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# Human rights in Palestine: from self-determination to governance

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## ABSTRACT

This article traces a number of historical junctions to show the limited normative and political purchase of human rights in addressing Palestinian demands for sovereignty and self-determination. The article shows how Israel speaks about and addresses itself to normalised settler colonial conditions that constitutively exclude Palestinians. Under these conditions, law and rights are wielded as technologies of rules that presuppose and articulate hierarchies of standings and claims that preclude Palestinian sovereignty and self-determination. Even though, historically, Palestinians have attempted different methods to engage international law and human rights, they repeatedly came up against a geopolitical structure of domination nested in a normative order that either relegates them figuratively outside its border or includes them only as an object of governance.

**Q KEYWORDS:** [Self-determination](#) [governance](#) [anticolonialism](#) [Palestinians](#) [settler colonialism](#) [human rights](#)

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In 1985, Ephraim Doweck, the Israeli Ambassador to the United Nations in Geneva, issued a strong statement condemning a report produced by a little-known Palestinian organisation Law in the Service of Man in collaboration with the International Commission of Jurists (ICJ) on Israel's systematic use of torture against Palestinian prisoners.<sup>1</sup> In his statement, the Ambassador expressed dismay at the willingness of a respected organisation like the ICJ to take part in what he construed as a slandering exercise prepared by 'a notorious front organization created by local PLO [Palestine Liberation Organisation] sympathisers'.<sup>2</sup> For the Ambassador, sympathy with the PLO rendered the report inadmissible. Regardless of the Israeli objection, the ICJ stuck by its junior Palestinian partner. The report drew broad attention to Israel's misrule in the Occupied Palestinian Territories. The Law in the Service of Man itself became globally known as Al-Haq (The Right), one of the most respected and innovative human rights

deliberate attempt to intimidate and silence them.<sup>4</sup> While there is abundant evidence that this is true, Al-Haq co-founder Raja Shehadeh suggested that there is something more fundamental at stake in 'this unfounded and patently untrue accusation'.<sup>5</sup> For Shehadeh, the accusation imputes 'that Al-Haq was not a genuine human rights organisation'.<sup>6</sup> Regardless of how hard the organisation worked on substantiating its findings and legal analysis, Israel cast doubt on its genuineness and credibility. In both occasions of accusation, Israel invested little effort in refuting the details of Al-Haq's findings; rather it largely sought to delegitimise the organisation by association with the PLO—the widely recognised 'representative of the Palestinian people'<sup>7</sup>—in the first instance or one of its factions in the second.

Regardless of the merit of the factual truth presented by Al-Haq, Israel's accusations imply that its alleged association with the PLO prevents the organisation from embodying the *moral* truth that human rights express and symbolise. From the outset, Shehadeh and his colleagues were aware that '[a]ny claim made by a Palestinian as a Palestinian could be easily dismissed—as untrustworthy, partisan, and driven by a nationalist goal rather than by a genuine search for the truth'.<sup>8</sup> A Palestinian as a Palestinian, it appears, cannot claim, speak, or embody the universal truth of human rights. There is much more at stake here than a conflict between the supposed impartiality of human rights and the partiality of a national liberation struggle. At a more foundational level, in Zionist thought and practices, Palestinians could not be a party to a genuine exchange from which universal understanding and normative prescription could arise because they 'did not exist' as the former Israeli Prime Minister Golda Meir flagrantly put it.<sup>9</sup> The denial of Palestinian existence is integral to the Israeli *reason of state*.

A telling example of this denial is a 1949 letter to the Committee for the Designation of Places Names in the Negev by Israel's first Prime Minister David Ben Gurion, in which he clarified the logic behind erasing any reminder of Palestinian existence. According to Ben Gurion, Israel is 'obliged to remove the Arabic names for reasons of state'.<sup>10</sup> Ben Gurion informed the Committee that rendering Palestinians politically and morally nameless is inseparable from dispossessing them of their land and sovereignty. As he put it: '[j]ust as we do not recognize the Arab's political proprietorship of the land ... so also do we not recognize their spiritual proprietorship and their names'.<sup>11</sup> For Ben Gurion, Meir, and Doweik, a Palestinian as a Palestinian names a challenge to the settler colonial *reason of state* that Israel expresses and represents. In order for this reason of state to prevail, it has to render the Palestinians as 'disembodied spirits, fictions without presence, without traditions or future', to cite Yasser Arafat's words to the United Nations General Assembly (UNGA).<sup>12</sup>

It was five years after Arafat addressed the United Nations that Al-Haq was established in Ramallah in 1979. By then, human rights had 'come to define the most elevated aspirations of both social movements and political entities—state and interstate'.<sup>13</sup> The new organisation had no intention to compete with the PLO or 'establish human rights work as a better form of expressing political opposition to the occupation'.<sup>14</sup> In his diary published in the wake of Israel's devastating 1982 attack on the PLO in Lebanon, Shehadeh insisted that he and the PLO fighters 'are fighting for the same thing' but with different tools.<sup>15</sup> For Shehadeh, who is a trained lawyer, international law and human rights were underutilised complements to the mass and militant struggle that the PLO had been waging since the mid-1960s, with the added value that law transcends the asymmetry of power that typified the Israeli-Palestinian conflict. In the estimation of the young lawyer:

The reason why everyone suffers the destructive control of the powerful is because they don't have the protection of the law. I want to promote the rule of law. When just laws are made they will apply equally to everyone, strong and weak, rich and poor.<sup>16</sup>

Promoting the rule of law promised to provide Palestinians with protection while furnishing them with an equal standing that the much more powerful Israel had been denying them for so long. In this meditation, Shehadeh prefigured current hopes to employ international law for the purpose of Palestinian liberation. International law scholar Ralph Wilde described this sentiment: 'if only the law were enforced, emancipation would be realized'.<sup>17</sup>

self-determination as the first step towards achieving Palestinian rights, Al-Haq, on the other hand and particularly in its formative

an probably, a way to evade Israeli intimidation and the stigmatisation of being political or expressing nationalistic aspirations.

<sup>19</sup> It nonetheless seems clear that, even if the lawyer and the fighter both fought for the same aspirations, they differed in their approaches to realising them.

This has not been inconsequential. It is shown that since the early 1980s, the form of human rights that Al Haq utilised has become a dominant normative and political framework through which the Israeli-Palestinian conflict has been conceptualised and approached. At the same time, Palestinian self-determination seems further away than ever. Human rights impact the framing of the conflict, inform the status claims of both sides, and provide evaluative judgments of their respective actions. Although human rights lends great sympathy to the Palestinians, Israel insists that the default normative and political identification of human rights are the preserve of the Jewish State. It is argued that the Israeli insistence mobilises a sanctioning of settler colonialism, a disavowal of anticolonial self-determination, and an aversion towards anticolonial activism, all of which are built into human rights discourses.<sup>20</sup> Israel addresses itself to a normalised settler colonial condition that historically dispossessed colonised peoples of their land and sovereignty.<sup>21</sup> Under the settler colonial condition, law and rights are wielded as technologies of rules that presuppose and articulate hierarchies of standings and claims that disqualify indigenous peoples as claimers and bearers of rights. In contrast, settler colonial societies occupy privileged 'ethico-political'<sup>22</sup> status as bearers of rights and enforcers of law. In this capacity, Israel declares itself as a natural member of a putative 'international community' which stands as a 'moral-political entity organizing the international order according to principles of law, fairness, rights, and humanitarianism'.<sup>23</sup> Palestinians have attempted different approaches to engage the international community, law, and human rights, however they have repeatedly come up against a geopolitical structure of domination nested in a moral-political order that either relegates them figuratively outside its border or includes them only as an object of governance. In this context, I show that, while international law and human rights have afforded Palestinians some opportunities to make claims, the correspondence between the ethico-political status of Israel as a settler colonial society and the international community as a moral-political entity limits the normative and political purchase of human rights in supporting Palestinian liberation and overturning the settler colonial relationships of domination.

## Self-determination and becoming a Palestinian once again

The centrality of self-determination to the Palestinian struggle was a response to a political and 'juridical erasure' of the Palestinian people that went back to the British Mandate.<sup>24</sup> In the wake of the Nakba, international law and institutions restated this erasure by referring to the dispossessed majority of Palestinians only as refugees.<sup>25</sup> Palestinians, as refugees, were declared to be entitled to humanitarian care under international law through the formation of a specific agency to support them—the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). Palestinians engaged this agency while viewing it to be 'part of the machinery of dismemberment and dispersion'.<sup>26</sup> The minority of Palestinians who remained in the new state were ruled by Israel as ethnic Arab, Muslim, and Christian, but never as Palestinians. Those Palestinians were subjected to a bifurcated regime of settler colonial citizenship that involves 'two kinds of citizenship: ... One is *incidental* citizenship, given to Arabs who remained in Israel after the Nakba. The other is *essential* citizenship, given to Jews as Jews'.<sup>27</sup> In general, after 1948 while Jewish settlers claimed exclusive sovereign political rights, Palestinians were regulated by international and Israeli laws as humanitarian and governed subjects. In both cases, their rights were detached from their status as a people endowed with political personhood and agency. For example, the Israeli Law of Return (1950) and the Citizenship Law (1952) are both based on Jewish affiliation. Even if a Palestinian acquires citizenship, as a non-Jew she/he is not a national of the state. The Nation-State Law (2018) furthers this trajectory by stating that 'the Land of Israel is the historical homeland of the Jewish people' and consequently 'the exercise of the right to national self-determination in the State of Israel is unique to the Jewish People'.<sup>28</sup>



seeking mere humanitarian and international recognition, they sought to re-establish their collective existence as a historical fact

resisting the the name(s), the status on offer because they were irreconcilable with their political understanding of themselves as a people with inalienable right to self-determination.<sup>30</sup>

The national resistance movement that crystallised after the 1967 War reflected the drive to accentuate the political personhood and agency of the Palestinians. Edward Said, the most forceful anti-colonial Palestinian voice in the West, claimed that since 1967 'he [the Palestinian] has become a politicized consciousness with nothing to lose but his refugeeedom'.<sup>31</sup> Writing in 1969, Said highlighted the reconstitution of the Palestinian political subjectivity which he called '*becoming* a Palestinian once again'.<sup>32</sup> As Said put it 'today two ways of life enclose all other ways, which finally connect the main two. These two are being a refugee in a camp and being an active member of one of the resistance groups'.<sup>33</sup> This link gave birth to what the Palestinian anthropologist Esmail Nashif calls the 'sovereign victim'—an annunciatory or declarative heroic figure that embodies the experience of the Palestinian collective as the suffering subject while expressing its political claims as a bearer of sovereign prerogatives.<sup>34</sup> The PLO was the institutional embodiment of this annunciatory figure. Its 1968 National Charter asserted the sovereign prerogatives of the Palestinian people who have '[t]he right to determine their destiny after achieving the liberation of their country in accordance with their wishes and entirely of their own accord and will'.<sup>35</sup>

In contrast to a regional order dominated and parcelled by nation-states, the Palestinians asserted the political primacy of their peoplehood. As Susan Marks writes in another context, Palestinians, as a sovereign people, 'not only insist[ed] that governments *recognise* certain important group rights, but also claim[ed] for themselves the right to *formulate* those rights'.<sup>36</sup> Through the representative status of the PLO, Palestinians led a determined campaign to gain recognition as formulators of rights and politics. On the ground, this drive clashed with the prerogatives of the State across the region. Against enshrined settler sovereignty, Palestinians named indigenous sovereignty; against regionally valorised state sovereignty, Palestinians stood for popular sovereignty. In both cases, they presented 'a double challenge to the state-oriented conception of international law'.<sup>37</sup> Through regional mechanisms such as the Arab League and international forums such as the United Nations or the drafting of the Additional Protocols to the Geneva Conventions, the PLO sought to secure an equal standing as a nonstate representative of the Palestinian people. In line with anticolonial legalism, Palestinians sought to position themselves as active subjects of international law rather than its passive object.<sup>38</sup> The potential of human rights to contribute to this project was, at least initially, far from obvious.

## The dynamic of difference: settler colonialism and human rights

Settler colonialism is a project of worldmaking by dispossession of land and sovereignty. It is conceptualised as an embodiment and extension of the rule of law in a lawless world.<sup>39</sup> In our own time, human rights are 'the paradigm through which all of international law is viewed'.<sup>40</sup> Israel, as a Jewish state, is often seen as laying 'a universal claim ... by speaking for humanity in the voice of the victim'.<sup>41</sup> In these circumstances, the name 'Palestine' itself became, according to Edward Said, 'uncomfortably, indeed scandalously, close to the Jewish experience of genocide'.<sup>42</sup> However, Israel as a settler colonial state lays a second forceful claim to universality by speaking for the law in the voice of its enforcer: the settler. If the first universal voice (that of the victim) is employed by Israel to question the status of the Palestinians as 'the victims of the victims',<sup>43</sup> the second universal voice (of the settler as embodiment of the law) is used to refute the possibility that a Palestinian as a Palestinian could embody or speak about the universality of the law or to be its proper subject. A Palestinian as a Palestinian is either an imposter who attempts to claim unmerited universal attributes or a usurper of universality. Although the first voice has weighed heavily on the representation of the conflict, it is the second that has effectively produced an 'anomalous position' for the Palestinians; as the settler monopolised the ability to speak in the name of the law, Palestinians—'neither the bearers of national rights nor of human rights'—were disqualified from both national sovereignty and universal equality.<sup>44</sup>

of sphere and a people fighting for its land and sovereignty.<sup>45</sup> In this latter capacity, a Palestinian as Palestinian presented a

norms themselves. Rather, it frequently served to present its own existence as the fulfilment of human rights and the Palestinians as the opposite. Using the first voice, in the wake of the atrocities of World War Two, Israel presented itself and was widely viewed as the restorer of human rights 'through the restoration or the establishment of national rights'.<sup>46</sup> The second voice ensured that these rights accrued to the Jewish community in Palestine on the account of being 'already civilized, and as carrying with them a bundle of rights and obligations'.<sup>47</sup> The second voice rendered Palestine a 'figuratively empty place'<sup>48</sup> in which Jewish settlers not only made the desert bloom but also carried the burden of introducing the law to fill the civilisational emptiness of the Holy Land. In this emptiness, Israel came into existence as the fulfilment and enforcement of the law. Conceived as lacking the very qualities that Israel embodies, Palestinians appeared as an excess violation of the law, a grave infringement on the rights and obligations of settler sovereignty, burdening it with the responsibility to protect law and order. To that end, asserting and performing Israeli sovereignty is intertwined with protecting the normative order that underpins this sovereignty.

Israel challenged the legitimacy of Palestinian anticolonial resistance by reducing it to terrorism—a discourse of criminalisation derived from the logic of law and order. The terrorism discourse mobilises the 'dynamic of difference' that international law, according to Anthony Anghie, posits as 'a gap, a difference between European and non-European cultures and peoples, the former being characterised, broadly, as civilised and the latter as uncivilised (and all this implies in terms of the related qualities of each of these labels)'.<sup>49</sup> In line with this delineation, Zionism and the State of Israel, deemed Palestinians as non-European (lawless) and as rebels (outlaws), and, in both cases, unable to make legitimate claims. In both capacities, they are more likely to be defendants than plaintiffs under the law.

The 'dynamic of difference' that Anghie detects in international law informed the cautious and evasive manner in which the Universal Declaration of Human Rights (UDHR)<sup>50</sup> attempted to address the question of anticolonial revolutionary violence. It is not easy to divorce Israeli intimidation of Al-Haq, in its formative years, from what Emma Stone Mackinnon describes as the disavowal of self-determination and rebellion built into the UDHR in 1948.<sup>51</sup> The third clause of the UDHR's preamble states that 'whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law'.<sup>52</sup> For the drafters of the preamble, as Samera Esmeir argues 'rebellion is the space of compelled political action' as opposed to the morally uncompelled and uncompromised free action that human rights represent.<sup>53</sup> Not only are human rights imperatives superior to anticolonial forms of actions but human rights themselves are the first resort against such action. Viewed through the prism of this logic, anticolonial rebellions were desperate actions which human rights can 'police against ... by prevailing in the law'.<sup>54</sup> In short, the UDHR foregrounds order and privileges law's preservation and enforcement; it prefers the lawfulness of policing over the unruliness of anticolonial politics.

The UDHR was drafted at a time when more than half the world's population remained subject to colonial rule and so excluded from the drafting process. It was a site in which 'US racial politics and French imperial politics' found a common cause in disavowing rebellion.<sup>55</sup> The American and French representatives, according to Emma Stone Mackinnon's archival research, sought to ensure that '[r]ights were something to be provided by national, and colonial, governments, not something to be demanded beyond or in defiance of the nation'.<sup>56</sup> Stressing this point, the famed French representative in the drafting committee, Rene Cassin, maintained that 'the right to rebel did not extend to Algerians. France's actions in the colonies were aimed at spreading respect for rights'.<sup>57</sup> In Cassin's estimation, Algerians under French colonial rule were duty bound 'to obey the law'.<sup>58</sup> Accordingly, to rebel was to forfeit the legitimacy bestowed by the law. In this light, as Mackinnon notes '[a]nticolonial violence [was conceived as] evidence of a lack of respect for rights, and therefore proof of the lack of a legitimate claim to self-determination'.<sup>59</sup> The likes of Cassin were the same members of the international community that granted Israel default sympathy in its disavowal of Palestinian resistance and the concomitant denial of the Palestinian claim to self-determination.

## The inadmissibility of Palestinian self-determination



settlers as fully rational autonomous agents and granted [them] civilizational standing. ... Based on this capacity and standing,

anthropological capacities that require prolonged schooling to overcome political incompetence. ... Objecting to this schooling logic, anticolonial actors formed 'a vision of an egalitarian world that guaranteed the condition of international nondomination in which popular sovereignty could be exercised'.<sup>63</sup> In this new framing self-determination was neither a civilisational nor pedagogical achievement; rather, it was a prerequisite for a democratic 'worldmaking' project in which colonised peoples participate in formulating rights and policies.<sup>64</sup> While self-determination did not make it into the UDHR, in 1966 anticolonial activism at the United Nations succeeded in introducing it as common Article 1 of the International Covenant on Civil and Political Rights (ICCPR)<sup>65</sup> and the International Covenant on Economic Social and Cultural Rights (ICESCR).<sup>66</sup> A democratised United Nations was a primary site of this worldmaking project and the Palestinians were at once beneficiaries and participants in this project.

Under the new condition, the UNGA was refashioned as a political and experiential forum in which people of what was then called the 'third world' spoke in view of one another. These were the institutional and historical settings from which and to which Palestinians asserted their existence and affinities. Yasser Arafat's 1974 speech to the UNGA was an example of the institutional and discursive effort to refashion both the United Nations as an institution and human rights as a discourse that foregrounds a reinvented self-determination. Arafat acknowledged that the anti-colonial effort to reconstitute the international order was the condition that made it possible for him to give a speech at the United Nations. As he put it:

The question of Palestine is being re-examined by the United Nations, and we consider that step to be a victory for the world Organization as much as a victory for the cause of our people. It indicates anew that the United Nations of today is not the United Nations of the past, just as today's world is not yesterday's world. Today's United Nations represents 138 nations, a number that more clearly reflects the will of the international community. Thus, today's United Nations is more nearly capable of implementing the principles embodied in its Charter and in the Universal Declaration of Human Rights, as well as being more truly empowered to support causes of peace and justice.<sup>67</sup>

Arafat was able to speak from the rostrum of United Nations because the newly admitted nations sought to place this international institution in the service of solidarity and non-domination. Tellingly, Arafat commenced by greeting the Algerian president of the General Assembly session for being 'in the vanguard of the freedom fighters in the heroic Algerian war of national liberation'.<sup>68</sup> At the heart of this development was the turning of the principle of self-determination, which did not make an appearance in the 1948 UDHR, into a foundational right in 1966. For Arafat, the elevation of a reinvented self-determination as a foundational principle of human rights was a product of a revolutionary rupture rather than a normative and institutional continuity. The rupture challenged the legacy of the dynamic of difference in international law and effectively invalidated the disavowal of anticolonial rebellion.

If, as Hannah Arendt once suggested, 'the fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective', it was the egalitarian internationalism of anti-colonialism that gave the Palestinians as Palestinians 'a place in the world'.<sup>69</sup> Having asserted their peoplehood and political agency through armed resistance and mass mobilisation, Palestinians followed the anticolonial model in seeking to invest 'themselves and their actions with a sovereign juridical stature' through the institutional and discursive opening created by the postcolonial condition.<sup>70</sup>

But, in being part of this historical milieu the Palestinians gained another anomalous position as an 'anticolonial liberation struggle that did not end up in a postcolonial independent state'.<sup>71</sup> Being out of sync with the trajectory of decolonisation wedged the Palestinians between the fall of self-determination, the primary right endorsed by the anticolonial struggle and the 1970s rise of human rights as 'a system of values and institutional system of global governance'.<sup>72</sup> Under the new conditions, the Palestinian movement persisted as a 'post-historical' remnant that had outlived the normative and geopolitical conditions of its emergence. In this context, the PLO clung to the recognition it gained but lost the sway it had in formulating politics. The new anomaly

actors 'under normative language that they themselves understood'.<sup>74</sup> But even though Shammās and the other founders of Al-Haq were committed to Palestinian aspirations, the normative language that they deployed was one that had abandoned the anticolonial insistence on the primacy of self-determination. From the 1970s onwards 'ideas of self-determination as either a human right in itself or as a starting point for human rights' were not excluded, as they were from the UDHR but rather demoted in importance.<sup>75</sup> A noticeable expression of this abandonment is the failure of human rights mechanisms or procedures to address violations of the right to self-determination. Ralph Wilde observes that 'the UN Human Rights Committee refuses to address self-determination on an individual level in individual complaints' however

when the collective dimension of the right is violated, this is overlooked in favour of an exclusive focus on the individual dimension in country reporting. Either way, then, the more fundamental questions of violations of the collective right of self-determination are not addressed.<sup>76</sup>

Wilde further notes the silence of major international human rights organisations on the question of self-determination and 'the absence of the right of self-determination in the American and European regional instruments'.<sup>77</sup> The failure, silence and absence are all manifestations of a persistent disavowal. Anticolonial activism has interrupted the disavowal for over a decade at UNGA but has not overturn it. Viewed in this light, the Israeli intimidation of emerging Palestinian human rights activism is entwined with this broader institutional and normative disavowal of self-determination, as a human right or prerequisite for achieving human rights.

In parallel with the take-off of human rights in Palestine and the global demotion of self-determination, the Carter Administration officiated the 1979 Camp David Accords between Israel and Egypt. Seth Anziska argues that this agreement played a catalyst role in curtailing Palestinian self-determination. The Carter Administration sought to distinguish itself by declaring human rights to be a natural expression of American idealism in foreign policy.<sup>78</sup> In this capacity, it projected itself as the locus of an international community based on law, rights, and humanitarianism. The Administration identified three kinds of individual rights to promote and protect but self-determination as a collective right was not one of them.<sup>79</sup> This conceptualisation of rights coincided with Israeli insistence, prior and during the negotiation, that 'the Palestinians as individuals possessed rights ... but had no rights or status as a people or a nation'.<sup>80</sup> This conceptualisation and stance, according to Anziska, shaped and informed all subsequent efforts to solve the conflict in the Middle East. In the Camp David Accords, Israel—with the support of the American Administration—imposed limited 'autonomy' as a rubric for addressing the Palestinians, while facilitating the extension of Israeli sovereignty inside the occupied territories.<sup>81</sup> In the past few decades, this Israeli rubric formed the basis of what came to be evasively coined 'the peace process', a process that foregrounds Palestinian compliance with international norms and mechanisms as a prerequisite of statehood. The effect of Camp David, Anziska concludes, is the ongoing denial of Palestinian sovereignty and self-determination under the watchful eye of the international community.

In 1982, in order to translate its Camp David gains into facts on the ground, Israel invaded Lebanon with the objective of diminishing the PLO (with American collusion and regional acquiescence). Edward Said, a member of the Palestinian National Council (PNC) at the time, observed in response to the attack that 'the object of ... violence' and what has been 'inadmissible' is the very 'existence of the Palestinian people whose history, actuality and aspirations, as possessed of a coherent narrative direction pointed towards self-determination'.<sup>82</sup> It can be argued that while the founders of Al-Haq viewed their intervention in terms that were complementary rather than oppositional to the PLO, the new organisation operated in a revisionist global environment that displaced the primacy of self-determination and in a geopolitical situation that ruled Palestinian self-determination inadmissible.

## A problem of government

discursive framework, an institutional form of activity, and a novel mode of political appeal in Palestine. ... Over time, a field of

than simply complementing the field of political and normative practices championed by the PLO, sociologist Lisa Hajjar claims that human rights from the mid-1980s provided 'new ways of thinking, talking about, and intervening in the conflict'.<sup>85</sup> On the whole, Palestinian resistance was reframed, according to Hajjar, 'as demands for human rights'.<sup>86</sup> Instead of a revolutionary warfare of mass mobilisation and repatriation, the emphasis was now on meticulous documentation of violations and seeking redress and recognition through legal avenues and normative precepts. This new reframing assumed the existence of a receptive normative order through which Palestinians could make claims and seek enforcement. Concomitantly, a shift took place from investing in the transformative law-making capacity of international institutions like the UNGA to 'a greater tendency to invoke international law, and compliance with the law ... as an end in itself'.<sup>87</sup>

Hajjar argues that the 1979 establishment of Al-Haq set in motion 'a counternarrative about the nature of the conflict as, foremost, a problem of government', as opposed to other interpretations of the conflict 'as a problem of terrorism, security, or land'.<sup>88</sup> This redefinition of the conflict as primarily a question of misrule or mis-governance that 'strays from the liberal ideal of transparent and accountable government' expressed a profound shift.<sup>89</sup> This new framing challenged Israel's self-representation as a benevolent occupier that 'enjoyed international reputation for being benign and scrupulous in its respect for rule of law'.<sup>90</sup> The recent series of reports by major international human rights organisations on Israel as an apartheid state is the highpoint of this counternarrative.<sup>91</sup> However, as a problem of *government*, Israel's violations largely appear as regulative and discriminatory in nature, rather than as expressions of a settler colonial logic that, in colonising land, deprives Palestinians of self-determination. Amnesty International's landmark 2022 report *Israel's Apartheid Against Palestinians*, for example, states that the organisation 'limits its analysis to legal frameworks that explicitly address institutionalized racial discrimination' and makes clear that this is because 'Amnesty International does not take a position on international political or legal arrangements that might be adopted to implement [the right to self-determination]'.<sup>92</sup> Like the evasive peace process, the framework adopted by Amnesty relegates the existential question of Palestinian self-determination to undefined arrangements. The report takes the one-state condition that Israel has created on the ground as given, and restricts itself to highlighting the multiple forms of discrimination various Palestinian communities are subjected to and calling for equality. The report does not address the formative settler colonial condition that has historically worked by elimination rather than discrimination. Discrimination is remedied by better regulations. However, settler sovereignty is a zero-sum game of domination that demands subordination. In the struggle for greater legal equality, Palestinians risk affirming Israeli settler sovereignty 'in order to invoke a regulatory regime that is not concerned with the corresponding question of their own right to collective freedom'.<sup>93</sup>

On the ground, human rights methods, norms, and style of activism have not only re-posed the conflict as a question of government but, in some cases, counterintuitively, they have participated in the colonial process of governance. Michael Sfard, a human rights lawyer who represented Israeli and Palestinian human rights groups including Al-Haq, provides a striking illustration of this entanglement, through which human rights lawyers became involved in humanising and legalising the occupation, as he recalls his role in the litigation against the Separation Wall in the West Bank:

The fence litigation posed a hard dilemma for human rights lawyers. While it failed to prevent the harm caused by the fence, its reduction of that harm by a substantial degree should not be underestimated. On the other hand, the lawyers behind the litigation became part of the creation of the barrier. Like a hill or an engineering impasse, we too were a factor that shaped the route. I did not like this insight. It took me a while, but at some point it dawned on me that I was one of the architects of the barrier, that there were sections where my signature might as well appear next to the Ministry of Defense Barrier Administration and the High Court of Justice, even though I objected to these sections, even in their mitigated format.<sup>94</sup>

Mouin Rabbani, a former volunteer at Al-Haq in the 1990s offers another troubling insight: according to Rabbani the organisation's strict adherence to human rights standards 'translated into an emphasis on micro-violations to the detriment of [conveying] the bigger picture or engaging with questions specifically of national rights'.<sup>95</sup> Both insights suggest that in Palestine,



authority of international law to address their violations, as Rappaport observed. The first mobilisation of human rights dedicated

claims through the liberal legal logic of global governance, which never delivered on its promises.

The new framing of Palestinian human rights overlapped with the effort to settle the Israeli-Palestinian conflict in line with the rubric of the Camp David Accords. This effort culminated in the signing of the 1993 Oslo Accord between the PLO and Israel. In this Accord, the utterly exhausted PLO traded away its status as the representative of the Palestinian people in order to form the Palestinian National Authority (PA) as an 'autonomous authority' in limited parts of the West Bank and Gaza. Meanwhile, Israel continued to be, as a matter of fact, the ultimate sovereign that rules over the whole territory of historic Palestine. The Oslo Accord yielded a process in which the PLO accepted the schooling logic of global governance in exchange for paternalistic recognition. This recognition elided the Palestinian movement's early challenge to the state-oriented conception of international law, in the name of a people 'claiming for themselves the right to *formulate ... rights*' before being recognised by them.<sup>97</sup> Under Oslo's terms of reference, 'Palestinians were not a people but *became* one through recognition. This is different from a *declaratory* recognition that recognises them as already being a people'.<sup>98</sup> To put it plainly, Oslo offered the Palestinians a very late enrolment in the colonial classroom of 'freedom ... if they are deemed "ready"'.<sup>99</sup> In exchange for this belated enrolment, the PLO relinquished the anticolonial cardinal rule against colonial pedagogy: self-determination first, as a prerequisite of egalitarian relations.

Instead of national liberation or independence Oslo codified demographic separation under a 'single hegemonic authority'.<sup>100</sup> Orna Ben-Naftali argues that:

The Oslo process has not been about Israel's withdrawal from the West Bank, much less about the dismantlement of settlements; it has been about the fragmentation of the OPT [Occupied Palestinian Territories] and the reorganization of Israeli power: henceforth, Palestinians would cease to be of interest to Israel, other than for the purpose of their exclusion ... The separation thus affected, is not about separating the state of Israel from a nascent Palestinian state. It is about separating Palestinians from their land, from other Palestinians and from Israelis. It is not about borders between states; it is about bordering the Palestinians in order to realize Israel's sovereignty throughout much of their land.<sup>101</sup>

In this situation, Jewish Israelis are citizens with full political rights and Palestinians in the West Bank and Gaza are subjects with some civil and humanitarian rights, always exposed to 'the administrative and coercive power of the state'.<sup>102</sup> In other words, Oslo formalised 'the legal and political separation of Israelis and Palestinians' and produced a 'bifurcated form of governance'.<sup>103</sup> The all-too-visible bifurcation accentuates the contradictions of Israeli liberal legalism but, at the same time, made self-determination appear a *passé* abstraction compared 'with the institutions through which rights and resources are distributed' on the ground.<sup>104</sup> The diminished PLO, in its failed attempt to achieve independence, seemed to collude with Israel in separating the two populations. The conflict was increasingly 'understood as a conflict over legal rights' within the bound of the only existing state that distributes rights and obligations unequally.<sup>105</sup>

The effective one-state condition prompted calls for the 'paradigm of collective sovereignty and separation ... to be radically rethought'.<sup>106</sup> Tobias Kelly articulates this call by arguing that, under current conditions, the 'creation of subjects with rights' was 'undermined by the contradictions in the claims of collective sovereignty that gave those rights meaning and political backing'.<sup>107</sup> The risk of such a radical rethinking is that in order to overcome the contradictions of collective sovereignty, the Palestinians, as the weaker party, may have to forsake their historical struggle against dispossession, in the process affirming and invoking a governing regime with a vested interest in denying their collective freedom. It is correct to argue that the current impasse is a product of the impossible space between Palestinian popular sovereignty and Israeli settler sovereignty. However, there is a constitutive difference between the two contending sovereignties and their respective trajectories. While the Palestinian trajectory is largely shaped by contingent historical conditions that foreclosed other possibilities, the Israeli trajectory was almost exclusively shaped by the dominative and eliminative logic of settler colonialism.

normative departure point was enshrined in the UNGA's 1960 Resolution 1514, the Declaration on Granting of Independence to

which the rights to independence and equality constituted the legal basis of non-domination within international society .

Rather than enshrining separation, the Bissau-Guinean revolutionary leader and intellectual Amílcar Cabral hailed the Resolution as creating the conditions in which anticolonial struggle 'has lost its strictly national character and has moved onto an international level'.<sup>111</sup> But the sheer force directed against this project (Cabral himself was assassinated in 1973) and the relentless violence unleashed against the Palestinian movement served to strip independence of its internationalist, democratic, and anti-domination content. Independence as separation was the residue—the outcome of a historical defeat. While defeat may be a product of inferior force it should not be analytically equated with political and normative failure.

Separation and domination, on the other hand, are intrinsic to the thought and practice of Zionism as a settler colonial project. In the Zionist ideology, separation, as exemplified in the pre-state Zionist policy of 'exclusive land and labour', is 'perceived as the norm'.<sup>112</sup> In the US's settler colonial experience, the reservation system of separation was a way-station on the road to attempted elimination. 'Subjugation and isolation', Mahmood Mamdani argues, 'robbed the Indian way of life of vitality and meaning ... Indian culture was to an extent preserved, but it was placed in a museum, where it could no longer meet the problems of the moment or evolve to meet those of the future'.<sup>113</sup> Similarly, separation combined with near absolute domination allows Israel to engage in wide-scale 'procedural'<sup>114</sup> or 'invisible'<sup>115</sup> forms of slow violence with 'insidious effects ... that can kill not only a (national) body, but its very soul'.<sup>116</sup> For the late Israeli Prime Minister Yitzak Rabin, the Oslo arrangements correspond to the long-standing Zionist views of 'separation as a philosophy'.<sup>117</sup> Separation, in this case, is a technology of sovereign domination tied to the settler colonial imperatives of elimination.

Following Oslo, 'Palestinians as a stateless nation began to witness the formation of nationless [nominal at best] state'.<sup>118</sup> The statist project completely eclipsed the popular imperatives that sustained the revolutionary character of the Palestinian liberation movement. Oslo ushered in a performance-based, globally-officiated, state-building project under occupation in which 'Israel's sovereignty is given; Palestinian sovereignty must be earned'.<sup>119</sup> At this juncture, human rights were enlisted as evaluative indicators of Palestinian readiness and deservedness of statehood and sovereignty. For example, 'between 1999 and 2008 external aid to the West Bank and Gaza Strip increased by over 600% to \$3.25 billion per year' with rights-based organisations receiving the highest proportion of this aid (30%).<sup>120</sup> Palestinians were inducted to 'identify, decipher and rationally act before [human rights as] knowable law [of humanity]' to refashion themselves as ready and deserving liberal subject.<sup>121</sup> What ensued was a tacit convergence of human rights and governance as performative indicators of legibility and eligibility. At this stage, Palestinians entered the uneven but integrated world of liberal governance 'as occupied subjects, namely, subjects who are never included within the power to which they are subjected (as opposed to the citizen), not completely expelled from it (as opposed to the foreigner, or even more so, the enemy)'. The occupied subject, as Julie Peteet puts it, is thus 'in an ever-lingering state of potentiality'.<sup>122</sup> In this situation, sovereignty and self-determination are perpetually deferred.

## The right to exist as a people

Edward Said, in a 1992 interview titled 'People's Rights and Literature', doubted the ability of human rights to provide sufficient resources to address the specificity of the Palestinian condition. As he put it,

we are in a unique position of being a people whose enemies say that we don't exist. So for us the concept of "rights" means the right to exist as a people, as a collective whole body, rather than as a collection of refugees, stateless people, citizens of other countries.<sup>123</sup>

Instead of rights stipulated in humanitarian and governmental terms, Said insisted that, for the Palestinians, achieving national rights 'is step one'. He argued that for the Palestinians

view was characteristic of the predicament of the Palestinian fight against a globally triumphant settler colonialism that renders the Palestinian, as the title of his memoir attests, *Out of Place*.<sup>126</sup> The anticolonial moment gave the *Palestinian as Palestinian* a provisional place to stand and speak from. Anthropologist Ilana Feldman is one of many to note that the very 'fact of continued Palestinian existence [is] perhaps the signal Palestinian political achievement over these decades'.<sup>127</sup> This achievement is largely an anticolonial achievement, a success that the Palestinians can still build on to open new emancipatory horizons.

The Oslo peace process is a symptom of the fall of the anticolonial project of self-determination. In Palestine, the weight of 'the forces arrayed against'<sup>128</sup> this international project and its own internal contradictions fused with the Israel settler colonial denial of Palestinian rights. Human rights under the influence of anticolonialism provided the Palestinians with a platform to declare their peoplehood and demand their self-determination. After Oslo, in contrast, human rights were used as a performative measure of good and global governance, an assessment tool of elusive 'readiness'. The World Bank and other international institutions recommended 'that the implementation of good governance reforms, rule of law, and policies ensuring a conducive climate for investment were necessary preconditions for Palestinian independence'.<sup>129</sup> The precepts of good governance completely overlooked the anticolonial insistence that 'the rights of peoples and nations to self-determination is conceived as a prerequisite for the enjoyment of all fundamental human rights'.<sup>130</sup>

As part of the 'performance-based and goal-driven roadmap to peace', the American Lieutenant General Keith Dayton oversaw the reform of the Palestinian National Security Forces (NSF). Dayton boasted of creating 'new Palestinians':

... what we have created are new men. These new men of Palestine, they have shown motivation, discipline and professionalism, and they have made such a difference ... senior IDF [Israel Defense Forces] commanders ask me frequently, 'How many more of these new Palestinians can you generate, and how quickly, because they are our way to leave the West Bank'.<sup>131</sup>

As part of the professionalising of the NSF, Dayton established a human rights training curriculum. Dayton's 'new Palestinians', to the relief of the IDF, are now ranged against those who still refuse to accept subservience, suppression, and extinction. For Dayton's Palestinians, human rights serve simultaneously as a measure of good governance and a measure of distance from the *Palestinian as Palestinian*. It is this double measure that Israel mobilises to deny, intimidate and disavow Palestinian standing and claims.

In November 2022 Al-Haq published a landmark report, *Israeli Apartheid: Tool of Zionist Settler Colonialism*,<sup>132</sup> that did not receive the same publicity and coverage as the recent reports by Amnesty International, Human Rights Watch and B'Tselem. In the tradition of anticolonial legal activism, Al-Haq's recent report defines the discriminatory practice of Israel settler colonialism as a 'mode of domination'.<sup>133</sup> The report asserts the Palestinian inalienable right to self-determination. And, notwithstanding Israeli intimidation, it calls on the United Nations, which disavowed that anticolonial legacy,

to begin repairing its own disarticulated approach and structural flaws that have contributed to the denial of Palestinian self-determination, the right of return, and bringing an end to the unlawful situation created through Israel's settler colonial apartheid regime and its associated international crimes.<sup>134</sup>

This is a worthy task. For it to succeed, it will be necessary to revisit the imperatives of the combined anticolonial projects of nation-building and worldmaking in order to address the persistence of the settler colonial condition in Palestine and the embeddedness of Israeli settler sovereignty in global structures of domination and hierarchy—including in the global structures of international human rights.

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## Notes

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