



### **Do Palestinians have a “right to resist” according to the United Nations?**

Yes, the United Nations General Assembly (UNGA) has explicitly affirmed the right of Palestinians to resist Israel’s military occupation, including through armed struggle. This right was affirmed in the context of the right to self-determination of all peoples under foreign and colonial rule. Some of the most relevant UN resolutions on this matter include:

- UNGA Resolution 3314 (1974) affirmed the right of self-determination, freedom, and independence for all “peoples under colonial and racist regimes or other forms of alien domination,” and affirmed the “right of these peoples to struggle to that end and to seek and receive support.”<sup>1</sup>
- UNGA Resolution 37/43 (1982) reaffirmed the “inalienable right” of the Palestinian people “and all peoples under foreign and colonial domination” to self-determination. It also reaffirmed the legitimacy of “the struggle of peoples for [...] liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle.”<sup>2</sup>

Similar principles have been repeated in numerous other UNGA resolutions. Although UNGA resolutions are not legally binding, they “accurately reflect the customary international legal opinion among the majority of the world’s sovereign states.”<sup>3</sup>

### **Why did the UN recognize this right?**

The UN recognized the right to resist foreign domination in the backdrop of independence wars against colonial powers in the second half of the 20<sup>th</sup> century, especially in Southern Africa. UN resolutions during this period frequently spoke in support of the Palestinian struggle alongside similar liberation movements in other colonial contexts, including the fight against apartheid rule in South Africa and Namibia, which had also incorporated the use of armed struggle to achieve their goals. During this same period, the UN granted observer status to the Palestine Liberation Organisation (PLO)<sup>4</sup> alongside African liberation movements including the African National Congress (ANC).

### **Is the “right to resist” recognized by international humanitarian law?**

Yes. Initially, the international laws of war as defined by the Fourth Geneva Convention (1949) had little to say about the use of force against an occupying power, but did not prohibit it.<sup>5</sup> However, supplementary amendments to the Fourth Geneva Convention under Protocol I (1977) expanded the scope of the law, explicitly affirming that it applies to situations including “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination.”<sup>6</sup> This update to international law gave legal legitimacy to “the resort to arms by national liberation movements, including the PLO,”<sup>7</sup> giving Palestinians a “legal right” to use force against military occupation,<sup>8</sup> similar to that enjoyed by sovereign nations.

### **Are there limitations to the exercise of this right?**

Yes. As Palestinian-American legal scholar Noura Erakat writes, the right to use force is “not unlimited and is regulated by the principles of distinction and proportionality, as well as the other laws that regulate irregular combat.”<sup>9</sup> “Distinction” refers to the mandate to distinguish between occupying combatants and civilians.<sup>10</sup> As such, Palestinian armed resistance must target occupation soldiers and infrastructure, and never civilians.

For this reason, UN experts and human rights groups including Amnesty International have argued that the indiscriminate firing of rockets by Palestinian militant groups in Gaza is unlawful and may constitute a war crime, as the rockets cannot be “accurately directed at a military target” and therefore cannot distinguish between military objects and civilians.<sup>11</sup> Such actions are subject to a pending investigation by the International Criminal Court (ICC), alongside Israeli war crimes.<sup>12 13</sup>

On the other hand, violence directed at military targets, including Israeli occupation soldiers and military checkpoints, can be considered within an occupied people’s right to resist. Erakat argues that “Palestinians have the right to use force against Israel and all military installations and targets to end their unjust rule.”<sup>14</sup>

### **How do Palestinians resist Israeli occupation?**

Palestinians have historically resisted colonial domination through different means, often deploying both nonviolent and violent methods of resistance.

During the First Intifada (1987-1993), Palestinians adopted a strategy of civil disobedience that was nonviolent. Through popular and mass committees, Palestinians organized strikes, boycotts and self-sustaining projects including household economies or “victory gardens” and “revolutionary schools.”<sup>15</sup> The economic boycott is a popular tactic that continues today, as expressed in the Palestinian call for boycotts, divestment and sanctions (BDS) as a form of non-violent pressure on Israel.<sup>16</sup> Other forms of nonviolent resistance include hunger strikes by Palestinian political prisoners, resistance arts and literature, and popular education.

There is similarly a long history of armed Palestinian resistance dating back to the 1936-1939 Great Arab Revolt against the British occupation and increasing Zionist land grabs.<sup>17</sup> Following the establishment of the PLO in 1964, armed struggle was seen as the primary vehicle through which liberation would be achieved.<sup>18</sup> This strategy continues today as many Palestinians engage in various forms of armed attacks against the Israeli military occupation. Surveys have consistently found that

Palestinians in the West Bank and Gaza overwhelmingly support armed struggle as a way to end the occupation.<sup>19</sup>

## **Does Canada support Palestinians’ right to resist?**

No. Although Canada recognizes the Palestinian right to “self-determination and supports the creation of a sovereign, independent, viable, democratic and territorially contiguous Palestinian state,”<sup>20</sup> it consistently condemns Palestinian resistance to Israeli occupation, both violent and non-violent.

Canada’s opposition to non-violent movements in support of Palestinian rights is paradoxical, but regrettably consistent. In 2016, for example, the Canadian parliament voted to condemn the non-violent BDS movement and its Canadian supporters,<sup>21</sup> and has consistently blocked any serious measures to hold Israel accountable for violations of international law. Similarly, for years, Canada has opposed efforts by Palestinians to seek justice at the International Criminal Court (ICC), the International Court of Justice (ICJ), and other forums. Meanwhile, Canada condemns all forms of Palestinian armed resistance against Israel’s occupation, while offering vocal support for Israel’s right to use violence against Palestinians.

<sup>1</sup> UNGA resolution 3314, “Definition of Aggression,” December 14, 1974.

<sup>2</sup> UNGA resolution 37/43, “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,” December 3, 1982.

<sup>3</sup> John Sigler, “Palestine: Legitimate Armed Resistance vs. Terrorism,” *Electronic Intifada*, May 17 2004.

<sup>4</sup> UNGA resolution 3237, “Observer status for the Palestine Liberation Organization,” November 22, 1974.

<sup>5</sup> Eliav Lieblich and Eyal Benvenisti, *Occupation in International Law*, Oxford University Press, 2022, 170-1.

<sup>6</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

<sup>7</sup> Noura Erakat, *Justice for Some: Law and the Question of Palestine*, Stanford University Press (2019), 111.

<sup>8</sup> Noura Erakat interviewed by Alex Kane, “Unpacking Israel’s Legal Fictions,” *Jewish Currents*, July 14, 2023.

<sup>9</sup> Noura Erakat interviewed by Alex Kane, “Unpacking Israel’s Legal Fictions,” *Jewish Currents*, July 14, 2023.

<sup>10</sup> “Principle of Distinction,” *International Committee of the Red Cross*, accessed Aug. 1, 2023 at <https://casebook.icrc.org/law/principle-distinction>.

<sup>11</sup> Amnesty International, “Unlawful and deadly: Rocket and mortar attacks by Palestinian armed groups during the 2014 Gaza/Israel conflict,” March 26, 2015.

<sup>12</sup> Peter Beaumont, “ICC opens investigation into war crimes in Palestinian territories,” *The Guardian*, March 3, 2021.

<sup>13</sup> In a contrary view, some argue that this position is untenable given the asymmetrical capacities of Palestinian militants and the Israeli military, which leaves Palestinians with “no other means to defend themselves or deter Israeli attacks ... In such a situation, the only effective means of defense and deterrence must be deemed lawful by necessity.” See Ali Abunimah, “Why Palestine is central to anti-imperialist resistance,” *Electronic Intifada*, August 22, 2022.

<sup>14</sup> Noura Erakat interviewed by Alex Kane, “Unpacking Israel’s Legal Fictions,” *Jewish Currents*, July 14, 2023.

<sup>15</sup> “Palestinian Nonviolent Resistance to Occupation Since 1967,” AFSC Middle East Task Force, Fall 2005.

<sup>16</sup> “Palestinian Civil Society Calls for Boycott, Divestment and Sanctions against Israel Until it Complies with International Law and Universal Principles of Human Rights,” *bds movement.net*, July 9, 2005.

<sup>17</sup> “Great Arab Revolt, 1936-1939: A Popular Uprising Facing a Ruthless Repression,” *Interactive Encyclopedia of the Palestine Question*.

<sup>18</sup> “Palestine Liberation Organization (I): The Reemergence of the Palestinian National Movement,” *Interactive Encyclopedia of the Palestine Question*; Palestine National Council, “10 Point Program of the PLO,” June 8, 1974.

<sup>19</sup> Palestine Center for Policy and Survey Research, “Public Opinion Poll No 87,” March 23, 2023.

<sup>20</sup> Government of Canada, “Canadian policy on key issues in the Israeli-Palestinian conflict,” last modified January 20, 2023.

<sup>21</sup> *Globe and Mail*, “Parliament votes to reject Israel boycott campaign,” February 23, 2016.