



**Written Submission  
to the United Nations Special Rapporteur  
on the Situation of Human Rights  
in the Palestinian Territory Occupied in 1967  
to Inform on Thematic Report to the United Nations  
General Assembly on the Right to Self-Determination.**

**27 June 2022**

## **Background and Context of Colonization**

The Israeli settler-colonial enterprise is rooted in a strategy to acquire the maximum amount of land with the minimum number of Palestinians. To accomplish this goal, Israel perpetually subjects Palestinians to a colonial system of forcible displacement and transfer which utilizes a wide array of apartheid policies and practices, including segregation, fragmentation, military occupation, annexation, and dispossession.

The combination of such policies and practices, achieving a hybrid system of mass oppression, is aimed at denying the Palestinian people's legitimate right to self-determination. Central to this denial is Israel's prohibition of over nine million Palestinian refugees from exercising their right of return on the one hand, while guaranteeing citizenship to anyone who can demonstrate Jewish ancestry on the other.

It is essential to recognize the interplay between colonialism, apartheid, self-determination and the right of return for Palestinian refugees to answer the question of how the Palestinian people can enforce their self-determination and provide the foundation surrounding the obligations of third-party states. Failing to acknowledge the colonial intentions behind Israel's policies and practices that deny the right of return and, ultimately, self-determination, allows for the normalization of Israel's colonial apartheid system through the legally neutral framing of "application of sovereignty."<sup>1</sup>

Colonialism, in its aim to deny the colonized population from exercising its right to self-determination, is considered to be a particularly serious breach of international law as it is fundamentally contrary to core values of the international legal order.

Colonization violates the inalienable rights of peoples, "to complete freedom, the exercise of their sovereignty and the integrity of their national territory." Furthermore, colonialism prevents peoples from exercising their right to self-determination by depriving them of their right to "freely determine their political status and freely pursue their economic, social and cultural development."<sup>2</sup> Moreover, the struggle in the pursuit of the right to self-determination is lawful and legitimate for people whose right to self-determination is denied because of their subjugation, domination and exploitation by a foreign power.<sup>3</sup>

## **Self-Determination and the Right of Return:**

In the Palestinian context, the right of return and the right of the Palestinian people to self-determination are intrinsically dependent and inseparable, and without one, the other cannot be fulfilled. In other words, the exercise of the right of self-determination without the freedom to exercise the return of two-thirds of the Palestinian population who are refugees and IDPs is hollow and invalid.

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<sup>1</sup> See BADIL, *Palestinian Self-Determination: Land, People and Practicality*, Working Paper No. 28, (Bethlehem: BADIL, 2021)

<sup>2</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, A/56/10, art.26, commentary 5, November 2001; *Ibid.*, art.40, commentary.

<sup>3</sup> United Nations Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969, art.53

The individual and collective right of return for Palestinian refugees, who constitute 66.4 per cent of the Palestinian people, must be viewed as a precondition for the realization of the Palestinian people's collective right to self-determination and must inevitably be included in practicing Palestinian self-determination.

Excluding Palestinian refugees who have been forced to live outside the borders of Palestine in exile (approximately 9.1 millions) from exercising their right to self-determination is a violation of this right as a whole, as it is a collective right owed to a people in its entirety. Refugees' inclusion, however, will only be possible through their physical presence in the land.

Thus, by denying Palestinian refugees their right of return, Israel is not only perpetuating the protractedness of the Palestinian refugee issue, but is also undermining the Palestinian people's right to self-determination by taking active measures to prohibit their physical presence within Mandatory Palestine. The denial of return thus amounts, in the Palestine context, to a violation of the right to self-determination and a serious breach of international law.

As such, a necessary prerequisite to the realization of self-determination is the fulfilment of the primary durable solution that Palestinian refugees are entitled to under United Nations General Assembly Resolution 194(III),<sup>4</sup> which entails facilitating their return to their homes as well as their access to real property restitution and compensation.

## **The *De Facto* Reality and its Infringement on the Right to Self-Determination:**

Since its creation, Israel has employed a colonial scheme which has worked to convert the internationally unlawful into a *de facto* reality that subsequently defers Palestinian self-determination. The Oslo "Peace Process" has played a crucial role in facilitating this scheme, and has conceived a method to transform the internationally-assumed short-term nature of Israel's occupation into a long-term colonial reality by:<sup>5</sup>

- transferring a select few of its occupier civil responsibilities to the Palestinian Authority (PA), which has in effect blurred the legal lines;
- forging an illusion of peace-making to anaesthetize the international community's concerns, with any 'clashes' between Palestinians and Israelis presented as temporary detractions, while;
- creating irreversible conditions, including the construction of a network of colonies, colonizer-only roads, by-pass roads, and the Apartheid Wall.

The Oslo framework's staunch negligence of Palestinian rights has not only allowed Israel to continue its expansionist, colonial ambitions but has also legitimized such an enterprise which has, in turn, undermined any realistic prospects for Palestinian self-determination.

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<sup>4</sup> See UN General Assembly (UNGA), Resolution 194 (III). Palestine—Progress Report of the United Nations Mediator, A/RES/194(III), 11 December 1948.

<sup>5</sup> See BADIL, *Palestinian Youth Perspectives on the Oslo Peace Process: Successes, Failures and Alternatives*. Working Paper No. 27, (Bethlehem, BADIL, 2021).

In the case of Palestinian refugee rights, the peace process has failed to adequately address these rights and instead designated them to final-status issues, thereby condemning them to a limbo of effective statelessness. As for the right to self-determination, the Oslo Accords excluded Palestinians inside the Green Line and the diaspora from exercising this collective right, treating it as a right connected to fragmented geographical realities rather than the people's historical existence and legitimate-national rights.

The international community has thus far failed to formally acknowledge that, as stated by former Special Rapporteur Richard Falk, the Oslo Peace Process “appears to have been an insidious roadblock that diverted the Palestinian struggle for self-determination while granting time to Israel to expand its territorial claims and virtually extinguish any realistic prospect of realizing Palestinian rights in the near future.”<sup>6</sup>

The seemingly irreversible situation that Israel has created on the ground and its impunity granted in the international sphere, have generated an erosion of the Palestinian people's national rights. In the discourse surrounding Palestinian rights, the Palestinian refugees' right to return is rarely discussed anymore, with even PA politicians surrendering this right.<sup>7</sup> As for the right to self-determination, it has been reduced to a right to be exercised on less than 18 per cent of the West Bank, which constitutes approximately 4 per cent of Mandatory Palestine, an unsurprising fact when considering Israel's colonial expansion in Area C.

Prior to the Oslo Accords, the Palestinian struggle was perceived as exactly that – a legitimate national struggle against a colonial power, with an indigenous people fighting for their right to self-determination. However, that has shifted into a discussion about statehood instead of self-determination. Although the two are complementary, they are not synonymous, as the former can manifest without the latter.

In order to be able to enforce a comprehensive, collective realization of the right to self-determination, there is an urgent need for rebuilding representative and democratized Palestinian institutions to lead the struggle for collective rights. National institutions have been systematically undermined, particularly since the Oslo Accords, and the institutions of the Palestinian Authority (PA) have collapsed, separating the Gaza Strip from the West Bank since mid-2007.

Conducting transparent and democratic elections for the Palestinian National Council and PLO bodies and institutions, including the Department of Refugee Affairs and popular committees, should ensure the participation and representation of all the Palestinian people - including refugees and IDPs wherever they may be currently located. Such a process is essential in rebuilding a unified national Palestinian strategy and activating the representative structures of the PLO. The notion of representation of Palestinian refugees and IDPs, in particular youth, in the PLO is crucial for the realization of the Palestinian inalienable rights to self-determination and return.<sup>8</sup>

However, considering that the Israeli apartheid-colonial regime is obstructing this realization, the only viable legal approach that would allow for the Palestinian right to self-determination must emerge

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<sup>6</sup> Richard Falk, “Oslo +20: A Legal Historical Perspective,” in *The Oslo Accords 1993-2013: A Critical Assessment*, Petter Bauck and Mohammed Omer, (eds.) (American University in Cairo Press, 2017).

<sup>7</sup> Harriet Sherwood, “Mahmoud Abbas outrages Palestinian refugees by waiving his right to return,” *The Guardian*, 4 November 2012.

<sup>8</sup> See BADIL, *Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018*, Volume IX, (Bethlehem, BADIL, 2020).

from the achievement of the right to decolonization owed to the Palestinian people on the Palestinian territory.

Self-determination through the decolonization of Palestine within its mandatory borders is confirmed and supported by the customary legal principle of *uti possidetis juris*, which provides that states rising out of decolonization should inherit the former colonial administrative borders.<sup>9</sup>

Bringing forward the settler-colonial paradigm allows international law to effectively address the root causes for the perpetuation of the Palestine Question and promote decolonization to achieve Palestinian self-determination. By means of advancing such a human rights-based approach, self-determination in Mandatory Palestine will be available for all people, irrespective of religion or race, in a new nation based on equal rights. Importantly, enabling the Palestinian people to practice their right to self-determination does not contradict ensuring that all human rights of the current Jewish-Israeli colonizers are guaranteed, as they will become citizens of the future state in Mandatory Palestine

## **International Obligation to Ensure Decolonization and Self-Determination:**

The international community must adhere to a human rights-based approach to conflict resolution as a means to respect and ensure rights for all people living in Mandatory Palestine as well as those in exile who are due to return. This includes realizing that colonialism has been the guiding axiom of the Zionist-Israeli enterprise, operating at the expense of Palestinian self-determination. Failing to acknowledge the colonial intents behind Israel's policies and practices of apartheid, forced displacement, and dispossession allows for the normalisation of Israel's denial of the Palestinian right to self-determination.

The United Nations Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations affirms that states have “a duty to refrain from forced actions that deprive peoples of their right to self-determination, freedom and independence,” and that peoples who resist such forced actions in pursuit of their right to self-determination, “are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”<sup>10</sup>

Similarly, as per the Draft Articles on Responsibility of States for Internationally Wrongful Acts, serious breaches of peremptory norms prompt the liability of third states in two ways: through a positive duty to “cooperate to bring an end through lawful means any breach,” and through a negative duty not to “recognize as lawful a situation created by a serious breach [...] nor render aid or assistance in maintaining that situation.”<sup>11</sup>

As such, the principle of self-determination consists not only of a duty for states to recognize, respect, and promote the right, but also of the obligation to refrain from taking any forcible action that serves

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<sup>9</sup> See BADIL, *Palestinian Self-Determination: Land, People and Practicality*, Working Paper No. 28, (Bethlehem: BADIL, 2021).

<sup>10</sup> UNGA, Declaration of Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, UN GAOR, 25th Sess., Supp. No.28, at 121, U.N. Doc. A/8028 (1970).

<sup>11</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, A/56/10, November 2001, Article 40 and 41.

to deny people the capacity to enjoy this right.<sup>12</sup> It follows that any action that undermines the capacity to enjoy this right and any denial of the substantive content of it – namely, the free choice of political status and economic, social, and cultural development – amounts to a serious breach of a peremptory norm under international law.<sup>13</sup> Furthermore, it has been acknowledged that, as peremptory norms of international law, the prohibition of apartheid and the right to self-determination<sup>14</sup> are “accepted and recognized by the international community of states as a whole as [norms] from which no derogation is permitted.”<sup>15</sup>

With due regard to the above, third states are obligated to abstain from acknowledging and supporting situations of fragmentation, segregation and isolation created by Israel in order to acquire sovereignty over Palestine through the denial of the Palestinian people’s right to self-determination.<sup>16</sup>

The United Nations Security Council has grounded effective measures in the domestic, individual, collective and extraterritorial obligations of states under international law, humanitarian law, criminal law and peremptory norms of customary international law - including the duty of non-recognition of an illegal situation created by the illegal use of force or other serious breaches of *jus cogens*.<sup>17</sup>

Legal and judicial mechanisms no less than the International Law Commission<sup>18</sup> and the International Court of Justice (ICJ) have reaffirmed these obligations of states, dating back to the “Namibia Doctrine,” whereby the ICJ advised that the: “development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them” and that “the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law.”<sup>19</sup>

Third-states are therefore obliged to take practical measures to bring to an end Israel’s policies and practices denying Palestinian refugees their right to return as it simultaneously obstructs the Palestinian people’s right to self-determination – a serious breach of international law. Through the international community’s pressure on Israel to uphold Palestinian refugee rights, the Palestinian people are enabled to exercise their right to self-determination on Mandatory Palestine.

It is necessary, therefore, for the international community to distance itself from a solution within the framework of the Oslo “peace process”, which has evidently been designed to legitimize the colonial enterprise, completely undermines the Palestinian people’s inalienable rights and discredits the

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<sup>12</sup> UNGA, Declaration on the Granting of Independence to Colonial Countries and Peoples, A/ RES/1514(XV), 14 December 1960; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970.

<sup>13</sup> The right to self-determination recognized as a peremptory norm principle of international law in Article 1(2) and Article 55 of the United Nations Charter of 1945 and evolved into a full-fledged peremptory norm through the decolonization process of the 1960s.

<sup>14</sup> UNGA, Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Resolution 1514 (XV), 14 December 1960, para. 2.

<sup>15</sup> United Nations Convention on the Law of Treaties, 1155 UNTS 331, 23 May 1969, art.53

<sup>16</sup> See BADIL, *Forced Population Transfer: The Case of Palestine: Segregation, Fragmentation and Isolation*, Working Paper No. 23, (Bethlehem, BADIL, 2020)

<sup>17</sup> See BADIL, *Creeping Annexation: A Pillar of the Zionist-Israeli Colonization Process in Palestine*, Working Paper No. 17, (Bethlehem: BADIL, 2020).

<sup>18</sup> Report of the International Law Commission, 53rd Session, GAOR, 56th Session, Supp. No. 10 (A/56/10), 2001, pp. 283-284, paras. 4,5.

<sup>19</sup> International Court of Justice, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1970] ICJ Rep. 16, para. 52.

legitimacy and willingness of the international community to support the just and legitimate liberation of all other territories and peoples' struggle against colonial oppression.

## **Conclusion:**

The Palestinian people have continuously been denied the enjoyment of their legitimate right to self-determination, despite this right having been consistently recognized by multiple United Nations General Assembly resolutions, as well as by the International Court of Justice in the Wall decision.

It is imperative to recognize and address the root causes of the ongoing forcible displacement and continued denial of reparations of the Palestinian people by Israel. 74 years after the commencement of the Nakba, the international community continues to bear the duty of promoting effective responses to decolonize Israel's colonial-Apartheid system and end its impunity.

This means that the international community must take practical measures for the dismantlement of this regime and its structures that are the origin of the fragmentation of Mandatory Palestine, the denial of the Palestinian right to self-determination, and the deprivation of Palestinian refugees and internally displaced persons of their right of return.

By normalizing a situation of settler-colonialism in Palestine, and not calling it by its name, the international community, directly or indirectly, and either by positive or negative action, facilitates and advances Israel's colonial project in Palestine. With this kind of support, complicity and inaction, Israel is able to entrench its unchallenged enterprise of indigenizing the colonizing population.

The only viable legal solution must come from the realization of the decolonization of the Palestinian territory within its Mandatory borders, as a *sine qua non* condition for the achievement of the Palestinian people's right to self-determination.

Through the decolonization and dismantling of the Israeli colonial-apartheid regime within the borders of Mandatory Palestine, all Palestinians are enabled to be included in the Palestinian people's right to self-determination.