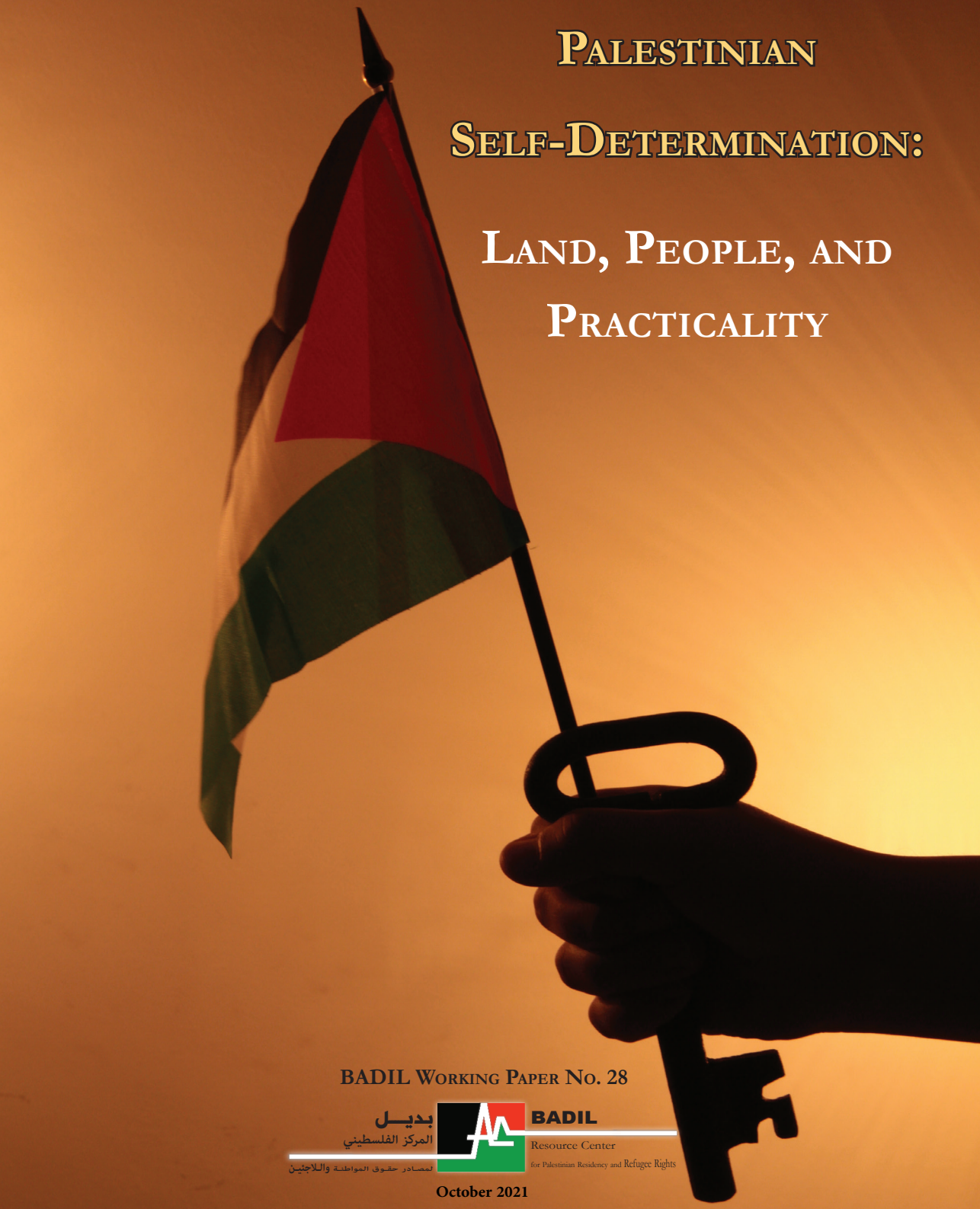
Palestinian Self-Determination: Land, People, and Practicality



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Table of Contents

1 **1. Introduction**

4 **2. The Palestinian People's Self-Determination: A Right Linking a People and a Territory**

6 2.1. The People: Palestinian People Wherever they are

7 2.2. The Territory: The Whole of Mandatory Palestine

9 **3. Realization of Self-Determination: Palestinian People's Inalienable Rights and Customary Law as the Foundation**

10 3.1. Palestinian Refugees: Refugee Rights and Self-Determination are Indivisible

11 3.2. Palestinians with Israeli Citizenship: Decolonization as a Prerequisite for Palestinian Self-Determination

15 **4. Conclusion: Human Rights Approach to Self-Determination**

1. Introduction

As embodied in the nineteenth century Zionist-embraced slogan, "a land without a people for a people without a land,"[1] Israeli-Zionism has long engaged in efforts to frame the Palestinian right to self-determination on Mandatory Palestine as an illusory, unrealizable right. Simultaneously, it has contrived a purported Israeli-Jewish self-determination that is somehow exclusive, legitimate, and applicable on the whole of Mandatory Palestine. This myopic slogan is relevant to self-determination, which necessarily encompasses a people and a land, in that it: (1) attempts to deny the Palestinian people's right to self-determination by stating that the land was historically free of a people, despite the existence of the Palestinian people on the land for centuries and their *de jure* recognition as a people, and (2) expresses the Zionist movement's claims to self-determination by referring to Jews as a 'people', despite their different nationalities and physical presence in Europe and several other countries at that time. Generally, self-determination is a right owed to peoples, allowing them to "freely determine their political status and freely pursue their economic, social and cultural development"[2] on their land. As a peremptory norm, the recognition of a people as such and their consequent entitlement to the right to self-determination constitutes a fundamental foundational basis for independence, autonomy, and statehood in the land where they exist. It is therefore only logical that the Zionist movement, to legitimize its colonial enterprise, namely Israel, and achieve its exclusive statehood claim, has actively strived to not only frame itself as a people entitled to the right to self-determination, but to also exclude the competing Palestinian right to self-determination on the same land that it has fixated on as its headquarters for its enterprise.

In accordance with this objective to destroy the Palestinian right to self-

1 Referenced in: Edward Said, *The Question of Palestine* (New York: Times Books, 1979), p. 9

2 United Nations General Assembly [UNGA], International Covenant on Civil and Political Rights [ICCPR], 999 UNTS 171, 16 December 1966, art.1(1), available at: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [accessed 1 November 2021]; UNGA, International Covenant on Economic, Social and Cultural Rights [ICESCR], 993 UNTS 3, 16 December 1966, art.1(1), available at: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx [accessed 1 November 2021].

determination, the Zionist-Israeli regime (Israel) has necessarily sought, and continues to seek, the erasure of the Palestinian people, turning them into a 'no people' consisting of displaced stateless individuals that are unqualified to exercise their right to self-determination. To that end, the ensuing 73 years since Israel's creation have shown Israel adopting evolving and varying means of forcible transfer policies to fragment and isolate Palestinians, subjecting them to different political and legal systems, weakening their physical continuity and thereby undermining their national cohesion, collective identity, and overall, their peoplehood.[3]

In addition to undermining the Palestinian peoplehood to, in turn, erode their right to self-determination, Israel denies it altogether both explicitly and through non-recognition of it. This was most recently evidenced in the 2018 Nation State Law which states that "[t]he exercise of the right to national self-determination in the State of Israel is unique to the Jewish people,"[4] thus denying the Palestinian people's right to self-determination and reaffirming Jewish-Israeli exclusivity of self-determination on the whole of Mandatory Palestine. This conception has also been reflected in the Oslo peace process. The 1993 Oslo Accords stated the process' intentions of reaching a final settlement based on United Nations Security Council Resolutions 242 and 338, none of which refer to the Palestinian people's right to self-determination.[5] As a result, the Oslo peace process, which has shaped the contemporary mainstream discourse on the Israeli-Palestinian 'conflict,' has prompted a denial of the Palestinian people's right to self-determination. Non-recognition is arguably equivalent to denial,

3 *See* BADIL's Forced Population Transfer series: BADIL, *Forced Population Transfer: The Case of Palestine - Introduction*, working paper no. 15 (March 2014); BADIL, *Denial of Residency*, working paper no. 16 (April 2014); BADIL, *Discriminatory Zoning and Planning*, working paper no. 17 (December 2014); BADIL, *Installment of a Permit Regime*, working paper no. 18 (December 2015); BADIL, *Suppression of Resistance*, working paper no. 19 (December 2016); BADIL, *Denial of Access to Natural Resources and Services*, working paper no. 20 (September 2017); BADIL, *Land Confiscation and Denial of Use*, working paper no. 21 (October 2017); BADIL, *Denial of Reparations*, working paper no.22 (October 2018). BADIL, *Segregation, Fragmentation, and Isolation*, working paper no. 23 (February 2020). All papers available at: https://www.badil.org/en/publication/research/working-papers.html

4 *See* Basic Law: Israel – the Nation State of the Jewish People, 5778-2018, unofficial translation by Dr. Susan Hattis Rolef, available at: https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf; BADIL, *The Nation State Law: The Culmination of 70 Years of Israeli Apartheid and Colonization* (Bethlehem: BADIL, October 2018), available at: https://www.badil.org/cached_uploads/view/2021/04/20/nationstatelaw-positionpaper-badil-oct2018-1618905362.pdf.

5 *See* BADIL, *Palestinian Youth Perspectives on the Oslo Peace Process: Successes, Failures, and Alternatives*, working paper no. 27 (Bethlehem: BADIL, August 2021), available at: https://www.badil.org/cached_uploads/view/2021/09/15/wp27-pal-youth-vs-oslo-eng-1631700884.pdf

and this form of denying Palestinian self-determination has been rampant since Israel's creation. As for the international community, it continues to express its commitment to Palestinian self-determination, as recently reaffirmed in United Nations General Assembly Resolution 75/172 on 16 December 2020,[6] but it has limited its understanding of Palestinian self-determination to one confined to a two-state conception and thus exercised on less than 22 percent of Mandatory Palestine, that is the West Bank, east Jerusalem, and Gaza Strip, and only inclusive of Palestinians living in those areas. However, this formulation can neither be equated to self-determination nor can it be realizable considering that central to the Zionist-Israeli enterprise is the denial of Palestinian self-determination, indicating that the two cannot coincide.

Through considering the substantive legal contents of the Palestinian people's right to self-determination, the following research will demonstrate that: (1) the Palestinian right to self-determination necessarily encompasses all Palestinians, wherever they are, (2) the territory upon which this right is exercised must be the whole of Mandatory Palestine, and (3) the fulfillment of the inalienable right of return and decolonization will enable the complete realization of Palestinian self-determination.

6 UNGA, The Right of the Palestinian People to Self-Determination, A/RES/75/172, 28 December 2020, available at: https://www.un.org/unispal/document/the-right-of-the-palestinian-people-to-self-determination-ga-resolution-a-res-75-172/ [accessed 1 November 2021].

2. The Palestinian People's Self-Determination: A Right Linking a People and a Territory

The Palestinian right to self-determination is a well-established legal fact that is recognized as an *erga omnes* peremptory norm. It has been acknowledged and recognized *de jure* long before the creation of Israel in 1948. Article 22 of the 1919 Covenant of the League of Nations considered Palestine as one of those "communities formerly belonging to the Turkish empire hav[ing] reached a stage of development where their existence as independent nations can be *provisionally* […] subject to the rendering of administrative advice and assistance by a Mandatory *until such times as they are able to stand alone* [emphasis added]."[7] This language amounts to a form of external right to self-determination, namely a right for the Palestinian people to define their own political status, including establishing a state of their own. The United Nations has subsequently recognized the Palestinian people's right of self-determination in numerous resolutions, including Resolution 2672(XXV) of 1970, Resolution 3236 (XXIX) of 1974, Resolution 66/146 of 2012, and Resolution 67/158 of 2013.[8]

Exercising Palestinian self-determination, per Common Article 1(1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights,[9] encompasses two essential pillars:

- The free choice of political status – defined in terms of sovereign

7 League of Nations, Covenant of the League Nations, 28 April 1919, Article 22, available at: https://www.naa.gov.au/learn/learning-resources/learning-resource-themes/australia-and-world/covenant-league-nations [accessed 1 November 2021]

8 *See* UNGA, United Nations Relief and Works Agency for Palestine Refugees in the Near East, A/RES/2672(XXV), 8 December 1970, available at: https://unispal.un.org/DPA/DPR/unispal.nsf/0/E7C4B66C913EC0DC852560DE006E8F1B [accessed 1 November 2021]; UNGA, Question of Palestine, A/RES/3236(XXIX), 22 November 1974, available at: https://unispal.un.org/UNISPAL.NSF/0/025974039ACFB171852560DE00548BBE [accessed 1 November 2021]; UNGA, Right of the Palestinian People to Self-Determination, A/RES/67/158, 26 February 2013, available at: https://unispal.un.org/DPA/DPR/unispal.nsf/0/9EBA2C881717F7D485257B32004E7D4C [accessed 1 November 2021]

9 ICCPR, art.1(1) in *supra* 2; ICESCR, art.1(1) in *supra 2*.

independence from, free association, or integration with an independent state.[10] It implies that the Palestinian people have a right to choose their own political destiny,[11] through participation in the political decision-making process, directly or through a presentative government; and

- The free pursuit of the people's economic, social, and cultural development – and the correlated free and unhindered disposal of its natural wealth and resources.[12] It is both the right to choose and to exercise decisions, as well as the right to not be deprived of the means of subsistence or suffer the destruction of culture.[13] International law additionally recognizes three basic conditions for self-determination: participation, access and contribution to economic, social, and cultural life.[14]

Based on these pillars, the exercise of the right to self-determination requires both a people to choose their political status and a territory within which to pursue their economic, social, and cultural development, with the two inextricably linked.[15] Pertaining to Palestinian self-determination, exercising this right includes the Palestinian people as defined and recognized under international law with Mandatory Palestine as the territory whereby they exert their political, social, economic, and cultural development. **As argued below, the *de facto***

10 UNGA, Principles Which Should Guide Members in Determining Whether or not an Obligation Exists to Transmit the Information called for under Article 73(e) of the Charter, A/RES/1541, 15 December 1960, Principle VI, available at: https://www.refworld.org/docid/3b00f0654c.html [1 November 2021].

11 Ben Saul et al., "Article 1: The Right of Peoples of Self-Determination, Article 25: The Right to Freely Utilize Natural Resources", in The International Covenant on Economic, Social and Cultural Rights (Oxford: Oxford University Press, 2014), p. 56.

12 ICCPR, art.1(2) in *supra* 2; ICESCR, art.1(2) & art.25 in *supra* 2; See also UNGA, Permanent Sovereignty over Natural Resources, A/RES/1803(XVII), 14 December 1962, art.1, available at: https://digitallibrary.un.org/record/57681?ln=en [accessed 1 November 2021].

13 UNGA, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2 October 2007, art. 8(1), available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf [accessed 1 November 2021].

14 UN Committee on Economic, Social and Cultural Rights, General Comment no. 21, Right of Everyone to Take Part in Cultural Life (art. 15, §1a of the Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, 21 December 2009, available at: https://bit.ly/3k2KjYK [accessed 1 November 2021].

15 "To confer on a people a right of "free choice" in the absence of more substantive entitlements – to territory, natural resources, etc. – would simply be meaningless. Clearly, the right of self-determination cannot be exercised in a substantive vacuum." Catrionia Drew, *The East Timor Story: International Law on Trial*, European Journal of International Law 12, no.4 (2001), p. 663, available at: http://www.ejil.org/pdfs/12/4/1539.pdf

existence of the Palestinian people in Mandatory Palestine for centuries and the *de jure* recognition of them as a people in that land necessarily links the Palestinian people with Mandatory Palestine, indicating that the Palestinian right to self-determination can only be exercised within the borders of their homeland as the territory where their right has been recognized.

2.1 The People: Palestinian People Wherever they are

The Palestinians have been the *de facto* people of Palestine well before the 20th century and the rise of Zionism. The *de jure* recognition of Palestinian nationality, and by extension their peoplehood, dates back to the Treaty of Lausanne signed in 1923.[16] Article 30 of the Treaty of Lausanne asserts that all Palestinians previously subject to Ottoman rule and habitual residents of Palestine as of 6 August 1924 qualify for the Palestinian nationality. This recognition is consistent with similar nationality provisions enshrined in post-World War I treaties, indicating that this *de jure* recognition of the Palestinian nationality is not unique and is indeed a legitimate legal basis that Palestinians are the people of Palestine.[17]

Contemporarily, the *de jure* recognition of the Palestinian people has been reinforced with the recognition of the Palestine Liberation Organization as the representative of the Palestinian people in United Nations General Assembly

16 "Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred." League of Nations, Treaty of Peace, signed at Lausanne, B.E.-Fr.-It.-Jp.-Gr.-Tr., 28 UNTS 701, 24 July 1923, Article 30, available at: https://treaties.un.org/doc/publication/unts/lon/volume%2028/v28.pdf

17 Other peoples were conferred with nationalities pursuant to similar provisions. *See* German nationality, Treaty of Peace with Germany (Treaty of Versailles), signed at Versailles, 28 June 1919, Article 278; Polish nationality, Minorities Treaty Between the Principal Allied and Associated Powers and Poland, signed at Versailles, 28 June 1919, Articles 4 and 6, available at: http://www.forost.ungarisches-institut.de/pdf/19190628-3.pdf; Romanian nationality, Treaty Between the Principal Allied and Associated Powers and Roumania, signed at Paris, 9 December 1919, Articles 4 and 6; Austrian nationality, Treaty of Peace Between the Principal Allied and Associated Powers and Austria, signed at Saint Germain- en-Laye, 10 September 1919, Articles 64-65, available at: http://www.forost.ungarisches- institut.de/pdf/19190910-1.pdf; Bulgarian nationality, Treaty of Peace Between the Allied and Associated Powers and Bulgaria, and Protocol and Declaration, signed at Neuilly-sur- Seine, 27 November 1919, Articles 51-52; Hungarian nationality, Treaty of Trianon, signed at Trianon, 4 June 1920, Articles 56-57.

Resolution 3210 and Resolution 3237.[18] **Per these resolutions, international law recognizes the Palestinian people according to the definition of the Palestinian National Charter, namely as "Arab citizens who were living normally in Palestine up to 1947, whether they remained or were expelled, [including] anyone born, after that date, of a Palestinian father – whether inside Palestine or outside it […]," with Palestine defined as "the boundaries it had during the British Mandate."[19]**

2.2 The Territory: The Whole of Mandatory Palestine

There are multiple implications to the fact that the Palestinians are the people of Palestine as their qualification as such is intrinsically linked to the land they have been historically residing in and developing economic, social, and cultural connections. Accordingly, the territory where the Palestinian people have been entitled to exert their right to self-determination is recognized within the borders defined under the British Mandate for Palestine.

Pursuant to the ensuing Mandate for Palestine, Article 5 prescribes that Britain, "the Mandatory[,] shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power."[20] It follows that the territorial integrity of Palestine, from the Jordan River to the Mediterranean Sea, has been recognized under international law since the British Mandate of 1922. The applicability of the principle of territorial integrity and its respective implications for preserving

18 UNGA, Invitation to the Palestine Liberation Organization, A/RES/3210(XXIX), 14 October 1974, available at: https://unispal.un.org/UNISPAL.NSF/0/0D024B3225278456852560DE0056AA64 [accessed 1 November 2021]; General Assembly, Observer Status for the Palestine Liberation Organization, A/RES/3237(XXIX), 22 November 1974, available at: https://www.un.org/unispal/document/auto-insert-180059/ [accessed 1 November 2021].

19 Palestinian Liberation Organization [PLO], Palestine National Charter, 28 May 1964, art.2 & art.6, available at: https://www.files.ethz.ch/isn/125413/2123_Palestinian_National_Charter.pdf [accessed 1 November 2021].

20 League of Nations, Mandate for Palestine, C.529.M.314.1922.VI., 12 August 1922, art. 5, available at: https://unispal.un.org/UNISPAL.NSF/0/2FCA2C68106F11AB05256BCF007BF3CB [accessed 1 November 2021].

borders, as enshrined in Article 2(4) of the United Nations Charter,[21] reinforces the Palestinian people's legitimate claims to exert their right to self-determination on the entirety of Mandatory Palestine. The contemporary existence of a Palestinian people on the totality of the Palestinian territory qualifies them to exert their social, economic, cultural and political right to self-determination on this very territory.[22]

21 Per Article 2(4) of the UN Charter, "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations." UN, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 2(4), available at: https://www.un.org/en/about-us/un-charter/full-text [accessed 1 November 2021].

22 BADIL, *Creeping Annexation: A Pillar of the Zionist-Israeli Colonization on Mandatory Palestine,* working paper no. 25 (Bethlehem: BADIL, December 2020), p. 17-22, available at: https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP25-CreepingAnnexation.pdf

3. Realization of Self-Determination: Palestinian People's Inalienable Rights and Customary Law as the Foundation

Bearing in mind that self-determination is a collective right with the Palestinian people, as defined according to United Nations General Assembly Resolution 3210 and Resolution 3237,[23] **the subject of this right, Palestinian self-determination necessarily encompasses all Palestinians who were living in Mandatory Palestine's borders and their descendants, wherever they are.** Today, this consists of three groups: those living under occupation since 1967 in the West Bank, the Gaza Strip, and Jerusalem, those displaced during the Nakba (1947-1949) and the war of 1967, as well as due to Israeli policies of forcible displacement, who now constitute more than 9 million refugees and IDPs, and Palestinians with an Israeli citizenship. These groups, encompassing the Palestinian people in their entirety, are entitled to self-determination, implying that self-determination only qualifies as such when it includes all Palestinians and is exerted on Mandatory Palestine's borders – contrary to the so-called Oslo peace process and the international community's framework.

Importantly, the external oppressive circumstances of displacement, denationalization, and possession of Israeli citizenship that most Palestinians have been subjected to does not deprive them from being a part of exercising self-determination as they are still part of the Palestinian people, irrespective of the long period of protracted displacement or acquisition of other citizenship(s). Put simply, Palestinian refugees, including those who have acquired other states' nationality due to their long-standing displacement, and Palestinians with Israeli citizenship remain a part of the Palestinian people and still have the right to exercise self-determination on the entirety of Mandatory Palestine, as do Palestinians in the occupied territory. Upon considering the inalienable right of return for Palestinian refugees and the customary prohibition of colonization applicable to Mandatory Palestine, the following section outlines how Palestinian refugees and Palestinians with an Israeli citizenship are to be practically included in the realization of Palestinian self-determination.

23 UNGA, A/RES/3210(XXIX), in *supra* 18.

3.1 Palestinian Refugees: Refugee Rights and Self-Determination are Indivisible

Palestinian refugees, constituting 66.4 percent of the Palestinian people,[24] must inevitably be included in practicing Palestinian self-determination. **Excluding Palestinian refugees whom have been forced to live outside the borders of Palestine in exile (approximately 7 million out of 13.7 million Palestinians), from exercising self-determination would not, per se, constitute self-determination as it is a collective right owed to a people in its entirety.** Refugees' inclusion, however, will only be possible through their physical presence in the land. As such, a necessary prerequisite to the realization of self-determination is the fulfillment of the primary durable solution that Palestinian refugees are entitled to under United Nations General Assembly Resolution 194(III), that is return to their homes, real property restitution, and compensation. [25] Refugees' return, which will allow for all the Palestinian people to exist in Mandatory Palestine, is a legal necessity that will enable the appropriate realization of Palestinian self-determination.

Israel, by denying Palestinian refugee rights, is not only perpetuating the protractedness of the Palestinian refugee issue, but is also undermining the Palestinian people's right to self-determination as their inability to physically be in Mandatory Palestine prevents the Palestinian people from exercising the right to self-determination. The denial of return thus amounts, in the Palestine context, to a violation of the right to self-determination, which amounts to a serious breach of international law. The right to self-determination, recognized as a peremptory norm principle of international law in Article 1(2) and Article 55 of the United Nations Charter of 1945,[26] evolved into a full-fledged peremptory norm through the decolonization

24 BADIL, *Nakba Statement: 73 years of Nakba and 73 years of resistance,* press release, 15 May 2021, available at: https://www.badil.org/press-releases/8864.html [accessed 1 November 2021].

25 UNGA, *194 (III). Palestine – Progress Report of the United Nations Mediator,* A/RES/194 (III), 11 December 1948, available at: https://unispal.un.org/UNISPAL.NSF/0/C758572B78D1CD0085256BCF0077E51A [accessed 1 November 2021].

26 Charter of the UN, Article 2(4), in *supra* 21.

process of the 1960s.[27] Therefore, the principle of self-determination consists not only of a duty for states to recognize, respect, and promote the right, but also the obligation to refrain from taking any forcible action that serves to deny people the capacity to enjoy this right.[28] It follows that any action that undermines the capacity to enjoy the right and any denial of the substantive content of the right – free choice of political status and economic, social, and cultural development – amounts to a serious breach of a peremptory norm under international law. Per the Draft Articles on Responsibility of States for Internationally Wrongful Acts, serious breaches of peremptory norms prompt the liability of third states in two ways: a positive duty to "cooperate to bring an end through lawful means any breach," and a negative duty not to "recognize as lawful a situation created by a serious breach […] nor render aid or assistant in maintaining that situation."[29]

Third-states are therefore obliged to take practical measures to bring to an end Israel's policies and practices denying Palestinian refugees their right to return as it simultaneously obstructs the Palestinian people's right to self-determination – a serious breach of international law. Through the international community's pressure on Israel to uphold Palestinian refugee rights, the Palestinian people are enabled to exercise their right to self-determination on Mandatory Palestine.

3.2 Palestinians with Israeli Citizenship: Decolonization as a Prerequisite for Palestinian Self-Determination

Similar to Palestinian refugees, Palestinians with Israeli citizenship are entitled to partake in exercising the Palestinian right to self-determination by virtue of

27 UNGA, Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514(XV), 14 December 1960, available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx [accessed 1 November 2021]; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970, available at: http://www.un-documents.net/a25r2625.htm [accessed 1 November 2021].

28 *Ibid.*

29 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, A/56/10, November 2001, Article 40 and 41, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

belonging to the Palestinian people as recognized in international law. Palestinians with Israeli citizenship have existed in their lands prior to the creation of Israel in 1948 and have remained there since. Their engulfment into the state of Israel and subsequent possession of Israeli citizenship is a result of Israeli colonization and not an indicator of surrendering their Palestinian national and collective rights. Recognizing this factuality, the Israeli colonial-apartheid regime implements policies and practices aimed at limiting their influence, ignoring their national rights, and severing their collective identity and national awareness, including: fragmenting and isolating Palestinian cities and villages, *de jure* labelling Palestinians as an "Arab minority in Israel", restricting and/or criminalizing their communication with Palestinian and Arab residents of "enemy states,"[30] and prohibiting Palestinian schools in Palestine 1948 from discussing the Palestinian narrative or even recounting the historical facts of the displacement of the Palestinian people, known as the *Nakba.*[31]

In addition, the enduring presence of the Palestinian population in 1948 Palestine is perceived as a threat to the ideological framework of Israel's religious ethno-nationalistic colonial project, hence their categorization as an 'ethnic minority.' As an entity that defines itself as a Jewish state where nationality is based on being Jewish[32] - the religious ethnicity that Zionism has situated at the center of the Israeli colonial project – anyone that exists in that geographical space and is not Jewish is regarded as a danger to this constructed vision of ethnic homogeneity. **Irrespective of these attempts, Palestinians in 1948 belonged to the same people as those elsewhere and have only been savagely ripped apart from other Palestinians, often belonging to the same family, as a result of the Israeli colonial-apartheid regime.**

To practically allow for Palestinians with an Israeli citizenship to partake in Palestinian self-determination, it is essential to recognize and act upon the recognition that Mandatory Palestine, as a whole, constitutes a territory "of a colonial type." Mandatory Palestine therefore qualifies as a non-self-governing

30 Adalah, "Prohibitng Contact with Enemy Aliens: The Case of the Palestinians in Israel, November 2009, available at: https://www.adalah.org/uploads/oldfiles/newsletter/eng/nov09/Haneen%20enemy%20English%20final.pdf

31 Adalah, "The Prohibition on Teaching the Nakba in the Arab Education System in Israel," September 2010, available at: https://www.adalah.org/uploads/oldfiles/newsletter/eng/sep10/docs/Sawsan%20Nakba%20English%20final.pdf

32 *See* Nation State Law; BADIL, *The Nation State Law,* in *supra 2.*

territory entitled to the acquisition of a "full measure of self-government" in line with General Assembly Resolution 1541(XV) of 1960.[33] From a legal outlook, it is supported that the Decolonization Declaration, recognized as customary law, should be applied within the borders of Mandatory Palestine, including the Palestinian territory colonized, annexed and recognized by the international community as Israel in 1948. The combination of Israeli colonial and apartheid practices aimed at achieving a hybrid system of systemic oppression of an entire population naturally comes at the expense of the Palestinian people's legitimate right to self-determination. **This necessarily implies that the achievement of the Palestinian people's right to self-determination could not seriously be fathomed except outside of the apartheid- colonial system of Israel that is the end product of a century of apartheid-colonial policies and practices in Palestine.**

Self-determination through the decolonization of Palestine within its mandatory borders is further confirmed and supported by the customary legal principle of *uti possidetis juris*,[34] which provides that states rising out of decolonization should inherit the former colonial administrative borders. The doctrine of *uti possidetis juris* has been consistently mobilized to solve border disputes concerning decolonized borders in general, starting with Latin America and Africa.[35] Interestingly enough, the principle has been subsequently applied to settle border disputes between former mandatory states, attributing the city of Mosul to Iraq, setting the Iraqi-Kuwaiti border along the mandatory lines, and giving the Walvis Bay enclave to Namibia.[36]

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33 UNGA, A/RES/1541, in *supra* 10.

34 The principle emerged in the wake of the first decolonization wave in South American. *See* Case Concerning the Frontier Dispute, *id.*, 565-567, available at: https://www.icj-cij.org/ public/files/case-related/69/069-19861222-JUD-01-00-EN.pdf

35 Steven Ratner, "Drawing a Better Line: UTI Possidetis and the Borders of New States," *American Journal of International Law 90*, no. 4 (1996), 593-595; Organization of African Unity, Border Disputes Among African States, AHG/Res.16(1), 17-21 July 1964, available at: https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf

36 *See* League of Nations, Question of the Frontier Between Turkey and Iraq: Report Submitted to the Council of the League of Nations by the Commission Instituted by the Council Resolution, 30th September 1924, available at: https://biblio-archive.unog.ch/Dateien/CouncilMSD/C-400-M-147-1925-VII_BI.pdf; UN Secretary General, Letter dated 21 May 1993 from the Secretary-General to the President of the Security Council, para. 27-40, S/25811, 21 May 1993; UN Security Council, Security Council Resolution 432, S/RES/432, 27 July 1978, available at: https://digitallibrary.un.org/record/71635?ln=ar [accessed 1 November 2021].

In the Palestinian context, the application of the principle of *uti possidetis juris* would support the transfer of the borders of Mandatory Palestine, as the latest recognized colonial administrative borders, to the newly independent state of Palestine, at the expiration of the British Mandate in 1948, which serves as the latest recognized legal title. It is also consistent with the ultimate purpose of the League of Nations' mandate system: to eventually achieve the independence and self-determination of peoples under the trusteeship system.

Through decolonization and dismantling the Israeli colonial-apartheid regime within the borders of Mandatory Palestine, all Palestinians are enabled to be included in the Palestinian people's right to self-determination.

4. Conclusion: Human Rights Approach to Self-Determination

The above analysis has shown that Palestinian self-determination must occur on the whole of Mandatory Palestine and is owed to the Palestinian people as a whole, consisting of Palestinians in the West Bank and Gaza Strip, including Jerusalem, Palestinian refugees, and Palestinians with Israeli citizenship. Any attempt to practice self-determination outside of this would not constitute an adequate execution of this right as it would only include a portion of the Palestinian people and only a portion of the land that they are entitled to exercise self-determination on. **Considering that the Israeli apartheid-colonial regime is obstructing this realization, the only viable legal approach that would allow for the Palestinian right to self-determination must emerge from the achievement of the right to decolonization owed to the Palestinian people on the Palestinian territory within its mandatory period borders as a sine qua non condition.**

Thus far, by limiting the personal and territorial constituting pillars of the Palestinian people's right to self-determination, the international community has contributed to perpetuating Israel's denial of the Palestinian people's right to self-determination. This is particularly palpable in the so-called peace process, dating back to the Oslo Accords in 1993. The most recent proposal in the peace process, the "Deal of the Century", proposed creating a non-contiguous, capitulated Palestinian entity with Israeli-regulated borders and connected by Israeli-controlled bridges, tunnels, and roads.[37] Not only is this short of a sovereign state, but it is also in no way an exercise of the Palestinian people's right to self-determination. Importantly, although statehood and self-determination are deemed indivisible, they are not synonymous. Altogether, achieving statehood is a means to access political, social, economic, and cultural development as well as living in dignity and a state's inability to provides this deems it virtually useless. **For the Palestinian people, therefore, having a "state" as is currently proposed by the peace process which is due to exist within the Israeli colonial-apartheid framework is unfeasible because it is embedded in the denial of Palestinian inalienable rights.**

37 BADIL, "Trump's so-called Vision/Deal of the Century: A Move to End the Palestinian Refugee Issue Through Serious Breaches of International Law," position paper, (BADIL: Bethlehem, 2020), available at: https://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/Deal-of-the-Century-Refugee-Issue(PositionPaper-May2020).pdf

Thus, the international community must distance itself from this "peace process," which has evidently been designed to legitimize the colonial enterprise, as it completely undermines the Palestinian people's inalienable rights and discredits the legitimacy and willingness of the international community to support the just and legitimate liberation of all other territories and peoples' struggle against colonial oppression. Instead, it must adhere to a human rights-based approach to conflict resolution as a means to respect and ensure rights for all people living in Mandatory Palestine as well as those in exile who are due to return. This includes realizing that colonialism has been the guiding axiom of the Zionist-Israeli enterprise, operating at the expense of Palestinian self-determination. Failing to acknowledge the colonial intents behind Israel's apartheid, forced displacement, and dispossession policies and practices allows for the normalization of Israel's denial of the Palestinian right to self-determination. Bringing forward the settler-colonial paradigm will allow international law to effectively address the root causes for the perpetuation of the Palestine Question and promote decolonization to achieve Palestinian self-determination. By means of advancing such a human rights-based approach, self-determination in Mandate Palestine will be available for all people, irrespective of religion or race, in a new nation based on equal rights. Importantly, enabling the Palestinian people to practice their right to self-determination does not contradict ensuring that all human rights of the current Jewish-Israeli colonizers are guaranteed, as they will become citizens of the future state in Mandatory Palestine.

In view of the above, BADIL calls on the third state parties to:

- Recognize Mandatory Palestine as a unified non-self-governing territory and advocate for its inclusion under the United Nations list of non-self-governing territories;

- Recognize Israel as a colonial and apartheid regime and take practical measures for the dismantlement of this regime and its structures that are the origin of the fragmentation of Mandatory Palestine, the denial of the Palestinian right to self-determination, and the deprivation of Palestinian refugees and internally displaced persons from their right of return; in essence, advocate for the decolonization of Palestine;

- Promote a human rights-based approach to the decolonization process

in Palestine, enabling the Palestinian people to put their right to self-determination into practice and ensuring that equal rights are guaranteed for all residents of Palestine.

"The only viable legal approach that would allow for the Palestinian people to exercise their right to self-determination must emerge from the achievement of the right of return and the right to decolonization on the entirety of Mandatory Palestine."

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