



Article

The Speicher Massacre Between International and Iraqi Law

Mohammed Hassan Khalid

1. Islamic University of Lebanon

* Correspondence: Hmag462@gmail.com

Abstract: This study addresses the position of international law and Iraqi law concerning the Speicher crime committed by the terrorist organization ISIS in 2014, in which more than (1700) military students were martyred at the Speicher base in Salah Al-Din Governorate. The study will define the nature of this crime in accordance with the international standards stipulated in the Rome Statute of the International Criminal Court, as well as under the applicable Iraqi laws, including the International Criminal Court Law No. (12) of 2005, the Law on the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime No. (12) of 2019, and the Anti-Terrorism Law No. (13) of 2005, without neglecting to review the elements of this crime and compare them to the criteria for international crimes.

Keywords: Speicher, Salah Al-Din Governorate, International Criminal Court Law

1. Introduction

The terrorist organization ISIS has committed many crimes against the Iraqi people in all its components and sects, whether they are Muslims or other Christians and other local communities such as Shabaks, Kakais, Yazidis and Turkmen, as the first crimes were the massacre of Speicher Air Base, in which members of the terrorist organization ISIS committed mass murders of military students and affiliates in June 2014, as well as crimes committed in and around Badoush prison near Mosul in June 2014, not to mention the use of chemical and biological weapons in The village of Taza Khurmatu in March 2016 [1], [2].

as well as crimes committed against Yazidis in August 2014. Thus, the multiplicity and diversity of crimes committed by the terrorist organization ISIS against the Iraqi components is evident, and the Turkmen come after the Yazidis in the nature of the violations directed against them, which were represented by committing many forms of genocide in Mosul and Kirkuk, including the siege of Turkmen civilians in the city of Amerli, the killing of civilians and the enslavement of women [3].

Based on the above, collective and individual criminal responsibility arises for the crimes committed by ISIS, as those who perpetrated them are subject to international and national criminal justice due to violations of international law, in accordance with what is stated in the Rome Statute of the International Criminal Court of 1998, while respecting the principle of complementarity.

In other words, the crimes committed by ISIS fall under a dual standard, which is the possibility of subjecting them to national courts, in addition to the jurisdiction of the International Criminal Court to consider them, as they are regarded as international crimes [4]. However, this opinion has not been unanimously agreed upon; while some

Citation: Khalid, M. H. The Speicher Massacre Between International and Iraqi Law. American Journal of Social and Humanitarian Research 2025, 6(7), 1894-1905

Received: 15th Apr 2025

Revised: 29th May 2025

Accepted: 17th Jun 2025

Published: 27th July 2025



Copyright: © 2025 by the authors. Submitted for open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license

(<https://creativecommons.org/licenses/by/4.0/>)

have classified the crimes committed by ISIS as crimes against humanity, others have considered them acts of genocide, while still others have regarded them as terrorist crimes [5]. This has led to a difference in the elements of the crime that must be present in these acts committed by the terrorist organization, especially when Iraqi law is intended to be applied to them. The significance of the study lies in the seriousness of these crimes committed by ISIS on international peace and security, as well as constituting serious violations of international humanitarian law. For this reason, some have described them as the most heinous crimes of our time that humanity has faced in Iraq and the Levant [6], [7], [8].

The study's issue lies in reviewing the legal classification of crimes committed by the ISIS terrorist organization, particularly the crime of Speicher, an examination of the elements of these crimes, and a demonstration of the extent to which national standards for criminalizing these acts in Iraq align with international standards, to achieve this, we will divide this research into the following two sections:

2. Materials and Methods

Section One: Definition of the Speicher crime and its elements.

Section Two: The extent of the legal classification of the Speicher crime's alignment with international standards.

The first topic Definition of the Speicher crime and its elements
The crimes of genocide and crimes against humanity committed by the terrorist organization ISIS varied, and perhaps it is not an exaggeration to say if we describe the crimes of the terrorist organization ISIS regarding the crime of Speicher or the crimes committed against the Yazidis in Sinjar in 2014 as one of the most severe crimes and grave violations committed by the terrorist organization ISIS, as they were characterized by gravity in terms of losses, as well as the large number of terrorists involved in their implementation.

In order to identify these crimes and their pillars, we will address this in the following two sections:

The first branch Definition of the Speicher Crime

The names given to the Speicher crime have varied, including (the crime of the presidential palaces in Salah Al-Din), or (the crime of Air Force students), or (the crime of Speicher Base). Meanwhile, the official designation adopted by the Iraqi legislator, represented by the House of Representatives, is (the martyrs of the crime of the martyr pilot Majid Al-Tamimi).

The Speicher crime is considered one of the most dangerous crimes committed by the terrorist organization ISIS in Iraq. We may not exaggerate if we describe this crime as (the crime of crimes) or (the crime of the age), due to the direct threat it posed to the lives of both military and civilians alike. It can also be described as one of the most heinous international crimes, given the extreme levels of brutality and violence inflicted upon the members of the armed forces in Tikrit. Therefore, it meets the standard of relative gravity, which is intended to determine the jurisdiction of international criminal courts in addressing the most serious and cruel crimes.

On June 12, 2014, the terrorist organization ISIS captured soldiers in the 18th Division of the Iraqi Army assigned the duty of protecting the oil pipeline linking Baiji to the Ain Al-Jahsh fields area in Mosul at Speicher Air Base from Iraqis, after the terrorist organization ISIS took control of the city of Tikrit, and then they took the prisoners to the presidential palaces in Tikrit, and then they killed them by firing squad at times, while they buried some of them alive. At other times.

Despite the success of some soldiers in escaping from the site of the massacre in the presidential palaces to the Al-Alam district area, which did not fall to the terrorist organization until June 24, 2014, as well as receiving them from the Jabour tribe and securing wheels and documents to escape from the controls of the terrorist ISIS, these transformers did not survive, and then they fell into the hands of the terrorist organization. The number of victims of the Speicher base massacre, according to the statistics of the Iraqi Ministry of Health, reached (1942) martyrs and missing, as the

province of Babil occupies the first place in the number of martyrs, followed by the province of Dhi Qar, and ends with the province of Anbar, which has (2) martyrs. Referring to the testimonies of the surviving witnesses, it is clear that the martyr soldiers had previously volunteered to form the leadership of the new reconnaissance squad from all governorates, and the unit was moved from Dhi Qar on June 8, 2014 to head to the reconnaissance command within the Salah al-Din operations cutter, and indeed the force was assembled by the commander of Salah al-Din operations (Colonel Ayoub Musa Ali), and the gathering was repeated again at about ten o'clock on the night of the eleventh of Hazir, the unit consisting of (3000) moved. Three thousand soldiers to the Speicher base, without being equipped with any weapons on the one hand, and without being informed of the fall and occupation of the provinces of Mosul, Salah Al-Din and the surrounding areas by the terrorist organization ISIS, Due to the lack of radios, televisions or telephones, on June 12, 2014, the force was regrouped under the command of the Salah Al-Din operations commander, and the order to withdraw was given as a convoy to Baghdad, leaving the base in civilian clothes, and leaving identities as the road was secured. In implementation of this military order, the soldiers rode cars, whose drivers turned out to be in advance with the militants of the terrorist organization ISIS to hand them over to them, and one of the witnesses showed that the cars were stopping every time without knowing the reasons for that, and indeed they handed them over and blindfolded them and rode them and dropped them off in one of the presidential palaces, after the militants left Salah al-Din University, and told the captured soldiers that Colonel Ayoub was the one who ordered their transfer to Samarra and then Baghdad, and as a result of deception and fraud they were taken by force of arms To the presidential palaces area, and they were detained for an hour, to be interrogated under the force of threats and beatings, and chanting slogans, and ended up giving the order to kill all soldiers of the Shiite sect, leaving only (150) captured soldiers were taken before the Sharia Court, which is headed by a Sharia judge, a prosecutor and a lawyer standing behind them swordsman, Then they began the investigation by asking about the tribe and the sect, and their detention continued for five days until (Abu Bakr al-Baghdadi), the leader of the terrorist ISIS, issued a pardon for the Sunni prisoners, and then they were released and dropped off in the middle of Tikrit.

The second branch

The elements of the Speicher crime:

The elements of international crime do not differ. The crimes committed by the terrorist organization ISIS in Speicher are distinguished from other elements of international crimes. In this regard, there are differing legal opinions regarding the definition of the elements of the Speicher crime as crimes against humanity among several views.

The first opinion defines the elements of the international crime as two components: the material and moral components.

The second opinion identifies the elements of the crime as consisting of four components: the material, moral, international, and legal components. A contemporary viewpoint adds the concept of 'relative weight'. As the basic condition for the International Criminal Court to exercise its jurisdiction regarding the initiation of investigations.

First: the material element: The material element generally refers to the tangible external activity that expresses the criminal behavior committed by the perpetrator. The legislator often determines it based on the principle of criminal legality .In other words, the material element is represented. By behavior or physical activity that has a tangible effect and appearance in the external world, which occurred during periods of armed conflict or peace.This section consists of three elements: behavior, the criminal outcome, and the causal relationship between them. The criminal behavior is represented by the perpetrator engaging in any positive or negative action that results in the loss of a living person's life. Therefore, positive behavior includes doing an act prohibited by law that leads to death, such as committing the acts specified in Article 8/2/a of the Rome Statute like premeditated murder, while negative behavior is represented by an individual refraining from performing an action required by law, as in the case of deliberately

delaying the return of prisoners, or ISIS surrounding areas in Mosul and Amerli, which led to the deaths of many citizens due to a severe shortage of medicine or essential food supplies. Applying this to the Speicher massacre, we find that the criminal behavior was represented by the ISIS terrorist organization committing numerous positive acts that resulted in the death of more than 1,700 military personnel, taking the form of shooting at victims and killing them one by one. Thus, the crime is considered to be fulfilled regardless of the type of weapon used, whether it is a rifle, a pistol, or others, as shown in the video clips. This indicates that it was committed within the context of a widespread or systematic attack. The concept of the criminal result relates to the changes in the external conditions that existed prior to the commission of the crime, which is manifested in the taking of a human life, which represents the killings in the Sayyidah massacre and the throwing of the body into the Tigris River. It is noteworthy in this regard that the Sayyidah massacre is also considered to be fulfilled concerning the survivors of the massacre, based on the provisions of paragraph (3/w) of Article (25) of the Rome Statute, which established that international responsibility is achieved even in the case of attempted crime, and the same provision applies to Article (30) of the Iraqi Penal Code. The causal relationship refers to the existence of a link between the conduct and the result, meaning that if it were not for the conduct, the result would not have occurred, without the requirement that the killing occurs directly or is delayed to a later time. Therefore, the causal link is present in the event of the explosion of landmines previously planted by ISIS in many neighborhoods of the old city of Mosul, resulting in the death of innocent people.

Applying the foregoing to the Speicher crime, we find that there was a causal link between the capture and shooting of soldiers by members of the terrorist organization, and the death was achieved, as the killing was carried out by the ISIS militants directly.

Thus, it can be said that in a grave breach, the conduct committed must constitute one of the internationally prohibited acts stipulated in the statutes of the International Criminal Tribunals or the rules of evidence and procedures complementary to it, without requiring the restriction of the commission of such conduct prohibited by the State only, in light of the expansion of international criminal law in a way that allows the criminal responsibility of individuals when they commit international crimes, including grave violations.

Secondly: the moral element (criminal intent)

It refers to the mental relationship that connects criminal behavior with the will of the perpetrator, meaning: the intent of the actor towards the act and the crime result simultaneously. Thus, there is no difference between the criminal intent in international crimes and that in national criminal law. It is worth noting the diversity of forms and shapes of criminal intent in serious violations, as it may take the form of intentional intent, meaning: that the perpetrator knows the illegality of his act and aims to commit the serious violation and its consequences, which is death, and is accepting of this outcome.

Applying the above to the crime of Speicher, we find that the members of the terrorist organization ISIS know that the behavior committed by them leads to the loss of life, in addition to that they are already carrying out a large-scale and systematic attack, in addition to the ISIS militants' will to conduct and the criminal result, which was achieved by throwing live bullets at military personnel, intending to cause the result of the crime, which is death. In other words, the intentional murder committed by members of the terrorist organization Daesh as a crime against humanity was achieved in the Speicher crime, as the existence of criminal intent represented by the elements of knowledge and will, as well as the filming and broadcasting of scenes of murder by members of the organization, give a clear indication that Speicher's crime is considered an intentional crime.

The second form of the moral element is the probabilistic intent, i.e., the perpetrator expects the criminal outcome that may occur or not, and at the same time accepts it if it occurs.

3. Results and Discussion

It is clear that determining whether the crime is intentional or not is the responsibility of the judge, who considers both the material and personal aspects of the crime, meaning the significance of the violated interest and the moral element represented by the perpetrator's fault [9].

Thirdly: The international element: It refers to the commission of acts directed against humanity, which are carried out based on planning by one of the warring states or armed groups, whether the execution is by an individual or bodies affiliated with one of them or by other individuals not affiliated with the state, such as militias against civilians and protected entities [10], [11]. By applying the above to the Speicher crime, we find that it is possible to classify the armed conflict with the terrorist organization ISIS as a non-international armed conflict, based on Article 3 common to the four Geneva Conventions, or based on the provisions of Additional Protocol II of 1977.

We conclude from the above that it is necessary to threaten international peace and security regardless of the perpetrator of the crime in order to fulfill the international element, in addition to the necessity for the interest being violated to be among the elements covered by the protections stipulated in the Rome Statute [12].

Fourth: The Legal Pillar: The legal pillar refers to the existence of a legal text that enshrines the principle of legality of crime and punishment. Its concept extends to the necessity of defining acts of crimes against humanity according to an international legal rule, whether it is stipulated in international treaties or recognized by international customary law [13]. This is due to the existence of many prohibited behaviors that have derived their criminal character directly from international custom [14].

Thus, it is not enough for a behavior to merely violate an international rule in order to assert the principle of legality; it must also be verified that this rule is considered one of the rules of criminalization under customary law. This is due to the customary nature of international criminal law, as international customary law is considered a source of international law. Therefore, the judge must also refer to it to determine the legality of the act [15], [16], [17].

Article (22) of the Rome Statute has confirmed this element, while Article (23) has embraced the principle of no punishment except by law [18].

Based on the above, for the possibility of investigating crimes against humanity to take place, it must be stipulated in the Rome Statute, in addition to the four Geneva Conventions and their additional protocols, or other international instruments or international customary law [19], [20]. Upon reviewing the legal systems, we found no explicit provisions that assume knowledge of the law or ignorance of it, except for what is stated in paragraph (2) of Article (32) of the Rome Statute, which states that the court does not recognize mistakes in law or ignorance of it, except in two cases: if it results in the absence of the moral element, or if the crime was committed in compliance with an order he received from a higher military or civilian authority [21].

Despite the clarity of the aforementioned elements, some legal scholars have argued that certain additional conditions must be met in order to confer legal qualification on acts that constitute crimes against humanity. These conditions include: the criminal act must be specifically defined in Article 7 of the Rome Statute, it must be part of a policy pursued by the state, and its impact must be extensive, meaning that it should be committed on a large scale or in a systematic manner [22]. Thus, it becomes clear that the political element is the decisive factor in determining jurisdiction, as it transforms the legal characterization of the crime from a national level to an international one; hence, it is considered the fundamental and essential element of this crime [23].

In conclusion, despite the absence of a clear text in the Rome Statute that criminalizes the acts committed in the Speicher massacre, and especially in light of the lack of consensus in the international community on a unified legal characterization of the crimes committed by the terrorist organization ISIS, we see that the legal element is present in the Spiker crime as it is considered intentional murder directed against humanity. Furthermore, the acts committed by members of the terrorist organization ISIS in Speicher

are classified as murder with a terrorist nature, and thus the provisions of the Iraqi Anti-Terrorism Law No. (13) of 2005 apply to them [24], [25].

The Second Requirement

The Extent to Which the Legal Classification of the Speicher Crime Complies with International Standards

We have previously demonstrated that the murder of military cadets at Camp Speicher is one of the most serious and grave violations committed by the terrorist organization ISIS in Iraq [26]. It was characterized by the use of brutal and illegal methods in the killings, to the point that the organization involved many children in carrying out this crime. Furthermore, the organization resorted to filming the killing scenes in detail and broadcasting them on websites to arouse international, regional, and local public opinion [27].

Thus, the legal classification and characterization given to this heinous crime has varied. Some consider it a crime of genocide, while others consider it a crime against humanity, while others consider it a war crime. In order to determine the nature of the Speicher crime, in light of the criminal gravity presented by the terrorist organization, jurisprudential opinions regarding its legal characterization or classification have been divided among several opinions [28]. This is in addition to the differing positions of the international community on this crime, which we will address in the following sections:

Section One

The Position of Iraqi Jurisprudence on the Legal Characterization of the Speicher Crime

From an examination of the opinions of Iraqi jurisprudence, we find that there has been no agreement on a unified legal nature regarding the legal characterization or classification of the Speicher crime. We summarize them as follows:

First: The first opinion: Those who hold this opinion believe that the Speicher crime constitutes a crime of genocide based on the provisions of paragraph (a) of Article (6) of the Rome Statute, which criminalizes the killing of members of the group [29], [30]. This was demonstrated by the terrorist organization ISIS's killing of more than 1,700 soldiers by shooting them, throwing their bodies into the Tigris River, and the mass burial of others, with the aim of inciting sectarian strife in Iraq.

Despite the sound foundations upon which this opinion is based, namely its reliance on the provisions of Article 6(a) of the Rome Statute, it cannot be accepted in its entirety for several reasons:

- a. The Republic of Iraq has not acceded to the Rome Statute of the International Criminal Court, and the failure to provide evidence of Iraq's acceptance of the jurisdiction of the ICC, rendering the legal description practically useless.
- b. The aforementioned opinion conflicts with the Iraqi legislative system, as there is no explicit constitutional or legal text obligating Iraqi judges to apply the Rome Statute. Article (8) of the Constitution of the Republic of Iraq of 2005 is sufficient to oblige Iraq to respect international obligations. As long as the Council of Representatives has not issued a law mandating Iraq's accession or ratification of the Rome Statute, it is impossible to accept and apply this opinion by judges considering ISIS crimes in general and the Speicher crime in particular.
- c. It was established that, for international criminal responsibility for the crime of genocide to be established, both general and specific intent are required. The facts and actions of the crime do not conclusively and categorically indicate that the terrorist organization ISIS possessed specific criminal intent, which is "the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such." We have previously demonstrated that the terrorist organization did not target one group over another, but rather its criminal acts extended to all Iraqi groups and minorities alike, without discrimination, whether in Mosul, Anbar, Salah Al-Din, or Baghdad [31].
- d. What supports the not-considering-the-Campaign-Charge-of-Genocide is the practical judicial applications in Iraq of ISIS leaders. The practical reality of the trials conducted before the Central Criminal Court regarding the Speicher crime indicates the stability of all rulings and decisions issued to convict the accused, in accordance with the

provisions of Anti-Terrorism Law No. (13) of 2005, considering them terrorist crimes. In addition, the lack of specific criminal intent, which is the intent to destroy, in whole or in part, a national, ethnic, or religious group as such, supports the failure to consider the Speicher massacre a crime of genocide, especially in light of the multiplicity of Iraqi groups against which ISIS has committed crimes and violations.

Second: The Second Opinion:

In light of the above-mentioned criticisms, the second opinion argues that although the Council of Representatives and the Iraqi government consider the Speicher massacre a crime of genocide in accordance with Security Council Resolution No. 2370 of 2017, it also argues that determining whether the Speicher base crime should be investigated by either the International Criminal Court or Iraqi courts requires that the aforementioned crime be classified as a crime within any type of crime that falls within the jurisdiction of the two courts.

This opinion is criticized for not being based on sound legal foundations. On the one hand, the proponents of this opinion do not differentiate between procedural and substantive rules in the trial of perpetrators of the Speicher crime. Furthermore, this opinion explicitly conflicts with the provisions of Article (7) of the Martyrs' Rights Law No. (12) of 2019 of the Martyr Pilot Majid Al-Tamimi Air Base Crime, which states, "First: This crime shall be considered a crime of genocide or a crime against humanity after it has been proven before the competent courts." Thus, it is noted that the Iraqi legislator has not settled the legal classification of the Speicher crime, leaving it to the judiciary, as the body responsible for enforcing the law. Furthermore, the judiciary has not adhered to this characterization in many of its decisions, which have tended to consider it a terrorist crime. This makes it impossible to adopt this opinion based on the legal principle of "no interpretation of the text."

Third: The third opinion: Those who hold this view in Iraqi jurisprudence attribute a mixed character to the Speicher massacre. They describe the premeditated murders committed by ISIS as premeditated murders, a crime against humanity, due to the perpetrator's intentional intent to bring about the criminal outcome through his behavior. This demonstrates the presence of criminal intent, manifested in the organization's meticulous filming of the killing scenes and broadcasting them on the internet. At the same time, this view argues that the Speicher massacre is qualified as the killing of members of the group as a crime of genocide, because the terrorist organization ISIS shot them dead based on their sectarian affiliation, according to the websites that broadcast the crime.

Despite the soundness of the foundations upon which the proponents of this opinion relied, and the fact that this opinion finds support and legal cover in accordance with Law No. (12) of 2019 on the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime, it is practically impossible to adopt this opinion in its entirety for the following reasons:

- a. The impossibility of achieving the dual legal description: While crimes against humanity do not require a special criminal intent, as they require that the attack be committed within the framework of a systematic and widespread attack, we find, in contrast, that crimes of genocide require a special criminal intent, which is the intent to destroy, in whole or in part, a national or ethnic group as such. This makes it impossible to say that the dual legal classification of the two crimes is combined at the same time, as the presence of a special criminal intent transforms the Speicher crime into a crime of genocide.
- b. The aforementioned opinion has fallen into a clear contradiction, by classifying the Speicher crimes as international crimes (crimes against humanity or crimes of genocide), and at the same time classifying these crimes as premeditated murder that applies to the provisions of Article (405-406) of the Iraqi Penal Code No. (111) of 1969, so it did not take into account the issue of Iraq not joining the Rome Statute, in addition to ignoring the terrorist objective resulting from the commission of these crimes by ISIS.

- c. What supports the inaccuracy of the legal classification of this opinion is that it contradicts the judicial rulings followed by Iraqi national courts, represented by issuing criminalization and punishment decisions in accordance with the provisions of Articles (2) and (4) of the Anti-Terrorism Law No. (13) of 2005.

Fourth: The researcher's position on the legal classification of the Speicher crime:

Given the lack of comprehensiveness and inaccuracy of the aforementioned opinions, as well as their reliance on the texts of international conventions not ratified by the Republic of Iraq, which requires that they not be relied upon regarding the legal classification of the Speicher crime. In order to clarify the precise legal classification of this crime, we believe it is necessary to differentiate between the following two cases:

1. The first case: Legal classification according to the standards of international law:

The Speicher crime can be viewed from an international perspective as a crime against humanity, because it was committed within a broad, systematic framework that encompassed all members of the Iraqi people and their components, whether in Salah Al-Din, Mosul, or elsewhere, in addition to the lack of specific criminal intent. All members of the terrorist organization ISIS have the intention to target only the Shiite component and not other components and minorities. It is also possible to rely on the Law of the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime No. (12) of 2019 issued by the Iraqi Council of Representatives, noting that this description is nothing more than a guide, and is not binding on the judiciary, which the Constitution of the Republic of Iraq for the year 2005 approved its independence in the matter of legal classification and imposing the appropriate penalty in accordance with the texts of Articles (19/First), (87) and (88) of the Constitution of the Republic of Iraq for the year 2005.

2. The Second Case: Legal Qualification According to Iraqi Law:

At the national level, by referring to the Iraqi laws in force, a precise legal description of the Speicher crime is evident. This is due to the failure of the House of Representatives to issue a law authorizing Iraq's accession to the Rome Statute, with the aim of classifying the mass crimes committed by the terrorist organization ISIS as Speicher crime in accordance with the standards of international criminal law.

For our part, we believe that, despite the legal description of premeditated murder under Article (406) of the Penal Code No. (111) of 1969 applicable to the Speicher crime, we believe it is closer to being described as a serial terrorist crime. This crime is nothing more than a terrorist crime, and its perpetrator is subject to the provisions of the Anti-Terrorism Law No. (13) of 2005, as the primary and ultimate purpose of committing it is to spread terror and fear among the people.

The Iraqi judiciary has adopted this classification in numerous decisions issued by the Central Criminal Courts in Baghdad and the governorates. Section Two

1. The Security Council's Position on the Legal Classification of the Speicher Crime

The Security Council has not yet decided on the classification of crimes committed by the terrorist organization ISIS. Referring to Resolution No. 2379 of 2017, we find that while it condemns all violations of international humanitarian law, violations of international human rights law, and terrorist acts committed by the terrorist organization ISIS, it also expresses its determination to hold accountable those responsible for these acts, including those that may amount to war crimes, crimes against humanity, or genocide.

As for the Security Council, we find that there has been no unified legal classification of the crimes committed by ISIS in general, and the killing of soldiers at Camp Speicher in particular. Referring to Security Council Resolution No. 2170 of 2014, we find that it states: Condemns and condemns in the strongest terms the terrorist acts committed by the Islamic State in Iraq and the Levant (ISIL) and its violent extremist ideology, and its continued gross, systematic, and widespread violations of human rights and international humanitarian law.

2. Strongly condemns the indiscriminate killing and deliberate targeting of civilians, the commission of multiple atrocities, mass executions and extrajudicial executions, including of soldiers, the persecution of individuals and entire communities on the basis of their religious or ideological affiliation, the abduction of civilians, the displacement of members of minority groups, the killing and maiming of children, the recruitment and use of

children, rape and other forms of sexual violence, arbitrary detention, attacks on schools and hospitals, the destruction of cultural and religious sites, and the obstruction of people from enjoying economic, social, and cultural rights, including the right to Education, particularly in the Syrian governorates of Raqqa, Deir Al-Zor, Aleppo, and Idlib, and in northern Iraq, particularly in the governorates of Al-Ta'mim, Salah Al-Din, and Nineveh.

3. Recalls that widespread or systematic attacks against any civilian population on the basis of their ethnic, political, religious, or ideological background may constitute a crime against humanity, stresses the need to ensure that the Islamic State in Iraq and the Levant (ISIL), Jabhat Al-Nusra, and all other individuals, groups, undertakings, and entities associated with Al-Qaida are held accountable for human rights abuses and violations of international humanitarian law, and urges all parties to prevent such violations and abuses

Thus, the resolution clearly demonstrates that the international community is moving toward characterizing the acts and violations committed by ISIS as terrorist crimes at times, while at other times describing them as serious violations of international humanitarian law, and at other times describing them as extrajudicial executions. Conflicts persist regarding the legal classification of the crimes committed by ISIS in accordance with Security Council Resolution No. 2379 of 2017

which defined prohibited behaviors that constitute violations and constitute crimes

The crimes committed by the terrorist organization ISIS fall into three categories under international public law:

1. Violations of international human rights law.
2. Violations of international humanitarian law.
3. International terrorism.

We believe that crimes of the first and third categories fall within the jurisdiction of Iraqi national law, as the Central Criminal Courts established pursuant to order No. (13) of 2004 of the (dissolved) Coalition Provisional Authority have jurisdiction over them. This contrasts with crimes related to violations of international humanitarian law, including violations committed by the terrorist organization ISIS, which generally fall outside the jurisdiction of Iraqi courts, especially given that the Security Council resolution did not explicitly define their jurisdiction and legal status. Based on the above, two legal opinions differ on this matter, which we summarize as follows:

First: The first trend holds that most of the serious violations committed by ISIS did not fall within the scope of an armed conflict, as agreed upon in international instruments. Rather, they were intended to spread terror against civilians far from the battlefields. Furthermore, the structure was based on foreign elements who joined it through a secret global network.

He then described ISIS as a terrorist organization that must be combated, unlike other armed groups. Second: The second view holds that the occurrence of serious violations of international humanitarian law cannot be denied, and thus the mandate of the international criminal investigation to examine operations between ISIS and Iraqi government forces is thus unassailable. This view is based on the distinction between serious violations that amount to the most serious crimes at the international level, which fall within the jurisdiction of the International Criminal Court, and ordinary violations that do not fall within the jurisdiction of the Court, such as crimes of terrorism. This is despite numerous attempts to include these crimes in the Rome Statute, particularly what took place at the Conference of States Parties to the International Criminal Court in Kampala in 2010.

For our part, we support the second view, which sees the legal qualification contained in the Security Council resolution as accurate, particularly with regard to not granting a final, definitive description to ISIS's serious violations, which it referred to as "terrorist acts that may amount to war crimes, crimes against humanity, or genocide." This suggests that the Security Council has left the qualification of these acts to the international investigation team in light of the evidence and circumstances of the crimes committed. This is a commendable approach, given that it granted broad discretionary power to the

investigation team and national courts. Classifying grave violations as international crimes.

Section Three

The Position of Iraqi Law on the Speicher Crime

As for the position of Iraqi law regarding classifying violations committed by the terrorist organization ISIS, this is evident in the letter addressed by former Iraqi Foreign Minister Ibrahim Al-Jaafari to the Security Council, which stated, "We request assistance from the international community to benefit from international expertise in prosecuting the terrorist entity ISIS, and that the Republic of Iraq and the United Kingdom work to submit a single draft resolution, while maintaining Iraq's national sovereignty and jurisdiction, and respecting its laws during the negotiation and implementation stages of the resolution."

It is noteworthy that the content of the letter categorizes ISIS's crimes as crimes against humanity only, contrary to the practical reality, which indicates that ISIS has committed terrorist crimes and other crimes that amount to genocide and war crimes. This indicates a legislative deficiency in this matter. Thus, we see the inaccuracy of the legal classification of ISIS's crimes in general, and the Speicher massacre in particular, with regard to the official Iraqi position. We believe that the reasons for the deliberate reference to the different legal classification of these crimes are due to several reasons. The first is that the Iraqi government does not view the conflict with the terrorist organization ISIS as an armed conflict. The second reason is that the failure to refer to crimes of genocide is due to the difficulty of meeting the required elements of this crime, as referred to in the resolution.

It is worth noting that the House of Representatives enacted Law No. (12) of 2019 on the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime. Article (7) thereof provides a legal definition for the Speicher crime, stating that "First: This crime shall be considered a crime of genocide or a crime against humanity after it has been proven before the competent courts." Thus, it is noted that while practical reality indicates that investigating judges continue to impose the legal definition of a terrorist crime on the perpetrators of the Speicher crime, in accordance with Article (4) of the Anti-Terrorism Law No. (13) of 2005, we find, on the other hand, that this description is no longer consistent with the text of Article (7/First) of Law No. (12) of 2019 on the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime, which defines this crime as a crime of genocide or a crime against humanity. In light of this, we see a legislative vacuum emerging regarding the investigation and trial phases of ISIS crimes committed at Camp Speicher. It is notable that the Republic of Iraq has not acceded to the Rome Statute, on the one hand, and that the temporal jurisdiction of the Iraqi High Criminal Court cannot be expanded to include crimes committed after 2003, in order to claim that the Camp Speicher crime falls within the jurisdiction of this court. This is due to the absence of any explicit or implicit reference to amending the temporal jurisdiction of the court.

Section Four

The Extent of Consistency of National Standards for the Camp Speicher Crime with International Standards

While the Statute has established its position on international crimes, we find that the Iraqi legislature has not established an explicit position on this matter. This is clearly demonstrated in Article (7/First) of the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime No. (12) of 2019, which describes it at times as crimes against humanity and at other times as crimes of genocide. Based on the above, the procedures for initiating an investigation differ, as the general principle is that it is not permissible to initiate an investigation into an international crime except after collecting evidence and presenting the matter to the attention of the Pre-Trial Chamber, which has broad discretionary authority regarding accepting or rejecting the case, without prejudice to the right of the Public Prosecutor to submit a second request to reopen the investigation in the event that new facts or evidence emerge that require this in accordance with Articles (53) and (15/5) of the Rome Statute. As for the procedures for accepting the case and

initiating an investigation in Iraq into international crimes, the jurisdiction is vested in the investigating judge, and thus it becomes clear that the Iraqi legislator has adopted the Latin system in the accusation, and thus the approach of Iraqi law differs from the approach of the Rome Statute, which entrusted this task to the public prosecution, in addition to the difference in the scope of the Public Prosecutor's jurisdiction before the two courts

Furthermore, it is noteworthy that the international organization of international crimes differs from the national organization. While the Rome Statute specified the penalties that may be imposed, which are a maximum of life imprisonment, we find, in contrast, that the Iraqi Counter-Terrorism Law specifies the penalties that must be imposed on perpetrators of terrorist crimes, including the Speicher massacre and other crimes committed by the terrorist organization ISIS, with the death penalty by hanging.

4. Conclusion

After completing our study, we reached several conclusions and recommendations:

First: Conclusions:

1. We have become aware of the duality of the legal classification of the Speicher massacre. The Security Council, in Resolution No. (2379) of 2017, considered it "terrorist acts," or crimes that may amount to "war crimes," "crimes against humanity," or "crimes of genocide." In contrast, we find that the Iraqi legislator, in Law No. (12) of 2019, considers it to be crimes against humanity and crimes of genocide at times, while criminal courts continue to consider it to be terrorist crimes.
2. It became clear to us that Iraq's failure to join the Rome Statute increases the problems related to the elements of international crimes and their proof. This is due to the discrepancy between the rules of procedure and evidence collection before the International Criminal Court and the theory followed by Iraqi courts in their investigations, evidence collection, and investigations.
3. The elements of the Speicher crime, as an international crime, differ from the elements recognized in national law. This indicates that Iraqi law has not followed the same principles as international conventions and resolutions regarding the criminalization of acts committed by members of ISIS and the Speicher crime.

Second: Proposals:

We call upon the competent investigative judges to reconsider the legal classification of the crime committed by the terrorist organization ISIS regarding Speicher, considering it a terrorist crime punishable under the provisions of Article (4) of the Anti-Terrorism Law No. (13) of 2005. This is due to the explicit legislative definition of the Speicher crime by the Iraqi legislature in Law No. (12) of 2019. Therefore, it is necessary to avoid interpretation in the context of an explicit text. This requires the Council of Representatives to intervene to eliminate this legislative vacuum, by adopting one of two solutions:

1. Either amend Article (1) of the Supreme Criminal Court Law and expand its temporal jurisdiction to include all international crimes committed in Iraq, regardless of the time of their commission.
2. Or amend Law (12) of 2019 by repealing Article (7/First) thereof or by adding a new article that expands the jurisdiction and authority of the Iraqi Supreme Criminal Court to consider the Speicher crime.

REFERENCES

- [1] W. Shamsan, "International Humanitarian Law and the Legal Necessity for the Establishment of the International Criminal Court," First Annual Scientific Conference of the Faculty of Law at Beirut Arab University, International Humanitarian Law (Prospects and Challenges), Vol. 3, Al-Halabi Publications, Beirut, 2005, p. 203.
- [2] Law on the Rights of the Martyrs of the Martyr Pilot Majid Al-Tamimi Air Base Crime No. (12) of 2019, published in the Iraqi Gazette, Issue No. 4552, 26 Aug. 2019.

- [3] A A. Ne'mah Al-Fatlawi, T. N. Abdul, Means of Evidence in the Framework of International Criminal Investigation (A Legal Study Enhanced by the Jurisprudence of International Criminal Courts), Zain Legal Publications, Beirut, 2022, p. 251.
- [4] S. M. Al-Adly, International Crime, Dar Al-Fikr Al-Jami'i, Alexandria, 2004, pp. 66 ff.
- [5] A A. Al-Fatlawi, T. Nazim, Means of Evidence in the Framework of International Criminal Investigation, Zain Legal Publications, Beirut, 2022, p. 251.
- [6] H. Al-Saadi, Introduction to the Study of International Criminal Law, Al-Maarif Press, Baghdad, 1971, pp. 234-235.
- [7] Constitution of the Republic of Iraq, Article (19), 2005: "Second: There is no crime or punishment except by law..."
- [8] Iraqi Penal Code No. (111) of 1969, as amended, Article (29), 1969.
- [9] A A. Al-Qahouji, International Crime, Dar Al-Jamia Al-Jadida, Alexandria, 2007, p. 662.
- [10] M. H. Badr Al-Din, The Concept of Serious Violations of International Humanitarian Law, p. 613.
- [11] H. Al-Saadi, International Criminal Law, p. 306.
- [12] Statute of the International Criminal Court, Article (30), Paragraph (3).
- [13] M. H. Badr Al-Din, The Concept of Serious Violations of International Humanitarian Law, p. 614.
- [14] H. A. Abdel Khaleq, International Law, p. 197; L. Al-Mukhtar, International Law, p. 65.
- [15] M. M. Abd, "The Legal Characterization of ISIS Crimes," Journal of the Judicial Investigator for Legal and Political Sciences, vol. 1, 2018, p. 483.
- [16] M. H. Badr al-Din, The Concept of Serious Violations of International Humanitarian Law, p. 615.
- [17] H. Al-Saadi, International Criminal Law, p. 263; J. Pictet, International Humanitarian Law: Its Development and Principles, Dar Al-Mustaqbal Al-Arabi, Cairo, 2000, pp. 35 ff.
- [18] "Rome Statute of the International Criminal Court," Article (22): "A person shall not be criminally responsible under this Statute unless the conduct in question at the time of its commission involved a crime within the jurisdiction of the Court."
- [19] A A. Al-Fatlawi, T. N. Abdul, Means of Evidence in the Framework of International Criminal Investigation, p. 149-150.
- [20] M. S. Bassiouni, The International Criminal Court: Its Origins and Statute, 2020, p. 156.
- [21] M. J. Jado' Al-Abdali, The Jurisdiction of the International Criminal Court to Hold the Perpetrators of the Speicher Crime Accountable, Kitabat Al-Sanhouri, Beirut, 2015, p. 35.
- [22] K. S. Ghafoor, "The Trial of the Perpetrators of the Camp Speicher Crime According to Iraqi Laws or the Jurisdiction of the International Criminal Court," Jarmo University Research Center for Anfal Crimes and Genocide, Kurdistan Region - Iraq, 2021-2022, p. 44.
- [23] A R. Ragheef, The Criminal Responsibility of ISIS for Violations of International Humanitarian Law: Iraq as a Model, Al-Halabi Legal Publications, Beirut, 2021, pp. 137 and 142.
- [24] United Nations Security Council, Resolution No. 2379, 2017.
- [25] United Nations Security Council, Resolution No. 2170, 15 Aug. 2014, document S/RES/2170 (2014).
- [26] United Nations Security Council, Resolution No. 2379, 2017: "Requests the Secretary-General to establish an investigative team..."
- [27] M. D. Oberg, "The Absorption of Grave Breaches into War Crimes Law," International Review of the Red Cross, vol. 91, no. 873, Mar. 2009, p. 164.
- [28] United Nations, Seventh Report of the Secretary-General on the Threat Posed by ISIS, S/2018/770, 16 Aug. 2018.
- [29] United Nations, Letter from the Permanent Mission of Iraq to the United Nations, S/2017/710, 14 Aug. 2017.
- [30] Z. D. Kaufman, "The Prospects, Problems, and Proliferation of Recent UN Investigations of International Law Violations," Journal of International Criminal Justice, vol. 1, issue 20, Oxford University Press, 2018, p. 9.
- [31] M. G. Janaby, A. A. Al-Fatlawi, "The Legal Characterization of ISIS Crimes," p. 6.