

# ISIS Violations in North and East Syria

## Legal Description and Specialized Courts (Part One)<sup>1</sup>

Al-Furat Center for Studies



### Summary:

The elimination of the terrorist organization ISIS is not limited to its military defeat; there is a need to find a solution to the aftermath of ISIS, which includes its women, children, sleeper cells, and members in detention centers in the northern and eastern regions of Syria.

During the period of ISIS control over areas in Syria, its members committed the most heinous crimes against the peoples of the region. Therefore, it was necessary, first, to examine the legal description of these crimes and, second, to study the possible judicial mechanisms for

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<sup>1</sup> Due to the vast volume of the study in terms of the number of pages and its complexity between the theoretical and practical aspects, we have divided it into two parts. The first part is dedicated to the theoretical legal aspect, where we examine the legal description of the violations committed by ISIS in northern and eastern Syria. As for the second part, it will be dedicated to the practical judicial aspect, where we study the possible judicial mechanisms for the trial of ISIS members detained in detention centers.

holding ISIS criminals accountable, shedding light on the obstacles hindering the achievement of criminal justice for the victims of this terrorist organization.

## Introduction

The post-military defeat phase of ISIS requires a necessary investigation into how to deal with its aftermath in the northern and eastern regions of Syria. This encompasses its sleeper cells, women, and children in camps and shelters<sup>2</sup>, and its former members in detention centers in particular. These elements, numbering in the thousands, have committed the most heinous and atrocious crimes against the Syrian people, especially against ethnic, religious, and racial minorities in the northern and eastern regions of Syria.

The investigation into the legal classification of these crimes and the possible judicial mechanisms for holding ISIS criminals accountable becomes of great importance at a time when the international community, represented by the United Nations Security Council, is reluctant to fulfill its responsibilities in maintaining international peace and security. It should effectively and earnestly work to find solutions for the ISIS aftermath. This has led the Autonomous Administration of North and East Syria to decide to prosecute ISIS criminals before its courts, based on its responsibilities and in accordance with its laws.

The Islamic State in Iraq and Syria (ISIS) is an extremist jihadist group that originally splintered from the terrorist organization al-Qaeda.<sup>3</sup> It expanded its terrorist activities into Syria following the outbreak of popular protests in 2011. As the Syrian armed conflict intensified, the organization emerged under the leadership of Abu Bakr al-Baghdadi, merging with the al-Qaeda-affiliated group Jabhat al-Nusra in Syria, led by Abu Mohammed al-Julani.<sup>4</sup>

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<sup>2</sup> Reference: Al-Furat Center for Studies, "Children from ISIS families in Camps and Rehabilitation Centers. Risks, Problematics, and Containment Approaches" available at the following link: <https://firatn.com/en/?p=2472>.

<sup>3</sup> In 2003, the terrorist Abu Musab al-Zarqawi established the group "Tawhid and Jihad" in Iraq, later renamed "Al-Qaeda in Mesopotamia" after joining Al-Qaeda in 2004. The organization later transformed into the "Islamic State in Iraq." See "Regarding the Historical Roots of the Emergence and Evolution of ISIS," Alaa Nasser Hussein, Nibras Ibrahim Muslim, "International Criminal Responsibility for Crimes of ISIS Terrorist Gangs," Journal of Legal Sciences, University of Baghdad, 2017, available at the following link: <https://jols.uobaghdad.edu.iq/index.php/jols/article/view/75/52>.

<sup>4</sup> It was classified as a terrorist organization under the resolution of the United Nations Security Council in its session 7242 held on August 15, 2014, document: <https://2u.pw/gx5y2A6>

The Syrian conflict provided a golden opportunity for the terrorist organization ISIS to emerge and seize control of vast areas of Syria.<sup>5</sup> It attracted numerous individuals, drawn to the ideological beliefs of the organization, from outside Syria and of various nationalities. The total number of individuals who joined its ranks reached around 30,000 from different Arab countries, Western and Eastern Europe, and Asian countries.<sup>6</sup> The majority of these individuals entered Syria through the airports of the Turkish state, and through its shared borders with Syria in particular. This enabled ISIS to militarily outperform other armed factions involved in the Syrian conflict, turning it into an organized military force that controlled extensive regions spanning between Iraq and Syria.

In 2013, following the collapse of its alliance with "Jabhat al-Nusra," the leader of the organization, Abu Bakr al-Baghdadi, announced the establishment of what he called the "Islamic State in Iraq and Syria" (ISIS). In June 2014, the so-called "Islamic State" declared itself a "caliphate," and al-Baghdadi proclaimed himself the "Caliph(head) of the Islamic world," calling on Muslims to pledge allegiance to him and designating the Syrian city of Raqqa as the capital of his alleged "caliphate."<sup>7</sup>

ISIS aimed to establish a theocratic state based on its own interpretation of Islamic law, specifically seeking to reinstate the Islamic caliphate that ended with the fall of the Ottoman Empire<sup>8</sup>. It created its own infrastructure to enforce its authority in the areas under its control, consisting of the Hisbah (civil police), the security apparatus (intelligence forces), courts, and entities managing recruitment operations. The Hisbah also operated an all-female brigade (Al-Khansaa Brigade), established to ensure compliance with restrictions and impose penalties on women and girls across the territories under the organization's control.<sup>9</sup>

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<sup>5</sup> Particularly, refer to "Post-Caliphate: Ideology, Propaganda, Organization, and Global Jihad," a group of researchers, Friedrich Ebert Foundation, Jordan and Iraq Office, 2021.

<sup>6</sup> Duplicate

<sup>7</sup> The Human Rights Council 69/28/a/hrc, February 2015.

<sup>8</sup> "After the Caliphate: Ideology, Propaganda, Organization, and Global Jihad," previous reference.

<sup>9</sup> United Nations General Assembly, Human Rights Council - Independent International Commission of Inquiry on Syria, A/HRC/46/55, March 11, 2021.

ISIS resorted to brutal practices, spreading terror and fear among local communities, and the term "ISIS" became synonymous with excessive violence against civilians and captured fighters<sup>10</sup>. Numerous international reports have confirmed that this organization committed a series of crimes, clear violations of international humanitarian law, and serious breaches of international human rights law. As a result, ISIS has been classified as a terrorist organization and included in the list of terrorist organizations by both the United Nations and the European Union. The United Nations Security Council, in its resolution numbered 2379 issued on September 21, 2017, affirmed that this organization is a terrorist group, posing a global threat and a threat to international peace and security due to its terrorist activities.

The liberation of the city of Kobani and the defeat of the Islamic State in 2015, achieved through local and self-driven efforts, notably by the resistance of the People's Protection Units (YPG) and the Women's Protection Units (YPJ), marked the beginning of the end for the "Islamic State in Iraq and Syria." Subsequently, in 2017, the Syrian Democratic Forces, supported by the international coalition against ISIS, besieged the Syrian city of Raqqa, the "capital" of the Islamic State, and liberated it from ISIS terrorism. This led to a rapid decline of ISIS and its geographic control, culminating in the fall of its last stronghold in Baghouz in March 2019.

However, despite the defeat of ISIS in northern and eastern Syria and the elimination of its alleged caliphate, this organization has left behind numerous complex and sensitive issues. These issues include concerns related to its women and children in camps and shelters, as well as the former members in detention centers, raising various legal challenges, not to mention the sleeper cells that continue to pose a security threat to the people of northern and eastern Syria.<sup>11</sup>

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<sup>10</sup> Human Rights Council 69/28/a/hrc, February 2015.

<sup>11</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/46/54 January 21, 2021

## The Research Problem

According to the rules of international humanitarian law<sup>12</sup>, armed conflicts fall into two categories: the first is **an international armed conflict**, and the second is **a non-international armed conflict**. Determining the nature of the conflict (armed or unarmed) and classifying it as international or non-international is of great importance, as it determines the applicability of international humanitarian law. This is based on the Geneva Conventions of 1949 and the two Additional Protocols of 1977. Any situation that does not meet or cannot be described as an armed conflict remains subject to national jurisdiction and national law.

Regarding the nature of the Syrian conflict, most international reports related to the Syrian situation have affirmed that it is a "non-international armed conflict."<sup>13</sup> Given the intensity and duration of the Syrian conflict and the increased organizational capabilities of the anti-government armed groups, the International Independent Committee on Syria declared that the Syrian conflict reached the legal threshold of a non-international armed conflict as of February 2012.<sup>14</sup> The International Committee of the Red Cross also announced on July 16, 2012, the situation as an internal non-international armed conflict in Syria<sup>15</sup>.

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<sup>12</sup> International humanitarian law is defined as "a set of internationally agreed upon principles and rules that aim to limit the use of violence during armed conflicts by protecting individuals participating in or no longer participating in military operations, the wounded, injured, prisoners, and civilian objects, as well as by making violence in battles "Military activities are limited to actions necessary to achieve the military objective." See: Muhammad Nour Farhat, "The History of International Humanitarian Law," Dar Al-Mustaqbal Al-Arabi, 1st edition, Cairo, 2000, p. 84.

<sup>13</sup> United Nations (HRC/CRP/ISIS), "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic "Rule of Terror: Living under ISIS in Syria," 14/11/2014. Available at: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/HR\\_C\\_CRP\\_ISIS\\_14Nov2014\\_AR.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/HR_C_CRP_ISIS_14Nov2014_AR.pdf) and the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/31/68, February 11, 2016, and the Report of the Commission of Inquiry The Independent International Commission on Syria, the United Nations, the General Assembly, the Human Rights Council A/HRC/46/54 January 21, 2021, and the Human Rights Council 69/28/a/hrc February 2015, and the report of the Independent International Commission of Inquiry on Syria, (A/ HRC/46/55), March 11, 2021, and other international reports that we relied on in preparing this study.

<sup>14</sup> General Assembly, Human Rights Council, Report of the Independent International Commission on the Syrian Arab Republic, A/HRC/21/50, 16 August 2012

<sup>15</sup> <https://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>

Regarding the nature of the conflict with ISIS and its character, and whether this organization can be considered a party to an armed conflict, it is certain, in the first place, that the conflict with ISIS cannot be described as an international conflict. This is because this terrorist organization cannot be considered a state in the legal sense, and it lacks the essential elements of a state, despite its self-proclamation as the "Islamic State in Iraq and Syria." However, it can be considered a party to a non-international armed conflict. ISIS possesses the criteria of governance, structure, and the ability to conduct coordinated and continuous military operations against its adversaries. On the other hand, it effectively controlled a vast geographical area spanning Iraq and Syria. Finally, the level of military confrontation between ISIS and the forces opposing it, involving the use of heavy weapons, air power, and guided missiles, indicates that the armed conflict with this organization meets the criteria for a non-international armed conflict.

As a result, all parties involved in the Syrian conflict, including the ISIS organization, are obligated to adhere to the rules of international humanitarian law, especially Article 3<sup>16</sup> common to the four Geneva Conventions dated August 12, 1949<sup>17</sup>, the Second Additional Protocol of 1977<sup>18</sup>, and international human rights law<sup>19</sup>. For instance, the United Nations Security Council has adopted a series of resolutions under Chapter VI of the United Nations Charter, such as the resolution dated April 14, 2014<sup>20</sup>, urging conflicting parties in Syria to respect human

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<sup>16</sup> The joint Article 3 of the 1949 Geneva Conventions covered non-international armed conflicts while maintaining other titles for international armed conflicts. This dual division was clearly manifested in the titles of the Additional Protocols to the 1949 Geneva Conventions. The First Additional Protocol of 1977 was dedicated to protecting victims of international armed conflicts, while the Second Additional Protocol of 1977 regulated the protection of victims of non-international armed conflicts. (See: Naman Atallah Al-Hayti, "International Humanitarian Law in Cases of Wars and Armed Conflicts," Dar Rasslan, Damascus, 2015.)

<sup>17</sup> The Four Geneva Conventions, dated 12/08/1949, were adopted and opened for signature and accession by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held from 4/21 to 12/08/1949 in Geneva, entering into force on 12/8/1949.

<sup>18</sup> The Second Additional Protocol to the Four Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, dated 10 June 1977.

<sup>19</sup> Balwas, Maryam, "The Syrian Conflict and the Jurisdiction of the International Criminal Court to Prosecute Perpetrators of War Crimes," Academic Journal of Legal Research, Issue 2-2018, p. 241.

<sup>20</sup> UN Security Council Resolution 2042, dated 14/4/2012, available at: [www.un.org/ar/documents/resolutions/2012.shtm1/documents/HRBodies/HRCouncil/Colsyria](http://www.un.org/ar/documents/resolutions/2012.shtm1/documents/HRBodies/HRCouncil/Colsyria)

rights, refrain from using heavy weapons, and calling on all parties to cease acts of violence.

However, despite this, ISIS committed numerous crimes against the people in northern and eastern Syria, including killings, torture, indiscriminate shelling of civilian-populated areas, brutal crimes against women and children, and other violations of international humanitarian law and international human rights law. Therefore, the main question that summarizes the research problem is: **What is the legal characterization of the most significant violations committed by ISIS against the people in northern and eastern Syria? And what are the specialized courts for holding accountable the criminals of ISIS detained in northern and eastern Syria?** And the following subsidiary questions:

- Do the crimes committed by this terrorist organization fall under the concept of "international crime," whether they were crimes against humanity, war crimes, or genocide?
- Is it possible to prosecute ISIS criminals before the International Criminal Court? What are the obstacles hindering the initiation of criminal responsibility against ISIS criminals?
- Can ISIS criminals be tried before an international court established by the United Nations Security Council, such as the International Criminal Tribunal for the former Yugoslavia or the International Criminal Tribunal for Rwanda?
- Can members of ISIS be tried before an international court similar to the Nuremberg or Tokyo trials, established by the international coalition against ISIS, or a mixed court in cooperation with the Autonomous Administration of North and East Syria, as part of its responsibilities in finding a solution to the ISIS legacy?
- Finally, is it possible to prosecute ISIS members before a local internal court in North and East Syria, according to the laws of the Autonomous Administration, and what are the difficulties in forming such a court?

**Research Objectives:**

- Shedding light on a contentious issue related to the aftermath of ISIS in northern and eastern Syria, specifically the case of ISIS members in

detention centers, and urging the international community to assume its responsibilities and actively contribute to finding a solution to the aftermath of ISIS.

- Emphasizing the necessity for the continuity and sustainability of the international coalition against ISIS as long as issues related to the aftermath of ISIS persist, and the international community remains hesitant in finding sustainable solutions.

### **Research Significance:**

The significance of the research can be summarized in the following points:

- Documenting and categorizing the most significant crimes committed by ISIS in northern and eastern Syria.
- Providing the legal description of ISIS violations and categorizing them as types of international crimes, whether crimes against humanity, war crimes, or genocide.
- Explaining the possible judicial mechanisms for prosecuting ISIS criminals and highlighting the obstacles facing legal prosecution in international courts.
- Shedding light on the difficulties hindering the trial of ISIS in northern and eastern Syria.

### **Research Methodology:**

We adopted the descriptive-analytical methodology in conducting this study. We reviewed the most heinous acts and grave violations committed by ISIS in the northern and eastern regions of Syria, analyzing and describing them in accordance with international humanitarian law, human rights, and international criminal law. We also analyzed the foundational systems of international courts, both the basic system of the International Criminal Court and the special international courts previously established by the United Nations Security Council to prosecute war criminals in the former Yugoslavia and Rwanda. This was done to determine the extent of their jurisdiction over the crimes committed by ISIS in northern and eastern Syria.

Based on the above, we have divided the study into two sections. The first section is dedicated to **the legal description of the most significant violations committed by ISIS in northeastern Syria**. In the second section, we will address **the specialized courts for holding ISIS criminals accountable**.

**Research Outline - Chapter One:**

**ISIS Violations as International Crimes**

**Section One:** ISIS Violations as a Genocide

Subsection One: Definition of the Crime of Genocide

Subsection Two: Instances of Genocide Committed by ISIS

**Section Two:** ISIS Crimes as Crimes Against Humanity

Subsection One: Definition of Crimes Against Humanity

Subsection Two: Instances of Crimes Against Humanity Committed by ISIS

**Section Three:** ISIS Violations as War Crimes

Subsection One: Definition of War Crimes

Subsection Two: Instances of War Crimes Committed by ISIS

**Conclusion of Part One**

## **Part One**

### **Violations by ISIS as International Crimes**

Many of the violations and attacks committed by the terrorist organization ISIS against the residents of northern and eastern Syria constitute systematic and organized crimes. The use of weapons, indiscriminate shelling, and explosives against innocent civilians led to the displacement of large numbers of people. These crimes range from intentional killing, genocide, field executions, brutal torture, rape and violence against women, recruiting children, forced displacement of populations, and more. It appears that all these crimes fall within the framework of the concept of international crime.

International crime is defined as "any act that goes against the rules of international law as set forth in international conventions or treaties established international custom, or recognized general principles accepted by civilized nations, provided that such a crime is of sufficient gravity to affect international relations or shock the conscience of humanity<sup>21</sup>." This includes crimes such as genocide, crimes against humanity, and war crimes.

In order to showcase the extent of ISIS violations in terms of the concept of international crime and give them the proper legal description, we must first define each type of international crime, supported by examples and applications of ISIS violations that fall within the legal description, whether it is genocide (Section One), crimes against humanity (Section Two), or war crimes (Section Three).

#### **Section One: ISIS Violations as a Genocide**

The crime of genocide is considered one of the most serious international crimes against humanity and is described as the "the most heinous of crimes."<sup>22</sup> This is due to the threat it poses to human life, health, and dignity, manifested in the potential eradication of an entire human group for reasons such as race, religion, nationality, etc.

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<sup>21</sup> Mohamed Ahmed Ali Kasab, "International Criminal Responsibility in Light of International Criminal Law," First Edition, 2020, available at <https://books.google.com/books?id=3dsCEAAAQBAJ&pg=PT152&lpg=PT152&dq>

<sup>22</sup> Duplicate

To address the crimes of genocide committed by ISIS in the areas under its control (Subsection Two), we must first define the crimes of genocide (Subsection One).

### **Subsection One: Definition of the Crime of Genocide**

The crime of genocide is one of the most heinous international crimes, representing the utmost degree of brutality. The term "GENOCIDE" has its origin in Greek and was first coined by the Polish jurist "Lemkin." It is derived from two words: "GENOS," meaning "group" or "human race," and "CID," meaning "killing." The combination of these words signifies "the killing of a group or the human race."<sup>23</sup>

Some argue that the first official mention of the crime of genocide, which carries the connotation of a crime against humanity, was through the Treaty of Sèvres signed between the Allied Powers and the Ottoman Empire in 1920<sup>24</sup>. The term "genocide" and the condemnation of this crime were affirmed in Recommendation 96 issued by the United Nations General Assembly during its first session on 12/11/1946<sup>25</sup>. Under this recommendation, the General Assembly condemned this crime, describing it as one of the crimes of international law and subject to the condemnation of the civilized world.

The forms of genocide are diverse, taking a material form such as attacks on life or health, a biological form such as reproductive disability and prevention of procreation, or a cultural form such as depriving a human group of its culture or language.<sup>26</sup>

Genocide crimes have been considered among the international crimes that warrant the punishment of their perpetrators and international cooperation to combat and eliminate them<sup>27</sup>, according to the Convention

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<sup>23</sup> Ayman Salama, "International Responsibility for Committing the Crime of Genocide," doctoral thesis, Faculty of Law, Cairo University, 2005.

<sup>24</sup> Tarek Ahmed Elwaleed, "Prevention of the Crime of Genocide and its Punishment in International Criminal Law," Dar Al-Nahda Al-Arabiya, Cairo, 1st edition, 2010, p. 11.

<sup>25</sup> Document issued by the United Nations General Assembly/First Session, number: (96/1/RES/A).

<sup>26</sup> Hamed Sayed Mohamed Hamed, "The Evolution of the Concept of Genocide within the Scope of the International Criminal Court," Dar Al-Kotob Al-Qanunia, Egypt, 2011.

<sup>27</sup> It is worth mentioning that the crime of "genocide" is an independent crime in itself, distinguishing it from the crime of "extermination," which is considered one of the fundamental crimes against humanity. Refer to: Sawsan Tamrakhani Baka, "Crimes

on the Prevention and Punishment of the Crime of Genocide issued on 9/12/1948<sup>28</sup>. Article 1 of this convention states: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Therefore, genocide is an international crime regardless of the time of its commission, whether it occurs in times of peace or during armed conflicts.

In the early 1990s, as a result of the genocide in Rwanda and neighboring countries, the International Criminal Tribunal for Rwanda (ICTR) was established by United Nations Security Council Resolution 955 on November 8, 1994. The Statute of this special international court defined **genocide** as follows in Article 2:

"Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group."<sup>29</sup>

In the same vein, the statute of the International Criminal Tribunal for the former Yugoslavia was formulated.<sup>30</sup>

On the other hand, the statute of the International Criminal Court for 1998<sup>31</sup> defined the crime of genocide as: "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical,

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Against Humanity in Light of the Statute of the International Criminal Court," Al-Halabi Legal Publications, Beirut, 1st edition, 2006.

<sup>28</sup> The Convention on the Prevention and Punishment of the Crime of Genocide was adopted after the massacres committed by the Nazis during World War II. It was opened for signature, ratification, or accession by General Assembly Resolution No. (260)-A-(III) of December 9, 1948, and entered into force on January 12, 1951.

<sup>29</sup> The second paragraph of Article 2 of the Statute of the Rwanda Tribunal.

<sup>30</sup> Article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, established under United Nations Security Council Resolution 808 on 22/2/1992.

<sup>31</sup> Article 6 of the Statute of the International Criminal Court.

racial, or religious group as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group."<sup>32</sup>

It is noted that this article has defined the forms of genocide, all of which are applicable regardless of the time of their commission, whether in peacetime or during war. This leads to the convergence and overlap between acts of genocide and crimes committed against humanity. However, a distinction can be made between these two categories of international crimes based on the targeted human group. **Genocidal crimes are committed against a distinct human group for racial, religious, or national reasons, while crimes against humanity are committed against civilians in general without discrimination** based on nationality, affiliation, or politics.

Committing any act mentioned above in Article 6 of the Rome Statute constitutes the material element of the crime of genocide, but this crime is not complete unless its moral element is also fulfilled, which takes the form of criminal intent. To establish criminal intent in any crime, the elements of knowledge and will must be present in the perpetrator of the crime<sup>33</sup>. The perpetrator's knowledge and will must be directed towards the extermination of a particular group due to its political, religious, cultural affiliations, etc. Additionally, the specific criminal intent must be present, represented by the presence of the intent to destroy<sup>34</sup>.

As for the international aspect, its presence is not a prerequisite for declaring a crime of genocide. This means that the commission of genocide does not require the involvement of a state for the crime to be

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<sup>32</sup> The crime of genocide is also defined under Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: a) Killing members of the group; b) Causing serious bodily or mental harm to members of the group; c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group."

<sup>33</sup> Reference: Aboud Al-Sarraj, "Public Penal Law - Crime Theory," Publications of the Syrian Virtual University, 2018.

<sup>34</sup> Ayman Salama, "International Responsibility for the Commission of the Crime of Genocide," Ph.D. thesis, Faculty of Law, Cairo University, 2005.

considered genocide. This crime is realized by the presence of its material and moral elements, whether committed by a state, at its request, or encouraged by it against another state. It can also be committed by a state or a group of individuals within a specific state against a particular group. This is evident in the crimes committed by Hitler during World War II against those belonging to the Slavic nationality<sup>35</sup> and the Jewish religion<sup>36</sup>. Similarly, Turkey, in its occupation of areas such as Afrin, and Kobani/Tel Abyad, and Sere Kaniye/Ras al-Ain, through the Syrian armed factions under its command, engages in killings and forced displacement of the indigenous population in those occupied regions.

Many of ISIS's actions and massacres fall within the description of the crime of genocide, especially those committed by this terrorist organization against the Yazidi minority in Iraq and Syria.

### **Subsection Two: Instances of Genocide Committed by ISIS**

To establish its control and sustain its "caliphate," ISIS adopted a policy of spreading terror and fear in the areas under its control, committing numerous acts of mass killing and massacres against various societal groups in northern and eastern Syria.

Some of ISIS's crimes in these regions can be described as genocide, especially the mass killings and massacres perpetrated against the Kurds in Kobani, the Shuaytat tribe in Deir ez-Zor, and the Yazidi minority.

**First: Kobani Massacre:** The Kobani massacre is considered one of the most heinous massacres committed against the Kurds by ISIS criminals. On June 25, 2015, ISIS militants carried out a horrifying massacre, claiming the lives of over 200 unarmed civilians in the city of Kobani (Aleppo countryside) and its villages. More than 250 people, including women and children<sup>37</sup>, were injured as they were directly targeted with live ammunition<sup>38</sup>. According to the Syrian Observatory for Human

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<sup>35</sup> Wikipedia, Encyclopedia, <https://ar.wikipedia.org/wiki>

<sup>36</sup> BBC Arabic, "The Holocaust: What do we know about it?" January 23, 2020, last updated: January 21, 2022

<sup>37</sup> North Press, "Kobani Massacre... Unforgettable Details and Calls for Justice," <https://npasyria.com/157160/>, last visited: September 20, 2023.

<sup>38</sup> Syrian Observatory for Human Rights, "In which about 206 civilians were killed... The eighth anniversary of the massacre of the city of Ayn al-Arab (Kobani) at the hands of ISIS," <https://www.syriaahr.com>, last visited: September 20, 2023.

Rights, 148 people were killed in the city of Kobani itself, and later, 32 bodies were found in the city after the clashes ended. ISIS criminals also attacked the village of Barkh Batan in the countryside of Kobani, killing around 26 civilians, including women and children. According to eyewitness accounts from the massacre site, ISIS criminals did not distinguish between a child or an adult, nor between a son, a mother, or a father. The victims of this massacre included 37 children, 77 women<sup>39</sup>, and 16 fighters from the People's Protection Units (YPG) and the Asayish forces.<sup>40</sup>



Martyrs' Cemetery of the Kobani Massacre - Source: JINHA Women's News

**Second: The mass killing of the Shuaytat tribe:** A massacre committed by ISIS against the members of the Shuaytat tribe in the eastern countryside of Deir ez-Zor. The areas in northern and eastern Syria, predominantly inhabited by tribal communities, posed a particular challenge to the rule of the Islamic State organization. The massacre occurred in August 2014 near the town of Muhassan<sup>41</sup>, in the towns of Abu Hamam, Al-Kishkiyah, and Ghranij. These areas were the scene of deliberate attacks preceded by artillery shelling and mortar bombardment<sup>42</sup>. A mass execution of males of fighting age from this tribe

<sup>39</sup> North Press, "Kobani Massacre...", previous reference.

<sup>40</sup> ISIS members managed to infiltrate the city of Kobani wearing uniforms of the People's Protection Units (YPG). See the Syrian Observatory for Human Rights, previous reference.

<sup>41</sup> United Nations (HRC/CRP/ISIS), "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>42</sup> Omar Abu Layla, "The Forgotten ISIS Massacre in Deir ez-Zor," available at: [link](<https://www.washingtoninstitute.org/ar/policy-analysis/mjzrt-dash-almnsyt-fy-dyr-alzwr>).

took place<sup>43</sup>. Estimates suggest that over a thousand members of the Shuaytat tribe were killed in confrontations with ISIS, including more than 50 civilians who had been abducted from their workplace in the oil field east of Deir ez-Zor<sup>44</sup>. Villages and towns were burned, properties were looted, and the organization prevented the residents from returning, displaced the population<sup>45</sup>, and killed those they found in the neighboring towns and villages<sup>46</sup>.



Mass grave discovered in the village of Jumah, east of Deir ez-Zor, containing some victims of the Shuaytat massacre - North Press.

**Third: The Massacre of Al-Telalia village:** On May 29, 2014, ISIS militants raided the village of Al-Telalia, southwest of the city of Sere Kaniye (Ras al-Ain) in the countryside of Al-Hasakah province. The village was inhabited by Yazidi Kurds and Sunni Arabs with roots in the Safira region of rural Aleppo. The raid occurred in the context of clashes between ISIS and the People's Protection Units (YPG) in the vicinity of Al-Telalia and neighboring villages. After the raid, ISIS members carried

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<sup>43</sup> United Nations Report (HRC/CRP/ISIS), "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>44</sup> Omar Abu Layla, "The Forgotten ISIS Massacre in Deir ez-Zor," previous reference

<sup>45</sup> In the statement issued on November 6, 2014, reports indicated that ISIS leader Abu Bakr al-Baghdadi granted members of the Al-Shuaytat tribe permission to return to their homes under the condition of not gathering, surrendering all their weapons, and reporting any "apostates" to the organization. He stated that all "traitors" would be killed. Refer to the UN report (HRC/CRP/ISIS), "Rule of Terror: Living under ISIS in Syria," for further details

<sup>46</sup> Abu Abdullah al-Kuwaiti issued a fatwa considering the Al-Shuaytat people a "disbelieving" group that rejects Islamic rule with weapons. He emphasized that making peace or releasing their captives, whether by money or any other means, is not permissible. It is also forbidden to consume the meat of animals they slaughter, and individuals are not allowed to marry their women. Killing their captives is allowed, pursuing and killing those who flee, even if they haven't initiated combat. The killing of the wounded among them is permitted, and they must be fought even if they haven't started fighting. See Omar Abu Layla's "The Forgotten Massacre of ISIS in Deir ez-Zor" for additional information

out mass shootings at close range, killing numerous residents of the village, including women and children<sup>47</sup>. This incident reflects a systematic pattern of sectarian-motivated killings, particularly since ISIS considers the Yazidi Kurdish community as infidels and views their religious practices as distortions<sup>48</sup>.



Victims of the massacre in the village of Al-Telalia- Source: Reuters

**Fourth: Genocide against the Yazidi Minority:** According to the report of the Independent International Commission of Inquiry on Syria, dated June 16, 2016, ISIS committed genocide against the Yazidis<sup>49</sup>. After launching attacks on Sinjar (northern Iraq), ISIS forcibly transported the Yazidis to Syria, where this terrorist organization committed heinous crimes against the Yazidi minority, seeking to destroy them through various means outlined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide<sup>50</sup>.

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<sup>47</sup> The Syrian Network for Human Rights documented the killing of 15 civilians, including 7 children and 3 women, mostly from the town of Al-Sfeira, who were engaged in agriculture ("Cremation of Society: Prominent Massacres with Patterns of Sectarian or Racial Violations in Syria," June 13, 2015).

<sup>48</sup> The United Nations report (HRC/CRP/ISIS), "Rule of Terror: Living under ISIS in Syria," previous reference

<sup>49</sup> Report of the International Independent Investigation Commission on Syria, "ISIS Commits Genocide against the Yazidis," document A/HRC/32/CRP2, June 16, 2016. This report highlights the violations committed by ISIS against the Yazidis in Syrian territories.

<sup>50</sup> Ahlam Dawood Al-Sha'shaa, "International Protection of Minorities during Armed Conflicts - An Applied Study on the Yazidi Minority," Master's Thesis, Syrian Virtual University, 2020.



Yazidis at a mass grave where their relatives who were killed by ISIS are buried - Source: AFP

This UN report stated: "ISIS aimed to erase Yazidis by killings, sexual slavery, slavery, torture, degradation, dehumanization and forced displacement. All of this caused great physical and psychological damages. In addition to imposing poor living conditions, which brought slow death, and the use of means that hindered the birth of Yazidi children, including forcing adults among them to change their religion and convert to Islam, and removing Yazidi children from their families and placing them with ISIS members, thus separating them from their community's beliefs and religious practices."<sup>51</sup> They killed those who refused to change their religion in order to destroy their identity as Yazidis. The ethnic, national, racial or religious identity of the victims of the crime of genocide represents an essential pillar of this type of international crimes<sup>52</sup>.

Certainly, we find in the crimes of the ISIS organization and others that they align with many aspects of the crime of genocide<sup>53</sup>, especially since the material element of the crime of genocide is intended to encompass any act through which the perpetrator aims to completely or partially eliminate a national, religious, or ethnic group through criminal behavior, such as killing members of the group<sup>54</sup>.

What ISIS committed in terms of mass killings and massacres against the Kurds in general, and the Yazidis and other minorities in northeastern

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<sup>51</sup> It should be noted that these actions also amount to crimes against humanity and war crimes. See later p. 16-25.

<sup>52</sup> This was indicated by the Special Adviser to the Secretary-General for the Prevention of Genocide, "Adama Dieng," and the Special Adviser to the Secretary-General for Responsibility to Protect on the situation in Iraq, "Jennifer Welsh," in their statement issued on August 12, 2014. They confirmed that ISIS had committed many acts and crimes against the Yazidis, Christians, and Shabak communities, which could amount to genocide.

<sup>53</sup> Many countries, including Germany and Britain, have recognized the genocide committed against the Yazidis.

<sup>54</sup> Ali W. Dib, "International Criminal Courts: Their Evolution and Role in Suppressing International Crimes," Aleppo Human Rights Publications, Beirut, 2015.

Syria, reaches the level of a crime of genocide punishable under international criminal law<sup>55</sup>. At the same time, these acts constitute serious violations of international human rights law, especially Article 3 of the Universal Declaration of Human Rights of 1948<sup>56</sup>, which states that "everyone has the right to life, liberty, and security of person."<sup>57</sup>

## **Section Two: ISIS Crimes as Crimes Against Humanity**

Recently, crimes against humanity have been defined within the realm of international criminal law, although they have deep historical roots<sup>58</sup>. Article 5 of the Statute of the International Criminal Court for the year 1998<sup>59</sup> explicitly addresses these crimes. Additionally, the Universal Declaration of Human Rights issued in 1948 encompasses various forms of these crimes<sup>60</sup>.

Before delving into the crimes committed by ISIS as crimes against humanity (the second subsection), it is necessary to first define crimes against humanity through the legal texts that have codified them (the first subsection).

### **Subsection One: Definition of Crimes Against Humanity**

Crimes against humanity are defined as "crimes that involve a blatant attack on humanity, encompassing acts such as murder, extermination, enslavement, and any other inhumane act committed against civilians

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<sup>55</sup> Ahlam Dawood Al-Shasha, "International Protection of Minorities During Armed Conflicts - An Applied Study on the Yazidi Minority," previously referenced.

<sup>56</sup> See: Yasser Al-Hawish, Muhannad Nuh, "Human Rights," Syrian Virtual University Publications, 2018.

<sup>57</sup> The Universal Declaration of Human Rights was adopted by the General Assembly (217) A (III) on December 10, 1948.

<sup>58</sup> Mentioned in the preamble of the 1907 Hague Convention and in the resolutions of the American States Conference held in Rio de Janeiro in 1902, in addition to the Treaty of Sevres in 1920, in which Turkey committed to handing over all those responsible for genocide, especially the Armenians, during World War I, to the allied powers.

<sup>59</sup> Article 5 of the Statute of the International Criminal Court for 1998 states: "...The Court shall have jurisdiction in accordance with this Statute with respect to the following crimes: (b) Crimes against humanity..."

<sup>60</sup> Article 4 of the Universal Declaration of Human Rights states: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Article 5 also states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. No one shall be subjected to arbitrary arrest or detention. No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence..."

before and during a war.<sup>61</sup> Article 7 of the Statute of the International Criminal Court of 1998 defines crimes against humanity as follows: "For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

Any act of the following acts constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

a- Intentional homicide, b- Genocide, c- Enslavement, d- Deportation or forcible transfer of population, e- Imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law, f- Torture, g- Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity, h- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender-related grounds as recognized universally under paragraph 3<sup>62</sup>, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court, i- Forced disappearance of persons, j- Apartheid, k- Other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury<sup>63</sup>.

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<sup>61</sup> Sawsan Tamrkhah Bakkah, "Crimes against Humanity in Light of the Provisions of the Statute of the International Criminal Court," Al-Halabi Legal Publications, Beirut, 1st edition, 2006.

<sup>62</sup> The third paragraph of Article Seven of the 1998 Statute of the International Criminal Court stated that the expression "gender" refers to the two sexes, male and female, within society, and does not indicate any other meaning to the contrary.

<sup>63</sup> The second paragraph of Article 7 of the Rome Statute of the International Criminal Court for the year 1998 defines some forms of crimes against humanity as follows: "For the purpose of paragraph 1: (a) The phrase 'attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack, or to promote such policy. (b) 'Genocide' includes deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. (c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person, in particular in the context of trafficking in persons, in particular women and children. (d) 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts, without any legal justification, in violation of the international law. (e) 'Torture' means intentionally inflicting severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions or penal measures. (f) 'Forced pregnancy' means the

It is noted that the mentioned provision defines the forms of crimes against humanity, where the commission of any of the mentioned acts constitutes the material element of the crime against humanity. However, for any crime to be complete, the moral element must also be present, which takes the form of criminal intent. Criminal intent consists of the elements of knowledge and will<sup>64</sup>, meaning that the perpetrator must be aware and willful in committing an act that involves persecuting a human group or assaulting it. The specific criminal intent must also be present, intending to eliminate that group due to its religious, ethnic, racial, or cultural affiliations, in addition to the general criminal intent.

The text of Article 7 of the Statute of the International Criminal Court makes it clear that for violations against humanity to be considered crimes against humanity, two conditions must be met: Firstly, the criminal acts must be committed internationally against any civilian population, meaning they include all civilians, regardless of the status of the perpetrators, whether they are regular military or armed groups. However, on the other hand, these acts must be part of widespread or systematic attacks, meaning they target a large number of victims.

These conditions are met in many of the violations committed by ISIS against civilians in northern and eastern Syria. The United Nations Security Council has affirmed that ISIS has committed various types of crimes, which may constitute crimes against humanity. These crimes include mass executions, persecution of specific religious or ideological

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unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or committing other grave violations of international law, and it shall not in any way be interpreted as affecting national laws relating to pregnancy. (g) 'Persecution' means the intentional and severe deprivation of fundamental rights of a group of people or the entire population, on the grounds of the identity of the group or population. (h) 'Crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime. (i) 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by a State or political organization, or by persons acting with the authorization, support or acquiescence of a State or political organization, followed by a refusal to acknowledge their deprivation of freedom or to give information on their fate or whereabouts, with the aim of depriving them of the protection of the law for a prolonged period."

<sup>64</sup> See: About Al-Sarraj, "General Penal Law - Crime Theory," previous source.

groups, civilian abductions, displacement of minorities, rape, arbitrary detention, and more<sup>65</sup>.

The organization used acts of killing and destruction as a weapon to achieve its goals, including spreading terror and fear in the areas it claimed as its caliphate. This organization committed numerous international crimes, particularly those that rise to the level of crimes against humanity, as ethnic and religious components in northern and eastern Syria were subjected to the worst forms of such crimes.

The members of the ISIS terrorist organization committed crimes including murder, kidnapping, rape, displacement, sexual and physical violence, as well as trafficking in women and children, forced recruitment of children, and the destruction of places of religious and cultural significance. The majority of these crimes fall within the scope of crimes against humanity<sup>66</sup>.

**First- Intentional homicide:** it is one of the most serious crimes against humanity. It involves a series of acts directed against one or more civilian populations, carried out by a state or a group as part of a general policy<sup>67</sup>. Intentional homicide as **a crime against humanity** differs from intentional homicide in the crime of **genocide**. While the latter targets individuals of a specific group, driven by national, ethnic, racial, or religious motives, the crime of intentional homicide as a crime against humanity does not target a specific group based on racial, national, religious, or ethnic grounds. Instead, it targets a group of civilian populations without discrimination, systematically and in an organized manner.

ISIS has pursued a policy of unlawful killing in the context of its continued widespread attacks on civilian populations. This includes targeting civilian areas and individuals through indiscriminate shelling,

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<sup>65</sup> UN Security Council Resolution No. (2170) of 2014, noting that the Security Council has issued within 15 months 6 resolutions regarding ISIS crimes, namely: Resolution No. (2178) dated September 24, 2014, Resolution No. (2195) dated December 19, 2014, Resolution No. (2199) dated February 12, 2015, Resolution No. (2214) dated March 2015, and Resolution No. (2249) dated November 20, 2015. The Security Council has also emphasized holding ISIS and Al-Nusra accountable.

<sup>66</sup> The seventh article of the Statute of the International Criminal Court for the year 1998.

<sup>67</sup> Mahmoud El Sherif Bassiouni, "The International Criminal Court - Its Origins and Statute," second edition, Rose Al-Youssef New Press, Cairo, 2002.

suicide operations involving explosive devices and car bombs, detention, as well as the abduction and execution of civilians under torture<sup>68</sup>.

The Islamic State organization carried out several suicide bombings in northern and eastern Syria, resulting in the deaths of dozens of civilians. In November 2016, a suicide bomber affiliated with ISIS detonated himself in a main street in Tell Abyad (Raqqa province), killing 5 civilians, including 3 children<sup>69</sup>. In December 2015, the organization orchestrated coordinated and multiple explosions in the town of Tell Tamer (Hasakah province), carrying out a deliberate attack with three car bombs that claimed at least 50 civilian lives and injured 80 others<sup>70</sup>. ISIS also targeted a wedding hall in the city of Hasakah (the Snabel Hall on the road between Qamishli and Hasakah) in October 2016. A suicide bomber detonated himself during a wedding ceremony, killing around 30 civilians and injuring dozens<sup>71</sup>. Finally, on June 27, 2016, ISIS carried out a double suicide bombing using a large truck and a motorcycle in the western neighborhood of Qamishli city (Al-Hasakah Governorate). This bombing is considered one of the most violent among ISIS's suicide operations, resulting in approximately 50 casualties and dozens of injuries among innocent civilians. It caused extensive destruction to buildings and nearby shops<sup>72</sup>. ISIS claimed responsibility for this attack<sup>73</sup>. These suicide operations can be described as crimes against humanity, given that they are carried out as part of a systematic and widespread attack against civilians.

**Second - Genocide:** The crime of "genocide" as a crime against humanity includes instances of killing that target a specific group of individuals who do not share common characteristics such as race, religion, or nationality. Thus, this crime differs from the crime of

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<sup>68</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/31/68, February 11, 2016.

<sup>69</sup> Duplicate

<sup>70</sup> Middle East Newspaper, "50 killed in suicide bombings claimed by ISIS in Tal Tamer, Syria," December 11, 2015, last updated on November 11, 2015, available at the following address: <https://aawsat.com/home/article/517331/50->

<sup>71</sup> Al Arabiya Channel, "Suicide bomber detonates himself at a wedding in Hasakah," published on October 3, 2016, last updated on August 20, 2020, available at the following address: <https://www.alarabiya.net/arab-and-world/syria/2016/10/03>

<sup>72</sup> France 24 Channel, "Syria: Dozens of dead and wounded in two suicide bombings in Qamishli," available at the following address: <https://www.france24.com/ar/20160727->

<sup>73</sup> ISIS, through its Amaq Agency, claimed responsibility for the bombing. See Al Jazeera, "A huge explosion in Qamishli causes destruction and dozens of deaths," available at the following address: <https://www.aljazeera.net/news/2016/7/27/>

"genocide" mentioned in Article 6 of the "Basic Rome Statute," which specifically requires targeting a particular group for reasons of race, religion, or nationality<sup>74</sup>.

On the other hand, genocide can be committed as a crime against humanity through various means of killing, whether directly or indirectly, such as imposing certain difficult living conditions, including depriving people of access to food and medicine with the intention of destroying part of the population. ISIS imposed a prolonged siege on some cities in northern and eastern Syria, adopting a strategy of depriving civilians of food, medical supplies, humanitarian aid, and relief. In addition, the Islamic State besieged densely populated neighborhoods controlled by the Syrian government in the city of Deir ez-Zor from 2014 to 2017<sup>75</sup>. The shortage of food, water, and medicine led to severe malnutrition and deaths among vulnerable groups, including children, the elderly, and people with special needs<sup>76</sup>.

The humanitarian organizations supporting access to food were unable to reach around 600,000 people in the provinces of Deir ez-Zor and Raqqa during the control of the Islamic State. In the Hassakeh province, ISIS hindered doctors and medical personnel from importing medications<sup>77</sup>.

The organization imposed a siege on the Kurdish cities in the countryside of Aleppo (Afrin - Kobani)<sup>78</sup> on 7/12/2013. This terrorist organization prevented residents from bringing in essential supplies, including food, medicine, and fuel<sup>79</sup>.

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<sup>74</sup> We have previously studied the crime of genocide as a type of international crime, mentioned in Article VI of the Rome Statute, see previous.

<sup>75</sup> Report of the Independent International Commission of Inquiry on Syria, A/HRC/31/68 11 February 2016

<sup>76</sup> Report of the Independent International Commission of Inquiry on Syria, United Nations, General Assembly, Human Rights Council A/HRC/46/54 January 21, 2021

<sup>77</sup> United Nations (HRC/CRP/ISIS), "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>78</sup> The Syrian Network for Human Rights, "The Organization of the Islamic State in Iraq and Syria: Its Origins and Documentation of the Most Prominent Violations Committed," 2014, [www.sn-hr.org](http://www.sn-hr.org), United Nations (HRC/CRP/ISIS), "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>79</sup> The Syrian Network for Human Rights, "The Organization of the State of Iraq and the Levant: Its Formation and Documentation of Its Most Prominent Violations," previous reference.

These internationally prohibited actions are considered a crime of genocide, as a type of crime against humanity. They also constitute serious violations of the principles of international human rights law<sup>80</sup>, such as the right to life, the absolute prohibition of torture, cruel, inhuman, or degrading treatment, the right to freedom of movement, and the right to a decent standard of living, including adequate levels of food, clothing, housing, and the right to primary healthcare, including essential medicines<sup>81</sup>.

**Third - deportation or forced displacement of the population:** It is prohibited by international law for civilians residing in a particular area, whether within their own country or forcibly moving them to another country, whether by actual force or mere threat. Throughout history, the world has witnessed wide-scale deportations of civilian populations during various stages, especially during armed conflicts<sup>82</sup>.

In the Syrian conflict, ISIS forcibly displaced national, religious, and ethnic minorities in the areas it controlled<sup>83</sup>, coercing them to assimilate or flee<sup>84</sup>. Kurds were forcibly displaced from their homes in Raqqa in July 2013, and they were also instructed to leave the city of Tell Abyad/Kari Sbei (Raqqa Governorate) or face death<sup>85</sup>. As a result, thousands of civilians, including Turkmen and Arab families, fled. ISIS members systematically looted and destroyed Kurdish properties, and in some cases, they resettled displaced Sunni Arab and Turkmen families from Qalamoun (Damascus countryside), Deir ez-Zor, and Raqqa in the evacuated Kurdish homes. This pattern repeated in Tel Aaran and Tel Hasel<sup>86</sup>. The terrorist organization also expelled Kurds from the city of

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<sup>80</sup> See: Yasser Al-Huwaish, Mohannad Nuh, "Human Rights," previous reference.

<sup>81</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, United Nations, General Assembly, Human Rights Council, A/HRC/46/54, January 21, 2021, paragraph 45

<sup>82</sup> Sawsan Tamrakhan's article, "Crimes Against Humanity in Light of the Statute of the International Criminal Court," previous reference.

<sup>83</sup> The United Nations (HRC/CRP/ISIS) report, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>84</sup> Human Rights Council 69/28/A/HRC, February 2015, page 13, and the report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," previous references.

<sup>85</sup> Human Rights Council 69/28/A/HRC, February 2015, page 13.

<sup>86</sup> The United Nations (HRC/CRP/ISIS), "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Iraq and Syria," as referenced earlier.

Al-Bab (Aleppo Governorate) in November 2014<sup>87</sup>. These systematic and widespread attacks against civilian Kurdish populations amount to a crime of forced displacement<sup>88</sup>, constituting a crime against humanity.

The forced displacement of the Yazidis and their relocation from their original place in Sinjar (Northern Iraq) to cities in Northern and Eastern Syria<sup>89</sup> also constitutes a crime of forced displacement.

**Fourth - Imprisonment or Detention:** After the rapid expansion of ISIS and its control over vast areas of Syria, the organization established an extensive network of detention facilities to punish anyone who opposed or refused its rule, especially in the provinces of Raqqa, Deir ez-Zor, and Aleppo, such as the notorious "Point 11" prison and the Muawiya School (Raqqa province)<sup>90</sup>.

The international human rights law<sup>91</sup> and international humanitarian law<sup>92</sup> impose clear obligations on all parties in non-international conflicts regarding the treatment and protection of all detained individuals. Detainees must be treated humanely and protected from violence or conditions that threaten their lives, including protection from any form of torture or ill-treatment<sup>93</sup>. Adequate healthcare and sufficient food must be provided<sup>94</sup>.

However, in the detention and imprisonment centers of the Islamic State, crimes against humanity were committed, including murder, torture, severe deprivation of liberty, enforced disappearance, enslavement, and disfigurement as a form of physical punishment<sup>95</sup>. Detainees were held

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<sup>87</sup> Human Rights Council Report (A/HRC/69/28), February 2015, p. 13, paragraph 39.

<sup>88</sup> Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," previous reference. These actions also qualify as war crimes.

<sup>89</sup> See earlier, p. 15.

<sup>90</sup> Report of the Independent International Commission of Inquiry on Syria (A/HRC/46/55), March 11, 2021.

<sup>91</sup> See: Yasser Al-Huwaishe, Mohannad Noah, 'Human Rights,' previous reference.

<sup>92</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," Dar Rasslan, Damascus, 2015, and Maya Al-Dabbas, Jasim Zakaria, "International Humanitarian Law," Syrian Virtual University Publications, 2018.

<sup>93</sup> Tareq Barnghi, "Strategies Against the Crime of Torture in International Law and National Jurisdiction," Master's Thesis, Syrian Virtual University, 2021.

<sup>94</sup> United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," January 27, 2016.

<sup>95</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier. These violations, among others, constituted a genocide against the Yazidi minority, see earlier page 15.

for extended periods in inhumane conditions<sup>96</sup>, subjected to harsh treatment,<sup>97</sup> and faced field executions<sup>98</sup>. They received inadequate amounts of food, and were not allowed to contact anyone outside the detention center<sup>99</sup>.

Journalists, human rights activists, and those seeking to control the flow of information in areas controlled by ISIS were among those who suffered the most from arbitrary arrests and detention<sup>100</sup>. Civilians accused of violating regulations or decrees imposed by ISIS, as well as those accused of dealing with other armed forces, also routinely faced unlawful deprivation of liberty, torture, and ill-treatment<sup>101</sup>. According to a UN report, ISIS detained civilians in the provinces of Raqqa and Deir ez-Zor, accusing them of violating the group's rules or suspected collaboration with "enemy forces,"<sup>102</sup> as well as prisoners from other armed forces, journalists, and activists accused of reporting violations attributed to the organization<sup>103</sup>, including local media personnel or assistants working with international journalists<sup>104</sup>.

As a result, journalists and activists documenting the violations and abuses suffered by their local communities under the control of ISIS have been deprived of the special protection provided by international humanitarian law. They have been subjected to disappearance, detention, torture, and killings<sup>105</sup>, reaching the level of crimes against humanity.

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<sup>96</sup> They were held in overcrowded cells filled with insects, according to a report by the Human Rights Council, see Human Rights Council report 69/28/A/HRC, February 2015, page 13.

<sup>97</sup> Report of the Independent International Commission of Inquiry on Syria, Human Rights Council-United Nations, "Detention in the Syrian Arab Republic," March 8, 2018.

<sup>98</sup> Often, detainees were executed after unqualified courts issued death sentences. Refer to the United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," January 27, 2016.

<sup>99</sup> Human Rights Council report 69/28/A/HRC, February 2015, page 13.

<sup>100</sup> Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier.

<sup>101</sup> United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," previous reference.

<sup>102</sup> Human Rights Council report 69/28/A/HRC, February 2015, page 13.

<sup>103</sup> Report titled "Detention in the Syrian Arab Republic," Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council-United Nations, March 8, 2018. Also, a report by the Independent International Commission of Inquiry on Syria, number: 58/23/HRC/A, Human Rights Council-United Nations, March 23, 2018.

<sup>104</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier.

<sup>105</sup> Duplicate

**Fifth - Torture:** In the areas under its control, ISIS adopted and implemented an organizational policy to spread terror and fear among the people. It directed and organized the commission of multiple acts of violence, reaching the level of attacks on civilian populations, especially in Raqqa, Deir ez-Zor, Hasakah, and the northeastern areas of Aleppo province<sup>106</sup>.

As part of its widespread and systematic attack on civilian populations, the organization carried out public executions, floggings, beheadings, and displayed severed heads in public squares<sup>107</sup>. This caused severe physical or psychological pain and suffering for the civilian populations in areas under the organization's control. The organization committed crimes against humanity, including acts of torture, harsh and degrading treatment, and inhuman acts against civilians.

In addition, the organization employed various brutal forms and methods of torture in detention centers<sup>108</sup>. Detainees were subjected to beatings with sticks or cables, whipping, electric shocks, hanging from their limbs on walls or ceilings in strenuous positions<sup>109</sup>, simulated drowning or beheading, gas asphyxiation, and stoning to death<sup>110</sup>. In late 2020, four mass graves were discovered near detention centers affiliated with the Islamic State in the Raqqa province<sup>111</sup>.

#### **Sixth - Rape or Sexual Violence:**

The first paragraph of Article 7 of the Statute of the International Criminal Court stipulates the crime of rape, considering any act of rape, sexual slavery, forced prostitution, forced pregnancy, or forced sterilization, or any form of sexual violence of a similar gravity as a crime against humanity under the provisions of this Statute.<sup>112</sup>

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<sup>106</sup> Regarding the crime of torture, see Tareq Barngki, "Strategies Against the Crime of Torture in International Law and National Jurisdiction," Master's Thesis, Syrian Virtual University, 2021.

<sup>107</sup> Human Rights Council Report 69/28/A/HRC, February 2015, page 13.

<sup>108</sup> Syrian Network for Human Rights, "Torture and Detention Centers under the State Organization: The Black Abyss," April 22, 2016, [www.sn-hr.org](http://www.sn-hr.org).

<sup>109</sup> Report of the Independent International Commission of Inquiry on Syria A/HRC/46/55, March 11, 2021.

<sup>110</sup> Syrian Network for Human Rights, "Torture and Detention Centers under the State Organization: The Black Abyss," previous reference.

<sup>111</sup> Report of the Independent International Commission of Inquiry on Syria (A/HRC/46/55), previous reference.

<sup>112</sup> Basic Statute of the International Criminal Court.

During the attack on Sinjar in northern Iraq in early August 2014, ISIS abducted hundreds of Yazidi women and girls, taking them to Syria. Subsequently, they were sold, with some as young as nine years old, considered "war spoils" in the markets for slaves or captives in the Syrian provinces of Raqqa, Aleppo, Homs, Hasakah, and Deir ez-Zor. For example, some women were sold to men living in Raqqa itself, while others were detained in "ISIS rest houses" in urban areas in the province. And these captive women, held as prisoners by ISIS, as 'war prizes,' were subjected to systematic rape, sexual violence, and sexual enslavement, whether by ISIS fighters returning from the frontlines or the men who brought them to public auctions<sup>113</sup>.

The unlawful detention of Yazidi women, driven by the explicit intent of capturing and enslaving them, demonstrates ISIS's intention to forcibly induce pregnancy among women and girls, thereby affecting the ethnic and religious composition of the Yazidi minority<sup>114</sup>. When such actions occur within the framework of a widespread and systematic attack, they reach the threshold of crimes against humanity in the form of enslavement, rape, and sexual violence.<sup>115</sup>

**Seven - Forced Disappearances:** It refers to the apprehension, detention, or abduction of individuals by a state or a political organization, with its authorization, support, or acquiescence. It also involves the refusal to acknowledge the deprivation of their freedom, provide information about their fate, or disclose their whereabouts, aiming to deny them legal protection for an extended period.<sup>116</sup>

Forced disappearance is prohibited under customary international humanitarian law<sup>117</sup>. According to Rule 98 of the "International Committee of the Red Cross, Customary International Humanitarian Law," forced disappearance is prohibited in both international and non-international armed conflicts. Rule 117 stipulates that each party to the

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<sup>113</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>114</sup> Reference: Ghassan Shhadeh Mondar, "Criminal Protection of Women from Sexual Violence in International Humanitarian Law - An Applied Study on Crimes Committed by Armed Terrorist Organizations in Syria," Master's Thesis, Virtual University, 2021.

<sup>115</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>116</sup> Article 7 of the Rome Statute.

<sup>117</sup> Maya Al-Dabbas, Jasim Zakaria, "International Humanitarian Law," Syrian Virtual University Publications, 2018.

conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and provide any information it has on their fate to their families. On the other hand, international humanitarian law prohibits hostage-taking<sup>118</sup> and considers it a war crime.<sup>119</sup>

Also, according to the Statute of the International Criminal Court, the systematic practice of enforced disappearance constitutes a crime against humanity<sup>120</sup>, and this applies to what ISIS has done in terms of the widespread occurrence of disappearances and its methodology. The fate of thousands of forcibly disappeared individuals remains unknown, according to the Syrian Network for Human Rights: at least 18,684 people, including 319 children and 255 women, are still forcibly disappeared by the organization since its establishment until January 2022<sup>121</sup>.

### **Section Three: ISIS Violations as War Crimes**

War crimes and crimes against humanity share many similarities; however, the fundamental difference lies in the fact that crimes against humanity can occur in times of peace or war, while war crimes are only committed in times of armed conflict, whether international or non-international<sup>122</sup>.

To better understand war crimes and distinguish them from crimes against humanity, we first attempt to define this type of international crime. Secondly, we highlight the most significant instances of ISIS violations as war crimes committed in the northern and eastern regions of Syria.

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<sup>118</sup> Article 34 of the Fourth Geneva Convention of 1949, Article 3 common to the Geneva Conventions, Article 75(2c) of the First Additional Protocol of 1977, and Article 4(2c) of the Second Additional Protocol of 1977.

<sup>119</sup> See later, page 33.

<sup>120</sup> Article 1-7, paragraph "ط" of the Basic Rome Statute.

<sup>121</sup> Reference: Syrian Network for Human Rights, "Notable Violations by ISIS Against the Syrian Society and its Contribution to Distorting the Popular Movement Demanding Freedom and Dignity," February 2022, p. 10, [www.sn-hr.org](http://www.sn-hr.org).

<sup>122</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," reference mentioned earlier.

## **Subsection One: Definition of War Crimes**

**War Crimes:** Serious violations of international humanitarian law<sup>123</sup> that entail individual criminal responsibility<sup>124</sup>. Article 6(b) of the Nuremberg Principles defines war crimes as "those acts that constitute a violation of the laws and customs of war."<sup>125</sup> The four Geneva Conventions of 1949 define them as "grave breaches." Grave breaches are violations that rise to the level of war crimes and warrant punishment for their perpetrators. The details and definitions of these grave breaches are provided in Articles 5 and 50 of the First Convention<sup>126</sup> and Articles 44 and 51 of the Second Convention<sup>127</sup> of the Four Geneva Conventions.

The basic Rome Statute of the International Criminal Court lists war crimes among the international crimes in its Article 5<sup>128</sup>. Article 8 of the same statute enumerates the acts constituting such crimes, stating that the Court has jurisdiction over war crimes "especially when committed as part of a plan or policy or as part of a large-scale commission of such crimes." The phrase "especially when" implies that the jurisdiction of the Court is limited to the most serious crimes against the international community. Consequently, this narrows the scope of international criminal accountability for perpetrators of war crimes before the Court<sup>129</sup>, linking its jurisdiction over those committing such crimes to the specific criteria outlined in the statute<sup>130</sup>.

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<sup>123</sup> Maya Al-Dabbas, Jasim Zakaria, "International Humanitarian Law," reference mentioned earlier.

<sup>124</sup> Report of the Independent International Commission of Inquiry on Syria, "Lost My Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," A/HRC/37/CRP.3, March 8, 2018.

<sup>125</sup> This category of crimes is governed by the basic statutes of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. See Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," Dar Rasslan, Damascus, 2015.

<sup>126</sup> The First Geneva Convention concerning the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, dated 12/08/1949, is an amendment to the First Geneva Convention of 1929.

<sup>127</sup> The Second Geneva Convention concerning the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, dated 12/08/1949.

<sup>128</sup> Mohammed Ghanem Ibrahim, "The Role of International Criminal Law in Criminalizing Violations of International Humanitarian Law - An Analytical Applied Study on the Statute of the International Criminal Court," Master's Thesis, Syrian Virtual University, 2021.

<sup>129</sup> Ali Wahbi Dib, "International Criminal Courts: Their Evolution and Role in Suppressing International Crimes," Aleppo Legal Publications, Beirut, 2015.

<sup>130</sup> It is well-known that criminal responsibility for committing a war crime does not require that the crime be committed on a large and extensive scale, as is the case with crimes against humanity and genocide. For instance, the responsibility of the

The eighth article of the Rome Statute extensively includes over fifty provisions that specify war crimes falling under the jurisdiction of the court. These crimes are categorized into four groups; two groups pertain to violations and crimes committed in international armed conflicts<sup>131</sup>,

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perpetrator is sufficient even for the killing of a single prisoner of war, according to the provisions of international humanitarian law. Refer to Ali Wahbi Dib, "International Criminal Courts: Their Evolution and Role in Suppressing International Crimes," aforementioned reference.

<sup>131</sup> Article 8 of the Rome Statute reads: "The Court shall have jurisdiction in relation to war crimes, in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. For the purpose of this Statute, war crimes mean:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: 1- Willful killing. 2- Torture or inhuman treatment, including biological experiments. 3- Intentionally causing great suffering or serious injury to body or health. 4- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. 5- Compelling a prisoner of war or other protected person to serve in the forces of a hostile power. 6- Willfully depriving a prisoner of war or other protected person of the rights of a fair and regular trial. 7- Unlawful deportation or transfer or unlawful confinement. 8- Taking hostages."

B) Other serious violations of the laws and customs applicable to armed conflicts within the established framework of international law include any act involving the following:

1. Deliberately directing attacks against civilians as such or against non-combatant individuals who are not taking direct part in hostilities.
2. Deliberately directing attacks against civilian objects, meaning objects that are not military objectives.
3. Deliberately attacking personnel, installations, material, units, or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the United Nations Charter, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict.
4. Launching an attack with the knowledge that it will cause excessive loss of life, injury to civilians, or extensive, long-term, and severe damage to the natural environment, disproportionate to the concrete and direct military advantage anticipated.
5. Attacking or bombing cities, towns, villages, or dwellings that are not military objectives by any means.
6. Killing or wounding a combatant who has surrendered, disarmed, or is otherwise hors de combat.
7. Misusing flags of truce, military emblems, insignia, or uniforms of the enemy, the United Nations, or distinctive emblems of the Geneva Conventions, resulting in death or serious injury to individuals.
8. The direct or indirect transfer of parts of the civilian population of an occupying power to the territory it occupies, or the displacement or transfer of all or parts of the population of the occupied territory, within or outside this territory.
9. Deliberately directing attacks against buildings dedicated to religious, educational, artistic, scientific, or charitable purposes, as well as historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives.
10. Subjecting persons under the authority of an adverse party to physical mutilation or to medical or scientific experiments that are not justified by medical, dental, or hospital treatment of the person concerned and that do not contribute to their health, causing their death or placing them at serious risk.
11. Killing members of an enemy state or army or injuring them treacherously.
12. Declaring that no one will be left alive.

and two groups relate to crimes committed in non-international armed conflicts<sup>132</sup>. It is noteworthy that the most significant development regarding war crimes lies in the text of the Rome Statute concerning the jurisdiction of the court regarding crimes committed during non-international armed conflicts<sup>133</sup>. The statute affirms the court's jurisdiction to consider serious violations of Common Article 3 of the

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13. Destroying the enemy's property or seizing it unless this destruction or seizure is imperatively demanded by the necessities of war.
  14. Declaring that the rights and claims of nationals of the hostile party are null and void, suspended, or will not be recognized in any court.
  15. Forcing nationals of the hostile party to participate in military operations against their own country, even if they were in the service of the belligerent state before the outbreak of war.
  16. Plundering any town or place, even when captured by force.
  17. Use of toxins or poisonous weapons.
  18. Use of asphyxiating, toxic gases, or any other gases and all that falls under their classification, including liquids, substances, or devices.
  19. Use of bullets that easily expand or flatten in the human body, such as bullets with hard casings that do not cover the entire bullet or jacketed hollow-point bullets.
  20. Use of weapons, shells, materials, or war methods that inherently cause unnecessary damage or pain, or are inherently indiscriminate in violation of international law for armed conflicts, provided that these weapons, shells, materials, and war methods are subject to a comprehensive ban and are listed in the annex to this fundamental system by amendment in accordance with the relevant provisions in Articles 121 and 123.
  21. Assault on the dignity of the person, especially humiliating treatment that infringes on dignity.
  22. Rape, sexual slavery, coercion into prostitution, or forced pregnancy as defined in paragraph 2 of Article 7, as well as forced sterilization or any other form of sexual violence also constitutes a serious violation of the Geneva Conventions.
  23. Exploiting the presence of a civilian or other protected persons to confer immunity from military operations on specific points, areas, or military forces.
  24. Deliberate attacks against buildings, materials, medical units, transportation, and individuals using distinctive emblems as specified in the Geneva Conventions under international law.
  25. Intentionally starving civilians as a method of warfare by depriving them of essential supplies for their survival, including deliberately obstructing humanitarian relief supplies as stipulated in the Geneva Conventions.
  26. Mandatory or voluntary recruitment of children under the age of fifteen into the national armed forces or their actual involvement in hostilities.

<sup>132</sup> Ali Wahbi Dib, "International Criminal Courts: Their Evolution and Role in Suppressing International Crimes," reference mentioned earlier.

<sup>133</sup> However, according to the basic Rome Statute, situations of internal disturbances and tensions, such as riots, individual acts of violence, or similar acts, fall outside the scope of disputes not of an international character. Article 8 of the Rome Statute, Paragraph 2 (e), applies to armed conflicts not of an international character and therefore does not apply to cases of internal disturbances and tensions, such as riots, individual acts of violence, or similar acts. It applies to armed conflicts occurring within the territory of a state when there is a protracted armed conflict between government authorities and organized armed groups or between such groups.

four Geneva Conventions of 1949 in the case of a non-international armed conflict<sup>134</sup>.

Based on the foregoing, the primary war crime in a non-international armed conflict<sup>135</sup> is the serious violations of Common Article 3 of the Four Geneva Conventions of 1949. These include any of the following acts committed against persons not taking an active part in hostilities, including members of the armed forces who have laid down their arms and those who have become incapacitated due to illness, injury, captivity, or for any other reason: 1) the use of violence against life and persons, especially murder in all its forms, mutilation, cruel treatment, and torture; 2) outrages upon personal dignity, particularly humiliating and degrading treatment; 3) taking hostages; 4) issuing sentences and carrying out executions without a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees recognized as indispensable by civilized people.

On the other hand, the concept of war crimes extends to other serious violations of laws and customs applicable to armed conflicts not of an international character, within the established framework of international law, including the following acts:

1. Deliberately directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities.
2. Deliberately directing attacks against buildings, material, medical units, means of transportation, and individuals using distinctive emblems specified in the Geneva Conventions according to international law.
3. Deliberately conducting attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the United Nations Charter, as

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<sup>134</sup> Article 8 of the Rome Statute concludes by emphasizing that this jurisdiction does not affect the responsibility of the government for maintaining or enforcing law and order in the state or for defending the unity and territorial integrity of the state by all lawful means. Article 8 of the Rome Statute: (3- Paragraphs 2 (e) and (h) shall not affect the responsibility of the government for maintaining or enforcing law and order in the state or for defending the unity and territorial integrity of the state, by all lawful means).

<sup>135</sup> According to the text of Article 8, Paragraph (h) of the basic Rome Statute.

long as they are entitled to the protection provided for civilians or civilian objects under international law for armed conflicts.

4. Deliberately directing attacks against buildings dedicated to religious, educational, artistic, scientific, or charitable purposes, and historical monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives.

5. Plundering a town or place, even when taken by force.

6. Rape, sexual slavery, forced prostitution, or forced pregnancy as defined in paragraph 2(b) of Article 7, or forced sterilization, or any other form of sexual violence also constitutes a serious violation of Common Article 3 of the Four Geneva Conventions.

7. The compulsory or voluntary recruitment of children under the age of fifteen into the armed forces or armed groups, or their use for actual participation in hostilities.

8. Issuing orders to displace civilian populations for reasons related to the conflict, unless justified by the security of the civilians involved or urgent military reasons.

9. Killing or wounding an enemy combatant treacherously.

10. Declaring that no one will be left alive.

11. Subjecting persons under the authority of another party to the conflict to physical mutilation or any form of medical or scientific experimentation that is not justified by medical or dental treatment, or treatment in the hospital for the person concerned and is not carried out for their benefit, resulting in the death of that person or those persons or exposing their health to serious risk.

12. Destroying the property of the enemy or seizing it unless such destruction or seizure is required by the necessities of war...<sup>136</sup>

There is no doubt that the text on the jurisdiction of the court to prosecute perpetrators of war crimes committed during non-international armed conflicts constitutes a significant and advanced step towards suppressing

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<sup>136</sup> Article Eight of the Rome Statute.

this type of crime, punishing its perpetrators, and protecting the victims of such conflicts. Therefore, the serious and grave violations committed by the ISIS organization during its caliphate in parts of northern and eastern Syria, which rise to the level of war crimes, fall within the jurisdiction of the International Criminal Court.<sup>137</sup>

### **Subsection Two: Instances of War Crimes Committed by ISIS**

Article 3 common to the Geneva Conventions of 1949<sup>138</sup>, along with other customary rules of international law applicable in armed conflicts, criminalizes acts such as murder, torture, and execution without due legal process. These obligations are binding on all non-state armed groups and the entities of states participating in combat. In addition, non-state armed groups and the nationals of foreign governments engaged in hostilities are linked to obligations imposing the protection and respect for human rights of individuals in areas under their control.<sup>139</sup> ISIS, as an organized armed group exercising effective control over territory, is obligated to adhere to these rules and ensure humane treatment.<sup>140</sup>

However, according to the nature of war crimes in an armed conflict of a non-international character, and based on various successive international reports on the practices of conflicting parties in Syria, most actions committed by the parties rise to the level of serious violations of relevant international law rules.<sup>141</sup>

The terrorist organization ISIS committed numerous serious violations of the laws and customs of war in the northern and eastern regions of Syria, which can be summarized as follows:

**First: Deliberate killing:** To qualify as a war crime involving deliberate killing, the perpetrator must intentionally kill one or more persons protected under the 1949 Geneva Conventions (such as a person incapable of fighting, a civilian, or someone who did not participate in

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<sup>137</sup> See later.

<sup>138</sup> Syria is among the countries that have signed these agreements.

<sup>139</sup> United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," January 27, 2016.

<sup>140</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>141</sup> Especially Article 8 of the Rome Statute.

the fighting), and the perpetrator must have the elements of knowledge<sup>142</sup> and intent<sup>143</sup>.

Elements of ISIS employed various methods in the killings they committed in their controlled areas, targeting detainees, prisoners, women, girls, and men under the pretext of violating Islamic teachings, according to the interpretation of this terrorist organization. Among these brutal methods adopted by ISIS is burning. In 2015, ISIS militants burned the Jordanian pilot (Muath al-Kasasbeh) alive in an iron cage, and they disseminated a video showing his execution by burning on the internet<sup>144</sup>.

One of the most implemented brutal methods is beheading by ISIS militants, as this punishment has been carried out in large numbers continuously since the ISIS takeover of various areas in northern and eastern Syria. Subsequently, the severed heads are displayed in public squares and gardens, such as those scenes witnessed in Al-Naeem Square in Raqqa, dubbed "Hell Square," which has seen numerous public executions, beheadings, and head displays.<sup>145</sup>

ISIS executed the Kurdish fighters captured during the attack on the city of Kobani (Aleppo province) between September 15 and November 5, 2014<sup>146</sup>. In mid-September 2014, in the city of Tell Abyad (Raqqa province), ISIS executed a Kurdish female fighter in front of a group of civilians detained from Kobani. Before beheading her, one of the fighters said to the audience, "She fought against us for three months with the 'infidels,' and now we will behead her in front of you. After that, go and

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<sup>142</sup> The perpetrator should be aware of the factual circumstances proving that the victims are covered by the protection outlined in the Geneva Conventions of 1949 and that the conflict is non-international. For the general elements of the crime, refer to: Aboud Al-Sarraj, "Public Penal Law - Theory of Crime," previous reference, and Emad Obeid, "Special Penal Law - Crimes Against Persons - Crimes Against Property," Syrian Virtual University Publications, 2018.

<sup>143</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Cases of Wars and Armed Conflicts," reference mentioned earlier.

<sup>144</sup> Falah Abdul Hassan Abdul Ayoub, "The Legal Adaptation of ISIS Crimes in Light of International Criminal Law," Journal of the Islamic University, Issue 61.

<sup>145</sup> Eleanor Lopera, "Crimes of ISIS," link to the article in French.

<https://espriturcouf.fr/securite-crimes-daech-eleonore-le-bars/>

<sup>146</sup> See above.

tell your children and neighbors that this is the end and fate of the 'infidels.'"<sup>147</sup>

The Islamic State committed numerous massacres against Syrian government soldiers who fell into the organization's captivity<sup>148</sup>. In the city of Tabqa (Raqqa Governorate), 200 government soldiers were captured after the organization raided the airbase outside the city in August 2014. ISIS militants stripped them of their clothes, except for their underwear, and marched them into the desert before shooting them dead<sup>149</sup>. In 2014, when the 17th Division base in Raqqa fell on July 25, 2014<sup>150</sup>, ISIS members killed Syrian government soldiers who were captured inside the base, and afterward, many of the bodies had their heads severed.

When members of the Islamic State organization engage in mass killings of captured fighters and civilians after a military attack, it means they are committing heinous violations of international humanitarian law and war crimes, including intentional killing.<sup>151</sup>

**Second: Torture and Physical Mutilation and Other Forms of Cruel Treatment:** This mean that the perpetrator deliberately inflicts physical or mental pain, or severe suffering on one or more persons protected by the Geneva Conventions of 1949<sup>152</sup>, with knowledge of the real circumstances, and with the purpose of obtaining information, confessions, intimidating, coercing, or for any discriminatory reason<sup>153</sup>.

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<sup>147</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier.

<sup>148</sup> Human Rights Council 69/28/A/HRC, February 2015, page 13.

<sup>149</sup> United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," reference mentioned earlier.

<sup>150</sup> This military base for the Syrian army is located in the Raqqa Governorate.

<sup>151</sup> The United Nations report titled "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic" is referenced earlier, and the United Nations (HRC/CRP/ISIS) report, "Rule of Terror: Living under ISIS in Syria," is also referenced earlier.

<sup>152</sup> refer to: Tareq Barnghi, "Strategies Against the Crime of Torture in International Law and National Jurisdiction," a previous reference.

<sup>153</sup> The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was adopted by the General Assembly, and its signing and approval were opened by Resolution 39/46, dated 12/1984. The document can be found at the following link:[https://www.unicef.org/arabic/crc/files/C\\_Against\\_torture.arabic.pdf](https://www.unicef.org/arabic/crc/files/C_Against_torture.arabic.pdf). Also, there is a report titled "Human Rights Situation in the World - Syria," number 2017/1018.

The residents in the areas controlled by ISIS suffered from the brutality of violent acts committed under the pretext of the "hudud" punishments, based on this organization's extreme interpretation of Islamic Sharia. Such punishments included flogging and amputation of hands for offenses like smoking cigarettes and theft<sup>154</sup>. Physical "hudud" punishments were imposed in public places, attempting to prevent anyone who might oppose the rule of the "Islamic State in Iraq and Syria" and to spread terror among the civilian population<sup>155</sup>. Hands of men accused of theft were amputated, fingers of men caught smoking were cut off, and others were flogged for being seen in the company of "improperly dressed" women, smoking, not attending Friday prayers, engaging in commercial activities during prayer times, or getting tattoos on their bodies<sup>156</sup>. Subjecting individuals to disfigurement, either permanent or causing disability by amputating limbs, reaches the level of the crime of mutilation, which is a war crime.

At the height of its power, the Islamic State in Iraq and Syria (ISIS) practiced discrimination against women, girls, and sexual minorities as a general policy<sup>157</sup>. The governance system imposed by ISIS placed women and girls under the control of male relatives<sup>158</sup>, effectively restricting their freedom of movement and keeping them away from public life<sup>159</sup>.

The punishment of flogging was applied to those who violated the strict dress code enforced by the organization, not only among women in general but also on young girls under the age of ten. Acts of stoning against women and girls on charges of "adultery" were common, as well as the execution of LGBT individuals<sup>160</sup> in areas under the organization's

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<sup>154</sup> United Nations (HRC/CRP/ISIS) report, "Rule of Terror: Living under ISIS in Syria," referenced earlier.

<sup>155</sup> Human Rights Council report 69/28/A/HRC, February 2015, page 13.

<sup>156</sup> United Nations (HRC/CRP/ISIS) report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," referenced earlier.

<sup>157</sup> Independent International Commission of Inquiry on the Syrian Arab Republic, "Lost Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," A/HRC/37/CRP 3, March 8, 2018.

<sup>158</sup> Human Rights Council report 69/28/A/HRC, February 2015, page 13.

<sup>159</sup> Independent International Commission of Inquiry on the Syrian Arab Republic, "Lost Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," as cited earlier, and the report of the Independent International Commission of Inquiry on Syria, A/HRC/46/5421, January 2021.

<sup>160</sup> In Syrian law, acts of homosexuality, including male rape, are subject to punishment with imprisonment for up to three years, Syrian Penal Code, Article 520. See: Imad Abyad, "Special Penal Code - Crimes Against Persons - Crimes Against Property," mentioned earlier, and Abood Al-Sarraj, "General Penal Code - Theory of Punishment," Syrian Virtual University Publications, 2018.

control, women were also forced to marry ISIS members<sup>161</sup>. Additionally, women and girls from the Yazidi community were subjected to enslavement, torture, inhumane treatment, murder, and rape, including sexual slavery, as part of a genocidal campaign against them.<sup>162</sup>

ISIS violated international humanitarian law by committing the aforementioned acts, which constitute war crimes, including torture, cruel or inhuman treatment, and attacks on personal dignity against women, as well as violence against life<sup>163</sup>. Executions (stoning to death and executing homosexuals) also constitute a war crime of murder.<sup>164</sup>

Furthermore, these violations fall within the category of serious violations of international human rights law, including the denial of the right to life and the right to be free from discrimination.<sup>165</sup>

**Third: Taking Hostages:** Article 8 of the Rome Statute considers the taking of hostages a war crime. This crime is only established if its elements are present, which include the perpetrator's arrest or detention of one or more persons protected by the Geneva Conventions of 1949, or taking them as hostages with the threat of killing them or continuing to detain them, with the presence of the perpetrator's knowledge and intent.<sup>166</sup>

The terrorist organization ISIS adopted various methods in deliberately attacking civilians belonging to religious and ethnic minorities, most of whom were women and children, and using them as hostages.<sup>167</sup> When Assyrian Christians living in villages along the banks of the Khabur River (Tell Tamer town, Al-Hasakah Governorate) requested protection from the People's Protection Units (YPG) in February 2015, the Islamic

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<sup>161</sup> Report of the Independent International Commission of Inquiry on Syria, A/HRC/46/5421, January 2021.

<sup>162</sup> Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier, paragraphs 56 and 57.

<sup>163</sup> The Islamic State also committed the war crime of torture and ill-treatment in places under its control, as previously mentioned.

<sup>164</sup> Refer to earlier, page 15.

<sup>165</sup> Independent International Commission of Inquiry on Syria, "Lost My Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," reference mentioned earlier.

<sup>166</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," reference mentioned earlier.

<sup>167</sup> Report of the Independent International Commission of Inquiry on Syria, document number A/HRC/36/55K, August 8, 2017.

State organization attacked this area, turning it into a front line, and abducted between 220-250 Assyrian civilians, including women and children.<sup>168</sup>

In August 2014, the Islamic State organization abducted and captured thousands of Yazidi women and girls from Sinjar (Northern Iraq), taking them to Syria where they were subjected to sexual slavery. They were bought and sold as slaves, exposed to severe sexual and physical violence.<sup>169</sup> The organization also conducted hostage-taking operations resulting in the deaths of victims.<sup>170</sup>

#### **Fourth: Targeting civilians with indiscriminate attacks and chemical weapons:**

ISIS adopted an unlawful killing policy in the context of a widespread attack on civilian populations, targeting residential areas with indiscriminate shelling. According to a report from Amnesty International (2016/2017), it unequivocally stated that "warring parties in Syria committed war crimes and other serious violations of international law, including direct attacks on civilians, indiscriminate attacks<sup>171</sup>, and the use of chemical weapons."

The "Islamic State" launched indiscriminate attacks using mortar shells, rockets, improvised explosive devices, and improvised explosive ordnance randomly in populated civilian areas. Consequently, it committed a war crime by conducting indiscriminate attacks resulting in the deaths and injuries of civilians.<sup>172</sup>

On the other hand, the organization carried out at least 5 attacks using chemical weapons, all of which occurred in the Aleppo governorate<sup>173</sup>. The first was in the city of Marea in the countryside of Aleppo on August

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<sup>168</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, document number A/HRC/31/68, February 11, 2016.

<sup>169</sup> Duplicate reference.

<sup>170</sup> United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," reference mentioned earlier.

<sup>171</sup> Report titled "Human Rights Situation in the World - Syria 2016-2017," document number 10/4800/2017 POL, Amnesty International, 2017.

<sup>172</sup> Report of the Independent International Commission of Inquiry on Syria, document number A/HRC/46/5421, January 2021.

<sup>173</sup> Syrian Network for Human Rights, "Key Violations by ISIS against the Syrian Society and its Contribution to Distorting the Freedom and Dignity Popular Movement," reference mentioned earlier.

21, 2015, causing injuries to 132 people<sup>174</sup>. However, the Independent International Commission of Inquiry on Syria confirmed the responsibility of the organization for one chemical weapons attack.<sup>175</sup>

**Fifth: Sexual Crimes:** Sexual and gender-based violence has been a destructive feature in the Syrian conflict since its inception.<sup>176</sup> With the proliferation of warring parties, various forms of sexual and gender-based violence have increased, including rape<sup>177</sup>, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and sexual violence<sup>178</sup>. These actions constitute war crimes and, at the same time, conflict with basic international standards of human rights, including the right to life, freedom, personal security, the right not to be subjected to torture, and other forms of cruel, inhuman, or degrading treatment, as well as the right to enjoy the highest attainable standard of physical and mental health.<sup>179</sup>

The brutal attacks by ISIS on Yazidi women and girls, who were transported to Syria, constitute violations of international humanitarian law, reaching the level of war crimes such as sexual slavery, sexual violence, rape, and forced pregnancy<sup>180</sup>. After the capture of Yazidi

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<sup>174</sup> Duplicate reference.

<sup>175</sup> Report of the Independent International Commission of Inquiry on Syria, A/HRC/46/5421, January 2021.

<sup>176</sup> The term "sexual violence" associated with conflicts refers to incidents or patterns of sexual violence, such as rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence at this level of severity, perpetrated against women, men, or children. These crimes may constitute war crimes, crimes against humanity, acts of genocide, or other serious violations of human rights depending on the circumstances. "Gender-based violence" is any harmful act targeting individuals or groups based on their gender. Gender-based violence may include sexual violence, domestic violence, human trafficking, forced/early marriage, and harmful traditional practices (see Report of the Independent International Commission of Inquiry on Syria, A/HRC/27/21, paragraph 3). Ghassan Shhadeh Mondher, "Criminal Protection of Women from Sexual Violence in International Humanitarian Law - An Applied Study on Crimes Committed by Armed Terrorist Organizations in Syria," Master's Thesis, Virtual University, 2021.

<sup>177</sup> The Syrian law criminalizes rape, defined as forced sexual intercourse outside of marriage, and sexual assault against women and children under the Syrian Penal Code Articles 489-497. Rape and sexual assault are subject to imprisonment with hard labor, and one aggravating factor is if the perpetrator is a government official, as per Penal Code Article 498. Refer to Emad Obeid, "Special Penal Code - Crimes against Persons - Crimes against Property," mentioned earlier.

<sup>178</sup> Article 8 of the Rome Statute.

<sup>179</sup> Refer to: Ghassan Shhadeh Mondher, "Criminal Protection of Women from Sexual Violence in International Humanitarian Law - An Applied Study on Crimes Committed by Armed Terrorist Organizations in Syria," Master's Thesis, Virtual University, 2021.

<sup>180</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," mentioned

women and children, they were divided according to "sharia" among the militants who participated in the attack on Sinjar. After transferring a fifth of them to the authority of the "Islamic State," they were distributed as "war spoils." Some women were sold to men in Raqqa, while others were held in "ISIS rest houses" where they were subjected to rape by numerous returning fighters from the front lines of combat.<sup>181</sup>

The sexual enslavement of Yazidi women and girls, forcing them to bear the children of ISIS militants, considering the offspring as property of the father, and preventing the birth of another generation of Yazidis by ISIS<sup>182</sup>, constitute war crimes, including sexual slavery and forced pregnancy<sup>183</sup>.

On the other hand, ISIS generally considers unmarried women and girls above the age of puberty as a threat to its ideology and social system. As a result, armed members of the organization have engaged in forced marriages with girls and women in areas under its control<sup>184</sup>. Some of those coerced into marriage were adults, including widows, but the vast majority of cases revealed that victims of forced marriage were underage girls, ranging in age from 12 to 16 years old<sup>185</sup>.

### **Sixth - Attack on Protected Objects Under Article 8 of the Basic Rome Statute:**

The attack on protected objects, according to the four Geneva Conventions of 1949, is considered a war crime. Protected objects include buildings dedicated to religious, educational, artistic, scientific, charitable purposes, as well as historical monuments or hospitals, and

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earlier. And the Independent International Commission of Inquiry on Syria, Report number A/HRC/46/55, dated March 11, 2021.

<sup>181</sup> Refer to the previous information.

<sup>182</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier.

<sup>183</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," reference mentioned earlier.

<sup>184</sup> These actions also constitute serious violations of international human rights law for women and girls, including the right to freely choose a spouse and not enter into marriage except with their free and full consent, under the Convention on the Elimination of All Forms of Discrimination Against Women, New York, December 18, 1979, Article 1(b).

<sup>185</sup> Report of the Independent International Commission of Inquiry on Syria, "Lost Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," reference mentioned earlier.

places where the sick and wounded are gathered, which do not constitute military objectives. To qualify as a war crime involving an attack on protected objects, the attack must target one or more of the buildings designated for the aforementioned purposes, and the perpetrator must be aware of the factual circumstances proving the existence of an armed conflict.<sup>186</sup>

During its control over areas in northern and eastern Syria, ISIS specifically targeted places of worship and historical monuments.

**Targeting Places of Worship:** With the spread of ISIS in northern and eastern Syria, it continued its attacks on Christians and their places of worship<sup>187</sup>. Between September and October 2013, ISIS militants attacked three Christian churches in the Raqqa governorate<sup>188</sup>. They destroyed the Roman Catholic Church located in the city center, near Rashid Garden. An armed group affiliated with ISIS attacked the church, seized and removed all its contents, including seats, crosses, images, icons, and symbols. They also smashed the cross on top of the church, raised the organization's flag in its place, and turned the church into a headquarters for the organization (referred to as the "Diwan of Grievances"). They occupied the Armenian Orthodox Church of the Martyrs in the city and burned an Armenian church in Tell Abyad. Members of the "Hamza Brigade," loyal to ISIS, burned the church, broke the crosses, looted its contents, and transformed it into a headquarters for the "Iraqi Security Battalion" affiliated with ISIS. In September 2014, ISIS militants also destroyed an Armenian church in Deir ez-Zor<sup>189</sup>.

In the province of Hasakah, the Syrian Network for Human Rights documented three damaged churches targeted by ISIS: the Virgin Mary Church in the village of Tal Nasri, the Saint Rabban Bithiyo Church in

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<sup>186</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," reference mentioned earlier.

<sup>187</sup> On February 23, 2014, ISIS issued a statement to Christians who had fled Raqqa, outlining conditions for their return, which included converting to Islam or paying the jizya tax. The forced conversion of several Assyrian Christians to Islam was documented, see United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier.

<sup>188</sup> Syrian Network for Human Rights, "Targeting Churches in Syria," [www.sn4hr.org](http://www.sn4hr.org).

<sup>189</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," previous reference.

the village of Tal Hermuz, and the Tomb of Shamiyya Mar Georges Church located in the village of Qabr Shamiyya on the Khabur River in the western countryside of Hasakah. ISIS militants burned down the latter church after invading the village<sup>190</sup>.

On another note, according to a report issued by the Independent International Commission of Inquiry on Syria in 2014, attacks on Shiite shrines and residences in Raqqa caused widespread displacement, with some individuals converting to protect their lives. In May 2014, ISIS members destroyed the Shia mosque of Awis al-Qarni and desecrated graves dating back to the seventh century in Raqqa as part of their assault against Shiites in the region. Sunni mosques established around graves or shrines of religious figures were also considered by ISIS as manifestations of polytheism and were consequently demolished.<sup>191</sup>

**Targeting Cultural Heritage:** The theft, looting, and use of property of great significance to cultural heritage, as well as its deliberate destruction, are acts prohibited under customary international humanitarian law<sup>192</sup> and fall within the category of war crimes.<sup>193</sup> However, irreplaceable artifacts from Syrian cultural heritage have been lost due to the intentional targeting of antiquities and indiscriminate attacks on them<sup>194</sup>. Despite efforts to relocate hundreds of artifacts to secure locations<sup>195</sup>, unauthorized excavations of priceless cultural properties continued, leading to the illicit smuggling of artifacts abroad and their sale on the black market.<sup>196</sup>

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<sup>190</sup> Syrian Network for Human Rights, "Targeting Churches in Syria," previous reference.

<sup>191</sup> Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>192</sup> Under the Syrian Law for Antiquities dated October 26, 1963. See Rana Mohammed Saleem Al-Aswad, "Protection of Cultural Properties in Light of the Rules of International Humanitarian Law: Syria as a Model," Master's Thesis, Syrian Virtual University, 2020.

<sup>193</sup> According to the Rome Statute.

<sup>194</sup> Report of the Independent International Commission of Inquiry on Syria, A/HRC/46/5421, January 2021.

<sup>195</sup> Rana Mohammed Saleem Al-Aswad, "Protection of Cultural Properties in Light of the Rules of International Humanitarian Law: Syria as a Model," previous reference, and Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/31/68, February 11, 2016.

<sup>196</sup> The Security Council, in its resolution 2199 (2015), condemned the destruction of cultural heritage in Iraq and Syria, whether incidental or deliberate. It emphasized the illegitimacy of trading in antiquities and called on all member states to take appropriate measures to prevent the trade in Iraqi and Syrian cultural properties, including imposing a ban on the cross-border trade of such items.

When the Islamic State organization seized control of Palmyra (Homs Governorate) in May 2015, it also took over the ancient city of Palmyra. Shortly thereafter, a systematic destruction process began targeting structures and archaeological landmarks dating back thousands of years. ISIS destroyed the statue of the Lion of Al-Lat, symbolizing the ancient city, the Temple of Baalshamin, built in the 1st century AD, seven burial towers, including the Tower of Elhabel built in 103 AD, and the Arch of Triumph, one of Palmyra's most prominent landmarks.<sup>197</sup>

Attacking churches, monuments, historical buildings, and sites with no military objectives by ISIS constitutes a violation of its commitment under customary international humanitarian law. Targeting such places means that ISIS has committed a war crime by attacking protected objects.<sup>198</sup>

### **Seven - Extrajudicial Execution:**

International human rights law and international humanitarian law include rules ensuring the administration of criminal justice openly, informing the accused of the charges against them, providing legal representation, and prohibiting the imposition of any punishment except after a trial according to specific legal standards and principles.<sup>199</sup> Execution outside the scope of these required legal rules and principles is considered a war crime in an armed conflict.<sup>200</sup>

However, in the areas under the control of the Islamic State organization, brutal execution operations were carried out openly, sometimes with a retaliatory nature. The militants of the organization executed death sentences in brutal ways, such as beheading, throwing from a high building, shooting, or stoning women to death. To justify attacks against anyone or any group perceived as a challenge to its control, ISIS employed the practice of takfir (labeling someone a disbeliever) or the pretext of affiliation with other armed groups or collaboration with the Syrian government. In public statements released before execution

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<sup>197</sup> Reference is made to the United Nations (HRC/CRP/ISIS) report by the Independent International Commission of Inquiry on Syria, titled "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>198</sup> Duplicae.

<sup>199</sup> United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic." previous reference.

<sup>200</sup> The eighth article of the Rome Statute

operations, ISIS also labeled these individuals as infidels.<sup>201</sup> Executions of detainees by the organization were repeated after illegitimate courts issued death sentences.<sup>202</sup>

On the other hand, the organization routinely executed women and men if any unauthorized contact with the opposite sex occurred<sup>203</sup> or due to the charge of "adultery." Cases of stoning women were particularly common in the provinces of Deir ez-Zor and Raqqa<sup>204</sup> during the rule of the Islamic State. Women were publicly executed by stoning to death<sup>205</sup>, forced to stand veiled and with bound hands in a shallow pit, while men threw large stones at their heads until they fell and eventually died.<sup>206</sup> In most cases, members of ISIS or the "Hisbah" (the morality police in the Islamic State organization) would read a statement accusing the woman of the crime without presenting any evidence. Simply reporting the accusation was sufficient for ISIS members to carry out the stoning. This usually took place in public squares (such as Al-Naim Square in Raqqa, for example)<sup>207</sup> and was witnessed by the woman's relatives, including children.<sup>208</sup> These public displays of brutality, often recorded and distributed on the internet, were used to instill fear among women who violated the rules of the Islamic State in Iraq and Syria<sup>209</sup>.

The organization also targeted sexual minorities with executions, as well as those accused of engaging in homosexual behavior.<sup>210</sup> Males were

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<sup>201</sup> The report of the Independent International Commission of Inquiry on Syria, titled "Rule of Terror: Living under ISIS in Syria," previous reference.

<sup>202</sup> See previous

<sup>203</sup> In August 2014, ISIS detained a female dentist and beheaded her in the fields (Deir al-Zour) because she continued to treat patients of both genders. Refer to the United Nations (HRC/CRP/ISIS) report, "Rule of Terror: Living under ISIS in Syria," as mentioned earlier.

<sup>204</sup> Report of the Independent International Commission of Inquiry on Syria, document number A/HRC/46/55, dated March 11, 2021.

<sup>205</sup> Independent International Commission of Inquiry on Syria, "Lost Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," previous reference.

<sup>206</sup> It should be noted that harsh treatment, torture, displaying the dead and mutilated bodies are intentional acts aimed at humiliating the victims, their families, and undermining their dignity, reaching the level of crimes against personal dignity.

<sup>207</sup> Eleanor Loebro, "Crimes of ISIS," previous reference.

<sup>208</sup> Human Rights Council report 69/28/A/HRC, February 2015, page 13.

<sup>209</sup> Independent International Commission of Inquiry on Syria, "Lost Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," previous reference, and the United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," previous reference, and Eleanor Loebro, "Crimes of ISIS," previous reference.

<sup>210</sup> See: Ghassan Shhadeh Mondher, "Criminal Protection of Women from Sexual Violence in International Humanitarian Law - An Applied Study on Crimes Committed by Armed Terrorist Organizations in Syria," previous reference.

executed on charges of "sodomy," including boys who had been raped by older men. In July 2016, the so-called "Hisba (morality police) men" arrested a teenage boy in Raqqa and threw him off a building on charges of "sodomy."<sup>211</sup>

It should be noted that children were, under ISIS control, both victims and perpetrators and witnesses in the executions carried out by the organization<sup>212</sup>. Children under the age of 18 were executed by beheading or shooting, under the pretext of their affiliation with other armed groups in Syria. Additionally, children were often present among the crowds witnessing executions in public squares<sup>213</sup>.

The execution of detainees presented to illegitimate courts, rising to the level of field execution or capital punishment, constitutes war crimes. The illegitimate mock trials conducted by the ISIS organization, which deprive victims of basic procedural safeguards, in themselves constitute a violation of international humanitarian law and international human rights law<sup>214</sup>. The use of these courts to execute women by stoning to death, in particular, constitutes a war crime involving murder and seriously contradicts international human rights law, including the right to life, liberty, and personal security, the right not to be subjected to torture or other forms of cruel, inhuman, or degrading treatment, and the right to enjoy the highest attainable standard of physical and mental health.<sup>215</sup>

### **Eighth - Use or Recruitment of Children:**

According to Article 8 of the Statute of the International Criminal Court, recruiting children in a non-international armed conflict is considered a war crime when the perpetrator recruits one or more children under the age of fifteen, uses them effectively in combat activities, is aware of their

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<sup>211</sup> Independent International Commission of Inquiry on Syria, "Lost Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," previous reference.

<sup>212</sup> Human Rights Council 69/28/A/HRC, February 2015, page 13.

<sup>213</sup> Eilona Lobra, "Crimes of ISIS," reference mentioned earlier.

<sup>214</sup> United Nations (HRC/CRP/ISIS), Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier, and the United Nations report "Out of Sight... Out of Mind: Deaths in Detention in the Syrian Arab Republic," reference mentioned earlier.

<sup>215</sup> Independent International Commission of Inquiry on Syria, "Lost My Dignity: Sexual and Gender-Based Violence in the Syrian Arab Republic," reference mentioned earlier.

young age, and the real circumstances confirming the existence of an armed conflict<sup>216</sup>.

Since the beginning of the Syrian war, Syrian children have been victims of various forms of harm, suffering multiple violations of their rights by all parties to the conflict<sup>217</sup>. They have been subjected to killing and mutilation, forced to participate in brutal wars<sup>218</sup> after being kidnapped, and separated from their mothers, especially by the "Islamic State" organization<sup>219</sup>.

This terrorist organization, since gaining control over extensive areas in Iraq and Syria, has been involved in the abduction and recruitment of children. They are later sent to specialized training centers, where they are trained in weapon usage and instilled with certain beliefs.<sup>220</sup> Upon reaching the age of nine, they are sent to the front lines. They have been used as human shields, spies, or donors of their blood for wounded members<sup>221</sup>. In other words, the organization used children as a tool, while abusing them systematically and intentionally.

Additionally, the organization has utilized schools for military purposes, exposing children to danger and preventing them from receiving education<sup>222</sup>. Education has been employed as a tool to instill the "ISIS ideology" with the aim of creating a new generation of loyalists, preparing and training dedicated fighters<sup>223</sup>. To achieve this goal, training camps (Cubs of the Caliphate camps) were established in all areas under the organization's control<sup>224</sup> to train them in warfare or work as suicide bombers<sup>225</sup>.

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<sup>216</sup> Nu'man Atallah Al-Hitti, "International Humanitarian Law in Times of Wars and Armed Conflicts," reference mentioned earlier.

<sup>217</sup> For a comprehensive overview, see the Investigation Committee's "They Have Erased Dreams of My Children: Children's Rights in the Syrian Arab Republic," available at: <https://www.ohchr.org/ar/2020/01/they-have-erased-dreams-my-children-childrens-rights-syrian-arab-republic>

<sup>218</sup> Report of the Independent International Commission of Inquiry on Syria, document A/HRC/46/54, dated January 21, 2021.

<sup>219</sup> Mohammad Mustafa Ahmed Krayz, "Criminal Responsibility for the Recruitment of Children in Armed Conflicts," Master's Thesis, Syrian Virtual University, 2020.

<sup>220</sup> Human Rights Council 69/28/A/HRC, February 2015, page 13.

<sup>221</sup> Falaah Abdul Hassan Abdul Ayoub, "The Legal Classification of ISIS Crimes in Light of International Criminal Law," Journal of the Islamic University, Issue 61, page 530.

<sup>222</sup> Human Rights Council 69/28/A/HRC, February 2015, page 13.

<sup>223</sup> Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier

<sup>224</sup> The Al-Buhutri School in the city of Al-Bab (Aleppo province) was used as an annex for recruiting and militarily training children under 18 years old by the Islamic State

On May 29, 2014, ISIS kidnapped 153 Kurdish children aged between 14 and 16<sup>226</sup>. The organization later held them captive in a school in Manbij (Aleppo province) and subjected them to video footage showing beheadings, military operations, and indoctrination into militant ideology for a period of five months<sup>227</sup>.

Additionally, during its attack on Sinjar, ISIS abducted Kurdish (Yazidi) children, aged between 8 and 15, separated them from their mothers, and took them to other areas in Iraq and Syria. They were forced to convert to Islam and undergo religious and military training, including learning how to use rifles and rockets<sup>228</sup>.

The training of children by the Islamic State, and their effective use in combat roles, constitutes a clear violation of international humanitarian law. It perpetrates large-scale war crimes in a systematic and organized manner<sup>229</sup>. Exploiting schools to indoctrinate children ideologically reflects ISIS's failure to fulfill its obligations under international humanitarian law and international human rights law, including ensuring education and protecting children from the dangers arising in times of war<sup>230</sup>.

### **Conclusion of Chapter One:**

In conclusion, as we discuss in the first chapter of the study regarding the legal description of ISIS violations committed in northern and eastern Syria, we observe that the armed conflict in Syria falls under the concept of non-international armed conflicts. Consequently, all parties to the

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organization. The Youth Sharia Camp near Tabqa (Raqqqa province) trained children aged 5 to 16 years for combat roles. Refer to the United Nations (HRC/CRP/ISIS) report by the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," mentioned earlier.

<sup>225</sup> In September and October 2014, minors were among the forces of the Islamic State organization during its attack on Ain al-Arab (Kobani). Refer to Human Rights Council 69/28/A/HRC, February 2015, page 13.

<sup>226</sup> Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," mentioned earlier..

<sup>227</sup> Duplicate.

<sup>228</sup> Maytham Mohammed Abd, Qasim Hamza, Nagham Khalil, "The Legal Description of ISIS Organization's Crimes," *Al-Muhakik Al-Hilli Journal of Legal and Political Sciences*, Issue 1/Tenth Year 2018, available at the following address: <https://iasj.net/iasj/download/a8273515cdf0b55d>

<sup>229</sup> Muhammad Mustafa Ahmed Kareez, "Criminal Responsibility for Recruiting Children in Armed Conflicts," reference mentioned earlier.

<sup>230</sup> Report of the Independent International Commission of Inquiry on Syria, "Rule of Terror: Living under ISIS in Syria," reference mentioned earlier

conflict, including the terrorist organization ISIS, are subject to international humanitarian law and international human rights law. Moreover, since the emergence of the "Islamic State" in the Syrian war theater and its effective control over vast areas of Syrian territory, thus becoming a party to the Syrian conflict, this organization adopted a policy of spreading terror and fear among the local communities under its control. In pursuit of this, it committed numerous crimes through brutal methods, falling within the scope of war crimes, genocide, and crimes against humanity, all of which are international crimes according to Articles 6, 7, and 8 of the Rome Statute of the International Criminal Court.

Despite the objective jurisdiction of the International Criminal Court (ICC) over the crimes committed by ISIS in northern and eastern Syria, no criminal case has been brought against the ISIS criminals detained in the detention centers in northern and eastern Syria, nor have they been prosecuted before the ICC. Furthermore, there is a failure on the part of the international community to fulfill its responsibilities and establish a special international court through a decision of the United Nations Security Council to hold ISIS accountable, as they pose a threat to international peace and security.

While the international coalition to combat ISIS has the ability to establish a special court to prosecute ISIS members as part of its responsibilities in finding a solution to the ISIS aftermath, the issue of prosecuting ISIS members detained in northern and eastern Syria remains unresolved without any international or regional initiatives to find a judicial mechanism for their trial and achieve criminal justice. The only initiative in this regard is the decision of the Autonomous Administration of North and East Syria to prosecute them.

This calls for an examination of possible judicial mechanisms for holding ISIS members accountable for their crimes in northern and eastern Syria, as well as the obstacles hindering their prosecution and achieving justice for their victims, involving the entire international community (**the subject of the second part of the study**).

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