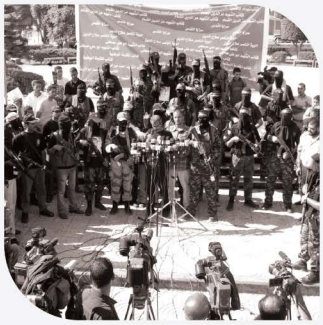

Legitimacy of the Palestinian People's Struggle for Freedom and Self-Determination under International Law

Nasir Qadri
Hüseyin Disli

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HUKUKÇULAR DERNEĞİ
1970

WOLAS
WORLDWIDE LAWYERS ASSOCIATION


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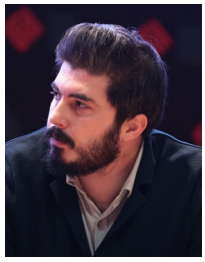

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INTRODUCTION

The ongoing genocide in Gaza cannot be understood in isolation but must be situated within the broader framework of the systematic oppression endured by the Palestinian people since the Nakba of 1948. This protracted colonial subjugation, characterised by foreign domination, displacement, apartheid, and the incremental erosion of fundamental rights, reflects the enduring legacy of colonialism within contemporary international law. The right of the Palestinian people to self-determination, and by extension, their right to armed resistance, emerges not as an isolated claim but as a legally and morally grounded response to decades of systematic denial of sovereignty and fundamental freedoms. This report argues that the current humanitarian catastrophe in Gaza is but one manifestation of an ongoing continuum of colonial violence that international law has repeatedly failed to address adequately.

Since 1948, international law has been unable to prevent or redress violations of Palestinian rights. The 76 years of the Nakba, marked by incremental genocide, apartheid, and dispossession, underscore the structural weaknesses of international law in safeguarding colonised peoples. Zionism's expansive militaristic agenda, reinforced by international complicity and political manoeuvring, has subjected Palestinians across Gaza, the West Bank (including Jerusalem), the 1948 territories, and the diaspora to unrelenting violence, displacement, and suffering. Israel's prolonged colonial occupation[1] exemplifies the inherent tension between the inviolability of territorial sovereignty and the inalienable right of peoples to self-determination, a clash that neocolonial states have exploited to undermine the application of international law.[2]

1 In 1980, the United Nations Security Council (UNSC) described the Israeli occupation of the Palestinian territories as Prolonged occupation'. UNSC Res. 471, June 5, 1980, p. 2, para. 6; UNSC Res. 476, June 30, 1980, p. 1, para. 1.

2 Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995). See also Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004).

The right to self-determination for colonised people has achieved the status of 'paramount principle.'[3], 'positive legal right'[4], and a form of *jus Cogens*[5] Under contemporary international law. For instance, in the Algerian War of Independence and the Namibian struggle for independence, the U.N. General Assembly (UNGA)[6] resolutions and ICJ advisory opinion[7] denounced France's aggression and South Africa's colonial presence. Under the preview of international law, their right to self-determination and the legitimacy of armed struggle were valid. One rationale behind the general prohibition of aggression is that it violates the people's right to self-determination. United Nations General Assembly (UNGA) resolutions, such as Resolution 1514 (XV) of 1960, Resolution 2625 (XXV) of 1970, and Resolution 37/43 of 1982, alongside the International Court of Justice's advisory opinions, affirm the right of colonised and oppressed peoples to pursue liberation "by all available means," including armed struggle. These precedents validate the legal standing of national liberation movements and establish the framework for analysing Palestinian resistance as part of this broader legal trajectory.

This report examines the legal grounds for Palestinian armed resistance as a legitimate exercise of the right to self-determination under international law. By situating Palestinian resistance within the broader context of wars of national liberation, it engages with key legal instruments and scholarly contributions, such as those of Georges Abi-Saab.[8], who highlights the conditions under which armed struggle against colonial or alien domination is permissible. Furthermore, it addresses contemporary critiques, particularly those advanced by Third World Approaches to International Law (TWAIL) scholars.[9], who contend that while international law affirms self-deter-

3 Case Concerning East Timor (Portugal v Australia) General List No 84 (1995) ICJ, 102, para 29.

4 The Right of Peoples and Nations to Right to Self-Determination, UNGA Res 637(vii) (1952) U.N. Doc A/RES/637(vii), para 3; Also, UNGA Res 742 viii (November 27, 1953) U.N. Doc A/ RES/742(viii), para 4.

5 Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest and Africa) notwithstanding Security Council Resolutions 176 (Advisory Opinion) (1971) ICJ Rep 276.

6 United Nations General Assembly, "Declaration on the Granting of Independence to Colonial Countries and Peoples," A/RES/1514 (XV) (December 14, 1960.

7 International Court of Justice, Advisory Opinion on Namibia, ICJ Reports 1971 (June 21, 1971).

8 Abi-Saab, Georges. "Wars of national liberation in the Geneva Conventions and Protocols." 1979, in Recueil des cours / Académie de droit international, Dordrecht, Volume 165(1979), t. 4, p. 357-445.

9 See, for example, Noura Erakat, Justice for Some: Law and the Question of Palestine (Stanford University Press 2019); Nimer Sultany, 'The Question of Palestine as a Litmus Test: On Human Rights and Root Causes' (2022) 23 Palestine Yearbook of International Law 1; John Reynolds, 'The Life of the Law in Palestine: The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory Orna Ben-Naftali' (2018) 8 International Dialogue art 5.

mination, its application is often subordinated to political interests, as seen in the Palestinian context. This analysis underscores the necessity for a justice-oriented interpretation of international law that transcends technical positivism and aligns with the lived realities of oppressed peoples.

The report also interrogates the evolving global context in which resistance movements operate. Since the events of 9/11, the United States and Western powers have developed the doctrine of the "global war on terror," whereby counterterrorism policies and perceptions are reformulated and manipulated to cast movements opposing (material) Western interests as "terrorist" organisations. So strategic and deliberate a misrepresentation ultimately stages legitimate (always particular and nuanced) struggles as rather identical security threats, advancing hegemonic geopolitical objectives. A primary beneficiary of this war-on-terror development and its capacity to generalise has been Israel, which has benefitted (a) in terms of defence sales and (b) in the sense that the “terrorist” catchall applied to Palestinians has gained widespread normalisation since 2001, whereby *“the Palestinian cause has been associated with extremism, especially since 9/11.”* [10] Loewenstein further elaborates on how the "global war on terrorism" emerged as an "*Islamophobic hegemonic coalition*," with Israel positioned as its easternmost front.[11] Similarly, Israel “know[s] that connecting its mission to Washington’s post-9/11 struggles is vital to eliciting sympathy and support”[12] for its own struggle against Palestinian “terrorists.”

Post-9/11 affairs provided Israel with the long-sought opportunity to shape global perceptions and policies in its favour and have served the rapid development of Israel’s defence industry, too. Indeed, *"The September 11, 2001, terror attacks on New York and Washington turbocharged Israel’s defense sector and internationalized the war on terror that the Jewish state had been fighting for decades."* [13] This is not simply because Israel has good weaponry and surveillance technology to sell – appealing in any case to those invested in actioning the so-called war on terror.

10 Loewenstein, Antony. The Palestine laboratory: How Israel exports the technology of occupation around the world. Verso Books, 2024, p56.

11 Ibid, p75.

12 Ibid, p76.

13 Ibid,p 48.

Rather, what it has to sell has already been "battle tested" on precisely the kind of targets such a war on terror seeks to go after – namely, the Palestinian, where "Palestinian" is a metonymic representation of "terrorist." The methods pioneered in Palestine are now widely used by governments across the world to suppress dissent, monitor opposition, and control marginalized populations. Israeli firms such as NSO Group, Cellebrite, and Verint provide mass surveillance tools that have been deployed in countries such as Saudi Arabia, the UAE, Azerbaijan, India, Myanmar, and Hungary to track and silence journalists, activists, and political dissidents. Loewenstein ultimately argues that *Israel has turned its occupation of Palestine to a global security model*. Beyond digital surveillance, Israel has also become a key supplier of cyber intrusion tools, with its military-intelligence unit, Unit 8200, playing a central role in developing cyberwarfare techniques that are now employed globally. Additionally, the Israeli model of counterinsurgency and urban warfare has influenced policing strategies, particularly in the United States, Brazil, and India, where programs such as "Deadly Exchange" have facilitated training sessions for U.S. police officers in Israeli "counterterrorism" tactics, later used against movements like Black Lives Matter and Indigenous activists. This is the latest installment, or the fruition, of a long-conceived plan for Israel to influence the global defence (and surveillance) domain. Since its earliest days, Israel has imagined itself to have a leading weapons industry. By the mid-1950s, Israel had developed a viable defense sector and began selling arms internationally. Prime Minister David Ben-Gurion emphasized that Israel would "sell arms to foreign countries in all cases in which the Ministry of Foreign Affairs has no objection." This period also saw the establishment of government-owned defense companies, which laid the foundation for Israel's arms industry to expand in the following decades. Therefore, it should be acknowledged that Palestinian resistance struggle is conducted against all this peculiarity.

Palestinian resistance and civilian life are peculiar in the extent of challenges they face against this deliberate and excessive focus on military (and surveillance) force. From international law viewpoint too, Palestine represents an unparalleled peculiarity in international law—a case of '*legal subalternity*' (as described by Ardi Imseis) where self-determination and sovereignty remain indefinitely deferred

under the guise of political legitimacy.[14] Unlike other territories that transitioned from colonial rule to full sovereignty, Palestine remains in a liminal legal space, trapped between enduring colonial structures, military occupation, and the strategic manipulation of international law by global powers. The British Mandate, Israeli occupation, and selective international interventions have entrenched a framework that recognises Palestinian rights in principle while denying their realisation in practice.[15] This illustrates how international law has functioned as a mechanism of subjugation rather than resolution. Meanwhile, Palestinian resistance is alternately framed as an anti-colonial struggle or as terrorism, depending on shifting geopolitical interests. Ultimately, Palestine exposes the contradictions of international law—its capacity to sustain domination while simultaneously offering avenues for legal resistance.[16] It remains the most enduring test case for the credibility of the global legal order, revealing both its structural inequalities and its potential to challenge hegemonic power.

The abovementioned securitisation has redefined occupation as a justified measure for maintaining international stability, further marginalising the voices of occupied peoples. The Palestinian case exemplifies the limitations of traditional legal frameworks, which often fail to account for the complexities of protracted occupations, the globalised nature of control mechanisms, and the daily lived experiences of those under occupation.[17]

In response to all these limitations, this report advocates for a broader, more nuanced legal approach that addresses the global securitisation of dissent and occupation as phenomena that extend beyond traditional legal boundaries.[18]It contends

14 Ardi Imseis, The United Nations and the Question of Palestine: A Study in International Legal Subalternity, PhD Thesis, University of Cambridge, 2019.

15 Ibid.

16 Ibid.

17 See Vasuki Nesiah, "Resistance in the Age of Empire: occupied discourse pending investigation." Third World Quarterly 27.5 (2006): 903-922, 915-917; Luis Eslava, and Sundhya Pahuja. "Between resistance and reform: TWAIL and the universality of international law." Trade L. & Dev. 3 (2011): 103; Luis Eslava, and Sundhya Pahuja. "Beyond the (post) colonial: TWAIL and the everyday life of international law." Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America (2012): 195-221; Luis Eslava, and Sundhya Pahuja. "The state and international law: A reading from the global south." Humanity: An International Journal of Human Rights, Humanitarianism, and Development 11.1 (2020): 118-138.

18 Vasuki Nesiah, "Resistance in the Age of Empire: occupied discourse pending investigation." Third World Quarterly 27.5 (2006): 903-922, 915-917.

that the existing legal language surrounding self-determination remains insufficient to capture the multifaceted realities of modern occupation. Instead, the analysis calls for adapting international legal principles to support self-determination in the face of evolving global pressures. By situating Palestinian resistance within the broader context of decolonisation, this report frames it as a lawful and morally justified response aligned with the fundamental right of peoples under occupation to resist alien domination.

Part I.
Theories of Resistance

Before moving on to the legal analysis, we will explore the theoretical foundations of resistance - focusing on some theories that resonate with the Palestinian struggle - which have shaped, justified, and expanded its understanding, particularly in the contexts of colonialism, imperialism, and military occupation.

Resistance and liberation movements draw deeply from a historical and philosophical landscape where the interplay between power, rights, and social justice has continuously shaped human action against oppressive structures. Central to these struggles is the right of the oppressed to resist subjugation, reclaim agency, and assert their inherent dignity. Philosophically, resistance has often been framed as a challenge to the law's attempts to suppress it, with revolutions arising when individuals and communities collectively expose the inadequacy of established systems and confront ideologies that sustain domination and subjugation. Costas Douzinas underscores the dual nature of rights in the context of resistance and revolutionary struggles.[19] On one hand, rights are codified and state-sanctioned, serving as instruments of social control. Conversely, a "second" notion of rights emerges from the oppressed and marginalised, transcending legal frameworks to demand justice. This alternative conception legitimises resistance through moral necessity rather than formal legality, framing a 'right to insubordination'.[20] Maurice Blanchot thinks that the right to insubordination expresses the exercise of freedom.[21] Here, the oppressed assert claims to humanity and liberation, challenging the established order at its core. When resistance evolves beyond incremental reforms to confront and

19 Costas Douzinas, Philosophy and Resistance in the Crisis: Greece and the Future of Europe. John Wiley & Sons, 2013, 85–88, 100–104; Douzinas, "Philosophy and the right to resistance", in Costas Douzinas, and Conor Gearty, eds. The meanings of rights: the philosophy and social theory of human rights. Cambridge University Press, 2014, 86-96.

20 Ibid.

21 Maurice Blanchot, 'Declaration of the Right to Insubordination in the Algerian War (Manifesto of the 121)', in Maurice Blanchot, Political Writings, Zakir Paul (trans.) (New York, Fordham University Press, 2010), 33–34.

dismantle entire systems of domination, it becomes an emancipatory force capable of fundamentally disrupting entrenched power structures.

Kant's philosophy embodies a paradox when it comes to resistance. While he famously argued for obedience to established law and rejected any legal right to revolution, he viewed historical revolutions, such as the French Revolution, as morally significant steps toward universal freedom. This tension highlights the contradiction between the law's claim to absolute authority and the human impulse for moral progress. This suggests that revolution, though unendorsed, is an inevitable aspect of history's morally purposeful trajectory.[22] Locke's philosophy offers a different perspective, framing resistance within the context of property and state. He argued for a limited right to revolution, primarily to protect property, thereby privileging the propertied class and excluding people with low incomes or property-less from such rights.[23] For Locke, revolution was a safeguard for the wealthy against tyranny rather than a right for all oppressed peoples, reflecting a tension between selective rights and broader demands for justice. Hegel's philosophy, however, aligns more closely with a transformative understanding of resistance. While he did not advocate a legal right to revolution, Hegel viewed resistance as historically necessary and justified it post-factum as an expression of the "World Spirit" driving moral and political progress.[24] According to Hegel, revolutions occur when the ethical structure of society no longer meets the needs of the people, framing resistance not as a reaction to authority but as a force of transformation integral to history's evolution.

Resistance and Liberation Struggles

> *'What may be most difficult to see is that to use law is also to invoke violence, at least the violence that stands behind legal authority … The reverse is also true – to use violence is also to invoke the law, the law that stands behind war, legitimating and permitting violence'.*[25]
>
> David Kennedy

22 Costas Douzinas, Philosophy and Resistance in the Crisis: Greece and the Future of Europe. John Wiley & Sons, 2013, 82-84.

23 Costas Douzinas, Philosophy and Resistance in the Crisis: Greece and the Future of Europe. John Wiley & Sons, 2013, 92.

24 Douzinas, "Philosophy and the right to resistance", in Costas Douzinas, and Conor Gearty, eds. The meanings of rights: the philosophy and social theory of human rights. Cambridge University Press, 2014, 93-95.

25 David Kennedy, "Modern War and Modern Law." International Legal Theory 12 (2006): 55.

Walter Benjamin's *Critique of Violence* offers a profound framework for understanding violence within structures of power. It distinguishes between *mythic* and *divine violence* alongside the modes of legal violence (*Rechtsgewalt*), *law-constitutive* (foundational), and *law-preserving* (administrative*) violence*.[26] *Mythic violence* manifests as the foundation of law, establishing boundaries through domination and perpetuating systems of control. It upholds order but obscures its origins in violence, embodying the punitive systems that sustain legal authority.[27] *Law-constitutive violence* imposes new legal systems and authority through acts of domination, legitimating itself as the assertion of sovereignty.[28] In contrast, *law-preserving violence* enforces existing legal structures through policing and suppression, reinforcing systems of power while quelling dissent.[29] In this regard, we can claim that violence is not merely an anomaly within the law or international law but a fundamental aspect of its existence and enforcement.

Benjamin's alternative, *divine violence*, transcends law altogether. It is law-destroying—a form of violence that dismantles oppressive structures without perpetuating new systems of domination.[30] *Divine violence* disrupts *mythic violence*, restores justice, and liberates the oppressed, operating outside the confines of law. This is particularly relevant to the Palestinian context, where legal frameworks, including international law, have historically legitimised Israel's occupation and denied Palestinians justice. By reframing resistance as a force that operates beyond the limits of legal validation, Palestinians can challenge these frameworks, rejecting the mythic violence of the occupier's sovereignty and reclaiming their liberation as an ethical and transformative act. Therefore, the term we use in the context, i.e. *redemptive violence,* is associated with *divine violence.*

26 Critique of Violence in "Walter Benjamin, Selected Writings Volume I." eds Marcus Bullock, and Michael W. Jenning, (2002). See also Byung-Chul Han, Topology of violence. MIT Press, 2018, 49-56.

27 Ibid, 239–242.

28 Ibid, 239.

29 Ibid, 243-244.

30 Ibid, 245-250.

In national liberation struggles, *redemptive violence* is a necessary, transformative and emancipatory violence aimed at overturning systems of oppression and restoring justice. In this context, Palestinian armed resistance can be seen as an embodiment of 'redemptive' violence, a necessary response to ongoing Nakba, i.e. decades of colonial and apartheid policies and incremental genocide imposed by Israel. Far from being a mere reaction, it is a *proactive articulation of sovereignty, dignity, and agency*. Here, resistance is not simply reactive but constitutes a radical reclamation of autonomy and self-determination, foregrounding displacement as the initial act of violence, fragmentation as systematic structural oppression, and the denial of self-determination as the ultimate goal of this framework.[31]

While Walter Benjamin's critique of violence exposes the inherent violence embedded in legal and political systems, emphasising *redemptive* power as a pathway to liberation, Frantz Fanon shifts the focus to the psychological and existential dimensions of resistance. Fanon deepens this analysis by demonstrating how colonial domination operates through external structures and colonising the minds and identities of the oppressed. For Benjamin and Fanon, resistance is more than a reaction; it is a transformative force—whether by dismantling control systems or reclaiming humanity and dignity through revolutionary means. Together, their frameworks provide a radical understanding of liberation that transcends statehood and engages with the existential re-humanisation of the oppressed.

In *The Wretched of the Earth*, Frantz Fanon redefines resistance as both a psychological and existential imperative, transcending political liberation. For Fanon, colonialism is not just a system of domination but a force that deeply dehumanises the colonised, stripping them of identity, agency, and self-worth. This pervasive alienation creates a psychological trauma that, Fanon argues, can only begin to heal through violent resistance—an act that is as therapeutic as it is political. [32] Such violence dismantles both the external structures of colonial power

31 Rabea Eghbariah, "Toward Nakba as a Legal Concept." Columbia Law Review 124.4 (2024).

32 Frantz Fanon, "The wretched of the earth." Grove Weidenfeld (1963), 94.

and their internalised hold over the psyche of the oppressed.[33] This insight resonates powerfully in the Palestinian struggle, where decades of displacement, apartheid, and fragmentation have inflicted profound psychological and social alienation. Fanon's understanding of violence as a path to reclaiming humanity underscores the existential necessity of Palestinian resistance as a reassertion of dignity and identity.

Fanon's vision of liberation is transformative. It rejects mere political sovereignty in favour of a total reimagining of social, cultural, and psychological existence.[34] For Fanon, resistance becomes an act of *existential reclamation*—purging colonial ideologies and restoring humanity and dignity.[35] It necessitates the decolonisation of minds, enabling the oppressed to reclaim their histories and values on their terms.[36] In Palestine, Fanon's call for mental and cultural decolonisation highlights the importance of resisting not only physical domination but also the erasure of Palestinian identity, heritage, and self-worth. The liberation struggle becomes a project of reconnecting with history and asserting cultural resilience against ongoing attempts to fragment and dehumanise Palestinian society.

Fanon frames violence as a radical means of breaking the psychological chains of subjugation.[37] Far from being a reactive tool, it transforms the colonised subject into an active agent of liberation, challenging ethical norms that reduce resistance to passivity. Palestinian armed and cultural resistance embodies this transformation, confronting both physical and psychological oppression while reconstituting agency in the face of a dehumanising occupation. Fanon's insights remain profoundly relevant in contexts such as Palestine, where colonial structures perpetuate displacement, alienation, and violence. Here, resistance is more than the pursuit of statehood; it is a rejection of colonial authority and an assertion of existential and collective self-determination.

33 Ibid, 51.

34 Ibid, 35.

35 Ibid, 93.

36 Ibid, 43.

37 Ibid, 94.

Fanon's anti-colonial psychology offers a holistic liberation framework that prioritises mental and social restructuring alongside political resistance.[38] By foregrounding cultural assertion, education, and collective healing, Fanon envisions resistance as a process of *dehumanisation*—a reclamation of dignity and identity that breaks external and internal colonial domination. For Palestinians, this process is a vital counter to the alienation enforced through military rule, forced displacement, and apartheid policies. Fanon's transformative vision reaffirms the necessity of Palestinian resistance as both an existential and collective act of liberation—an enduring struggle to restore humanity and overcome the psychological violence of colonialism.

38 Ibid, 47.

PART II.

EXPLORİNG JURİDİCAL SCOPE AND BOUNDARİES OF SELF-DETERMİNATİON İN POSİTİVE LAW

The right to self-determination is articulated in positive international law under Articles 1 and 55 of the United Nations Charter. Article 1(2) explicitly states that self-determination is one of the U.N.'s objectives. It emphasises further support for the concept of the right to self-determination by Article 55 of the Charter, which advocates for *"the establishment of friendly relations between nations based on respect for equal rights and the principle of self-determination of peoples, along with the adoption of other appropriate measures to strengthen universal peace."* The United Nations promotes the conditions necessary for stability and well-being, essential for promoting peaceful and amicable relations amongst nations based on equal rights, higher standards of living, full employment, and conditions conducive to economic and social progress and development. Specifically, these conditions include:

a) "Higher standards of living, full employment, and conditions for economic and social progress and development

b) Solutions to international economic, social, health, and related problems

c) International cultural and educational cooperation

d) Universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[39]

Furthermore, General Assembly Resolution 1514 (XV) of 1960 reiterates this 'right' in its declaration on the Granting of Independence to Colonial Countries and Peoples. Article 1(1) of the International Covenant on Civil and Political Rights and the

39 Article 55 of UN Charter

International Covenant on Economic, Social and Cultural Rights, adopted in 1966, demonstrates this. In addition, in 1948, the international community recognised the principle of self-determination: "Whereas the rule of law must protect human rights if individuals are not to be compelled to resort to rebellion against tyranny and oppression."[40]

The General Assembly achieved another significant milestone with the declaration on the Independence of Colonial Nations and Peoples, which proclaimed in paragraphs 2 and 4:

> *2. All people have the right to self-determination. They are free to determine their political status and to pursue their economic, social, and cultural development freely.*
>
> *4. All armed actions and measures of repression against dependent peoples must cease to allow them to enjoy their right to complete independence peacefully. The integrity of their national territory will be respected.*[41]

Since 1949, developments in international relations have gradually led to establishing and consolidating a universal understanding regarding national liberation wars. This principle of self-determination is grounded in a consensus amongst global organisations. The organs of the United Nations, particularly the General Assembly, have established a secondary interpretation: that self-determination constitutes a legal obligation for colonial powers while affirming all peoples' right to self-determination.[42]

The paramount importance of General Assembly Resolution 1514 (XV) was that it was in the character of a Declaration of Independence for colonial nations and peoples. Self-determination is recognised as a human right in Article 1 of both International Covenants adopted by the General Assembly in 1966. A significant achievement in this context is encapsulated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation amongst

40 Universal Declaration of Human Rights of December 10, 1948

41 United Nations General Assembly, Declaration on the Granting of Independence to colonial countries and peoples (Resolution 15 14, XV, December 14, 1960)

42 Georges Abi-Saab, "Wars of National Liberation in the Geneva Conventions and Protocols, "165 Recueil Des Cours), (1979-IV), 369-370

States, as articulated in General Assembly Resolution 2625 (XXV) in 1970. The international community universally acknowledged self-determination as a binding norm.[43]

In Resolution 2105 (XX), dated December 20, 1965, the United Nations General Assembly affirmed the legitimacy of colonial peoples' struggles against colonial governance for their right to self-determination and freedom. It called upon all states to provide material and moral support for national liberation movements within colonial territories.

Common Article 1 of both International Covenants clearly states that all peoples possess the right to self-determination; they are entitled to freely determine their political status and pursue economic, social, and cultural development.

This trajectory culminated with adopting the Declaration on Principles of International Law on Friendly Relations and Cooperation according to the United Nations Charter in General Assembly Resolution 2625 (XXV) on October 24, 1970. This resolution proclaimed a development and amounts to a codification in terms of right to self-determination of all people. It predicted:

To expedite an end to colonialism while considering the freely expressed will of affected populations, recognising that subjugation to alien domination constitutes a violation of principles that deny fundamental rights contrary to the UN Charter.

Creating a sovereign independent state or free association with an independent state represents a means through which people can exercise their right to self-determination. Every state must refrain from any violent acts that would deprive these populations of their right to self-determination and their freedom to determine their present circumstances. Resisting such oppressive measures to advance their right to self-determination entitles populations to seek assistance under U.N. objectives and principles.

43 Ibid, 370

Jus Cogens and Erga Omnes Status

The genesis of the concept of jus cogens norms (preemptory norm) in international law flows through the Vienna Convention on the Law of Treaties (VCLT). Article 53 of VCLT enunciates:

> *The International community of states accepted and recognised a peremptory norm of general international law as a norm for which no derogation is permitted and that can only be modified by a subsequent norm of general international law with the same character.*[44]

Article 53 further explains that if a treaty's conclusion conflicts with the preemptory norm of general international law at any stage, it becomes 'void.' In *the Kosovo Advisory Opinion* case, the ICJ affirmed the principle of jus cogens and held that Self-determination is a core principle of contemporary international law, albeit with complexities regarding its application beyond decolonisation.[45] In another case, Armed Activities, the ICJ further stresses the violation of self-determination as a grave breach of international obligation, thereby invoking state responsibilities.[46]

In the Advisory opinion on the consequences of denial of the right of self-determination in the context of the construction of the wall in the occupied Palestinian territory, the ICJ though did not use the terminology of jus cogens; however, it identifies the obligations consistent with those flowing from the breach of jus cogens norms under Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). Paragraph 159 of the Wall Advisory Opinion enunciates:

> *Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognise the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They must also refrain from rendering aid or assistance*

44 Enforcement of international law - Diakonia International Humanitarian Law Centre. https://www.diakonia.se/ihl/resources/international-law/enforcement-international-law/

45 International Court of Justice, Advisory Opinion on Kosovo, 2010

46 International Court of Justice, Armed Activities on the Territory of the Congo (*Democratic Republic of Congo v. Uganda*), 2005.

> *in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.*[47]

The International Law Commission (ILC) also held that "If a state fails to comply with its obligations that have jus cogens status grossly or systematically, all other states are barred from recognising as lawful the resulting situation and from rendering aid or assistance in maintaining it."[48]

The ILC draft explicitly refers “not only to the formal recognition of this situation, it also prohibits acts implying such obligations.”[49]

The exposition of ILC draft articles on state responsibility includes the right to self-determination as a norm with *jus cogens* status. Moreover, the ILC's 2019 draft conclusions on jus cogens substantiate the argument that self-determination has attained the norm of jus cogens, which emphasises its integral role in protecting collective interests and human rights.[50]

Erga Omnes

In addition to the jus cogens status, the right to self-determination embodies an *erga omnes* obligation, legally binding all the states to respect and ensure the application of this right universally. The landmark judgement *Barcelona Traction Case* 1970 ruled that states are under a legal obligation as a whole international community to protect the legal interest. This concept of *erga omnes*, which 'must be fulfilled regardless of the behaviour of the other states in the same field,' 'gave rise to a claim for their execution that accrues to any other member of the international community.'[51]

47 Israeli Wall case (n 7) [159]

48 Christian J, Tams, and Antonios Tzanakopoulos, “Barcelona Traction at 40: The ICJ as an Agent of Legal Development” (2010) 23(4) Leiden Journal of International Law 781, 793–794.

49 International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts,” with commentaries (ARSIWA), in *Report of the International Law Commission on its 53rd Session* (April 23 - June 1 and July 2 - August 10, 2001), U.N. Doc A/56/10, art. 48.

50 International Law Commission, Draft conclusions on Jus Cogens,2019

51 Barcelona Traction, Light and Power Company Limited (*Belgium v Spain*) (Judgement) [1970] ICJ Rep 3 [33]

According to the ICJ, the people's right to self-determination has established a status of *erga omnes*, which allows any third state to invoke state responsibility for the denial of self-determination.[52]

The scope for invoking responsibility includes demanding cessation and reparation for the injured party. Such steps can be part of a strategy to encourage non-compliant occupiers to become compliant. Signalling that the occupier is not complying with its international legal obligations can affect its domestic and international legitimacy.[53] For this to impact the occupier, there must be concerns about its legitimacy and an understanding that compliance with the law is a means of improving its legitimacy. It also requires that, from the occupier's perspective, such legitimacy concerns outweigh the strategic benefits of maintaining the occupation.

Article 54 of the ILC (ARSIWA) provides a basis for countermeasures to enforce compliance, but the specific nature of the measures permitted in this context remains to be determined. The general practise of countermeasures includes examples of economic sanctions and the termination of certain relationships.[54] The practise is limited because third countries need a clear incentive to monitor and enforce human rights worldwide. Nevertheless, Libya, Syria, and Russia have all been the subject of significant third-party countermeasures in recent years, including from E.U. member states.[55] The reasons given for why third states condemn Israel for specific violations of international law but do not impose sanctions against Israel include concern that they will not behave constructively in the search for a political solution to the dispute over territorial claims.[56] In this regard, reflecting on the jus cogens status of the right to self-determination is essential since serious violations of jus cogens norms entail obligations for third countries.

52 Case Concerning East Timor (*Portugal v Australia*) (Judgement) [1995] ICJ Rep 90 para 29

53 Beth A Simmons, Mobilising for Human Rights: International Law in Domestic Politics (CUP 2009) 124.

54 The ICJ as an Agent of Legal Development' (2010) 23(4) Leiden Journal of International Law 781, 793-794.

55 Martin Dawidowicz, "Third-Party Countermeasures: A Progressive Development of International Law?" *Questions of International Law* 29 (2016): Zoom In 3.

56 The German parliament has called on Israel to halt its plans to annex settlements in the occupied West Bank. However, it has ruled out the use of sanctions against Israel' in "Germany rejects Israel's West Bank annexation plans as illegal" Deutsche Welle July 1, 2020

Question of Self-Determination

When the British issued the Balfour Declaration in 1917, they did not expressly advocate a separate state for Jews; instead, they vaguely referenced a "national home for Jewish people."[57] Moreover, after a short span of military invasion and de facto rule by the British administration, the state of Palestine was administered as a mandatory power of the Allied League of Nations.[58] Article 22 of the Covenant of the League of Nations oblige the international community to ensure the Palestinian people's fundamental right to self-determination.

The relevant part of the Article enunciates that:

> *Specific communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance until they can stand alone. The wishes of these communities must be the principal consideration when selecting mandatory measures.*[59]

In *the Advisory opinion for the Legal consequences of the state of the continued presence of South Africa in Namibia*, the ICJ observed that the League of Nations mandate was "created in the interest of inhabitants of Territory and for the humanity in general, as an international institution within an object "a sacred trust of civilisation" and the "international rules regulating the Mandate" as "constituting an international status for the territory recognised by all the Members of the League of Nations..."[60]

The Legal Framework of Betrayal

The British did not comply with the mandates; instead, they became involved in the Zionist movement, allowing outsiders to decide the fate of the Palestinians in the il-

57 "Balfour Declaration," November 2 1947. In: Mahdi Abdul Hadi, Ed., *Documents on Palestine*, (Passia Publications, Jerusalem, 2007). 33.

58 ibid

59 Covenant of the League of Nations, Adopted at Versailles, June 28, 1919,188.

60 The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West and Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, ICJ Reports 128, 132 (July 11, 1950).

legally occupied territory.[61] The basic structure of Article 22 is premised on the "sacred trusts of civilisation" for the realisation of the right to self-determination. However, this legal framework, which aimed to ensure the self-rule and political development of the local populace, was co-opted by Britain to serve its own imperialistic goals.[62]

The ICJ also highlighted this historical betrayal of Britain in its *Advisory opinion on the Legal consequences of the construction of a wall in the occupied territory (2004)*. The Court affirmed that the Palestinian right to self-determination is enshrined under international law and held that Britain's failure to comply with the mandate denies this right.[63] The legal commentators also accused Britain of facilitating the displacement and illegal occupation of Palestinian territories, leading directly to the horrendous situation that persists today.[64] The British reflect their collaboration and active involvement in shaping the legal and political developments that have perpetuated the occupation.

Constructing the Argument for Palestine's Occupation

A wealth of legal scholarship has materialised, focusing primarily on Israel's compliance or non-compliance with its obligations as occupying power and its humanitarian impact. This section evaluates these legal arguments and synthesises a position based on establishing legal norms and contemporary doctrine. The first group of scholars observed that occupation generated several normative results when applying the law of occupation. However, they often analyse occupation as a fact of power that cannot be explained away on political grounds. They ignore the normative legal order, which is either fragmented within an extra-legal domain or as a legally permissible condition without rules prohibiting it. Secondly, some distinguish between a legal and illegal occupation through identification, which involves a legal construction relationship with the normative order that generates an occupation and the normative order that produces the legal occupation re-

61 League of Nations, "Interim Report of the Civil Administration of Palestine during the Period July 1, 1920- 30 June 1921," The Report of the British Government as the Mandate Holder, July 30, 1921.

62 Pedersen, Susan. *The Guardians: The League of Nations and the Crisis of Empire*. (Oxford: Oxford University Press, 2005), 160-180

63 Advisory opinion (2004) Legal Consequences of the Construction of the Wall in the Occupied Territory. International Court of Justice (ICJ) para 88

64 Quigley, John. *The Case of Palestine: An International Law Perspective*. (Durham: Duke University Press, 2005),81

gime. The basic principle of the international legal order rests on the presumption of sovereign equality between states.

The Centrality of this conclusion lies in the principle of self-determination, which vests sovereignty in the people rather than the occupier. This principle is further supported by three key concepts: (1) sovereignty and title in the situation of occupation do not vest in the occupying power; (2) the obligation of the occupying power to maintain public order and civil life in the territory under control; and (3) the temporary nature of the occupation.[65] It may be neither permanent nor for an indefinite period. The ICJ has already determined the illegality of one historical case of occupation: the presence of South Africa in Namibia following the revocation of the mandate by the General Assembly; the Court held with the *"historical fact of South Africa's presence in Namibia (then called West Africa) and then proceeded to deduce the illegality of that continuing presence from various pertinent components that had characterised this fact."*

Israel's reluctance to approve the Fourth Geneva Convention (hereinafter referred to as GC) and Additional Protocol I (1977), particularly its application to the West Bank and Gaza, reflects an attempt to disregard these international humanitarian norms. Israel questioned the applicability because the territory does not form part of the high contracting party upon their occupation; therefore, G.C. does not apply.[66] Their argument is based on Jordan's annexation of the West Bank in 1950, while Egypt never claimed the Gaza Strip as part of its territory.[67] The aggressor state posits a narrow interpretation of laws to ensure that they provide minimal protection to the occupied civilian population;[68] The intention of Israel's narrow definition is also quite telling because it has been rejected, even within Israel itself.[69]

65 *Construction of a Wall, supra* note 6, Separate Opinion of Judge Elaraby, 1 3.1; Separate Opinion of Judge Koroma, 2. A discussion of the temporal constraints of the normative regime of occupation is offered in Section II.A.4 *infra.*

66 Meir Shamgar, "Legal Concepts and Problems of the Israeli Military Government: The Initial Stage," in *Military Government in the Territories Administered by Israel 1967-1980*, 13, 33–34.

67 Meir Shamgar, "The Observance of International Law in the Administered Territories," *Israel Yearbook on Human Rights* 1 (1971): 262, 263

68 McDougall, Carrie. "Accountability for the Crime of Aggression against Ukraine: An Immediate Call to Reform the ICC's Jurisdiction." *Verfassungs blog*, March 15, 2022.

69 Yoram Dinstein, "The International Law of Belligerent Occupation and Human Rights," *Israel Yearbook on Human Rights* 8 (1978): 104, 107.

The rationale underlying the GC IV is to safeguard the protection of the civilian population from occupying power. To all intent and purposes, Israel is a foreign occupying power of the Palestinian population. The Convention is part of international humanitarian law, the main object of which is the protection of civilian populations regardless of the existence of sovereignty. Therefore, there can be no legal justification for denying the Palestinian local population the protection enshrined under the GC IV.[70]

The Applicability of Occupation Law in Practise

Another group of scholars argues that protecting individuals in occupied territory has evolved significantly after WWI and WWII. Before this, these codified laws could not adequately protect individuals; therefore, the state adopted new rules embodied in the 1949 GC IV.[71] Subsequently, the Additional Protocol I of 1977 GC for protecting civilians in occupied territory formed an integral part of the law of occupation.[72]

Marco Longobardo is amongst the scholars who enunciated that in the discourse regarding occupation, there is confusion between the situation of occupation versus legal regulation (commonly referred to as the law of occupation). He posits the test of applicability of the law of occupation by interrelating between the fact and the law of occupation. He summarised this test as follows: every time there is (*sein*) the fact of occupation and the international legal order (*sollen*) the application of the law of occupation. Therefore, the mere fact of occupation, regardless of its applicability under *jus ad bellum*, triggers the applicability of international legal norms.[73] He further emphasises that occupation is not an institution created by international law but a norm that regulates the factual condition of occupation.[74] Therefore, the idea that the factual nature of the occupation prevents the examination of its legality under international law is wrong, and there is no need to construct a "normative approach to the law of occupation.

70 OrnaBen-Naftali and Yuval Shany, "Living in Denial: The Application of Human Rights in the Occupied Territories," *Israel Law Review* 37 (2003-04): 17.

71 Eyal Benvenisti, *The International Law of Occupation* (1993), 24

72 Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protect-on of Victims of International Armed Conflicts (AP I), June 8, 1977

73 Marco Longobardo, *The Use of Armed Force in Occupied Territory* (Cambridge: Cambridge University Press, 2018), 28.

74 Christopher Greenwood, "The Administration of Occupied Territories in International Law," in *International Law*, edited by David Playfair (London: 1992), 241, 250.

Numerous International documents substantiated the above argument, including Article 42 of the Hague Regulations and Article 2(2) of the Fourth Geneva Convention; the application of the law of occupation is triggered by the fact of occupation, irrespective of its legality under *jus ad bellum*. The International Criminal Tribunal for the former Yugoslavia (ICTY) further reinforced this principle in its jurisprudence, holding that occupation entails the exercise of authority over a territory, even if this authority is exercised indirectly or by proxy.[75]

Occupations carried out by states – since the condition of occupation is a fact, '[m]ere proclamation of occupation is insufficient to bring an occupation into existence' and '[t]erritory may be occupied even though no proclamation for its declaration were made.'[76] In practise, states are reluctant to acknowledge their position as occupying powers, which creates several legal obligations and causes widespread stigma in international relations.[77]

The ongoing demographic changes caused by illegal settlements and the displacement of Palestinian populations reinforce the conclusion that Israel's occupation is both prolonged and illegal.

Crisis of International Law and Israel's Defiance

Although both groups of researchers give a critical understanding of the legal dimensions of the Israeli occupation, the debate on the nuances and technical aspects of the occupation has lasted for decades. The long-term legal debate, often based on good faith and humanitarian principles, has not led to a global consensus on the illegal occupation of Palestine by Israel. Richard Falk argues that the international community faces a "practical crisis" in international law, where political will rather than legal principles dictate enforcing international legal norms.[78] The failure of international institutions to take Israel's responsibility highlights the limitation of international legal order and questions its capacity to end violations of international law.

75 Procecutor V. Prlić, Para 322

76 U.S. Military Manual, section 11.2.4

77 Martti Koskenniemi, 'Occupation', 164.

78 Richard Falk, International Law and Al-Aqsa Intifada (Jerusalem: Passia 2001), 14

Israel's long-standing strategy of misuse and manipulation of legal arguments has enabled it to sustain its occupation while violating the fundamental principles prohibiting such actions.[79] Through illegal settlements, demographic manipulation, and systematic violations of the IHL, Israel has fundamentally changed the facts on the ground and committed war crimes and crimes against humanity without facing meaningful repercussions. The fact that the Fourth Geneva Convention does not allow the violation of essential IHL duties by occupying power, and this underlines Israel's legal defence's invalid nature.

One of the most outrageous justifications for Israel is that in the event of a prolonged occupation, the sovereignty vests to the international community, which negates the claim of Palestinian self-determination. At the same time, however, Israel rejects any application of international law or the supervision of global institutions. David Kennedy's observation that "military action becomes a legal act; just as legal action becomes a weapon."[80] highlights Israel's weaponisation of law in its military strategy. The law is not a constraint on Israel's actions but a tool to legitimise the occupation of Palestine and undermine Palestinian claims.

The Historical Evolution and Legal Recognition of National Liberation Movements

National liberation movements can be historically periodised into distinct phases. According to Abi-Saab, these phases include the era of colonial suppression and internalisation of liberation struggles, the transformative post-World War II period marked by the rise of the United Nations Charter, the decolonisation era of the mid-20th century, and the post-Cold War challenges to the legitimacy and recognition of such movements.[81] This trajectory reveals how the struggle for

79 George E. Bisharat, "Violence's law: Israel's campaign to transform international legal norms." Journal of Palestine Studies 42.3 (2013): 68-84. Bisharat critically examines Israel's systematic efforts to reshape international legal norms, particularly international humanitarian law (IHL), by violating and redefining these norms through its military actions. Bisharat identifies key strategies such as legal entrepreneurialism, reclassifying operations as "armed conflict short of war," and legal innovations like the Dahiya Doctrine, targeted killings, and weaponised warnings. He argues that these efforts undermine the core principles of IHL, expanding the scope of legitimate violence and eroding protections for civilians. This analysis highlights how Israel's practises contribute to the normalisation of violations of international law and contextualises the challenges faced by Palestinian resistance movements.

80 David Kennedy, Of war and Law (Princeton: Princeton University Press,2006), 12-13

81 See Georges Abi-Saab, Wars of National Liberation in the Geneva Conventions and Protocols (165 Recueil Des Cours), 416

self-determination transformed from a domestic rebellion into a cornerstone of international law.

During the colonial era, national liberation struggles were largely dismissed as internal matters governed solely by the laws of the colonising powers. Resistance movements were labelled insurgencies or rebellions, with international law primarily upholding the colonial order. The absence of legal recognition denied these movements any international legitimacy, reflecting the dominance of state sovereignty and the exclusionary nature of the international community, which operated as a "club" for recognised states and powers.[82]

The aftermath of World War II marked a pivotal shift. The establishment of the United Nations Charter in 1945 introduced self-determination as a principle of international law, though initially framed as aspirational. This period saw decolonisation gaining momentum, with the UN General Assembly adopting Resolution 1514 in 1960, which declared the right to independence for colonial peoples. This legal development provided a foundation for the legitimacy of national liberation movements and reframed their struggles as exercises of self-determination rather than mere internal dissent.[83]

The 1960s and 1970s represented the zenith of international legal and political recognition for national liberation movements. The adoption of UN General Assembly Resolution 2625 in 1970 explicitly recognised the legitimacy of armed resistance in the pursuit of self-determination. Concurrently, international humanitarian law evolved with Protocol I of the Geneva Conventions in 1977, extending protections to wars of national liberation. This protocol, particularly Articles 1(4) and 96(3), allowed liberation movements to adhere to the Geneva Conventions, granting them legal personality and obligations on par with sovereign states. Movements such as the Palestinian Liberation Organisation (PLO) and the Algerian National Liberation Front (FLN) epitomised this era of elevated legal and political status.[84]

82 Abi-Saab, Georges. "Wars of national liberation in the Geneva Conventions and Protocols." 1979, in Recueil des cours / Académie de droit international, Dordrecht, Volume 165(1979), t. 4, p. 357-445, 366-367.

83 Abi-Saab, Georges. "Wars of national liberation in the Geneva Conventions and Protocols." 1979, in Recueil des cours / Académie de droit international, Dordrecht, Volume 165 1979, t. 4, p. 357–445, 369–371.

84 Abi-Saab, Georges. "Wars of national liberation in the Geneva Conventions and Protocols." 1979, in Recueil des cours / Académie de droit international, Dordrecht, Volume 165 1979, t. 4, p. 357–445, 372–375;400–404.

However, the post-Cold War period introduced significant challenges. The decline of ideological bipolarity shifted international priorities, with counterterrorism narratives increasingly framing liberation movements as threats to state sovereignty rather than legitimate actors in international law. Support for these movements waned, and the application of self-determination became selective, often constrained by political expediencies. Georges Abi-Saab highlights this cyclical evolution, emphasising that while international law codifies the legitimacy of armed struggles for self-determination, political realities often undermine these principles, as seen in the contemporary struggles of Palestinian resistance.[85]

The Right to Armed Struggle in Palestinian National Liberation

In the ongoing Israeli colonialism and War against Palestinians, global solidarity is essential but insufficient, as they cannot bring back two-year-old Mohammed Al Tamimi,[86], who died of Israeli gunfire—one of more than 10,000 children lost in this long-armed conflict. Over the past three decades, more than 41,000 Palestinians have lost their lives, each representing a destroyed family and a stolen future amidst a landscape of systematic Human Rights violations, illegal demographic engineering, and the unchecked expansion of illegal settlements. Despite international support and solidarity, the reality is that these efforts have not dismantled the structure of Israeli occupation, halted the Hermes heroine (drones used against unarmed civilian populations in Palestinian-occupied territories) and snipers, or banned white phosphorus.[87] Between 7 October 2023 and 23 December 2024, Israeli forces caused devastating human loss and suffering in Gaza amounting to genocide, as documented by the Euro-Med Human Rights Monitor.[88] In this period, 54,107 Palestinians were killed, including 17,627 children and 10,892 women, while civilians constituted 90% of the fatalities. Additionally, 113,220 Palestinians were injured, with thousands suffering permanent disabilities, including over 10,000 children who

85 Abi-Saab, Georges. "Wars of national liberation in the Geneva Conventions and Protocols." 1979, in Recueil des cours / Académie de droit international, Dordrecht, Volume 165 1979, t. 4, p. 357–445, 406–412.

86 Muhammad Al Tamimi, a 2-year-old boy from village Nabi Saleh in the west bank, was killed by Israeli occupying forces on December 4, 2022. He is the youngest victim of Israeli ongoing oppression against the civilian population.

87 Human Rights Watch, (2023) Israel: White Phosphorous Munitions used in Civilian areas.

88 https://euromedmonitor.org/ar/article/6577.

lost at least one leg. Over 4,950 individuals were detained or forcibly disappeared, with survivors reporting severe torture, including sexual violence, electric shocks, and waterboarding. The destruction of infrastructure was catastrophic, with 456,000 housing units, 9,700 government facilities, 46 hospitals, 227 schools, and 11 universities either partially or completely destroyed. Nearly 90% of Gaza's population was forcibly displaced, with refugee camps also bombed. Critical resources have been systematically denied: 97% of the water supply falls below global safety standards, 96% of the population faces food insecurity, and 70% suffers malnutrition. As the international community observes, the question remains suffocating: How long will conscience remain dormant while the Palestinian people systematically face denial of their right to self-determination?

Azmi Bishara argues that the Palestinian liberation struggle is a central example of resistance to colonialism and foreign occupation. Bishara contends that, although solidarity efforts were essential, they had to be accompanied by direct resistance, including armed struggle, which, in certain situations, became the only effective means of dismantling the system of domination.[89] The Palestinian people have waged a national liberation war, fighting to realise the fundamental right to self-determination guaranteed by the United Nations, which is the cornerstone of international legal frameworks that support the liberation movement. Based on Bishara's view, David Kennedy further explored the complexity of the legal framework that governs the national liberation movement, pointing out that these frameworks are not merely neutral structures but embedded in the political realities of power and resistance. Kennedy argues that while international law discerns armed resistance, it must also grapple with the lived experiences of people under occupation.[90] Therefore, the Palestinian struggle is not just a legal issue but a deeply political one, requiring both a normative and pragmatic approach to understanding the role of armed resistance in achieving self-determination.

Antonio Cassese offers a complementary view, emphasising that the right to self-determination is a *jus cogens* norm, one of the highest in international law, which justifies armed resistance when peaceful measures fail.[91] Cassese's legal

89 Azmi Bishara, The Quest for Freedom Palestinian Nationalism (London: Zed Books, 2018),91

90 David W. Kennedy, Of war and Law (Princeton University and Press 2006), 56-57

91 Antonio Cassese, Self-determination of People: A Legal Reappraisal (Cambridge: Cambridge University Press, 2017), 73-75

theory highlights that the protracted nature of Israel's occupation, coupled with its violation of international humanitarian norms, provides a compelling legal basis for the legitimacy of armed struggle in the Palestinian context. In Cassese's view, the international community must recognise that the Palestinian right to resist is not an exception but a normative principle grounded in the legal right to self-determination. In this regard, the principles enshrined in the U.N. charter and other international instruments support the Palestinian right of armed resistance to achieve their fundamental right to self-determination, which will further be analysed in the following sections, addressing multiple legal frameworks on armed resistance.

Legal Basis of Armed Resistance to Oppression

The right to armed resistance is deeply rooted in traditional international and treaty law, contextualising national liberation movements. The United Nations General Assembly resolutions[92] have consistently reaffirmed the legitimacy of the armed struggle against colonial rule, foreign occupation, and racist regimes. For instance, General Assembly Resolution 37/43 of 3 December 1982 explicitly reaffirms "the legitimacy of the struggle of peoples for independence, territorial integrity, national unity, and liberation from colonial and foreign domination and foreign occupation *by all available means, including armed struggle*."[93] This recognition underscores the principle that oppressed peoples have a legal and moral right to resist through all available means when other avenues for self-determination are denied.

In the case of the Western Sahara, the International Court of Justice interpreted the resistance of the tribes as an expression of self-determination. The absence of condemnation implies that the ICJ holds that such armed resistance acts against foreign rule are legitimate expressions of self-determination.[94] According to Ahmad Salama, this recognition is rooted in the historical experience of oppressed peoples, including Palestinians, whose legal right is inextricably linked to self-determination to resist prolonged occupations.[95]

92 UNGA Resolutions 1514(1960), UNGA 3103(1973), UNGA 37/43 of 3 December 1982.

93 https://documents.un.org/doc/resolution/gen/nr0/425/21/pdf/nr042521.pdf.

94 Western Sahara, Advisory Opinion, [1975] ICJ Rep 12 (ICJ), para. 104

95 Ahmad Salama, "Demographic changes in Occupied Territories," Journal of Palestine Studies 48, no. 1 (2019),40-42

Before discussing whether the Palestine liberation movement has acquired subject status under international law, we must explore whether national liberation movements such as the Palestinian resistance have an international legal personality. Moreover, if not, can the liberation movement attain its goals without international character? In the *Reparation for Injuries Suffered in the Service of the United Nations* advisory opinion, the International Court of Justice accepted that:

> *Throughout its history, the development of international law has influenced the requirements of international life, and the progressive increase in the collective action of States has already given rise to instances of action upon the international plane by certain entities that are not States.*[96]

Now, the question of whether national liberation movements constitute a subject of international law, and if so, to what extent, is inextricably linked to the development of the right to self-determination. The acquirement of the status of a national liberation movement amounts to be recognised as the representatives of a particular liberation movement. This international legal standing capacity is commonly attributed to being admitted by its peoples and is then admitted as observers or members of international organisations in some cases. This recognition of their capacity as actors in the global community may indicate that the movement can possess limited rights and obligations under international law.

In the 1960s and 1970s, the participation of the liberation movement witnessed the 13th assembly for resolution 2918 (1972) (XXVII) of the United Nations, which, in consultation with the Organization of African Unity, advocated the participation of the liberation movements of Angola, Guinea-Bissau, Cape Verde, and Mozambique "in an observer capacity in its consideration of these territories." In resolution 3247 (XXIX), the United Nations Conference on the Representation of States in Relations with International Organizations invited national liberation movements recognised by the United Nations Organization for the Reconstruction of the United Arab Emirates and the Arab League to participate as observers in the United Nations Conference on the Representation of States in Relations with International Organizations.

96 Reparation for Injuries Suffered in the Service of the United Nations (1949) Rep 174-178

In 1974, in an unprecedented act of recognition, the General Assembly invited the Palestine Liberation Organization, the representative of the Palestinian people, to participate in the General Assembly's deliberations on the question of Palestinian movements—the work of various subsidiary organs of the United States. The powers of the PLO extend when the Assembly invites the PLO to participate as observers in the meetings and work of the General Assembly in the capacity of observer.[97]

Richard Falk believes that the international legal personality of the national liberation movement should not diminish because its struggle involves using force.[98] Falk stresses, however, that international law must accommodate these movements as legitimate actors in the struggle against illegal occupation and domination, especially when peaceful means have been exhausted.

Ali Golma also argued that the national liberation movement in Palestine represents its military wings and the people's collective will. This collective character distinguishes these movements from simply militants, giving them the legal power to act on behalf of the entire occupied population.[99] Article 96 of Protocol I (1977) to the Geneva Convention enshrines this representative function, recognising the legal status of the Liberation Movement involved in a conflict of national liberation.

This declaration was found to resolve several complicated and controversial issues arising from cases of violent self-determination, namely:

(a) It clearly states that the "Forcible actions" or use of force prohibited under Article 2(4) is not that used by people struggling for self-determination, but that which colonial or foreign governments resort to denying them self-determination.

(b) Conversely, armed resistance to the forcible denial of self-determination - through the imposition or forcible maintenance of colonial or foreign rule - is legitimate under the Charter, according to the declaration

97 United Nations General Assembly, "Resolution 3237(XXIX) on the Palestine Liberation Organization," A/RES/3237(XXIX), November 22, 1974.

98 Richard Falk, "Intervention and National Liberation." In Intervention in World Politics, edited by Bull, 119-33. Oxford: Clarendon Press, 1984

99 Ali Gorman, Understanding the Israeli Occupation: A legal perspective (Beirut Arab Institute for Research and Publishing .2021), 104.

(c) The right of liberation movements representing peoples struggling for self-determination to seek and receive support and assistance implies that they have a locus standi under international law and international relations.

(d) This right necessarily implies also that third States can treat liberation movements, assist and even recognise them without this being considered a premature recognition or constituting an intervention in the domestic affairs of the colonial or alien government.[100]

However, even before the adoption of the said 1970 declaration, the United Nations affirmed several times the legitimacy of such struggles. For example, in resolution 2649 (XXV) (1970), the General Assembly said that it: *"Affirms the legitimacy of the struggles of peoples under colonial and foreign domination, recognised as a claim to the right to self-determination to restore to themselves that right by any means atdisposal."*[101]

"The Declaration has been construed to have legalised the use of farmed means to assert the right to self-determination. The 'forcible action' prohibited under Article 2 (4) of the Charter comprehends the use of force by colonial governments to deny a people of their right to self-determination."[102]

Another significant development based on the 1970 Declaration is the affirmation that liberation movements had *locus standi* in international law and that wars of national liberation were armed conflicts of an international character.

Under the 1970 Declaration, a movement representing a people 'in their actions against, and resistance to, such forcible action' used to deny them their right to self-determination, are entitled to seek and receive outside support. Moreover, third parties that assist liberation struggles do not breach their duty of non-intervention in the domestic affairs of another state, for such assistance is precisely by the purposes and principles of the Charter itself.[103]

100 Karen Parker, "Understanding Self-Determination: The Basics," presentation to the First International Conference on the Right to Self-Determination, United Nations, Geneva, August 2000.

101 Georges Abi-Saab, Wars of National Liberation in the Geneva Conventions and Protocols (165 Recueil Des Cours), 416

102 ibid

103 Wil D. Verwey, "The International Hostages Convention and National Liberation Movements," *The American Journal of International Law* 75, no. 1 (January 1981), 69

Although the "belligerents can speak for themselves, the liberation movement not only represents itself and the territories it controls but also represents all people whose right to self-determination has been denied. This representative capacity makes the status of a national liberation movement intrinsically independent of a geo-military dimension."[104] Therefore, the international legal framework recognises that the liberation movement transcended military actions and that their agency for rights and aspirations of the people it represented.

Evaluating the Scope and Applicability of International Humanitarian Law (IHL) in Contemporary Warfare

We must also analyse the legitimacy of Armed resistance in occupied territories against an occupying power from the perspective of International Humanitarian Law, as *jus ad bellum* addresses the situation of occupation.

Notwithstanding the legitimacy of armed resistance under international humanitarian law and codified humanitarian Convention according to its legitimacy, face multiple disagreements amongst states; the powerful states attempt to link resistance movements and their freedom fighters with occupying forces; conversely, smaller states, due the fear of being under occupation at any point of time, have been vocal in emphasising the legitimacy of armed resistance against occupying power.[105]

Before the establishment of occupation, international humanitarian law recognised the legitimacy of *levée en masse*, which granted substantial protection to the individual concerned. The term *levée en masse* is defined as the "*inhabitants of a territory which has not been occupied, who on the approach of the enemy spontaneously take up arms to resist the invading troops without having had time to organise themselves into regular armed forces*."[106] They must be regarded as combatants if they carry arms openly and respect the laws and customs of armed conflict. If captured, they have a right to be treated as prisoners of war.

104 Raul C. Pangalangan and Elizabeth H. Aguiling, "The Privileged Status of National Liberation Movements Under International Law," *Philippine Law Journal* 58 (1983), 44–65.

105 Mark Graber, Development of the Law of the Constitution (New York: University Press), 70-109

106 ICRC database

In 1949, the G.C. recognised that participation in armed resistance against occupying power was not a war crime. In fact, according to Article 4(A)(2) of GC III, "[m]embers of other militias and members of other voluntary organisations, including members of organised resistance movements, who belong to a party to the conflict and operate in or outside their territory, even if it is occupied," are entitled to the protection of prisoners of war if they comply with the requirements of GC III.[107] Therefore, this provision clarifies that resistance to the occupying power is not per se prohibited by international humanitarian law; instead, GC III Recognises the legitimacy of armed resistance.[108] Moreover, it limits, at the same time, the right to the status of a prisoner of war to only combatants who meet specific criteria for the distinction of civilians.

Article 44(3) AP I further states that if the nature of hostilities makes it impossible for combatants to distinguish themselves by GC III, they shall, nevertheless, be considered combatants if they carry their “arms openly:

(a) during each military engagement and

(b) during such a period that [they are] visible to the opponent while [they are] engaged in a military deployment before the commencement of an attack in which [they] will participate”.

Given the fundamental state differences over this rule, which was considered mainly applicable in occupied territories,[109] Scholars generally accept that Article 44(3) AP I does not reflect customary international law. However, if a combatant does not meet the criteria of international humanitarian law, he would not have the right to the status of prisoner of war. His resistance would not be a violation of international law in itself.[110]

According to Article 5(2) of GC IV, persons involved in "activities hostile to the security of the occupying power" who, if absolute military security is required, can "be considered to have violated communication rights" under GC IV. Article

107 (Art. 4(A)(2) GC III).

108 Anthony Roger, ‘Combatant Status’ in Elizabeth Wilmhurst & Susan Breau (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (Cambridge University and Press 2007) 101, 106.

109 Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. *Customary International Humanitarian Law*. Vol. I. (Cambridge: Cambridge University Press, 2005),180

110 Ronzitti, Domenico. *Diritto internazionale e conflitti armati*. (Milan: Giuffrè), 2006. Also, Ago, Roberto. “Nota a In re Keppler.” *Rivista di diritto internazionale* 36 (1953): 200–206.Von Glahn, Richard. “The Occupation.” In *Law Among Nations*, 55.

45(3) AP I specifically repeals this rule, stating that "any person who participated in hostilities in the occupied territory does not have the right to be a prisoner of war, does not benefit from a more favourably treated treatment in accordance with [GC IV] ..." It shall also be entitled, in addition to Article 5 [GC IV], to its communication rights. The existence of this specific regime has generated a debate on the establishment of a third category of unlawful combatants other than combatants and civilians, which would also include civilian armed resistance in the occupied territories,[111] However, the Israeli Supreme Court has confirmed that civilian armed resistance within the framework of international humanitarian law remains civilians.[112] However, the treatment provided for civilian armed resistance under GC IV and AP I is inapplicable to members of the ousted sovereign armed forces who do not meet the conditions for the status of prisoner of war against the occupying power.

In addition, A.P. 1 of 1977 supports the legitimacy of armed resistance against an occupying power, recognising the particular role of the struggle for self-determination. According to article (1) 4 AP I, the rule governing international armed conflicts also applies to:

> *The situations referred to in the paragraph include armed conflicts in which peoples fight against colonial domination, alien occupation, and racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States by the Charter of the United Nations.*[113]

Considering the considerations mentioned above, the evolution of international humanitarian law shows that the law of occupation has not prohibited civilian armed resistance in occupied territory.

111 Michael H. Hoffman, 'Terrorists Are Unlawful Belligerents, Not Unlawful Combatants: A Distinction with Implications for the Future of International Humanitarian Law' (2002), 34

112 *Targeted Killings* case, para. 28.

113 Protocol Additional to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of International Armed Conflicts (1977), 1125 UNTS 3.

ICJ 19 July 2024 Advisory Opinion: Legal Consequences Arising from the Policies and Practises of Israel in the Occupied Palestinian Territory, Including East Jerusalem

> *"There is no alternative to the principle of self-determination in the process of decolonisation."*
>
> (ICJ AO (19.07.2024) paragraph 233)

The International Court of Justice's (ICJ) Advisory Opinion (AO) on the Legal Consequences arising from the Policies and Practises of Israel in the Occupied Palestinian Territories (oPt), including East Jerusalem, delivered on July 19, 2024, marked a pivotal moment in international legal discourse.[114] The AO concludes that Israel's occupation of the opt, including Gaza, East Jerusalem, and the West Bank, is unlawful under international law and asserts that Israel is obligated to end its occupation immediately. The ICJ states that Israel must dismantle its settlements in the oPt, enable the return of displaced Palestinians to their original places of residence, and provide full reparations for its wrongful acts, including restitution, compensation, and satisfaction. These obligations underscore the systemic violations of international law resulting from Israeli policies, such as settlement expansion, de facto annexation, and the exploitation of Palestinian natural resources for Israel's benefit, all of which contravene the Fourth Geneva Convention and international humanitarian law.

The Court observes that Israel has used its effective control over the oPt to assert permanent control over it, with significant implications for the Palestinian people's right to self-determination (*Advisory Opinion, paragraph 261).* As the AO details, this conduct involves the annexation of large parts of the oPt and steps toward the annexation of the entire West Bank (*paragraphs 162-173*). These actions directly contravene the prohibition of forcible acquisition of territory (*paragraph 179*). The Court points out that Israel has extended its effective control over the entirety of the oPt—the territory where the Palestinian people's right to self-determination must be exercised (*paragraph 262*). This illegal annexation of territory and the ongoing assertion of permanent control violate both the prohibition of the acquisition of territory by force and the fundamental right of self-determination (*paragraphs 179 and 243*).

114 See https://www.icj-cij.org/case/186. Following references will be made by addressing the relevant paragraph.

The Advisory Opinion emphasises that in cases of foreign occupation, *such as "the present case"*, "the right to self-determination constitutes a peremptory norm of international law" (*paragraph 233*).[115] Israel's actions undermine this right. The ICJ further stresses that the violation of the Palestinian people's right to self-determination has a direct impact on the legality of Israel's presence in the opt. The Court specifically states that "the violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people's right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful" (*paragraph 261*). Furthermore, the right to self-determination "cannot be subject to conditions on the part of the occupying Power, because of its character as an inalienable right" (*paragraph 257*).

The ICJ is evident in its conclusion that Israel's presence in the oPt is unlawful and must cease. It calls on Israel to end its unlawful occupation as rapidly as possible, halt all new settlement activities immediately, evacuate all settlers from the oPt, and provide reparation for the harm caused (*paragraph 285*). The Court also imposes binding obligations on all states, declaring that they must not recognise or assist in maintaining Israel's unlawful presence in the oPt (paragraph 285). This obligation to not recognise or render assistance is crucial to enforcing international law. The ICJ calls on international organisations, including the United Nations, to actively pursue modalities to end Israel's occupation (*paragraph 285 (8) and (9)*).

115 See in Declaration of Judge Tladi page 5: "The Court reaffirms its previous descriptions of the right of self-determination as "one of the essential principles of contemporary international law" and that the obligation to respect this right is owed erga omnes12. These are not new, and the Court had previously used these descriptions13. What is new is the Court's explicit recognition of the right of self-determination as a peremptory norm of international law. In paragraph 233, the Court "considers that, in a foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law". The qualifier "in cases of foreign occupation such as the present case" is rather unclear. However, I understand it to mean that the element of the right of self-determination, which is implicated in the present case, i.e. the right of the Palestinian people not to have their right of self-determination impeded by the ongoing foreign occupation by Israel, is assuredly a peremptory norm of international law. This statement would be without prejudice to the peremptory status of other elements of the right of self-determination (which were not at issue in this case). In the same way, stating that the (narrower) prohibition of aggression is a peremptory norm does not necessarily mean that the broader prohibition on the use of force is itself not peremptory."

Israel's discriminatory policies in the oPt, including the transfer of Israeli citizens into occupied territories and the deportation of Palestinians, alongside punitive demolitions, forced evictions, land confiscations, and exploitation of resources, are all outlined in the Advisory Opinion (*paragraphs 118-123, 147, 200-206, 208-212, 126*). These actions clearly violate the Palestinian right to self-determination, international humanitarian law and human rights law, reinforcing the Court's conclusions about the unlawfulness of Israel's occupation.

Notably, the AO underscores the illegal exploitation of natural resources in the occupied territories, including water and minerals, which are directed primarily toward Israeli settlements, exacerbating the disparity between the Palestinian population and Israeli settlers (*paragraphs 128-129*). The Court also notes the violence against Palestinians by both settlers and Israeli security forces, along with unjustified restrictions on their freedom of movement (*paragraphs 148-154, 200-206*).

The ICJ's reasoning aligns with the broader legal consensus that Israel's conduct violates specific prohibitions under international humanitarian law and human rights law, as well as the prohibition on the use of force and the right to self-determination. As the Court points out, this systematic abuse justifies its conclusion that Israel's continued presence in the occupied territories is unlawful and must end as soon as possible (*paragraph 261*).

The Court highlights the broader legal consequences of these findings for third-party states. All states have a duty not to assist in maintaining Israel's unlawful presence, mainly through military aid, economic exchanges, or political collaboration (*paragraph 285*). This extends to the obligation to support the Palestinian people's right to self-determination actively and the end of Israel's occupation. The Court emphasises that these obligations are part of the broader responsibility to uphold international law and ensure compliance with the prohibition of forcible annexation (*paragraphs 179 and 243*).

While the duty to cooperate is not explicitly mentioned in the operative paragraph (paragraph 285), the Court affirms in its reasoning that third states do indeed have a duty to cooperate in ensuring the cessation of violations and the realisation of Palestinian self-determination, thus reinforcing the global responsibility for addressing these violations (*paragraph 275*).

The AO is significantly enriched by its judges' separate opinions and declarations. Judge Xue underscores the fundamental status of self-determination as a peremptory norm in international law. She draws parallels between Israel's occupation and colonial domination, asserting that such practises are unequivocally condemned under contemporary legal frameworks: "The effects of Israel's occupation in that regard have little difference from those under colonial rule, which has been firmly condemned under international law."[116] Judge Xue emphasises the interconnectedness of the legality of Israel's presence and its policies, stating that internationally wrongful acts, such as settlement expansion and resource exploitation, inherently challenge the lawfulness of Israel's continued occupation. This perspective situates the occupation within a broader legal matrix of jus ad bellum (law governing the use of force) and jus in bello (law governing conduct in armed conflict), where the occupation's persistence violates both domains.

Judge Yusuf critiques Israel's indefinite occupation and categorises it as colonial. He states, "Any belligerent occupation which substitutes an indefinite occupation for the legally sanctioned temporariness of belligerent occupation takes on the characteristics of colonial occupation or of conquest, contrary to the United Nations Charter and contemporary principles of international law."[117] Yusuf identifies two critical dimensions for legal analysis: "first, the extent to which the prolonged occupation has departed from the tenets and rules of the law of belligerent occupation (jus in bello); and secondly, whether or not this prolonged occupation is contrary to the rules concerning the prohibition of the use of force (jus ad bellum)."[118] He argues that Israel's occupation has morphed into an enterprise of conquest, defying the temporary nature mandated by international law.

Since all peoples under colonialism, alien subjugation, foreign domination and exploitation have a right to self-determination under international law, Judge Yusuf's and Xue's categorisation of Israel's effective control over Palestinian land as colonialism provides another argument for the right of Palestinian people to self-determination.

116 https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-06-en.pdf.

117 https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-05-en.pdf.

118 Ibid.

Judge Cleveland introduces the principle of non-allegiance under customary international law, affirming that the Palestinian population owes no allegiance to the occupying power. She states, "*The population in the occupied territory does not owe allegiance to the occupying Power.*[119]*, and that it is not precluded from using force by international law to resist the occupation*[120]. Therefore, the fact that the population in the Occupied Palestinian Territory *resorts to force to resist the occupation* does not in itself justify the maintenance by Israel of its occupation."[121] Cleveland critiques Israel's attempt to justify its continued occupation based on the challenges posed by Palestinian resistance. She further rejects the use of settlement policies as a legal basis for maintaining effective control, emphasising that these practises fundamentally breach international law and perpetuate the subjugation of Palestinians.

Judge Tladi elaborates on *the multifaceted nature of self-determination*, linking it to the Palestinian people's sovereignty over their economic, social, and cultural resources. He critiques Israel's discriminatory policies and settlement practises, arguing that "Israel has used occupation as a front to cover up its breaches of some of the most fundamental principles of international law."[122] This includes systemic discrimination through settlement policies and the appropriation of resources. Tladi further highlights the apartheid characteristics of Israel's actions: "Whether one speaks of the discriminatory detention practises, including detention without trial, residence permit system, restrictions of movement or demolition of property, deprivation of land, or the encircling of Palestinian communities into enclaves reminiscent of South African Bantustans from which I come, it is impossible to miss the similarities."[123] He argues that the systemic denial of Palestinian rights to govern and benefit from their natural resources reflects a colonial model of control and exploitation.

119 See Art. 45 of the Hague Regulations and the third paragraph of Art—68 of the Fourth Geneva Convention.

120 See, for example, General Assembly resolution 37/43 of 3 December 1982, para. 2.

121 https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-13-en.pdf.

122 https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-14-en.pdf.

123 Ibid.

Legal Instruments Supporting Palestinian Armed Struggle

- Article 2(4) of the UN Charter prohibits the use of force in international relations, except in cases of self-defence or under U.N. Security Council authorisation. However, this principle accommodates the right to resist foreign occupation, mainly when aimed at achieving self-determination.

- U.N. General Assembly Resolution 2625 (1970) recognises the right of peoples to self-determination and affirms their right to resist colonial domination, foreign occupation, and racist regimes.

- U.N. General Assembly Resolution 2649 (XXV) reaffirms the legitimacy of struggles against foreign occupation, including through armed resistance.

- U.N. General Assembly Resolution 2787 (XXVI) 1971 identified and recognised the legal characterisation of the armed conflicts as a war of liberation for Palestinians and other areas of national liberation movements, as many States have even recognised liberation movements. It allowed them to establish official representation in their territory and provided them with moral and material assistance.

- U.N. General Assembly Resolution 3070 (XXVIII) of November 30, 1973, further recognises the rights of peoples under occupation to seek self-determination and protects combatants in national liberation wars.

In the same vein, General Assembly Resolution 3103(XXVIII) of December 12, 1973, states in its preamble that the continuation of colonialism in all its forms and manifestations is a crime and that all colonial people have the inherent right to struggle by all necessary means against colonial powers and alien dominions in the exercise of their right to self-determination.

- Protocol I to the Geneva Conventions (1977), particularly Article 1(4) and Article 96(3), consolidates the legal framework for national liberation movements, affirming the legitimacy of their struggles and the rights of combatants and civilians involved in such conflicts.

- General Assembly Resolution 32/147 on measures to prevent international terrorism of December 6, 1977, again Reaffirms the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination and upholds the legitimacy of their struggle, particularly for the national liberation movements.

In light of the aforementioned legal instruments, it becomes clear that the Palestinian liberation struggle is grounded in international legal norms and the historical precedents of anti-colonial struggles. Abi Saab articulates that the Palestinian case reflects the broader decolonisation movement, where the right to self-determination necessitates armed resistance when other means fail.[124] it aligns with Article 1(4) of Protocol I, which recognises armed resistance as a legitimate response to foreign occupation, colonialism, and racist regimes.

Therefore, the Palestinian liberation movement is not an anomaly but part of a continuous legitimate struggle recognised by international law. Richard Falk recalled that international law must defend the rights of oppressed people, not only through symbolic gestures of solidarity but also by affirming their legal right to resistance, including armed struggle.[125] Ramzy Baroud's insight into the political dimensions of international law reinforces the need to understand Palestine's case within the broader global struggle against colonialism and foreign occupation.[126] The legal and moral legitimacy of Palestinian armed resistance is thus firmly rooted in both legal theory and international law, providing a solid foundation for understanding the Palestinian people's right to fight for their self-determination, even in the face of overwhelming odds.

Delimiting Rights and Exclusions of Self-Determination and Armed Struggle in International Law

Recognising self-determination and the legitimacy of armed struggle under international law is central to combating colonialism, alien domination, and racial subjugation, particularly in the mid-20th century decolonisation era. Georges Abi-Saab highlights the critical need to delineate its boundaries to prevent misuse.

124 Abi Saab, "The right to self-determination and the Palestinian struggle," Journal of Palestine Studies 43 no 4(2014), 78

125 Richard Falk, "History is on the side of the Palestinians," Middle East Eye October 5, 2024

126 Ramzy Baroud, The Last Earth: A Palestinian Story (London: Pluto Press, 2018), 142-145

He argues that self-determination applies to "peoples" under colonial or foreign domination. That armed struggle becomes necessary when peaceful avenues are ineffective, as codified in Article 1(4) of Protocol I (1977). These struggles gain international armed conflict status, ensuring protections under international humanitarian law. However, Abi-Saab distinguishes such liberation movements from secessionist movements, which lack similar legitimacy and are constrained by the principle of territorial integrity. Secessionist claims, often viewed as internal issues, face legal and political barriers unless extreme oppression is evident. In such cases, the legitimacy of armed struggle arises when all peaceful avenues for achieving self-determination have been exhausted. Protocol I, in recognising armed struggles for national liberation, elevates them to international armed conflicts, extending the full protections of international humanitarian law (IHL) to combatants engaged in these movements. This framework ensures that armed resistance against colonial or occupying powers is recognised and subject to humanitarian safeguards.

There is no doubt that Palestinian resistance qualifies as a national liberation movement under international law. Moreover, the representation of a national liberation movement does not need to be monopolised by a single entity. In the Palestinian context, we witness a plurality of movements; the aggregate of these embodies the broader Palestinian national liberation movement.

The principle of territorial integrity typically governs these claims,[127] a cornerstone of the post-World War II international legal order. As reaffirmed by the International Court of Justice (ICJ) in the Kosovo Advisory Opinion (2010), the principle of territorial integrity is primarily applicable in relations between states, but secessionist movements are generally considered internal matters unless there is evidence of grave oppression or denial of fundamental rights by the parent state.[128]similarly, in the Quebec secession case, the Canadian Supreme Court ruled that Quebec's desire to secede did not constitute a right under international law because the Canadian government did not subject the people of Quebec to systematic oppression or deny their rights.

127 UNGA Resolution 2625

128 Kosovo Advisory Opinion 2010

This distinction is not only legal but also political. The Friendly Relations Declaration (UNGA Resolution 2625) affirms that self-determination should not be construed as authorising actions that would dismember or impair the territorial integrity of sovereign states. Thus, self-determination operates within the limits of international law, ensuring it is not weaponised to destabilise states but functions as a corrective mechanism for historical injustices.

Beyond Abi-Saab, scholars such as Antonio Cassese provided additional insight into the boundaries of self-determination and armed struggle. Cassese underscores the importance of ensuring that self-determination movements genuinely represent the people they claim to represent.

Conclusion

Israel's continued presence in the occupied Palestinian territories is illegal under international law. The occupation represents a clear and illegitimate case of continued control, resulting in egregious violation of International Human Rights law (IHRL) and International Humanitarian law (IHL) against the Palestinian people, who are subjected to 'atrocity crimes' by Israeli occupying forces.

Israel's actions violate the principles of self-determination set out in the United Nations Charter, the resolutions of the United Nations General Assembly, and the decisions of the International Court of Justice (ICJ). Moreover, these measures undermine the credibility and effectiveness of the United Nations and other international institutions supporting human rights and humanitarian principles. The principle of the right to self-determination has attained the status of an *erga omnes* and *jus cogens*, reinforcing its universal applicability and legal significance. Consequently, the international community's failure amounts to severe breaches of its obligations. The International Court of Justice also affirmed that the onus to uphold principles of the right to self-determination lies with the global community,

The central question is whether Palestinian national liberation for the right to self-determination falls within the purview of international law and international treaties, as demonstrated by their actions, policies, and declarations.

Palestinian national liberation movement members have a legitimate right to armed liberation. According to international law, armed liberation cannot be invalidated as criminal or terrorist acts. The right of the Palestinian people to armed resistance focuses on defending their country of origin. It is linked to the universal concept of patriotism, heroism, and the willingness to sacrifice for freedom.

International humanitarian law and the principle of self-determination maintain the legitimacy of armed resistance to occupation under international legal frameworks.

PART III.

MOVİNG BEYOND THE TRADİTİONAL DİSCOURSE OF SELF-DETERMİNATİON

While pivotal to anti-colonial movements of the mid-20th century, the discourse of self-determination has increasingly proven inadequate in addressing the layered and evolving complexities of contemporary struggles. Rooted in the binary framework of state sovereignty—opposing the coloniser to the colonised and the occupier to the occupied—it overlooks the multifaceted dimensions of power that define modern imperialism. These include non-territorial control, economic dependency, and cultural domination, which often transcend physical occupation. While the pursuit of statehood remains a critical goal for many, it frequently neglects alternative forms of resistance and autonomy that exist outside the framework of the nation-state.

In today's context, resistance is further undermined by the securitisation of dissent, which recasts legitimate liberation struggles as "insurgency" or "terrorism." This reframing not only delegitimises acts of resistance but also entrenches a discourse that privileges the security concerns of imperial and settler-colonial regimes. Despite its historical significance as a milestone in international law, the concept of self-determination remains tethered to Eurocentric frameworks, which have historically facilitated colonial hierarchies. As such, true liberation must move beyond the mere attainment of formal independence to address the deeper structural, economic, and cultural legacies of colonialism.

Vasuki Nesiah highlights how framing self-determination in rigid, binary terms obscures the layered realities of globalised securitisation. It reduces lived experiences to abstract legal constructs while ignoring the intersection of material and ideological forms of domination.[129] Scholars like Luis Eslava and Sundhya Pahuja critique how

129 Vasuki Nesiah, "Resistance in the Age of Empire: occupied discourse pending investigation." Third World Quarterly 27.5 (2006): 903-922, 917.

international law often reinforces imperial legacies rather than dismantling them by embedding Western-centric notions of sovereignty and governance.[130] Edward Said's analysis of *Orientalism* illustrates how imperial powers perpetuate narratives that cast the colonised as inferior and incapable of self-rule, justifying subjugation and denying agency.[131] These narratives persist today,[132] shaping global perceptions of resistance, particularly in Palestine, where liberation struggles are systematically reduced to security threats by dominant international actors. Similarly, Byung-Chul Han's concept of "invisible violence" exposes the covert mechanisms of control—such as economic dependency, cultural erasure, and surveillance—that reinforce oppression without overt coercion.[133] These dynamics further constrain autonomy in ways traditional self-determination frameworks fail to address.

For example, Nesiah thinks that traditional self-determination framework unable to address the complexities of imperial governance in 'the Age of Empire'[134] that transcends traditional nation-state boundaries since this framework fails to account for

130 Luis Eslava and Sundhya Pahuja. "The state and international law: A reading from the global south." Humanity: An International Journal of Human Rights, Humanitarianism, and Development 11.1 (2020): 118-138, 121-122; Luis Eslava and Sundhya Pahuja. "Beyond the (post) colonial: TWAIL and the everyday life of international law." Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America (2012): 195-221, 197.

131 Edward Said, "Orientalism", Penguin Books, (2003), 95-96, 205-206, 321.

132 See John Reynolds, "Genocide and/as Civilisation," London Review of International Law, vol. 00, no. 0, 2024, 63-64: "In December 2023, a full two months into the Gaza genocide, Israeli president Herzog said: 'it's a war that is intended, really, truly, to save western civilisation, to save the values of western civilisation'. Samera Esmeir had warned of this colonial discourse back in October: 'Signs of obliteration appear first in language. Hence, civilized states and international organizations, liberals and conservatives, and US university presidents and donors alike have all lined up to participate in this discourse', one that 'contains not a single dignifying reference to Palestinians'. Be it Herzl in 1896 or Herzog in 2023, Israel is presented as the West's only defence from the barbarism of east and south—from Palestinians, Yemenis and others who dare to contest and resist Western imperialism. The civilising mission is deployed in the form of crippling munitions: Israel dropping nearly as many bombs on Gaza in one week as the US was dropping on Afghanistan in a year.Zionist leaders regularly summon the colonial tropes of civilisation and barbarism, light and darkness. As their forces kill and maim thousands upon thousands of children, they claim to be defending 'the children of light' against the 'children of darkness'.'The children of Gaza brought it on themselves', declares Meirav Ben-Ari in the Knesset. Israeli ministers and ambassadors speak of saving humanity itself from Palestinians cast as 'human animals', 'inhuman animals', or 'human savages, beasts of prey'.We recall Fanon: 'when the colonist speaks of the colonized he uses zoological terms'."

133 Byung-Chul Han, Topology of Violence, MIT Press, 2018, 6-7, 79-80.

134 In Empire, Michael Hardt and Antonio Negri define "Empire" as a decentralised, globalised system of power that transcends traditional nation-state boundaries, integrating political, economic, and cultural control into a networked and biopolitical order that governs through consensus, surveillance, and the management of life itself. They account for the rhizomatic, non-hierarchical structure of global information networks and their integration into the biopolitical production processes that define the modern Empire. Their enquiry explores the transition from the Westphalian sovereignty model to imperial justice, highlighting how global power systems now operate beyond traditional legal and territorial frameworks. See Antonio Negri and Michael Hardt, "Empire" Harvard University Press (2000).

how contemporary structures of control are deeply intertwined with global economic dependencies, surveillance regimes, and cultural hierarchies, which operate beyond the territorial or formal bounds of occupation.[135] By privileging state sovereignty as the primary axis of liberation, these frameworks inadvertently naturalise the mechanisms of the Empire, treating the systemic marginalisation of subjugated populations as peripheral to the core legal discourse.[136] Nesiah argues that such conceptual limitations weaken the critical potential of self-determination and perpetuate the very structures of power they seek to challenge, rendering them inadequate to address the complexities of lived oppression under modern imperial configurations.[137]

To move beyond these limitations, alternative paradigms must engage with the complex layers of systemic control, cultural alienation, and ideological domination. Resistance must extend beyond legal and political aspirations for independence and instead encompass the broader reclamation of identity, humanity, and collective existence. Unlike traditional frameworks that focus primarily on the harms inflicted by colonialism or occupation, these paradigms must also contend with how imperial structures shape the consciousness and aspirations of oppressed populations.

In the preceding parts, we presented the philosophical and legal foundations of resistance. For the reasons mentioned above, this part will analyse how the limitations of the traditional discourse on self-determination can be overcome by drawing on contemporary philosophical and legal thought.

Palestinian Resistance and the Regime of Exception in International Law: Agamben's Insights

The framework of Giorgio Agamben's critique of modern governance, with its transformation into a security-driven paradigm, provides a vital lens for analysing Palestinian resistance within the international legal order. Agamben's concept of the state of exception, conceived initially as a temporary response to crises, illuminates how contemporary regimes normalise oppression through perpetual states of emergency. This insight is particularly relevant to understanding how Palestinian resistance,

135 Vasuki Nesiah, "Resistance in the Age of Empire: occupied discourse pending investigation." Third World Quarterly 27.5 (2006): 903-922, 915-916.

136 Ibid. 914-915.

137 Ibid. 916-917.

especially armed resistance, is delegitimised under the guise of international law by Israel and its western allies.

Traditionally, the state of exception functioned as an extraordinary measure to address immediate crises and restore 'normalcy'. However, as Agamben observes, "While the state of exception was originally conceived as a provisional measure, meant to cope with an immediate danger in order to restore the normal situation, *the security reasons constitute today a permanent technology of government*."[138] In the Israeli occupation, this permanence is starkly evident: the pretext of "security" sustains an indefinite state of emergency, where the occupation itself is reframed as an essential protective measure. As Agamben notes, "the formula 'for security reasons' functions today in any domain, from everyday life to international conflicts, as a password to impose measures that the people have no reason to accept."[139] The occupation's structural permanence and expansionist policies are justified as defensive necessities, masking their role as tools of domination.

Weaponising the Discourse of Terrorism

International law often provides a veneer of legitimacy for states to suppress resistance movements by conflating resistance with terrorism. Agamben's concept of the perpetual state of emergency sheds light on this dynamic, as the discourse of terrorism creates a pseudo-legal basis for targeting resistance. Palestinian resistance, including armed resistance, which seeks liberation from foreign domination and alien subjugation, is delegitimised through its classification as terrorism. This framing aligns with Agamben's critique: "*What is happening today is still different. A formal state of exception is not declared, and we see instead that vague non-juridical notions — like the security reasons — are used to ensure a stable state of creeping and fictitious emergency without any identifiable danger*."[140] The terrorism discourse creates an indefinite emergency framework, silencing the political aspirations of the oppressed and privileging the security concerns of the occupier and settler-colonialist state.

138 Giorgio Agamben, "For a theory of destituent power." *Critical Legal Thinking* 5 February (2014), https://criticallegalthinking.com/2014/02/05/theory-destituent-power/ accessed 19.12.2024.

139 Ibid.

140 Ibid.

Agamben highlights how contemporary governance deploys vague, non-juridical concepts like "security reasons" and "crisis" to justify measures outside classical legal frameworks. In the Palestinian context, Israel's and its western allies' invocation of such terms enables practises like administrative detention, home demolitions, and extrajudicial killings without the need for explicit legal suspension. This practise shifts the focus of international law from addressing colonial oppression to legitimising the colonial state's actions.

Agamben critiques the modern concept of crisis for its indefinite extension. Crises are no longer tied to specific temporal events requiring resolution. Instead, crises coincide with 'normalcy,' creating a "*stable state of creeping and fictitious emergency*."[141] This perpetual crisis is evident in the Palestinian context, where the occupation sustains itself as an ongoing state of emergency. The continuing denial of Palestinian sovereignty and self-determination is framed as necessary to maintain order and prevent conflict, effectively postponing justice indefinitely.

Agamben's governance analysis highlights a shift from addressing the causes of crises to managing their effects. Inspired by François Quesnais' perspective on the modern economy, he thinks that governments no longer attempt to prevent dangers but instead develop strategies to govern their *consequences*.[142] This logic underpins especially the Western states' stance towards Palestinians, where the focus is not on resolving the resistance's root causes—dispossession, mass destruction/extermination, apartheid, and systemic inequality—but on suppressing and controlling its outcomes through security measures. The security apparatus thus becomes a means of governing the resistance it provokes.

Agamben argues that modern governance resembles a *perpetual coup d'état*, where incremental acts of control replace explicit suspensions of normal governance. For Palestinians, this is seen in the continuous expansion of settlements, the militarisation of civilian spaces, and the integration of surveillance technologies into daily life. Each act deepens the state of exception without formally declaring it, ensuring

141 Ibid.

142 Ibid.

that control is normalised as part of governance. The international legal system, by validating these measures under the guise of security, becomes complicit in perpetuating the oppression.

Agamben concludes that the Security State has abandoned the domain of politics, entering a *no man's land* where traditional strategies of resistance are insufficient. For Palestinians, this necessitates a move beyond seeking justice within merely the dominant frameworks of international law that have consistently failed them. Agamben's notion of destituent power offers an alternative, emphasising the dismantling of oppressive systems rather than their reform. Resistance within this paradigm becomes a radical act of rejecting the legitimacy of colonial international legal structures that sustain the occupation.

Towards Destituent Power and Decolonial Praxis

The invocation of "security reasons" to justify the occupation underscores the inadequacy of traditional legal mechanisms to address Palestinian resistance. Agamben asserts, "the real purpose of the security measures is not, as it is currently assumed, to prevent dangers, troubles or even catastrophes."[143] Instead, these measures serve to entrench structural domination. Destituent power offers Palestinians a framework for resistance that rejects the occupier's sovereignty and dominant international legal order's complicity. By focusing on dismantling systems of oppression, destituent power aligns Palestinian liberation with broader global struggles against securitisation and neo-colonialism.

Destituent power, as articulated by Giorgio Agamben and grounded in the reflections of Sorel and Benjamin, redefines liberation by breaking free from the cyclical violence inherent in constituent and constituted power or in law-constitutive (foundational) and law-preserving (administrative) violence. This cycle, which perpetuates domination through the making and preserving of law, is encapsulated in Agamben's assertion that "a power that was *only* just overthrown by violence will rise again in another form."[144] Liberation, therefore, demands a framework that neither reproduces nor legitimises state structures but dismantles the foundations of domination.

143 Ibid.

144 Giorgio Agamben, "What is a destituent power?" Environment and Planning D: Society and Space 32.1 (2014): 65-74, 70.

Agamben's concept of destituent violence offers this transformative approach, aiming to dissolve the cycle of mythic violence and inaugurate a new historical epoch. As Benjamin reflects, "On the breaking of this cycle that plays out in the sphere of the mythical form of law... a new historical epoch founds itself."[145] In Palestine, where international legal systems and the discourse of security legitimise occupation, destituent power reframes resistance as autonomy and decolonial reclamation, untethered from the binaries of statehood.

Benjamin's engagement with Sorel's theory of revolutionary violence illuminates a crucial distinction: force seeks authority and perpetuates the state, while proletarian violence aims at its abolition. This resonates in Agamben's assertion that revolutionary violence must "carry the right to exist within itself."[146] It is a "*violence that negates the self as it negates the other*" and rejects justification as a means to an end.[147] For Palestinians, this perspective underscores the need to confront not just the structures of occupation but the ideological and legal frameworks that enforce subjugation, transforming resistance into an assertion of autonomy and dignity.

The concept of *redemptive violence* as "pure and immediate violence" envisions a rupture with the existing order, ousting both law and the force that upholds it. This disruption, Benjamin suggests, creates "a new experience of temporality—a new History."[148] Palestinian resistance, often reduced to securitised discourse, embodies this transformative potential. By rejecting frameworks that perpetuate dispossession and securitisation, Palestinians can advance strategies rooted in armed struggle, cultural resilience, non-participation, and transnational solidarity, aligning with Benjamin's vision of a historical rupture that transcends cycles of oppression.

According to Agamben, revolutionary violence is "not a violence of means, aimed at the just end of negating the existing system." Instead, it dismantles the structures of

145 Walter Benjamin, "Zur Kritik die Gewalt", in Gesammelte Schriften II, 1 (Frankfurt am Main, Suhrkamp), 1977, 202 via Giorgio Agamben, "What is a destituent power?" Environment and Planning D: Society and Space 32.1 (2014): 65-74, 70.

146 Giorgio Agamben, "On the Limits of Violence (1970)." Translated by Elisabeth Fay. In Towards the Critique of Violence, edited by Brendan Moran and Carlo Salzani (2015): 231-38, 234.

147 Ibid. 236.

148 Ibid. 237.

domination, enabling a profound reimagining of political existence. In the Palestinian context, this involves resisting not only the physical manifestations of occupation but also the erasure of identity, culture, and autonomy perpetuated by colonial systems. Destituent power enables Palestinians to confront "all the muck of ages."[149] Moreover, it asserts liberation that transcends the frameworks of state and law.

Agamben's critique of the dialectic between constituent and constituted power provides a foundation for dismantling entrenched systems of domination. He asks, "What does 'to destitute law' mean? And what is a destituent violence that is not only constitutive?"[150] In Palestine, destituent power disrupts the perpetuation of law-preserving violence, offering a path of liberation rooted in autonomy and collective humanity. By rejecting state-centric paradigms, Palestinians align their struggle with a broader global movement against colonialism, securitisation, and dispossession. The Palestinian resistance is not an isolated struggle in this regard. It stands as a universal emancipatory project, confronting the global logic of securitisation that transforms dissent into existential threats. Their struggle exposes the mechanisms by which dominant powers sustain injustice, oppression, and exploitation.

Palestinian redemptive violence operates as a radical rupture, rejecting the symbolic and material frameworks that sustain oppression. This is not violence for its own sake but a profound act of liberation, dismantling the structures that deny dignity and liberation. Redemptive violence carries risks, as history shows in revolutions that devolve into new forms of mythical violence. Yet this paradox and these risks must be embraced, for rejecting redemptive, emancipatory or revolutionary violence outright is to accept the structural violence of the existing order as immutable.[151] Also because paradox of revolutionary violence is not a weakness but a strength, revealing that true emancipation requires confronting the contradictions of oppression head-on.[152] Palestinian resistance, in this sense, embodies both the rejection of violence as domination and the assertion of violence as a component of the path to liberation.

149 Ibid.

150 Giorgio Agamben, "What is a destituent power?" Environment and Planning D: Society and Space 32.1 (2014): 65-74, 70.

151 See Slavoj Zizek, In defense of lost causes. Verso Books, 2009.

152 See Slavoj Zizek, In defense of lost causes. Verso Books, 2009.

Through this lens, destitute power is not just an abstract theory but an urgent call to action—a praxis for disrupting the mechanisms of domination and inaugurating a new historical epoch. "Only those who consciously confront their negation through violence may... begin the world anew," a revolutionary imperative that underscores the transformative potential of Palestinian resistance.[153]

Colonialism vs. Settler Colonialism and Survival as Resistance in Palestine

> *"This is a unique colonialism that we have been subjected to where they have no use for us. The best Palestinian for them is either dead or gone. It is not that they want to exploit us or that they need to keep us there in the way of Algeria or South Africa as a subclass."*[154]
>
> *— Edward Said.*

The complex interplay of survival, resistance, and the demand for justice requires an analysis of the challenges posed by settler colonialism in Palestine and beyond. Colonialism and settler colonialism, while often conflated, are distinct in their objectives and operations. Colonialism "reproduces itself," creating systems of domination that indefinitely postpone the freedom and equality of the colonised. Designed to extract resources and labour, colonialism relies on maintaining a hierarchical relationship between the coloniser and the colonised, ensuring perpetual exploitation. Gayatri Chakravorty Spivak's concept of the *subaltern* reveals how colonialism silences the voices of the oppressed, necessitating frameworks that amplify marginalised perspectives.[155] Similarly, Edward Said's critique of *Orientalism* dismantles the cultural narratives imposed by imperial powers that depict the colonised as inherently inferior.[156] For Said, liberation requires dismantling the intellectual and cultural foundations of imperial dominance—not simply

153 Giorgio Agamben, "On the Limits of Violence (1970)." Translated by Elisabeth Fay. In Towards the Critique of Violence, edited by Brendan Moran and Carlo Salzani (2015): 231-38, 237.

154 Edward W. Said, The pen and the sword: Conversations with David Barsamian. Common Courage Press, 1994.

155 See Gayatri Chakravorty Spivak, "A critique of postcolonial reason: Toward a history of the vanishing present." Harvard UP (1999).

156 Edward Said, "Orientalism", Penguin Books, (2003), 14, 45, 353.

achieving formal independence. Therefore, from Said's perspective, Palestinian resistance involves dismantling both the material structures of occupation and the cultural narratives that sustain them.[157]

In contrast, settler colonialism operates with a "logic of elimination," aiming to replace the indigenous population entirely.[158] Settler societies "tame a variety of wildernesses," establish independent nations, and "effectively repress, co-opt, and extinguish indigenous alterities."[159] These societies justify their actions "based on the expectation of their future demise," presenting themselves as "settled" and "postcolonial" while "unsettling anxieties remain."[160] Veracini observes that colonialism and settler colonialism are "not merely different; they are in some ways antithetical formations."[161] However, *these systems often coexist, with settler-colonial regimes operating "colonially and settler colonially at once."*[162]

In the Palestinian context, settler colonialism manifests through policies of displacement, land annexation, and cultural erasure, epitomising its drive to replace Palestinians with settlers. Unlike colonialism, where the coloniser may leave, settler colonialism establishes a permanent settler presence. Israel's policies embody this logic, aiming to erase Palestinian identity and presence while claiming a "postcolonial" status. Recognising that settler colonialism does not end with regime change or the removal of direct foreign control is crucial. As Veracini highlights, settler colonialism persists through policies of displacement, cultural erasure, and land annexation. Acknowledging this permanence provides the foundation for strategies that address the structural realities of settler colonialism.

Decolonisation, as traditionally understood, focuses on ending exogenous domination. In colonial contexts, this involves the coloniser's departure or the establishment of equality between former colonisers and colonised, signalling the formal end of the colonial relationship. However, settler colonialism, which aims

157 Ibid. 306-307, 339.

158 Lorenzo Veracini, "Introducing: Settler colonial studies." Settler colonial studies 1.1 (2011): 1-12, 7. Also, see Patrick Wolfe's "Settler Colonialism and the Elimination of the Native." Journal of genocide research 8.4 (2006): 387-409.

159 Lorenzo Veracini, "Introducing: Settler colonial studies." Settler colonial studies 1.1 (2011): 1-12, 3.

160 Ibid.

161 Ibid.

162 Ibid.

to "extinguish itself," eludes such frameworks.[163] Veracini explains that settler colonialism remains "impervious to regime change,"[164] Its structure depends on eliminating Indigenous sovereignty and identity rather than maintaining a hierarchical exploitation system.

This distinction is crucial in Palestine, where traditional decolonisation frameworks fall short. Palestinians' struggle is not merely against external domination but against a settler-colonial project that seeks to erase their existence. Calls for decolonisation in Palestine challenge not only territorial occupation but the more profound settler-colonial framework. The demand is not simply the removal of foreign rule but the recognition and restoration of indigenous sovereignty, a reality the settler state seeks to deny. Traditional decolonisation frameworks often focus on territorial sovereignty, but the Palestinian case necessitates addressing the erasure of cultural and historical narratives. Transitional justice mechanisms must, therefore, include reparations, recognition of past injustices, and the restoration of autonomy over historical, cultural, and legal institutions.

In settler-colonial contexts, survival itself is a critical form of resistance. Veracini underscores that "*resistance and survival are inevitably mixed,*" as indigenous populations "*resist by surviving and survive to resist*."[165] In Palestine, everyday acts—living in ancestral homes, farming restricted lands, and preserving cultural practises—embody this resistance. These acts disrupt the settler-colonial narrative of permanence, ensuring that settler colonialism remains "never ultimately triumphant."[166]

The Palestinian struggle also gains strength from global solidarity and connections with other indigenous and colonised peoples. As Michael Hardt and Antonio Negri explore in *Empire*, contemporary power operates as a decentralised, networked system that transcends national borders, integrating economic, cultural, and political control dimensions.[167] In this framework, resistance gains potency through local struggles and transnational solidarity networks. Such alliances challenge

163 Ibid.

164 Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native', Journal of Genocide Research 8, 4 (2006), pp. 387-409, 402.

165 Ibid. 4.

166 Ibid.

167 Antonio Negri, and Michael Hardt, "Empire" Harvard University Press (2000) 25-27, 61-62, 299-301, 345-346, 355-357.

imperial structures by cultivating support amongst marginalised communities and aligning liberation movements within a broader resistance to global capitalist and colonial systems. Situating this struggle within a broader decolonial framework legitimises Palestinian claims and pressures international actors to confront the settler-colonial foundations of the Israeli state. Reimagining a post-settler future where coexistence does not erase Palestinian sovereignty or identity is essential. This requires addressing settler colonialism's goal of replacing rather than exploiting indigenous populations, ensuring that coexistence is grounded in justice and equality rather than domination.

Conclusion

Building upon the philosophical, legal, and structural critiques presented, a multidimensional framework for liberation emerges that transcends traditional self-determination and state sovereignty constraints. This approach integrates existential, cultural, and structural dimensions of resistance, addressing the unique challenges of settler-colonial contexts like Palestine. Liberation necessitates dismantling colonial domination's psychological and physical structures, reclaiming identity, agency, and collective humanity, and redefining freedom as a lived and personal reality. Challenging imperialist cultural narratives is equally essential, as it involves asserting self-determined histories and identities to counter the erasure imposed by colonial frameworks.

At the same time, resistance must address the subtle, systemic mechanisms of control that perpetuate dependency and erasure without overt coercion. This includes strengthening cultural, economic, and social resilience to undermine domination and reclaim autonomy. The pursuit of justice cannot remain confined to systems that legitimise domination; liberation demands dismantling such structures through transformative and direct action. Beyond the local, global alliances are crucial to connecting struggles against colonialism, imperialism, and systemic dispossession, aligning movements within a shared commitment to justice and dignity.

This framework also embraces the concept of destituent power, rejecting the cyclical violence inherent in law-preserving systems. Dismantling oppressive structures

builds autonomy and envisions a future defined by decolonisation and equity. In Palestine, this multidimensional framework transcends mere state-centric paradigms by addressing visible and invisible structures of domination. Situating Palestinian liberation within a global decolonial struggle redefines resistance as a transformative force, rejecting colonial hierarchies and upholding dignity and freedom.


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SUMMARY

The humanitarian crisis in Gaza epitomises the protracted colonial subjugation of Palestinians since the Nakba of 1948, marked by systemic displacement, settler colonialism, apartheid, and the denial of sovereignty. This report situates Palestinian resistance within the framework of international law, asserting its legal legitimacy as a response to decades of colonialism. By examining the right to self-determination as a jus cogens norm, it explores the legal basis of armed resistance as codified in UN General Assembly Resolutions (1970) 2625 ,(1960) 1514, and (1982) 43/37, alongside ICJ advisory opinions and judicial precedents from decolonisation movements. Engaging with Third World Approaches to International Law (TWAIL), the report critiques the politicisation of international law and its failure to address Israel's prolonged military occupation and indiscriminate use of force. It further interrogates the post-11/9 securitisation of liberation movements, which has redefined struggles for self-determination as "terrorism," enabling neocolonial occupations to persist. Advocating for a framework grounded in aequitas and substantive legal principles, the report argues that Palestinian resistance constitutes a legally grounded exercise of self-determination. It also highlights the necessity of reevaluating the efficacy of international law to address the intricacies of prolonged military occupations and to reaffirm the inalienable rights of colonised peoples to resist foreign invasion, colonial subjugation and alien domination.

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