

Violation of the Peremptory Norm of the Right to Self-Determination of the People of Gaza and the Attribution of International Responsibility to the Israeli Regime after 7 October 2023

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Abstract

According to international law, people possess the right to self-determination, based on which they can freely determine and pursue their political status as well as their economic, social, and cultural development. The Israeli regime, in the war against Gaza that escalated and intensified from 7 October 2023, has committed extensive and systematic violations of fundamental human rights rules, some of which are considered jus cogens, including the right to self-determination of the people. This study, employing a mixed (descriptive-analytical) approach and drawing on library, online sources, and authoritative international judicial documents and precedents, aims to elucidate the right to self-determination and its dimensions, and to identify the instances of violations of the right to self-determination of the people of Gaza by the Israeli regime after 7 October 2023. It seeks to answer the question: “How can international responsibility be attributed to Israel due to the violation of the peremptory rule of the right to self-determination of the people of Gaza?” The findings indicate that, in light of the extensively documented human rights violations, and based on the provisions of conventions and international mechanisms, international responsibility can indeed be attributed to the Israeli regime for the committed international human rights crimes.

Key words: International responsibility, Peremptory rule, Right to self-determination, Gaza, Israeli regime

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Introduction

The Gaza Strip, a narrow territory along the Mediterranean coast with an area of 360 square kilometers and a population exceeding 2.3 million (Diakonia, 2023), is among the most densely populated and youngest residential areas in the world. Following the 7 October 2023 operation known as the Al-Aqsa Operation, the Israeli regime gained effective control over Gaza by land, sea, and air, and continues to occupy the territory. After 7 October 2023, Israel launched an operation termed “Iron Swords,” conducting attacks and aerial bombings in Gaza, ultimately issuing orders for a large-scale ground assault on 19 October. Benjamin Netanyahu declared a state of war in Israel, and former Israeli Minister of War Yoav Galant, on 10 October 2023, issued orders for the complete siege of Gaza, stating: “No electricity, food, or fuel exists, everything is blocked” (Dannenbaum & Dill, 2024, P. 666). These operations severely worsened living conditions in Gaza, prompting the UNICEF spokesperson on 31 October 2023 to state: “Gaza has become a graveyard for thousands of children and a living hell for others” (Diakonia, 2023).

The Israeli occupying government, not only disregarding its international obligations, has widely violated fundamental human rights rules that qualify as *ius cogens*, such as the principle of the right to self-determination of the people of Gaza. Moreover, Israel’s representative to the United Nations declared the organization illegitimate and called for the resignation of Secretary-General António Guterres (Horton, 2023, P.1609). They have, through the use of force, occupied the Gaza Strip for many years, and in the light of this territorial aggression and occupation, the people have been deprived of their right to political, economic, social, and cultural self-determination. In this study, in response to the main question of “How can the international responsibility of Israel be invoked due to the violation of the peremptory norm of the right to self-determination of the people of Gaza?,” the concept of the rule of the right to self-determination and its dimensions are explained, and examples of instances of systematic and widespread violations of this right by Israel in Gaza after 7 October 2023 are documented, and, based on the provisions of international conventions and mechanisms, reference is made to the international responsibility of the Israeli regime with regard to the international human rights crimes committed. These are documents that demonstrate, on the one hand, Israel’s fault and negligence, and, on the other hand, the violation of international regulations and obligations by that regime. The organization of the research is such that, while the issue is explained in the introduction, the second section addresses the research background.

The definition of concepts and theoretical foundations, as well as the research method, are examined in the third section, so that in the fourth section the main discussion and analysis of the research which demonstrates the occupying status of Israel and recounts concrete instances of violations of the right to self-determination in the political, economic, social, and cultural dimensions of the people of Gaza are presented, in order that in the fifth section reference may be made to the international

responsibility of that regime with respect to the violations committed, and in the sixth section of the research the possibility of judicial pursuit of the acts committed before international courts is analyzed. In the final section of the research, the results are presented.

1. Literature Review

Hosseini Akbarnejad (2024), in an article entitled “Establishing Gross Violations of Human Rights and the Commission of International Crimes against the People of Gaza before and after 7 October in the Procedure of Human Rights Institutions,” documents some of the international crimes and the continuous violations of human rights by Israel before and after 7 October 2023, and in the second part of the article, under the topic of genocide after 7 October, depicts the material and mental elements of this crime in Gaza, and examines the orders issued by the International Court of Justice. Farahmandzad (2023), in an article entitled “Judicial Mechanisms for Pursuing and Bringing Claims against the Zionist Regime (A Case Study of Crimes Committed in the Gaza Conflict after 7 October 2023),” by mentioning limited instances of human rights and humanitarian law violations by Israel, introduces international and regional judicial mechanisms for addressing these crimes.

Hassanpour & Negini (2023), in their article entitled “Violation of the Right to Education of the People of Gaza as a Result of Hostile Actions of the Zionist Regime,” analyze and present instances of these violations prior to 7 October. Dannenbaum & Dill (2024), in the *American Journal of International Law*, write an article entitled “International Law in Gaza: Military Intent and Provisional Measures,” in which they address the history of Israel’s military operations after 7 October 2023. The article focuses on genocide and the provisional orders of the International Court of Justice and sets out the arguments of South Africa’s legal representatives.

Soni (2024), in an article entitled “Gaza and International Law,” sets out instances of human rights and humanitarian law violations by Israel and critiques Israel’s claim of self-defense. Koop (2024), in an article entitled “The Israel-Palestine Conflict from the Perspective of Human Rights and Humanitarian Law,” attempts, by advancing legal arguments, to establish Israel’s status as an occupying power in Palestine. Benvenisti (2021), in his article “The International Law of Blockade and Prolonged Siege,” presents arguments indicating Israel’s occupation of Gaza. Additionally, Saadi Jaber and Bantekas (2023) at the University of Cambridge, in an article entitled; “The Status of Gaza as an Occupied Territory,” set out evidence indicating Israel’s effective control over Gaza and the occupying nature of that regime.

Kholghi, Samiee Esfahani & Farahmand (2024), in an article entitled “Palestine as a Camp; The Zionist Regime's “Thanatopolitic Approach to the Gaza Crisis”, Using the theoretical concepts of Foucault, Schmitt and Giorgio Agambens on social control mechanisms based on the biopolitical and thanatopolitical approaches, show that the



Israeli regime, within the framework of the thanatopolitical approach, has attempted to redefine and reproduce the rule of “exception” and, through strategies such as; Othering (inhumanization, animalization) and securitization of space, place and identity, has placed the people of Gaza as “Homosacer” or the inverted subject of biopolitics in “bare life” (a situation of death and elimination and, at best, in a minimal form of life); Subjects who are placed in a “state of exception” beyond the norms of international law and human rights standards, based solely on regulations and orders issued by the Israeli regime's repressive apparatus; are subjected to everyday forms of repression and, according to Agamben, are subject to “victimization and elimination without punishment.”

Upon reflection on the content of the aforementioned valuable works, each of which has scholarly examined one aspect of the various dimensions of Israel's aggression against Palestine, and particularly Gaza, no work was found that could comprehensively, while identifying the right to self-determination as a peremptory norm and proving the occupying nature of the Israeli regime, highlight the instances of violation of this right and, by explaining international responsibility, invoke Israel's responsibility and demonstrate international judicial mechanisms for pursuing the crimes committed. Therefore, the present research is distinct from the aforementioned works.

2. Theoretical Foundations and Research Methodology

2.1. Research Method

This study employs a descriptive-analytical research method. Descriptive (non-experimental) research comprises a set of methods whose objective is to describe the conditions or phenomena under examination. Descriptive research is a scientific research method conducted without the researcher's intervention in the variables. In this method, in addition to portraying what exists, the researcher addresses the explanation and elucidation of the reasons for the manner and the causes underlying the status of the issue and its dimensions. In order to explain and justify these reasons, the researcher requires a solid argumentative foundation. This foundation is provided through a search of the research literature and theoretical discussions, and through the formulation of general propositions and principles existing in this regard. To realize this method, efforts have been made by making use of library research and by relying on international judicial documents and practices, scientific-research evidence, articles, reference books, and foreign sources to collect the required data and information.

2.2. International Responsibility

In traditional international law, the use of force was the governing principle of relations among states, and acts or omissions that were considered lawful did not give rise to responsibility for states. Accordingly, this situation prompted contemporary international law, with the aim of compensating victims for damages, to introduce and

develop the concept of state responsibility within the sphere of international law (Mostaghimi & Tarom-Sari, 1998, p. 12). Today, the institution of responsibility constitutes one of the most important and fundamental mechanisms in international law and international relations. Within a relationship of rights and duties, states possess both rights and responsibilities. The International Law Commission began examining the draft articles on the international responsibility of states in 1969, and ultimately, in 2001, the said draft was adopted by the Commission. With regard to obligating states to accept their responsibility and, consequently, to provide reparation for damage, two theories exist in international law: the theory of risk (or danger) and the theory of fault, or subjective responsibility. According to the fault theory, any violation or attribution of a breach of a rule of international law (customary or treaty-based) entails the international responsibility of the state and requires it to make reparation for the damage caused, whether or not the establishment of such responsibility involves an element of fault (Ziaei-Bigdeli, 2005, p. 471). Under this theory, the presence or absence of fault on the part of the state is not a condition; rather, if the act committed by the state is contrary to international regulations and obligations, responsibility is established. The other theory is the theory of fault or subjective responsibility, according to which the basis for the obligation to make reparation is the fault of the agent causing the damage. That is, the realization of responsibility is contingent upon fault and negligence of the perpetrator, and the mere breach of an international obligation does not give rise to responsibility. Therefore, fault constitutes the principal element in the creation of responsibility (Fiyouzi, 1973, p. 89).

2.3. Peremptory Norm

Peremptory norms are referred to as the fundamental and general rules of international law, the principles of which stand at the apex of other rules of international law. Pursuant to Article 64 of the Vienna Convention, if a new peremptory norm of international law is established, any existing rule that is in conflict with that norm shall become void¹. Violation of such norms entails the international responsibility of the violator. Consequently, observance of these norms has acquired extraordinary importance for members of the international community, as such norms constitute the pillar or principal framework of international law (Ziaei-Bigdeli, 2005, p. 192). In international law, every rule derives the basis of its validity from a superior rule (Falsafi, 2000, pp. 283–289). These norms are superior rules that stand above all other rules, reflect the fundamental interests of the international community, and, for this reason, a state cannot be exempted from the obligation to comply with such a rule on the pretext of lack of consent or even “persistent objection to the relevant rule.” Accordingly, recent developments indicate that peremptory norms have gone beyond their consensual basis, to the extent that their application against opposing states has been justified (Zamani, 1997, p. 14), and all states enjoy universal jurisdiction to prosecute the instigators and perpetrators of crimes falling within instances of violations of peremptory norms.

¹Vienna Convention, 1993, Article 64



2.4. Right of Self-Determination

The right of people to self-determination is a fundamental human rights standard, recognized as a peremptory norm and a universally binding obligation, and the realization of other human rights depends on its implementation. This right is defined as “the right of all peoples and nations to freely determine their political status and freely pursue their economic, social, and cultural development” (Asghari Aghmashhadi, 2013, p. 101). Reviewing international instruments, particularly the two binding covenants on civil and political rights and economic, social, and cultural rights, this right should be considered among negative rights (first-generation rights), i.e. rights whose implementation depends on non-interference by states. Additionally, the International Covenant on Economic, Social, and Cultural Rights confirms that the effects of self-determination are not merely political but also economic (Cassese, 1995: pp. 68-69). It is also considered a positive right (second-generation rights), which requires state intervention for its implementation (Dehbanipour, 2019, p. 61).

The United Nations Charter explicitly enshrines this right in Article 1, paragraph 2, stating: “Develop friendly relations among nations based on respect for the principle of equal rights, the right to self-determination of peoples, and take appropriate measures to strengthen global peace²”. Article 5 of the Charter reiterates this as a binding obligation for states³. Thus, the adoption of the Charter marks a significant milestone in the evolution of the principle of the right to self-determination. Further, Article 21(3) of the Universal Declaration of Human Rights emphasizes: “The will of the people shall be the basis of the authority of government” (Levin, 2011, p. 172).

Under the 1966 Covenants on Civil-Political and Economic, Social and Cultural Rights, the right to self-determination acquired legal binding force and was recognized as universal, obligating member states to assume duties in its implementation (Akhavan Kharazian, 2007, p. 1). According to Article 1 of both Covenants, all people have the right to self-governance. The 1993 Vienna Declaration recognized this right as a natural component of international human rights protection (Omidi, 2007, p. 225). The right to self-determination encompasses external and internal dimensions: externally, it allows all nations to freely determine their status in the international community; internally, it includes the right to elections, minority protection, economic self-determination, and nationalization, among others (Omidi, 2007, p. 227). Internally, all people are entitled to economic, social, and cultural development free from external interference. Fundamental rights arising from this right include adequate housing, education, health protection, and the right to life, each briefly summarized below.

One of the fundamental human rights widely recognized in international human rights instruments is the right to a safe and dignified living space. States are obligated,

²UN Charter, 1946, Art. 1(2)

³UN Charter, 1946, Art. 5

under international law, to ensure access to this fundamental right regardless of adverse economic conditions. Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights stipulates: “States Parties recognize the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing, housing, and continuous improvement of living conditions ⁴⁷”. Article 12(1) of the International Covenant on Civil and Political Rights acknowledges the right to choose housing, and Article 25(1) of the Universal Declaration of Human Rights emphasizes dignified living and adequate housing (Abbasi, 2011, 267). Human dignity necessitates that every individual have secure and comfortable shelter.

The right to education, encompassed under the right to self-determination, is also fundamental. International instruments recognize this right and oblige states to provide the necessary means for its realization, including primary education, higher education, and technical and vocational training (Hashemi, 2005, p. 501). Article 26 of the UDHR asserts: “Education shall be free, at least at the elementary level; technical and professional education shall be made generally available; higher education shall be equally accessible to all on the basis of merit.” Article 13 of the ICESCR similarly recognizes the right of everyone to education. Article 28 of the Convention on the Rights of the Child establishes the right of children to education and emphasizes compulsory and free primary education and accessible higher education for all. Article 55 of the UN Charter also recognizes the UN’s mandate to promote international cooperation in cultural and educational matters.

The right to health, another fundamental right derived from self-determination, encompasses complete physical, mental, and social well-being, not merely the absence of disease (Abbasi, 2011, p. 345). Article 25(1) of the UDHR states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including medical care.” Article 12 of the ICESCR affirms: “Everyone has the right to the highest attainable standard of physical and mental health through the improvement of all aspects of environmental and industrial hygiene and the provision of medical care in case of sickness” (Abbasi, 2011, p. 346).

The right to life is a fundamental human right and a preemptory norm. Morally, life is the most foundational element underpinning human value, serving as the source of all other rights. No government may deprive individuals of this right or cause harm to their body or mind. Sovereignty does not exempt a state from its international obligations regarding human rights (Tabatabai Moetameni, 1991, p. 29). According to Article 6 of the ICCPR: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life” (Mehrpour, 2011, p. 456). Hence, states are obligated to protect the right to life of all citizens (Seyyed Fatemi, 1389, p. 51).

⁴⁷ICESCR, 1966, Art. 11(1)



The International Law Commission (ILC) confirmed in 1996, based on the UN Charter, the two Covenants, the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), and UN resolutions including 1514 and 1803, that the principle of self-determination is a peremptory norm of international law⁵. The theoretical discussion on self-determination, manifesting as political, cultural, and economic participation, pertains to exercising self-determination without external interference during peace. Under occupation, self-determination manifests as the right to resist, which is considered an extension of a state's right to self-defense. The people of a territory may act as a complement or substitute for the official armed forces (Maqami and Shirzad, 1403, p. 15).

Although self-defense is an inherent right of states recognized in the UN Charter and customary international law, resistance belongs to the people of the occupied territory. Both rights are subject to rules defined in international law. The justification for resistance, based on natural law and human rights, including the right to self-determination recognized in Article 1 of the ICCPR (Talmon, 2013, p. 236), broadens its scope. Resistance against occupation, as against colonial and apartheid regimes, is an extension of the right to self-determination as a peremptory norm (Maghami and Shirzad, 1403, p. 17). The objective of resistance is to expel the occupier, and the occupation ends once the occupier leaves. The ICJ, in the 2004 Wall Advisory Opinion, held that an occupier is responsible for protecting human rights of those under its authority (ICJ, 2004, p. 139).

3. Discussion and Analysis

3.1. Occupation in International Law and the Status of the Gaza Strip

Although Palestine was formally occupied by Israel in 1948, and the scope of occupation expanded during the 1967 Six-Day War, in 2005 Israel withdrew its forces from Gaza, which was interpreted as ending control and responsibility. It is necessary to examine occupation through both traditional and modern perspectives to determine whether Gaza after 2005 remained occupied.

The traditional approach defines occupation by the establishment of effective physical military control. Modern international law recognizes that the capability to exercise control suffices to constitute hostile occupation, as technological advancements enable occupiers to exercise effective control without physical presence (safa sadi and Bantekas, 2023, p. 1069). Therefore, legal attribution of rights and obligations of an occupying power requires “effective control,” which extends beyond mere physical domination. Official declarations of withdrawal do not necessarily end effective control. The ICJ, in its advisory opinion on 19 July 2024 regarding “Legal Consequences of the Policies and Practices of Israel in the Occupied Palestinian Territories,” considered

⁵ILC, 1966

Gaza's occupation illegal, impeding Palestinians' right to self-determination and violating fundamental principles of international law, urging Israel to withdraw promptly and compensate affected Palestinians (Van Steenberghe, 2024, p. 987). Similarly, the UN Human Rights Council's independent commission regards Israel as the occupier, obliging it to respect its duties in Gaza due to effective control (Grewal, 2023). Israel's actions violate international humanitarian law and the Palestinian people's right to self-determination, consistent with the ICJ advisory opinion of July 2024⁶.

In conclusion, Gaza's status as occupied territory has not changed after 7 October 2023 (Coop, 2024); this 50-year-long occupation exceeds the parameters of occupation established under international law (Center for Constitutional Rights, 2016), resulting in multi-layered structural dependency for Gaza's population on the Israeli regime (Benvenisti, 2021, p. 74). Since the people have the right to freely determine their political status and pursue economic, social, and cultural development, other states, particularly Israel, are obligated to refrain from obstructing the exercise of this right (Van Steenberghe, 2024, p. 987).

3.2. Violation of the Peremptory Norm on the Right to Self-Determination of the People of Gaza by Israel

The occupation and effective control of Gaza by Israel, in itself, constitutes a violation of the people's right to self-determination. Since 7 October 2023, the Palestinian people, particularly in Gaza, have been deprived of their right to self-determination and are living under military occupation in the most appalling humanitarian conditions. The realization of the right to self-determination in Gaza necessitates the end of Israeli occupation and, consequently, the withdrawal of the occupying regime. Land confiscation, destruction of homes, displacement of civilians, control of land crossings, creation of restricted zones, aerial and maritime control, forced migration and expulsion of residents, and the unlawful killing of civilians, particularly children, an atrocity that led UN Secretary-General António Guterres to describe Gaza as a "graveyard for children" represent the primary obstacles to the exercise of the right to self-determination in Gaza (Soni, 2023, p. 80).

Among the fundamental rights derived from the right to self-determination, which are violated by Israel and prevent the free determination of internal political status and the positioning of Gaza in the international community without external interference, are the right to housing, the right to health and medical care, the right to education, and the right to life. Examples of these fundamental violations that undermine the right to self-determination in Gaza are as follows:

⁶A/HRC/RES/S-C/1, 28 May 2024



In the sphere of housing, camp living, forced migration, and the destruction of residential dwellings—which occur daily and extensively—constitute violations of access to housing and secure living space. In this context, the Israeli military has leveled residential areas, displacing thousands of people through aerial attacks, forcibly relocating approximately 90 percent of the Gaza population while simultaneously restricting adequate shelter provision (ECCHR, 2024). Furthermore, continuous and intensive Israeli bombardment has caused severe damage and extensive destruction of entire residential blocks. The Israeli army ordered residents of northern Gaza, numbering over 1.1 million, to move south and threatened that those remaining in the north would be considered accomplices of a terrorist organization (Diakonia, 2023).

Another fundamental right closely related to the right to self-determination is the right to life. Targeted destruction, arbitrary detention or kidnapping, and extrajudicial executions in Gaza are examples of deprivation of the right to life. The Israeli army regularly targets Gaza from land, air, and sea, leaving residents with no means of escape. Israeli attacks and blockades have caused significant increases in miscarriages, premature deaths, and preterm deliveries. The World Health Organization recently estimated that 15 percent of women giving birth in Gaza are likely to encounter complications (ECCHR, 2024). Israel has also deployed indiscriminate munitions and 2,000-pound bombs on densely populated and “safe” areas. Seventy percent of recorded deaths consistently involve women and children. Israeli forces have detained thousands of Palestinians, many of whom were severely mistreated, including through torture, which in some cases resulted in death (ASIAN–AFRICA, 2024).

When the occupying regime so readily violates and disregards the right to life, the impact on the right to education for the people of Gaza is evident. States have the obligation to facilitate educational access, while families are responsible for sending their children to school. Any factor that prevents the state or families from fulfilling this obligation constitutes a violation of this fundamental right. Although Israel has ratified the Convention on the Rights of the Child, it simultaneously violates its provisions in Gaza. According to this convention, children’s access to education must be guaranteed and cannot be obstructed (Hassanpour & Negini, 2023, pp. 55–57). However, house demolitions, the killing and imprisonment of parents, forced migration, camp living, and the psychological trauma experienced by families prevent Gazan families from sending their children to school. The destruction of educational facilities, including schools and universities, further violates the right to education. Additional violations include the killings of teachers, professors, and students in Gaza.

In the domain of health and medical care, as another fundamental right derived from self-determination, the people of Gaza have faced numerous violations following Israeli attacks since 7 October 2023. Systematic destruction of healthcare facilities, deprivation of safe drinking water, forced consumption of unsuitable water sources including highly saline water from agricultural wells, severe sanctions on pharmaceuticals, denial of humanitarian aid including medicines and medical supplies, and the killing, detention, or imprisonment of healthcare providers are all fundamental violations of the right to

health and medical care. Several hospitals, including Al-Rantisi, Al-Quds, and Al-Shifa—the largest hospital in Gaza—witnessed mass burials of 179 bodies in a single grave on 15 November, as reported by the Gaza Ministry of Health. The Awda Hospital in Jabalia was also targeted to the extent that a World Health Organization (WHO) official reported on 17 November that Gaza’s health system was on the verge of collapse (Diakonia, 2023).

4. Establishing Israel’s International Responsibility in Light of the Violation of the Principle of the Right to Self-Determination of the People of Gaza

Contemporary international law has extended state responsibility into the domain of international law to compensate victims of harm (Mostaghimi & Tarem Seri, 1998, p. 21). Accordingly, if a state or international organization, through its actions, causes damage to other subjects of international law, those affected may invoke the responsibility of the injuring state. State responsibility is an inherent consequence of the equality of states (Vakil, 2011, p. 311). Today, both domestic and international law share the principle that non-compliance with an obligation entails responsibility. If such non-compliance involves violation of peremptory norms, it constitutes an international crime, and breaches of these norms trigger the international responsibility of the violator (Moghtader, 2004, p. 148). Therefore, both the injured state and other states may invoke the responsibility of the injuring state (Ajeli Lahiji & Rashidi, 2025, p. 30).

By violating the principle of non-use of force, Israel launched a large-scale aggression against Gaza on 7 October 2023, committing egregious and systematic human rights violations, including breaches of the right to self-determination as a non-derogable peremptory norm. The destruction of homes and displacement of civilians, control of crossings and obstruction of humanitarian aid, air, sea, and land control, forced migration and expulsion of residents, unlawful killings, deprivation of life through abductions and extrajudicial executions, violations of the Convention on the Rights of the Child through forced displacement of children to camps, psychological trauma to children and families, destruction of educational institutions (schools and universities), killing of teachers, professors, and students (Diakonia, 2023), and violations of health rights through deprivation of safe drinking water, strict sanctions on medicines, prevention of access to medical supplies, and killing or imprisonment of medical personnel, including hospital destruction (ASAN–ADRICAN, 2024) constitute violations of human rights in Gaza and examples of the peremptory norm on the right to self-determination. All these actions represent the material element of the crime upon which Israel’s international responsibility can be established.

Israel, as the occupying power, is bound by legal and international frameworks governing occupation and must respect the right to self-determination of the people of the territory, as explicitly emphasized in Article 2(2) of the UN Charter and the provisions of the 1966 International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights, to which Israel is a party. Furthermore, although

the International Court of Justice (ICJ) in 2004 emphasized the right to self-determination in its advisory opinion regarding the separation wall⁷, in a more significant advisory opinion on 14 July 2023, the ICJ declared Gaza's occupation illegal, confirmed the obstruction of the right to self-determination of the people of Gaza, and reaffirmed the violation of fundamental principles of international law, urging Israel to withdraw promptly from the occupied territories⁸. Another important international institution, the United Nations General Assembly, although it emphasized the Palestinians' right to self-determination and Israeli aggression in its Resolution No. 3643 in 1982, and recognized the legitimacy of the armed struggle of nations for independence and freedom from foreign occupation, but in October 2023, the General Assembly again stressed the right of the Palestinian people to self-determination and encouraged all UN member states and institutions to continue support for Palestine until the realization of this right in the shortest possible timeframe⁹.

Another international influential institution is the UN Human Rights Council. in March 2024¹, mandated the UN Independent International Commission of Inquiry to report on the situation in Gaza. The commission emphasized Israel's role as an occupying power, recommended ending the occupation and halting settlement activities, and concluded that Israel's actions in the occupied territories violated the people's right to self-determination¹. Despite these international affirmations, Israel has continued its occupation and grave human rights violations, particularly of peremptory right to self-determination.

In conclusion, based on all the documented instances in this study which constitute the material elements of the crime and the acknowledgment of Israel's status as an occupying power by international legal and judicial bodies, along with its obligation to comply with international law including occupation law, and given that Israel does not hold a right to self-defense as an occupying regime according to the ICJ advisory opinion (Khen, 2011, p. 59) while the right to resist belongs to the people of the occupied territory, including Gaza-Israel's international responsibility is established and can be invoked in international judicial forums.

5. Prospects for Judicial Recourse in International Courts

For invoking violations of peremptory norms, two international judicial institutions are available: the International Court of Justice (ICJ), a principal organ of the UN, and the International Criminal Court (ICC), an independent institution with complementary jurisdiction (ECCHR, 2024). The ICJ has both contentious and advisory jurisdiction. Contentious jurisdiction allows member states to bring disputes to the court, while

⁷ ICJ, 2004/139

⁸ ICJ, 2023

⁹ A/RES/ED-10/21, October 2023

¹ A/HRC/RES/55/32; A/HRC/RES/55/28 and A/HRC/RES/55/32; A/HRC/RES/55/32

¹A/HRC/RES-30/1, para. 114, October 2024

advisory jurisdiction enables the UN and its specialized agencies to request advisory opinions. Although advisory opinions are legally non-binding, they serve to inform public opinion, condemn violations of international law, and promote the development of international law, particularly international human rights law. Article 65(1) of the ICJ Statute states: “The Court may give an advisory opinion on any legal question at the request of any body authorized by or in accordance with the UN Charter to make such a request” (Ajeli Lahiji & Rashidi, 2025, p. 69).

For the ICJ to exercise contentious jurisdiction over Gaza, the parties must accept the court’s jurisdiction. If Israel refuses, as a member of the 1948 Genocide Convention, disputes arising under the treaty may still be referred to the ICJ by other state parties (Farahmandzad, 2023, p. 66). The absence of state criminal liability in international law does not preclude the attribution of criminal acts to state officials, and individual criminal responsibility does not negate the state’s international liability for internationally wrongful acts. The complementarity and coexistence of these responsibilities in both criminal and non-criminal spheres have been recognized in ICC statutes and case law, as well as in the 2001 and 2011 UN International Law Commission draft articles on the responsibility of states and international organizations (Zamani, 2016, p. 9). Accordingly, Israel’s international responsibility for systematic and fundamental human rights violations, including the right to self-determination of the people of Gaza, is established (civil liability), while the individual criminal responsibility of perpetrators for aiding and abetting crimes against humanity remains intact.

The ICC, as an independent judicial body, provides greater enforceability of its decisions compared to the ICJ. The injured state may accept the court’s jurisdiction through ratification of the Rome Statute, request the Prosecutor to initiate proceedings, and the ICC may act on reports from states, UN agencies, and NGOs. Although the ICC declared in 2021 that it has jurisdiction over all criminal claims committed in the occupied territories, and the Statute allows non-member states to accept its jurisdiction under specific circumstances (Bosco, 2016, p. 160), the State of Palestine, as a UN non-member observer state, accepted the ICC’s jurisdiction and filed a case. The ICC recognizes Palestine, including Gaza, as a state for the purposes of the Rome Statute, whose membership legitimizes its legal standing (Milanovic, 2024). The UN Security Council may also refer the Gaza situation to the ICC, although veto powers, particularly by the United States, may obstruct such action, given its strategic interests in the region (Takhshid & Nourian, 2017, p. 27). Nevertheless, referral to the Security Council can support legal claims and influence public opinion. In another approach, the Prosecutor of the Court can also receive and investigate reports received from governments to UN-affiliated bodies and NGOs in order to take action.

Conclusion

The elevated status of human rights norms in contemporary international law necessitates international response in cases of violations, and maintaining international



order requires that states be accountable for certain acts and omissions. While international law is based on the consent of states, contemporary international law advances beyond mere consent: no state may evade responsibility by claiming non-membership in international treaties or mechanisms, nor commit violations of fundamental human rights. Certain rules safeguard the collective interests of all members of the international community, and violation of these norms triggers international responsibility and imposes a duty to respond on other states. Among these rules, the right to self-determination is a peremptory norm, providing non-derogable and enforceable guarantees in international law; any treaty in conflict with these norms is void. Although Israel declared in 2005 that Gaza was no longer occupied in an effort to evade responsibility, advances in technology enabling effective control without continuous military presence, combined with the modern legal understanding of occupation, confirm that Gaza remains occupied and Israel remains the occupying power. This regime not only fails to comply with occupation law in Gaza but continues to violate jus cogens norms of international human rights law. Accordingly, pursuant to the 2001 UN International Law Commission provisions and reinforced by international institutions, mechanisms, norms, and documents, Israel's international responsibility can be invoked and claims filed in international judicial forums.

Ethical considerations

This article is not sponsored.

Conflict of Interests

The author declares that there is no conflict of interest and that all ethical issues in research, including avoiding plagiarism, publishing or submitting articles more than once, repeating others' research, data fabrication or falsification of data, source fabrication and falsification of sources, uninformed consent of the subject or researched person, misconduct, etc., have been fully observed.

Copyright commitment

According to the author's commitment, copyright (CC) has been observed.

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