



AL-HAQ
25 Years Defending
Human Rights
(1979-2004)



UN Commission on Human Rights
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**ITEM 5: THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS
APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR
FOREIGN OCCUPATION**

**Written Intervention Jointly Submitted by Al-Haq and the Palestinian Centre
for Human Rights**
1 February 2004

Al-Haq and Palestinian Centre for Human Rights (PCHR) are gravely disturbed by the continuing denial of the Palestinian people of their fundamental right to self-determination. The principle of self-determination of peoples, a principle which is fundamental in the realisation of other basic rights, is a fundamental pillar of the UN Charter, affirmed in Article 1 and in Article 55 which deems it “necessary for peaceful and friendly relations among nations”.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) both give particular significance to this right in Article 1 common to each Covenant. The UN Human Rights Committee has emphasised that the realisation of the right of self-determination “is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”.

While other peoples, which in the past were subject to foreign colonisation, have exercised their right to self-determination and become sovereign states, the Palestinians did not acquire independent nationhood at the conclusion of the British Mandate and the transfer of the Question of Palestine to the UN in 1948. However, despite being continuously denied by the ongoing Israeli military occupation of the West Bank (including East Jerusalem) and the Gaza Strip, the right to self-determination of Palestinians is inalienable, non-negotiable, indissoluble and requires immediate implementation.

Numerous UN bodies have passed scores of resolutions over the last five decades upholding the right of the Palestinian people to self-determination. These resolutions also urge Israel to withdraw from territories unlawfully acquired or occupied by force and implement the right of return and to compensation for Palestinian refugees.

Security Council

Israeli withdrawal from territory occupied by force as a result of the 1967 War was mandated by the Security Council Resolution 242 passed in the same year. This resolution emphasised the necessity for Israel, in order to establish a “just and lasting peace”, to withdraw its armed forces from the territories occupied in the conflict and the acknowledgment of the “sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”. These requests were reiterated by Resolution 338 (1973) which also mandated the immediate termination of “all military activity” in the positions

occupied. The inadmissibility of any territorial acquisition by force or conquest was later reaffirmed in three successive Security Council Resolutions 476, 480 and 1322 in 1980.

More recently, Security Council Resolution 1397 (2002), envisioned again an independent Palestinian State, as outlined in General Assembly Resolution 181 (1947). That year, the Security Council renewed its call for the withdrawal of Israeli troops from Palestinian cities (Resolution 1402, 2002), once again stressing the link between military occupation and the impossibility of exercising the inalienable right of self-determination.

General Assembly

The General Assembly has repeatedly demonstrated its support for the Palestinian quest for a just peace. This peace must respect their legitimate right to self-determination and must be just to all Palestinians, including those who were forced to flee their homes. A just peace cannot be only the cessation of Israeli military activities in the Occupied Palestinian Territories (OPT). General Assembly Resolution 194 (1948) affirms that

the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property.

The right of the Palestinian people to self-determination is specifically affirmed in General Assembly Resolution 2767 (1970), whereby the General Assembly “recognizes that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations”. This principle is also restated in General Assembly Resolution 2787 (1971), which reaffirms “the inalienable right of all peoples in particular those of...the Palestinian people to freedom, equality and self-determination and the legitimacy of their struggles to restore their rights”

Most fundamentally, Israel has so far refused to publicly declare its adherence to the principle of “non-annexation of territories through the use of force” as requested by the General Assembly in Resolution 2949 (1972). On the contrary, in June 2002, in blatant defiance of this principle, Israeli authorities began construction of what the UN Special Rapporteur on the Situation of Human Rights in the OPT has termed “the Annexation Wall”. It is unquestionable that the Wall will serve to annex substantial amounts of Palestinian land. As presently planned, the Wall will stretch to over twice the length of the Green Line, isolating approximately 14.5% of the West Bank (excluding East Jerusalem), between the Green Line and the Wall, which will be *de facto* annexed to Israel. Plans for the secondary Wall to extend into the Jordan Valley appear to suggest that over 50% of the West Bank will be annexed by the construction of the Wall. The village of Jayyous, near Qalqiliya, presents a striking example. Although it is six kilometres inside the West Bank, 72% of the village’s land and seven of its wells have been requisitioned by Israeli authorities in the construction of the Wall directly adjacent to the village.

Resolution 2949 further declared that “changes carried out by Israel in the occupied Arab territories in contravention of the Geneva Conventions of 12 August 1949 are null and void”. It calls upon Israel “to desist from all policies and practices affecting the physical character or demographic composition” in the same territories. These requests have been rejected by Israeli authorities. As a consequence of the construction of the Wall, approximately 142,000 Israeli settlers (63% of the settler population present in the OPT) will be included in the area between the Wall and the Green Line and over 160,000 Palestinians will be living in 12 separate enclaves - areas where the population is totally surrounded by the Wall. As noted by the UN Special Rapporteur on the Situation of Human Rights in the OPT, the annexation which is accompanying the Wall has a fundamental impact on the right of Palestinians to exercise their right to self-determination:

The right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self-determination within a

territory. The amputation of Palestinian territory by the Wall interferes with the right of self-determination of the Palestinian people as it substantially reduces the size of the self-determination unit (already small) within which that right is to be exercised.

We hope that the International Court of Justice will consider his comments carefully in their upcoming advisory opinion on the Annexation Wall.

Since General Assembly Resolution 34/70 (1979), which emphasised that the attainment and the exercise by the Palestinian people of “its inalienable national rights” is a *conditio sine qua non* for a “comprehensive, just and lasting peace in the Middle East”, over 40 resolutions have been passed in support the right to self-determination of the Palestinian people. Regrettably, Israel has remained unwilling to implement its international legal obligation.

Commission on Human Rights

This Commission, with Resolution 2003/3 - “Situation in occupied Palestine”, has also recently reaffirmed the

right of the Palestinian people to self-determination in accordance with the provisions of the Charter of the United Nations, the relevant United Nations resolutions and declarations, and the provisions of international covenants and instruments relating to the right to self-determination as an international principle and as a right of all peoples in the world” further affirmed that this right is “*jus cogens* in international law and a basic condition for achieving a just, lasting and comprehensive peace in the region of the Middle East.

The right of the Palestinian people to self-determination has also been defined in the same resolution as “inalienable, permanent and unqualified” and including the “right to establish their sovereign and independent Palestinian State”.

Al-Haq and PCHR believe that it is time that the international community promotes respect for international law by ensuring that Israeli authorities give meaning to these resolutions. We remain deeply disturbed that Israel has been permitted to consistently violate international human rights and humanitarian law and agreements to which it is bound before the UN Security Council and General Assembly. It is in virtue of these agreements to the UN that Israel was allowed to become a member state. They include its declaration to implement and respect the UN Charter without reservation, and its commitment to respect and implement all resolutions issued by the UN regarding the Arab/Israeli conflict. We call on UN member states to ensure that the most basic right of the Palestinian people to self-determination is at last respected.