis Response by the International Committee of the Red Cross

The International Committee of the Red Cross has a very important role in working to embody and respect the principles of International Law, stopping or preventing violations of its rules, and raising awareness of its provisions among the various groups concerned. There is a close relationship between the Committee and International Humanitarian Law: its statute declares that one of its main tasks is to work on the strict application of International Humanitarian Law. The existence of an independent, non-political humanitarian body, such as: the International Committee, is a basic need; To be able to intervene with the competent authorities and the victims; With the aim of ensuring respect for the rules of International Humanitarian Law, if the International

Committee of the Red Cross, in particular, is concerned with preserving the integrity of the application of International Humanitarian Law and promoting its implementation, it is not solely responsible for ensuring its implementation, especially in cases of violations; therefore, states must strive to facilitate the work of the committee in crisis areas in order to perform the role entrusted to them under the rules of International Law.

International Red Cross and Red Crescent Movement pledged to intensify its humanitarian activities in Iraq and to provide more aid to the displaced from their homes as a result of the ongoing fighting in different parts of the country in crisis. The Committee has the ability to spread rapidly, and continue to work during armed conflicts and situations of violence all over the world, and it is possible for the Committee to reach places that the United Nations cannot reach, because of its singularity in some activities, especially the mandate given to it to spread and sponsor Humanitarian Law. Furthermore, the Committee's reliance in its work on humanitarian principles is the basis for its success in reaching people and gaining the acceptance of the parties to the conflict. It is clear that the important role played by the International Committee of the Red Cross as the main protector of the rules of International Humanitarian Law, in addition to its role in protecting civilians during armed conflict, is rather difficult. Because of the complexities of conflicts, the International Committee of the Red Cross faces many difficulties and obstacles that hinder its work and the performance of its mission, which can be summarized as follows:

-The large number of conflicts recorded in the contemporary time frame, and their intensification, affects the ability of the ICRC to cover all the assistance it is supposed to provide to those affected by armed conflicts.

-The difficulty of implementing the rules of International Humanitarian Law is one of the most important obstacles that hinder the work of the International Committee of the Red Cross in Iraq.

- The lack of protection granted to the International Committee of the Red Cross and its delegates affects its effectiveness and role during armed conflicts.

2.2.5.1. The International Commission of Inquiry and Investigation.

By reviewing the reports by international fact-finding committees on the Iraqi crises, it was found that there is a dire need directed to Iraq and its people and to the

world in various media outlets that call for the implementation of mechanisms of International Law in Iraqi politics. Despite the follow-up by the United Nations missions in Iraq (UNAMI) and its submission of periodic reports that included recommendations, the most important of which was the report issued on December 15, 2014 that came out with the following inquiries:

1. All parties to the ongoing armed conflict must fully fulfill their obligations under International Humanitarian Law and human rights law, and parties must take all feasible precautions to spare civilians from the effects of hostilities and take all necessary measures to respect, protect and meet the basic needs of the civilian population.

2. Immediately stop all acts of violence or abuse against civilians that violate applicable international humanitarian and human rights law. The international community, including the United Nations Security Council and the Human Rights Council, should continue to closely monitor the situation with a view to ensuring accountability for the perpetrators of grave violations, human rights violations and serious violations of International Humanitarian Law.

3. When carrying out armed operations, all parties to the conflict must take all necessary precautions to ensure the protection of civilians from the effects of violence and to reduce the human suffering caused by the conflict, in line with fundamental principles of International Law.

4. All parties to armed conflict and other relevant actors must refrain from displacing the civilian population and take the necessary measures to prevent and respond to this, including allowing safe passage and providing guarantees of safety for humanitarian actors to have access to the displaced and conflict-affected populations.

5. All parties must ensure that civilians are protected, have unimpeded access to medical facilities and humanitarian assistance, are able to leave violence-affected areas in safety and dignity to seek safe shelter, and are not forcibly returned to affected areas.

6. All parties must agree to and facilitate relief operations of a humanitarian and neutral nature by allowing and facilitating the rapid and unimpeded passage of relief shipments, equipment, and personnel. Humanitarian workers and facilities should also be respected and protected.

7. Iraqi political leaders must seize every opportunity and urgently reach a significant and effective resolution to the crisis by restoring government control and the rule of law over the areas captured by ISIS.

8. The Government of Iraq is obligated to effectively, promptly, accurately, and impartially investigate any allegations of violations or abuses of international human rights law and serious violations of International Humanitarian Law, and, where appropriate, to prosecute those responsible for such acts, particularly if such acts constitute international crimes. Moreover, such violations and abuses raise the victims' right to an effective remedy that guarantees them the right to equal and effective access to justice and adequate, effective and prompt compensation for the harm they have suffered.

9. The Government of Iraq should consider acceding to the Rome Statute of the International Criminal Court and, as an immediate step, consider accepting the exercise of the jurisdiction of the International Criminal Court with respect to the special situation facing the country in accordance with the third clause of Article 12 of the Rome Statute.

10. The Government of Iraq must implement comprehensive social, political, and economic reforms aimed at ensuring social peace through reconciliation. (UNAMI, 2014).

Based on these recommendations, the UN Security Council condemned the crimes of genocide and crimes against humanity that took place on Iraqi soil, especially those committed by terrorist groups in Iraq; most notably ISIS. The Security Council also stressed the need to respect the rules of International Law and to implement the rules of International Humanitarian Law more broadly in Iraq. Through the review of the crises and armed conflicts that Iraq went through, it becomes clear that international organizations had a prominent role in applying the rules of International Law, especially in the relief field stipulated by the principles of International Humanitarian Law. As these organizations had an important role in providing organizations with humanitarian aid and relief for the displaced population during the conflicts, they provided periodic studies of the conditions of civilians who were exposed to waves of displacement in the manner of realistic field monitoring and recording cases of violations of human rights and the rules of International Humanitarian Law. Thus, periodic reports are a monitoring and preventive means to alleviate the suffering of forcefully displaced persons. Among these organizations is the International Fact-Finding Committee, and at the core of its functions is to comply with the provisions of the four Geneva Conventions, the First Additional Protocol, the International Organization for Migration, the United Nations High Commissioner for Refugees, and UNICEF. The services provided by these organizations to address the conditions of the displaced and reduce their suffering to the areas to which they have been displaced by ensuring the compliance of international and regional organizations with International Law and policies, in coordination with local national authorities for periodic field monitoring of the situation of the displaced. International organizations enjoy freedom of movement to carry out their duties and preserve the lives of the displaced.

This chapter presented the nature of the crisis in general, and touched upon the Iraqi crises in the period of 2005-2020. In doing so, it sought to reveal the roots of some of these crises, and how both the international community and the local governance dealt with them.

CHAPTER THREE

THE EFFECTIVENESS OF INTERNATİONAL HUMANİTARİAN LAW IN IRAQ'S ARMED CRISIS

3.1. The Role of International Humanitarian Law in Iraq's Sectarianism Problem

The urgent need to protect the human beings and take care of their survival requirements at all times necessitated the laying down of the provisions of International Humanitarian Law, which is one of the most important branches of general International Law, because it is closely related to the human lives. To date, it has contributed to saving millions of people on condition that they abide by respecting this law and abiding by its rules and provisions, because its overriding goal is to protect people in the event of armed conflicts. Moreover, its rules restrict the right of the parties to the conflict to choose means and methods of warfare that may lead to the lives of millions of people if they try to use them due to the technological and scientific developments.

The crises that afflicted the Iraqi State before and after 2003 are due to structural elements linked to the political systems that Iraq has known. The conflict of democracy and totalitarianism, the struggle of the state and non-state, the conflict of the city and the countryside, citizenship, sectarianism and ethnicity had a clear impact on the outcomes of the political regimes that ruled Iraq, and generated crises for the Iraqi State. The political crisis would branch out from 2003 and strike the country where the rigidity of power and the struggle of the parties and their shares of their spoils conflict. If the political blocs and groups do not need the legal entitlements, they go to options to employ nationalism and sectarianism, regional and international support helps to ignite the aforementioned crises, which are also looking for their interests through ethnic and sectarian groups. In the end, the result is only at the expense of the security and stability of the Iraqi State, and the well-being of its people. There are various reasons and motives that encourage the practice of violence, and therefore it is not possible to rely on one factor or one particular element. Rather, there is an overlap between ideas and values between the political and economic conditions, the conditions of the local political environment and their connection with the external political environment (Hussein, 2014, pp. 345-352).

Iraq suffers the largest share of its crises, whether they are external or internal crises. Any follower of Iraqi affairs gets to discover that the aptitude for crisis is a deep psychological syndrome rooted in the nature of the Iraqi personality. No sooner had the country emerged from a crisis than it entered into another that was more severe and worse than the previous one. Social crises are the origin of all other crises, whether political or economic, and this is due to the social structure of Iraqi society. If one is to follow the events that followed the occupation of Iraq in 2003, it can be seen that the controversies that accompanied the occupation are three arguments, which are the argument of inside and outside, the argument of unity and fragmentation, and the argument of contradiction between political and non-political identities. Sectarian violence has many forms by which its parties can practice the process of violence. Sectarian violence may come in the form of civil wars, or terrorist groups intervene in sectarian conflict, or the emergence of separatist movements from the state and the formation of a region for the conflicting group, or the existence of guerrilla wars and so on.

When speaking of the most important forms of sectarian political violence within the state, civil wars rise to prominence as they occur when a coup, revolution, or rebellion presents itself. Civil war represents the height of political violence, as it revolves between two conflicting parties, each of which has a special military force that helps to achieve its goals. This war may result in a weakening of the prestige of the state, this is an appropriate opportunity for foreign forces to intervene as a party to the conflict. The intervening states typically support one party without the other, and give it all the reins of power in order to establish subordinate governments to achieve their goals (Harir, 1996, p. 59).

Non-separatist civil wars exist, however; they are wars that arise on ethnic grounds but do not involve separatist demands or tendencies on the part of the actors. The main goal in these wars is the struggle for power, like the struggle between Sunnis and Shiites in Iraq.

Another phenomenon to unfold in crises is terrorism. Although terrorism is something that human societies have known since ancient times that works to create terror as a result of terrorist acts, it has specific primary goals to which actions are directed (people - a state - large groups); terrorism uses violence differently aimed at achieving political goals (Ezz El-Din, 1984, pp. 46-57).

Gang wars, not necessarily linked to terrorism, seek to achieve limited goals for the most part. A gang war does not depend on the use of regular methods of traditional warfare, especially in its early stages, but rather depends on clash, hit-and-run, and rapid attacks. The political dictionary defines guerrilla warfare as a fight that takes the form of warfare usually carried out by groups of citizens against the enemy's regular forces or against the standing army of the existing government, and each group consists of a limited number of citizens trained in fighting and using small arms (Harir, 1996, 66-69). The situation of sectarian violence has changed after the advent of the occupation in April 2003, as with its early days Iraq passed continued a wave of continuous guerrilla wars, but these wars were not based on any sectarian religious authority, as they were at the time of the sectarian war (2006-2008). The guerrilla wars began to intensify in Iraq by August 2003, the most prominent of which were the bomb attack on foreign embassies, the attack on the United Nations headquarters, the assassination of the United Nations envoy, the militia attacks on the occupation forces, and the occurrence of many bombings, car bombs and shooting incidents (Hosseini, 2019). These events indicate that the different Iraqi sects were busy in the process of resisting the occupation more than resisting each other. Among the most important indicators of sectarian violence in Iraq is the increase in the number of deaths on the basis of identity, the phantom checkpoints that were killing citizens on the basis of their ethnic or sectarian affiliation, the bombing of places of worship for different sects, and the ensuing mortar shell war inside Baghdad between Sunni and Shiite areas, as well as the massive forceful displacement operations from one region to another on an ethnic and sectarian basis. According to statistics reported by the media, acts of violence in Iraq were killing about 30 people every day during the years 2003 and 2004. It increased by the end of 2005 to reach 50 Iraqis per day, and it increased to more than 100 a day by mid-2006 after the Samarra bombings (Alwan, 2006, p. 32). According to Pentagon figures, the number of Iraqi civilian deaths increased from 500 at the beginning of 2006 to about 3,700 at the beginning of 2007 with the escalation of sectarian violence, but the number began to decrease intermittently to 2,000 in mid-2007, and nearly 600 at the beginning of 2008 (Glanz, 2009, p. 157).

One of the most dangerous manifestations resulting from the inter-sectarian fighting in Iraq, which some see as serving and facilitating the plan to divide Iraq into racial and ethnic entities, is what is called forced displacement, a phenomenon that

refers to forcing the followers of a certain sect to leave the areas in which the majority of followers of the other sect live so as not to be killed (Qalta, 2006, p. 75).

In the wake of the Sunni-Shiite conflict, differences began to escalate following the escalation of open and mutual accusations deliberately targeting each other, until these accusations turned into physical fighting on the ground. Despite the many confrontations between the two sects, the conflict did not take a very dangerous turn, except after the so-called "war of mosques in Iraq" after the bombings of the shrine of the two imams in Samarra, and the subsequent attacks of Shiite militias on Sunni mosques all over Iraq (Qalta, 2006, 74).

3.1.1. Mechanisms for Applying International Humanitarian Law

To protect human beings in society and provide security requirements, mechanisms have been put in place to implement International Humanitarian Law, and these mechanisms differ according to the custodian and supervising authority. They are supervision and control mechanisms in the application of International Humanitarian Law. The mechanisms of supervision and control over the implementation of the rules for the protection of civilians in the occupied territories can be classified into two types, the first being embodied in the mechanisms established under the Fourth Geneva Convention of 1949, a type that is considered one of the most important types of supervision over the implementation of these rules; and the mechanisms developed under the First Additional Protocol to the Geneva Conventions of 1977, which are as follows:

3.1.1.1. The Protecting Power System

International Humanitarian Law in all international armed conflicts emphasized the necessity of establishing a (protecting state system) to enable the parties to the conflict to continue the dialogue, as this system is somewhat similar to the system of the state that represents the interests of a particular country when diplomatic relations are interrupted, and from another angle, this system is a legal means that is effective in ensuring the implementation of the provisions of International Humanitarian Law, especially with regard to the protection of victims of international armed conflicts. What is meant by the protecting power is: "A state that takes care of the interests of a state and the interests of its nationals in another state with the consent of these two states" (Al-Habib & Judea, 2010, pp. 363-364). The United States is the protector of

Iraq, and since the outbreak of the sectarian war in Iraq, the American grip on Iraq is clear in the conduct of events; for example, the US Senate approved a non-binding plan to divide Iraq into three federal regions on sectarian and ethnic lines in September, 2007. It is noted that this decision was introduced by Joe Biden, Chairman of the Senate Foreign Relations Committee at that time (Taha, 2007, p. 114).

It is not possible to overlook the role of the United States of America in pushing Iraq into a sectarian war by following various policies, beginning with the dissolution of the former Iraqi army, the destruction of the economic, political, military and social infrastructure of Iraq, and its interference in the drafting of the new constitution of Iraq (Steele, 2008, p. 8). The United States of America supplied the Sunni tribes with weapons and equipment and armored them to confront Al-Qaeda in some places and some provinces of Iraq, although the seriousness of the matter is that it was arming those who were likely to turn against them at a later time or attack the Shiite militias. It was clear that the United States of America was planning a new sectarian war in the future because the United States of America has expanded the military movement circle of the Shiite militias loyal to the authority to end the Sunni movements, and this was to keep the attacks away from the forces of the United States of America and direct chaos among the people of one nation. The occupation forces used the media to create a wedge between the people of the country by diverting the conflict confronting the occupier to internal confrontation (Steele, 2008, p. 17; Al-Bayati, 2007, p.54). From the aforementioned events it is clear that the United States did not exercise the role of the protecting state, but rather was working to increase the spread of chaos and fighting between the Iraqi people, and the international community and control committees did not confront the protecting state and did not object to its actions in Iraq, but the world was in support of it. In this regard, it is found that International Humanitarian Law was not conducted in the sectarian crisis and monitoring mechanisms and the protective legislature was not applied to a state in this crisis.

3.1.1.2. International Humanitarian Fact-Finding:

As a result of the refusal of the International Committee of the Red Cross about the role of an investigator in violations of International Humanitarian Law, because the results of the investigation may lead to the deterioration of the Committee's relations with the state, another commission was keen to cover the deficit that exists in the good implementation of International Humanitarian Law, especially after the

reality of the relations between the parties to the conflict. the 1977 Diplomatic Conference attempted to send an executive body under a legal provision; it has ratified Article 90 of the Protocol that speaks about the International Fact-Finding Commission, specifying its nature, functions and functioning. The International Fact-Finding Commission is developing a new mechanism to oversee the implementation of International Humanitarian Law only in international armed conflicts, adopted by Extra Protocol I, which is a fact-finding procedure that complements the Geneva Conventions. By looking at the reports of the investigation committees into the Iraqi armed crises, it can be understood that the conclusion of these reports indicates that both government security forces and armed groups are responsible for launching attacks that target civilians or cause harm to them. These reports do not give Iraq and its people any assurance in investigating the mechanisms of implementing International Law in Iraqi politics and their implementation, however.

3.1.1.3. *The Role of the International Committee of the Red Cross*

The ICRC in Iraq has focused on visiting people held by the multi-national forces in Iraq and by the Iraqi authorities. The aim of these visits is to inspect the living conditions of the detainees. They must get acquire proper and humane treatment and reconnect with their families through Red Cross postal systems. Despite the restrictions imposed on it due to the security situation, the ICRC provided help, including medical supplies and equipment, to hospitals where the wounded were being treated, as well as basic aid to families displaced by the hostilities.

On the political level, Iraq still does not have a strong government capable of controlling the situation and managing the country; due to the incompatibility of the political process partners on a particular candidate.

On the security level, Iraq faces major challenges at the internal and external levels, the most important of which are the proliferation of weapons among factions that are not subject to the authority of the state, the weakness of the authority of the official security services, the repercussions of the US-Iranian conflict and the settling of the accounts of the two parties on Iraqi lands.

3.2. The Role of International Law in the ISIS War

ISIS is a large-scale, semi-conventional militant group that has taken over a large area of the governments of Iraq and Syria, and encourages covert attacks and

operations around the world, or launches them on their own. Abu Bakr Al-Baghdadi assumed the leadership of the group with the intention of building and expanding the "Islamic Caliphate" that extends across a large part of the Middle East. The Islamic State emerged from previous iterations of what usually described Al-Qaeda in Iraq and is competing with Al-Qaeda for dominance over the various extremist Salafi-Jihadi movements in Iraq and Syria with overlapping domestic and international terrorist movements. It is organized hierarchically and globally. The so-called caliphate divided into emirates, or states, whether inside Iraq or Syria or in its affiliated sites in Nigeria, Libya, and Afghanistan.

3.2.1. The Beginnings and Premise of ISIS

The so-called Islamic State was a byproduct of the US invasion of Iraq and its subsequent withdrawal. The 2003 war led to the shifting of the political balance in the state from the former dominant Sunni sect to the Shiite sect, leaving the Sunni groups in exasperation, division and confusion. The Sunni extremists had a common cause that brought them together with the tribal leaders and elements of the former Saddam Hussein regime, represented in the resistance to the American occupation and then the new Shiite government, so that Abu Musab Al-Zarqawi, a jihadist of Jordanian origin, shone as the most brutal leader in this movement. He had settled in northern Iraq in 2002 to become a leader of Al-Qaeda's Iraq branch in 2004, after he formally allied with Osama bin Laden.

The year 2011 is seen as the withdrawal of US forces from Iraq and the start of the war in neighboring Syria, where Abu Bakr Al-Baghdadi, the new leader of Al-Qaeda in Iraq, transferred the group's headquarters. In the wake of his failed attempt to impose his authority on another group affiliated with Al-Qaeda, Al-Baghdadi split from the main organization in 2014 and established his Islamic State, seeking to assume the global leadership of the Salafi-Jihadi movement.

The American withdrawal from Iraq contributed to increasing Iranian influence, weakening the adequacy of the Iraqi army and reducing American supervision over these forces, which weakened their strength under the regime dominated by Shiite parties in Baghdad. The ISIS columns that emerged in Syria were rapidly expanding in the suburbs of Baghdad at the beginning of 2014, which came as a big surprise to Washington. The behavior of the Islamic State is based on religious enthusiasm,

strategic calculations, and catastrophic predictions. After its defection from Al Qaeda, ISIS leaders sought to establish an Islamic "Caliphate" that stretches from Africa to the Middle East, South Asia and parts of the Pacific region.

3.2.2. The Legal Description of ISIS in International Law

The International Security Council, according to its Resolution No. 2170 of 2014, referred to the adoption of the designation "the Islamic State in Iraq and the Levant," and this designation and which the Security Council description of ISIS was denied the character of the state. The confrontation with ISIS fulfills the conditions for a non-international armed conflict, and this is confirmed by the report of the international team assigned by the United Nations Human Rights Council, where this international team described the confrontation with ISIS as an armed conflict of a non-international character, ISIS and the armed groups supporting it one side, and the government forces and the army a second party. As a result, the fight against ISIS in Iraq and Syria is a non-international armed conflict that carries international elements. According to the aforementioned Security Council resolution, the council did not decide to address ISIS to the International Criminal Court, because it refers to countries, not organizations, and the legal description of ISIS depends on determining what ISIS is and the actions it has carried out. According to the current rules of International Law, it is somehow difficult to put ISIS in the context of current multi-national legislatures (Al-Ashaal Abdullah, 2015, published article) .

3.2.3. Patterns of Violence Use

The use of violence embodied ISIS's main means of expanding its control. ISIS's use of violence resembled the behavior of most rebel groups. Naturally, if ISIS faced a powerful governmental opponent, they tried to establish strongholds for it in a new country, and they would resort to traditional guerrilla warfare tactics such as mobilizing the local population and carrying out surprise attacks instead of confronting the opponent on the battlefield and weakening the government's desire to fight (Arreguín-Toft, 2005, pp. 3233). It is a strategy that has particular appeal to groups much weaker than the government security forces.

3.2.4. International Legal Adaptations of ISIS Crimes

ISIS crimes against civilians and the military varied, constituting systematic crimes in which weapons and bombs were used, and did not differentiate between

civilians and combatants. Their crimes were of the nature of mass murder, genocide, displacement of civilians from their homes, seizing their property and rape, which made these crimes fall under the list of international crimes. The United Nations mission monitored a number of crimes committed by ISIS that aroused international public opinion:

- ISIS killed nearly 1,700 cadets at the Speicher military base by means of a mass execution by firing squad and throwing their bodies in the Tigris River.
- Killing civilians in various ways, the most prominent of which are beheadings, burning and drowning.
- Killing by stoning and throwing people alive from high places.
- Kidnapping and trafficking in women and children as war spoils.
- ISIS has disappeared hundreds of young people, who were working as a military in the Iraqi government.
- Forcibly recruiting children between the ages of 8 to 15 years, separating them from their families, practicing brainwashing operations, and instilling in them extremist ideas of ISIS (Al-Qaisi, 2016, published article).

These actions are incompatible with Article 3 of the 1948 Universal Declaration of Human Rights, which affirms the right of everyone to life, liberty and personal integrity. Likewise, the material pillar by which ISIS intended to destroy a human group on a religious basis, as happened with the Yazidis, Christians, and Shabaks, and accordingly the ethnic, national and religious identity of the victims represent the most important pillar of international crime. This is what the Special Advisers to the Secretary-General of the United Nations, Adama Dieng and Jennifer Welch, emphasized in their statement issued on August 12, 2014. ISIS has committed crimes against the Yazidi, Christian and Shabak sects, which amount to genocide.

On another note, ISIS has committed a number of international crimes that amount to crimes against humanity, including its crimes committed on a religious basis and the destruction of religious sanctity places in addition to sexual and physical violence against women and the recruitment of children to carry out suicide operations, which fall within the jurisdiction of the International Criminal Court. In order for the Court to be able to exercise its jurisdiction to take investigation measures and prosecute criminals, the state on whose territory these crimes stipulated in the statute of the court were committed must be a party to the statute of the Court or for the state to submit a registered declaration containing its acceptance of the Court's exercise of its jurisdiction over the crime committed; since Iraq is not a party to the court's statute,

it cannot investigate these crimes without the consent of Iraq. International Criminal Court must however be introduced to those crimes in accordance with the provisions of Paragraph (b) of Article (13) of the Basic Law. Based on the law, the Security Council may relay crimes committed on Iraqi territory to the Criminal Court, even if Iraq is not a part of the Statute and without the approval of the Iraqi government. However, the Security Council contented itself with condemning these crimes and considered them a very serious violation of human rights, describing these crimes as crimes against humanity only, and imposing travel bans, preventing funding and seizing funds for people, and identified six of them, on the basis that ISIS leader Abu Bakr Al-Baghdadi was listed on the black list since 2011. The international resolution also urged drying up the sources of money and weapons for ISIS (Qais Ali, 2016, published article).

3.2.5. The United States' Approach to Countering ISIS

The methodology of the US President Barack Obama's administration in fighting ISIS and Al-Qaeda in Iraq initially relied on the separation of American forces and their withdrawal from Iraq in 2011, while Al-Qaeda in Iraq continued to launch attacks for many years afterwards. In the aftermath of the ISIS attacks in the spring and summer of 2014 on regions such as Al-Anbar and Mosul, the United States focused for a short period on containing the threat and helping to defend Baghdad, after which it moved to support efforts to retake the lands seized by ISIS in Iraq. As the White House made clear, American efforts were aimed at stemming the momentum of ISIS's advance on the battlefield in Iraq and Syria, the source of ISIS soldiers and the source of its power (White House, 2015). The US-led military operations began in the summer of 2014 with Operation Inherent Resolve to weaken and defeat ISIS. A team officer commanded the military operations and headed the organizational structure of its joint task force under US central command, and sought to benefit from the Iraqi and Syrian resistance and other partners in inflicting the military defeat of ISIS in the joint operation's area of Iraq and Syria so as to provide the opportunity to implement comprehensive coalition government measures in a way that enhances stability regionally. The United States established a global coalition task force to fight ISIS, headed by a special presidential envoy who reports to the US Secretary of State administratively, in which the sixty-six countries worked to weaken ISIS in Iraq and the Levant and ultimately defeat it through a comprehensive and continuous strategy

to combat terrorism. In regard to what is stated above, the United States used a set of tools, such as building the capacity of partners, improving the process of intelligence gathering, cutting off the sources of funding for ISIS, and providing humanitarian aid. Several US government documents reviewed these tools, showing nine lines of efforts exerted, some of which are represented by the support of effective governments. It also included four pillars, including strengthening the support provided to the forces fighting ISIS on the ground and eight "things" the United States did to defeat ISIS, including a quest for a diplomatic solution (White House, 2014). The battle for Mosul, which was retaken by the Iraqi forces, with the participation of the international coalition, was a major setback for ISIS and the end of its inventor state. Their defeats continued in Raqqa, Deir Ezzor, and western Anbar regions, and huge losses were taken as a result of ground and air operations that lasted from September 2014 until December 27, 2017. Air and ground operations continued during 1059 days of fighting, including 23 thousand air strikes in Iraq and Syria at a cost of 12.6 million USD per day (Al-Qaisi, 2017). ISIS was forced to abandon cities and return to work as an armed group, and to shift from the traditional warfare style to another type of military operations in an attempt to win the battle of turfs. After the disintegration and loss of the military bodies of 7 states in Iraq and 6 states in Syria followed, with one joint state within the Euphrates Province that included the Syrian city of Albu Kamal and the Iraqi city of Qaim. Managing the war from a military and political point of view against ISIS was not an easy matter, as the nature of the parties participating in the operations internally and externally had an important impact on increasing the complexities of the war, especially in the field of the ground and air military balance. However, operations with the Iraqi mission-sharing model had a very important impact on the side of winning this war. With the victories achieved by the armed forces against the terrorist organization, the strategic assessment of this war is a necessary entry point for dealing with potential challenges in the future (Faris, 2016).

3.3. The Effectiveness of International Humanitarian Law in Protecting Civilians in Armed Conflicts

In one way or another, civilians suffer the penalties of armed conflicts, and there is little to no need for interpretation or research to acknowledge the heavy losses that wars cause among civilians. Although it is natural that these people should remain outside the circle of battles, contemporary conflicts tend to reverse this, and

International Law did not address the conditions of the group most affected by war until 1949, when the Fourth Geneva Convention on the Protection of Civilians Persons in Time of War was concluded. Afterwards, it became clear that The Hague Regulations were insufficient to guarantee the necessary protection.

In the absence of a text defining the legal concept for the categories of the civilian population, there was a significant impact on the violation of their rights and exposing them to the most severe forms of suffering, crimes and genocide. This was a motivation for the International Committee of the Red Cross to exert its utmost efforts to modernize International Humanitarian Law, trying through its way to establish a clear concept of the civilian population. That is preciselywhy the International Committee of the Red Cross made a proposal to define the civilian population in the draft rules relating to protection from the dangers faced by the civilian population in time of war in 1956.

And as follows, the civilian population in the current rules is all persons who are not related to the following categories:

1- Members of the armed forces or auxiliary or complementary organizations.

2- Persons who do not belong to the aforementioned forces, but who participate in the fighting. (Azmi, 1978, p. 26).

However, this definition is ambiguous in how the civilian population is distinguished in some cases from individuals who are temporarily in a military situation, and as such, it leads to the exclusion of civilians associated with the war effort, such as factory workers and scientists, from among civilians (Al-Shalanda, 2005, p. 161). It also leads to attempts to include some military personnel among the civilians. Hence, Article 50 of the First Additional Protocol to the Geneva Convention of 1977 adopted a definition of civilians, stating that:

1- A civilian is a person who does not belong to the security forces or armed groups carrying weapons of all kinds.

2- The civilian population includes all persons (civilians).

The civilian population is not stripped of its being civilian because of the presence of individuals among them who are not subject to the definition of civilians; that is, the character of the civilian population does not disappear when there are individuals who fit the description of armed combatants among themselves. Thus the definition of the civilian population represents all the civilian persons present in the

state's territories, as well as foreign civilians affiliated to the enemy and residing in the territory of one of the belligerent countries, as well as the civilian population residing in the occupied territories (Al-Shalanda, 2005, p. 163). International Humanitarian Law must operate throughout the duration of the conflict and in protracted conflicts; hostilities may cease or freeze for certain periods without a peaceful solution by the parties. There are different orientations regarding the operation of International Humanitarian Law in these situations. ICRC has stated that non-international armed conflicts end when hostilities cease and when there is no real risk of their resumption, which is rare when territorial control remains contested between the belligerents.

International Humanitarian Law requires non-state armed groups to treat civilians living under their control humanely without any adverse distinction. International Humanitarian Law prohibits all acts of violence against persons, as well as acts of pillage, and requires parties to the conflict to respect the religious beliefs and practices of civilians under their control, and to take particular care not to damage or destroy cultural property.

However, International Humanitarian Law applicable in non-international armed conflicts does not contain rules that address issues such as the establishment of public order and security, the possible collection of taxes, or the adoption of laws regulating life in these territories. In contrast, there are rules that deal with such issues in situations of occupation in international armed conflict (Hague Convention, 1907, Articles: pp. 43, 48 and p.49).

International Humanitarian Law applicable in non-international armed conflicts is usually less detailed or silent about the protection of certain other rights, notably the political, economic, social and cultural rights of the population. Matters relating to the relationship between citizens and the authorities are primarily the competence of human rights law. However, ensuring the ongoing protection of the human rights of people living in territories under the effective control of armed groups is challenging in law and in practice.

To overcome these legal challenges and engage in protection-related dialogue with all parties to an armed conflict, the ICRC follows a pragmatic path and operates on the basis that human rights responsibilities may be recognized de facto if a non-

state armed group exercises stable control over territory and is able to act like state authority (Challenges Report, 2011, pp. 14-15). The international legal space applicable to the non-international armed conflict in Iraq includes International Humanitarian Law and International Human Rights Law. International Law requires that all parties to the conflict in Iraq, including government agencies and armed groups outside the state, respect the principles of distinction and proportionality in force when armed operations occur and take all appropriate measures to avoid and reduce the impact of violence, in all circumstances, on civilians and to take the necessary steps to ensure the safety of civilians and provide especial protection for them by providing safe ways to leave the areas affected by violence in safety and dignity, and enabling them to obtain humanitarian aid at various times. Parties to the conflict must take measures to ensure that the most vulnerable civilians are protected and cared for, as well as to prevent violations.

It is imperative that the Iraqi government be committed to holding accountable the perpetrators of strife and serious violations of human rights and International Law, especially those that amount to international crimes, including war crimes, crimes against humanity and genocide, regardless of the identity of the perpetrator. The Iraqi government must oblige its forces, including The Popular Mobilization Forces and all armed groups participating in hostilities, to respect relevant International and National Laws when carrying out operations against ISIS and the armed groups associated with it.

This is to protect civilians from the repercussions of violence and ensure their access to humanitarian assistance. But in reality, and on the ground, Iraq has not seen the application of these assumptions and rules in protecting civilians in conflicts and wars, as sectarian events witnessed various types of violence against civilians, including killing, displacement, rape, torture, and the practice of various types of human violence against civilian in especially the capital, Baghdad, as well as other areas. Then came the events and operations of ISIS in the northern and western Iraqi territories, where the region has seen various methods of human oppression, psychological and physical torture, rape of all kinds, killing and mutilation of the corpses of civilians and security forces who were captured by the ISIS state at the time.

The last chapter of this thesis represents the content of the research interests because it discusses the hypothesis for which the title is chosen; to show the answers

to the questions and problems that search for the role of the bodies charged with the application of international and humanitarian law in resolving Iraqi crises, especially the most violent and bloody crises, namely the armed crises that Iraq witnessed it from 2005 to 2020. Various rules have been put in place to try to solve conflicts and apply them in crises. But what was seen in this study is that the rules of International Law are not sufficient to activate the protection imposed in the stipulated rules, and this is confirmed by the reality of the Iraqi situation. Iraq has seen, through sectarian events and the war of ISIS, many violations against humanity in general and civilians in particular. There was no evidence of the effectiveness of the laws of the international community in contributing to the preservation of the lives and property of the civilian people in Iraq, especially the areas that witnessed these events.

CONCLUSION

It was found through this thesis that among the biggest challenges facing international law in the world is to respect the legal rules contained in the conventions regulating this law, and that ensuring its respect by states and organizations requires the availability of effective preventive, monitoring and punitive mechanisms to ensure its respect and ensure the application of its provisions. It was also found that the four Geneva Conventions of 1949 and the two additional protocols had stipulated a set of mechanisms represented in obligating states to respect and ensure respect for the rules of international law, and their obligation to disseminate the provisions of international and humanitarian law, and to form National Societies, and to provide military advisers to their armies, and to represent these mechanisms as protection against violations before the start of armed conflict. Likewise, the agreements stipulated a set of other mechanisms to act as a monitor of the application of international law, such as the protecting state, the International Committee of the Red Cross, investigation and fact-finding committees. Also, the conventions required states to include the provisions of International Humanitarian Law in their national laws, to criminalize grave violations of international law, and to prosecute their perpetrators. The rules of international law have undergone an important development. It is no longer confined to the organization of military operations. Rather, international law became concerned with the issues of the main victim of those wars, namely the human being. The features of this development are evident through the diversity of branches of international law. The most important of these branches is International Humanitarian Law, whose legal rules seek to provide protection to victims of crises and armed conflicts, both international and non-international. When talking about the effectiveness of international law, it turns out that international rules still suffer from not defining the exact meaning of their content. It is also subject to the will of the greater powers. Through this thesis, the most prominent crises that afflicted Iraq between 2005 and 2020 were reviewed, where the political crises that accompanied the American occupation were in all other crises; especially the armed conflicts that occurred between 2005 to 2020. Also, United States was considered the protector state of Iraq in accordance with the rules and provisions of international law, and it was obliged to ensure the implementation of the provisions of International and Humanitarian Law in Iraq and the protection of civilians, but it did not perform this role as it should have. Rather, it had a negative

role in building a democratic political process that ensures the formation of an independent national government. Also, it has failed in its task of protecting citizens during armed conflicts and sectarian fighting in Iraq. The framework of international law applicable to the non-international armed conflict in Iraq includes International Humanitarian Law and international human rights law. International law also requires all parties to the conflict in Iraq to respect the principles of distinction and proportionality that are applicable when they launch armed operations and to take all appropriate measures to avoid and reduce the impact of violence. Under no circumstances should civilians take the necessary steps to ensure the safety and protection of civilians by enabling them to leave areas affected by violence without safety and dignity, and facilitating their access to essential humanitarian assistance at all times. Parties to a conflict must take steps to ensure the protection and care of the most vulnerable civilians, as well as to prevent violations.

There is no article or provision in international law that grants immunity from prosecution to non-state actors involved in an armed conflict for any crimes they may commit. But in fact, we did not see the application of these assumptions and rules in protecting civilians in Iraq in all crises, conflicts and wars. Rather, civilians were the most affected, as they were exposed to various types of violence and crimes that amount to crimes of genocide and forceful displacement on a sectarian basis. As a result of the unarmed international conflicts that Iraq went through, the forced migration of large numbers of the civilian population within the territory of the state itself, grave consequences presented themselves on the innocent. It led to forced migration, which is a dangerous phenomenon and a problem facing the internal government authorities, which required the international community to confront the humanitarian situation and find alternative solutions. Therefore, the two additional protocols of 1977 annexed to the four Geneva Conventions contained the refugee crisis and forced migration. International Humanitarian Law protects displaced persons who have been forced to leave their homes in cases of internal conflicts. Naturally, international and national legislation requires the provision of protection and assistance to them by the international community to study the phenomenon as a result of internal conflicts and civil wars to provide humanitarian assistance in the field of human rights and to document violations through field monitoring of the incident. In Iraq, after the forced migration (displacement) of the civilian population, the

effectiveness of International Humanitarian Law and international human rights law was clearly demonstrated through the work of international organizations working in the humanitarian field, such as the International Committee of the Red Cross and the International Organization for Migration, which have contributed effectively to monitoring displacement and providing assistance to the Iraqi government to contain The ICRC has a prominent role in providing humanitarian aid and legal protection, in addition to providing legal advice and organizing methods of assistance in order to achieve a balance for needs, reduce the burden on the displaced, and provide technical and logistical assistance. Through field visits and periodic reports to monitor the wave of displacement and return, where the number of displaced people has reached more than two million displaced people spread in different locations in Iraq, a displacement matrix has been adopted as an informational tool for the International Organization for Migration through which the conditions and problems of the displaced are studied and provided for their relief. This thesis sheds light on the effectiveness of international law in the Iraqi crises and does not aim in any way to attack or criticize International and Humanitarian Law, but its purpose is to show the possibility that international law and its effectiveness can have a greater role in resolving Iraqi crises, providing special protection for civilians and avoiding many tragedies.

Below is a series of findings and recommendations that are directed at further research and works:

Findings

1. The adoption of international law on a set of basic principles, including the principle of balance between military necessities and humanitarian considerations, and the principle of human treatment.

2. The International Humanitarian Law is related to the material domain, as it targets international and non-international armed conflicts. As for the personal domain, those who are protected by the provisions and texts of International Humanitarian Law are civilians, prisoners, the wounded, women and children. As for the spatial scope of International Humanitarian Law, it is determined by general international law by designating the areas and places of military operations that are practiced. International law also provides for the military rights of combatants and makes clear which military objectives can be attacked, and which civilian objects it is prohibited to attack.

3. The existence of International Humanitarian Law, a branch of International Law, is effective in defining the nature of legal protection for victims of conflicts and in showing how, by implementing and applying this law, it clarifies international crimes and shows the penalty for committing them.

4. The political crisis has many advantages as it is a turning point in the current situation and an event that requires an urgent decision and quick action, such as immediate intervention to prevent a catastrophe threatening the existing system.

5. The most dangerous crises that threaten the state and may lead to its collapse is the one that has a political dimension, because of its connection locally, regionally and internationally, where the higher interests of the state are affected.

6. The basis of the political crises that afflicted Iraq after the year 2005 is the adoption of the principle of the crisis of consensual democracy in the administration of the state as a solution to the crisis of participation in the new political system after the passage of Iraq's permanent constitution in 2005, in which the system was transformed into a parliamentary system. Iraq to a sectarian quota system.

7. The crises that struck the Iraqi state before and after 2003 are due to structural elements related to the political systems that Iraq knew. The struggle of democracy and totalitarianism, the conflict of state and non-state, the struggle of city and countryside, citizenship, sectarianism and ethnicity, had a clear impact on the outcomes of the political systems that ruled Iraq.

8. International Humanitarian Law in all international armed conflicts stressed the need to establish a protecting state system to enable the two parties to the conflict to continue dialogue, and after 2003, the United States is considered the protector state of Iraq after this date, and since the outbreak of the civil war in Iraq, it can be noted that the American grip on Iraq is clear in the conduct of events, but it has not fulfilled the role it was supposed to play as a protector state in accordance with international law.

9. The armed groups participating in hostilities have not committed to applying international legal principles and rules in protecting civilians in Iraq in all the conflicts, wars and crises that have afflicted Iraq.

10. Iraq is still politically without a stable government capable of controlling the situation and running the country normally. Due to the lack of agreement between the

partners of the political process to manage the country in a calm, stable and secure manner, Iraq faces major challenges at the internal and external levels, the most important of which are the proliferation of weapons among factions that are not under the authority of the state and the weak authority of the security services official.

11- The international system was established through mechanisms for applying controls (such as alliances, treaties, unofficial rules) and those who are committed to it must follow the direction of codified states (such as peace, general commitment to rules).

12- The International Committee of the Red Cross is an impartial, neutral and independent organization, which performs a purely humanitarian mission of protecting the lives and dignity of victims of armed conflicts and other situations of violence and providing them with assistance. The ICRC also makes all possible efforts to avoid suffering by spreading and strengthening the provisions of International Humanitarian Law and universal humanitarian principles.

13- The provisions of International Humanitarian Law do not apply to internal disturbances and political tensions, but its non-applicability is not an excuse for states to evade the application and respect of humanitarian rules and basic principles of customary international law, while confronting those disturbances.

14- It is prohibited for the conflicting parties to target civilians, and in the event that a person is suspected of being a civilian or a military person, the presumption of civilian status is the first to follow, and civilians may not be stripped of that status because of the presence of non-civilians among them.

15 - The lack of political will and the practical ability for states and armed groups involved in an armed conflict to assume their obligations has led to a lack of adequate respect for the rules of International Humanitarian Law.

16 - The International Fact-Finding Committee is specialized in investigating international armed conflicts only. As for non-international armed conflicts, which are regulated by Additional Protocol II, the Committee is not competent to look into those conflicts. Until this moment, this mechanism has not been used in any conflict that occurred.

Recommendations

1- Accepting the premise that the ICRC is the internationally mandated body in implementing the provisions of the conventions and rules of international law in Iraq.

2- The inclusion of internal tensions and turmoil within the cases of non-international conflict, and the application of the provisions of International Humanitarian Law to them, because of their abundance at the present time.

3- Providing the means that states can use to enforce respect for International Humanitarian Law. It is necessary to disseminate the rules of international law through the media that could achieve a wider spread, and would affect decision-makers and internal and external public opinion in the field of respect for international law.

4- Amending the mechanism related to the investigation of violations of International Humanitarian Law, canceling the condition of consent by states to the investigation, and making the investigation a matter of international law provisions imposed on the state that violates, regardless of its consent.

5- Amending the statute of the International Committee of the Red Cross to increase its ability to address the challenges it faces.

6- The International Committee of the Red Cross must strengthen its presence and increase its cadre in Iraq to protect civilians and provide them with humanitarian assistance.

7- Iraq should join the statute of the International Criminal Court in order to have the primary role in investigating the crimes stipulated in the system, and that its role is not only complementary to the judiciary.

8- Countries of the world, including the United States of America, should fulfill their obligations under the conventions of public and humanitarian international law towards Iraq.

9- The Iraqi state should fulfill its obligation regarding the preparation of workers qualified to apply the provisions of international law, and that they be trained and qualified to carry out their work.

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