

FACT SHEET #2: Ending the Occupation: It's the Law

WHAT IS INTERNATIONAL LAW?

International law is the only universally recognized framework that applies to all people everywhere. As an impartial and objective set of standards, international law is capable of resolving disputes without prejudice in favor of one party.

Human rights is a fundamental component of international law. The adoption by the United Nations of the Universal Declaration of Human Rights in 1948, thanks in large part to the tireless efforts of Eleanor Roosevelt, made possible the rapid evolution of international law, and specifically international humanitarian law, during the 20th Century.¹

INTERNATIONAL LAW AND THE ISRAELI-PALESTINIAN CONFLICT

To date, the enforcement of international law is the crucial missing element in the Israeli-Palestinian conflict. Agreements between the two parties will inevitably be biased by power imbalances unless international law serves as a bridging framework. Under the Geneva Conventions, direct agreements between an occupying power and an occupied people are presumptively invalid for this very reason. U.S. support for Israel has prevented the U.S. Government from playing an objective mediating role between the two sides. A just Israeli-Palestinian peace is simply not possible until U.S. policy changes to reflect the universal standards of international law.

Yet the law is not only the most objective statement of justice in a

conflict. Its application also protects both sides. International law can provide a just solution to all the issues at the heart of the Israeli-Palestinian conflict.

FREEDOM & SELF-DETERMINATION

Self-determination is the most basic of all human rights, the foundation upon which all other human rights depend.² The United Nations system is built on the concept of self-determination as expressed in the U.N. Charter.³ It is, on the one hand, the most basic collective right of peoples and nations, and on the other hand, the indispensable foundation for all individual human rights. If a people lack the right to self-determination, then all individual members of such people are necessarily deprived of the full realization of their human rights.

The inalienable right of self-determination stands as the very first article in the two treaties which, together with the Universal Declaration of Human Rights, comprise the International Bill of Rights – the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1976.⁴

The prominence of this article is extremely significant. It is placed at the very beginning of both treaties to underscore that all human rights – civil, political, economic, social and cultural – depend upon the effective exercise of self-determination.⁵ The widespread international consensus regarding this right was remarkable given Cold War political and ideological divisions at the time.⁶

The right to self-determination may be claimed and asserted only by the legitimate representative of a people or nation.⁷ The realization of the right to self-determination, through the attainment of sovereignty and legal personality, is governed under international law according to recognized factual criteria of statehood. One of the classic formulations of these criteria, Article 1 of the 1933 Montevideo Convention of Rights and Duties of States, declares that: “The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.” In addition to these factual criteria, recognition is an important factor in the granting of legal statehood. The General Assembly, responsible for admitting members to the UN, is the most authoritative forum for state recognition, although bilateral recognition by other states is also an important factor.

SELF-DETERMINATION: ISRAEL AND PALESTINE

The law protects. According to international resolutions, people in both Israel and Palestine have the right to self-determination and statehood. U.N. Resolution 181 of 1947 provides for the partition of Palestine into an Arab state and a Jewish state. Israel already enjoys statehood, and has established formal relations with almost all countries in the world. However, Israel was admitted to the U.N. in 1948 on explicit condition that it respect the →

1 For information about UN agreements on human rights see <http://www.hrweb.org/lega/undocs.html>; for more on international humanitarian law and conventions see: <http://www.icrc.org/eng/ihl>

2 The continued invocation of the right to self-determination in international law and practice has given it the status of a peremptory norm, meaning that it trumps other legal principles. See, e.g., Hector Gros Espiel, “Implementation of United Nations Resolutions Relating the Right of People Under Colonial and Alien Domination to Self-Determination,” Special Rapporteur, Document E/CN.4/Sub.405 of 20 June, 1978, pp. 33-5.

3 The U.N. Charter affirms the principle of self-determination in several important articles, including Article 1 on the “Fundamental Purposes and Principles” of the U.N.

4 “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” - International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No.16) 52, U.N. Doc. A/6316 (1967), Article 1; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No.16) 49, U.N. Doc. A/6319 (1967), Article 1.

5 This interpretation has been officially confirmed by the Human Rights Committee: “the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights” - HRC General Comments 12(21), para.1 (G.A.

Official Records Doc.A/39/40, pp.142-143.

6 The comments of the U.K. delegate to the Human Rights Committee are representative: “[the right to self-determination] is inalienable and indivisible. It is fundamental to international peace and security, and to the protection of national integrity... We cannot be selective in its application” - Statement to the Third Committee of the General Assembly by Mr. R. Furstrand, 12 October 1984, (1984) 55 B.Y.I.L. 434.

7 The right to self-determination is not the same as an absolute right of secession from an established state. The territorial integrity and sovereign equality of states are also basic principles of international law recognized in the U.N. Charter and subsequent treaties. In the 1970 Declaration of Principles of International Law, the General Assembly affirms that every state

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legitimate rights of the Palestinian people as embodied in UN resolutions 181 and 194 (calling for the return of Palestinian refugees) — both of which Israel continues to violate.⁸

The Arabs and Palestinians, having initially rejected the 1947 U.N. Partition Plan as unjust,⁹ have since accepted a two-state solution to the conflict, most recently in the Saudi plan submitted to the Arab Summit in Beirut in March 2002, which was formally endorsed by the League of Arab States, including the Palestine Liberation Organization.

Yet Palestine does not yet enjoy statehood. The Palestine Liberation Organization has permanent observer status at the U.N., and over 120 states have recognized the PLO and/or the Palestinian Authority. But Palestine has not yet been seated as a member state of the U.N., in spite of the law's application to other peoples, most recently the people of East Timor.¹⁰ The simple reason is that Israeli military occupation of Palestinian land continues to thwart the legitimate right of Palestinians to self-determination. U.S. political, military, and economic support for Israel is the most significant external factor enabling this occupation to continue in defiance of international law and justice.



CESR Fact Sheets on Palestine are produced as a contribution to the US Campaign to End the Israeli Occupation. The US Campaign promotes the application of international law to the conflict, contributing to a just peace and human rights for all — Palestinians and Israelis. If you would like more information on the US Campaign, go to www.endtheoccupation.org or contact us_campaign@endtheoccupation.org

The Center for Economic and Social Rights (CESR) was established in 1993 to promote social justice through human rights.

EQUALITY & NON-DISCRIMINATION

The fundamental principle of human rights law is that all human beings have equal rights without any discrimination on the basis of race, religion, gender, ethnicity, or other categories. This principle forms the cornerstone of the modern democratic state in which all citizens enjoy full and equal rights under the law without discrimination of any kind. Under resolution 181, both the Arab and Jewish states were required to extend equal rights to all citizens. But Israel has never adopted a constitution or bill of rights and retains over 20 laws that discriminate against the Palestinian national minority on such fundamental civic rights as education, land ownership, and access to public resources.

OCCUPATION

There is no such thing as a “legal” occupation, because the occupier cannot usurp by force the rights of the occupied people, who retain title to their land and resources by virtue of the fundamental right to self-determination. U.N. Resolution 242 of 1967, which calls for Israeli withdrawal from territories occupied during the 1967 June War, is based on the principle of the “inadmissibility of the acquisition of territory by war”.

International law views occupation as a temporary status during which the occupier is obligated first to end the occupation as quickly as possible and second to safeguard the rights of the occupied population during the

temporary period in which the occupation is maintained. Any move by the occupier to infringe of the rights of the occupied or change the status of the occupied land through, for example, annexation, confiscation of resources, population transfer, or destruction of civilian property is illegal under the Geneva Conventions.¹¹

RESISTANCE

Occupied people have the right to resist the occupation itself, as well as the specific illegal practices of the occupier.¹² However, it is beyond dispute that attacks on unarmed civilians — whether by an occupying army or an armed resistance group — always constitute a violation of fundamental human rights and can never be justified under international law.

The legal status of combatants for the right to self-determination was defined by the General Assembly in 1973 according to the following principles:¹³

— Such struggles are legitimate and in full accord with the principles of international law.

— Attempts to suppress struggles against colonial and racist regimes are incompatible with the UN Charter, the Universal Declaration of Human Rights, and the Declaration on the Granting of Independence to Colonial Countries and Peoples. Such attempts themselves constitute a threat to peace and security.

must aid in the realization of the “self-determination of peoples” in accordance with the provisions of the Charter, but also that “nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair... the territorial integrity or political unity of a sovereign State.” Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, Oct. 24, 1970, G.A. Res. 2625, 25 U.N. GAOR, Supp. (No. 28) 121, U.N. Doc. A/8028 (1971), art. 2. Similarly, the 1961 Declaration on the Granting of Independence to Colonial Countries and Peoples affirms both the right of all peoples to self-determination and the principles of territorial integrity and inviolability of state borders. Declaration on the Granting of Independence to Colonial Countries and Peoples, Dec. 14, 1960, G.A. Res. 1514 (XV), 15 U.N. GAOR, Supp. (No. 16), UN Doc. A/4684 (1961).

⁸ Resolution 194 provides for the right of return and compensation of refugees from what became the state of Israel. Israel has accepted both resolutions 181 and 194, as recognized in the preamble of the resolution admitting

Israel to U.N. membership.

⁹ See CESR Fact Sheet 1 “Palestine and the Palestinians” for more details.

¹⁰ In a 1995 decision, the International Court of Justice held that “Portugal’s assertion that the right of peoples to self-determination, as it evolved in the Charter and from United Nations practice, has an *ergo omnes* [universal application] character, is irreproachable.” Case Concerning East Timor (Port. v. Austr.), 1995 I.C.J. 90 (June 30).

¹¹ Israel is a signatory to the Fourth Geneva Convention, and, as such, obligated to uphold its provisions.

¹² Article 1(4) of Protocol I (additional to the Geneva Conventions) considers self-determination struggles in the context of international armed conflicts: the principle of self-determination itself provides that where forcible action has been taken to suppress the right, force may be used in order achieve self-determination.

¹³ United Nations High Commission on Human Rights Fact Sheet on International Humanitarian Law and Human Rights: <http://www.unhchr.ch/html/menu6/2/fs13.htm>