

The Right to Resistance and Armed Struggle Against Occupation and Its Relation to the Right to Self-Determination (Emphasizing Developments in the Gaza Strip)

Mohammad Reza Hosseini¹, Ali Hosseini²

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Abstract

In international law, the "right to resistance" is closely linked to the "right to self-determination" and "the rights regarding the occupation of territory." The right to self-determination for people is realized through the struggle against colonial domination, territorial occupation, and racist regimes. On the other hand, the "right to resistance" is a human right and an inherent right to defend oneself against aggression and military occupation, rooted in religion, philosophy, and history. In contemporary times, the "right to resist against occupation, subjugation, domination, and foreign exploitation" is recognized by the United Nations Charter and various resolutions of the UN General Assembly. This qualitative research, conducted using a descriptive method, seeks to answer the question: What is the relationship between the right to resistance against occupation and the right to self-determination, and how is the exercise of these rights manifested in the occupied territories of Palestine? The findings indicate that numerous UN resolutions, international jurisprudence, and the four Geneva Conventions affirm that people under occupation have the right to struggle for their self-determination using all available means, including resorting to arms under the right to resistance. Consequently, resistance groups and liberation movements representing the occupied people in Palestine (the West Bank and Gaza Strip) are entitled to use military force against the occupying Zionist regime within the framework of the laws of occupation and international humanitarian law. However, this regime, as the occupying power, has only supportive obligations and does not possess the right to self-defense against the armed actions of liberation movements.

Key words: Right to Armed Resistance, Right to Self-Determination, International Humanitarian Law, Occupation Law, Liberation Movements.

¹.Professor of International Law and Member of the Faculty at the National Defense University (Corresponding Author).Rezahsn88@gmail.com

² .Master's Degree Graduate in Law and Judge
.osseini123@gmail.comHosseini123@gmail.com

Introduction

International law has established regulations since the 19th century to control the behavior of occupying powers. These regulations were formulated through the development of guidelines for military personnel, the negotiation of multilateral treaties, and judicial procedures and decisions. In the context of the law of war and armed conflicts, international law has set rules regarding the occupation of territory, taking into account the real effects of occupation on the sovereignty of states and the military needs and necessities involved. As a result, the doctrine of occupation enables the exercising of authority by the occupying state over the territory of the sovereign state under occupation (Siyah-Rostmi, 2019: 439).

Military domination and occupation in all its forms, including apartheid and other forms of racism, are contrary to the United Nations Charter and hinder international peace. This issue has been affirmed in the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as in the Declaration on Principles of Friendly Relations and in numerous resolutions of the UN General Assembly. Denying the right to self-determination for peoples inevitably leads to dissatisfaction among those under domination and ultimately maintains an environment conducive to conflict that may threaten peace and security.

In General Assembly Resolution 3103 (1973), it was reiterated that "the continuation of colonialism in all its forms and manifestations, as stated in General Assembly Resolution 2621 on October 12, 1970, is a crime." In the Declaration on Friendly Relations, countries affirmed that "every state is obliged to refrain from any coercive action that deprives peoples, as mentioned in the principles of equal rights and self-determination, of their right to self-determination, freedom, and independence."

The Gaza Strip is considered one of the most densely populated areas in the world and has long been under Israeli occupation. The regime administers this region through the imposition of military laws. In December 2005, the Israeli armed forces ended their physical military presence in this territory and withdrew beyond the borders of the Gaza Strip. However, they continue to control and monitor Gaza's land borders, airspace, and maritime access. Following the victory of Hamas in the democratic elections of 2007, the regime declared Gaza a hostile territory and subsequently imposed restrictions on the entry and exit of goods,

particularly fuel and electricity. Due to Gaza's complete economic dependence on this regime—resulting from long-term occupation and the lack of development in the Gaza Strip—the regime only considers itself obligated to meet basic humanitarian needs, and even then, only to the extent that is deemed necessary.

A careful examination of international documents reveals that the laws of occupation are encompassed within the rules attached to the 1899 and 1907 Hague Conventions, which pertain to the laws and customs of land warfare, as well as the Fourth Geneva Convention of 1949 regarding the protection of civilians during wartime and international humanitarian law. These documents outline criteria such as the military presence of hostile forces in the occupied territory, the exercise of sovereignty and the ability to enforce it, and the former government's incapacity to assert its territorial authority, which are considered effective indicators of the status of occupation. However, one criterion that has been overlooked among these is "effective control," which is not explicitly stated in any of the documents. In this regard, Article 43 of the Fourth Hague Convention states:

"Once the authority of the legitimate power has passed into the hands of the occupier, the occupying state must take all steps in its power to restore and ensure, as far as possible, public order and safety while respecting the laws in force in the occupied country, unless absolutely prevented."

Arguments for the "right to resist occupation" are based on international laws and standards. This research conducts an in-depth analysis of the following questions:

1. In which international documents is the concept of the "right to resist" reflected?
2. What is the relationship between the "right to resist" and the "right to self-determination of peoples," and is the exercise of these two rights applicable in the Gaza Strip?
3. Do Palestinians possess the right to armed resistance under international law?
4. Under what conditions can "armed resistance against the occupier" be exercised, and what limitations does it face?
5. According to humanitarian law, can the "rights of occupation" still be applied in the Gaza Strip?

Theoretical framework

Literature Review

In the fields of "self-determination," "the laws of armed conflict," and "occupation law," numerous books and articles have been written. Researchers have primarily focused their works on studying the legal dimensions of war, with less attention given to the right to resistance as an inherent human right and its relationship with the right to self-determination within the framework of international human rights law and international humanitarian law. Among these writings, the following can be noted:

Siyah-Rostmi, in his doctoral dissertation titled "International Law of Occupation and Its Effectiveness in Protecting Individuals" (2011), concluded that in cases of military occupation, the regulations of international humanitarian law must be implemented. The Security Council should emphasize the necessity of upholding human rights obligations by occupying powers in the resolutions and other documents issued regarding territorial occupation. The researcher, in a published article derived from this dissertation, emphasizes that by ensuring respect for human rights in the occupied territories, many existing legal gaps concerning the new model of occupation will be addressed, thereby providing the necessary protection for the residents of the occupied land (Siyah-Rostmi, 2011: 42.)

Akhavan Kharazian in his article "Application of International Humanitarian Law in the Recent Conflict in Gaza" (2009), published in the *International Legal Journal*, discusses the crimes committed by the occupying power in Gaza through serious violations of many fundamental principles of humanitarian law, including collective punishment and disregard for its obligations under the law of occupation. He notes that the failure to respect humanitarian law, alongside the neglect of the principle of individual criminal responsibility, exacerbates the conditions for establishing international accountability for the Zionist regime. He acknowledges that international bodies have not been effective in alleviating the severity of the situation or in compelling the conflicting parties to adhere to human rights and international humanitarian law (Kharazian, 2009: 65.)

Ahmadinejad, Amin al-Raiya, and Motaji, in a joint study titled "The Conceptual Transformation of Occupation from the Perspective of

International Law with Emphasis on the Situation in Gaza" (2020), published in the Journal of Public Law Studies at the University of Tehran, address the question: Does the withdrawal of Israeli forces from Gaza signify the end of the Zionist regime's occupation? The authors' findings indicate that, given the significant role of the criterion of "effective control" in the conceptual evolution of occupation in the international arena, the continuity of the occupation of Gaza by the Zionist regime can be substantiated even after 2005, thereby imposing obligations on that regime as the occupying power under international law (Ahmadinejad et al., 2020: 51).

Conceptualization

1. International Humanitarian Law: "International humanitarian law," sometimes referred to as the law of war or "the law of armed conflict," is a set of rules that governs armed conflicts between states. It protects individuals who are not participating in hostilities or who have ceased to participate in them, and it restricts the means and methods of warfare (Hosseini, 2022: 49).
2. Right to Resistance :The "right to resistance" is an inherent right recognized by international humanitarian law. Accordingly, people under occupation have the right to fight against the unlawful occupying power and racist regimes using any available means, including weapons, in order to determine their own destiny. Denying people such a right amounts to denying their equality and human dignity (Manirakiza, 2019: 85).
3. Right to Self-Determination :The "right to self-determination" is a fundamental right and considered the most important right among human rights. This right is a prerequisite for the exercise of all individual rights and freedoms. According to the right to self-determination, people under occupation or colonial rule can freely determine their political status and pursue their economic, social, and cultural development (Kasse, 1995: 37).

4. **Rights of Occupation:** "Occupation" refers to the effective military presence of occupying forces in the territory of another country, involving the exercise of sovereignty and effective control over the occupied territory for the purpose of temporary domination. The "rights of occupation" encompass a set of human rights that the occupying power must strive to ensure for those under occupation. These rights include:
 1. **Maintenance of public order,**
 2. **Security,**
 3. **Access to adequate nutrition,**
 4. **Assurance of access to medical facilities,**
 5. **Preservation of hospitals and certain public health services (Samson, 2010: 924).**

Theoretical Foundations

1. Military Occupation

The laws regarding the occupation of territory are part of the laws of war, which regulate the general principles and provisions of international law in this area. These laws aim to establish the legal status of occupied territory and ensure the rights and security of the residents of occupied lands (Kasiri, 2016: 218). Michael Akehurst argues that there is a significant distinction between military occupation and the acquisition of territorial sovereignty or annexation. Military occupation of a territory without United Nations authorization is illegal and is never acceptable; any threat or use of force to acquire territory certainly undermines the legitimacy of territorial acquisition or the annexation of that territory (Akehurst, 1987: 149).

The concept of military occupation often falls within the realm of the laws of armed conflict, representing an unusual status that exists somewhere between peace and war, governed by specific rights and obligations that differ from those applicable during wartime or peacetime.

The 1874 Brussels Declaration plays a decisive role in shaping the concept of occupation. In this declaration, it states:

"A territory belonging to one of the parties in conflict shall be considered occupied when it is actually placed under the authority of hostile armed forces. The status of occupation exists only in territories

where sovereignty is established, and it will continue as long as the conflicting party can exercise its sovereignty."

After World War II, the concept of occupation was subject to judicial scrutiny. In its advisory opinion on the Separation Wall (2004), the International Court of Justice stated:

"The term 'occupation' implies that the organized resistance of the occupied state must be suppressed and that structures for maintaining order and law in the occupied territory must be established. The Court refers to Article 49, paragraph 6 of the Fourth Geneva Convention, which explicitly states that the occupying power has no right to transfer its civilian population into the occupied territory. Thus, whenever control by the occupier becomes effective and the established government is destroyed, the area will be considered occupied" (Fararu, 2012: 141).

In fact, occupation is distinct from aggression; in occupation, sovereignty is exercised over the occupied territory. In this regard, "Oppenheim" states that occupation involves the invasion of another country's territory along with the intention to retain it (Quigley, 2016: 279).

Article 2 common to the four Geneva Conventions of 1949 applies not only generally to international armed conflicts but also specifically in cases of partial or total occupation of the territory of a contracting party. The regulations governing military occupation, as part of an international armed conflict, are defined by customary war law, the 1907 Hague Regulations (the Fourth Hague Convention concerning the laws and customs of war on land and its annex of October 18, 1907), the Fourth Geneva Convention of 1949, and certain provisions of Additional Protocol I of 1977.

According to Article 42 of the Hague Regulations, "territory is considered occupied when it is actually placed under the authority of the hostile army." Since no other definition has been provided in subsequent ratified treaties, this definition remains a criterion for determining the existence of an occupation status. Importantly, Article 42 also states that "occupation extends only to territory where such authority has been established and can be exercised." Consequently, occupation pertains only to areas where the necessary control has been effectively established. This definition has also been affirmed in international judicial practice.

2. Continuation of the Occupation of Gaza

The West Bank and Gaza Strip came under Israeli occupation in 1967. While the West Bank remains under occupation, the situation in Gaza is somewhat different. On June 6, 2004, the Israeli regime decided to withdraw its forces and evacuate settlements. According to this plan, Israeli ground troops withdrew from the Gaza Strip, and the area was evacuated. The plan stipulated that once the evacuation process was completed, there would be no legal basis to claim that Gaza should still be considered occupied territory.

Although this plan asserts that the occupation of Gaza has ended, a mere declaration of the end of occupation is insufficient from a legal standpoint; an objective assessment of the facts on the ground must be conducted. However, the existing realities on the ground suggest otherwise. Legally, occupation ends when "the occupying power withdraws from the territory or is driven out by the people." Nevertheless, occupying powers rarely withdraw immediately; such withdrawals usually occur gradually through a phased reduction of their forces (Quigley, 2015: 49). Many legal scholars, NGOs, and international organizations argue that Gaza remains under occupation (Goldstone Report, 2013: paragraph 276).

Various arguments support the position that the Israeli regime continues to be an occupying power in Gaza, as the control exerted by Israel over the Gaza Strip still meets the "effective control" threshold required by occupation law. Consequently, the nature and extent of the obligations of the occupying power depend on the level of control exercised over the territory. In its 2015 report on the challenges of contemporary armed conflicts, the International Committee of the Red Cross states:

"The criterion of effective control is equally applicable when determining the end of occupation, meaning that the standards to be adhered to should generally reflect those used to determine the beginning of occupation. However, the International Committee of the Red Cross considers that in certain specific and relatively exceptional cases—particularly when foreign forces withdraw from the occupied territory (or parts of it) but retain key elements of authority or other significant responsibilities—occupation law may still apply to that territorial area. In fact, despite the absence of foreign forces in the relevant territory, the retained authority may be deemed effective control for the purposes of occupation law."

Additionally, the Israeli Supreme Court, in its ruling on "Al-Basyouni," emphasizes the continuation of the occupation of Gaza and bases Israel's obligations regarding Gaza on three reasons:

1. The ongoing armed conflict between the Israeli regime and Hamas.
2. The control that the Israeli regime still exerts over border crossings.
3. The significance of the relationships established between the Israeli regime and Hamas over the years.

The first point is relatively straightforward: given the ongoing armed conflict between the Israeli regime and Hamas, the corresponding obligations under international humanitarian law continue to apply.

3. Foundations of the Right to Resist Occupation

The "right to resistance" is arguably the oldest human right; it is the right to self-defense and the preservation of life. This right was redefined by John Locke, who argued that one's body is the first property one possesses, thus establishing the basis for the right to ownership. The term self-defense arises in the context of war:

"Resistance against invasion, military attack, and the occupation of your land. Here, you have the right to use force against your aggressor and defeat them, as the right to freedom from the yoke of the occupier and invader is fully recognized in both customary and treaty law as well as judicial practice" (Kanafani, 1982: 34).

The United Nations General Assembly explicitly affirmed the right of Palestinians to resist the military occupation by the Israeli regime, including through armed struggle. This right was recognized within the context of the right to self-determination for all people under foreign and colonial rule. Some of the most relevant UN resolutions on this matter include:

Resolution 3314 of the General Assembly (1974), which affirmed the right to self-determination, freedom, and independence for all "peoples under colonial and racist regimes or other forms of alien domination," emphasizing their right to struggle for this goal and to seek and receive support.

Resolution 37/43 of the General Assembly (1982), which emphasized the "inalienable right" of the Palestinian people and "all peoples under alien and colonial domination" to self-determination. It also reaffirmed the legitimacy of "people's struggles for liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle."

Similar principles have been echoed in various other UN resolutions. Although UN resolutions are not legally binding, they "accurately reflect the prevailing legal opinions in international law among the majority of independent states in the world" (Sigler, 2004).

The UN recognized the right to resist foreign domination against the backdrop of independence wars against colonial powers in the second half of the twentieth century, particularly in Southern Africa. During this period, UN resolutions frequently supported Palestinian struggles alongside similar liberation movements in other colonial contexts, including the fight against apartheid in South Africa and Namibia, which also involved the use of armed struggle to achieve their objectives. During this time, the UN granted observer status to the Palestine Liberation Organization (PLO) alongside African liberation movements, including the African National Congress (Manirakiza, 2019: 89).

The establishment of a Palestinian self-governing authority does not negate the legitimacy of collective actions by the people to achieve their right to self-determination. In the current illegal circumstances, Palestinian territory remains under foreign occupation, and the international community has largely ignored this issue. Article 9 of the International Law Commission's draft on the international responsibility of states recognizes that "individuals may undertake actions typically carried out by states in the absence or inadequacy of official state authorities, under similar conditions" (Kant and Kolasis, 2004: 47). The International Law Commission further explained the meaning of "under similar conditions" in its interpretation, stating:

"Such situations rarely occur; they arise during revolutions, armed conflicts, or foreign occupations, where regular authorities are dissolved, disintegrating, suppressed, or currently inactive."

International law recognizes that the legitimate pursuit of the right to self-determination may be undertaken by groups of people seeking to assert their rights against an occupying state. In defining the eligible categories for classifying prisoners of war, Article 4(1) of the Third Geneva Convention states, "members of the armed forces of a party to the conflict, as well as members of militias or volunteer groups forming part of such armed forces."

Simultaneously, paragraph 2 of Article 4 clarifies the status of "other members of militias and other volunteer corps, including members of organized resistance movements." This distinction emphasizes that these individuals and entities are not part of official armed forces but rather

constitute "militias" and "other volunteer groups," which include those living under occupation.

In cases of military occupation deemed illegitimate by the international community, people have no recourse but to resort to force in pursuit of their rights outlined in the United Nations Charter. Recognizing the legitimacy of such resistance is essential for empowering oppressed people to defend themselves in the absence of political will. Otherwise, the international legal community risks normalizing the subjugation of others by the global society (Shafer, 2003: 29).

Multiple UN resolutions, statements from government officials, and Additional Protocol I of the Geneva Conventions recognize "the legitimacy of people's struggles by all legitimate means available to them, including armed struggle for the exercise of self-determination." As noted by the Court in the Western Sahara case, General Assembly resolutions can serve as evidence of state practice and "belief in their binding nature."

4. The Right to Resist and the Right to Self-Determination in International Legal Documents

The Right to Resist and Armed Struggle

The right to resist and the struggle of people under foreign domination have been recognized in various international human rights and humanitarian documents. For instance, Article 20(2) of the African Charter on Human and Peoples' Rights, adopted in 1981, asserts after declaring the undeniable right of peoples to self-determination:

"All peoples under colonial and oppressive regimes have the right to use any means recognized by the international community to free themselves from domination."

Similarly, Article 2 of the "Convention on the Suppression of International Terrorism," adopted in 1999 by the Organization of Islamic Cooperation, states:

"Struggles of peoples, including those against foreign occupation, aggression, colonialism, and domination aimed at freedom and self-determination, in accordance with the principles of international law, should not be regarded as terrorist crimes."

In 2004, the Arab Charter on Human Rights, adopted at the Arab League summit on May 23, 2004, and coming into force on January 15,

2008, declared in Article 2(4): "All peoples have the right to resist foreign occupation." International humanitarian law also recognizes the right of people to resist colonial domination and foreign occupation, as well as against racist regimes. This right is derived from the principles of occupation law and resonates across various sources of international law.

International Law Governing Armed Conflicts

International law governing armed conflicts, as outlined in the Fourth Geneva Convention (1949), does not establish a rule regarding the legitimacy of using force against an occupying power and remains silent on the "right to resist" (Benavich and Benounisti, 2022: 170). However, Additional Protocol I of 1977, which was developed to enhance and complement the Fourth Geneva Convention, expanded the scope of resistance against military occupation and explicitly affirmed that the "right to resist" and "right to self-determination" apply in situations including "armed conflicts in which people fight against colonial domination and foreign occupation as well as against racist regimes" (Noura Urkat, 2019: 111).

This update to international law provides legal legitimacy for "the use of force by national liberation movements, including the Palestine Liberation Organization," granting Palestinians a "legal right" to use force against military occupation, similar to the rights enjoyed by independent states. However, "the right to use force by combatant groups is not unlimited and must adhere to the principles of proportionality, necessity, and other governing humanitarian law principles (such as the principle of distinction between occupying forces and civilians)." On the other hand, violence directed at military targets, including Israeli soldiers and military checkpoints, can be considered within the scope of the right to resist for the occupied people (Noura's interview with Alex Kain, 2023).

Experts from the United Nations and Amnesty International have stated that "indiscriminate rocket fire by Palestinian militant groups in Gaza is illegal and may constitute a war crime, as rockets cannot be accurately directed at a military target." Such actions, alongside war crimes committed by the Israeli regime, will be subject to investigation by the International Criminal Court (ICC) (Peter Beaumont, 2021).

Legitimacy of Resistance and Armed Struggle Against Occupation

Throughout history, Palestinians have resisted colonial domination in various ways, often employing both non-violent and violent methods. During the First Intifada (1987-1993), Palestinians adopted a strategy of civil disobedience manifested through:

1. Popular committees,
2. Strikes,
3. Boycotts,
4. Self-funded projects as a form of non-violent pressure on the Israeli regime.

Following the establishment of the Palestine Liberation Organization (PLO) in 1964, armed struggle was regarded as the primary means to achieve freedom. This strategy continues today, as many Palestinians engage in various forms of armed attacks against Israeli military occupiers.

Another instance of this armed resistance occurred during the Intifada of 1988. The legitimacy of this uprising was recognized by UN bodies through the condemnation of retaliatory actions and ongoing settlement activities. Similarly, the UN Economic and Social Council condemned the oppressive actions of the Israeli regime against the Intifada and emphasized the "protection of Palestinian women and their families in the occupied territories."

The International Court of Justice and the Right to Self-Determination

The International Court of Justice (ICJ) interpreted the armed resistance of tribes and liberation groups in Western Sahara as an expression of the right to self-determination. From the Court's perspective, the actions of these groups and their armed struggle against foreign domination are indicative of the legitimate exercise of the people's right to self-determination.

This approach has been echoed repeatedly by the United Nations General Assembly. In Resolution 2105 (1964), member states recognized "the legitimacy of the struggle of peoples under colonial rule to exercise their right to self-determination and independence." During the General Assembly's debate on the resolution, the term "struggle" was associated with "freedom fighting" and "the quest for independence." Thus, the concept of "struggle" can be interpreted as actions aimed at independence

or liberation, reflecting resistance against the dominating power. Similarly, General Assembly Resolution 2787 in 1971 explicitly states:

"The legitimacy of the struggle of peoples for self-determination and liberation from colonial and foreign domination, particularly for the people of Zimbabwe in South West Africa and the Palestinian people, is confirmed in accordance with the Charter of the United Nations."

In Resolution 2649 (1970), the General Assembly reaffirmed that "peoples under colonial and foreign domination have the right to self-determination and to reclaim this right by any means at their disposal." Furthermore, in Resolution 3070 (1973), the Assembly reiterated the legitimacy of the struggles of peoples to free themselves from colonial and foreign oppression using all available means, including armed struggle.

The positions articulated in UN resolutions regarding Zimbabwe, Namibia, Djibouti, Comoros, and Palestine further reinforce these principles. The General Assembly supported the exercise of self-determination by the people of Namibia "by any means at their disposal, including armed struggle." Therefore, the pursuit of self-determination "by all available means, including armed struggle" is reflected not only in the practices of UN bodies but also in the practices of states. For instance, the "British Military Manual" states:

"The fact that some inhabitants are in a state of rebellion, or that guerrillas or resistance fighters achieve successes, does not end the occupation. Even a temporarily successful rebellion in part of an occupied area does not necessarily terminate the occupation as long as the occupying power takes steps to counter the rebellions and is able to re-establish its authority."

A similar argument is found in the "U.S. Military Handbook," which asserts:

"The existence of a rebellion or activities by guerrilla or paramilitary units does not, in itself, stop the occupation, provided that the occupier can regain physical control of any part of the territory at any time they wish."

The Right of Occupied Peoples to Self-Determination

The "right to self-determination" is one of the fundamental principles in contemporary international law. This principle is among the goals and objectives of the United Nations, with the UN Charter recognizing the

right to self-determination as a cornerstone of friendly and peaceful relations between states and peoples. However, this principle, alongside others such as the prohibition of the use of force, the equality of sovereigns, and non-intervention in domestic affairs, lacks sufficient robustness. For a long time, there has been debate about the meaning of this principle and whether its scope is limited to "the peoples of colonies, peoples of territories under foreign domination, and ethnic groups under the control of a racist regime."

The report by Aurelio Cristescu titled "The Right to Self-Determination: Its Historical and Contemporary Evolution Based on the UN Charter" extensively examines the evolution of the fundamental concepts inherent in the "right to self-determination." In this report, self-determination is defined as follows:

"Self-determination is a fundamental right, without which other rights cannot be fully realized; it is not merely a principle but the most important right among human rights and a prerequisite for the exercise of all individual rights and freedoms." (Cooper, 1985: 34).

The right to self-determination is enshrined in Article 1(2) of the UN Charter, which states:

"The development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and the use of other appropriate means to strengthen universal peace."

This was the first time this principle had been included in a multilateral treaty, marking a significant milestone in the historical evolution of the right to self-determination (Kasse, 1996: 44). After the initial acknowledgment of the existence of the right to self-determination for peoples, the discussion turned to the methods and tools for realizing and ensuring this right for people, gradually reflecting this principle more prominently in decolonization debates (Nanda, 1996: 195).

The 1960s marked the peak of the United Nations' efforts to promote the right to self-determination within the context of decolonization. The "Declaration on the Granting of Independence to Colonial Countries and Peoples" was adopted with the hope of accelerating the decolonization process. This declaration, known as the anti-colonial or decolonization declaration, states that all peoples have the right to self-determination and declares that colonialism should be rapidly and unconditionally eliminated. Based on this declaration, included in General Assembly

Resolution 1514, the General Assembly established a "Special Committee on Decolonization" in 1962 to oversee the implementation of the declaration and to issue recommendations for its application (Kasse, 1996: 44).

Following the adoption of this declaration, in 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted. The common Article 1 in both covenants states that all peoples have the right to self-determination. Consequently, they can freely determine their political status, and "self-determination" became recognized as a legal principle in international law.

For the first time, an international legal rule stated that peoples in an independent and sovereign state have the right to freely choose their rulers and to establish a democratic government. At the same time, member states committed themselves to refrain from interfering in the internal affairs of other states and from occupying foreign territories, thereby depriving the peoples of their right to self-determination. Until this point, the external right to self-determination meant gaining independence, and this right implied the obligation of other states to refrain from interfering in the internal affairs of the peoples of an independent and sovereign state.

However, after the 1970s, new dimensions of the right to self-determination emerged, including the right to defend against occupation and to control one's natural resources. Thus, the implications of self-determination extended beyond mere political aspects, leaving security, military, and economic impacts as well (Ibid).

The Right to Self-Determination

In 1970, the United Nations reached a peak in its efforts to establish the primacy of the right to self-determination, recognizing it as a rule of international law and a source of "universal obligations," while refining its concept, substance, and foundations. That year, the General Assembly adopted the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the United Nations Charter," which included seven principles, one of which is the equal rights and "self-determination" of peoples. According to this declaration:

"All peoples have the right to freely determine their political status and pursue their economic, social, and cultural development without external interference, and every state has the duty to respect this right in accordance with the provisions of the Charter."

At the same time, the declaration obligates states to refrain from coercive actions that would deprive peoples of their right to self-determination. However, peoples have the right to receive international support in their struggle against such states (Morris, 1997: 207).

The right to self-determination for all peoples in colonized and occupied territories has been recognized as a universal right. All states are committed to taking positive actions to enable this right and to create the conditions necessary for its realization. Thus, the concept of self-determination encompasses not only achieving independence for colonized peoples but also includes:

1. The prohibition of interference in the internal affairs of a state,
2. The prohibition of the continued occupation of the territories of other states,
3. The prohibition of the control of natural resources and wealth of other countries.

In its advisory opinion on Namibia in 1971, the International Court of Justice acknowledged that the subsequent development of international law regarding non-self-governing territories applies the right to self-determination to all such areas. In 1975, in the Western Sahara case, the Court affirmed the right of the people of Western Sahara to determine their future political status—expressed through their freely given will. As seen, the legal right to self-determination for peoples has been assumed to apply primarily in the context of colonization and non-self-governing territories (Nanda, 1996: 190).

In 2004, in its advisory opinion regarding the Wall, the International Court emphasized that its jurisprudence in these cases indicates that "the right of peoples to self-determination today is a 'universal' right." It seems that the Court has recognized the set of rules in common Article 1 of the two covenants and the 1970 Declaration on Friendly Relations as embodying the right to self-determination, characterized as "Erga Omnes."

The Right to Self-Determination for Peoples under Domination and Occupation

State practices and United Nations resolutions indicate that the right to self-determination belongs not only to the peoples of colonies but also applies to those in occupied territories. The concept of "foreign domination" is included in paragraph 1 of the Declaration on the Granting of Independence:

"The subjugation, domination, and exploitation of peoples constitute a denial of fundamental human rights, contrary to the principles of the United Nations Charter and an obstacle to the promotion of world peace and cooperation."

Additional Protocol I (1977) outlines the general framework and scope of application of the right to self-determination. Article 1, paragraph 4 states:

"In situations involving armed conflicts, peoples can struggle for their self-determination against colonial domination and foreign occupation and against racist regimes."

This provision clearly affirms the legitimacy of armed resistance by peoples in pursuit of their right to self-determination (Abisab, 1981: 78). The first article of the human rights covenants implicitly addresses this issue; however, it does not directly mention foreign occupation or foreign domination. Ultimately, the 1970 Declaration on Friendly Relations refers to several situations that encompass the external right to self-determination for peoples, one of which includes domination, subjugation, and exploitation by foreign powers.

The Declaration on Occupation and Foreign Domination

This declaration illustrates that the situation of occupation or foreign domination can exist independently of colonization. This notion is now recognized by all countries and the international community. The Security Council has repeatedly stated that the acquisition of territory through military conquest and coercion is unauthorized and illegitimate. For example, in Resolution 298, the Security Council acknowledges that all administrative and legislative actions taken by the Israeli regime to alter the status of the city of Jerusalem, including the expropriation of property, population transfer, and legislation aimed at integrating the occupied

territories into the Israeli regime, are entirely null and void and cannot effect any change in status.

In 1980, in Resolution 478, the Council deemed the law declaring Jerusalem as the capital of the Israeli regime and uniting it as a violation of international law, declaring all legislative and executive measures by the Israeli regime aimed at altering the character of the city of Jerusalem to be annulled and void.

The right of the Palestinian people to resist is grounded in their right to self-determination. The General Assembly of the United Nations, in the preamble of Resolution 43/73, declares the denial of the inalienable right to self-determination, sovereignty, and independence of the Palestinian people, as well as the right of return for Palestinian refugees, along with the recurrent aggressive actions of the Israeli regime against the people of the region, to be a threat to international peace and security.

In paragraph 2 of this resolution, the Assembly affirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity, and freedom from colonial and foreign domination, including through armed struggle.

Further, in paragraph 18 of the resolution, the Assembly condemns those states that do not recognize the right to self-determination and independence for peoples under foreign domination, particularly the Palestinian people. In paragraphs 23 and 28 of the same resolution, it calls upon all states and relevant United Nations bodies to assist the Palestinian people in their legitimate struggles (Habibzadeh, 2016: 481).

Discussions and exchanges of views on the right to self-determination and the expansion of its concept continue among various and conflicting perspectives. To date, this principle has not crystallized into a precise legal rule; however, the following customary rules can be extracted from it:

1. The application of the external right to self-determination for colonies and their peoples;
2. The application of the external right to self-determination for the peoples of occupied territories;
3. The application of the internal right to self-determination for ethnic groups in states that practice racial discrimination (Crawford, 1996: 331).

Research Methodology

This research is applied-developmental in nature, as it aims to utilize the findings for practical purposes by diplomats, political officials, military commanders, and decision-makers within the judiciary and the Ministry of Foreign Affairs. Furthermore, from a research paradigm perspective, it is interpretive and critical.

The approach of this study is qualitative, and it falls under descriptive and analytical research methods. Data collection was performed using library resources, employing techniques such as note-taking and textual analysis of United Nations documents, as well as other international legal theories and jurisprudence.

Analysis and Research Findings

The occupying power has numerous duties and responsibilities under modern humanitarian law, primarily based on the 1949 Geneva Conventions and Additional Protocol I. In fact, the Fourth Geneva Convention, unlike the Hague Conventions, centers on the protection of civilian populations and the provision of public services to those under occupation, imposing extensive obligations on the occupying power for the administration of the occupied territory. Thus, the occupying power assumes a comprehensive administrative role (Ahmadinejad et al., 2020: 43).

The actions of the Israeli regime in the collective imprisonment of the Palestinian people in the occupied territories reflect a pattern of colonial-settlement. One of the main characteristics of colonial-settlement is the confinement of populations. This systematic confinement leads to the imprisonment of entire populations who have lost their lands. Over time, the Israeli regime has expanded its comprehensive control over Palestinians as a nation through physical, administrative, and digital mechanisms. Traditional imprisonment has been replaced by restrictive techniques that encompass the entire population of the occupied territories, facilitating land confiscation and the forced displacement of the Palestinian population.

As General Assembly Resolution 2787 in 1971 states:

"The legitimacy of the struggle of peoples for self-determination and liberation from colonial domination and foreign subjugation, particularly the Palestinian people, is affirmed by all means available."

Accordingly, the total blockade and military actions against the people of Gaza by the Israeli regime are considered "collective punishment," resulting in a violation of international law and a breach of the right to self-determination of Palestinians in Gaza. This has been recognized as a form of "genocide," as noted by the International Court of Justice in its provisional ruling (*South Africa v. Israel*) in January 2024. Additionally, this issue has been explicitly mentioned in the Security Council and in resolutions of the Special Session of the Human Rights Council, as well as in statements by the UN High Commissioner for Human Rights.

On the other hand, following Hamas's victory in Gaza in 2007, the Israeli regime declared the end of its occupation and withdrew its forces. It claimed that this meant it was no longer considered an occupying power. However, since it continues to control Gaza and its crossings, imposing restrictions on the entry and exit of goods, especially fuel and electricity, it is still regarded as an occupying power under international law. Consequently, the right to resist for the people of Gaza and for liberation movements and resistance groups remains valid.

In reality, the physical withdrawal from Gaza merely transformed the form of the Israeli regime's control from direct presence to complete confinement. After the withdrawal, the regime has maintained effective and direct control over Gaza's land, air, and sea borders. Gaza remains dependent on the Israeli regime for the influx of food, medicine, and the provision of water, electricity, fuel, communications, and other basic necessities. This is compounded by issues such as widespread unemployment, poverty, and severe deprivation of fundamental living conditions.

The occupying power, according to international law concerning occupation, including the Fourth Geneva Convention of 1949, has responsibilities regarding the security and needs of the people in the territory it occupies. Article 33 of the Fourth Convention prohibits collective punishment of civilians, and the imposition of economic sanctions on the residents of Gaza by the Israeli regime is a clear example of collective punishment and, therefore, a violation of international law.

Rights of the Occupied and the Right to Resist

Under the law of occupation, residents of occupied territories have no obligation of loyalty to the occupying power. Furthermore, foreign military occupation has always faced resistance from the population of

the occupied territory. This resistance is not only acceptable but is often celebrated as a patriotic and honorable endeavor. Undoubtedly, the Palestinians, as residents of an occupied territory that has experienced prolonged and ongoing occupation, have the right to resist the occupying power. They are entitled to live freely in their homeland, away from confinement and oppression, and to exercise their right to self-determination. No one can deny the Palestinian people's right to resist foreign military occupation.

This situation brings us to a gray area in international law concerning the struggles of groups and movements against foreign colonization and occupation. The distinction between "terrorists" and "freedom fighters" remains unclear among various countries, and there is often disagreement regarding these concepts. However, it is important to note that the "right to resist and to resort to armed actions by freedom fighters" is aimed at exercising their "right to self-determination," while the actions of terrorists typically serve political objectives.

On July 9, 2004, the International Court of Justice, in its advisory opinion, evaluated the legitimacy of constructing the wall based on the United Nations Charter, General Assembly Resolution 2625, the right to self-determination of peoples, and human rights and humanitarian law. The Court declared that the construction of the wall in the occupied Palestinian territories was unjustified and must be halted immediately, and that the Israeli regime must compensate for the damages caused. According to the International Court of Justice, other states are also obligated not to recognize this situation, to remove obstacles to the exercise of the right to self-determination, and to ensure compliance with the provisions of the Fourth Geneva Convention of 1949. The United Nations Security Council is also required to take further actions in this regard.

Pressures on the Palestinian Population and Humanitarian Crises

The imposition of severe and prolonged pressures on the residents of the occupied Palestinian territories, through repeated and widespread violations of international law governing occupied territories and a persistent disregard for the rights of the occupied population, has incited the anger of the Palestinian people. The continuation of occupation and the blockade of Gaza, the expansion of settlements in the West Bank, Jerusalem, and the gradual annexation of Palestinian lands, along with the implementation of stringent security measures against Palestinians in

both the West Bank and Gaza, have all contributed to the obstruction of their right to self-determination. These actions have prompted movements and groups to seek to assert their rights through armed resistance.

The culmination of these grievances was the attacks on October 7, 2023, by the Hamas movement against the Israeli regime, which were immediately met with a response from Israeli forces that included a "complete blockade of the Gaza Strip and the initiation of heavy military operations" targeting hospitals, schools, places of worship, educational institutions, and Gaza's water, electricity, and fuel infrastructure.

The humanitarian disasters and the ruthless killings occurring throughout the Gaza Strip prompted the United Nations Security Council to issue Resolution 2712 on November 15, 2023, and Resolution 2720 on December 22, 2023, calling for an immediate cessation of hostilities and the establishment of access to urgent humanitarian aid in Gaza for an adequate duration. The Council also requested the Secretary-General to identify options for effective monitoring of the implementation of these resolutions.

On October 10, 2023, the Independent International Commission of Inquiry on the Occupied Palestinian Territories issued a statement indicating that it was in the process of collecting evidence of war crimes. The Commission invited governments, individuals, groups, and organizations to report any information regarding potential crimes committed by the parties involved since October 7, 2023. These matters include:

1. Attacks against civilians and civilian objects,
2. Hostage-taking,
3. Use of civilians, including children, as human shields,
4. Collective punishment,
5. Starvation,
6. Rape and other forms of violence.

Summary

Regarding the exercise of the right to self-determination by peoples under colonization and military occupation, in light of Resolution 2625 and the "Declaration of Principles of Friendly Relations" (1970), we can conclude the following:

It is the "duty" and "obligation" of states to refrain from any coercive actions against the peoples of colonies and non-autonomous territories that would deprive them of their right to self-determination.

The exercise of this right by people in these territories is not an obligation but rather an opportunity that allows those under colonization and in occupied territories to use any means available (including weapons) to repel aggression.

Third countries are obligated to recognize the legitimacy of the Palestinian people's resistance, and the Israeli regime must refrain from harassing Palestinians due to their legitimate resistance. Furthermore, the occupying regime cannot classify such forms of armed struggle and resistance as violations of international rules and justify its continued aggression and attacks under the principle of "self-defense."

Recommendations

In light of the above, it is proposed that, in accordance with the implementation of the General Assembly and Security Council resolutions of the United Nations and international jurisprudence, and to restore the lost rights of the oppressed Palestinian people, international political and judicial bodies should incorporate the following points into their future documents and ensure their precise implementation through legal mechanisms:

The occupying power must not resort to violent and military actions against the people under colonization and those residing in occupied territories, and it must avoid any displacement of populations and ethnic groups within its controlled territory.

People under occupation should face no legal or political obstacles in exercising their right to self-determination.

Liberation movements and resistance groups should be allowed to use any means available (including weapons) to assert their right to self-determination.

Regarding the exercise of the right to self-determination by peoples under colonization and military occupation, in light of Resolution 2625 and the "Declaration of Principles of Friendly Relations" (1970), we can draw the following conclusions:

1. It is the "duty" and "obligation" of states to refrain from any coercive actions against the peoples of colonies and non-autonomous territories that would deprive them of their right to self-determination.
2. The exercise of this right by the peoples of these territories is not an obligation but an opportunity that allows those under colonization and in occupied territories to utilize any means (including weapons) to repel aggression.
3. Third countries are obligated to recognize the legitimacy of the Palestinian people's resistance, and the Israeli regime must refrain from harassing Palestinians due to their legitimate resistance. Furthermore, the occupying regime cannot classify such forms of armed struggle and resistance as violations of international law or justify its continued aggression under the principle of "self-defense."

Recommendations:

In light of the above, it is recommended that, in accordance with the implementation of the resolutions of the United Nations General Assembly and Security Council, as well as international jurisprudence, and to restore the lost rights of the oppressed Palestinian people, international political and judicial bodies should incorporate the following points into their future documents and ensure their precise implementation through legal mechanisms:

- ✓ The occupying power must not resort to violent and military actions against the colonized peoples and those residing in occupied territories, and it must avoid any displacement of populations and ethnic groups within its controlled area.

- ✓ People under occupation should not face any legal or political obstacles in exercising their right to self-determination.
- ✓ Liberation movements and resistance groups should be permitted to utilize any means (including weapons) in their pursuit of self-determination.

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