

THE PALESTINIAN PEOPLE HAVE A RIGHT
TO ARMED STRUGGLE BY VIRTUE OF THEIR
INALIENABLE RIGHT TO SELF-DETERMINATION

The Palestinian People Have a Right to Armed Struggle by Virtue of their Inalienable Right to Self-Determination

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BADIL Resource Center for Palestinian Residency and Refugee Rights is an independent, non-profit human rights organization working to defend and promote the rights of Palestinian refugees and Internally Displaced Persons (IDPs). Our vision, mission, programs and relationships are defined by our Palestinian identity and the principles of international humanitarian and human rights law. We seek to advance the individual and collective rights of the Palestinian people on this basis.

Introduction

The preamble of the Universal Declaration of Human Rights stresses that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

The wording of the preamble clearly indicates that **‘resort to rebellion against tyranny and oppression’ is a predictable position when fundamental rights are not respected.** Indeed, historical records overwhelmingly show that self-determination is rarely restored or achieved without the use of force and armed struggle. In fact, **failing to acknowledge resistance movements would lead to an illogical situation where alien occupation and colonial domination would go unchallenged.**¹ This is particularly relevant since “states follow above all, their own interests and feelings with one another”,² that usually contradict subjugated peoples’ struggle for liberation. Not recognizing their right to resist would entrap them in a paradoxical situation, as changing the power structure is historically impossible without recourse to force.³

The **recognition of peoples’ right to self-determination was therefore accompanied by the affirmation of the legitimacy of peoples’ resistance** against foreign domination and subjugation, including armed struggle. Because they violate the inalienable right to self-determination, asymmetric power structures such as **colonization, apartheid, alien domination and subjugation are prohibited.**

They have also been analyzed in many international law documents as **grave violations that threaten peace and security.** In the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations General Assembly (UNGA) effectively noted that it is aware of “the increasing conflicts resulting from the denial of or **impediments in the way of the freedom of**

1 Shahd Hammouri, The Palestinian People have the right to resistance by all means available at their disposal (Law for Palestine, 2023) 18

2 International Court of Justice, Anglo-Iranian Oil Co. case (United Kingdom v. Iran) (Preliminary objections) (1952) Dissenting Opinion of Judge Alvarez, 126

3 Iris Marion Young, Responsibility for Justice (Oxford University Press, 2011)148

such peoples [peoples under foreign subjugation, domination and exploitation], which constitute **a serious threat to world peace.**⁴

According to the UNGA, “**further delay in the granting of independence is a continuing source of international conflict** and disharmony, seriously impedes international co-operation, and is creating an increasingly dangerous situation in many parts of the world, which may **threaten peace and security.**”⁵ Later, in Resolution 3103 of 1973, the UNGA hence stated “that the **continuation of colonialism in all its forms and manifestations (...) is a crime.**”⁶

This paper reaffirms that, due to the denial of the Palestinian people’s self-determination by the Israeli colonial-apartheid regime, international law guarantees their right to armed struggle, and protects it until they can exercise their inalienable right to self-determination.

The Legitimacy of Peoples’ Armed Struggle for Self-Determination

The recognition that alien subjugation, domination and exploitation of peoples impede peace and security⁷ is at the origin of **international law’s support for national liberation movements in their quest for independence and self-determination**, empowering them to employ any means necessary to free themselves from occupation or colonial domination.

In the context of the South African occupation of Namibia, the UNGA repeatedly supported the exercise of the Namibian **people’s right to self-determination by all means at their disposal, including armed struggle.**⁸

4 UNGA, Resolution 1514 (1960)

5 UNGA, Resolution 1654 (1961)

6 UNGA, Resolution 2621 (1970) 1

7 UNGA, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970) [Hereinafter: UNGA, Declaration on Friendly Relations (1970)]

8 UNGA, Resolution 3492 (1979) 12: “Supports the armed struggle of the Namibian people (...) to achieve self-determination”; UNGA, Resolution 3836 (1983) 4: “reaffirms the legitimacy of their [Namibia’s] struggle by all the means at their disposal, including armed struggle, against the illegal occupation”.

According to Judge Ammoun's separate opinion in the International Court of Justice's Advisory Opinion on the Namibia case, "the **legitimacy of the peoples' struggle follows from the right of self-defense**, inherent in human nature, which is confirmed by Article 51 of the United Nations Charter."⁹

In other words, the **prohibition on the use of force**¹⁰ does not apply to peoples struggling for self-determination. Rather, it **aims at preventing the force that is resorted to by colonial or foreign governments** against the people in order to deny them self-determination.¹¹ Denouncing Portuguese colonialism in Guinea-Bissau, Resolution 2105 of 1965 was indeed adopted while the independence party (PAIGC)¹² had officially engaged in armed liberation struggle.¹³

With respect to the people of Palestine, but also of Zimbabwe, Djibouti and the Comoros, the **UNGA unequivocally established that self-determination is to be implemented "by all available means, including armed struggle."**¹⁴ Recalling the cases of Namibia and Palestine, the UNGA stated in Resolution 3535 that "the activities of Israel, in particular the **denial to the Palestinian people of their right to self-determination** and independence, **constitute a serious and increasing threat to peace and security**"; and **stressed the legitimacy of peoples' struggle for independence**, territorial integrity, national unity and liberation, "by all available means, **including armed struggle.**"¹⁵

In Resolution 3817, the UNGA reiterated that "the denial of the inalienable rights of the Palestinian people to self-determination, sovereignty, independence and return to Palestine, and **the repeated acts of aggression by Israel** against the people of the region constitute a serious **threat to international peace** and

9 International Court of Justice, Advisory Opinion, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) Separate Opinion of Judge Ammoun, 70

10 United Nations Charter (1945) Art. 2 (4)

11 George Abi-Saab, Wars of National Liberation in the Geneva Conventions and Protocols (Collected Courses of the Hague Academy of International Law, Vol.165, 1979) 371, 372.

12 African Party for the Independence of Guinea and Cape Verde (Partido Africano da Independência da Guiné e Cabo Verde, PAIGC).

13 UNGA, Resolution 2105 (1965)

14 UNGA, Resolution 3214 (1977) 2

15 UNGA, Resolution 3535 (1980) 2

security”, thereby reaffirming the legitimacy of the struggle for **“liberation from colonial domination, apartheid, and foreign occupation by all available means, including armed struggle.”**¹⁶

Finally, the Declaration on Friendly Relations, which reflects customary law, calls on states to render assistance to the United Nations in bringing “a speedy **end to colonialism, having due regard to the freely expressed will of the peoples concerned**”, in accordance with the purposes and principles of the UN Charter.¹⁷ Accordingly, states must refrain from any forcible action depriving peoples of their right to self-determination. Further, not only does the Declaration recognize **the legitimacy of peoples’ actions and resistance** against forceful deprivations of their self-determination, but it also affirms that, in taking such actions, **peoples are entitled “to seek and receive support.”**¹⁸

Thus, international law clearly provides peoples with a right to resist the negation of their right to self-determination, with all available means at their disposal, including armed struggle.

Legal Consequences of The Right to Armed Resistance

The Declaration on the Granting of Independence calls for the **cessation of “All armed action or repressive measures of all kinds directed against dependent peoples.”**¹⁹ According to Judge Robinson’s separate concurring opinion on the Chagos case, the wording of the Declaration demonstrates “a sensitivity on the part of the General Assembly to the **imbalance in the power relationship between a colonial administration and a dependent people.**”²⁰

The Palestinian people were regarded as ‘dependent’ as early as 1920, in

¹⁶ UNGA, Resolution 3817 (1983) 1

¹⁷ UNGA, Declaration on Friendly Relations (1970)

¹⁸ Ibid (UNGA, Declaration on Friendly Relations, 1970)

¹⁹ UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) Art. 4

²⁰ International Court of Justice, Advisory Opinion, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (2019) Separate Opinion of Judge Robinson, 210

Article 22 of the Covenant of the League of Nations, and in Article 30 of the Lausanne Treaty of 1923. The asymmetrical power relationship between the Israeli colonizing power and the Palestinian people was also asserted in UNGA Resolution 3535, which “**condemns the expansionist activities of Israel** in the Middle East, as well as the continuous bombing of civilians”, as they “**constitute a serious obstacle to the realization of self-determination** and independence of the Palestinian people.”²¹ Similarly, the UNGA considered that the “**continuing illegal and colonial occupation** of Namibia by South Africa constitutes an **act of aggression** against the Namibian people.”²²

Since both occupations and situations in which peoples are fighting against alien occupation and racist regimes are classified as international armed conflicts,²³ International Humanitarian Law (IHL) must be respected. For instance, individuals engaged in such a fighting should benefit from the rights and treatment afforded to prisoners of war if captured.²⁴ Per Article 45 of the Hague Regulations, “it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.” **There is no duty of obedience to the occupying power,**²⁵ insofar as it “only **exercises a factual and not a legitimate authority**, so that the population of the occupied territory are in general neither ethically nor juridically obliged to obey it as such; it follows from this that **resistance to the enemy in the occupied territory can be a permissible weapon.**”²⁶

Although IHL is the relevant legal framework for situations of armed conflict and occupation, the geographical and personal scopes of the right to resist are not limited to circumstances, territories and persons to which IHL applies. As a people, **all Palestinians**, regardless of their individual status or location, **are holders of rights** under the Universal Declaration of Human Rights, the UN Charter, the Declaration on the Granting of Independence, and the Declaration on Friendly Relations, among others. These documents, along with many more,

21 UNGA, Resolution 3535 (1980) 12

22 UNGA, Resolution 3836 (1983)

23 Geneva Conventions (1949) Article 2, Additional Protocol I to the Geneva Conventions (1977), Art. 1 (4)

24 Additional Protocol I to the Geneva Conventions (1977), Art. 45

25 Richard Baxter, *The Duty of Obedience to the Belligerent Occupant* (British Yearbook of International Law, 1950) 252, 258

26 Special Court at the Hague, Special Court of Cassation, Trial of Hans Albin Rauter (1949) 127

uphold the right to self-determination for ‘all peoples’, and confer on the **Palestinian people as a whole, in Mandatory Palestine or in exile, the right to armed struggle** until liberation and independence is attained.

It is important to note that the **establishment of the State of Palestine** on the pre-1967 borders does not realize the right to self-determination of the Palestinian people, and so **does not preclude the legitimacy of their collective acts in pursuit of self-determination.**²⁷ Rather, **as long as their right to self-determination is not fully implemented by all and for all, the right to resist is activated**, irrespective of whether or not a state for (some) Palestinians has been created and is gradually recognized by members of the international community.

As for the **Israeli colonial-apartheid regime**, international law sets forth **a duty to refrain from forcible actions** depriving the Palestinian people from their right to self-determination,²⁸ but also imposes an **obligation not to prosecute Palestinians for resistance**, as clearly recalled by UNGA Resolution 3535, which demands “the immediate and unconditional release of all persons detained or imprisoned as a result of their struggle for self-determination and independence.”²⁹

Finally, **third states**, too, must refrain from any forcible action that deprives peoples of their right to self-determination, freedom, and independence.³⁰ Further, they must recognize the right of all peoples to self-determination, and to **offer material and moral assistance to “the national liberation movements in colonial Territories”**,³¹ **and any other kind of assistance** to “all peoples struggling for the full exercise of their inalienable right to self-determination and independence.”³²

27 Shahd Hammouri, The Palestinian People have the right to resistance by all means available at their disposal (Law for Palestine, 2023) 8

28 UNGA, Declaration on Friendly Relations (1970)

29 UNGA, Resolution 3535 (1980) 14

30 UNGA, Declaration on Friendly Relations (1970)

31 UNGA, Resolution 2105 (1965)

32 UNGA, Resolution 3070 (1973)

Conclusion

To prevent colonial domination from being unchallenged, international law derives from the inalienable right of self-determination the right to armed struggle, which therefore arises so long as self-determination remains denied, and until it is restored and achieved.

Despite its *jus cogens* character, **the right of self-determination has been violated by the Israeli colonial-apartheid regime with respect to the Palestinian people for 75 years.** It is indeed a matter of historical record that, from the onset of Zionism and even before the creation of Israel, the goal of the Zionist movement has been clearly identified: to create a 'Jewish state' in Mandatory Palestine and to artificially engineer Jewish 'purity' in the land.

To execute this racist enterprise, the Zionist-Israeli regime relies on **three pillars: colonization, apartheid, and forcible transfer**, all of which are predicated by colonizer implantation, codification of colonizer privileges, and erasure of the colonized people. Designed and implemented **to actively deny the Palestinian people's right to self-determination**, these pillars have been enacted by the Israeli colonial-apartheid regime **with total impunity.**

Not only have western colonial states refused to apply international law and accountability mechanisms to Israel,³³ they also have continuously facilitated the imposition of colonial laws, policies and practices, through their material and political assistance, thereby entrenching the Israeli colonial-apartheid regime over the Palestinian people.³⁴ Doing so, they **have failed their obligation to recognize and support** the right of all peoples to self-determination. Moreover, **in aiding and abetting the repression of the Palestinian people's resistance** against the negation of self-determination, **these states are complicit in the violation of a *jus cogens* norm of international law.**

33 BADIL, 75th Anniversary of UDHR and UN Resolution 194 (Press Release, 2023)

34 BADIL, Forced Population Transfer: the Case of Palestine (Working Paper 15 Series, 2014)

The Genocidal War on Gaza waged on 7 October 2023 shows once again that the Israeli colonial-apartheid regime and its supporters continue to blatantly ignore international law. **The vouched unconditional support** to the commission of war crimes and grave breaches of humanitarian law, and **to the sustained denial of self-determination**, an inalienable right and a *jus cogens* rule, **must be replaced with the provision of assistance to the Palestinian people's struggle.**

Until liberation and the fulfillment of their rights to self-determination and return are achieved, the right to resist is available to the Palestinian people, by all available means, including armed struggle.

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