



## THE PALESTINIAN PEOPLE'S RIGHT TO ARMED RESISTANCE FROM THE PERSPECTIVE OF INTERNATIONAL LAW

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### ABSTRACT

The occupation of the Palestinian Territory for over seven decades encompasses historical, political, and legal dimensions, intertwined with issues of peace and security. At its core, this conflict arises from the denial of a nation's right to self-determination and the establishment of an independent state. This article not only recounts pertinent events but also analyzes the central issue of self-determination. By affirming this right, the article explores the right to resist and combat the occupying forces, examining the interplay between self-determination and the right to resistance. Additionally, it addresses the obligations of other states concerning the occupied nation and the occupying power, adhering closely to international legal standards and citing relevant sources. The recent tragic events and the dire circumstances faced by the people of Gaza, including the loss of nearly 40,000 innocent lives, underscore the significance of this research. It is evident that violations of the Palestinian people's right to self-determination are the primary causes of this prolonged crisis. The struggle and resistance of the Palestinian people, including armed resistance, are framed as the only viable solution. Both self-determination and the right to resist, including armed struggle, possess international legal legitimacy. Other states are obligated to support the Palestinian people and must refrain from legitimizing the occupation or facilitating its continuation. The support of the Islamic Republic of Iran for the Palestinian cause can be understood within this context of international law.

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## Introduction

On October 7, 2023, the military wing of the Islamic Resistance Movement (Hamas) conducted a surprise operation in the Gaza Envelope, resulting in the capture of numerous Israelis and the death of several individuals during the conflict. This operation was met with widespread condemnation from Western nations and media, while public opinion in Arab and Islamic countries, as well as significant portions of the global community, regarded it more favorably. Initially, some sympathy towards the Israeli side emerged in media coverage and governmental positions due to civilian casualties. However, the subsequent severe military response from the Israeli regime against civilian infrastructure and residents of Gaza engendered a broader wave of sympathy and support for the Palestinian cause, particularly among civil society and media groups in Israel's traditional supporter regions, such as Western Europe and North America.

As of December 2024, the death toll in Gaza has tragically reached approximately 46,000, predominantly comprised of women and children.<sup>1</sup> Thousands more have been injured, displaced, and rendered homeless, facing severe shortages of food and medical supplies.<sup>2</sup> The scale of bombings and targeted killings of Palestinians in Gaza has prompted the South African government to invoke Israel's obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. On December 29, 2023, South Africa initiated proceedings against Israel before the International Court of Justice (ICJ), alleging violations of the Genocide Convention concerning Palestinians in the Gaza Strip,<sup>3</sup> and sought provisional measures to address the situation.

This article aims to address several critical questions: Do the Palestinian movements, particularly Hamas, possess the right to armed resistance and military action against the Israeli regime as the occupying power? What is the legal framework governing this right under International Humanitarian Law? What obligations do other states have toward the Palestinian people and their liberation movements? Furthermore, what responsibilities do these states bear

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1 Israel-Gaza war in maps and charts: Live tracker, retrieved from <https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker>, last accessed on December 28, 2024.

2 Imminent famine in northern Gaza is 'entirely man-made disaster, retrieved from <https://news.un.org/en/story/2024/03/1147656>, last accessed on May 22, 2024; see also Israel's war on Gaza live: 'Catastrophe, nightmare – all these and worse, available at <https://www.aljazeera.com/news/liveblog/2024/5/21/israels-war-on-gaza-live-40-of-gaza-population-displaced-in-two-weeks>, last accessed on May 22, 2024.

3 Reports of the International Court of Justice, Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/192/192app-01-00-en.pdf#page=72>, last accessed on December 28, 2024.



regarding the mass killing of Palestinian civilians, the destruction of homes, hospitals, and infrastructure in Gaza, and the repression of UNRWA<sup>1</sup> personnel under international law?

## 1. The Palestinian People's Right to Armed Resistance in Light of the Right to Self-Determination

For over seventy years, the Palestinian people have been denied their fundamental right to self-determination and the establishment of an independent state. In contrast, during the 1960s and 1970s, following the establishment of the United Nations, numerous states in Africa, Asia, and other regions liberated themselves from colonial rule or foreign occupation, thereby forming independent political systems. The Palestinian nation, however, remains deprived of its inherent rights, enduring the consequences of occupation, which has resulted in millions of displaced individuals, widespread casualties, and significant loss of homes and agricultural lands.

The right to self-determination is a recognized and valid principle under international law. This right is enshrined in Articles 1 and 55 of the United Nations Charter, as well as in Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Additionally, several United Nations General Assembly resolutions affirm the principle of self-determination for peoples, notably Resolution 2526 (1970).

In its 1974 definition of aggression, the UNGA clarified in Article 7 of Resolution 3314 that anti-colonial struggles should not be classified as acts of aggression. This resolution explicitly states that “nothing in this Definition” shall “in any way prejudice the right to self-determination, freedom, and independence, as derived from the Charter, of peoples forcibly deprived of that right.” The resolution further references the 1970 Declaration on Friendly Relations, emphasizing the rights of peoples under colonial and racist regimes to struggle for their liberation and to seek support in accordance with the principles of the Charter.<sup>2</sup>

The General Assembly has consistently recognized the rights of the Palestinian people through various resolutions, including 2535 (1969), 2672 (1970), 2792 (1971), and 2963 (1972). In Resolution 3337 (1974), the Assembly granted observer status to the Palestine Liberation Organization (PLO). The subsequent recognition of Palestine as a non-member observer state in 2012, and the recent resolution passed on May 10, 2024, affirming full membership for Palestine in the United Nations, exemplify ongoing efforts to recognize Palestinian statehood. However, the United States has impeded these developments through vetoes and opposition in the Security Council, countering the prevailing global consensus.

The discourse surrounding the right to self-determination extends beyond the General Assembly's resolutions; it is a fundamental principle of contemporary international law.<sup>3</sup> Scholars contend that the principle of self-determination is both a customary and conventional rule of international law, with Professor Antonio Cassese asserting that it constitutes a general

<sup>1</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

<sup>2</sup> Quigley, *The Case for Palestine: An International Law Perspective* (2005) 194.

<sup>3</sup> Case Concerning East Timor, Reports 1995, at 102 (Para. 29).



principle of law.<sup>1</sup> This perspective grants additional weight to the principle, acknowledging its inherent validity beyond governmental will.

While the principle of self-determination implies independence from foreign control, its application to internal self-determination—particularly concerning separatist groups—remains contentious. Cassese delineates the principle's firm establishment in international law across three contexts:<sup>2</sup>

1. As a measure against colonialism,
2. As a deterrent to military occupation,
3. As a means for all racial groups to attain governmental participation.

In these contexts, the right to self-determination encompasses specific rights and obligations:

- A. A. The right to self-determination is a collective right that applies universally to all states, with every member of the international community bearing responsibility for its protection, reflecting its *erga omnes* characteristic.
- B. B. The rights and obligations related to the conduct of belligerents during wartime apply equally to these peoples, ensuring adherence to protective rules and duties in times of conflict.
- C. C. Liberation movements, representing these peoples, possess both the right and obligation to honor treaty obligations.<sup>3</sup>

However, distinctions exist among groups entitled to self-determination. For racial groups, this right pertains to participation in governance and the enjoyment of legal entitlements. In contrast, self-determination in the context of military occupation and colonialism pertains to liberation from foreign domination and the establishment of an independent political system.

Article 1, Paragraph 4 of the First Additional Protocol of 1977 to the Geneva Conventions of 1949 recognizes that armed conflicts involving peoples struggling against colonial domination and alien occupation, as well as against racist regimes, constitute international conflicts.

The final resolution adopted by the UNGA prior to the commencement of the Steering Committee for Human Rights (CDDH) was Resolution 3103 (XXVIII), dated 12 December 1973, entitled "Basic Principles of the Legal Status of Combatants Struggling Against Colonial and Alien Domination and Racist Regimes." As articulated in the commentary of the International Committee of the Red Cross concerning the First Additional Protocol of 1977, the principles delineated in the operative paragraphs of Resolution 3103 are intended to be "without prejudice to their elaboration in future within the framework of the development of international law applicable to the protection of human rights in armed conflicts." These principles may be summarized as follows:

1. The struggle of peoples against colonial and alien domination, as well as against racist regimes, for the realization of their right to self-determination is legitimate.

<sup>1</sup> Cassese, *International Law* (2005) 140.

<sup>2</sup> *Ibid.*, 141.

<sup>3</sup> *Ibid.*



2. Attempts to suppress such struggles violate the Charter of the United Nations and relevant human rights declarations, posing a threat to international peace and security.
3. Armed conflicts arising from these struggles are categorized as international armed conflicts under the Geneva Conventions.
4. Combatants engaged in such struggles should be afforded prisoner-of-war status under the Third Geneva Convention.
5. Violations of this status result in full accountability for the perpetrators.<sup>1</sup>

Thus, liberation movements acting under this framework are protected by the First Additional Protocol and the Geneva Conventions, which delineate their rights and obligations. For instance, combatants in these movements are protected under the Third Geneva Convention, while civilians in occupied territories are safeguarded by the Fourth Geneva Convention. Importantly, as these conflicts are international in nature, support from other states for liberation movements does not constitute interference. However, these states are obliged to adhere to humanitarian law standards concerning civilians and civilian infrastructure.

Although armed resistance is not explicitly mentioned in these international documents, the recognition of such struggles as international conflicts, coupled with the imperative to respect humanitarian law, implies that armed resistance is permissible for these movements, particularly when the occupying power suppresses the right to self-determination. When self-determination is denied, the affected population bears the brunt of the injustice. The practice of the Security Council suggests that, when all other avenues fail, a people denied self-determination may resort to forceful measures to reclaim their independence. The Palestinian National Covenant characterizes the use of force aimed at achieving self-determination as an act of self-defense, asserting that “the liberation of Palestine from an international viewpoint is a defensive act necessitated by the demands of self-defense.” In a case before the International Court of Justice regarding Namibia, Judge Fouad Ammoun echoed this sentiment, stating that a people possess the right to armed resistance to attain self-determination. He asserted that “the legitimacy of the peoples' resistance cannot be disputed,” as it is rooted in the inherent right of self-defense, which is affirmed by Article 51 of the United Nations Charter.<sup>2</sup>

The Palestinian liberation movements are recognized as parties to an international conflict and are thus protected under humanitarian law based on their right to resist the occupying regime. If we take Security Council Resolution 242 as our criterion, we can designate the territories captured by Israel in 1967—including the Gaza Strip, the West Bank, and East Jerusalem—as occupied. Consequently, the struggle of the Palestinian people and their armed movements, in accordance with the aforementioned international documents and other sources of international law, constitutes legitimate and lawful resistance.

While some may argue that the Palestine Liberation Organization (PLO) and the Palestinian Authority represent the Palestinian nation due to their recognition by regional and international organizations, this viewpoint raises questions regarding the legitimacy of Hamas

<sup>1</sup> Customary International Humanitarian Law, Retrieved from <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article1/commentary/1987?activeTab=undefined>, last accessed on December 28, 2024.

<sup>2</sup> Quigley, Op. Cit. (2005) 191



as a representative entity. The failure of negotiated solutions and the ongoing occupation of Palestinian territories, despite agreements made by these organizations with the occupying power, casts doubt on their exclusive representation. Movements like Hamas, which represent a significant segment of the Palestinian population, gained further legitimacy through their electoral victory in the 2006 Palestinian National Assembly elections and the subsequent appointment of Ismail Haniyeh as Prime Minister by the Palestinian Authority.

In addition to popular support within Palestine, various Islamic and Arab nations have bolstered Hamas's regional and global standing. As Professor Cassese has noted, while the recognition of liberation movements by international organizations is significant, it does not solely legitimize these movements.<sup>1</sup> This principle is particularly relevant to Hamas, which, despite the lack of formal recognition by some international entities, remains a negotiating party backed by a substantial portion of the Palestinian populace and key governments in the Middle East.

## 2. The Right to Self-Determination of the Palestinian People in the Advisory Opinions of the International Court of Justice

In the preceding sections, we have analyzed the right of armed resistance for the Palestinian people against the occupying power, rooted in their right to self-determination. This right is fundamental to the Palestinian cause and underpins all other rights. The position of the ICJ regarding the Palestinian people's right to self-determination is crucial for understanding their right to resistance.

### 2.1. Advisory Opinion of the International Court of Justice, July 19, 2024<sup>2</sup>

The ICJ delivered its Advisory Opinion concerning the legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem. On December 30, 2022, the UN General Assembly adopted Resolution A/RES/77/247, invoking Article 65 of the Court's Statute and requesting an advisory opinion on two questions:

1. What are the legal consequences arising from Israel's ongoing violation of the Palestinian people's right to self-determination, its prolonged occupation, settlement, and annexation of Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character, and status of Jerusalem, as well as its discriminatory legislation and measures?
2. How do these policies and practices affect the legal status of the occupation, and what legal consequences arise for all states and the United Nations?<sup>3</sup>

In its advisory opinion, the Court concluded that:

- Israel's continued presence in the Occupied Palestinian Territory is unlawful.

<sup>1</sup> Cassese, *Le Droit International dans un-Monde Divisé* (translated by Kalantarian Morteza (1992) 127 (in Persian).

<sup>2</sup> Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem Advisory Opinion of 19 July 2024, retrieved from <https://www.icj-cij.org/index.php/decisions>.

<sup>3</sup> International Court of Justice, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion, 19 July 2024) <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-pre-01-00-en.pdf>, accessed 28 December 2024, 7.



- Israel is obligated to end its unlawful presence in the Occupied Palestinian Territory as swiftly as possible.<sup>1</sup>

The Court thoroughly examined the occupation of Palestinian lands and Israel's continuation of this situation, reaching clear conclusions about the necessity of ending the occupation, the obligations of the occupying power, and the rights of the Palestinian people. The Court emphasized that the ongoing occupation and Israel's actions in the occupied territories violate the Palestinian people's right to self-determination. It outlined the elements of this right as follows:

1. The right to territorial integrity is recognized as a vital component of customary international law, corollary to the right to self-determination (Para 237).
2. The right to self-determination protects populations against acts aimed at dispersing them and undermining their integrity (Para 239).
3. The right to exercise permanent sovereignty over natural resources is a principle of customary international law (Para 240).
4. A key element of the right to self-determination is the right of people to freely determine their political status and to pursue economic, social, and cultural development (Para 241).

The Court asserted that Israel's occupation policies exacerbate violations of the right to self-determination (Para 243). In addressing the legal status of the occupation, the Court deemed it illegal and noted that the prohibition against land acquisition by force violates the Palestinian people's right to determine their identity (Para 261).

A pertinent question arises regarding the relationship between Israel's continued presence in the occupied territories and its agreements with the Palestinian side, such as the Oslo Accords. The Court clarified that security considerations do not justify land annexation or the establishment of a permanent occupation (Para 263).<sup>2</sup>

## 2.2. Advisory Opinion on the Barrier Wall, 2004<sup>3</sup>

In its 2004 advisory opinion on the barrier wall in the Palestinian territories, the Court connected the issue of the occupation with the right to self-determination, concluding that Israel's construction of the wall contributed to the departure of Palestinian populations from certain areas, thereby threatening the demographic composition of the Occupied Palestinian Territory. This construction severely impeded the Palestinian people's exercise of their right to self-determination.

The Court characterized Israeli settlements established in the territories occupied since 1967, including East Jerusalem, as illegal under international law and a significant obstacle to achieving a two-state solution and a just, lasting peace. It invoked several international resolutions to condemn Israel's practices of territorial annexation,<sup>4</sup> including Resolution 242,

<sup>1</sup> Ibid.

<sup>2</sup> Ibid, section E. Question of self-determination, Paras. 230-243, pp. 65-68.

<sup>3</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136, available at <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>, last accessed December 28, 2024.

<sup>4</sup> Aasi, *Yuridika* (2022) 548



which stresses the inadmissibility of acquiring territory by war and calls for the withdrawal of Israeli armed forces from occupied territories.<sup>1</sup>

Through these advisory opinions, the ICJ has reinforced the Palestinian people's right to self-determination, asserting that the territories occupied since 1967 are reserved for the exercise of this right.<sup>2</sup>

### **3. Occupation of Palestinian Land: International Approach and Rival Theory**

The prevailing theory and dominant approach at the international level, as reflected in resolutions, procedures of international institutions, and the stances of various governments, assert that the Gaza Strip, the West Bank, and East Jerusalem are occupied territories. These areas were captured by Israel during the 1967 war, and Security Council Resolution 242, issued in the same year, classifies these lands as occupied. This position continues to be upheld in United Nations documents and the positions of governments.

This approach is grounded in the “two-state solution” as outlined in UNGA Resolution 181. The Oslo Accords and subsequent agreements aimed at resolving the Palestinian issue have also been based on this framework. However, the failure of Israel and international powers to fulfill their obligations concerning the establishment of a Palestinian state in the 1967 territories has highlighted the deficiencies of this approach.

In contrast, a significant portion of the Palestinian population and some Islamic states, including the Islamic Republic of Iran, contend that all Palestinian lands, including those captured in 1948, remain occupied. This perspective argues that the partition of Palestinian land under Resolution 181 lacks legitimacy, as neither the committee establishing the resolution nor the UNGA possessed the authority to divide Palestinian territory without consulting its inhabitants. The right to self-determination and independence for the Palestinian people should have been paramount.

Thus, while this research is structured around the dominant international approach that views only the lands occupied in 1967 as occupied territories, there is a competing perspective that considers the entirety of Palestinian land, including territories occupied in 1948, as under occupation. This viewpoint is respected and upheld by a significant segment of the Palestinian populace.

### **4. The Two-State Solution and the Palestinian People's Right to Self-Determination**

A critical question arises: why has the United Nations failed to determine a viable solution for the Palestinian people to exercise their right to self-determination? Although a framework was established through Resolution 181, the major flaws inherent in this solution rendered it ineffective for the Palestinian people. This resolution proposed the division of Palestine into separate Jewish

<sup>1</sup> International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (19 July 2004) ICJ Reports 2004, 34, para. 75.

<sup>2</sup> Aasi, Op. Cit. (2022) 549.





and Arab states, allocating 56 percent of the territory to the Jewish state, which predominantly comprised recent immigrants rather than the native Palestinian population.

Numerous member states expressed opposition to Resolution 181, cautioning that such division would incite enduring conflict. However, the backing of international powers, particularly Britain, facilitated the advancement of this plan alongside the efforts of Jewish organizations. Legally, Article 22 of the former Covenant of the League of Nations affirmed that the Palestinian people met the criteria for independence and should be progressively granted this right, akin to Jordan, Syria, and Iraq. Yet, the General Assembly, lacking the authority to partition territory, overlooked this legal right amidst protests from several member states.

The international response to these events has often been to plant the seeds of division and hostility in the region. Despite the initial resistance from the Palestinian and Arab populations, the establishment of the Zionist state in 1948 occurred with significant global support. The legitimacy of the partition proposed in Resolution 181 continues to be contested, as the actions and policies of the occupying regime have severely obstructed the establishment of a Palestinian state within the two-state framework.

Since the 1990s, Palestinian and Arab leaders have engaged in negotiations, accepting the two-state solution framework. This included the "permanent status negotiations" initiated in 1993, which aimed to culminate in an independent Palestinian state. However, a decade later, no final peace agreement had been reached. In 2003, a coalition of international entities proposed a performance-based Roadmap intended to facilitate the emergence of a Palestinian state, yet a genuine resolution to the Palestinian issue remains elusive.<sup>1</sup>

The historical context of Palestinian leaders who accepted negotiations under the two-state framework is both compelling and instructive. Yasser Arafat, former leader of the Palestine Liberation Organization, faced significant pressures from Israel and the United States, ultimately being isolated in his leadership role. His death remains shrouded in controversy, with theories of poisoning emerging amidst allegations of Israeli involvement.<sup>2</sup> Arafat's steadfastness against external pressures regarding critical issues like the status of Jerusalem, the right of return for Palestinian refugees and support for the intifada exemplifies the challenges faced by leadership committed to the Palestinian cause.

Another significant barrier to the two-state solution has been the expansion of Jewish settlements in Palestinian territories, which reoccupy lands and obstruct Palestinian access to their cities and villages. Security Council Resolution 2334 (2016) reaffirmed that the construction and expansion of Jewish settlements threaten the viability of the two-state solution and violate international law.<sup>3</sup>

Furthermore, the continued occupation of Palestinian lands contradicts Security Council Resolution 242, which calls for Israel's withdrawal from territories occupied in 1967. The establishment of settlements not only contravenes this resolution but also breaches the obligations

1 Browlie, *Principles of Public International Law* (2021) 389-390.

2 Euronews, 'European Human Rights Court Rejects Attempt to Reopen Investigation into Yasser Arafat's Death' (1 July 2021) <https://parsi.euronews.com/2021/07/01/european-human-rights-court-rejects-attempt-to-reopen-investigation-yasser-arafat-death>, accessed December 28, 2024.

3 UN Security Council, *Resolution 2334* (23 December 2016) S/RES/2334.



outlined in Article 49 of the Fourth Geneva Convention, which prohibits the transferring of an occupying power's civilian population into occupied territory.

Israel's violations of international law extend beyond settlement construction; the erection of a barrier wall has further segregated Palestinian areas, severely restricting access and contravening prior agreements with the Palestinian side. The ICJ issued an advisory opinion in 2004, declaring that the barrier wall undermines the Palestinian right to self-determination, recognized in various international frameworks.<sup>1</sup> The Court noted that Israel's actions, including the establishment of illegal settlements and security zones, constitute grave breaches of international law and severely impede the realization of Palestinian self-determination.<sup>2</sup>

Based on these considerations, it can be asserted that the two-state solution and the realization of the Palestinian people's aspirations have largely failed. In recent years, with the normalization of relations between certain Arab governments and the backing of the former U.S. administration, Israeli leaders have effectively abandoned the two-state framework, advocating instead for a singular Jewish state encompassing all Palestinian territories. Additionally, the opposition of the United States to Palestinian membership in the United Nations further complicates the viability of the two-state solution. Consequently, the only recourse left for the Palestinian people appears to be resistance and armed struggle in pursuit of their right to self-determination.

As previously noted, resistance, including armed struggle, is recognized as a legitimate course of action under international law. This path is deemed reasonable by the Palestinian nation, especially in light of how other nations have successfully achieved independence with significant international support, particularly from the United States. For instance, the cases of South Sudan and East Timor illustrate the granting of independence to peoples through resolutions adopted by the UN Security Council, aimed at protecting victims of egregious human rights violations and the systematic denial of their self-determination rights.

The inhabitants of East Timor and South Sudan ultimately attained statehood after secession from Indonesia and Sudan, respectively, facilitated by a series of Security Council resolutions since the late 1990s. This same rationale should equally apply to the Palestinians.<sup>3</sup> As noted by Edward Said, a prominent Palestinian intellectual and activist, the Palestinian people strive to preserve their collective identity and national concept, a goal that remains unfulfilled. He articulates, "We are in a unique position of being a people whose enemies assert that we do not exist. Thus, for us, the concept of 'rights' signifies the right to exist as a people, as a collective entity, rather than merely as a collection of refugees or stateless individuals."<sup>4</sup>

1 International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion, 9 July 2004) ICJ Reports 2004, 183.

2 Aral, *Oslo "Peace Process" as a Rebuttal of Palestinian Self-Determination* (2009) 21.

3 Ibid, 23.

4 Shalbak, *Human Rights in Palestine: From Self-Determination to Governance* (2023) 3.



## 5. States' Obligations Concerning the Rights of the Palestinian People

States' obligations can be analyzed from two perspectives: First, in terms of the nature of these commitments—what are the rights of the Palestinian people living under foreign occupation, and what is the significance and character of these commitments in international law? Second, the types of these obligations should be clarified, specifying which actions, whether negative or positive, are necessary for their implementation.

### 5.1. The Nature of States' Obligations Towards the Rights of the Palestinian People

If independence is the decisive criterion for statehood, self-determination is a principle that pertains to the right to exist as a state. A pivotal development was the reference to "the principle of equal rights and self-determination of peoples" in Articles 1(2) and 55 of the UN Charter. While some perceived these references as merely aspirational, the practices of UN organs have strongly reinforced this principle, particularly through the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in 1960 and reiterated in numerous subsequent resolutions.

Means of achieving self-determination include the formation of a new state through secession, association in a federal state, or autonomy within a unitary state.<sup>1</sup> The most vital right of the Palestinian people in the occupied territories is their right to self-determination, which has been violated by Zionist occupation for over 70 years, effectively obstructing all avenues for its realization. The occupying regime, by perpetuating the occupation and constructing Jewish settlements in the West Bank and around Jerusalem, and by failing to adhere to any agreements with the Palestinians, has rendered a negotiated solution and compromise to end the occupation unattainable.

Moreover, the obstruction of recognition and membership of the Palestinian state in international organizations—supported by the United States—alongside violations of the rights of residents in the occupied territories as outlined in the Fourth Geneva Convention and other international instruments, further complicates this landscape. The obligations of governments in response to these violations of humanitarian law are not merely typical obligations; they carry significant weight. The ICJ has emphasized the *erga omnes* obligations arising from the right to self-determination in its advisory opinion regarding the barrier wall.<sup>2</sup>

*Erga omnes* obligations are characterized by their applicability to the international community, creating both rights and duties for all states to demand compliance with these obligations. Some scholars regard the right to self-determination for peoples under colonial rule and foreign occupation as a peremptory norm (*jus cogens*). This perspective is grounded in the notion that the right to self-determination is widely accepted, either due to its intrinsic nature or

<sup>1</sup> Brownlie and Crawford, *Principles of Public International Law* (2021) 390-391.

<sup>2</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion, 9 July 2004) ICJ Reports 2004, paras 88, 155.



its significance for human rights, as it is considered a prerequisite for the effective realization of human rights.<sup>1, 2</sup>

In 2006, the International Law Commission recognized the right to self-determination among its authoritative list of jus cogens norms.<sup>3</sup> This recognition is particularly significant given the high academic and moral standing of the Commission's members within international law. Therefore, it appears that the right to self-determination, especially for peoples under foreign rule, exemplifies a jus cogens norm.<sup>4</sup>

In addition to the right to self-determination, which serves as the foundation for all the rights of the Palestinian people, there exists a broad spectrum of human and humanitarian rights enshrined in international documents, to which member states are obligated to adhere. A considerable portion of these obligations regarding humanitarian rights, particularly for individuals under foreign occupation, possesses a customary nature, thus qualifying as customary international law.<sup>5</sup>

Notably, a comprehensive study conducted under the auspices of the International Committee of the Red Cross by leading experts in humanitarian law, published in 2005, reinforces these principles. This collection, titled "Customary Rules of Humanitarian Law,"<sup>6</sup> demonstrates that the occupation of Palestine and the conduct of the occupying regime towards its residents adhere to customary norms, obligating all states, not merely those party to international humanitarian law.

## 5.2. Types of States' Obligations Towards the Rights of the Palestinian People

According to Articles 40, 41, 42, and 48 of the International Law Commission's 2001 draft on the international responsibility of states, all states are bound to:

1. Cooperate through legal means to end gross violations of obligations.
2. Refrain from recognizing the situation resulting from breaches of obligations.
3. Avoid assisting or supporting the occupying power in maintaining an illegal status quo.
4. In this context, the obligations of states regarding the rights of the Palestinian people in their struggle against occupation can be delineated in two general terms:

### A) States' Negative Obligations Concerning the Occupation of Palestinian Territories

Under principles and rules of international law, particularly Article 41 of the state responsibility framework, states should neither recognize nor assist in establishing an illegal situation, especially if such a situation arises from violations of jus cogens norms. Additionally, Article 16 of the draft

1 Espérell (1978) para. 75.

2 Hannikainen, *Peremptory Norms (Jus Cogens) in International Law: Historical Development* (2006) 637-638.

3 United Nations, *Report of the International Law Commission on the Work of Its Fifty-Eighth Session* (A/CN.4/L.702, 18 July 2006) 833.

4 Habibzadeh, *The Resistance of the Palestinian People to the Right to Self-Determination and Obligations of the International Community Against It* (2015) 846.

5 For information on customary rules regarding the rights of people in occupied territories, you can refer to the Customary International Humanitarian Law document published by the International Committee of the Red Cross (ICRC). This document outlines various rules that govern the treatment of individuals in occupied territories, emphasizing protections under international humanitarian law.

The document could be accessed at <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

6 Henckaerts and Alvermann, *Customary International Humanitarian Law (Vol 1)* (2005).



articles on state responsibility asserts that "assisting another state in an international wrongful act is itself wrongful."

In light of the violations of international law and the establishment of an illegal situation in the occupied Palestinian territories by Israel, UN member states have repeatedly affirmed these obligations in their resolutions, urging states to refrain from facilitating the continuation of these circumstances.<sup>1</sup> For instance, in 1980, the Security Council called upon all countries to "refrain from providing aid to Israel, particularly in relation to settlements in the occupied territories."<sup>2</sup>

The General Assembly has consistently reiterated its positions by issuing numerous resolutions annually. For instance, in 1980, it urged countries "not to recognize any changes in the occupied territories by Israel and to refrain from actions that may enable Israel to further its colonial policies and annex land, including the refusal to provide aid."<sup>3</sup> This request has also been extended to the United Nations judicial body, the International Court of Justice. In its advisory opinion concerning Israel's barrier wall in the Palestinian territories, the Court interpreted Article 1 of the Geneva Conventions as imposing an obligation on all countries not to recognize the illegal situation created by the construction of the wall and not to assist in maintaining the conditions resulting from it.<sup>4</sup>

Although the construction of Jewish settlements and the barrier wall contravenes the agreements between the Palestinian Authority and Israel, it raises the question of whether the local authority, as a representative of Palestine, can legitimately agree to terms under duress from the occupying regime. Should it forfeit Palestinian lands or accept arrangements that violate the rights of the residents of the occupied territories? Article 47 of the Fourth Geneva Convention stipulates that the rights of residents in occupied territories shall not be undermined by any agreement or arrangement between the occupying power and the local authorities. This provision aims to prevent local authorities from making concessions detrimental to the inhabitants under pressure from the occupying power, thereby preserving their legal status. Consequently, such agreements are deemed invalid.<sup>5</sup>

Despite the issuance of these resolutions and international documents, none have effectively countered Israel's persistent defiance of international law, a situation largely attributable to the unwavering support of the United States for the occupying regime.

## **B) States' Positive Obligations to Support the Resistance of the Palestinian People**

States have obligations toward the Palestinian people's right to self-determination and their resistance against the occupying power. They are also committed to providing assistance and cooperation in this regard. In its 1970 resolution, the UNGA acknowledged the legitimacy of support for nations resisting foreign occupation, asserting that these nations have the right to "receive any material and spiritual assistance."<sup>6</sup> During Namibia's struggle for independence,

1 Habibzadeh, Op. Cit. (2015) 847.

2 UN Security Council, S/465, 1 March, 1980

3 UN General Assembly, *Resolution 35/1227* (A/RES/35/1227, 1980).

4 International Court of Justice, *Reports 2004* para. 159.

5 Gasser, *Protection of the Civilian Population' in D Fleck (ed), The Handbook of Humanitarian Law in Armed Conflicts* (translated by Hajar Siyahrostami) (2008) 335-336.

6 UN General Assembly, *Resolution 2649* (A/RES/2649, 1970).



various countries provided material aid, and the United Nations financially supported the SWAPO liberation movement,<sup>1</sup> while Angola permitted SWAPO to use its territory as an operational base without opposition from other states.<sup>2</sup>

There is, however, a divergence of opinion regarding the legality of third countries' assistance to liberation movements against foreign domination.<sup>3</sup> Some Western scholars argue that the absence of consensus among General Assembly members regarding this issue undermines the legality of such assistance.<sup>4</sup> This argument is contestable, as universal consensus on many rules of international law is not a prerequisite. Moreover, the aforementioned resolution was not adopted by consensus but rather by a majority vote.<sup>5</sup>

Liberation movements are entitled to request and receive assistance from other countries in their pursuit of self-determination against foreign domination, as outlined in General Assembly Resolution 2625.<sup>6</sup> Notably, the International Court of Justice, in the case of *Nicaragua v. United States*, recognized the principles articulated in Resolution 2625 as customary international law.<sup>7</sup> Given the status of customary international law and the imperative for compliance, the opposing views of some Western scholars contradict the validity of Resolution 2625 and its endorsement of material and spiritual support for liberation movements.

The content of Article 1, Paragraph 4 of the 1977 Additional Protocol to the Geneva Conventions reinforces this interpretation. This provision classifies struggles against colonial rule and foreign occupation as international conflicts, thus negating the obligation of non-intervention concerning liberation movements. Consequently, third-party governments are permitted to assist these movements.

Furthermore, Article 96, Paragraph 3 of the same protocol stipulates that an authority representing a people engaged in armed conflict with a High Contracting Party may unilaterally declare its intention to apply the Conventions and the Protocol to that conflict. Upon receipt of such a declaration by the depositary, the following effects ensue:

(a) The Conventions and the Protocol come into force for the said authority as a Party to the conflict with immediate effect.

(b) The authority assumes the same rights and obligations as those of a High Contracting Party to the Conventions and the Protocol.

(c) The Conventions and the Protocol are equally binding upon all Parties to the conflict.

In contrast, assistance and intervention by third governments in internal and non-international disputes are prohibited under the principle of non-intervention. Within this framework, the UNGA has, in several resolutions, called upon member states not to withhold their material and spiritual support for the Palestinian liberation movement.<sup>8</sup>

1 *The South West Africa People's Organization*

2 Quigley, *The Case for Palestine: An International Law Perspective* (2005) 309

3 Malcom Shaw, *International Law* (2008) 1037-1038.

4 Thurer and Burri, 2008: para. 15

5 Habibzadeh, *Op. Cit.* (2015) 848.

6 UN General Assembly, *Resolution 2625 (XXV)* (A/RES/2625 (XXV), 1970) para. 5, principle 5.

7 International Court of Justice, *Nicaragua Case* (1986) para. 202.

8 UN General Assembly, *Resolution 2708* (A/RES/2708, 1970).; UN General Assembly, *Resolution 2787* (A/RES/2787, 1971).



## 6. The Performance of Palestinian Liberation Movements and Wartime Rules

As discussed in previous sections of this research, liberation movements derive their right to armed resistance against occupying powers from international law. The legitimacy of their struggle against colonial or oppressive regimes, including apartheid systems, is well-established. However, when these movements are recognized and supported under the law of armed conflict—such that their struggle is classified as an international conflict—they are also required to adhere to the obligations imposed by humanitarian law during periods of occupation. This includes responsibilities concerning civilians, the wounded, and prisoners of war.

Furthermore, these movements must distinguish themselves from terrorist organizations, as their objectives and motivations are fundamentally different. For instance, groups such as Hamas and Islamic Jihad have not been officially classified as terrorist organizations by an international body like the United Nations Security Council. However, governments that support the Israeli occupation, notably the United States and various European nations, have unilaterally designated these groups as terrorist entities. Such actions do not contribute to resolving the Palestinian issue; rather, they overlook the historical context, wherein much of the violence in the Middle East is rooted in the ongoing occupation of Palestine and the denial of the Palestinian people's right to statehood under international law.

### Conclusion

The Palestinian issue remains a regional and global crisis that has persisted for over seven decades, with the Palestinian people suffering the consequences of being deprived of their natural and legal right to self-determination. As outlined in this research, the right to self-determination is a central tenet and recognized principle in international law, as evidenced by numerous United Nations General Assembly resolutions and international legal frameworks. The International Court of Justice, as the judicial organ of the United Nations, has consistently addressed this principle in various cases. Notably, in its advisory opinion regarding the barrier wall, the Court affirmed and emphasized the Palestinian people's right to self-determination.

The advisory opinion issued on July 19, 2024, serves as a significant exposition of the right to self-determination for the Palestinian people, delineating its boundaries and implications amidst the ongoing conflict in Gaza. The Court explicitly states that Israel's policies of occupation contravene the Palestinians' right to self-determination and that the prolongation of these policies exacerbates violations of this right. The scope of this right extends to populations under colonial rule, foreign occupation, and those living under apartheid conditions; these groups are entitled to resist through various means, including armed struggle.

Other states have corresponding obligations towards these populations, which are inferred from the general principles of state responsibility articulated in the International Law Commission's 2001 framework. According to these principles, states are obligated to support liberation movements positively while refraining from legitimizing conditions of occupation, colonialism, and apartheid. Moreover, UNGA resolutions have consistently called upon member



states to assist and protect populations under occupation, with specific references to the plight of the Palestinian people.

Despite these resolutions, the actions of the Israeli occupying regime continue to disregard international law and norms, including recent decisions by the ICJ regarding the critical humanitarian situation in Gaza. For nearly eight months, the Palestinian population in the Gaza Strip has faced relentless bombardment, siege, and famine, resulting in the deaths of approximately 46,000 individuals, predominantly women and children. This situation has illuminated the reality that the Palestinian people have no recourse but to resist and engage in armed struggle—a struggle that is grounded in international law and represents a natural, human, moral, and legitimate right.

The position and actions of the Islamic Republic of Iran regarding the Palestinian issue and Gaza can be analyzed within this framework. Iran's support for the Palestinian struggle is consistent with international law and reflects its legal and humanitarian obligations. Article 154 of the Constitution of the Islamic Republic of Iran explicitly states that the country shall "fully refrain from interference in the internal affairs of other nations" while supporting the rightful struggle of the oppressed against oppressive forces globally. A comprehensive analysis of Iran's behavior and its implications would require further research beyond the scope of this article.





## References

### Books and Articles

- Berdal A, 'Oslo 'Peace Process' as a Rebuttal of Palestinian Self-Determination' (2018) 10 (1) *Middle Eastern Studies* 8-26
- Brownlie I, *Principles of Public International Law* (9th edn, Oxford University Press 2021)
- Cassese A, *International Law* (2nd edn, Oxford University Press 2005)
- Cassese A, *Le Droit International dans un Monde Divisé* (1986, translated by Morteza Calantarian, International Legal Services Office of IRI 1992) p 127 (in Persian)
- Habibzadeh T, 'The Resistance of the Palestinian People to the Right to Self-Determination and Obligations of the International Community Against It' (2015) *Public Law Studies Quarterly* 64(6) [In Persian]
- Ihab S, 'Human Rights in Palestine: From Self-Determination to Governance' (2023) 29 *Australian Journal of Human Rights*
- Joni A, 'Israeli Territorial Annexation in Occupied Palestinian Territory: The Ambivalence of International Law' (2022) 37(3) *Yuridika*
- Quigley J, *The Case for Palestine: An International Law Perspective* (Duke University Press 2005)
- Shaw M, *International Law* (6th edn, Cambridge University Press 2008)

### Reports and Documents

- Gasser HP, 'Protection of the Civilian Population' in D Fleck (ed), *The Handbook of Humanitarian Law in Armed Conflicts* (2008) 335-336 (translated by Hajar Siyahrostami)
- Hannikainen K, *Peremptory Norms (Jus Cogens) in International Law: Historical Development* (1988)
- Hennikainen JM and Alvermann C, *Customary International Humanitarian Law* (Vol. 1, Cambridge University Press 2005)

### Cases and Legal Opinions

- Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* [2023] available at: <https://www.icj-cij.org/sites/default/files/case-related/192/192app-01-00-en.pdf#page=72>
- Case Concerning East Timor (Portugal v Australia)* [1995] available at: [https://icj-cij.org/sites/default/files/case-related-84/084-19950630-JUD-01-00-EN.pdf](https://icj-cij.org/sites/default/files/case-related/84/084-19950630-JUD-01-00-EN.pdf)
- Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024* available at: <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-pre-01-00-en.pdf>
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1971)* available at: <https://www.icj-cij.org/sites/default/files/case-related/53/11473.pdf>
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [2004] available at: <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040630-PRE-01-00-EN.pdf>
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1986] available at: <https://www.icj-cij.org/sites/default/files/case-related/70/9973.pdf>

### United Nations Security Council Resolutions

- UN Security Council Res 2334 (2016)
- UN Security Council Res 465 (1 March 1980)

### United Nations Documents

- UN Doc A/CN.4/L.702 (18 July 2006) *Imminent Famine in Northern Gaza is 'Entirely Man-Made Disaster'* available at: <https://news.un.org/en/story/2024/03/1147656>
- UNGA Res 2625 (XXV) (1970) *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* available at: [https://treaties.un.org/doc/source/docs/A\\_RES\\_2625-Eng.pdf](https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf)
- UNGA Res 2649 (November 1970) *Right to Self-Determination*
- UNGA Res 2708 (1970)
- UNGA Res 2708 (XXV) (1970) *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*
- UNGA Res 2787 (1971)
- UNGA Res 3103 (XXVIII) (1973) *Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Régimes*
- UNGA Res 35/1227 (1980)