

The Premise of Envisioning the End of the Illegal Israeli Occupation

The Palestinian Right to Self-determination as Decolonisation

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"I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner; but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season.""

- Martin Luther King 'Letter from a Birmingham Jail' 16 April 1963

Reflecting on Dr. King's words in the context of Palestine, one reaches the following conclusion: to articulate the violence imposed on the Palestinian people, to seek the justice that is detrimental to peace in the region in alignment with the UN Charter, we must challenge the cognitive limitations imposed by years of accumulated 'moderate' positions in international legal circles vis-à-vis the question of Palestine.¹

Palestinian international lawyers have worked for decades towards a declaration of the illegality of the Israeli Occupation of Palestine. On 19 July 2024, the International Court of Justice (ICJ) delivered a historic advisory opinion declaring that Israel's 57-year-old control over the Palestinian territories is illegal in its totality, full stop.² The court found that Israel is undertaking several grave and intersecting illegalities, which include the violation of the

¹ Shahd Hammouri, *When the Negation of Critique Becomes Bloody Business: To Be an International Lawyer in Times of Genocide*, 2 LONDON REVIEW OF INTERNATIONAL LAW 11 (2024).

² *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion 186 (19 July 2024) (hereon Advisory Opinion on Legal Consequences).

people's right to self-determination, the prohibition against annexation, and the prohibition against racial discrimination and apartheid. This advisory opinion was delivered at a moment when a 'plausible' genocide in the Palestinian Gaza strip was ongoing.³

The ICJ noted that the Israeli occupation of Palestine must end as rapidly as possible. It conveyed the responsibility of envision the modalities of ending the Israeli occupation of Palestine to the UN General Assembly (UNGA). As asserted by the ICJ in the Chagos case, there are many ways to imagine the right to self-determination.⁴ We are thereby presented with the question of what is the best way to envision this right in the Palestinian context? In this essay, I argue that envisioning the modalities of ending the Israeli occupation of Palestine, must be anchored in the materiality of the Israeli colonisation of Palestine and the historical lessons pertaining to the end of colonisation. Palestinian self-determination is decolonisation, and the right of return is an integral element to it. Going further, I use this framework to envision third state economic responsibility in this context building on material present and history. Building on precedents of UNGA resolutions in the era of decolonisation, I argue that **third state economic responsibility can be summed as all economic measures within the state's influence which can impede on Israel's capacity to maintain its colonisation.** Herein, I argue against interpretations of the decision which risk watering down state responsibility.

I. Self-determination as decolonisation

A harmonised reading of the court's decision reveals the larger picture that is crystal clear on the ground. Apartheid + *de facto* annexation + violation of the right to self-determination + violation of sovereignty over natural resources + wide spectrum of violations of international humanitarian law * foreign power = alien domination and subjugation = colonisation.

While there are no clear criteria for what alien domination and subjugation entails, elements of systemic exploitation, dispossession, fragmentation, inhumane acts, prosecution, and discrimination by an alien power would be common indicators.⁵ The prevalence of such

³ *Application of the convention on the prevention and punishment of the crime of genocide in the Gaza strip (South Africa v. Israel)*, 192 ICJ (24 January 2024).

⁴ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Separate Opinion of Judge Robinson, [2019] I.C.J. Rep. 169 para. 144 [*ICJ Chagos case*]

⁵ *ICJ Chagos case*: apartheid and alien domination and subjugation both entail a systemic policy of domination and subjugation targeting a specific group which results in inhuman acts: "Alien subjugation, alien domination and alien exploitation are the classic features of colonialism... Exploitation is at the epicentre of colonialism. It was a political and economic system of governance that was wholly exploitative of dependent peoples". Further

systemic practices in the current situation is widely documented,⁶ and the illegal nature of such practices has been reaffirmed by the ICJ.

The materiality of colonisation extends beyond the occupied Palestinian territories to the whole of Israel or historical Palestine, as the Nakba established the groundwork for existing relations of exploitation and domination.⁷ Zionism as the founding ideology of the Israeli state did not shy away from articulating its colonial nature in its early days.⁸ Within its borders, the Israeli state is now widely perceived as an apartheid state – as its laws establish a clear racial hierarchy for the benefit of its Jewish population, and its government maintains a policy of denying Palestinian history, identity and existence.⁹ Such policies come hand in hand with systemic violations against Palestinians who are residents or detainees (unlawfully transferred to Israeli territories)¹⁰ such as arbitrary detention, denial of social, political, civil and economic rights, extrajudicial killing, displacement, among other things.¹¹

A reading of the official records on the admittance of Israel as a member of the United Nations, demonstrates that the recognition of the Palestinian right of return was a *condicio*

review: *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Separate Opinion of Judge Cançado Trindade, [2019] I.C.J. Rep. 169. Further practices of apartheid intersect with practices of alien domination and subjugation, review some acts associated with apartheid listed in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion [1971] ICJ Rep 16 (ICJ), para.130.

⁶ Review for example: *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation, Issue No. 1* Report by Richard Falk and Virginia Tilly for ESCWA, UN Doc. E/ESCWA/ECRI/2017/1(2017), Online: ESCWA

https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1013&context=ps_pubs accessed 22 June 2023, at 37-

84; *Report on Apartheid*, Report by ESCWA UN Doc.A/77/356 (2022); *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports*, Report by Al Haq, BADIL, Palestinian Center for Human Rights, Al Mezan Center for Human Rights, Addameer, Civic Coalition for Palestinian Rights in Jerusalem, Cairo Institute for Human Rights Studies, Habitat International Coalition – Housing and Land Rights Network for CERD, (2019), online:

https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf accessed 4 July 2023; HRC 'Report of the United Nations Fact-Finding Mission on the Gaza Conflict' (2009) UN Doc. A/HRC/12/48.

⁷ AHMAD H. SA'DI & LILA ABU-LUGHOD, NAKBA: PALESTINE, 1948, AND THE CLAIMS OF MEMORY (2007).

⁸ THEODOR HERZL, THE JEWISH STATE (2008). Chapter on the Jewish Corporation. Rabea Eghbariah, *Toward Nakba as a Legal Concept*, 124 COLUMBIA LAW REVIEW 887 (2024).

⁹ NOT A "VIBRANT DEMOCRACY". THIS IS APARTHEID.;

http://www.btselem.org/publications/202210_not_a_vibrant_democracy_this_is_apartheid (last visited Nov 2, 2024).

¹⁰ Review The Bar Human Rights Committee of England & Wales 'Court Observation and Fact-Finding Report: The Israeli Military Courts in the West Bank of the Occupied Palestinian Territories' (November 2024)

<https://barhumanrights.org.uk/wp-content/uploads/2020/09/BHRC-Military-Courts-Observation-Report.pdf> last accessed 27 November 2024. 42-42.

¹¹ Review UN records submissions in the Advisory Opinion on Legal Consequences

sine qua non for the recognition of the state of Israel.¹² The denial of the right of return has deprived the Palestinian people of practicing their economic self-determination, depriving them of their assets, land and means to develop as peoples. The pivotal role of return as an element of the people's right to self-determination is affirmed in Article 3 of the Algiers Charter: Universal Declaration of the Rights of Peoples of 1976.¹³ Herein, within the geography of the whole of historic Palestine that is modern day Israel and occupied Palestine, Palestinian self-determination cannot be read in absence of the right of return for all Palestinians.

Within the halls of the UN, Palestine was *diplomatically erased*.¹⁴ The case of Palestine was labelled as a 'humanitarian issue'.¹⁵ It was only for a brief moment in the 1960's and 1970's, in the context of a global south led decolonisation movement, that the colonial nature of Israel's control was recognised.¹⁶

The normalisation of the erasure of the political rights of Palestinians is exemplified in the Oslo Accords (1993) signed between the Palestinian Liberation Organisation (PLO) and Israel, which normalised Israel's multi-faceted control of the Palestinian territories. The Oslo Accords have been argued as void on the grounds of coercion, temporary nature, lack of

¹² Shahd Hammouri, *A Forgotten Detail: The Right of Return Was a Condition of the Establishment of the State of Israel*, OPINIO JURIS (Mar. 11, 2024), <http://opiniojuris.org/2024/03/11/a-forgotten-detail-the-right-of-return-was-a-condition-of-the-establishment-of-the-state-of-israel/> (last visited Nov 19, 2024).

¹³ 'Every people has the right to retain peaceful possession of its territory and to return to it if it is expelled.' Algiers Charter: Universal Declaration of the Rights of Peoples (Algiers, 4 July 1976)

¹⁴ ARDI IMSEIS, *THE UNITED NATIONS AND THE QUESTION OF PALESTINE: RULE BY LAW AND THE STRUCTURE OF INTERNATIONAL LEGAL SUBALTERNITY* (2023). 177-79.

¹⁵ 'The UN to have provided a measure of legitimacy to Israel's occupation of the OPT at a time when the Third World membership of the Organization has been pivotal in developing a universally binding international legal proscription against all forms of alien domination, subjugation, and exploitation, itself one of the bases upon which the right of the Palestinian people to self-determination rests. By choosing a humanitarian/managerial approach to assessing the legality of Israeli actions in the OPT, the constitutional propriety of its occupation regime has been taken as a given by the UN and has therefore been regarded intrinsically, if impliedly, to be legal.' *Id.* 173, 180-183. Shahd Hammouri, *Defense or Domination: The Categories of Israel's Occupation*, CRITICAL LEGAL THINKING (May 18, 2021), <https://criticallegalthinking.com/2021/05/18/defense-or-domination-the-categories-of-israels-occupation/> (last visited Oct 30, 2024).

¹⁶ "Confirms the legality of the people's struggle for self-determination and liberation from colonial and foreign domination and alien subjugation, notably in southern Africa and in particular that of the peoples of Zimbabwe, Namibia, Angola, Mozambique and Guinea (Bissau), as well as of the Palestinian people by all available means consistent with the Charter of the United Nations" *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, GA Res. 2787 (XXVI) UN Doc. A/RES/2787(XXVI) (1972) at para.1; "Condemns all Governments which do not recognize the right to self-determination and independence of peoples, notably the peoples of Africa still under colonial domination and the Palestinian people" *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, GA Res.3070 (XXVII), UN Doc. A/RES/3070(XXVIII) (1973) at para.6.

adherence, and the maxim of *ex turpi causa non oritur*.¹⁷ Further, the Accords primarily set the rules for administering Israel's control over the OTP, such control has been deemed illegal in its totality by the ICJ.¹⁸ Herein, the premises of normalising Israel's domination over the OTP is now irrelevant. Direct reference to the colonial nature of Israel's acts has notably reemerged within the halls of the UN as exemplified in the work of the UN Rapporteur on the Occupied Palestinian Territories, Francesca Albanese;¹⁹ and UN Rapporteur Special Rapporteur on the right to Food, Michael Fakhri.²⁰ This discourse was largely popularised in 2023/2024, where there was a notable reemergence of this framework in the popular discourse. The ongoing 'plausible' genocide is seen as a continuation of colonial policies by Israel, as opined by Albanese in her report 'Genocide as Colonial Erasure'.²¹

Further, it is arguable that the ICJ placed the Palestinian right to self-determination under the umbrella of decolonisation. During its treatment of the *jus cogens* nature of the right to self-determination, the court made several references to the Chagos case where the right to self-determination was situated in the context of decolonisation.²² As elaborated by Judge Yusuf in his separate opinion:

'Israel's excessively prolonged occupation has subjected the Palestinian people to a regime of indefinite alien subjugation and domination which is contrary to all rules and tenets of the law governing belligerent occupation. This is reflected in the realities on the ground, which also include, inter alia, Israel's transfer of its civilian population into the occupied territory, the confiscation of land, the exploitation of natural resources, the extension of its domestic law into the occupied territory and the forced displacement of, and discrimination against, the Palestinian population. It is also corroborated by Israel's repeated denials that the Fourth Geneva Convention is

¹⁷ Professors Asem Khalil & Halla Shoaibi 'Submissions Pursuant to Rule 103' ICC-01/18 (16 March 2020);

¹⁸ Advisory Opinion on Legal Consequences, para. 264; John Quigley, *The Oslo Accords: More Than Israel Deserves*, 12 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 285 (1997).

¹⁹ *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Report by Francesca Albanese, UN Doc. A/77/356 (2022).

²⁰ Starvation and the right to food, with an emphasis on the Palestinian people's food sovereignty, UN Doc. A/79/171 (2024)

²¹ *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, 'Genocide as colonial erasure', Report by Francesca Albanese, UN Doc. A/79/384 (2024).

²² Advisory Opinion on Legal Consequences, paras. 230-234.

applicable to the Occupied Palestinian Territory and its consequent rejection of the rules and principles of the law on belligerent occupation.²³

Similarly, Judge Xue noted:

‘The effects of Israel’s occupation in that regard have little difference from those under colonial rule, which has been firmly condemned under international law’²⁴

This argument is implicitly supported by Judges Tomka, Abraham and Aurescu’s objection to articulating Palestinian self-determination as decolonisation. From their perspective, this conflict is of a ‘different nature’ with many ‘complex legal, political, and historical aspects’ which can only be solved through negotiations.²⁵ Their vague reference to complexity does not build on any known international legal principles which predicates self-determination on negotiation between a militarily superior power with a subjugated people.²⁶ Further, their rationale presupposes good faith of the Israeli state. It is arguable that the long record of violations elucidated by the court and case files overturns that presumption.

Meanwhile, we need to combat epistemic tendencies that would limit our imagination of the Palestinian right to self-determination. In international legal circles, the right to self-determination is one where there is a lack of imagination. In the words of Knudsen:

“Manifestations of ‘self-determination’ in international discourse have been characterised by the presence of *two* conflicting ideas of freedom [...] while the ‘liberal- conservative’ idea of freedom has given priority to the value of *peace*, the ‘radical’ idea has brought *equality* to the fore.” She continues to argue that the liberal conservative idea of freedom has dominated international legal discourse.²⁷ Such prevalence is consistent with the dominance of the western experience in shaping the parameters of the international legal imagination, alongside

²³ Advisory Opinion on Legal Consequences, Separate Opinion of Judge Yusuf. Para.10.

²⁴ Advisory Opinion on Legal Consequences, Declaration of Judge Xue, Para.4.

²⁵ Advisory Opinion on Legal Consequences, Joint opinion of Judges Tomka, Abraham and Aurescu, para 10.

²⁶ The unconditional nature of Israel’s duty to withdraw from the OTP was affirmed in 1982 by the UNGA: ‘Reaffirms the overriding necessity of the *total and unconditional* withdrawal by Israel from all the Palestinian and other Arab territories occupied since 1967, including Jerusalem, which is a primary requirement for the establishment of a comprehensive and just peace in the Middle East’ UNGA ‘The situation in the occupied Arab territories’ UN Doc. A/RES/ES-9/1 (5 Feb 1982). Further review: Ardi Imseis, *Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020*, 31 EUROPEAN JOURNAL OF INTERNATIONAL LAW 1055 (2020).

²⁷ Rita Augestad Knudsen, *Moments of Self-Determination: The Concept of “self-Determination” and the Idea of Freedom in 20th- and 21st Century International Discourse*, Oct., 2013, <http://etheses.lse.ac.uk/923/> (last visited Nov 25, 2024).

the state-centrism of the discipline.²⁸ In mainstream discussions, statehood and democracy are repeatedly prioritised as the pillars of self-determination,²⁹ while they are not necessarily the priority of previously colonised states who have a common history of domination. In practice, such shortcomings are associated with a prolonged obsession with the procedure of self-determination rather than the substance.³⁰

The prevalent reading of self-determination down-tones the sound of the streets in the decolonisation process. The experience of postcolonialism demonstrates that ‘statehood’ or the promise of ‘democracy’ can lead to a perpetual process of trial and error under the current dynamics of the global market.³¹ Building on their common experience of domination, the people in previously colonised states often demanded the prioritisation of non-domination and non-exploitation as the premises of their vision of the future. This is evidenced in the substantive focus of the primary international legal documents pioneered by states of the global south such as the Declaration of the New International Economic Order, and the Declaration on Principles of Friendly Relations.³² These documents reiterate principles of non-intervention, economic self-determination, sovereignty over natural resources ...etc. The focus on economic aspects of self-determination was strongly articulate in the historic speech of the former president of Chile Salvador Allende in his 1972 speech to the GA.³³

Further, the Algiers Charter translated a vision of self-determination for colonised peoples that enshrines non-domination (Section II) and non-exploitation through economic rights (Section III) as hallmarks of self-determination. Indeed, these two substantive elements of self-determination are side-lined from the discussion on Palestinian self-determination in

²⁸ Susan Marks, *State-Centrism, International Law, and the Anxieties of Influence*, 19 LEIDEN JOURNAL OF INTERNATIONAL LAW 339 (2006); Jean D’Aspremont, *ESIL Reflection: International Law, Universality, and the Dream of Disrupting from the Centre – European Society of International Law | Société Européenne de Droit International*, (Oct. 16, 2018), <https://esil-sedi.eu/esil-reflection-international-law-universality-and-the-dream-of-disrupting-from-the-centre/> (last visited Nov 2, 2024).

²⁹ Review for example: ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* (1995). 165-202.

³⁰ Catriona Drew, *The East Timor Story: International Law on Trial*, 12 EUROPEAN JOURNAL OF INTERNATIONAL LAW 651 (2001).665, 724-25.

³¹ EDUARDO GALEANO, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT* (1997). WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (2018).

³² UNGA ‘Declaration on the Establishment of a New International Economic Order’ UN Doc. A/RES/3201(S-VI) (1974); UNGA ‘Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.’ UN Doc. A/RES/2625(XXV) (1971). Also review IMSEIS, *supra* note 14. 174,175.

³³ Shahd Hammouri, *Revisiting Allende’s 1972 Speech at the United Nations General Assembly: Histories Repeated with a Twist*, TWAILR: REFLECTIONS (Jun. 2, 2020), <https://twailr.com/revisiting-allendes-1972-speech-at-the-united-nations-general-assembly-histories-repeated-with-a-twist/> (last visited Jul 27, 2023).

international institutions. Notably, the Algiers Charter also focuses on Cultural rights of peoples in Section III.

Once we articulate Palestinian self-determination as decolonisation, we can invoke the relevant precedents of Angola, South Africa, Namibia, Zimbabwe, Algeria as the markers for imagining the modalities facilitating the Palestinian people's inalienable right to self-determination. Herein, we must look towards relevant UNGA resolutions of the time, hoisting principles of non-domination and non-subjugation as the appropriate dictionary for the exercise of envisioning the modalities of ending the occupation demanded by the ICJ. Further, we must study the wealth of knowledge that has been accumulated on post-colonialism to translate lessons learned into the modalities envisioned.

The value of UNGA Resolutions to the global south and international law is not to be underestimated. As noted by the ICJ in the *Western Sahara* case, UNGA resolutions can provide an indication of state practice and *opinio juris*.³⁴ Notably, in their joint concurring declaration in the *Chagos* case, Judges Cançado Trindade and Robinson stressed the normative value of both the Friendly Relations Declaration and the Declaration on the Granting of Independence which confer this legitimacy, emphasizing that they 'demonstrate the continuing development of the *opinion juris communis* in customary international law'.³⁵ The importance of this development must not be underestimated, as it is representative of the position of states and peoples whose legal positions were disregarded for the majority of international legal history.³⁶

As such, a harmonised reading of the law which gives value to global south state practice, and holistic perspective of the relevant material reality elucidates the colonial nature of Israel's domination of Palestinians and places the question of Palestinian self-determination under the umbrella of decolonisation, and the right of return as a central element to its fulfilment. The building blocks of self-determination in the context of decolonisation starts are established on the basis of non-domination and non-exploitation, and the place to look

³⁴ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996] I.C.J. Rep. 3, at 254-255, at para. 70.

³⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, (Joint Declaration of Judges Cançado Trindade and Robinson) [2019] ICJ Rep 95 (ICJ), at 260.

³⁶ *Ibid*, at 258, para. 2. see also, JOCHEN VON BERNSTORFF & PHILIPP DANN, *THE BATTLE FOR INTERNATIONAL LAW: SOUTH-NORTH PERSPECTIVES ON THE DECOLONIZATION ERA* (2019). LUIS ESLAVA, MICHAEL FAKHRI & VASUKI NESIAH, *BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW: CRITICAL PASTS AND PENDING FUTURES* (2017).

further is UNGA resolutions on decolonisation during the 1950's-80's and following literature on lessons learned from the post-colonial experience.

II. Third State Economic Obligations

Colonialism is characterised by asymmetry between the two parties. People under domination and subjugation are systemically prosecuted for any acts of resistance seeking to challenge the illegal situation. The ICJ affirmed the *erga omnes* nature of state duties towards the Palestinian right to self-determination, thereby affirming that all states share responsibility for the liberation of the Palestinian people.³⁷ This responsibility responds to the material reality of colonisation which poses a threat to international peace and security and places the subjugated population in perpetual precarity.³⁸ As I argue elsewhere, a global south reading of the notion international peace and security is one which enshrines equality and non-domination as the pillars of the international legal system.³⁹

Grave violations of international law prompt third state responsibilities.⁴⁰ The prolonged nature of the wrong-doing renders Israel's state responsibility multifaceted – it is conjointly responsible for the wrong-doing, and for the accumulated failure to enact its responsibility vis-à-vis the wrongdoing through reparations, and repatriation – the right of return being a cornerstone of such responsibility.⁴¹ The enactment of the right of return requires a structural

³⁷ Advisory Opinion on Legal Consequences, para. 232.

³⁸ “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.” Declaration on the Granting of Independence to Colonial Countries and Peoples UNGA Res.1514 (XV)(1960). (hereinafter Declaration on the Granting of Independence) Further the UNGA repeatedly noted that similar grave violations of colonization and apartheid pose a threat to international peace and security for example: “Convinced that the attitude of Portugal towards the African population of its colonies and of the neighboring States constitutes a threat to international peace and security” Question of Territories under Portuguese administration. UN Doc. A/RES/2107(XX) (1965-12-2) preamble. Strongly reiterates its conviction that the situation in South Africa constitutes a threat to international peace and security ‘The policies of apartheid of the Government of the Republic of South Africa’ UN Doc. A/RES/2307 (13 December 1967) para.3.

³⁹ Rabea Eghbariah et al., *Seven Perspectives on International Law and Palestinian Liberation*, LPE PROJECT (Oct. 28, 2024), <https://lpeproject.org/blog/seven-perspectives-on-international-law-and-palestinian-liberation/> (last visited Nov 29, 2024).

⁴⁰ Review Articles 40, 41 in ILC, *Responsibility of States for Internationally Wrongful Acts*, II (2) YEARBOOK OF THE INTERNATIONAL LAW COMMISSION (2001).

⁴¹ John Quigley, *Displaced Palestinians and a Right of Return*, 39 HARV. INT'L. L. J. 171 (1998).

revision of the legal and economic structure of the state of Israel. Herein, state responsibility is to be envisioned as a response to these multi-faceted wrongdoings.

Given Israel's violations of *jus cogens* norms and the *erga omnes* effects of such violations, states have the green light to unilaterally forgo commitments under relevant treaties with the state of Israel according to Article 53 on the Vienna Convention on Treaties, which establishes the primacy of *jus cogens* norms over treaty obligations.⁴² Similarly, states have the green light to forgo the principle of non-discrimination under Article the General Agreement on Trade and Tariffs (1994) vis-à-vis Israel under Article XXI (c) pertaining to measures taken 'in pursuance of' obligations under the UN Charter.

Reluctance to engage third party countermeasures in response to *jus cogens* violations is overturned by the existence of two ICJ decisions which clearly invoke third state obligations.⁴³ As elaborated by Orakhelashvili, the appropriateness of third-states countermeasures in response to *jus cogens* violations is also determined by the nature of the violation.⁴⁴ In the case at hand, we are faced with persistent grave violations of international law that is coupled with political reluctance by economically advanced states, such violations are causing irreparable damage to the effected population. The combination of grave violations and political reluctance has prompted UN experts to declare that the international legal system is at a knife's edge.⁴⁵ These elements render third state unilateral and multilateral countermeasures essential to uphold the integrity of the international legal system. Decolonisation-oriented UNGA resolutions are apt precedents to build on for envisioning such countermeasures. Given its institutional structure, the UNGA provided a space for the ascertainment of some historically side-lined positions of states of the global south.⁴⁶

⁴² ALEXANDER ORAKHELASHVILI, PEREMPTORY NORMS IN INTERNATIONAL LAW (2008). 134-204.

⁴³ For a discussion on how international institutional decisions evade reluctance to enact third responsibility review. *Id.* 270,271.

⁴⁴ "The logical and consequential link between the nature of the relevant violations and the standing of third States to take countermeasures is quite clear." *Id.* 272.

⁴⁵ UN EXPERTS WARN INTERNATIONAL ORDER ON A KNIFE'S EDGE, URGE STATES TO COMPLY WITH ICJ ADVISORY OPINION (PRESS RELEASE), (2024), <https://www.ohchr.org/en/statements/2024/09/un-experts-warn-international-order-knifes-edge-urge-states-comply-icj-advisory> (last visited Dec 1, 2024).

⁴⁶ In the Barcelona Traction Case, Judge Ammoun advocated for categorising UNGA resolutions as a subsidiary source of International law. *Barcelona Traction, Light and Power Company, Limited* (Belgium v. Spain), Separate Opinion of Judge Ammoun [1970] I.C.J. Rep. 1 [*Barcelona Traction Case, Separate Opinion of Judge Ammoun*] at 302.

Herein, with relation to economic obligations, third state obligations laid out by the court can be identified as three intersecting layers, each requires a different set of questions.

1. The First Layer: The Obligation not to Recognise Colonisation

The first layer starts with suspending all economic activity with Israel where it purports to be acting on behalf of the OTP.⁴⁷ Herein, states have the duty to stop all trade and investment in the settlements and any other Israeli establishments in the OTP. The question here, *how does one differentiate economic dealings where Israel purports to be acting on behalf of the OTP?*

Economic relations in the OTP are deeply entangled with the Israeli economy. The occupation of the Palestinian territories cannot be understood in isolation of the overall colonial nature of the Israeli state.⁴⁸ Ever since its inception, Israel created the conditions apt for facilitating the exploitation of the Palestinian economy.⁴⁹ Its economic premises as a state started with the destitution of the Palestinians from their land during al Nakba.⁵⁰ As in any other colonial context,⁵¹ the Palestinian economy has been rendered dependent on the Israel

⁴⁷ “Member States are under an obligation . . . to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, inter alia, the obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory;” Advisory Opinion on Legal Consequences para. 278. A historical precedent here is the UNGA’s request to third states “to discontinue all economic, financial or trade relations with South Africa concerning Namibia and to refrain from entering into economic, financial or other relations with South Africa, acting on behalf of or concerning Namibia, which may lend support to its continued illegal occupation of that Territory;” Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa UN Doc. A/RES/31/7 (1976-11-05) para.10.

⁴⁸ Eghbariah, *supra* note 8.

⁴⁹ Shahd Hammouri, *Systemic Economic Harm in Occupied Palestine and the Social Connections Model*, 22 THE PALESTINE YEARBOOK OF INTERNATIONAL LAW ONLINE 112 (2021); GEORGE T. ABED, THE PALESTINIAN ECONOMY: STUDIES IN DEVELOPMENT UNDER PROLONGED OCCUPATION (1988); Leila Farsakh, *Palestinian Labor Flows to the Israeli Economy: A Finished Story?*, 32 JOURNAL OF PALESTINE STUDIES 13 (2002).

⁵⁰ RASHID I. KHALIDI, THE HUNDRED YEARS’ WAR ON PALESTINE (2020).

⁵¹ RODNEY, *supra* note 29; Theotónio Dos Santos, *The Structure of Dependence*, 60 THE AMERICAN ECONOMIC REVIEW 231 (1970). The UNGA referred to the forced dependency of territories under Portuguese colonization, herein it condemned “the activities of the financial interests operating in the Territories under Portuguese domination, which exploit the human and material re- sources of the Territories and impede the progress of their peoples towards freedom and independence” Question of Territories under Portuguese administration. UN Res. A/RES/2270(XXII) (1967-11-17). Samir Amin, *Underdevelopment and Dependence in Black Africa--Origins and Contemporary Forms*, 10 THE JOURNAL OF MODERN AFRICAN STUDIES 503 (1972).

economy.⁵² The two economies are intertwined in terms of the allocation of natural resources, tourism, energy, currency ...⁵³ This systemic deprivation is exemplified in Israeli land law, which masqueraded colonial land grab.⁵⁴ The institutional structure of domination has created an interdependent relationship on an administrative level as well.⁵⁵ Taking the above into consideration, these legal structures facilitating domination through dependency are premised on illegality that must not be recognised by other states. Further, it must be presumed that information as to the economic entanglements of the two economies are held by Israel, which has persistently upheld a non-cooperative attitude vis-à-vis international mechanisms.⁵⁶

Without recognising the material reality of this institutional structure of domination, and with the expected lack of transparency at Israel's end, those interpreting the decision may limit the scope of prohibited economic dealings only to those with a direct link to the settlements. It is observable, based on recent engagement with the subject matter, that international institutions tend to accept such narrow interpretations.⁵⁷

The narrative of the Commission of Inquiry (COI) and the UN General Assembly (UNGA) reflects a tendency to obfuscate the economic reality of the occupation. For example, in its position paper responding to the ICJ Decision on the illegality of the Israeli occupation, the COI noted: "States must cease all financial, trade, investment and economic relations with Israel that maintain the unlawful occupation or contribute to maintaining it. States must

⁵² Yusif A. Sayigh, *The Palestinian Economy under Occupation: Dependency and Pauperization*, 15 JOURNAL OF PALESTINE STUDIES 46 (1986); Taher Labadi, *How Israel Dominates the Palestinian Economy*, JACOBIN (Dec. 20, 2023), <https://jacobin.com/2024/01/israel-palestine-settler-colonialism-labor-economy> (last visited Nov 29, 2024).

⁵³ Generally review ALAA TARTIR, TARIQ DANA & TIMOTHY SEIDEL, POLITICAL ECONOMY OF PALESTINE: CRITICAL, INTERDISCIPLINARY, AND DECOLONIAL PERSPECTIVES (2021).

⁵⁴ HADEEL S. ABU HUSSEIN, THE STRUGGLE FOR LAND UNDER ISRAELI LAW: AN ARCHITECTURE OF EXCLUSION (2021).

⁵⁵ Al Haq, BADIL, Palestinian Center for Human Rights, Al Mezan Center for Human Rights, Addameer, Civic Coalition for Palestinian Rights in Jerusalem, Cairo Institute for Human Rights Studies, Habitat International Coalition – Housing and Land Rights Network, 'Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports' (2019), https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf accessed 4 July 2023.

⁵⁶ Review arguments in Petition to the UN General Assembly: unseating Israel is the only way to preserve the integrity of the international legal system., LAW FOR PALESTINE, <https://law4palestine.org/petition-to-the-un-general-assembly-unseating-israel-is-the-only-way-to-preserve-the-integrity-of-the-international-legal-system/> (last visited Dec 2, 2024).

⁵⁷ Thus far international organisations have demonstrated a position that can be described as orchestrated mediocracy vis-à-vis Palestine. As I argue elsewhere, relevant UN bodies have assessed the context through liberal lens which overlooks lessons learned from colonisation. Shahn Hammouri, *The Commission of Inquiry on Palestine and Israel: To Speak of Genocide from a European Liberal Lens*, 2024 PEACE HUMAN RIGHTS GOVERNANCE 1 (2024).

review their trade and economic agreements with Israel that involve products and produce of the unlawful settlements. The burden is on Israel to establish that any product or produce does not originate in the settlements”.⁵⁸ The later sentences demonstrate the COI’s impulse to limit the scope of acts which ‘maintain the unlawful occupation or contribute to maintaining it’ to economic acts relevant to the context of the settlements. This reading sharply limits the scope of state obligations to one level, and within parameters that are not responsiveness to the relevant economic reality.

Herein, the imagined solution of differentiating between economic dealings relevant to the OPT and those relevant to Israel would catch only a fraction of the economic relations that facilitate the entrenchment of the occupation. When looking at the relevant economic reality, we can conclude that the proposed approach will lead us down a path where we are stuck in *process* rather than substance.⁵⁹ Based on existing engagements with the international institutions, the *process* of untangling the two intertwined economies for the purpose of concrete action would dominate the conversation without avail. In other words, such a path would instigate *orchestrated institutional mediocracy*. Such a path only promises the prolongation of the occupation and does not respond to the court’s proclamation that Israel’s presence in the OPT must end as *rapidly as possible*.⁶⁰ Herein, the first layer, merely represents only the first step of not recognising colonial acts.

2. The Second Layer

The second layer of third state responsibility articulated by the ICJ includes steps to “to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territories”. Therein, states have the duty to undertake due diligence to ensure that its subjects and government are not undertaking acts which impede on the Palestinian people’s right to self-determination.

The court’s choice of the word ‘prevent’ is curious, its indeterminacy opens a leeway for interpretations that limit the scope of the obligation to the fashionable remits of the UN Guiding Principles on Business and Human Rights.

⁵⁸ ‘Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (Oct 18, 2024)

https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2024-10-18-COI-position-paper_co-israel.pdf (Last visited Nov 2, 2024)

⁵⁹ Discussing the case of East Timor, Drew also observes the international institutional tendency to focus on process rather than substance in relation to the question of self-determination. Drew, *supra* note 28.

⁶⁰ Advisory Opinion on Legal Consequences, para. 267.

States are asked to undertake due diligence to decide whether a specific economic relation further entrenched the occupation. Imagining how such responsibility can be taken forward starts with asking the question, what are the acts that *further entrench Israel's presence in the OPT*?

Once again, the court set a standard that is preconditioned on non-existent transparency. Further, it presumes that there is a way to untangle economic relations which entrench from those who do not – risking a position of *orchestrated institutional mediocracy*.

Alternatively, taking the path of a functionalist interpretation of the court's words under the umbrella of self-determination as decolonisation can lead us to another question from which to base the third-state economic modalities to end the illegal occupation of Palestine and safeguard the self-determination of its peoples. It starts with the question, *what is the purpose of third state responsibility in this case?*

Building on the analysis presented thus far, it becomes clear that states have the duty to cooperate to end the colonisation of the Palestinian people.⁶¹ The centrality of ending the Israeli occupation of Palestine to safeguarding peace and security in the region was noted by the UNGA in 1976.⁶²

One cornerstone of the lessons learned from decolonisation is that colonisation stops when it becomes economically unviable.⁶³ In other words, the most appropriate framework for state responsibility as decolonisation is that of economic restrictions on the perpetrating state to induce compliance with international law.⁶⁴ Such measures would respond to the reality of the perpetrator state's bad faith. This was clearly noted by the UNGA in 1982, when it called upon states 'to cease forthwith, individually and collectively, all dealings with Israel in order

⁶¹ This duty was repeatedly reiterated in resolutions on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, for example review UN Doc. A/RES/2908(XXVII) (1973).

⁶² "Reaffirms that a just and lasting peace in the Middle East cannot be achieved without Israel's with- drawal from all Arab territories occupied since 1967 and the attainment by the Palestinian people of their inalienable rights, which are the basic prerequisites enabling all countries and peoples in the Middle East to live in peace;" The situation in the Middle East, UN Doc. A/RES/31/61(1976-12-09) para.3.

⁶³ AMILCAR CABRAL, RESISTANCE AND DECOLONIZATION (2016). Chapter Four: Economic Resistance; Lee Jones, *South Africa: Sanctioning Apartheid, in SOCIETIES UNDER SIEGE: EXPLORING HOW INTERNATIONAL ECONOMIC SANCTIONS (DO NOT) WORK 0* (Lee Jones ed., 2015), <https://doi.org/10.1093/acprof:oso/9780198749325.003.0003> (last visited Nov 5, 2024). Also generally review: FRANTZ FANON, A DYING COLONIALISM (1959).

⁶⁴ The ILC Draft Articles on state responsibility International Law Commission do not prescribe a particular way to cooperate to end a grave illegality. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Supplement No. 10 (A/56/10), chp.IV.E.1, November 2001, Article 41 Commentary para.3

totally to isolate it in all fields'.⁶⁵ Economic relations with the colonial state “constitute a major obstacle to political independence and to the enjoyment of the natural resources of those Territories by the indigenous inhabitants”.⁶⁶ The colonised people aspire to an end of exploitative relations with the dominating state,⁶⁷ such relations are premised on entangled illegalities that third states have the duty not to recognize.

Herein, from this perspective, **third state economic responsibility can be summed as all economic measures within the state’s influence which can impede on Israel’s capacity to maintain its colonisation.**

Overall, the UNGA noted “any economic or other activity which impedes the implementation of the Declaration [on granting independence] and obstructs efforts aimed at the elimination of colonialism, apartheid and racial discrimination in southern Africa and other colonial Territories violates the political, economic and social rights and interests of the peoples of the Territories and is therefore incompatible with the purposes and principles of the Charter”.⁶⁸ Further, the UNGA affirmed that continued trade relations with a state committing such grave violations of international law encourages that Government to “defy world opinion”,⁶⁹ “aggravates the danger of violent conflict”,⁷⁰ and nullifies “the efforts of the UN to solve the problem”.⁷¹ In 1982, the UNGA had asked states ‘to sever diplomatic, trade and cultural relations with Israel’⁷²

⁶⁵ UNGA ‘The situation in the occupied Arab territories’ UN Doc. A/RES/ES-9/1 (5 Feb1982) para. 13.

⁶⁶ Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa UN Doc. A/RES/31/7 (1976-11-05)

⁶⁷ RETURN TO THE SOURCE: SELECTED TEXTS OF AMILCAR CABRAL, NEW EXPANDED EDITION, (2022), <https://www.jstor.org/stable/jj.17102139> (last visited Nov 5, 2024). 30,31.

⁶⁸ Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa UN Doc. A/RES/31/7 (1976-11-05) preamble.

⁶⁹ “Urgently appeals to the major trading partners of the Republic of South Africa to cease their increasing economic collaboration with the Government of South Africa, which encourages that Government to defy world opinion and to accelerate the implementation of the policies of apartheid;” para.1. The policies of apartheid of the Government of the Republic of South Africa. UN Doc. A/RES/2054(XX) (1965-12-15)

⁷⁰ The UNGA “Draws the attention of the main trading partners of South Africa to the fact that their increasing collaboration with the government of South Africa despite repeated appeals by the General Assembly has aggravated the danger of a violent conflict, and requests them to take urgent steps towards disengagement from South Africa and to facilitate effective action to secure the elimination of apartheid.” “The policies of apartheid of the Government of the Republic of South Africa” UN Doc. A/RES/2202(XXI)[A] (1966-12-16)

⁷¹ The policies of apartheid of the Government of South Africa (1969-11-21) UN Doc. A/RES/2506(XXIV)[B] preamble.

⁷² UNGA ‘The situation in the occupied Arab territories’ UN Doc. A/RES/ES-9/1 (5 Feb1982). para.12(d).

States were asked to enact these policies with regards to investors incorporated in their jurisdiction.⁷³ The UNGA carefully articulated that states have the duty to ensure that such investors do not undertake economic activities that “are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises and to prevent new investments that run counter to the interests of the inhabitants of those Territories;”⁷⁴

In case of Israel, in 1982, the UNGA generally deplored ‘any political, economic, military and *technological* support to Israel that encourages Israel to commit acts of aggression and to consolidate and perpetuate its occupation and annexation of occupied Arab territories [emphasis added]’.⁷⁵

The most common step towards third state economic responsibility towards decolonisation is an arms embargo. An energy embargo would disincentivise arms corporations invested in maximising profit from Israel’s colonisation. Such an embargo extends to the transit and sometimes the purchase of weapons. This measure responds to the need to stop the proliferation of arms in the asymmetric war economy. For example, in the case of South Africa, the UNSC demanded an arms embargo in 1963.⁷⁶ In the case of Angola, the UNGA used language which resonates with that of the ICJ in the current case. It requested “all Member States to deny Portugal any support or assistance which may be used by it for the suppression of the people of Angola”.⁷⁷ In effort to end the Portuguese colonisation of multiple African states, the UNGA demanded “states to take all measures to prevent the sale and supply of arms and military equipment to the Portuguese government”⁷⁸

⁷³ Question of Territories under Portuguese administration – (1965-12-21) UN Doc. A/RES/2107(XX) para.6. “Appeal to all States to render moral and material assistance to the Republic of Guinea to strengthen and defend its independence and territorial integrity” Security Council resolution 290 (1970) [on Portuguese military actions against Guinea] UN Doc. S/RES/290(1970) (1970-12-08) at para.4. Also review UNSC ‘Resolution 569 (1985) [on sanctions against South Africa]’ S/RES/569(26 July 1985) at para.6.

⁷⁴ Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa UN Doc. A/RES/31/7 (1976-11-05) para.7.

⁷⁵ UNGA ‘The situation in the occupied Arab territories’ UN Doc. A/RES/ES-9/1 (5 Feb 1982). para 8.

⁷⁶ Security Council Calls upon all States to cease the sale and shipment of arms to South Africa. S/RES/181(1963) 1963-08-07

⁷⁷ The situation in Angola. A/RES/1819(XVII)1962-12-18 at 7. Similar language is used by the security council: “all States should refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the peoples of the Territories under its administration” Security Council resolution 180 (1963) [on the question of Territories under Portuguese administration, UN Doc. S/RES/180(1963) 1963-07-31

⁷⁸ ‘Territories under Portuguese Administration’ A/RES/1807(XVII) (1962-12-14) para.7.

In its report on taking the ICJ Decision forward the Commission of Inquiry seemed to accept that a differentiation between types of weapons as defensive and offensive, advising states to avoid supplying the latter.⁷⁹ This distinction risks distorting the effectiveness of the measure. In the case of South Africa, the UNSC had generalised the embargo to include “arms and related material” referred to in resolution 418(1977) shall include, in addition to all nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and equipment as well as weapons and ammunition, spare parts and supplies for the aforementioned and the sale or transfer thereof⁸⁰

Indeed, the premises for an arms embargo against Israel have been repeatedly established. In 1976, the UNGA asked states to refrain from supplying military aid and assistance that further entrenches Israel’s occupation of the OPT.⁸¹ In 1982, the UNGA asked states ‘12.(a) To refrain from supplying Israel with any weapons and related equipment and to suspend any military assistance which Israel receives from them’ ... ‘(b) To refrain from acquiring any weapons or military equipment from Israel’⁸² In April 2024, the Human Rights Council adopted a resolution where it called upon states to ‘cease the sale, transfer and diversion of arms, munitions and other military equipment to Israel’.⁸³ The case for an arms embargo against Israel has gained further strength under the duty to prevent genocide which was engaged after the ICJ’s decision in the case of *South Africa v. Israel*.⁸⁴

Another common measure of state responsibility towards decolonisation is the imposition of an energy embargo. In 1964, a research paper published as part of a conference on the use of economic measures against Apartheid South Africa noted the potential of withholding oil as

⁷⁹ ‘Position Paper of the United Nations Independent Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel’ (Oct 18, 2024) https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiopt/2024-10-18-COI-position-paper_co-israel.pdf (Last visited Nov 2, 2024) para. 26.

⁸⁰ UNSC ‘Resolution 591 (1986) / adopted by the Security Council at its 2723rd meeting’ UN Doc. S/RES/591(1986) (28 November 1986).

⁸¹ The situation in the Middle East, UN Doc. A/RES/31/61(1976-12-09) para.5.

⁸² Also review 12. Calls upon all Member States to apply the following measures:

(a); UNGA ‘The situation in the occupied Arab territories’ UN Doc. A/RES/ES-9/1 (5 Feb 1982) paras. 12 (a) and (b).

⁸³ Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice* (Geneva: United Nations, 2024) UN Doc. A/HRC/RES/55/28 at para.14.

⁸⁴ Shahd Hammouri, *The Legal Case for Imposing Embargoes on Israel*, AL JAZEERA (Apr. 3, 2024), <https://www.aljazeera.com/opinions/2024/4/3/the-legal-case-for-imposing-embargoes-on-israel> (last visited Dec 1, 2024).

an effective economic counter measure.⁸⁵ The paper also noted that the key issue with such an embargo, in the same way as with any embargo on Israel today, was the enforcement of such measures, particularly when powerful states were unwilling to offer support or enforcement.⁸⁶

In 1963, the UNGA instated an embargo on petroleum products by the UNGA.⁸⁷ A later oil embargo was enacted against South Africa and other states by oil producing Arab states for support of Israel during the 1973 Yom Kippur War.⁸⁸ The effects of this embargo would gain the attention of the UN Special Committee against Apartheid, which had shown limited interest previously in such measures.⁸⁹ This interest would lead to recommendations at the UNGA resulting in the drafting of UNGA 3411 on the situation in South Africa in 1973, appealing for states to impose an “effective embargo on the supply of petroleum, petroleum products and strategic raw materials to South Africa”.⁹⁰ This call for an oil embargo would be repeated in nearly every subsequent UNGA resolution on South Africa and its apartheid policies, granting legitimacy to the measures that would be adopted by other organisations, including OPEC.⁹¹

Other economic activities that limit the colonising state’s capacities to subjugate include not allowing the perpetrator’s ships to port, to refuse landing or passage of the perpetrator’s air crafts, to boycott that state’s goods, not to export arms to that state, to withhold any trade relations with it.⁹² Further, the UNGA noted the role of the finance industry in the colonising economy and asked states ‘to refrain from extending loans, investments’ to the perpetrator

⁸⁵ Brian Lapping, ‘Oil Sanctions against South Africa’ 1964 in Ronald Segal, ‘Sanctions against South Africa’ 1964 (penguin; First Edition 1 Jan.1964)

⁸⁶ Shipping Research Bureau, Embargo Apartheid oil secrets revealed, (Amsterdam University Press 1995) available at: https://kora.matrix.msu.edu/files/50/304/32-130-1C09-84-Embargo_Apartheids_Oil_Secrets_Revealed%20opt.pdf [accessed 4 November 2024]

⁸⁷ Question of South West Africa. UN Doc. A/RES/1899(XVIII) (1963-11-13) Para 7 a,b.

⁸⁸ Britannica, Arab oil embargo, Available at: <<https://www.britannica.com/event/Arab-oil-embargo>> accessed 4 November 2024

⁸⁹ P.17, Shipping Research Bureau, Embargo Apartheid oil secrets revealed, (Amsterdam University Press 1995) available at: https://kora.matrix.msu.edu/files/50/304/32-130-1C09-84-Embargo_Apartheids_Oil_Secrets_Revealed%20opt.pdf [accessed 4 November 2024]

⁹⁰ Para. 11, Situation in South Africa, UN General Assembly resolution 3411 (XXX) (28 November 1975)

⁹¹ P.17, Shipping Research Bureau, Embargo Apartheid oil secrets revealed, (Amsterdam University Press 1995) available at: https://kora.matrix.msu.edu/files/50/304/32-130-1C09-84-Embargo_Apartheids_Oil_Secrets_Revealed%20opt.pdf [accessed 4 November 2024]

⁹² The policies of apartheid of the Government of the Republic of South Africa. A/RES/1761(XVII) 1962-12-14 at para.4. Question of Territories under Portuguese administration – (1965-12-21) UN Doc. A/RES/2107(XX) para.6; ‘The policies of apartheid of the Government of South Africa’ UN Doc. A/RES/2506(XXIV)[B]1969-11-21 at para.5.

state.⁹³ In 1982, the UNGA asked states ‘[t]o suspend economic, financial and technological assistance to and co-operation with Israel’⁹⁴

The UNGA repeatedly reiterated the state duty to support the people in their legitimate struggle of national liberation,⁹⁵ and to assist the people in their struggle for liberation.⁹⁶ This duty extended to refraining from any economic activity which might assist the colonising state’s effort to suppress the people’s struggle for liberation.⁹⁷ On the other side, the UNGA encouraged supporting the colonized population in their struggle for liberation. In the context of the illegal occupation of Namibia, it called on member states and international organisations to increase and sustain “support and material, financial, military and other assistance to the South West Africa People's Organization to enable it to intensify its struggle for the liberation of Namibia”.⁹⁸ Further, it came hand in hand with, the affirmation of the perpetrator state’s duty to urgently release political prisoners.⁹⁹

Settler colonialism is premised on demographic changes of the area. A danger that has been repeatedly noted by the international community in relation to Palestine. In response, it is apt to reiterate third state duty to discourage settler immigration to the colonised entity.¹⁰⁰

⁹³ ‘The policies of apartheid of the Government of South Africa’ UN Doc. A/RES/2506(XXIV)[B]1969-11-21 at para.5(c).

⁹⁴ UNGA ‘The situation in the occupied Arab territories’ UN Doc. A/RES/ES-9/1 (5 Feb 1982). Para.12(c).

⁹⁵ Shahd Hammouri, *The Palestinian People Have the Right to Resistance by All Means Available at Their Disposal*, LAW FOR PALESTINE (Oct. 8, 2023), <https://law4palestine.org/the-palestinian-people-have-the-right-to-resistance-by-all-means-available-at-their-disposal-dr-shahd-hammouri/> (last visited Nov 11, 2024).

⁹⁶ “Urges all States and organizations to provide increased assistance to the national movement of the oppressed people of South Africa against the policies of apartheid, in the light of the recommendations contained in the report of the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa” ‘The policies of apartheid of the Government of South Africa’ UN Doc. A/RES/2506(XXIV)[B] (1969-11-21).

⁹⁷ Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa UN Doc. A/RES/31/7 (1976-11-05) para.9.

⁹⁸ ‘Declaration on Namibia and Programme of Action in Support of Self-Determination and National Independence for Namibia’ UN Doc. A/RES/S-9/2 (3 May 1978).

⁹⁹ Question of South West Africa. UN Doc. A/RES/1899(XVIII) (1963-11-13); Security Council resolution 191 (1964) [on persons imprisoned, interned or sentenced to death for their opposition to the policy of apartheid] 1964-06-18 UN Doc. S/RES/191(1964); Security Council resolution 311 (1972) [on policies of apartheid in South Africa] UN Doc. S/RES/311(1972) (1972-02-04) para 4.

¹⁰⁰ “To take effective steps to prevent or discourage the emigration to Southern Rhodesia (Zimbabwe) of any individuals or groups of individuals under their jurisdiction;” Question of Southern Rhodesia’ UN Doc. A/RES/31/154 A (1976-12-20).

The process of decolonisation has been historically contested by mainstream media in the global north.¹⁰¹ Noting the role of media and narratives in shaping the conditions that normalise colonisation, the UNGA invited states to establish organisations focused on public awareness.¹⁰² Further, the UNGA noted “the continued need to mobilize world public opinion against the involvement of foreign economic, financial and other interests in the exploitation of the natural and human resources, which impedes the independence of colonial Territories, particularly in Africa”¹⁰³

Such resolutions offer clear historical lessons that can be harnessed to facilitate the global effort to end Israeli alien domination and subjugation of the Palestinian people. They provide us with a basis for thinking about unilateral and multilateral state responsibility vis-à-vis Israel. Further, the decolonization framework responds to the material reality of the lived Palestinian reality and offers realistic premises for envisioning the modalities of ending the Israeli occupation of the OPT. Attempts to limit the scope of third state economic responsibility only to a narrow reading of the first layer is a denial of the brute reality experienced by the Palestinian people, disrespect to lessons learned from colonization and an acceptance of the prolongation of their suffering.

Recommendations:

- Imagining the modalities of ending the Israeli occupation of Palestine must fall under the umbrella of self-determination as decolonisation. To limit self-determination to statehood is a deflection.

¹⁰¹ Generally review: EDWARD S. HERMAN & NOAM CHOMSKY, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA* (1994); KEITH BOLENDER, *MANUFACTURING THE ENEMY: THE MEDIA WAR AGAINST CUBA* (2019).

¹⁰² “Invites all States to encourage the establishment of national organizations for the purpose of further enlightening public opinion on the evils of apartheid and to report annually to the Secretary-General on the progress and activities of such organizations;” ‘The policies of apartheid of the Government of the Republic of South Africa’ UN Doc. A/RES/2307 (13 December 1967)

¹⁰³ Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and People in Southern Rhodesia and Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa UN Doc. A/RES/31/7 (1976-11-05) preamble and para.14 which particularly focuses on raising public awareness with relation to the pillaging of natural resources.

- All economic activity which feeds the Israeli war economy further entrenches the Israeli Occupation of Palestine.
- The modalities of enacting the right of return must be a solid element of these discussions.
- Three-way arms embargo (including other relevant technologies of policing and surveillance) and energy embargo.
- A resolution is needed to clearly condemn the misconduct of global media outlets and social media platforms.
- The unseating of Israel via the upcoming accreditation process is vital. Review [letter here](#).
- Direct action with relation to the release of political prisoners and instating protections.
- Businesses have an independent duty to divest from the Israeli war economy.
- Review of the premises of the UN Database on Businesses in the OPT in line with the ICJ decision.
- Establish a committee on reparations that builds on relevant global south expertise – reference to the work of the likes of [Tendayi Achiume](#)
- Support audio-visual repository of evidence that is publicly accessible.
- Centring global south expertise.
- Reiterating the Palestinian right of resistance building on Human Rights Council, *Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice* (Geneva: United Nations, 2024) UN Doc. A/HRC/RES/55/28. Also review the separate opinion of Judge Hillary Charlesworth
- Reiterating Judge Tladi's position in his separate opinion that Israel's claim to security cannot override Palestine's claim to security.

Notable issues that must be taken into consideration:

- To limit third state responsibility to economic dealings in the settlements is a reductive reading of the decision and does not rise up to the seriousness of the crimes we are witnessing or respond to the economic reality of the colonisation of Palestine.

- Oslo has no legal value.
- The terrorism framework may not be invoked in the case of Palestine, the affirmation that Palestinians have the legitimate right of resistance. [resolution 4061 (1972) on the definition of terrorism] Review [position paper here](#).
- Self-determination is not premised on negotiations. Review the work of [Ardi Imsies](#)
- The negotiations between Hamas and Israel are premised on negotiating the illegal. Israel has the duty of immediate ceasefire, withdrawal of forces from Gaza and release of political prisoners. Israel cannot claim security concerns or self-defence in this context as affirmed by the court. As repeatedly asserted by Hamas, adherence to these legal obligations secures the release of the hostages, and proper independent accountability mechanisms can be put in place to investigate any violations at their end.
- The US is a not merely a third state to this conflict.
- The arms embargo cannot be realistically limited to arms used against Palestine/so called offensive weapons.