

Armed Resistance in Gaza Strip Against Israeli Occupation: Legitimate Requirement to Achieve Self-Determination

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This paper argues that according to comparative and analytical research, the rules of armed resistance under the International Humanitarian Law require different understanding in the context of Palestine and its struggle against the Israeli occupation. It explains the nature of the Palestinians' right to self-determination and assesses the legitimacy of armed resistance activities against the occupation.

Introduction

In 1948, when the Israeli Occupying Authorities (IOA) started functioning openly in Palestine, the Palestinians formed independent resistance movements as a direct reaction. These movements varied in their structure and ideologies. For example, some of them were connected with political parties, while others were just popular groups. However, the consideration of the armed resistance as the only option for liberation was a consensus view amongst these movements. The forms of resistance varied according to the capabilities of the Palestinians. Basically, resisting through firearms and bombs against the Israelis was widespread.¹

The resistance continued, and in 1967, the IOA extended their occupation to what is currently known as the Gaza Strip (GS) and the West Bank (WB). Accordingly, new resistance movements emerged to fight against the Israelis in those Palestinian territories. Hamas in particular, which is considered as the biggest resistance movement in Palestine, and the factual government of GS, started its operations against the IOA in 1988. Hamas caused significant damage to the Israeli settlers in the GS, which led the IOA to announce their Disengagement Plan from GS in 2005.²

Even though the IOA military forces withdrew from the GS, they still exercise effective control over the borders, the sea, and the air of GS. As a result, Hamas, supported by other Palestinian resistance movements in the GS, like Islamic Jihad and Al-Aqsa Brigades, continued their attacks against the IOA settlements in the

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¹ "PLO Negotiations Support Unit (NSU), Analysis of the Israeli Disengagement Plan, October 2004 (Excerpts)", *Journal of Palestine Studies*, Vol. 34, No. 2, p. 200.

² Israel and the Palestinians; Sharon's 'Disengagement' Plan is Completed, Series (trans, Economist Intelligence Unit N.A. Incorporated, 2005).

Palestinian occupied land, using their internationally recognized right to self-determination and self-defense.³

The last significant occasion was on the first of July 2014, when the IOA declared military operations in the GS. These operations resulted in, after 50 days, 2,140 martyrs and more than 10,000 injured Palestinians. Thanks to the firm resistance, the IOA signed a ceasefire agreement with the resistance movements in the GS, and the war came to an end.⁴

The IOA purported that what they had done was a self-defense mechanism, as this action has been explained in The Hague Regulations of 1907 regarding the Laws and Customs of War on Land, the Fourth Geneva Convention relating to the Protection of Civilian Persons in Time of War of 1949, and the first additional protocol annexed to the Geneva Convention on the protection of victims of International armed conflicts of 1977. Moreover, they alleged that what the resistance movements used falls out of the purview of the right to self-determination activities.⁵

In this paper, the author argues that armed resistance, as it has been used in the aforementioned occasion, is a legitimate and fundamental requirement in resisting the IOA violations. Moreover, the author contends that such resistance is indispensable for building the governmental institutions in the GS, establishing economic entities, and exercising the right to self-determination.⁶ In this paper the author also refutes the IOA's arguments regarding their allegation of exercising the right of self-defense against Palestinians in GS.⁷

The Legal Status of the GS

The Disengagement Plan Provides for Israel's Effective Control Over the Gaza Strip

In 2006, the IOA decided to enforce the Disengagement Plan, which basically contained the following steps:⁸

- Withdrawing all the Israeli forces and settlers residing in the GS, amounting to 7500 settlers;
- Evacuating seventeen settlements in the GS and four settlements in the North West Bank, and dismantling all existing establishments;

³ "UN Office for the Coordination of Humanitarian Affairs (OCHA), 'Gaza on the Edge', Gaza, October 1, 2004 (Excerpts)", *Journal of Palestine Studies*, Vol.34, No. 2, p. 199.

⁴ After Gaza [Electronic Resource], Middle East Report No. 68, International Crisis Group, 2007, Amman; Jerusalem; Gaza; Brussels.

⁵ Inside Gaza: The Challenge of Clans and Families, Middle East Report No. 71, International Crisis Group, 2007, Brussels, Washington DC; and Stephen Zunes (2010), "The Gaza War, Congress and International Humanitarian Law", *Middle East Policy*, Vol. 17, No. 1, p. 68.

⁶ B'Tselem (2007), *The Gaza Strip: One Big Prison*, Jerusalem.

⁷ Trude Strand (2014), "Tightening the Noose: The Institutionalized Impoverishment of Gaza, 2005-2010", *Journal of Palestine Studies*, Vol. 43, No. 2, p. 6.

⁸ Yousef Shandi (2010), "Israel's Claim of the 'Legitimate Right of Self-Defence' Regarding the Gaza Strip in Light of International Law: A Palestinian Lawyer's Position", *Journal of East Asia & International Law*, No. 2, p. 389.

- Maintaining Israel's full security control of the land borders, as well as the sea and airspace of the GS; and
- Expanding settlement activity in the WB, asserting that any future solution must take into consideration Israel's demand to maintain control over Israeli settlements, villages, cities and other areas of security and strategic significance for Israel in the WB.

In The Hague Regulations of 1907 regarding the Laws and Customs of War on Land, Article 42 specifies that

[A]territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.⁹

This Article emphasizes that the exclusive criterion to determine whether a particular land is occupied or not is 'effective authority'. This type of authority does not require the existence of foreign army units in that land.¹⁰ However, this authority is considered to exist when the foreigner is able to exercise their authority over it. Subsequently, the occupation ceases to exist when this authority ends.¹¹

By applying this logic to the status quo in GS, particularly after the Disengagement Plan of September 2005, GS is an occupied territory and the IOA is the occupier of it, because they are still exercising real authority over it. This exercise is noticeable through the effective control of the airspace, borders, sea and all the land of GS.¹² Moreover, the suffocating economic blockade which started in 2007, and the wide-ranging militant activities are clear signs of that control.¹³

Because the IOA controls the borders and their crossing points, they issue permits for goods, people in general, the GS inhabitants' family members and even international convoys of humanitarian assistance and medical support provided to the GS.¹⁴ As a result, it is irrefutable that the IOA is occupying GS from the international law perspective.¹⁵

Moving to the rules of the International Court of Justice (ICJ), the court asserted in its advisory opinion on the separation wall case that the GS is an occupied

⁹ Available at <https://www.icrc.org/ihl/INTRO/195>

¹⁰ "Revitalising Gaza: A White Paper", Palestine Investment Conference, 2008, Bethlehem.

¹¹ Ruling Palestine I: Gaza Under Hamas, Middle East Report No. 73, International Crisis Group, 2008, Gaza; Jerusalem; Brussels.

¹² Gaza's Unfinished Business [Electronic Resource], Middle East Report No. 85, International Crisis Group, 2009, Brussels, Belgium.

¹³ Gaza: Hamas' Deadly Campaign in the Shadow of the War in Gaza, 2009, Amnesty International, London.

¹⁴ Israel/Gaza: Operation 'Cast Lead', 22 Days of Death and Destruction, 2009, Amnesty International, London.

¹⁵ Yoram Denstein (2009), "The War Against Gaza from the Perspective of Israeli National Security Experts", The Palestinian Centre for Israeli Studies (MADAR), January.

territory.¹⁶ In that case, the Court affirmed that 'the GS and the WB including East Jerusalem remain occupied territories and Israel has continued to have the status of an Occupying Power. Subsequent events to 1967 in these territories have done nothing to alter this situation, that these are occupied territories'.¹⁷

It can be argued that this advisory opinion is not binding on the IOA.¹⁸ This is true. However, this opinion undermines the allegation of the IOA that the Palestinian territories are disputed not occupied.¹⁹ Moreover, the IOA purported that they brought to an end their effective authority over GS by implementing their Disengagement Plan.²⁰ The United Nations Commission on Human Rights, the International Committee of Red Cross and the Security Council Resolution 1860 of 2009 all recognized GS as an occupied territory even after the implementation of the Plan.²¹

It is clear from the provisions of the Plan that the IOA has merely redeployed its forces with no actual withdrawal. The Plan declares that '[t]he state of Israel will evacuate the settlements in the GS and will redeploy outside the Strip ... Upon completion of this process, there shall no longer be any permanent presence of Israeli security forces in the land territory of the GS which have been evacuated'.²² Till today, the IOA is imposing militant siege on the GS, and they have recently launched the brutal operation called the Protective Edge.²³

The Unilateral Disengagement Plan Is Violating International Law

The Disengagement Plan is inconsistent with international law, because it infringes upon the Palestinians' right to self-determination. To elaborate more, this unilateral plan was implemented without assigning full authority with complete sovereignty for those Palestinians who were occupied. This sovereignty includes territorial sovereignty and political sovereignty to exercise the right to self-determination.²⁴

Washington Agreement of 1995, which was signed by both the IOA and the PA, obliges both the parties not to take action that would cause harm to another party. The agreement asserts that

¹⁶ Stephen R Shalom (2009), "Unjust and Illegal: The Israeli Attack on Gaza", *Logos: A Journal of Modern Society & Culture*, Vol. 8, Nos. 1-2.

¹⁷ Available at <http://www.icj-cij.org/docket/files/131/1677.pdf>

¹⁸ "Foreign Trade and Payments" (2010), Country Report, Palestinian Territories, p. 23.

¹⁹ Maan News Agency, "EU to Propose Full Opening of Market to Palestinian Goods", June 10, 2010, available at <http://www.maannews.com/Content.aspx?id=291089>

²⁰ "Distributed Recharge Estimation for Groundwater Modeling Using Wetspass Model, Case Study – Gaza Strip, Palestine", Series (trans, Springer Science & Business Media B.V., 2010).

²¹ Israel Ministry of Foreign Affairs, "Gaza Operation Investigations: An Update", January 2010, available at http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Gaza_Operation_Investigations_Update_Jan_2010.aspx

²² Michele K Esposito (2011), "Quarterly Update on Conflict and Diplomacy", *Journal of Palestine Studies*, Vol. 40, No. 2, p. 119.

²³ Naomi Roht-Arriaza (2011), "International Legal Implications of Israel's Attack on the Gaza Aid Flotilla", *Proceedings of the Annual Meeting-American Society of International Law*, Vol. 105, p. 13.

²⁴ Charter of the United Nations Article 1(2).

[N]either party shall take any steps in the WB and Gaza that may prejudice the outcome of the final status negotiations.²⁵

By applying the Disengagement Plan, the IOA ignored the principle of territorial integrity between the WB and GS.²⁶ The IOA committed themselves to that principle in the Declaration of Principles of 1993, which also was signed by the IOA and the PA.²⁷ This declaration asserts that 'the two sides, the WB and the GS constitute one geographic unit whose unity and integrity must be preserved during the interim period'.²⁸ Through their plan, the IOA did not preserve that integrity. Rather, they unilaterally repositioned their military forces in GS.²⁹

The principle of territorial integrity in the case of GS is supported by two legal texts: first, in Washington Agreement, Article 11 affirms that

The two parties consider the WB and the GS as one territorial unit whose integrity and status shall be preserved during the interim period.³⁰

Secondly, the Security Council Resolution 1860 specifies that

The Security Council, recalls all of its relevant resolutions, including resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003) and 1850 (2008), that the GS constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian State.³¹

The content of Resolution 1860 finds its origins in the General Assembly Resolution 1514.³² The latter is related to the general idea of the colonized peoples' right to independence.³³ Two paragraphs in this Resolution proves that the IOA occupation of GS is subjugation rather than a temporary occupation. The first paragraph emphasizes that

The subjugation of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary

²⁵ Available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>

²⁶ "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts", The International Committee of the Red Cross, October 2011.

²⁷ The Declaration of Principles on Interim Self-Government Arrangements Between the Government of the State of Israel and the Palestinian Liberation Organisation-Agreement on Gaza and Jericho Area (signed and entered into force, September 13, 1993) (Oslo Accords).

²⁸ IHS Global Insight (2013), "Country Intelligence Report: Palestinian Authority", Palestinian Authority Monitor, pp. 1-5.

²⁹ Gaza (2013), Columbia University Press.

³⁰ Available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>

³¹ Available at <http://www.un.org/press/en/2009/sc9567.doc.htm>

³² Available at <http://www.sfu.ca/~palys/UN-Resolution%201514.pdf>

³³ Mona Russell (2013), *Peace with Israel and the Gaza Border, in Middle East in Focus: Egypt*, pp. 360-363, The American Bibliographic Centre, California, USA.

to the Charter of the UN and is an impediment to the promotion of world peace and cooperation.³⁴

The second paragraph in number six declares that

Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the UN.³⁵

By linking the last two paragraphs with Resolution 1860, the IOA has resorted to a total disruption of the territorial integrity of Palestine.³⁶ Therefore, the Disengagement Plan itself is incompatible with the principles of the UN Charter.³⁷ This concludes that the IOA is still occupying GS, and refutes the IOA claim that implementing the Disengagement Plan means the end of the IOA's effective authority over GS.³⁸

Considering GS as an Occupied Territory Because of the Illegitimate Occupation

The consideration of GS as an occupied territory leads to the fact that the occupation is illegitimate. Article 2(4) of the UN Charter emphasizes that

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN.³⁹

The Disengagement Plan affects the territorial integrity of GS and does not constitute a withdrawal from it.⁴⁰ Additionally, General Assembly Resolution 2625 declares that

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.⁴¹

³⁴ UNGA, Resolution 1514: "Declaration on the Granting of Independence to Colonial Countries and Peoples", available at <http://www.un.org/en/decolonization/declaration.shtml>

³⁵ *Ibid.*

³⁶ "Turkey and Qatar Welcome 72-Hour Ceasefire in Gaza Between Israel and Hamas", *Journal of Turkish Weekly*, August 5, 2014, p. 1.

³⁷ *Propaganda, Psyop, and Political Marketing: The Hamas Campaign as a Case in Point*, Series (trans, 2014).

³⁸ IHS Global Insight, "Country Intelligence Report: Palestinian Authority", *Palestinian Authority Monitor*, 2014, p 1.

³⁹ Charter on the United Nations.

⁴⁰ "Gaza's Ark: The Freedom Flotilla Continues After the Terrorist Attempt", *Middle East Journal of Business*, (2014), Vol. 9, No. 3, p. 50.

⁴¹ Available at <http://www.un-documents.net/a25r2625.htm>

This Resolution clearly indicates how using force to acquire a territory is illegal. Moreover, the ICJ, in the Nicaragua case, asserted that 'the principle of the inadmissibility of the use of armed force in international relations, and the consequent illegitimacy of the acquisition of land through armed force constitutes an International Custom ary Law'.⁴² These legal sources prove that this occupation is illegitimate and violates the core values of international law.

To avoid admitting this fact, the IOA claimed that GS is an 'enemy territory'.⁴³ In fact, this claim is baseless according to the international law.⁴⁴ First of all, there is no such term as 'enemy territory' in the terminology of international law.⁴⁵ The IOA politically invented this term to justify their violations, in order to help them to evade their obligations toward GS civilians, whom they occupy.⁴⁶

Secondly, GS is not an entity that can be defined as a sovereign state.⁴⁷ Actually, it is an occupied territory, which is recognized as a part of the whole Palestinian territory. As a result, considering GS as an 'enemy territory' is invalid.⁴⁸

Besides, the blockade that the IOA is imposing on GS takes the illegitimate occupation to a more transgressive stage.⁴⁹ This stage is 'military aggression'. The General Assembly Resolution 3314 indicates in paragraph (c) that 'the blockade of the ports or coasts of a state by the armed forces of another state' is also an act of aggression.⁵⁰ Through this aggression, the IOA was and is still exercising collective punishment by transforming GS into a huge imprisonment for its inhabitants.⁵¹ Amnesty International reported in 2010 that 'The continuing Israeli military blockade of Gaza, in force since June 2007, deepened the ongoing humanitarian crisis. Mass unemployment, extreme poverty, food insecurity and food price rises caused by shortages left four in five Gazans dependent on humanitarian aid.'⁵²

⁴² Available at <http://www.icj-cij.org/docket/files/70/6503.pdf>

⁴³ "Gaza: An Urgent Call to Protect Civilian Life and Health", 2014, *The Lancet*, Vol. 384, No. 9942, p. 469.

⁴⁴ Nour Shreim (2014), "War in Gaza: A Multimodal Analysis of the Attacks on the UNRWA School", *Journal of War & Culture Studies*, Vol. 7, No. 1, pp. 54-81.

⁴⁵ *Israel Blockades the Gaza Strip* (Gale, Cengage Learning, 2014).

⁴⁶ Shane Darcy and John Reynolds (2010), "'Otherwise Occupied': The Status of the Gaza Strip from the Perspective of International Humanitarian Law", *Journal of Conflict & Security Law*, Vol. 15, No. 2, p. 211.

⁴⁷ Rochelle Davis and Mimi Kirk (2013), *Palestine and the Palestinians in the 21st Century*, Indiana University Press, Bloomington, IN.

⁴⁸ Shane Darcy and John Reynolds (2010), "An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law", *Journal of Conflict and Security Law*, Vol 15, No. 2, pp. 211-243.

⁴⁹ Motti Inbari (2007), "Fundamentalism in Crisis-The Response of the Gush Emunim Rabbinical Authorities to the Theological Dilemmas Raised by Israel's Disengagement Plan", *Journal of Church & State*, Vol. 49, No. 4, p. 697.

⁵⁰ United Nations General Assembly Resolution 3314, available at <http://hrlibrary.umn.edu/instreet/GAres3314.html>

⁵¹ Carey James (2009), "Mere Words: The 'Enemy Entity' Designation of the Gaza Strip", *Hastings International and Comparative Law Review*, Vol. 32, p. 643.

⁵² See <http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2010>

The IOA violates international law by prohibiting GS inhabitants from getting the medical care they require from neighboring countries.⁵³ On November 1, 2010, Samir al-Nadim died because the IOA gave him permission for a heart operation at Nablus after 22 days of his submitting the application. Due to the delay, his situation got worse, and he passed away.⁵⁴

The Applicability of International Humanitarian Law to the Occupied Territories

The result of considering GS as an occupied territory is the applicability of International Humanitarian Law (IHL) to it.⁵⁵ Basically, this law consists of three legal texts. First, the First Additional Protocol annexed to the Geneva Convention on the Protection of Victims of International Armed Conflicts of 1977; secondly, the Fourth Geneva Convention relating to the Protection of Civilian Persons in Time of War of 1949; and third, The Hague Regulations of 1907 regarding the Laws and Customs of War on Land. In principle, these texts oblige the occupying power to provide the citizens with the protection they need, maintain public order by discharging the essential social obligations like establishing health facilities, and forbid retaliation and collective punishment against civilians or their property.⁵⁶

The Security Council Resolution 1860 proves that the IOA, as occupiers, do not obey the compulsory provision of the IHL with regard to GS. Article 33 of the Fourth Geneva Convention states that

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.⁵⁷

The reports of Amnesty International and UN reports show that the IOA committed collective punishment in GS, and the IOA continues to do so through blockades that they impose on GS.⁵⁸ As a result, many international organizations still need to pressurize the IOA to immediately terminate the blockade of GS. Richard Goldstone's report about the Operation Cast Lead asserted that the IOA committed crimes against humanity and war crimes against the Palestinians in GS.⁵⁹

⁵³ Mohammed S Dajani Daoudi (2006), "Unilateralism: Lessons from the Gaza Disengagement", *Palestine-Israel Journal of Politics, Economics & Culture*, Vol. 13, No. 2, p. 13.

⁵⁴ See <http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2010>

⁵⁵ Marc S Kaliser (2007), "A Modern Day Exodus: International Human Rights Law and International Humanitarian Law Implications of Israel's Withdrawal from the Gaza Strip", *Indiana International & Comparative Law Review*, Vol. 17, No. 1, pp. 187-228.

⁵⁶ Joe Sacco (2009), *Footnotes in Gaza*, 1st Edition, Metropolitan Books, New York.

⁵⁷ Available at <https://www.icrc.org/ihl/INTRO/380>

⁵⁸ OHCHR, Report of United Nations Fact Finding Mission on the Gaza Conflict, Para 1733.

⁵⁹ Richard Goldstone, Report of the Fact-Finding Mission on the Gaza Conflict ('Goldstone Report'), UN Doc A/HRC/12/48, September 25, 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

Even if the IOA claim that they are not part of those conventions and legal texts, they are legally bound by these, because they are a fundamental part of the customary international law. The ICJ, in its advisory opinion on the legal consequences of the construction of a wall,⁶⁰ emphasized that the Fourth Geneva Convention applies to all occupied regions, and the Occupied Palestinian Territories is one of those regions. In addition, Article 2 in the common articles of Geneva Convention declares that

The Fourth Geneva Convention shall apply to all cases of partial or total occupation, even if the said occupation meets with no armed resistance.⁶¹

According to the ICJ statement and the aforementioned Article, the IOA is obliged to obey these conventions, and any violation of them means that the IOA must bear the consequences for it.⁶²

Moreover, the Israeli High Court itself upheld the fact that those conventions are applicable. In Beit Sourik case, the court adjudicated that the first three Geneva Conventions and The Hague Regulations are part of the customary international law. As a result, the IOA is obliged to these legal texts.⁶³ In fact, any attempt by the IOA to claim the inapplicability of these texts because they are not part of their internal law is a violation of Article 27 of Vienna Convention on the Law of Treaties, which declares that

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty ...⁶⁴

The Context of the Palestinians' Right to Self-Determination

After the end of the First World War, there were a lot of occupied and politically disputed territories. Therefore, the political leaders were looking for means to resolve the issues related to these territories. The solution was the principle of the right to self-determination.⁶⁵ Woodrow Wilson, the US President at that time, explained this principle by stating that

[T]he settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship [is to be made] upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage

⁶⁰ Available at <http://www.icj-cij.org/docket/files/131/1671.pdf>, Para 112.

⁶¹ Available at <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

⁶² Available at <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6>

⁶³ Yagil Levy (2007), "The Embedded Military: Why Did the IDF Perform Effectively in Executing the Disengagement Plan?", *Security Studies*, Vol. 16, No. 3, p. 382.

⁶⁴ Vienna Convention on the Law of Treaties, Opened for Signature, May 23, 1969, 1155 UNTS 331 (entered into force January 27, 1980).

⁶⁵ Crown Prince of Jordan, Hassan bin Talal (Eds.) (1981), *Palestinian Self-Determination: A Study of the West Bank and Gaza Strip*, Quartet, London.

of any other nation or people which may desire a different settlement for sake of its own exterior influence or mastery.⁶⁶

The role of this principle was noticeable in both the world wars. For the first one, this principle significantly affected the outcome of the discussions about territories that had been liberated.⁶⁷ For the second one, this principle was a fundamental tool to decolonize the occupied territories. Article 1 of the UN Charter requires member nations that

[T]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people.⁶⁸

Moreover, the 1966 Covenants on Civil and Political Rights and on Economic Social and Cultural Rights raised the statues of this principle by declaring in their first article that

All people 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.⁶⁹

The fact that the IOA is occupying GS means that they are violating the Palestinians' right to self-determination.⁷⁰ As the legal texts mentioned above declare, all people, not only those who live in autonomously governed or independent territories, can invoke this right. This right is based on a collection of legal principles called *erga omnes*, which no state, including the State of Israel, can violate or evade under any justification.⁷¹

The Palestinian resistance movements that seek national liberation shall be considered as legitimate entities to exercise this fundamental right. These movements utilize this right through armed struggle against the occupying power to gain actual independence and sovereignty. The General Assembly Resolution 3103 asserts that

The struggle of the people under colonial or foreign rule or under a racist regime to gain their rights to self-determination and independence is legitimate and in full agreement with the Principles of the Rights of Peoples ... All attempts to suppress the struggle against colonial or foreign rule or against a racist regime are incompatible with the Charter of the UN, the Principles of the Rights of Peoples...⁷²

Based on the above, the fact that the Palestinian movements exercise their right to self-determination, through armed struggle against the IOA, means that any

⁶⁶ Available at <http://www.niu.edu/phil/~kapitan/pdf/Self-DeterminationandInternationalOrder.pdf>

⁶⁷ Ilana Feldman (2008), "Waiting for Palestine: Refracted Citizenship and Latent Sovereignty in Gaza", *Citizenship Studies*, Vol. 12, No. 5, p. 447.

⁶⁸ Sharyn Lock, Sarah Irving and Richard Falk (2010), *Gaza: Beneath the Bombs*, (London; New York: Pluto; New York: Distributed in the United States of America exclusively by Palgrave Macmillan).

⁶⁹ Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁷⁰ Ron Schleifer (2014), "Propaganda, Psyop, and Political Marketing: The Hamas Campaign as a Case in Point", *Journal of Political Marketing*, Vol. 13, Nos. 1-2, pp. 152-173.

⁷¹ Available at <http://www.icj-cij.org/docket/files/84/6841.pdf>

⁷² Available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/281/78/IMG/NR028178.pdf?OpenElement>

attempt by the IOA to suppress the Palestinian movement is a violation of international law, because it deprives legitimate entities of their recognized rights.⁷³ Therefore, as long as the IOA occupies GS, the Palestinian movement and inhabitants can legally resist and fight against their occupation.⁷⁴

The Interpretation of the Right

The Palestinian right to self-determination is unique.⁷⁵ It differs from other nations. Here are three noticeable differences that are important to understand how Palestinians in GS shall use this right, and what are the aims of this usage. In particular, these differences give this right in GS case a unique comprehension, which is linked to the idea of armed resistance against the IOA.⁷⁶

First, GS is politically homogenous.⁷⁷ In fact, Hamas is the dominant party in GS and the vast majority of GS population supports it. The support is evident in the form of military assistance, by seeking admission into the military wing of the party. Moreover, this support is also in the form of social solidarity that GS inhabitants show for Hamas and its decisions regarding the political and governmental issues in GS.⁷⁸

As a result of this political homogeneity, there is no question of cultural discrimination or socially unfair decisions taken by the Hamas government. Political minorities in GS, like Fatah and the Public Resistance Party, disagree with Hamas in terms of particular logistic matters, like economic governance and construction of tunnels. However, there is a consensus amongst all political groups that armed struggle is the primary solution to end the illegitimate occupation.⁷⁹

Second, many nations in the world have culturally different groups in the society. These groups can have different interests, which are contradictory and impossible to achieve at once.⁸⁰ Therefore, the right to self-determination is challenged in such nations fearing institutionalizing the majority's culture in the state.⁸¹

⁷³ Gregory Morgan (2008), *Gaza Strip Disengagement*, ABC-CLIO, LLC.

⁷⁴ Farsakh Leila (2013), "2 Colonial Occupation and Development in the West Bank and Gaza: Understanding the Palestinian Economy Through the Work of Yusif Sayigh", p. 35, Indiana University Press.

⁷⁵ Hisham Awartani (2007), "Reform in Institutional Framework and Economic Policies", *Palestine-Israel Journal of Politics, Economics & Culture*, Vol. 14, No. 3, p. 6.

⁷⁶ David Gootnick (2006), *Foreign Assistance: Recent Improvements Made, But Usaid Should Do More to Help Ensure Aid Is Not Provided for Terrorist Activities in West Bank and Gaza*, US Government Accountability Office, Washington, DC.

⁷⁷ Yehezkel Lein (Ed.) (2005), "One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan", B'Tselem Organisation, Israel.

⁷⁸ John Quigley (1997), "The Oslo Accords: More Than Israel Deserves", *American University International Law Review*, Vol. 12, No. 2, pp. 285-298.

⁷⁹ Asem Khalil (2005), "Israel, Palestine and International Law", *Miskolc Journal of International Law*, Vol. 2, No. 3, pp. 20-39.

⁸⁰ Alexander Koensler and Cristina Papa (2011), "Political Tourism in the Israeli-Palestinian Space", *Anthropology Today*, Vol. 27, No. 2, p. 13.

⁸¹ Koutroulis Vaios (2011), "Of Occupation, Jus Ad Bellum and Jus in Bello: A Reply to Solon Solomon's 'The Great Oxymoron: Jus in Bello Violations as Legitimate Non-Forcible Measures of Self-Defense: The Post-Disengagement Israeli Measures Towards Gaza as a Case Study'", *Chinese Journal of International Law*, Vol. 10, No. 4, p. 897.

In GS, this challenge does not exist because of the common suffering that the GS inhabitants have gone through that led to a collective cultural entity.⁸² This culture mainly based on the priority of taking all the necessary means to go for armed resistance against the IOA forces. The institutionalization of this culture in the Hamas regime is not in contradiction with the interests of the GS inhabitants.⁸³

Third, in general, the right to self-determination is linked with fears of national division.⁸⁴ These fears are a result of existence of conflicting nationalist ambitions among the people.⁸⁵ For example, the Fatah regime in the WB has many different views amongst its leaders with regard to the relationship with the IOA.⁸⁶ Some members believe that it should be based on establishing an independent, autonomous Palestinian Authority, without significant restrictions from Israel, on what is currently under the limited control of that Authority. In contrast, other members hold the view that such relationship should be based on peaceful negotiations to expand the Authority's control over areas that are uninhabited in the WB.⁸⁷

However, in the GS case, the fear of competing nationalist determination is unrealistic, because armed resistance is a point of consensus among the political parties there.⁸⁸ The last war in GS, called the Protective Edge, proved that all these parties have participated in sniping, killing, bombing and firing rockets against the IOA's armed forces.⁸⁹

For these reasons, the right of Palestinians to self-determination in GS is an expression of the public will, which is using armed resistance to end the illegitimate occupation and terminate the blockade imposed on their territory.⁹⁰ As a result, any armed action against the IOA forces should be considered as an exercise of a fundamental right of GS people.

⁸² Arlene Kushner (2011), "UNRWA's Anti-Israel Bias", *Middle East Quarterly*, Vol. 18, No. 3, p. 84.

⁸³ Mehrene Larudee (Ed.) (2011), *Gaza – Palestine: Out of the Margins*, 1st Edition, Birzeit University, Birzeit.

⁸⁴ Carol Migdalovitz (2010), *Israeli-Arab Negotiations: Background, Conflicts, and U.S. Policy*, Congressional Research Service – Congress of USA, January, <https://fas.org/sgp/crs/mideast/RL33530>

⁸⁵ Beverley Milton-Edwards (2014), "Islamist Versus Islamist: Rising Challenge in Gaza", *Terrorism & Political Violence*, Vol. 26, No. 2, p. 259.

⁸⁶ John Quigley (2011), "Palestine is a State: A Horse with Black and White Stripes is a Zebra", *Michigan Journal of International Law*, Vol. 32, No. 4, p. 749.

⁸⁷ Matthew Saul (2011), "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?", *Human Rights Law Review*, Vol. 11, No. 4, pp. 609-644.

⁸⁸ Brijesh Mehrish (2010), "The Right of Self-Determination: Legal and Human Rights Dimension of the Palestinian-Israeli Conflict", *The IUP Journal of International Relations*, Vol. 4, No. 4, pp. 7-13.

⁸⁹ Gilad Hirschberger and Tsachi Ein-Dor (2006), "Defenders of a Lost Cause: Terror Management and Violent Resistance to the Disengagement Plan", *Personality & Social Psychology Bulletin*, Vol. 32, No. 6, p. 761.

⁹⁰ Aldous Huxley (Ed.) (2009), *Eyeless in Gaza*, with an Introduction by David King Dunaway, 1st Edition, Harper Perennial Modern Classics, Harper Perennial, New York.

Self-Determination in Palestine from 1948 till Present

Since the Palestinian Catastrophe in 1948, the year when the IOA declared the Statehood of Israel, the IOA has continued to violate the Palestinians' right to self-determination, both in GS and the WB.⁹¹ In addition to the General Assembly Resolutions, the IOA violated the General Assembly Resolution 194. This Resolution is related to the Palestinian refugees who left Palestine in 1948 as a result of the war between the IOA and the Palestinian resistance movement. The Resolution states

[Resolved] that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.⁹²

Till 2014, the IOA did not permit the Palestinian refugees to come back; neither did it compensate those who lost their properties because of the occupation.⁹³ Moreover, the IOA violates the right to self-determination of Palestinians who continued to live in the territories under the Israeli jurisdiction. Those Palestinians constitute fifth of the IOA population. In January 24, 2007, the Knesset, the Parliament of the IOA, enacted a law that allows the IOA to revoke the Israeli citizenship from those who do not show their allegiance to Israel as a Jewish state. At the time of enactment, the Israeli Attorney General himself described this law as 'a drastic and extreme move'.⁹⁴

Throughout the war of 1967, the IOA expanded their occupation to include what is currently known as the WB and GS. In addition, the IOA occupied the eastern part of Jerusalem and the Golan Heights. On the pretext of protecting national security, the IOA established military governance authorities in the newly-occupied territories.⁹⁵ In fact, the aim of these was judaizing those territories by confiscating Palestinians' lands, establishing Jewish settlements and imposing restrictions like unrepresented taxation on the Palestinian economy.⁹⁶

⁹¹ Lama Jamjoum (2002), "The Effects of Israeli Violations During the Second Uprising 'Intifada' on Palestinian Health Conditions", *Social Justice*, No. 3, pp. 53-72.

⁹² Available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/65/IMG/NR004365.pdf?OpenElement>

⁹³ Alan Baker (2012), "International Humanitarian Law, ICRC and Israel's Status in the Territories", *International Review of the Red Cross*, Vol. 94, No. 888, p. 1511.

⁹⁴ "Jewish State Passes New Racist Law Against Arab Israelis", available at http://www.aljazeera.com/me.asp?service_ID=13222, January 22, 2007.

⁹⁵ Robbie Duschinsky (2011), "Slaughtered Innocents: Child Victims in Political Discourse During the Second Intifada and Gaza Conflict", *Social Semiotics*, Vol. 21, No. 1, p. 33.

⁹⁶ UNGA, Security Council, "Annex of Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip", (2013), p. 5, available at <https://peacemaker.un.org/israelopt-osloll95>

After that, in 1993 the IOA signed the Oslo Accords with the Palestinian Liberation Organization.⁹⁷ These Accords established the PA as an autonomous governance entity for the Palestinians in the WB and GS. The PA had limited authority and restricted competencies according to these Accords. This means that till 2014, the PA did not have the real governing authority of the Palestinian territories because its capabilities were constrained by the IOA. These Accords had no guarantees for the PA with regard to the removal of Jewish settlements in the Palestinian territories or the Palestinian refugees right to return.⁹⁸

The violation of the Palestinians' right to self-determination is an ideology among the leaders of the IOA. Yitzhak Rabin, the Prime Minister of Israel, announced in 1995 that Oslo Accords and the negotiations between the IOA and the PA will 'never ... end in a full-fledged Palestinian state'.⁹⁹ Moreover, Ehud Barak, the successor of Yitzhak Rabin, asserted that the Oslo Accords reinstates the Israeli point of view, that aims to establish a 'permanent neocolonial dependency'.¹⁰⁰

The Relevance of Self-Determination in GS Conflict

The right to self-determination is based on two ideas: First, any political solution for a nation's struggle must be accepted by the members of that nation.¹⁰¹ This means that popular approval is an essential requirement; and second, the solution to any nation's struggle must be responsive to legitimate hopes and demands of its members as well. Therefore, defining what is legitimate and what is not is significantly relevant to the right to self-determination.¹⁰² In the Palestinian context, an argument has been made by the IOA that establishing the State of Israel is an application of the right to self-determination on 78% of mandated Palestine, which is currently fully controlled by the IOA without any authority for the PA.¹⁰³

There are at least three loopholes in this argument. The first, Palestinians have been seeking the right to self-determination since the beginning of the British Mandate in 1917. Because this right has been steadily denied by the British governments and its mandated authorities, the State of Israel came into existence.¹⁰⁴

⁹⁷ Sunday E Edeko (2012), "Arab-Israeli Conflict: Towards Lasting Peace and Security", *African Journal of Social Sciences*, Vol. 2, No. 1, p. 38.

⁹⁸ Elisha Efrat (Ed.) (2006), *The West Bank and Gaza Strip: A Geography of Occupation and Disengagement*, Routledge, London, New York.

⁹⁹ Noam Chomsky (2003), *Middle East Illusions*, p. 215, Rowman and Littlefield, Lanham.

¹⁰⁰ Edward Alexander and Vernon Bogdanor (2006), *The Jewish Divide Over Israel: Accusers and Defenders*, Transaction Publishers, New Brunswick, NJ, p. 94.

¹⁰¹ Michael Freeman (1999), "The Right to Self-Determination in International Politics: Six Theories in Search of a Policy", *Review of International Studies*, Vol. 25, No. 3, p. 355.

¹⁰² Moshe Bensimon (2009), "The Dynamic of Groups in Intergroup Conflict and Proximity: The Case of the Israeli Disengagement from the Gaza Strip", *Group Processes & Intergroup Relations*, Vol. 12, No. 3, p. 397.

¹⁰³ Ilana Feldman (Ed.) (2008), *Governing Gaza: Bureaucracy, Authority, and the Work of Rule, 1917-1967*, Duke University Press, Durham.

¹⁰⁴ Victor Kattan (2011), "The Statehood of Palestine: International Law in the Middle East Conflict", *American Journal of International Law*, Vol. 105, p. 407.

Therefore, the establishment of this State itself is a violation of that right, which is based on the inherent coherence between the Palestinians as a political group that can make its own political decisions for their homeland as whole, not just what is known currently as the WB and GS.¹⁰⁵

Second, this argument is based on the assumption that the residents of the remaining 22% of Palestine, which is the WB and GS, have no interest in the rest of Palestine.¹⁰⁶ This assumption is flawed because around three to five million Palestinians are illegal inhabitants of the WB and GS, where they are currently living. This illegality is established through two facts: first, the expulsion of most of those Palestinians from the Palestinian territories occupied in 1948; and second, the reality that the rest of those Palestinians are descendants of Palestinian refugees.¹⁰⁷ The IOA violated the right that has been granted to those Palestinians to return home, as General Assembly Resolution 52 emphasized. This Resolution, which discussed the rights of Palestinians who left their homes and properties in the occupied territories, asserted that

[T]he Palestine Arab refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of justice and equity.¹⁰⁸

The third defect, Israel is exclusionary and practices religious discrimination in its laws, which means that the legitimacy of it as a representative of all its inhabitants stands vindicated. Its exclusionary policy is evident through its continuous denial of the Palestinians refugees' right to return, which was declared by many UN resolutions.¹⁰⁹ Additionally, its religious discrimination is mentioned clearly in its 1985 Amendment of Basic Law, which states that

A candidate shall not participate in elections to the Knesset if its objects or actions, expressly or by implication, include one of the following: (1) negation of the existence of the State of Israel as the state of the Jewish people.¹¹⁰

As a result of Israel's alleged occupation, it is impossible to consider its establishment as an application of the right to self-determination.¹¹¹

¹⁰⁵ Peter Maurer (2012), "Challenges to International Humanitarian Law: Israel's Occupation Policy", *International Review of the Red Cross*, Vol. 94, No. 888, Winter, pp. 1530-1535.

¹⁰⁶ Aitemad Muhanna (2013), *Agency and Gender in Gaza: Masculinity, Femininity and Family During the Second Intifada*, Ashgate Publishing Ltd., Farnham.

¹⁰⁷ Tariq Mukhimer (2012), *Hamas Rule in Gaza: Human Rights Under Constraint*, Palgrave Macmillan, New York.

¹⁰⁸ Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/52/62

¹⁰⁹ Noam Chomsky, Frank Barat and Ilan Pappé (Eds.) (2013), *Gaza in Crisis: Reflections on Israel's War Against the Palestinians*, pp. 120-127, Haymarket Books, Chicago, Illinois.

¹¹⁰ See the website https://www.knesset.gov.il/laws/special/eng/basic2_eng.htm

¹¹¹ Federica D'Alessandra (2014), "Israel's Associated Regime: Exceptionalism, Human Rights and Alternative Legality", *Utrecht Journal of International & European Law*, Vol. 30, No. 79, p. 30.

The Legitimacy of Armed Resistance Against the IOA

Refuting the IOA's Arguments Regarding Palestinians' Terrorism

There is an obvious overlap between the understanding of the right to self-determination and terrorism.¹¹² In the Palestinian context, the word terrorism is double-edged; first, what the IOA used to justify its brutal attacks against Palestinian fighters, in which the Israelis claimed that they are fighting the Palestinian terrorists who attack Israeli civilians. In contrast, the Palestinian fighters proved the legality of their attacks by claiming that the IOA was and still resorting to state terrorism.¹¹³

Distinctly, the word terrorism is used at two different levels in the GS context, because the Palestinian resistance refers to the Israeli actions as state terrorism, while the IOA refers to Palestinian resistance as terrorism.¹¹⁴ The reason for this difference is the fact that GS is not a state, and the Hamas regime is not recognized internationally as much as Fatah regime in the WB. Fatah regime adopts completely different ideology than Hamas. The former is submissive, obedient and compliant to the IOA policies.¹¹⁵

In contrast, Hamas is resistive, proportionally aggressive and radical with regard to terminating the IOA occupation of Palestine.¹¹⁶ Therefore, the IOA cannot claim that Hamas is exercising state terrorism, because this will indicate that Hamas is the legal regime of Palestine State. This indication will prove that the IOA is actually occupying what existed and is known as the State of Palestine.¹¹⁷

The line between the application of the right to self-determination and terrorism can be drawn by answering the following question: will that particular militant action necessarily result in the achievement of self-determination? If the answer is yes, then it is an exercise of the right, and if it is no, then it is terrorism.¹¹⁸ The IOA is not eligible to answer this question, because they have continuously violated that right since they occupied Palestine in 1948. Therefore, all militant attacks are considered terrorist operations from the IOA point of view.¹¹⁹

Truly, only the Palestinians in GS are entitled to answer that question, because the application of the right to self-determination is based on what they agree upon

¹¹² Joyce Dalsheim (Ed.) (2011), *Unsettling Gaza: Secular Liberalism, Radical Religion, and the Israeli Settlement Project*, Oxford University Press, New York.

¹¹³ Tomis Kapitan (2011), "Violence and Self-Determination in the Israeli-Palestinian Conflict", *Peace & Change*, Vol. 36, No. 4, October.

¹¹⁴ Dávid Kaposi (Ed.) (2014), *Violence and Understanding in Gaza: The British Broadsheets' Coverage of the War*, Palgrave Macmillan, (Houndmills, Basingstoke, Hampshire; New York (University of East London, UK).

¹¹⁵ Abdul Rashid Moten (2010), "Understanding Terrorism: Contested Concept, Conflicting Perspectives and Shattering Consequences", *Intellectual Discourse*, Vol. 18, No. 1, pp. 35-63.

¹¹⁶ Barnaby Raine (2014), "It is Not Anti-Semitic to Criticise Israel for its Gaza Crimes", *Guardian (Sydney)*, No. 1651, p. 9.

¹¹⁷ Bill Rolston (2014), "Messages of Allegiance and Defiance: The Murals of Gaza", *Race and Class*, Vol. 56, No. 1, p. 40.

¹¹⁸ Caroline Rooney (2014), "Prison Israel-Palestine: Literalities of Criminalization and Imaginative Resistance", *Journal of Postcolonial Writing*, Vol. 50, No. 2, pp. 134-147.

¹¹⁹ Sara Roy (2005), "Praying with Their Eyes Closed: Reflections on the Disengagement from Gaza", *Journal of Palestine Studies*, No. 4, pp. 64-74.

as resistance actions, and they have already supported and assisted Hamas regime and all resistance movements in GS.¹²⁰

The solidarity, support and celebrations of victory, which GS inhabitants showed after the Protective Edge war, are signs of public acceptance of what the Hamas and other resistance movements are doing.¹²¹ For example, the *Daily Mail* declared that 'Palestinians in Gaza have celebrated a self-proclaimed 'victory' over Israel with fireworks and street parties after the announcement of an open-ended ceasefire in the seven-week conflict'.¹²²

Moreover, Nader Tamer, a Palestinian father from GS commented on what the resistance movements in GS have done: 'We say that we will rebuild what they destroyed God willing,¹²³ today I want to say despite all this, the resistance is an asset and a card that we should use in our struggle with our enemy'.¹²⁴

Besides, the Palestinians also celebrated the capture of an Israeli soldier in the last war. A newspaper wrote that '[t]he streets in Ramallah and Gaza erupted in ecstasy tonight after Hamas announced that it had captured an Israeli soldier in the neighborhood of Hayye al Tuffah (Apple) in Gaza'.¹²⁵

Identifying the IOA Violations as Institutionalized Impoverishment

In January 2008, Ehud Olmert, the Israeli Prime Minister affirmed that '[w]e [will not] allow for a humanitarian crisis, but have no intention of making their lives easier. And the harder their lives, excluding humanitarian damage, we will not allow them to lead a pleasant life'.¹²⁶ Two years later, Tzipi Livni, a former Israeli foreign minister declared that 'There is not, and never was, any intention to harm the Palestinian population living in Gaza'.¹²⁷ Israeli policies regarding GS are not only brutal, they are even denied.¹²⁸

Extraordinary occupation needs extraordinary methods of resistance. In general, what comes to our minds when we speak about military occupation is soldiers, tanks

¹²⁰ Sara Roy (2013), *Hamas and Civil Society in Gaza: Engaging the Islamist Social Sector*, (New in Paperback), Princeton Studies in Muslim Politics, Princeton University Press, Princeton.

¹²¹ Benjamin Rubin (2009), "Disengagement from the Gaza Strip and Post-Occupation Duties", *Israel Law Review*, Vol. 42, No. 3, p. 528.

¹²² See the website <http://www.dailymail.co.uk/news/article-2734438/Fireworks-replace-shells-Gaza-Palestinians-celebrate-cease-fire.html>

¹²³ Peter Berkowitz (2011), "The Gaza Flotilla and International Law", *Policy Review*, August and September, No. 168, p. 3.

¹²⁴ See the website <http://mondoweiss.net/2014/08/palestinians-celebrate-resistance>

¹²⁵ See the website <http://mondoweiss.net/2014/07/palestinians-celebrate-captured>

¹²⁶ Amnon Meranda (2008), "Olmert: No Fuel? Gazans Can Walk", *Ynet News*, January 21.

¹²⁷ Jodi Rudoren (2014), *Dust to Dust on the Ground in Israel and Gaza*, Series (trans, *The New York Times Company*).

¹²⁸ Nissim Leon (2010), "The Transformation of Israel's Religious-Zionist Middle Class", *Journal of Israeli History*, Vol. 29, No. 1, p. 61.

and military governance.¹²⁹ In contrast, this is not the case in Palestine, particularly in GS. The IOA methods of impoverishment are unique and exclusively used by them in the current times.¹³⁰ These methods appear like political and marginal for the international community, but according to many scholars, these methods are substantial and excessively affecting the inhabitants of GS, which takes this occupation to the level of collective punishment. The IOA used three extraordinary methods of occupation: economic, infrastructural and nourishment-related.¹³¹

Starting with the economic method, before 2007, 95% of the goods imported to GS came from the IOA manufacturers. Additionally, 70% of GS exports were consumed by the IOA market.¹³² In September 2007, the IOA took the decision to put GS under complete closure. One year after that decision, the Palestinian Federation of Industries affirms that 98% of businesses were forcefully terminated due to economic hardships.¹³³ The poverty rate rose to approximately 80% with two thirds of the population living in poverty conditions.¹³⁴

Moving to the infrastructural method, the IOA allowed the GS government to import just 114 items, while excluding raw materials that are necessary to establish new industries, fix healthcare infrastructure and provide safe houses for those who lost theirs in the continuing Israeli attacks. In addition, the IOA prevented any construction materials from entering GS.¹³⁵ This action resulted in the suspension of all internationally-funded projects to repair and improve the infrastructure in GS, or even to build apartments for the growing population.¹³⁶ As a result, Palestinians who worked in the construction sector became unemployed, and their families became dependent on food and goods provided to them by international donors.¹³⁷

Proceeding to the nourishment-related method, in 2010, the UN conducted a study on the situation of food security in GS.¹³⁸ The study asserted that 52% of the

¹²⁹ Roy Sara (2013), "Before Gaza, after Gaza: Examining the New Reality in Israel/Palestine", in Davis Rochelle and Mimi Kirk (Eds.), *Palestine and the Palestinians in the 21st Century*, p. 103, Indiana University Press.

¹³⁰ David B Gootnick (Ed.) (2010), *Foreign Assistance: US Assistance to the West Bank and Gaza for Fiscal Years 2008 and 2009*, US Govt. Accountability Office, Washington, DC.

¹³¹ Phoebe Greenwood and Charmaine Seitz (2012), *Gaza's Children: Falling Behind. The Effect of the Blockade on Child Health in Gaza* (Save the Children and Medical Aid for Palestinians).

¹³² "Palestinian Economic Prospects: Aid, Access and Reform", World Bank, September 22, 2008, p. 22, available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCSept15,08.pdf>

¹³³ *Ibid.*

¹³⁴ Strand (2014), *Op. cit.*

¹³⁵ Keren Tenenboim-Weinblatt (2008), "'We Will Get Through this Together': Journalism, Trauma and the Israeli Disengagement from the Gaza Strip", *Media, Culture & Society*, Vol. 30, No. 4, p. 495.

¹³⁶ Michael Toomey and Benedict E Singleton (2014), "The Post-9/11 'Terrorism' Discourse and Its Impact on Nonstate Actors: A Comparative Study of the Ltte and Hamas", *Asian Politics & Policy*, Vol. 6, No. 2, p. 183.

¹³⁷ Özlem TÜR (2013), "What Lies Ahead for the Palestinian Issue in 2013 – Opportunities and Challenges", *Middle Eastern Analysis/Ortadogu Analiz*, Vol. 5, No. 49, p. 21.

¹³⁸ Mandy Turner (2009), "The Power of 'Shock and Awe': The Palestinian Authority and the Road to Reform", *International Peacekeeping*, Vol. 16, No. 4, p. 562.

inhabitants are food insecure, 16% of them are slightly food secure, and 13 of them are susceptible to food insecurity.¹³⁹ This indicates that only 19% of the population have food security.¹⁴⁰ In order to make matters worse, the IOA adopted policies to cripple its agricultural sector by prohibiting the export of agricultural products to the IOA market.¹⁴¹ Before 2005, GS used to export more than 100,000 truckloads per month of agricultural products to the IOA consumers. After the closure, this number declined to approximately 12 truckloads per month. Families dependent on the agriculture sector became desperately poor and even destitutes.¹⁴²

Holmes, the UN general for Humanitarian Affairs commented sarcastically on GS situation and the outcome of these occupation methods stating that what GS inhabitants are going through is 'the collective price that Gaza's civilians must pay for the acts of a few among them'.¹⁴³

Rules of Practicing the Right of Armed Resistance

The just nature of the Palestinian cause is agreed upon by most of the international law scholars. Many of them also believe that military force is the only option against the occupation. However, the usage of force is limited to the legal means of resistance as they are described in the law, particularly IHL.¹⁴⁴

If Palestinians, especially resistance movements in GS, want to exceed the legal limits of resisting, then this will demoralize the cause.¹⁴⁵ In addition, the illegal occupation exposes the facts on the ground, and as mentioned earlier, the occupying methods are extraordinary. Therefore, Palestinians must obey the rules of legitimate resistance and at the same time, use extraordinary resistance movements in accordance with these rules to the limit necessary for ending the illegitimate occupation.¹⁴⁶

The words 'necessary' and 'ending' in the previous sentence are important. As mentioned earlier, who decides what is terrorism and what is self-determination, should be asked again.¹⁴⁷ In fact, the answer is similar. Because Palestinians are the ones who

¹³⁹ *Ibid.*

¹⁴⁰ Linda Wafi (2006), "The Implications of the Israeli Disengagement Plan on Economic Recovery in the Gaza Strip", *Capstone Collection*, p. 1563.

¹⁴¹ Joas Wagemakers (2013), "In Search of 'Lions and Hawks': Abū Muhammad Al-Maqqīsī's Palestinian Identity", *Welt des Islams*, Vol. 53, Nos. 3/4, p. 388.

¹⁴² Mohammed Migdad (2007), "Future Scenarios After the Gaza Events", *Palestine-Israel Journal of Politics, Economics & Culture*, Vol. 14, No. 2, p. 48.

¹⁴³ John Holmes (2009), "Life and Livelihoods in Gaza are Being Made Impossible", *European Voice*, April 30.

¹⁴⁴ Nobuo Hayashi (2013), "Contextualizing Military Necessity", *Emory International Law Review*, Vol. 27, No. 1, pp. 189-284.

¹⁴⁵ Jean-Marie Henckaerts and Louise Doswald-Beck (2005), *International Committee of the Red Cross - Customary International Humanitarian Law Volume I: Rules*, Cambridge University Press.

¹⁴⁶ *Rules of Engagement: Protecting Civilians Through Dialogue with Armed Non-State Actors* (Geneva Academy of International Humanitarian Law and Human Rights, 2011).

¹⁴⁷ Justus Reid Weiner (2009), "The Gaza War of 2009: Applying International Humanitarian Law to Israel and Hamas", *San Diego International Law Journal*, Vol. 11, No. 1, p. 5.

are subjugated, and know what they need the most, then they are entitled to answer the question whether a particular action is necessary or not, and whether the occupation has come to an end or not.¹⁴⁸

It may be argued that giving the Palestinians this authority is unfair, and this discretionary power will allow them to justify any violation they commit. However, this argument is naïve, because it disregards the nature of necessary action that happens during wars.¹⁴⁹ In wars, terrible things always happen, so it is almost impossible for laws and regulations to avoid these things. Actually, the function of these laws is to illegalize what is not necessary.¹⁵⁰ This fact indicates that if an action is unnecessary to end the occupation, then it is illegal.

Hayashi, a remarkable researcher in the field of military law, listed three conditions to consider a military action as unnecessary.¹⁵¹ If the particular action meets one of these conditions, then it is unnecessary. These conditions are wastefulness, excessiveness and impertinence.¹⁵²

Wastefulness, in GS context, means the exercise of power that is more than required to achieve a military goal that the resistance movements have identified. In other words, an action is considered wasteful if the goal can be achieved without resorting to that action. The concept of wastefulness is the opposite of economy of force, which means allocating 'minimum essential combat power to secondary efforts'.¹⁵³

Excessiveness, in general, is established through two facts. The first is the fact that a particular action has achieved what is required. The second fact is the production of externalities by that action.¹⁵⁴ Therefore, if an action generates outcomes that are irrelevant to the main goal, then this action is unnecessary.

Impertinence, in a moral sense, means impoliteness and rudeness.¹⁵⁵ However, in a military sense, it means attaining military objectives by using non-cogent methods. To elaborate, a military action is unnecessary if it does not follow the common morals and ethics that will not negatively affect the achievement of the military goal.¹⁵⁶

¹⁴⁸ Katz Yaron (2012), "Examining the IDF Media Campaign on the Unilateral Disengagement Plan of Israel from Gaza Strip", *Global Media Journal: Mediterranean Edition*, Vol. 7, No. 1, p. 6.

¹⁴⁹ Peter Margulies (2012), "The Fog of War Reform: Change and Structure in the Law of Armed Conflict After September 11", *Marquette Law Review*, Vol. 95, p. 1417.

¹⁵⁰ Alon Margalit and Sarah Hibbin (2010), "Unlawful Presence of Protected Persons in Occupied Territory? An Analysis of Israel's Permit Regime and Expulsions from the West Bank Under the Law of Occupation", *Yearbook of International Humanitarian Law*, Vol. 13, p. 245

¹⁵¹ David Luban (2013), "Military Necessity and the Cultures of Military Law", *Leiden Journal of International Law*, Vol. 26, No. 2, pp. 315-349.

¹⁵² Hayashi (2013), *Op. cit.*, p. 204.

¹⁵³ Alan Cole, Phillip Drew and Rob McLaughlin (2009), *Rules of Engagement Handbook*, pp. 4-6, International Institute of Humanitarian Law, available at <http://www.jag.navy.mil/distrib/instructions/San-Remo-ROE-Handbook>

¹⁵⁴ Michael Bröning (2013), *Political Parties in Palestine: Leadership and Thought*, pp. 51-61, Palgrave Macmillan, New York.

¹⁵⁵ Ilana Feldman (2007), "Difficult Distinctions: Refugee Law, Humanitarian Practice, and Political Identification in Gaza", *Cultural Anthropology*, Vol. 22, No. 1, p. 129.

¹⁵⁶ Seif Da'na (2009), "Islamic Resistance in Palestine: Hamas, the Gaza War and the Future of Political Islam", *Holy Land Studies: A Multidisciplinary Journal*, Vol. 8, No. 2, p. 211, Edinburgh University Press.

The Legality of GS Resistance Movements' Actions

In applying the right to self-determination, using the armed forces in inevitable, because no occupying entity will give back the territories and authorities that it has previously taken, in a voluntary way.¹⁵⁷ Occupation is terminated through a decision in which its disadvantages exceed its benefits. Surely, this decision is taken by the occupying entity, and the most insufferable disadvantage is human casualties, particularly among the armed forces' personnel.¹⁵⁸

Therefore, resistance movements in GS tried to resist the Israeli occupation through ordinary methods.¹⁵⁹ But because the occupation methods were extraordinary, like economic, infrastructural and nourishment-related, the Palestinians used, particularly during the Protective Edge operation, an extraordinary method of resistance as well.¹⁶⁰

This method is launching rockets on Israeli cities located in the Palestinian territories occupied in 1948. During that operation, Hamas and other resistance movements launched almost 800 rockets.¹⁶¹ The IOA alleged that launching these rockets violates IHL.¹⁶² Admittedly, launching rockets is neither distinctive nor proportionate.¹⁶³ Still, it is necessary, and as a result it is legal.¹⁶⁴ It is necessary because it is the only means to terminate the extraordinary methods of occupation that the IOA used against GS inhabitants.¹⁶⁵

As this paper explained earlier, if a military action is wasteful, excessive and impertinent, then it is unnecessary. On the contrary, the action is considered necessary if it is frugal, moderate and respectful. In fact, the action of launching rockets meets these criteria.¹⁶⁶

Launching rockets is frugal, because it expends the required limit of power to achieve the resistance movements' goal, which is terminating the occupation. After

¹⁵⁷ Maoekit Bendel (2005), "The Disengagement Plan: And its Repercussions on the Right to Health in the Gaza Strip", *Physicians for Human Rights Organisation*, pp. 19-28.

¹⁵⁸ Alon Ben-Meir (2009), "Negotiating an Israeli-Palestinian Breakthrough", *Middle East Policy*, Vol. 16, No. 1, p. 53.

¹⁵⁹ Ravi Bhavnani, Dan Miodownik and Choi Hyun Jin (2011), "Three Two Tango: Territorial Control and Selective Violence in Israel, the West Bank, and Gaza", *Journal of Conflict Resolution*, Vol. 55, No. 1, p. 133.

¹⁶⁰ Lisa Bhungalia (2010), "A Liminal Territory: Gaza, Executive Discretion, and Sanctions Turned Humanitarian", *GeoJournal*, Vol. 75, No. 4, p. 347.

¹⁶¹ See the website <http://www.jpost.com/Arab-Israeli-Conflict/Palestinian-sources-Gaza-cease-fire-to-be-announced-on-Tuesday-evening-372386>

¹⁶² See the website <http://jcpa.org/hamas-threat-no-different-from-isis/>

¹⁶³ See the website <http://www.reuters.com/article/2014/08/24/us-mideast-gaza-hamas-document-idUSKBN0G00D120140824>

¹⁶⁴ Alan Cole, Phillip Drew and Rob McLaughlin (2009), *Op. cit.*

¹⁶⁵ Lætitia Bucaille (2011), "Armed Resistance and Self-Esteem: Ex-Combatants in Palestine and South Africa", *International Political Sociology*, Vol. 5, No. 1, pp. 52-67.

¹⁶⁶ Laura Junka (2006), "The Politics of Gaza Beach at the Edge of the Two Intifadas", *Third Text*, Vol. 20, Nos. 3/4, p. 417.

this launch and the end of the Protective Edge' military operation, as the IOA names it, the IOA signed a truce with these movements which included a provision to '[l]ifting the siege and opening the border crossings to commerce and people' to the limit agreed between the negotiation representatives of Hamas and the IOA.¹⁶⁷ Without this launch and the negative effects it caused to the IOA, the latter would have never signed that truce.¹⁶⁸

This launch is also moderate, because it did not result in externalities. The pressure that was imposed on the IOA because of the Israeli casualties and damages was unavoidable to make the IOA sign the truce.¹⁶⁹ The outcome generated by this launch is fundamentally relevant to the goal of the resistance movement. The truce included a provision that allows Palestinians to '[Increase] the permitted fishing zone to 10 km'.¹⁷⁰ This provision is productive in terms of terminating the nourishment-related method of occupation that the IOA used.¹⁷¹

In the military sense, the launch was pertinent because using partly-imprecise rockets on Israeli cities meant that Hamas and other resistance movements did not aim directly to hit civilians and their properties.¹⁷² Undeniably, these movements knew that these rockets might hit such targets. However, the aim was to impose sufficient pressure on the IOA to sign the truce and weaken the blockade. In fact, these rockets were the only effective means to do so. By signing the truce, these movements achieved what they aimed for.¹⁷³

In conclusion, resistance movements used launching rockets as a necessary means to terminate the extraordinary methods of IOA occupation.¹⁷⁴ These movements partially attained that goal by forcing the IOA to sign the truce.

The Illegitimacy of Israel's Claim to the Right of Self-Defense

The Armed Attack Should be Illegitimate

The general doctrine in international law is the prohibition of the use of force. The UN Charter affirms that

¹⁶⁷ See the website <http://mondoweiss.net/2014/07/report-israel-conditions>

¹⁶⁸ Nicolas Pelham (2012), "Gaza 's Tunnel Phenomenon: The Unintended Dynamics of Israel's Siege", *Journal of Palestine Studies*, Vol. 41, No. 4, p. 6.

¹⁶⁹ Joel Peters (2012), *Gaza*, Oxford University Press,.

¹⁷⁰ See the website <http://www.ldfp.eu/2014/07/20/report-hamas-offers-israel-10-conditions-for-a-10-year-truce/>

¹⁷¹ Chris McGreal (2006), "Aid Withdrawal is Bringing Health Service in Gaza to Brink of Collapse", *BMJ: British Medical Journal*, Vol. 332, No. 7551, p. 1171, International Edition; and Jan McGirk (2008), "Gaza's Humanitarian Crisis Deepens", *Lancet*, Vol. 371, No. 9610, p. 373.

¹⁷² Noam Chomsky, Frank Barat and Ilan Pappé (Eds.) (2013), *Op. cit.*

¹⁷³ Bassam Gh Karadsheh *et al.* (2011), "The Prevalence of Anemia Among People of Gaza Attending the Royal Jordanian Field Hospitals (Gaza-I, Gaza-II, Gaza-III, Gaza-IV and Gaza-V)", *Middle East Journal of Family Medicine*, Vol. 9, No. 7, p. 3.

¹⁷⁴ Robert A Caplen (2006), "Rules of 'Disengagement': Relating the Establishment of Palestinian Gaza to Israel's Right to Exercise Self-Defense as Interpreted by the International Court of Justice at the Hague", *Florida Journal of International Law*, Vol. 18, No. 2, p. 679.

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the UN.¹⁷⁵

However, the Charter itself gives an exception to that doctrine. In Article 51, permission to use force in situation of legitimate self-defense is granted. The Article asserts that

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN ...¹⁷⁶

The IOA justified its Disengagement Plan, Operation Cast Lead and Operation Protective Edge on the basis of this right, the right to self-defense.¹⁷⁷ However, let us ascertain whether the IOA claims meet the conditions of this right or not.

The right to self-defense is given to states to confront an armed attack targeted against it. The first condition of using this right is the illegality of the armed attack itself. In order to consider an armed attack illegal, it should be intentionally and unilaterally initiated.¹⁷⁸ This means that if a state provoked another state to attack it, then the former cannot claim the right to self-defense against the attacks of the latter.¹⁷⁹ In other words, self-defense actions are not justified against an application of another states' right to self-defense.¹⁸⁰

Consequently, if an occupying state is being targeted by armed attacks, then this state would be deprived of the right to self-defense, because the occupation is the genesis of these resistance actions.¹⁸¹ This deprivation includes all pre-emptive, retaliative and repressive actions as well, because there would be no need for such an action if the occupation does not exist.¹⁸² Three important arguments are noticeable in this context.

First, the Israeli occupation of WB and GS is a continuous aggression that violates the international resolutions which ordered IOA forces to withdraw from these territories.¹⁸³ The General Assembly Resolution 3314 of 1974 emphasized when it discussed the definition of occupation that

¹⁷⁵ Charter of the United Nations Article 4(2).

¹⁷⁶ Charter of the United Nationsart 51.

¹⁷⁷ Disengagement Plan, Article a(3).

¹⁷⁸ Mohammad Khalil Musa (2004), *The Use of Force in the Contemporary International Law* (Amman: Wael Publications), p. 79.

¹⁷⁹ Hervé Kempf and Jérôme Equer (Eds.) (2006), *Gaza: Life in a Cage*, Algora Pub., New York.

¹⁸⁰ Available at <http://unscr.com/en/resolutions/doc/188>

¹⁸¹ Karby Leggett (2006), " Hamas Faces Crisis if Funding Dries Up", *Wall Street Journal – Eastern Edition*, Vol. 247, No. 25, p. A7.

¹⁸² Mohammad Mahmoud Khalaf (1973), *The Right of Self-Defence in International Criminal Law*, Ph.D. thesis, Cairo: Faculty of Law, Cairo University, p. 217.

¹⁸³ Gideon Löwy (Ed.) (2010), *The Punishment of Gaza*, Verso, London, New York.

[N]othing in this definition could prejudice the right of people forcibly under colonial and racist regimes or other forms of alien domination to struggle for self-determination, freedom and independence.¹⁸⁴

This conclusion makes the Israeli claim of right to self-defense baseless, because the military operations that the IOA had undertaken against GS inhabitants aimed to kill Palestinian fighters who legally exercised their right to self-determination against the IOA as an occupying entity.¹⁸⁵ Therefore, the outcome of the illegitimate occupation cannot be used by the IOA as a justification to exercise the right to self-defense against resistance movements.¹⁸⁶

Second, international community, particularly the UN, has repeatedly declared that the Palestinian people who live in WB and GS enjoy the right to self-determination. The IOA claim of the right to self-defense means complete negation of that Palestinian right.¹⁸⁷ Nuremberg Court upheld the legitimacy of using force as a manner of self-defense against occupation. The court asserted that 'the enemy that unrightfully occupies the territories of another state shall not be hurt if the attacked people did not implement the laws and customs of war during clashes that occur between them and the occupying state, within the scope of their use of the legitimate right of self-defense.'¹⁸⁸

Consequently, IOA's claim to the right to self-defense to resort to military action against the Palestinians' is unacceptable who are in fact, because of the Israeli occupation, the actual holders of that right.¹⁸⁹

Third, rules of IHL, including The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, are applicable to the GS. Therefore, the IOA strikes on UNWRA schools,¹⁹⁰ killing more than thousand civilian,¹⁹¹ massively destruction of Palestinians' houses,¹⁹² using civilians as human shield for more than five days,¹⁹³ all of these actions that the IOA has carried out are gross violations of the IHL and related provisions.

¹⁸⁴ United Nations General Assembly Resolution 3314, available at <http://hrlibrary.umn.edu/instreet/GAres3314.html>

¹⁸⁵ Arturo Marzano (2011), "Reading the Israeli-Palestinian Conflict Through an Islamophobic Prism: The Italian Press and the Gaza War", *Journal of Arab & Muslim Media Research*, Vol. 4, No. 1, p. 63.

¹⁸⁶ Donald Macintyre (2014), "Life Among the Ruins", *New Statesman*, Vol. 143, No. 5221, p. 22.

¹⁸⁷ Carol Bisharat (1989), "Palestine and Humanitarian Law: Israeli Practice in the West Bank and Gaza", *Hastings International and Comparative Law Review*, Vol. 12, No. 2, pp. 325-372.

¹⁸⁸ See Al-Haq, "Israeli Attack on Gaza Strip in Light of International Humanitarian and Public Laws", available at <http://www.alhaq.org/pdfs/release-Gaza-IHL.pdf>

¹⁸⁹ David Archibald and Mitchell Miller (2012), "Full-Spectacle Dominance? An Analysis of the Israeli State's Attempts to Control Media Images of the 2010 Gaza Flotilla", *Journal of War & Culture Studies*, Vol. 5, No. 2, p. 189

¹⁹⁰ See the website <http://www.maannews.net/eng/ViewDetails.aspx?ID=726796>

¹⁹¹ See the website <http://www.washingtonpost.com/blogs/worldviews/wp/2014/09/03/heres-what-really-happened-in-the-gaza-war-according-to-the-israelis/>

¹⁹² See the website http://www.btselem.org/gaza_strip/201407_families

¹⁹³ See the website <http://972mag.com/palestinian-teen-i-was-used-as-a-human-shield-in-gaza/95800/>

The Armed Attack of One State Against Another State

An armed attack can be launched either by the state or other unrecognized military groups. The second condition of using the right to self-defense requires the armed attack to be launched by a state.¹⁹⁴ In the Separation Wall case, the ICJ asserted that the application of Article 51 of the UN Charter is linked to the fact that the armed attack, which the states want to confront, must be launched by another state. Therefore, the right to self-defense is applicable in a state-to-state armed attack.¹⁹⁵

Noticeably, the court did not adopt the wide interpretation of the right to self-defense.¹⁹⁶ On the contrary, it narrowed the application of this right to the state-to-state case.¹⁹⁷ In fact, the ICJ implemented a similar approach before. In the Nicaragua case, the ICJ emphasized that

The exercise of the legitimate right of self-defense against armed attacks of unorganized forces is conditional to the presence of a link between these armed attacks and a certain state, while armed attacks conducted by non-state entities, such as an organization or a group, do not justify, from the perspective of the court, establishing the right of self-defense, unless these attacks are linked to a specific state.¹⁹⁸

However, there is a trend, particularly in Israel and the US, which argues the applicability of this right in cases where there is a strong connection between the movements or groups, which started the armed attack, and the state. This argument is used by the IOA to justify their attacks against Palestinians in GS.¹⁹⁹ This argument is based on what the General Assembly Resolution 1368 of 2001 mentioned. This Resolution, following September 11 attacks, called states to

[W]ork together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harboring the perpetrators, organizers and sponsors of these acts will be held accountable.²⁰⁰

This Resolution entitled the states to fight the Al Qaeda and the Taliban even though they were not a state.²⁰¹ As a result, the US and other member states

¹⁹⁴ Andrew Flibbert (2011), "The Gaza War: Instrumental Civilian Suffering?", *Middle East Policy*, Vol. 18, No. 1, p. 54.

¹⁹⁵ Available at <http://www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6>

¹⁹⁶ Available at <http://www.icj-cij.org/docket/files/70/6503.pdf>

¹⁹⁷ Available at <http://www.icj-cij.org/docket/?sum=634&code=op&p1=3&p2=3&case=90&p3=5>

¹⁹⁸ Available at <http://www.icj-cij.org/docket/index.php?sum=367&p1=3&p2=3&case=70&p3=5>

¹⁹⁹ Jan McGirk (2008), "Gaza 's Humanitarian Crisis Deepens", *Lancet*, Vol. 371, No. 9610, p. 373.

²⁰⁰ Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement>

²⁰¹ Jeff Halper (2010), "The Second Battle of Gaza: Israel's Undermining of International Law", *CounterPunch*, Vol. 17, No. 4, p. 1

conducted armed attacks as an application of self-defense in Afghanistan. However, this is a case where there is a strong connection between these movements and the state itself.

Obviously, regarding the statehood, GS is not a state, it is a territorial part of the State of Palestine that the IOA themselves do not recognize.²⁰² Regarding the relationship between the resistance movements and the internationally recognized Palestinian State and its government machinery in the WB, there is completely no connection in terms of military actions. Evidently, Mahmoud Abbas, the Palestinian President, has many times condemned the actions that these resistance movements inflicted on the IOA, despite the public support.²⁰³

Admittedly, there is a coup d'état between the WB and GS, but this does not mean that both of them are two different states.²⁰⁴ GS is neither sovereign nor independent in terms of economic and external affairs. Despite the coup d'état, there is a fundamental relation and connection between the governments of both the territories.²⁰⁵

Besides, the international law requires the armed attack to be actually initiated from abroad. This means that if the source of attack is internal, then Article 51, which gives states the right to self-defense, is not valid.²⁰⁶

The Use of Force as the Last Resort to Repel Armed Attack

The UN Charter prohibited the use of force in international relations.²⁰⁷ Additionally, the Charter entailed the states to exercise the right to self-determination as an exception to that prohibition. Therefore, using that right has been constrained by particular factors. These factors were established in order to prevent the use of this right to aggression, and to disallow states from using this right for purposes which were not considered valid when it was legislated.²⁰⁸

The most important factor is related to the notion of exhausting all other possible remedies to stop the armed attack, which is considered as the third condition of using the right to self-defense.²⁰⁹ This means that using this right is restricted to the situation

²⁰² Amira Hass (2014), "Amira Hass, 'Even as Gaza Reels from Floods, Hamas and Fatah Remain Divided', Haaretz", *Journal of Palestine Studies*, Vol. 43, No. 3, p. 102.

²⁰³ See the website <http://www.businessweek.com/news/2014-07-10/abbas-lashes-out-at-hamas-for-barraging-israel-with-rockets>

²⁰⁴ Daniel Benoliel (2011), "Israel, Turkey and the Gaza Blockade", *Journal of International Law*, Vol. 33, No. 2, pp. 615-662, University of Pennsylvania.

²⁰⁵ Marko Milanovic, January 3, 2009, "A Follow-Up on Israel and Gaza", *Blog of the European Journal of International Law*, available at <https://www.ejiltalk.org/a-follow-up-on-israel-and-gaza/>

²⁰⁶ Available at <http://www.sfu.ca/~palys/UN-Resolution%201514.pdf>

²⁰⁷ Ilana Feldman (2009), "Gaza's Humanitarianism Problem", *Journal of Palestine Studies*, Vol. 38, No. 3, p. 22.

²⁰⁸ Jamil Hilal (2010), "The Polarization of the Palestinian Political Field", *Journal of Palestine Studies*, Vol. 39, No. 3, pp. 24-39.

²⁰⁹ Fred Aja Agwu (2010), "The Legality of the Israeli Blockade of Gaza", *IUP Journal of International Relations*, Vol. 4, No. 4, p. 14.

where all the other less harmful means were exhausted but were not fruitful. Based on that, if an intervention by the Security Council is possible, or if there are other peaceful avenues that would resolve the situation, then these avenues should be given priority.²¹⁰

Therefore, the use of force for self-defense is allowed when it is the last option to hold off the armed attack. At the same time, states, while repelling these attacks, must adhere to the principles that the ICJ enumerated in the Nicaragua case, which are distinction, proportionality and immediate necessity.²¹¹

Undeniably, in the GS case, peaceful avenues were available to prevent the armed attacks initiated by the resistance movements, rather than the use of force by the IOA.²¹² The first one of these avenues is to comply with international resolution and other international law provisions related to them. These resolutions clearly demanded the IOA to end their illegal occupation, and to give the Palestinians their right to self-determination, which will result in the formation of their own independent state.²¹³ Particularly, General Assembly Resolution 1654 of 1961, in which the General Assembly

[Recalled] in particular paragraph 5 of the Declaration providing that: 'Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom.'²¹⁴

By applying this resolution to GS, the IOA is required to immediately transfer the powers to the Palestinians living there, with no reservations with regard to crossing of borders, in the way that those Palestinians desire.²¹⁵

As long as the IOA disobeys these resolutions, imposing the blockade on GS including all its inhabitants, forcing the Palestinians to discard their right to self-determination, building settlements in the WB, the IOA is neither eligible to claim

²¹⁰ Refaat Alareer (Ed.) (2014), *Gaza Writes Back: Short Stories from Young Writers in Gaza, Palestine*, Just World Books, Charlottesville, Virginia.

²¹¹ Available at <http://www.icj-cij.org/docket/files/70/6503.pdf>

²¹² Jamie Allinson (2010), " Hamas, Gaza and the Blockade", *International Socialism*, No. 128, p. 57. available at <http://isj.org.uk/hamas-gaza-and-the-blockade/>

²¹³ Lori Allen (2012), "The Scales of Occupation: 'Operation Cast Lead' and the Targeting of the Gaza Strip", *Critique of Anthropology*, Vol. 32, No. 3, p. 261.

²¹⁴ Available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/167/07/IMG/NR016707.pdf?OpenElement>

²¹⁵ George Bisharat (2009), "Israel's Invasion of Gaza in International Law", *Denver Journal of International Law And Policy*, Vol. 38, No. 1, p. 41.

the right of self-defense, nor maintain this right to justify their brutal attacks against GS resistance movements and citizens.²¹⁶

Adherence to the Principles of Proportionality and Distinction

The adherence to the principles of proportionality, distinction and immediate necessity is the fourth condition of using the right to self-defense.²¹⁷ The use of force as self-defense must be in accordance with these principles. Proportionality is implicitly defined in Article 26(b)(3) of the 1977 Additional Protocol to the Geneva Convention of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts.²¹⁸ This Article declared the prohibition of

[A]n attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.²¹⁹

This definition shows that responding to an armed attack must be in a way that will not result in excessive damage than required to repel this attack. If the state has many options to confront an attack, this principle requires it to take the least harmful action to do so.²²⁰ This principle is established to prohibit states from causing disproportionate damage under the pretext of self-defense.²²¹

The principle of distinction means that all military actions must be targeted toward those who form 'a part of belligerent armed force'.²²² This indicates that only military forces and their facilities are legitimate targets in the application of self-defense. On the flip side, all civilians and civilian facilities are illegal targets, and causing damage to them is a violation of international law. The actions of collective punishment are typical examples of violations of this principle.²²³

The principle of immediate necessity means that these actions of self-defense must be instantly required to repel the armed attack.²²⁴ To elaborate more, if there is an

²¹⁶ M Billig, R Kohn and I Levav (2006), "Anticipatory Stress in the Population Facing Forced Removal from the Gaza Strip", *Journal of Nervous and Mental Disease*, Vol. 194, No. 3, p. 195.

²¹⁷ Available at <http://www.icj-cij.org/docket/files/70/6503.pdf>

²¹⁸ See the website <https://www.icrc.org/ihl/INTRO/470>

²¹⁹ Available at <https://www.icrc.org/ihl/INTRO/470>

²²⁰ Raimond Gaita (Ed.) (2010), *Gaza: Morality, Law and Politics*, UWA Publishing, Crawley, WA.

²²¹ International Federation of Human Rights, *The Blockade of Gaza is Inhumane and Must Cease* [e-book]. Gale, Cengage Learning, 2012, available from Gale Virtual Reference Library, Ipswich, MA.

²²² See the website https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule1

²²³ Arancha González (2014), "Success is when Trade Barriers are Overcome", *International Trade Forum*, No. 2, p. 1, available at <https://www.thefreelibrary.com/Success+is+when+trade+barriers+are+overcome-a0383048956>

²²⁴ Richard Goldstone (2012), *Israel's Actions in the Gaza War Were Justifiable*, Cengage Learning, Gale.

opportunity that the armed attack will not continue, or it will face an obstacle that will force it to stop, then the state must not use force as self-defense.²²⁵

The IOA military operations, starting from the implementation of the Disengagement Plan to the Operation Protective Edge in 2014, violated all the three principles. The most obvious evidence about these violations is the blockade.²²⁶ This blockade is indistinctive, because it caused collective harm to all inhabitants of GS, not only to the resistance movements.²²⁷ Additionally, this blockade is disproportionate because it is excessively causing food crisis, humanitarian disasters and severe poverty in GS. Moreover, this blockade is not an immediate necessity, because it is endlessly obstructing the borders of GS, whether there is an armed attack or not.²²⁸

In 2009, and as an obvious proof of these violations committed by the IOA, the report of the UN fact-finding mission on the Gaza conflict stated that

The Palestinian Legislative Council building in central Gaza city was, according to information provided by the Israeli armed forces on their official web site, attacked on December 31, 2008. Mr. Ahmad Bahr, then Acting Speaker of the Palestinian Legislative Council in Gaza, stated to the Mission that it was hit by three missiles launched from fighter planes. The Mission visited the damaged assembly room. It also saw the rubble of the severely damaged three-storey building of the Parliament, which had been completed two years before.²²⁹

Conclusion

This first objective of this paper was to ascertain the necessity and legitimacy of Palestinian armed resistance actions against the IOA occupation in GS, which are considered as an application of the Palestinians right to self-determination. The second objective was to give evidence of the indispensability of these actions to establish the governmental institutions in GS, particularly the economic facilities, in order to establish functioning Palestinian institutions that are able to administer the Palestinian peoples' needs in GS.

²²⁵ "Palestinian Public Opinion Poll No (53): One Month After the End of the Gaza War: A Drop is Found in the Level of Satisfaction with War Achievements, in Support for Hamas and Ismail Haniyeh, and in Support for an Armed Intifada; but the Public Still Favors Hamas' "Way" Over Negotiations, and Hamas and Haniyeh are Still More Popular Than Fatah and Mahmud Abbas" (Palestinian Center for Policy and Survey Research, *Palestinian Public Opinion Poll*, No. 53, available at <http://www.pcpsr.org/en/node/498> . Visited on 10/1/2018. (replace this comment in place of the whole footnote, please).

²²⁶ Dore Gold (2010), *The UN Gaza Report: A Substantive Critique: An Expanded Text of Ambassador Dore Gold's Presentation During an Exchange with Justice Richard Goldstone at Brandeis University on November 5, 2009*, Jerusalem Center for Public Affairs, Jerusalem.

²²⁷ Daud Abdullah (2012), *Israel's Actions in the Gaza War Were Indefensible*, Cengage Learning, Gale.

²²⁸ Vittorio Arrigoni (2010), *Gaza: Stay Human*, Translated by Daniela Filippin, Kube Pub., Markfield, Leicestershire.

²²⁹ Available on the website: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

In fact, four main findings are noteworthy; first, the legal status of GS is an occupied territory, despite the implementation of the Disengagement Plan. This status is established through the illegal occupation and blockade that the IOA still applies on GS; second, Palestinians have the right to self-determination, which accords them the right to legally and legitimately use force as a form of resistance against the IOA; third, that the launch of rockets by resistance movement in GS is legal, because it constitutes an action taken as a military necessity to resist the IOA occupation; and lastly, the IOA justification of its operation as an application of their right to self-defense is baseless according to the international law and inconsistent with the conditions of exercising this right.

These findings prove that armed resistance is legitimate and indispensable for Palestinians in GS to apply their right to self-determination. This application is inherently linked to the establishment of governmental institutions in GS, which will be responsible for the inhabitants' needs in the entire territory.

The implementation of these findings will result in enhancing international support for Hamas and other resistance movements in GS, whether financially or militarily. Moreover, exposing the IOA allegations regarding the use of force as self-defense as baseless will provide legal basis for considering the IOA actions as state terrorism.

Further research is required to identify available means that can effectively hold the IOA accountable for their violations of international law, such as filing cases against it in the International Court of Justice. Additionally, it is required to explore foreign avenues, particularly judicial, that can also hold Israeli officials who were responsible for these violation when they travel to foreign countries. ▣

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