

# **Palestinians' Right to Resist and Israel's Claim of Self-Defense**

The Israeli military offensive in the Gaza Strip, launched on October 7, 2023, has inflicted staggering destruction and human loss. With over 61,200 Palestinians killed - including an estimated 80% civilians - entire cities such as Rafah razed, and 80% of Gaza's infrastructure obliterated, including hospitals, schools, and water systems, the offensive cannot be classified as a conventional "war." Rather than two sovereign states in armed conflict, this is an assault by an occupying power against a civilian population under its control. This essay argues three interrelated legal points: (1) Palestinians have a recognized right under international law to resist occupation; (2) Israel, as the occupying power, cannot legally invoke self-defense under Article 51 of the UN Charter to justify its military campaign in Gaza; and (3) Israel's actions constitute repeated and grave violations of international law, including illegal occupation, apartheid, and systematic disregard for legal norms.

## **The Right of Palestinians to Resist Occupation**

The right to resist foreign occupation is firmly grounded in international law. It derives from the principle of self-determination, enshrined in Article 1 of the UN Charter, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). For Palestinians, living under Israeli occupation since 1967 in the West Bank, East Jerusalem, and Gaza, this right has particular urgency.

The UN General Assembly has affirmed the legitimacy of resistance in multiple resolutions. Resolution 37/43 (1982) declares "the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle." Additionally, Article 1(4) of Additional Protocol I to the Geneva Conventions (1977) recognizes armed conflicts involving peoples resisting alien occupation or colonial domination as international armed conflicts, granting such struggles legitimacy under international humanitarian law (IHL).

Though Israel formally withdrew its settlements from Gaza in 2005, the International Court of Justice (ICJ) reaffirmed in its July 2024 Advisory Opinion that Gaza remains occupied under international law, given Israel's effective control over its borders, airspace, and maritime access. This legal status activates the right of the Palestinian people to resist the occupation.

## **Israel's Inability to Claim Self-Defense Against Occupied Territory**

Israel frequently invokes Article 51 of the UN Charter to justify its military actions as self-defense. However, this legal rationale is inapplicable in the context of occupied territory. The ICJ's 2004 Advisory Opinion on *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* made clear that self-defense under Article 51 applies only in response to an armed attack by another state. The Court stated unequivocally:

“Article 51 of the Charter... has no relevance in this case, as Israel does not claim that the attacks against it are imputable to a foreign state.” (ICJ, 2004, para. 139)

Instead, as an occupying power, Israel is bound by the Fourth Geneva Convention (1949), which governs its obligations toward the occupied population. These include the protection of civilians (Articles 27 and 33), prohibition of collective punishment, and the duty to ensure access to essential resources such as food, water, and medical care (Articles 49 and 55).

Israel's military conduct in Gaza flagrantly violates these obligations. The death of over 61,200 Palestinians - most of them women and children - along with the destruction of 80% of homes, hospitals, and schools, cannot be justified under any legitimate security rationale. The siege and blockade of Gaza, in place since 2007, constitute collective punishment under IHL and have been condemned as such by the UN Fact-Finding Mission on the Gaza Conflict (2009) and reaffirmed by Amnesty International in 2024.

Particularly egregious was the May 2024 assault on Rafah, launched in defiance of provisional measures issued by the ICJ in the *South Africa v. Israel* genocide case. The operation displaced 1.2 million Palestinians and shut down the Rafah crossing - the main gateway for humanitarian aid - further deepening the humanitarian crisis. The destruction of Gaza's environment and agricultural infrastructure, including 80% of plant life, 70% of farmland, 47% of groundwater wells, and 65% of water tanks, violates Article 55 of the Fourth Geneva Convention, which mandates the occupying power to ensure the food and medical supplies of the population.

## Repeated Violations and Erosion of Legal Norms

Israel's policies in the Occupied Palestinian Territory (OPT) reveal a consistent pattern of violating international law and flouting legal obligations, while condemning others for similar conduct. These violations are evident in three primary areas:

### Expansionism and Illegal Settlements

Under Article 49(6) of the Fourth Geneva Convention, the transfer of the occupier's population into occupied territory is prohibited. Yet, Israel has authorized the construction of nearly 24,000 settler housing units in the West Bank between 2009 and 2020 and controls over 675,000 dunams of West Bank land for settlements. These actions have fragmented Palestinian territory, undermining the viability of a future Palestinian state.

The ICJ's 2024 Advisory Opinion reaffirmed the illegality of these settlements and ordered Israel to dismantle them and end the occupation by September 2025. Additionally, Israel's disproportionate use of shared natural resources, including the exploitation of 90% of the Mountain Aquifer's water supply, violates IHL prohibitions on resource exploitation in occupied lands.

## **Apartheid as a Crime Against Humanity**

International human rights organizations - including Amnesty International (2022) and Human Rights Watch (2021) - have determined that Israel's policies amount to apartheid under international law. The 1973 Apartheid Convention and Article 7(2)(h) of the Rome Statute define apartheid as an institutionalized regime of systematic oppression by one racial group over another.

Israel's regime meets this definition:

- **Dual Legal Systems:** Palestinians in the West Bank are subject to military law, while Jewish settlers enjoy civil law protections.
- **Forced Displacement:** Tens of thousands of Palestinians have lost residency rights, and over 35 Bedouin villages remain unrecognized.
- **Nationality Discrimination:** Palestinians in the OPT remain stateless, denied both Israeli citizenship and a sovereign Palestinian state.

The ICJ's 2024 ruling affirmed the apartheid designation, citing systematic domination and oppression as legally established.

## **Indiscriminate and Disproportionate Military Force**

Israel's military conduct in Gaza repeatedly violates IHL principles of distinction, proportionality, and necessity. Specific war crimes under Article 8 of the Rome Statute include:

- **Targeting civilians or civilian infrastructure** (Article 8(2)(b)(ii))
- **Disproportionate attacks** (Article 8(2)(b)(iv))
- **Starvation of civilians as a method of warfare** (Article 8(2)(b)(xxv))

Examples include:

- The April 16, 2024, airstrike on Al-Maghazi refugee camp, killing 15 civilians, including 10 children.
- October 2024 bombings of Al-Tabaen school and Shuhada al-Aqsa mosque, killing over 100 people.
- The deaths of 217 journalists, 120 academics, and 224 humanitarian aid workers, including 179 UNRWA employees.

These acts render large parts of Gaza uninhabitable, fulfilling the criteria for ethnic cleansing and plausibly genocide, as noted by the ICJ in January and May 2024.

## **Double Standards and Legal Exceptionalism**

Despite its violations, Israel routinely challenges the applicability of international law. Israeli officials claim that the West Bank and Gaza are “disputed” territories, not occupied ones, and dismiss ICJ rulings as non-binding. Yet, Israel frequently invokes international law to condemn others, such as Iran, Hezbollah, or the ICC itself. This selective adherence erodes the rule of law and obstructs meaningful accountability, especially given the consistent shielding of Israel by U.S. vetoes in the UN Security Council.

## **Conclusion**

Israel’s military offensive in Gaza, far from being a lawful act of self-defense, constitutes a grave and ongoing violation of international law. As an occupying power, Israel has no legal right to wage war against the population it controls. The right of Palestinians to resist occupation is enshrined in international law, even as that resistance must conform to humanitarian norms. Israel’s systematic violations - including war crimes, collective punishment, apartheid, and expansionism - demand urgent international accountability. The ICJ’s 2024 rulings, alongside mounting evidence from human rights organizations, make clear that impunity can no longer be tolerated. Upholding international law requires that Israel’s actions be treated not as exceptional, but as criminal - and that those complicit, including foreign states, be held equally accountable under the Genocide Convention, the Rome Statute, and the principles of the UN Charter.