

Defend International Law – International Commission of Jurist Conference: *A Palestinian state – 75 years of broken promises. The right to self-determination*
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***On the right to self-determination for the
Palestinian People. From the narrative of conflict between Israel and
Palestine to recognizing Israel's settler-colonial occupation***
by Francesca Albanese

Good afternoon distinguished guests,

I am deeply grateful to Defend International Law and to the International Commission of Jurists for organizing this event and inviting me. And, of course, my gratitude also goes to you, fellow panelists, and the participants, whom I warmly salute.

The invitation to this conference, which I enthusiastically accepted, looked like an opportunity to get to know better the socio-political landscape involved with the question of Israel-Palestine in Norway. Thus, I eagerly indicated to the friends of Defend International Law my availability to have other engagements while here. I said: 'use all of my time'. After dozens of meetings in two days, I can assert: I had definitely underestimated Norwegian efficiency! Thank you for keeping me busy and making me feel so warmly welcome.

If the level of participation in this conference, from the panelists and attendants, bears testament to the interest that Norwegians have in the question of Palestine, I can say that I am in a privileged place. In Europe, the debate on the situation of Palestinians, who have been living under Israeli military control and 'colonial rule' for 55 years, is often terribly distorted and obscured.

Before I delve into the first report I presented to the UN general Assembly last October, allow me to briefly explain my role as UN Special Rapporteur, as not everyone may be familiar with its functions. Along with other 54 Special Rapporteurs, I have been appointed by the UN Human Rights Council for a term of up-to-6 years. While most Special Rapporteurs are called to report to the Council itself and to the General Assembly on specific human rights issues, I have a 'country mandate' together with other 13 Special Rapporteurs. The mandate I hold was created in 1993 to report on "Israel's violations of international law in the Palestinian territory occupied since 1967, namely the West Bank, East Jerusalem, and the Gaza Strip" – back then PA did not exist yet. I am now the 8th person and the first woman to hold this role. Country-specific Special Rapporteurs are meant to base their reports primarily on country visits. In my case, such visits have not yet been facilitated by Israel against its obligations under international law and as a member of the UN, and despite the fact I am officially invited by Palestinian authorities.

I decided to focus my first report to the UN General Assembly, on the right to self-determination of the Palestinian people in the occupied Palestinian territory for two reasons. First, because the right is foundational to all other rights; it has been granted to the people of Palestine since 1919 with the Covenant of the League of Nations, at a time when 70% of Palestinians were Muslims,

20% Christians and 10% Jews, and then recognized as an “inalienable” right of the Palestinian people by several UN resolutions. Yet, this right remains unrealized.

Second, because, despite being central to the international consensus on how to resolve the erroneously called ‘Israel-Palestine conflict’, the legal meaning and implications of self-determination are either absent from or gravely misunderstood in the current debate. The political, humanitarian, and economic approaches that have been extensively deployed by the international community to address the continuously deteriorating situation in the occupied Palestinian territory have, without exception, failed. Instead of challenging Israel’s illegal occupation, they have normalized it.

In recent years, the slow but progressive recognition of the apartheid regime in the occupied Palestinian territory has proven cardinal and necessary to shift the analytical focus from the decontextualized and siloed analysis of single violations of international law to the very system through which Palestinians are dominated under Israeli rule. Yet, the Apartheid framework, on its own, is not sufficient to fully understand the gravity of the situation and advance solutions, because it circumvents, without resolving, one critical issue, which is clear in terms of international law and consensus: the recognition of the Palestinian people’s collective right to self-determination.

The right to self-determination is a critical piece of the puzzle, which gives meaning to the apartheid framework, which cannot be dismissed only on the ground that - as many seem to infer - ‘it is not like South Africa’. The apartheid framework is universal and the case at hand is not and does not need to be entirely like South Africa, despite there are many similarities between apartheid in South Africa and in the occupied Palestinian territory. In South Africa, apartheid was established within its own State boundaries and over its own citizens. Instead, the Israeli apartheid over the occupied Palestinian territory is somewhat also reminiscent of Namibia, where the South African apartheid regime established a prolonged occupation deemed illegal by the International Court of Justice, along the lines now used to assert the illegality of the Israeli occupation and the immediate necessity for its unconditional dismantlement.

The right to self-determination - a founding principle of the UN Charter and a fundamental right - asserts people’s entitlement to determine their political status and to pursue their economic, social and cultural development, independently and free from alien domination or interference. A 55-year-long occupation - which has already been criticized as illegal by the majority of authoritative legal scholarship and UN figures - is quintessentially incompatible with the law of self-determination.

The Oslo Accords have given the illusion that an independent Palestinian State was in the making. And this is true: a State of Palestine exists, but in captivity: a government of subjugated people that lacks full jurisdiction over its own residents, territory and resources cannot function independently.

On this let me stress that I am aware that the government of Norway does not recognise the State of Palestine. This does not change the fact that the State of Palestine exists under international law and MonteVideo criteria.

The very occupation Israel has maintained since 1967 over the West Bank, East Jerusalem and Gaza Strip is geared toward the non-realization of the four constitutive elements of the right to self-determination of the Palestinian people. These four elements are:

1. First, **territorial sovereignty**, which Israel violates by seizing, annexing, and fragmenting the occupied Palestinian territory in bantustans of shattered landscapes and lives, and transferring its own civilian population into it, creating colonies. This reality is profoundly illegal and amounts to a war crime.
2. Second, **sovereignty over natural resources**, necessary to develop an independent Palestinian economy, which Israel violates by extracting and exploiting Palestinian resources in order to generate profits benefiting third parties, including the settlers. As these products are the outcome of the commission of a war crime, third States are *de jure* banned from trading and marketing them: doing otherwise makes them complicit.
3. Third, **cultural existence of and as a people**, which Israel violates by appropriating, erasing and suppressing symbols of Palestinian identity, including by imposing a ban on the Palestinian flag, on Palestinian school curriculum by imposing a sanitized curriculum which eliminates Palestinian history, and by apprehending, seizing and converting Palestinian sites in Israeli cultural venues.
4. **Formation and expression of the Palestinian polity**, the beating heart of self-determination, which Israel violates by interfering with the formation of political will and repressing political activity, as epitomized by the draconian persecution of reputable Palestinian human rights organizations.

This systematic and persistent violation has been characterized by a logic and practice of ‘displace the local Palestinians to replace them with its own citizens’ (a war crime in and of itself). This is the hallmark of settler-colonialism, which is intrinsically incompatible with international law and the multilateral order that emerged after the Second World War and consolidated through the global decolonization movement as of the 1950s.

Within the framework of the law of self-determination, the use of force demanded to maintain the Israeli occupation is unlawful - because force is only justified if authorized by the UN Security Council or in response to an imminent threat, and neither is the case here. So, Israel’s occupation can be seen as an act of aggression that cannot be justified as self-defense (exactly as it is the case of Russia’s occupation of Crimea and Ukraine). The sacrosanct security of one people cannot legitimize the total subjugation of another.

This situation calls for many changes, that I describe as a fundamental paradigm shift in the way the Question of Palestine is approached.

This includes:

1. First: Recognizing that this is not an ‘**intractable**’ conflict between two parties borne of irreconcilable rivalry and an incompatible sense of identity, presupposing a false equivalence between the parties. It is the result of a reality shaped by profound and protracted injustice, where two peoples are trapped by an **anachronistic settler-colonial enterprise**, but with different agency, responsibility and suffering: one is the occupier, the

other is the occupied. One is the colonizer, the other, is the colonized. In this context, bilateral peace negotiations between two inequitable protagonists are doomed to fail. It is immoral to request them, it would mean “negotiating the illegal” in the words of Professor Ardi Imseis. The end of Israel’s illegal occupation of the occupied Palestinian territory cannot be made contingent on negotiations. Rather, it must be, together with the realization of the right to self-determination of the Palestinian people, an unconditional demand, which implies guarantees of non-repetition and reparations. Only on this basis can meaningful discussions about a political solution be constructively conducted.

2. Second: it is necessary to re-establish the **primacy of the international rule of law** upon which the maintenance of the international order is premised.
 - a. The right to self-determination and the prohibition of apartheid, aggression, annexation are **peremptory norms of international law, derogation from which is not permitted**. These give rise to obligations *erga omnes*: Third States, including Norway, are under the obligation not to recognize as lawful, aid or abet the illegal situation created by Israel in the occupied Palestinian territory. This extends to the government itself as well as private actors which operate under Norwegian jurisdiction. On this, I note that the report drafted by LO, *Don’t buy into the occupation*, is paramount and it should be disseminated widely.
 - b. Economic and diplomatic measures, as afforded by the UN Charter and widely used against Russia, for example, should be considered.
 - c. Third States should also pursue accountability for perpetrators of war crimes and crimes against humanity both through the ongoing ICC investigation and through universal jurisdiction.
 - d. As the UN Security Council is paralyzed, the request of the advisory opinion to the ICJ on the ‘legal consequences’ of Israel’s refusal to end the occupation and to respect the right to self-determination of the Palestinian people represents a first step to reassess the primacy of international law. This, however, should not be subjected to the same negligence as the 2004 Advisory Opinion on the Wall, but should be a first step to realign justice closer to law rather than politics.
 - e. The exceptionalism demonstrated towards Israel’s non-compliance with its legal obligation only undermines the primacy of the international rule of law, and tarnishes the image, trustworthiness, and role of the United Nation-system.
3. Third, the deployment of a protective presence on the ground. Ensuring protection to the subjugated population is necessary “to constrain the violence routinely used in the occupied Palestinian territory and protect the Palestinian population” while dismantling the occupation as well as its unlawful manifestations, including settler-colonialism and apartheid. Israel’s objection and US veto to UN peacekeeping interventions can be circumvented by upgrading the current humanitarian presence in oPt to a ‘protective’ one through international physical presence at checkpoints, refugee camps and colonies, and any sensitive areas. This can be developed along the lines of the ‘refugee affairs officers’ deployed by the UN across the oPt during the first intifada to provide protection through their ‘neutral presence’.
4. Fourth, There is a significant problem with the space to change this: the space for civil society working in and on Israel and Palestine is increasingly shrinking. The weaponization of the IHRA definition of antisemitism, which conflates criticisms of Israel with anti-

Semitism, has created a chilling effect on free speech and civic-activism in defense of Palestinian rights, eroding the protection stemming from any democracy and freedom of expression, and risking to further endanger Jewish individuals and communities outside of Israel.

Let me conclude with one note: the need to end this violence and impunity is as urgent as ever for the Palestinian people, but also for the Israelis. It is crystal clear that decades of impunity and violence corrupt and corrode the very foundations of a society: no one can dehumanize another people without being dehumanized internally; and no one can deliver the occupation in the brutal way it is delivered without being corrupted themselves.

Thank you.