

Al-Haq's 40th Anniversary Seminar

The Right of the Palestinian People to Self-determination

Ramallah Municipal Theatre

Saturday, 13 July 2019

Concept Note

Background: The right to self-determination is well established in international law. The right of the Palestinian people to self-determination was first recognized with the adoption of the 1919 Covenant of the League of Nations,¹ and the adoption, in 1922, of the British Mandate for Palestine.² Notably, Article 22 of the Covenant of the League of Nations recognized that for those peoples, including Palestinians, under mandatory or colonial rule “there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation”.³ As later recognized by the International Court of Justice in its 1970 Advisory Opinion on Namibia, the “developments [in international law] leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned.”⁴

As such, the right of Palestinian people to self-determination was already well enshrined in international law before the Nakba. Since then, the right to self-determination has further developed, becoming an *erga omnes* obligation of all States,⁵ and “one of the essential principles of contemporary international law.”⁶ In the case of Palestinians, the right to self-determination has been reaffirmed in many United Nations (UN) resolutions and is now embodied in international human rights law instruments applicable to Palestinians whether as refugees or in exile, in Israel, or in the Occupied Palestinian Territory (OPT).

Notably, international human rights law enshrines the right of all peoples to self-determination, including the right to “freely dispose of their natural wealth and resources” and to “freely determine their political status and freely pursue their economic, social and cultural development”.⁷ As recognized by the UN Human Rights Committee, Article 1(3) common to the

¹ League of Nations, *Covenant of the League of Nations*, 28 April 1919.

² ‘British Mandate for Palestine’ (1923) 17[3] *The American Journal of International Law* 164.

³ Article 22, Covenant of the League of Nations.

⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16, at para. 53.

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, at 172, para. 88.

⁶ *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 102, para. 29.

⁷ Article 1, ICCPR; Article 1, ICESCR; Article 1(2), UN Charter; General Assembly, Resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UN Doc A/RES/2625 (XXV), 24 October 1970, para. 1; UN General Assembly,

two bedrock human rights Covenants “imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have [...] been deprived of the possibility of exercising their right to self-determination.”⁸

Yet, after 71 years of the Nakba, very little has been done to guarantee the exercise, by the entirety of the Palestinian people, of their inalienable right to self-determination, despite positive third State obligations in this regard and despite the significant developments in the law applicable to Palestinians. It is this lacuna, which Al-Haq’s seminar, organized at the margins of the organisation’s 40th anniversary, seeks to address and discuss. Notably, while the Palestinian people continue to be denied their inalienable right to self-determination, Israel, as Occupying Power, has further entrenched its occupation, colonisation, and fragmentation of the Palestinian territory and its people, creating a regime of systematic racial discrimination and domination over Palestinians, amounting to the crime of apartheid.

In the 71st year of the Nakba, Israel has continued to entrench its illegal annexation of occupied East Jerusalem and the occupied Syrian Golan, while Israeli election promises were made to further annex illegal West Bank settlements to Israel. These measures have further been coupled with recent media leaks of a so-called “Deal of the Century” undermining the inalienable rights of Palestinians, including their right to self-determination, to permanent sovereignty over natural resources, and to return to their homes and property. Accordingly, Al-Haq believes it is particularly timely to reframe the discussion around the right to self-determination of the Palestinian people and to examine prospects for the full realisation of Palestinians’ inalienable rights.

Aim of the Seminar: Al-Haq’s 40th anniversary seminar seeks to provide a platform for scholars, researchers, practitioners, human rights defenders, and policymakers, to discuss developments and future prospects for the collective realisation of the right of the Palestinian people to self-determination. The purpose of the seminar is to explore the different elements of the Palestinian right to self-determination, including the right of Palestinian refugees to return, the economic right to self-determination, and the right to permanent sovereignty over natural wealth and resources. As such, the seminar will seek to examine different perspectives on the issue, including through international comparative examples, with a view to evaluating the possibility of realizing the right to self-determination in the Palestinian context and discussing the way forward.

Themes: The seminar will be organised in four panels followed by open discussions and will include a historical overview of the development of the right to self-determination of Palestinians and its current applicability, focusing on the principle of and right to self-determination as a *jus cogens* norm of international law, while also examining third State obligations in relation to ensuring the full realisation of the right and effective remedies for its prolonged and continued denial.

Resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, UN Doc A/RES/1514 (XV), para. 2.

⁸ UN Human Rights Committee, General Comment No 12, Article 1 (Right to Self-determination), 13 March 1984, para. 6.

As the right to self-determination is closely linked to the realisation of an independent State, the seminar will further examine the external, political, and territorial elements of Palestinian self-determination, notably addressing the pervasive and systematic fragmentation of the Palestinian people as a result of Israeli laws, policies, and practices towards Palestinian residents of the OPT, Palestinian citizens of Israel, Palestinian refugees, the diaspora and Palestinians in exile, all of whom form part and parcel of the Palestinian people for the purposes of collective self-determination.

Another substantive element of the right to self-determination is the right to permanent sovereignty over one's natural wealth and resources and the right to economic, social, and cultural development. In the OPT, Palestinians are restricted from accessing and controlling their natural resources, and from developing a viable Palestinian economy under prolonged Israeli occupation. Al-Haq's seminar will seek to examine restrictions impeding the realisation of Palestinians' economic self-determination and right to development, including as a result of corporate complicity in Israel's occupation.

In addition, the seminar will examine Palestinians' right to freely determine their political status and the Palestinian Authority's inability to operate as an independent political entity in light of Israel's prolonged occupation and colonization.