GLOBAL SUMUD FLOTILLA
Legal Symposium

The Colonial Gallows of Occupation:
Israel's "Death Penalty for Terrorists" Law dated 30 March 2026

An Analysis under International Humanitarian Law,
International Human Rights Law, and the Law of Occupation

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I. Introduction

On 30 March 2026, the Israeli Knesset enacted the "Death Penalty for Terrorists" amendment (Penal Law Amendment, 5786–2026) by a vote of 62 to 48, institutionalising capital punishment as a racially discriminatory mechanism, specifically designed for exclusive application to Palestinians, in violation of peremptory norms of international law and amounting to an instrument of war crime. This legal analysis examines the legislation against the full corpus of applicable international law. The analysis concludes that the law constitutes: (a) a fundamental violation of the law of belligerent occupation; (b) a breach of multiple provisions of the International Covenant on Civil and Political Rights (ICCPR); (c) a violation of the Convention Against Torture (CAT); (d) a suppression of the right of self-determination of the Palestinian people; and (e) a potential war crime under the Fourth Geneva Convention.

II. The Law of Belligerent Occupation and the ICJ Advisory Opinion

A. Israel Cannot Apply Its Domestic Penal Law to Occupied Territory

The law of belligerent occupation, as codified in the Hague Regulations of 1907 (Article 43) and the Fourth Geneva Convention (Articles 64–78), imposes strict constraints on the legislative authority of an occupying power. Article 64 of the Fourth Geneva Convention permits the occupying power to enact penal legislation only to the extent "*essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain orderly government of the territory, and to ensure the security of the Occupying Power.*" This authority is inherently limited and does not extend to the wholesale importation of the occupying power's domestic criminal code into the occupied territory. What the legislation effects, in substance, is *the application of enemy criminal law* to a protected population under occupation.

The ICJ's Advisory Opinion of 19 July 2024 found Israel's entire occupation of the Palestinian territory to be unlawful, ordering rapid withdrawal and declaring all States obligated not to recognise or assist the illegal situation. The Knesset's enactment of legislation directing the military commander of the West Bank to amend the Order Regarding Security Provisions-thereby introducing a death penalty de facto applicable exclusively to Palestinian residents-constitutes the extraterritorial application of Israeli domestic law to occupied territory. This is precisely the type of legislative annexation that the ICJ condemned as incompatible with the legal framework governing occupation.

B. Article 68 and the Death Penalty in Occupied Territory

Article 68 of the Fourth Geneva Convention restricts the imposition of the death penalty on protected persons in occupied territory to cases where the offence constituted a serious threat to the security of the occupying power, *provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began***.** Palestinian law applicable in the West Bank does not provide for the death

penalty for the offences contemplated by this legislation. The introduction of capital punishment for offences not previously carrying the death penalty in the occupied territory is therefore a direct violation of Article 68.

Crucially, Article 68(2) further requires that courts draw particular attention to the fact that the accused, as a non-national of the occupying power, *"is not bound to it by any duty of allegiance."* This provision reflects a foundational principle of occupation law: a protected person under occupation has no duty of loyalty to the occupying power. The law's framing of potential resistance activities as 'terrorism' aimed at 'negating the existence of the State of Israel' seeks to impose precisely such a duty of allegiance, in direct contravention of Article 68(2).

C. Article 147: Denial of Fair Trial as a Grave Breach

Article 147 of the Fourth Geneva Convention defines "*wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention*" as a grave breach-constituting a war crime. The legislation systematically dismantles fair trial guarantees: it establishes a quasi-mandatory death penalty removing judicial discretion; permits death sentences by simple majority without prosecutorial request; prohibits commutation or pardon by the military commander; requires execution within 90 days of final verdict; restricts access to legal counsel to two attorneys; and cloaks the entire execution regime in secrecy with blanket immunity for executioners. In the context of military courts that maintain a conviction rate exceeding 99% for Palestinians - overwhelmingly based on confessions extracted under torture and other forms of coercive interrogation. These provisions render any resulting death sentence inherently arbitrary. The imposition of such sentences therefore constitutes a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute.

III. International Covenant on Civil and Political Rights

A. Right to Life (Article 6)

Article 6(1) of the ICCPR provides that "*every human being has the inherent right to life" and that "no one shall be arbitrarily deprived of his life.*" Article 6(2) permits the death penalty only for "*the most serious crimes,*" which the Human Rights Committee has interpreted restrictively to mean crimes involving intentional killing. While Israel's death penalty law prohibits pardon*, the* ICCPR *provision (Article 6) further affirms that "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence," and that such relief "may be granted in all cases.* Even where permissible, the death penalty must comply with all procedural safeguards.

The Human Rights Committee's General Comment No. 36 (2018) on Article 6 establishes that:

(i) The mandatory or quasi-mandatory imposition of the death penalty, without consideration of the defendant's personal circumstances or the particular circumstances of the offence, constitutes an arbitrary deprivation of life. The legislation establishes death as the default sentence, permitting life imprisonment only where the court records "special reasons"-a quasi-mandatory framework that the UN Committee Against Torture has explicitly found to constitute arbitrary deprivation of life.

(ii) The creation of new offences carrying the death penalty is impermissible for States that are moving toward abolition. Israel has not carried out the death penalty since 1962 and has co-sponsored UN resolutions calling for a moratorium on executions. The introduction of new capital offences is a retrograde step inconsistent with Article 6(6)'s requirement to move toward abolition.

(iii) Vague or overly broad definitions of offences carrying the death penalty render their application arbitrary. The civil court track imposes the death penalty on those who cause death "with the aim of negating

the existence of the State of Israel"-a formulation with no precedent in Israeli criminal law, no objective criteria, and no established jurisprudence. This ideological requirement functions as a legal filter targeting nationalistic motives attributed to Palestinians while exempting Israeli citizens whose acts of violence are not legally categorised as a rejection of the state's existence, therefore rendering the law an apartheid law.

B. Non-Discrimination and Equality (Articles 2 and 26)

Article 2(1) of the ICCPR requires each State party to respect and ensure the rights recognised in the Covenant "without distinction of any kind, such as race, colour… national or social origin." Article 26 guarantees equality before the law and equal protection of the law. The legislation is discriminatory on its face: the military court track explicitly excludes Israeli citizens and residents from its application. In the words of the bill's sponsor, MK Limor Son Har-Melech: "There is no such thing as a Jewish terrorist" and "the death penalty should not be applied to Jews." As the Human Rights Committee has stated, "Discrimination in the application of the death penalty is contrary to articles 2(1), 6 and 26 of the ICCPR."

C. Fair Trial Guarantees (Article 14)

Article 14 of the ICCPR guarantees, inter alia, the right to a fair and public hearing by a competent, independent, and impartial tribunal; the presumption of innocence; adequate time and facilities for the preparation of a defence; and the right to examine witnesses. General Comment No. 36 emphasizes that any violation of fair trial guarantees renders a subsequently imposed death sentence arbitrary and unlawful. Customary international law places strong emphasis on the irreversibility of executions, especially where due process violations, lack of access to legal representation, or concerns over the independence and impartiality of the judiciary may arise. In such circumstances, even a judicially imposed death sentence is rendered arbitrary deprivation of life, prohibited under international law. Israeli military courts systematically fail these standards: they apply harsher maximum punishments than civilian courts; impose longer pre-trial detention periods; deny timely access to legal counsel; rely on secret evidence; fail to translate evidentiary materials into Arabic; and apply overly broad definitions of offences. The bill further degrades these guarantees by removing the requirement for prosecutorial request, eliminating unanimity, and truncating the execution timeline to 90 days.

IV. Convention Against Torture

Israel remains legally bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), having ratified the treaty on 3 October 1991. As a State Party, Israel is subject to the absolute prohibition of torture under Article 2 of CAT and has an obligation to investigate, prosecute, and punish acts of torture. These obligations are non-derogable and apply at all times, including during the criminal investigation and sentencing phases of a trial. The Convention Against Torture (CAT) is engaged on two fronts. First, Article 15 of CAT prohibits the use of any statement obtained through torture as evidence in proceedings. It is extensively documented that Palestinians suspected of "security offences" are routinely subjected to interrogation by the Israeli Security Agency (Shin Bet) involving physical violence, stress positions, sleep deprivation, humiliation, threats, and other forms of coercive treatment designed to extract confessions. The Public Committee Against Torture in Israel, Physicians for Human Rights Israel, and the UN Committee Against Torture have all documented these practices. In military courts where convictions exceed 99% and are overwhelmingly based on confessions, it is virtually certain that death sentences would be imposed on the basis of evidence obtained through torture.

Second, international human rights jurisprudence increasingly recognizes the death penalty itself as constituting cruel, inhuman, or degrading treatment in violation of the absolute prohibition of torture. The

UN Committee Against Torture has specifically noted that hanging as a method of execution "exacerbates the cruelty" of the death penalty. The legislation mandates hanging as the sole method of execution, with executions to be carried out within 90 days in a regime of secrecy, restricted counsel access, and blanket immunity-a framework that maximizes the suffering and indignity of the condemned.

The report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, submitted to the General Assembly in 2022 (A/77/270), warns that torture may occur *before* a death sentence is imposed: "*torture can be carried out before an individual receives a death sentence; numerous submissions were made concerning the treatment of individuals being accused of a capital offence, including a lack of access to legal representation and the use of torture and ill-treatment to elicit forced confessions*."[1]. Such circumstances substantially heighten the risk that death sentences may be based on *coerced or unreliable* evidence. This legal tension has long been recognised by human rights bodies. In 2012, Special Rapporteur on Torture Juan E. Méndez argued that capital punishment must be evaluated through the lens of the absolute prohibition of torture, which reflects an emerging customary norm.[2] Likewise, former Rapporteur Mr. Wako stressed that the prohibition of torture applies *"throughout the process leading to capital punishment and in all aspects thereof."*[3] The inherent cruelty of capital punishment has been increasingly scrutinised under international law through the lens of torture and cruel, inhuman, or degrading treatment or punishment (CIDTP). This scrutiny extends beyond the physical act of execution to encompass the entire process: prolonged periods on death row, solitary confinement, lack of adequate medical care, and the psychological torment associated with the so-called "*death row phenomenon*." The Human Rights Committee (General Comment No. 20) and various regional human rights courts, including in *Soering v. United Kingdom* (ECtHR), have recognised that such conditions can amount to CIDTP. As international legal scholar William Schabas incisively observed: "If you were to connect someone to electrodes and put jolts of electricity through them to get a confession, that would be torture and a violation of article 7 [of the International Covenant on Civil and Political Rights], unless you turned up the current enough to kill them, which would be okay. That is the paradox of dealing with the death penalty."[4] All of these reveals that the processes leading to death penalty simultaneously involve violations of prohibiting torture under any circumstance.

V. The Right of Self-Determination and the Right to Resist Occupation

A. No Duty of Allegiance to the Occupying Power

A foundational principle of the law of belligerent occupation is that the occupied population retains its political identity and owes no allegiance to the occupying power. The right of self-determination, enshrined in Article 1 of the ICCPR, Article 1 of the UN Charter, and numerous General Assembly resolutions, is a peremptory norm (*jus cogens*) of international law. The Palestinian people's right to self-determination has been specifically affirmed by the ICJ in the *Wall Advisory Opinion* (2004) and the *Occupation Advisory Opinion* (2024).

[1] https://digitallibrary.un.org/record/3987211/files/A_77_270-EN.pdf, p15.
[2] https://docs.un.org/en/A/67/279, para. 74.
[3] https://docs.un.org/en/E/CN.4/1984/29, para. 22-23.
[4] William Schabas, "International law and the abolition of the death penalty", in Comparative Capital Punishment, Carol S. Steiker and Jordan M. Steiker, eds. (Cheltenham, United Kingdom, and Northampton, United States, Edward Elgar Publishing, 2019).

B. Resistance Under International Law

Under international humanitarian law, a population under occupation, domination, and colonial exploitation has no obligation to submit to the occupying power. General Assembly Resolution 3246 (XXIX) of 1974 reaffirmed "*the legitimacy of the struggle of peoples for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle*." While the scope and modalities of this right remain debated, the underlying principle is well established: the occupied population has a right to resist, and activities directed at achieving self-determination cannot lawfully be criminalised by the occupying power as "terrorism" through the securitisation politics.

The legislation's civil court track imposes the death penalty on those who cause death "with the aim of negating the existence of the State of Israel." This formulation *deliberately conflates legitimate self-determination activities with existential threats to the state,* providing a legal mechanism to classify all forms of activities Palestinian national liberation-including acts of self-defence against an illegal occupation-as capital offences. The purpose is transparent: to suppress and silence resistance to occupation through the threat of execution. This constitutes the use of capital punishment as an instrument of alien domination, colonial subjugation and political repression, which is categorically prohibited under international law.

VI. Contextual Analysis: The Law as Part of a Systematic Policy

The death penalty law does not stand in isolation. It is the legislative capstone of a systematic policy that includes: 81 documented deaths in custody bearing forensic hallmarks of torture and summary execution since October 2023; approximately 9,500 Palestinians in detention, including children and women; the administrative detention regime operating without charge or trial; the systematic use of torture in interrogation by the Israeli Security Agency; the deliberate starvation of 2.3 million persons in Gaza, documented by the ICC as a war crime; the destruction of 92% of housing stock in Gaza; and the imposition of a military exclusion zone encompassing 60% of the Gaza Strip.

The UN High Commissioner for Human Rights Volker Türk stated on 2 January 2026 that "draft proposals for the death penalty for Palestinians must be dropped," warning that the legislation risks entrenching "an already lethal system." The Parliamentary Assembly of the Council of Europe expressed "deep concern" on 18 March 2026, warning that the legislation "runs counter to the global trend toward abolition and presents serious risks of discriminatory application."

VII. The Imperative for the Global Sumud Flotilla

The Global Sumud Flotilla is not a symbolic gesture; it is a lawful and urgent response to an unlawful order of genocide, siege, starvation, torture, and racialised execution. In the face of a blockade that deepens genocidal conditions and a death penalty regime designed to operate through discrimination, coerced confessions, and the denial of elementary judicial guarantees, the necessity of action is neither rhetorical nor optional. The Flotilla gives concrete expression to the obligations imposed by international humanitarian law and to the refusal of humanity to remain passive before the destruction of a protected people. Every day that the blockade continues, mass suffering is intensified; every day that this law remains in force, Palestinian detainees remain under the threat of execution by an arbitrary and abusive legal system. The boats will sail because Sumud is not only a Palestinian virtue, but steadfastness in the face of annihilation is a legal, moral, and human demand, an obligation against complicity with injustice.

VIII. Conclusions

1. The extraterritorial application of Israeli domestic penal law to the occupied West Bank is unlawful under the law of belligerent occupation and the ICJ's 19 July 2024 Advisory Opinion. The Knesset has no authority to direct the military commander to introduce capital punishment for offences not previously punishable by death under the law of the occupied territory.

2. The denial of fair trial guarantees-including quasi-mandatory sentencing, elimination of prosecutorial discretion, restricted counsel, and a 90-day execution timeline-in military courts with a 99% conviction rate for Palestinians based predominantly on coerced confessions constitutes a grave breach of the Fourth Geneva Convention and a war crime under Rome Statute Article 8(2)(a)(vi).

3. The law's racially discriminatory design-explicitly excluding Israeli citizens from the military court track and applying the "negating the existence of the State of Israel" criterion exclusively to Palestinians-violates the right to life (Article 6), non-discrimination (Article 2), equality before the law (Article 26), and fair trial guarantees (Article 14) of the ICCPR.

4. Under General Comment No. 36, the quasi-mandatory death penalty and vague criteria constitute arbitrary deprivation of life. The creation of new capital offences contravenes the obligation to move toward abolition.

5. The virtual certainty that death sentences will be based on confessions obtained through torture violates CAT Article 15. The method of execution (hanging), the secrecy regime, and the restricted safeguards independently violate the prohibition on cruel, inhuman, and degrading treatment.

6. The occupied population has no duty of allegiance to the occupying power and retains the right to resist. The classification of self-determination activities as "terrorism" aimed at "negating the existence of the State of Israel" is an unlawful suppression of the right to self-determination-a jus cogens and erga omnes norm.

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