

# Isreal-Palestine Conflict In The Context Of Applicable Princiles Of International Law

Ankit Raghuvanshi\*

The conflict between Israel and Palestine has been going on for a considerable period of time in which a number of events have taken place which called for the application of various principles of International Law. These principles had application from both the parties and also these principles had varied application owing to the interpretation that was given to it. Some of these principles had a resounding effect on the issue as well as gained a substantial amount of acceptance throughout the world community as well as among jurists.

**INTRODUCTION-**Theodor Herzl, an Austro-Hungarianjournalist was considered to be the political founder of the idea of Zionism, a movement for the establishment of the Jewish state in the Land of Israel. This inspired many Jews throughout the world to return to the 'Zion'. This feeling of returning to their homeland coupled with the aspirations of the Holocaust survivors, after the 2<sup>nd</sup> World War to start with a new life in a protected environment led to a massive influx of Jews in the region. International tensions started to rise which led the newly formed United Nations to establish a special committee on Palestine. The majority of the committee was in favour of formation of an independent Arab state, an independent Jewish State and the city of Jerusalem. Following this UN Resolution No. 181(1) was passed to implement the partition.<sup>1</sup>

However this plan was not well received by the Arab states which lead to the Arab-Israeli War of 1948. After a year of fighting, ceasefire was declared but by the then the proposed borders were completely distorted and none of the parties were ready to step back. This was followed by an era of tension which finally resulted in the form of Six-Day war which further increased the area under Israeli occupation. Thus the efforts which began as an opportunity to bring a

diaspora together got converted into a war for territory coupled with religious tensions.

The international community found itself responsible to intervene and sort out the dispute under the aegis of International Organizations as well as efforts on the part of the individual countries.<sup>2</sup> While in an effort to bring peace in the region, remedies in international law were sought to be raised, but in order to do so it was required to first segregate the issues which were to be sorted out with the principles of international law. Also, it was important to understand the applicability of these principles of international law in order to arrive at any conclusive point. In doing so, the following principles of international law would be required to be studied, and also the issues associated with them. They would be the principle of Self-determination, statehood, recognition and occupation, along with that the human rights issue would be dealt.

**PRINCIPLE OF SELF-DETERMINATION-**The concept of self-determination is not a very new concept in the field of international law and is often invoked by countries that are oppressed by other nations and their territorial integrity is compromised. The term self-determination was for the first time used in the context of "nationalism and democratic principles"<sup>3</sup> in the German declaration of rights in 1848. The extensions of sovereignty into the right of self-determination could be seen as a awakening of the nationalistic consciousness.

This concept gained momentum after the formations of the United Nations which was the forefront for the protections of right of self-determination. The UN Charter under Article 1 Para 2 stated that the conduct of relations between the various nations would be "based on respect for the principle of equal rights and self-determination of peoples"<sup>4</sup> and it was further presumed that it is the responsibility of the nations to ensure that the right of determination is preserved. This same right was as acknowledged by the International court of Justice in plethora of its decision. At that time it was seen as a means to end the colonial rule but soon it blossomed into a full-fledged right which was exercised by the states.

Despite its growth and development, the right of self-determination was still devoid of a universally accepted definition, also there was no binding force for the enforcement of this legal right. So, this concept was soon to be understood in the light of the realpolitik considerations. This was done in order to ensure that every factional

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group in a state could not make an attempt to dissemble the state and question the law which was holding it together. But this would further enlarge the debate as to what demands of any particular group asking for their right of self-determination was just and which was not. Also there would be a question as to what extent this right was applicable in its true sense.

As it is a general issue that most of the principles or the rights of the United Nations are merely nothing but guidelines as they do not have any actual enforcement mechanism. To some extent this goes true for the right of self-determination as well. Though it can be said that self-determination is capable of being converted into sovereignty but then this sovereignty itself becomes anti-sovereign to the state itself. The same was observed by both former Secretary General of the United Nations, U. Thant<sup>5</sup> as well as the Organization of African Unity<sup>6</sup>. They had to observe that the right to self-determination might have to be controlled in order to ensure that the state sovereignty is not put into question by any factional group. Thus factional groups cannot always be given the right to exercise their self-determination as it would create a constant internal instability and might actually affect the world affairs adversely.

While it comes to the application of the principles of self-determination, UN holds the right to assert when a particular group is actually in a position to exercise its right to self-determination. Going by these standards the UN General Assembly in 1969 “recognized the Palestinian people”<sup>7</sup> and after this it also asserted their “right of self-determination”<sup>8</sup>.

The efforts to create a separate Muslim state began way back in 1920, when an effort was launched to protest against the carving of a Jewish state out of the disputed piece of land.<sup>9</sup> After this the demand for the formation of a separate Muslim state started to rise, this garnered a sense of revolt by the Arabs of Palestine against the British rule and also acted as an instrument to garner a sense of unity amongst the communities residing in that region on the basis on communal lines. Despite the constant uprising against the formation of a Jewish state and the Zionist movement, Israel was formed. Even after the formation of the Jewish State, the struggle did not end. This struggle took the shape of the war in 1948 which resulted in defeat of the Arabs. Despite this defeat, the cause of the Arabs did not die rather; it helped the Arabs to garner a sense of national consciousness. After the defeat of the

Arabs and the occupation of the land by Palestine led, one might argue that the occupation of the disputed piece of land might be a good example of “extinctive prescription”<sup>10</sup> but one of the pre-condition for extinctive prescription is the “peaceful and uninterrupted reign by an occupying power in place of the legal sovereign”<sup>11</sup> which was not the case as voices were being raised against this occupation mostly by the PLO. PLO or the Palestinian Liberation Organization was a result of the growth of the national consciousness of the people of Palestine. It was formed in 1964 and ever since its formation; its main objective was the self-determination of Palestine. Their right of self-determination was recognized multiple times, this includes the mandate, the plan which was framed for partition and also in a number of U.N. Resolutions.

While this forms the theoretical backdrop of the situation along with that the history associated with the claim for having a right of self-determination but coming to the actual scenario one must understand that there are a number of limitations which would actually prevent the enforcement of this right. The possibility of joining together the west bank and the Gaza strip to form a Palestinian state would not be possible as that would require the states to be connected through the territory of Israel which would not be acceptable for Israel. A merger of Palestine with the state of Israel would also not be possible but to the past differences of both these nations, along with that there would be a constant threat to Palestinian self-determination. Also the hope of having a Palestinian say in the decisions of Israel or the having a self-governing state under the trusteeship of Israel would be meek.<sup>12</sup> While are discussing the actual ground reality of the issue, we must also understand that the actual territory of Palestine was under the Israeli occupation for a considerable period of time, thus the bargaining power of both these parties are not at all at par. This would further raise doubts regarding the fair chance of Palestine to have a fair say in the resolution of the dispute.

In a way it could be said that though the world accepts the Palestinian right of self-determination and would opt for the peaceful resolution of dispute, still when push comes to shove their priorities would shift in view of their diplomatic or trade relations with Israel.

**PRINCIPLES RELATING TO HUMAN RIGHTS-**‘The rights of every man are diminished when the rights of one man are threatened’

-John F. Kennedy

Time and again the Israeli Government is condemned for its acts of violations of Human Rights violation; this is performed by the United Nations through its various declarations.<sup>13</sup> The violations are both against the terms of the International Law, along with that; it violates the domestic commitments of Israel as well. Israel tends to justify its actions by the aid of “alternative legality”<sup>14</sup>, according to which the human right laws are only applicable to the Jewish part of the population. The rationale which is provided for this segregation is the existence of threat from Hamas, Hezbollah and various other militant organisations.<sup>15</sup> It is a widely acknowledged fact that the laws for the protection of Human Rights are “applicable both in the situation of armed conflict as well as belligerent occupation”<sup>16</sup>. As Israel is holding, the West Bank as well as the Gaza strip, it is obligated to enforce the Hague regulations as well as the terms of the fourth Geneva Convention which relates to the protection of the civilians at the time of the war. However Israel refuses to abide by its part of the obligation as it states that territories before their occupation were not sovereignities thus incapable of being not the signatory to that agreement, thus it refutes the claims regarding the terms of the Geneva Convention.

Other than this, Israel does not provide the combatant status to the fighter of Palestine, the rationale which Israel provides for this action is that the combatants do not have any association with the army of the state which is the “party to the conflict”<sup>17</sup>. This disables them to the protections which are provided to the combatants at the battlefield, whether it be the “access to the services of Red Cross”<sup>18</sup> or any other aid, also it strips them of their combatant rights.

These actions of Israel is not only limited to the humanitarian law but also spreads to the enforcement of the international instruments of human rights. Despite being the member to a number of international covenants as well as conventions, Israel refuses to enforce these Human Right laws, as it believes that these laws are to be enforced in a peace time situation, not in conflict zones like West Bank or the Gaza Strip.<sup>19</sup> However this interpretation of Israel is rather obsolete and often seen as a representation of its oppressive regime, as in most parts of the world both Human Right Laws as well as the Humanitarian law continues to exist side by side.

Thus not only Israel is found to violate the international norms but also tends to not oblige to follow its domestic laws for human rights

protection, and for not doing the same it does not have a reasonable cause. Also the exclusions of Arab and Palestinian population is nothing but acts of violation of the law.

**PRINCIPLE OF OCCUPATION AND RECOGNITION**-The initiation of the occupation by Israel could be traced back to 1967, when Israel was being attacked by the Arab forces from all sides; however it managed to defeat the combined force as was able to occupy Gaza Strip from Egypt, West Bank from Jordan and Golan Heights from Syria.<sup>20</sup> The Gaza strip as well as the West Bank still remains under its occupation. After this occupation the Israel entered into a peace treaty with Jordan and Egypt, where it was expressed by the two nations that the spirit of the “Oslo Accord”<sup>21</sup> would be respected by Israel. However these terms were not strictly adhered to by Israel as the Israeli forces have been constantly engaged in fighting off the terrorist organizations, so mostly the provisions relating to hostilities were put into use and not the provisions relating to occupation.

There is an important question regarding this whole issue of occupation; whether the occupation was legal or not. Although in cases of occupation, the sovereignty is separated from effective control, but still the occupant is required to manage the governance of the occupied territory in a responsible manner. Often the belligerent occupation was also called responsible occupation. But when this is discussed in the context of the Israeli occupation, the entire conditions are put under question.

A number of notable writers including Ben-Naftali and Micheali believe that the occupation by Israel was illegal as the principles which were supposed to be followed by Israel including the “rule of self-determination”<sup>22</sup>, “non-subjugation of the civil rights and inalienability of sovereignty were not adhered to by Israel”<sup>23</sup>. Another view was presented by Benvenisti which stated that any occupation would remain valid until and unless the occupier shows his “indefinite grant of power and refuses to negotiate his withdrawal”<sup>24</sup>. Thus it can be said that there is a difference of opinion regarding the legality of the occupation by Israel within the international community as well as the jurists.

While talking about the question of occupations by Israel, there arises another question regarding the position of Israel’ legal status as when there is cause for occupation, then there has to be a territory but here the question is about the recognition of Palestine so that it has a legitimate claim over that territory. The recognition of state is usually

governed by the rules of customary international law and it comes into existence when “a state conforms to the conditions provided<sup>25</sup> in Montevideo criteria”

Although the status of recognition of Palestine is debatable as most of the countries refrain from doing so due to their diplomatic relations with Israel, but post the recognition of Israel as an observer state by the United Nation General Assembly, the situation has altered but not completely changed. Likewise, when an application was moved by the Palestinian authority for the membership to the United Nations, it was blocked by the Security Council. In this manner the law relating to the recognition in case of Palestine typically suffer mostly due to the fact that Israel exercises a substantial influence over the members of the Security Council and other powerful nations of the world.

**CONCLUSION-**While talking about the principles which are involved with the resolution of dispute between Israel and Palestine, it could be said that a number of principles of International Law are being applied to the dispute, this included the principle of self-determination, principles relating to occupation, recognition as well as the principles relating to the human right laws. But what needs to be distinguished here is the applicability of the principles as opposed to the actual application of the principle of law.

Here in the case of this dispute, the said principles find their applications but are applied only in a limited manner, if not completely ignored. This fact could be attributed to a number of factors which may include right from the nation’s personal commitments towards one of the parties to the fact that the international system of law lacks a system for enforcement. Thus owing to these factors, most of the international commitments towards securing a long term solution for the dispute between Palestine and Israel fail to see the light of the day. Also the Israel’s stubborn attitude and whimsical interpretation of the international covenants further acts a barrier to ensure a long term solution based on the principles of international law.

The limitation is also present in the principles as well, which further aggravates the issue and states tend to hide themselves in the garb of these limitations in order to avoid the enforcement of these principles. These limitations of the principles of international law coupled with the geo-political considerations of the nations involved only tends to weaken the system provided in place by the international law. As in

most of the cases where the problem is not with the law but with the application of law, the same is the problem in this case as well, where principles are placed by the international community but it is the nations which will have to do the needful and fulfil their obligations in order to achieve a conclusive and long term solution to the problem.

**(Footnotes)**

- 1 Molinaro Enrico, “Negotiating Jerusalem- Preconditions for Drawing Scenarios based on Territorial Compromises”, Jerusalem, PASSIA, April 2002.
- 2 Morris, Benny, The Birth of the Palestinian Refugee Problem, 1947-1949, Cambridge, Cambridge University Press. 1987
- 3 A.Cobban, The Nation State and the National self- determination, Corwell P. 45 (1969).
- 4 Similarly, Article 56 provides that “all members pledged themselves to take joint and separate action in cooperation with the Organization to the achievement of the purposes set forth in Article 55.” The purposes included in Article 55 foresee the creation of “friendly relations among nations based on respect for the principle on equal rights and self-determination of peoples.”
- 5 U.N. Monthly Chronicle, Feb. 1970, at 36.
- 6 Nanda, Self-Determination in International Law, 66 AM.J. Intl. Law. 321, 327 (1972).
- 7 G.A. Res. 2535B, 24 U.N. GAOR, Supp. (No. 30) 25, U.N. Doc. A/7363 (1969).
- 8 G.A. Res. 2649, 25 U.N. GAOR, Supp. (No. 28) 73, U.N. Doc. A/8028 (1970).
- 9 Shamgar Meir, “The Observance of International Law in the Administered Territories” in Israel Yearbook on Human Rights, 1971 vol. 1, p.262-277.
- 10 The doctrine of extensive prescription is to some extent similar to the principle of adverse possession, both of these in principle offer a means of obtaining or losing title over territory.
- 11 Israel: Conqueror, Liberator or Occupier within the Context of International Law, 7 SW. U.L. REV. 206, 209 (1975).
- 12 Shusteff, Boris, “The Logistics of Transfer”, The Freeman Center for Strategic Studies, July. 2002

