

A MODERN DAY EXODUS: INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW IMPLICATIONS OF ISRAEL'S WITHDRAWAL FROM THE GAZA STRIP

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INTRODUCTION

Israel's withdrawal from the Gaza Strip in September 2005 ended thirty-eight years of disputed Israeli control of and presence in the territory.¹ Moreover, the withdrawal represented an important change in the geopolitical stability of the Middle East.² Israel's exit affected both Israeli citizens, many of who lived in settlements in the Gaza Strip, and Palestinians, who primarily inhabit the territory.³

Various alleged human rights law and humanitarian law violations, mainly against Israel, arose at the same time as Israel's withdrawal plan commenced. Since it relinquished its power and control over the Gaza Strip and is subsequently no longer the governmental authority in the territory, Israel contends that it owes no legal obligations to the Palestinians in Gaza.⁴ Palestinians and various non-governmental organizations contend that Israel still owes certain duties and obligations under international law despite its withdrawal.⁵

Historical and religious struggles between Jews and Zionists, on one hand, and Palestinians and Arabs, on the other, date back for centuries.⁶ This

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1. State of Isr., *Exit of IDF Forces from the Gaza Strip Completed* (Sept. 12, 2005), <http://www.mfa.gov.il/MFA/Government/Communiques/2005/> (follow "Exit of IDF Forces from the Gaza Strip completed" hyperlink) [hereinafter *Exit of IDF*].

2. See Assoc. Press, *Gazans Celebrate, Take over Former Settlements* (Sept. 12, 2005), <http://www.msnbc.msn.com/id/9279728/page/2/> [hereinafter *Gazans Celebrate*].

3. See generally MINISTRY OF FOREIGN AFFAIRS, STATE OF ISR., ISRAEL'S DISENGAGEMENT PLAN RENEWING THE PEACE PROCESS (2005), available at <http://www.mfa.gov.il/NR/rdonlyres/23EFC707-AEBA-4195-BB90-B6BA8AB616FF/0/disenagement2.pdf> [hereinafter DISENGAGEMENT PLAN].

4. DARRYL LI & YEHEZKEL LEIN, B'TSELEM, ACT OF VENGEANCE ISRAEL'S BOMBING OF THE GAZA POWER PLANT AND ITS EFFECTS 30 (2006) [hereinafter ACT OF VENGEANCE]; see DISENGAGEMENT PLAN, *supra* note 3, at 24.

5. See ACT OF VENGEANCE, *supra* note 4, at 30-32.

6. The Israeli-Palestinian conflict can be traced to the Zionist movement, a Jewish nationalist ideology, of the late nineteenth and early twentieth century. THOMAS FRIEDMAN, FROM BEIRUT TO JERUSALEM 13-14 (1989). Jews from all over the world amassed in Palestine,

Note, however, focuses exclusively on the Israeli-Palestinian conflict—the ongoing conflict between Israelis and Palestinians over the land of Palestine—since the creation and independence of Israel.⁷ It seeks objectivity and accuracy rather than advocacy and opinion regarding the sensitive issues surrounding the Israeli-Palestinian conflict and international law in the Gaza Strip.

This Note seeks to raise awareness of the various alleged human rights violations that have occurred or are occurring in connection with Israel's withdrawal from the Gaza Strip. Various legal instruments and principles exist to protect those involved in the Gaza situation and to remedy violations of international law. Conversely, this Note also serves to remind states of their international legal obligations, as well as the United Nations, the preeminent international organization, of its purpose and role in the international community.

Part One of this Note focuses on the Gaza Strip and provides a brief history of the Israeli-Palestinian conflict since the creation of Israel. Knowledge of this history provides context for the importance of the Gaza Strip to the Israelis, Palestinians, and the region. Part One then describes the birth of Israel and various wars involving the Gaza Strip.

Part Two explains the history of Israeli legal authority in the Gaza Strip. This includes how the Gaza Strip came under Israeli control, the framework for Israeli legal authority, and the transition of power to the Palestinians.

Part Three begins with an overview of the various sources of international law. It continues by identifying and exploring the various sources and forms of international human rights law and international humanitarian law applicable to the situation in the Gaza Strip. Part Three examines six major international legal instruments: the United Nations Charter; the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Guiding Principles on Internal Displacement; and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

Part Four surveys the various international human rights law and international humanitarian law claims arising from the withdrawal of Israeli control and presence in the Gaza Strip. This part also examines the forced evacuation and displacement of Israeli citizens from the Gaza Strip. Non-governmental organizations and the media reported most of these human rights claims. Part Four examines these claims in the context of Israeli and Palestinian international law obligations, paying particular attention to their respective international law obligations and any potential violations of these obligations.

Part Five concludes with recommendations for the present situation in Gaza. Ultimately, both Israel and the Palestinian Authority are bound by international law to ensure that human rights are recognized and protected for

their believed Biblical homeland, and pushed for the creation of a Jewish state. *Id.*

7. May 14, 1948, marked the creation of the State of Israel and its independence. MARK TESSLER, A HISTORY OF THE ISRAELI-PALESTINIAN CONFLICT 269 (1994).

all peoples in the Gaza Strip.

PART ONE: A BRIEF HISTORY OF THE ISRAELI-PALESTINIAN CONFLICT
SINCE 1948 AS RELATED TO THE GAZA STRIP

The modern day Israeli-Palestinian conflict does not represent a “struggle between good and evil,” but instead embodies “a confrontation between two peoples who deserve recognition and respect, neither of whom has a monopoly on behavior that is either praiseworthy or condemnable.”⁸ Under this approach, the modern day Israeli-Palestinian conflict is not a continuation of some “ancient blood feud.”⁹ Rather, the clash includes legitimate and legally-relevant competing interests between Israel and the Palestinian Authority. The most notable interests include Palestinian statelessness and lack of international recognition¹⁰ versus Israeli state security and sovereignty in the hostile Middle East.¹¹

A. *The Creation of the State of Israel*

Israel declared its independence on May 14, 1948.¹² The United States immediately recognized Israel’s statehood,¹³ as did the larger international community through the United Nations,¹⁴ but others expressed discontent. The day after Israel’s independence, Egypt, Jordan, Iraq, and Syria attacked Israel.¹⁵ The primary reason for the attack stemmed from international law: leaders of

8. *Id.* at xii.

9. *Id.* at 1.

10. The international community does not recognize Palestine as a state. Adrien Katherine Wing, *The Legal Foundations of Peace and Prosperity in the Middle East: The Palestinian Basic Law: Embryonic Constitutionalism*, 31 CASE W. RES. J. INT’L L. 383, 411 (1999); Omar M. Dajani, *Stalled Between Seasons: The International Legal Status of Palestine During the Interim Period*, 26 DENV. J. INT’L L. & POL’Y 27, 79 (1997). The Palestinian Authority does not meet all the qualifications for statehood, especially the defined territory requirement. International law mandates the following requirements for statehood: “a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.” Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19 (*entered into force* Dec. 26, 1934) [hereinafter *Montevideo Convention*]. Tribunals have also held that no state of Palestine exists. *See, e.g.*, *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 47 (2d Cir. 1991) (holding that the Palestine Liberation Organization does not satisfy the requirements for statehood).

11. TESSLER, *supra* note 7, at xiv.

12. State of Israel Proclamation of Independence, May 14, 1948, *available in* THE ISRAEL-ARAB READER A DOCUMENTARY HISTORY OF THE MIDDLE EAST CONFLICT 125-28 (Walter Laqueur ed., 3d ed. 1976).

13. President Truman immediately recognized Israel’s statehood and independence. TESSLER, *supra* note 7, at 263. This recognition contravened the recommendations of Truman’s advisors, who “urged him to wait.” *Id.*

14. *See id.*

15. *Id.* This war “[was] unmistakably launched by the decision of Arab governments.” BERNARD LEWIS, *THE MIDDLE EAST A BRIEF HISTORY OF THE LAST 2,000 YEARS* 364 (1995).

surrounding states were unwilling to recognize Israel's new existence as a state in the international community.¹⁶ The creation of Israel resulted in a mass exodus of Palestinians; Egypt, Jordan, Iraq, and Syria sought to reclaim the land for the Palestinians.¹⁷

Originally, the 1947 United Nations partition plan for Palestine¹⁸ intended the Gaza Strip to be a Palestinian-Arab state coexisting with Israel;¹⁹ however, during the ensuing war after Israel's independence, Egypt seized the Gaza Strip and the land fell under Egyptian military control.²⁰ Other smaller battles followed, such as the "Ten Days War," but the fighting eventually stopped.²¹ By 1949, Israel signed armistice agreements with Egypt, Lebanon, Jordan, Iraq, and Syria.²² At the time of these agreements, and as a result of the fighting, Israel controlled a territory much larger than envisioned under the Partition Plan.²³ The newly-acquired territory, which excluded the Gaza Strip,²⁴ became the official boundaries of Israel by authority of the armistice agreements.²⁵

B. *The 1967 War*

Also known as the Six Day War²⁶ or the June War,²⁷ the 1967 War²⁸ represents another watermark in the history of the Gaza Strip. Growing regional tensions prompted the war, illustrated by minor military exchanges²⁹ and "mutual defense pacts" signed by some of Israel's enemies.³⁰ Scholars disagree on the issue of who started the war,³¹ but strong arguments exist that Israel was not the aggressor.³² Regardless, the 1967 War again pitted Egypt,

16. TESSLER, *supra* note 7, at 263. See Montevideo Convention, *supra* note 10, art. 1, for requirements of statehood.

17. See TESSLER, *supra* note 7, at 263.

18. G.A. Res. 181 (II), U.N. GAOR, 2d Sess. (Nov. 29, 1947) [hereinafter Partition Plan].

19. AN HISTORICAL ENCYCLOPEDIA OF THE ARAB-ISRAELI CONFLICT 182 (Bernard Reich et al. eds., 1996).

20. *Id.*

21. TESSLER, *supra* note 7, at 264.

22. *Id.*

23. *Id.*

24. Gaza remained under Egyptian control. *Id.* at 264-65.

25. *Id.*

26. BENNY MORRIS, *RIGHTEOUS VICTIMS A HISTORY OF THE ZIONIST-ARAB CONFLICT, 1881-2001*, at 313 (2001). In dramatic fashion, Israel handed crushing defeats to Egypt, Jordan, Syria, and Iraq in "six days." LEWIS, *supra* note 15, at 365.

27. TESSLER, *supra* note 7, at 378.

28. For more history and information on the 1967 War, see generally ProCon.org, 1967 War, <http://www.israelipalestinianprocon.org> (follow 1967 War hyperlink) (last visited Jan. 30, 2007).

29. TESSLER, *supra* note 7, at 378.

30. *Id.* at 378-79.

31. LEWIS, *supra* note 15, at 364.

32. ALAN DERSHOWITZ, *THE CASE FOR ISRAEL 91-92* (2003). "Although Israel fired the first shots . . . Egypt, Syria, and Jordan started the war." *Id.* at 91.

Syria, Jordan, and Iraq against Israel.³³

The acquisition of the Gaza Strip by Israel proved to be the most important result of the 1967 War. During the course of the war, Israel captured the Gaza Strip, among other territories, from Egypt.³⁴ Israel's acquisitions changed the geopolitical stability of the region.³⁵ The 1967 War resulted in Israeli control of all the land originally allocated for the Palestinians under the 1947 Partition Plan.³⁶ The war also led to the establishment of Israeli settlements in the "occupied territory" of the Gaza Strip.³⁷

C. Intifada of 1987-1993

In the twenty years after the 1967 War, the Gaza Strip grew more volatile.³⁸ Spontaneous and uncoordinated resistance by the Palestinians quickly transformed into a rebellion—the *intifada*.³⁹ Literally translated as "shaking off,"⁴⁰ the *intifada* began on December 8-9, 1987, two decades after Yasser Arafat called for a Palestinian revolt.⁴¹ Instead of an armed rebellion, the *intifada* materialized into a "persistent campaign of civil resistance, with strikes and commercial shutdowns, accompanied by violent (though unarmed) demonstrations against the [Israeli] occupying forces."⁴²

The goals of the *intifada* were "to wage a holy war against the Zionist enemy, to oppose any peace efforts, and to convert the Arab states to the way of Islam and to draw them into the conflict."⁴³ The *intifada* represented the Palestinians' perceived "war for independence from Israel."⁴⁴ Palestinian nationalist aspirations for the creation of a Palestinian state drove the *intifada*.⁴⁵ The Palestinians' frustration grew from alleged human rights abuses⁴⁶ by Israel

33. *Id.*

34. TESSLER, *supra* note 7, at 399.

35. *See id.*

36. *Id.* at 401-02; see Partition Plan, *supra* note 18, for details on the territory originally intended for the Palestinians.

37. COMM. ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE, UNITED NATIONS, ISRAELI SETTLEMENTS IN GAZA AND THE WEST BANK (INCLUDING JERUSALEM) THEIR NATURE AND PURPOSE 1 (1982) [hereinafter ISRAELI SETTLEMENTS].

38. Emile A. Nakhleh, a Palestinian-American scholar, described the Gaza Strip as "a pressure-cooker ready to explode." TESSLER, *supra* note 7, at 683.

39. *Id.* at 677.

40. *Id.*

41. MORRIS, *supra* note 26, at 561. Actually, an accident involving an Israeli tank, not a deliberate act, may have ignited the *intifada*. TESSLER, *supra* note 7, at 677.

42. MORRIS, *supra* note 26, at 561. "The stone and, occasionally, the Molotov cocktail and knife were [the *intifada*'s] symbols and weapons, not guns and bombs." *Id.*

43. *Id.* at 577.

44. ARYEH SHALEV, THE INTIFADA, CAUSES AND EFFECTS 16 (1990).

45. MORRIS, *supra* note 26, at 562.

46. Some of the alleged human rights abuses resulting from Israeli government policy included deportations, press censorship, denial of access to education, forced curfews, and the demolition of homes. TESSLER, *supra* note 7, at 677.

and deplorable living conditions in the Gaza Strip.⁴⁷

A marked change in Palestinian attitude emerged during the *intifada*. Previously adhering to a passive resistance mentality, Palestinians now followed the concept of *sumud*, or steadfastness.⁴⁸ From *sumud* emerged a new assertiveness among the Palestinians that produced a more determined, militant, and desperate Palestinian people.⁴⁹ New pro-Palestinian organizations, notably the Unified National Leadership Uprising (UNLU)⁵⁰ and Hamas,⁵¹ cast influence over Gaza.⁵² Coexistent with *sumud*, Palestinians now perceived themselves as alone in the world and only able to rely on themselves.⁵³ Thus, the *intifada* “change[ed] the relationship of Palestinians with each other and with the world outside in the occupied territories,”⁵⁴ promulgating a Palestinian perception of worldwide abandonment.⁵⁵

PART TWO: THE GAZA STRIP—ADMINISTRATION, AUTHORITY, AND LAW IN THE OCCUPIED TERRITORY

After Israel officially assumed control of the Gaza Strip,⁵⁶ authoritative power in the land vested primarily in the occupying Israeli military government.⁵⁷ Gaza, as a municipality,⁵⁸ was the only such kind of government in the Strip.⁵⁹ Theoretically, the municipal government derived its authority

47. Such conditions included poverty, hatred, violence, oppression, poor sanitation, drugs, and crime. *Id.* at 683.

48. *Id.* at 684.

49. *Id.* at 685.

50. The UNLU emerged as an underground organization with the purpose of “guiding the evolution of the *intifada*.” *Id.* at 689. The UNLU communicated by distributing leaflets, called *bayanat*, that were printed in secrecy at night. *Id.*

51. *Harakat al-Muqawama al-Islamiyya* (Hamas), the Islamic Resistance Movement, worked to sustain and amplify the *intifada*. *Id.* at 694. Hamas, meaning “zeal” or “ardor” in Arabic, was led in part by Dr. Abd al-Aziz al-Rantisi, a professor at Islamic University in Gaza. *Id.* Embedded in Hamas’s ideology is the notion that Palestine is an Islamic land. *Id.* at 695. The main goal of Hamas is the destruction of Israel. MORRIS, *supra* note 26, at 578. Hamas is listed on the U.S. Department of State List of Designated Foreign Terrorist Organizations (FTOs). Bureau of Public Affairs, U.S. Department of State (Oct. 11, 2005), available at <http://www.state.gov/s/ct/rls/fs/37191.htm>. Hamas recently won a large majority of seats in the Palestinian parliamentary elections and became the controlling party. Sarah el Deeb, Associated Press, *Hamas Win Unsettles Peace Process*, (Jan. 26, 2006), available at <http://www.breitbart.com/news/2006/01/26/D8FCCU705.html>.

52. TESSLER, *supra* note 7, at 694-95.

53. *Id.* at 684. “‘Reliance on outside help has proven futile,’” commented one Palestinian. *Id.*

54. ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* 433 (1991).

55. TESSLER, *supra* note 7, at 684.

56. *Id.* at 399.

57. EMILE A. NAKHLEH, AM. ENTER. INST. FOR PUB. POLICY RESEARCH, *THE WEST BANK AND GAZA TOWARD THE MAKING OF A PALESTINIAN STATE* 15 (1979).

58. A municipality is the “highest level of indigenous political institution[] in the occupied areas.” *Id.* at 1.

59. *Id.* at 15.

from an old British municipal law: the Palestine (British) municipal law of 1934.⁶⁰ In reality, however, the Israeli military ruled the territory and law came in the form of military directives.⁶¹ Control often manifested itself in the form of military orders directed from Israeli military headquarters.⁶² A military commander, military-appointed mayor, or governor implemented the orders.⁶³

The Israeli municipal framework had two levels of administration: civil and military.⁶⁴ The civil administration ran agencies necessary to ensure the stability of the social infrastructure, such as departments of health, education, and transportation.⁶⁵ Israeli military influence still reached the civil administration, however, because Israeli officers, who were attached to the military, often ran these civil departments.⁶⁶ All policies devised and actions taken by the civil administration required military approval.⁶⁷ Thus, the civil administration served as an extension of Israeli military authority and had no real power or executive authority independent of the military.

The municipal government received much criticism. Extreme poverty in Gaza ran rampant.⁶⁸ The municipal government also experienced sharp fiscal restrictions that hindered both fiscal planning and problem solving.⁶⁹ These problems affected other areas, such as urban development, industrial development, and educational planning.⁷⁰

Gaza's chronic troubles can be attributed to three main conditions: (1) constraints, such as political, psychological, and economic constraints; (2) outdated laws, such as the British municipal law of 1934; and (3) vague sources of legal authority.⁷¹ Nevertheless, Gaza's problems seemed to emanate primarily from the military's control over the other branches of the municipality:⁷² a questionable form of legal authority.⁷³

Israeli military control in Gaza presented many legal problems. For instance, municipal officials frequently complained that Israeli military

60. *Id.* at 7.

61. *Id.* at 17.

62. *Id.* at 15.

63. *Id.*

64. *Id.* at 9.

65. *Id.*

66. *Id.* The civil officers were still "subject to the rules, regulations, and policies of the military occupation." *Id.*

67. *Id.* at 2.

68. *Id.* at 18.

69. For instance, the civil administration could not levy taxes without military approval. *Id.* Such restraints rendered the government ineffective without the needed military approval. *See id.* at 18.

70. *Id.* at 18.

71. *Id.* at 23.

72. Most officials agreed that the military control was the source of Gaza's problems. *Id.* at 18. *But see* DERSHOWITZ, *supra* note 32, at 158-62.

73. NAKHLEH, *supra* note 59, at 18. Israeli government control in Gaza was "based on a mysterious combination of . . . [British] mandate law, military orders, and the personal temperament of local or regional military governors." *Id.* at 23.

interference undermined their legal authority.⁷⁴ This interference blurred the line between legitimate legal authority and “whim and temperament” control by the military.⁷⁵ Also, the military often interpreted the law.⁷⁶ This resulted in the military determining legal issues—quite a dangerous prospect.⁷⁷

PART THREE: INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW APPLICABLE TO ISRAEL AND THE PALESTINIAN AUTHORITY REGARDING THE CHANGE OF POWER IN THE GAZA STRIP

Before examining the conditions and allegations that arose from Israel’s withdrawal from the Gaza Strip, the relevant international law must be understood. Both international human rights law and international humanitarian law are applicable to the situation in Gaza. Various instruments and principles in these bodies of law are identified and examined below.

A. *International Law*

Public international law “governs relationships principally between and among sovereign states as international actors.”⁷⁸ The modern day definition of international law includes other international actors, such as intergovernmental organizations and individuals, as objects and subjects of international law.⁷⁹ International human rights law and international humanitarian law are subsets of public international law.⁸⁰

There are three traditional sources of international law: (1) treaties, (2)

74. *Id.* at 18.

75. *Id.*

76. The military would provide the “correct” interpretation of legal questions, often not serving the local government’s interests. *Id.*

77. *See id.*

78. George E. Edwards, Expert Witness Affidavit of Professor George E. Edwards on International Human Rights Law, International Humanitarian Law, and International Criminal Law, *United States of America v. David M. Hicks, U.S. Military Commissions, Guantanamo Bay, Cuba*, para. 1.1 (Nov. 14, 2005) (unpublished affidavit, on file with the Indiana University School of Law at Indianapolis Program in International Human Rights Law Library) [hereinafter Edwards Affidavit]. Public international law is also commonly referred to as “the law of nations” and “international law.” *Id.* Private international law, on the other hand, is defined as “[t]he intellectual discipline concerning the international interface of municipal legal systems.” MARK W. JANIS & JOHN E. NOYES, *CASES AND COMMENTARY ON INTERNATIONAL LAW* 767 (3d ed. 2006). Private international law involves regulating private disputes with the legal system of a particular state, usually entailing a conflict of laws component. *See id.* Private international law is outside the scope of this Note.

79. Mark W. Janis, *Individuals as Subjects of International Law*, 17 CORNELL INT’L L.J. 61, 61, 73 (1984); JANIS & NOYES, *supra* note 78, at 368. “[M]ore modernly, [international law], embrac[es] not only nations but also such participants as international organizations and individuals (such as those who invoke their human rights or commit war crimes).” BLACK’S LAW DICTIONARY 835 (8th ed. 2004).

80. Edwards Affidavit, *supra* note 80, para. 1.4.

customary international law, and (3) general principles of law.⁸¹ Additionally, equity serves as a non-traditional source of international law that tribunals often synthesize with traditional sources in settling disputes.

1. *Treaties*

The Vienna Convention on the Law of Treaties,⁸² as the foremost authority on treaty law,⁸³ defines “treaty” as “an international agreement concluded between States in written form and governed by international law.”⁸⁴

While it is possible for non-state actors to enter into treaties,⁸⁵ the Vienna Convention only applies to treaties between state actors.⁸⁶ Treaties legally bind states parties under international law.⁸⁷ Treaties are akin to contracts under *pacta sunt servanda*,⁸⁸ where states parties are legally obligated to abide by the terms of the treaty.⁸⁹

A state’s express consent to be legally bound to a treaty activates the binding effect of this source of international law.⁹⁰ A state becomes bound when it complies with one of the acceptable methods recognized in the Vienna Convention:⁹¹ (1) signature;⁹² (2) exchange of instruments;⁹³ (3) ratification, acceptance, or approval;⁹⁴ and (4) accession.⁹⁵ Once a state becomes bound to a treaty, it becomes a “state party” to that treaty.⁹⁶ If a state signs but does not ratify, accept, or approve a treaty, the state is not legally bound to it and the

81. *Id.* para. 6. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, recognizes these sources as the three traditional sources of international law. Statute of the International Court of Justice art. 93, § 1, June 26, 1945, 59 Stat. 1031, T.S. No. 993 [hereinafter ICJ Statute]. The ICJ also considers “[j]udicial decisions and the teachings of the most highly qualified publicists of the various nations[] as subsidiary means for the determination of rules of law.” *Id.* art. 93, § 1(d).

82. Vienna Convention on the Law of Treaties, May, 23, 1967, 1155 U.N.T.S. 331 (*entered into force* Jan. 27, 1980) [hereinafter Vienna Convention]. Treaties are also known as “international agreements,” “conventions,” “covenants,” “protocols,” “charters,” or “pacts.” Edwards Affidavit, *supra* note 80, para. 14.3.

83. DAVID WEISSBRODT ET AL., INTERNATIONAL HUMAN RIGHTS LAW, POLICY, AND PROCESS 19 (3d ed. 2001).

84. Vienna Convention, *supra* note 84, art. 2, § 1(a).

85. *See id.* art. 3.

86. *Id.* art. 1.

87. *See id.*

88. The Latin translation of *pacta sunt servanda* is “agreements must be kept.” BLACK’S LAW DICTIONARY 1140 (8th ed. 2004). The legal definition is “[t]he rule that agreements and stipulations, esp. those contained in treaties, must be observed.” *Id.*

89. Vienna Convention, *supra* note 84, art. 26. “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” *Id.*

90. *See id.* art. 2, § 1

91. *Id.* art. 11.

92. *Id.* art. 12.

93. *Id.* art. 13.

94. *Id.* art. 14.

95. *Id.* art. 15.

96. *Id.* art. 1(g).

state's legal obligations are not as stringent;⁹⁷ the state merely must "refrain from acts which would defeat the object and purpose of [the] treaty."⁹⁸

2. Customary International Law

Customary international law, a second source of international law,⁹⁹ includes unwritten rules or principles of law that exist in the international legal arena.¹⁰⁰ These rules and principles become law through their widespread international acceptance as law.¹⁰¹ A customary international law norm binds all states unless a state has "expressly and persistently objected" to it.¹⁰² While treaty-based law binds states parties based on express consent, customary international law binds states based on implicit consent.¹⁰³ This is an important distinction because, while treaties bind only parties, customary international law binds any international actor.¹⁰⁴ Thus, customary international law projects a wider scope than treaty-based international law.

Two elements must exist for a rule or norm to rise to the level of customary international law: state practice and *opinio juris*.¹⁰⁵ In other words, a state must practice the norm and follow it from a sense of legal obligation.¹⁰⁶ Satisfaction of the state practice prong must, at the very least, show: (a) the duration of the state practice, (b) the uniform and consistent application of the practice, (c) the generality and empirical extent of the practice, and (d) the conformity of state practice to international standards.¹⁰⁷ Courts look to the widespread acceptance of international law instruments and various judicial decisions as evidence of state practice.¹⁰⁸

*Opinio juris*¹⁰⁹ is a "psychological element that requires an examination of a state's motives in engaging in a particular act or practice."¹¹⁰ To satisfy this prong, a state must show that it is practicing the norm out of a sense of legal obligation, not merely convenience or coincidence.¹¹¹ To satisfy *opinio juris*, the state must show: (a) that there is a legal nature to the rule protecting

97. See Edwards Affidavit, *supra* note 80, para. 14.5.

98. Vienna Convention, *supra* note 84, art. 18(a).

99. ICJ Statute, *supra* note 81, art. 38, § 1(b).

100. Edwards Affidavit, *supra* note 80, para. 15.2.

101. WEISSBRODT ET AL., *supra* note 85, at 22.

102. *Id.*

103. JANIS & NOYES, *supra* note 78, at 92.

104. The binding effect of customary international law is contingent upon the "persistent objector" rule. *Supra* note 102 and accompanying text.

105. WEISSBRODT ET AL., *supra* note 85, at 22.

106. *Id.*

107. Edwards Affidavit, *supra* note 80, para. 15.3.

108. See WEISSBRODT ET AL., *supra* note 85, at 22; Edwards Affidavit, *supra* note 80, at 26 n.21.

109. The full phrase *opinio juris sive necessitatis* literally means "opinion that an act is necessary by rule of law." BLACK'S LAW DICTIONARY 1125 (8th ed. 2004).

110. Edwards Affidavit, *supra* note 80, para. 15.4.

111. See JANIS & NOYES, *supra* note 78, at 101.

the right, (b) that the right is international in context, and (c) that the state is aware of the right.¹¹²

It is possible for the rules and norms in a treaty to also exist independently in the field of customary international law.¹¹³ For instance, many of the rules and norms contained within the Vienna Convention on the Law of Treaties have risen to the level of customary international law.¹¹⁴ In this regard, parts of the Vienna Convention actually represent a codification of customary international law.¹¹⁵ This has no effect on the treaty itself; customary international law exists parallel to treaty law.¹¹⁶ For example, a state party to the Vienna Convention would be bound to follow the express treaty norms and the parallel customary international law norms, while a non-state party would be bound to follow only the customary international law norms.¹¹⁷

A special type of customary international law, *jus cogens*,¹¹⁸ elevates a customary international law norm to a higher status.¹¹⁹ A *jus cogens* norm is non-derogable and can only be replaced by a subsequent *jus cogens* norm.¹²⁰ Thus, a *jus cogens* norm can trump a contrary norm contained in a treaty *contra bonos mores*.¹²¹ From this, it follows that *jus cogens* sits atop the hierarchy of international law.¹²² Examples of *jus cogens* norms include the prohibition of torture or other cruel, inhuman, or degrading treatment or punishment,¹²³ the prohibition of slavery,¹²⁴ and, more recently, the prohibition of the execution of

112. Edwards Affidavit, *supra* note 78, at 26 n.22.

113. *Id.* para. 15.6.

114. Gabcikovo-Nagymaros Project (Hung. v. Slov.), 1997 I.C.J. LEXIS 2, 64 (Sept. 25, 1997); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, Part 3 – International Agreements (1987).

115. Gabcikovo-Nagymaros Project (Hung. v. Slov.), 1997 I.C.J. LEXIS 2, 130 (Sept. 25, 1997); Edwards Affidavit, *supra* note 80, para. 14.7.

116. Edwards Affidavit, *supra* note 78, para. 15.6.

117. *Id.* para. 14.7.

118. *Jus cogens* literally means “compelling law.” BLACK’S LAW DICTIONARY 876 (8th ed. 2004). *Jus cogens* is also known as a “peremptory norm” or “peremptory rule of international law.” WEISSBRODT ET AL., *supra* note 85, at 23. The Vienna Convention recognizes *jus cogens* and defines it as “a peremptory norm of general international law . . . accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Vienna Convention, *supra* note 84, art. 53. *Jus cogens* stemmed from the natural law. JANIS & NOYES, *supra* note 78, at 138.

119. Edwards Affidavit, *supra* note 80, para. 15.8.

120. See WEISSBRODT ET AL., *supra* note 85, at 23; Edwards Affidavit, *supra* note 80, para. 15.8.

121. Alfred von Verdross, *Forbidden Treaties in International Law*, 31 AM. J. INT’L L. 571, 572 (1937). *Contra bonos mores* literally means “against good morals.” BLACK’S LAW DICTIONARY 341 (8th ed. 2004).

122. Prosecutor v. Furundzija, Case IT-95-17/1, Appeals Chamber Ruling (2002).

123. WEISSBRODT ET AL., *supra* note 85, at 23; Edwards Affidavit, *supra* note 80, para. 15.8.

124. WEISSBRODT ET AL., *supra* note 85, at 23; Edwards Affidavit, *supra* note 80, para. 15.8.

minors.¹²⁵

3. *General Principles of Law*

General principles of law serve as the last traditional source of international law.¹²⁶ This source has been defined as a “non-treaty, non-customary, and non-consensual source of international law.”¹²⁷ When examining international law issues, treaties and customary international law will be consulted first, and then, if gaps still need filling, general principles of law are consulted.¹²⁸ The rationale behind general principles of law is that “some legal principles are so general or fundamental that they are to be found in all or nearly all legal systems.”¹²⁹ If so, these principles should be used to fill in the gaps of international law.¹³⁰

A general principle of law can also derive from “unperfected” treaties (e.g. one never entered into force) or “unperfected” customary international law (e.g. where the state practice element is not met).¹³¹ Most general principles of law deal with procedural issues.¹³² Examples include the right to a fair trial and the right of assistance of counsel.¹³³

4. *Equity*

Although a non-traditional source of international law, international tribunals have used equitable principles as a basis in determining issues of international law.¹³⁴ The Statute of the International Court of Justice recognizes equity as a legitimate source to decide cases.¹³⁵ But, all parties to a particular case must agree to allow the International Court of Justice (ICJ) to apply equitable principles to a particular case.¹³⁶ In the more than eighty combined years that the ICJ and the Permanent Court of International Justice (PCIJ) have

125. *Michael Domingues v. United States*, Case 12.285, Inter-Am. C.H.R., Report No. 62/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 para. 85 (2003).

126. ICJ Statute, *supra* note 83, art. 38, § 1(c).

127. *Edwards Affidavit*, *supra* note 80, para. 16.2. For an in-depth look at general principles of law, see M. Cherif Bassiouni, *A Functional Approach to “General Principles of International Law,”* 11 MICH. J. INT’L L. 768 (1990).

128. *See Edwards Affidavit*, *supra* note 80, para. 16.2.

129. *JANIS & NOYES*, *supra* note 78, at 137.

130. *See Case 155/79, AM & S Eur. Ltd. v. Comm’n of the Eur. Cmtys.*, 1982 E.C.R. 1575.

131. *Edwards Affidavit*, *supra* note 80, para. 16.2.

132. *See id.* paras. 16.3-16.4.

133. *Id.* para. 16.4.

134. *JANIS & NOYES*, *supra* note 78, at 154.

135. ICJ Statute, *supra* note 83, art. 38, § 2. “[Article Thirty-Eight] shall not prejudice the power of the Court to decide a case *ex aequo et bono* if the parties agree thereto.” *Id.* *Ex aequo et bono* translates as “[a]ccording to what is equitable and good.” BLACK’S LAW DICTIONARY 600 (8th ed. 2004).

136. ICJ Statute, *supra* note 83, art. 38, § 2.

existed,¹³⁷ no case has produced such an agreement by the parties.¹³⁸ Nevertheless, international tribunals have incorporated equitable principles into adjudication without the express consent of the parties.¹³⁹

B. International Human Rights Law—Applicable Sources and Instruments

The notion of universal human rights materialized in the international community around the same time as the creation of Israel.¹⁴⁰ The brutality of the Nazi regime during World War II and the horrors of the Holocaust—where the Nazis exterminated an estimated six million Jews and six million other politically unpopular European peoples—outraged and shocked the international community.¹⁴¹ The Japanese military also committed inhumane acts during World War II.¹⁴² During and after World War II, world leaders spoke out against these and other horrors.¹⁴³ For instance, President Franklin D. Roosevelt remarked on the importance of promoting “peace and protection of human rights” for the future.¹⁴⁴ Hence, international human rights law was born.

International human rights law, a subset of public international law, consists of multi-lateral treaties, customary international law, and general principles of law.¹⁴⁵ Initially, international human rights law included only those rights recognized in the International Bill of Rights.¹⁴⁶ International human rights law has expanded; it now includes all “norms in place to protect individuals and groups from breaches of basic dignity, respect, and humanity

137. The Permanent Court of International Justice (PCIJ) preceded the ICJ. JANIS & NOYES, *supra* note 78, at 28. The PCIJ is now defunct. See WEISSBRODT ET AL., *supra* note 83, at 11.

138. JANIS & NOYES, *supra* note 78, at 28-29.

139. See *id.* at 29. The ICJ (and the PCIJ before it) has adjudicated cases using equitable principles without the agreement of all the parties. See, e.g., *North Sea Continental Shelf (F.R.G. v. Neth.)*, 1969 I.C.J. 3, 48 (Feb. 20); *Diversion of Water from Meuse (Neth. v. Belg.)*, 1937 P.C.I.J. (ser. A/B) No. 70, at 76-77 (June 28) (individual opinion of Judge Hudson).

140. “The modern human rights movement began during World War II.” WEISSBRODT ET AL., *supra* note 85, at 6. “Modern day international human rights law was born in the era immediately following World War II, when pre-existing human rights norms were incorporated into positive international instruments and heralded as inviolable by the international community of nations.” Edwards Affidavit, *supra* note 80, para. 22.3.

141. WEISSBRODT ET AL., *supra* note 85, at 6.

142. One of the worst atrocities, the “Rape of Nanking,” occurred in 1937, where the Japanese army killed at least 43,000 civilians and raped thousands of women. *Id.*

143. President Franklin D. Roosevelt, in his 1941 State of the Union address, outlined his “four essential human freedoms” vision of a future where human rights are ensured. *Id.* Winston Churchill also supported a future of human rights through the Atlantic Charter. *Id.* at 6-7.

144. *Id.* at 6.

145. Edwards Affidavit, *supra* note 80, para. 22.1.

146. WEISSBRODT ET AL., *supra* note 85, at 28. See *infra* note 173 and accompanying text for a description of the International Bill of Rights.

. . . [that are] afforded to all persons without regard for the identity of the victims or abuse perpetrators."¹⁴⁷ International human rights law protects all persons; it "must be abided by at all times in all places by all" international actors.¹⁴⁸

1. *United Nations Charter*

The United Nations replaced the League of Nations as the preeminent intergovernmental world organization.¹⁴⁹ The Charter is the constitution of the United Nations and "is both the most prominent treaty and contains seminal human rights provisions."¹⁵⁰ Initially, the United Nations Charter codified existing human rights norms and elevated them to the international level.¹⁵¹ The Charter expressly recognizes human rights¹⁵² and the importance of protecting such rights among all peoples.¹⁵³ The Charter, and the rights it seeks to uphold, centers around innate human dignity.¹⁵⁴ Thus, the United Nations and its member states strive to promote and protect human rights.¹⁵⁵

Article Fifty-Five obliges member states to promote "higher standards of living, full employment, and conditions of economic and social progress and development."¹⁵⁶ Article Fifty-Six reiterates that it is an obligation of membership for states to work jointly and separately to achieve the purposes set out in Article Fifty-Five.¹⁵⁷

Any "peace-loving" state may apply for United Nations membership by submitting an application pursuant to Article Four of the Charter.¹⁵⁸ Next, the Security Council must recommend the applicant for admission and the General Assembly must vote to admit the state.¹⁵⁹ The applicant-state must then accept

147. Edwards Affidavit, *supra* note 80, para. 22.1.

148. *Id.*

149. See MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 207 (4th ed. 2003). Preliminary negotiations among the United States, Great Britain, the Soviet Union, and later with China, occurred in 1944 at Dumbarton Oaks in Washington, D.C. WEISSBRODT ET AL., *supra* note 83, at 7. The United Nations was officially created in San Francisco in 1945. *Id.* at 8. For more information on the founding of the United Nations, see Richard Edis, *A Job Well Done: The Founding of the United Nations Revisited*, 6 CAMBRIDGE REV. INT'L AFF. 29 (1992).

150. WEISSBRODT ET AL., *supra* note 85, at 17.

151. See generally U.N. Charter (including provisions for many human rights norms).

152. "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED . . . to reaffirm faith in fundamental human rights . . ." *Id.* pmbl.

153. *Id.*; WEISSBRODT ET AL., *supra* note 85, at 8-9.

154. U.N. Charter pmbl.

155. "The Purposes of the United Nations are: . . . To achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms . . ." *Id.* art. 1, para. 3. "[T]he United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms for all . . ." *Id.* art. 55.

156. *Id.* art. 55(c).

157. *Id.* art. 56.

158. *Id.* art. 4, para. 1.

159. *Id.* art. 4, para. 2.

the obligations contained in the Charter.¹⁶⁰ Since the Charter is a treaty,¹⁶¹ the applicant-state must become bound to it.¹⁶² The Charter requires ratification as the means of becoming bound.¹⁶³ In exceptional circumstances, a state may “continue” or “succeed” another state’s membership without having to submit an application and undergo the application process.¹⁶⁴

Membership in the United Nations¹⁶⁵ obligates Israel to adhere to and promote the provisions of the Charter. Only states can become members of the United Nations;¹⁶⁶ the Palestinian Authority cannot become a member unless it obtains statehood.¹⁶⁷ Even if the Palestinian Authority obtains statehood, it would then need to be “peace-loving,” submit an application, receive the recommendation of the Security Council and an affirmative vote by the General Assembly, and bind itself to the Charter.¹⁶⁸ Only then could Palestine become a United Nations member and be legally bound to uphold and promote the obligations of membership contained within the Charter.

2. *Universal Declaration of Human Rights*

In 1948, the United Nations General Assembly adopted the foundation of modern international human rights law: the Universal Declaration of Human Rights (UDHR).¹⁶⁹ Although not a treaty, the UDHR represented a monumental human rights law achievement and served as a precursor to subsequent human rights law treaties, declarations, and other international law instruments.¹⁷⁰ The norms contained in the UDHR have, however, risen to the level of customary international law and are therefore binding on all international actors.¹⁷¹ Municipal law, such as United States case law, has recognized the norms in the UDHR as implicitly binding.¹⁷² The UDHR also

160. *Id.* art. 4, para. 1.

161. *Supra* note 150.

162. See *supra* notes 83-89 and accompanying text for information regarding activating the binding effect of treaties.

163. U.N. Charter art. 110, para. 1.

164. See generally Michael A. Scharf, *Musical Chairs: The Dissolution of States and Membership in the United Nations*, 28 CORNELL INT’L L.J. 29 (1994), for an in-depth look at the continuity and state succession theories of United Nations membership. For instance, India and Russia obtained United Nations membership this way. *Id.*

165. Israel joined the United Nations on May 11, 1949. United Nations, *List of Member States*, <http://www.un.org/Overview/unmember.html> (last visited Jan. 30, 2007).

166. U.N. Charter art. 4, para. 1. “Membership in the United Nations is open to . . . states . . .” *Id.*

167. Palestine is not a state. *Supra* note 10 and accompanying text.

168. U.N. Charter art. 4.

169. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter UDHR].

170. WEISSBRODT ET AL., *supra* note 85, at 9.

171. Edwards Affidavit, *supra* note 80, para. 15.6.

172. See, e.g., *Filartiga v. Pena-Irala*, 630 F.2d 876, 882-83 (2d Cir. 1980). “[T]he [United Nations] Charter precepts embodied in this Universal Declaration ‘constitute basic principles of

marks the first of three fundamental documents that comprise The International Bill of Human Rights¹⁷³—"the most authoritative and comprehensive prescription of human rights obligations that governments undertake in joining the [United Nations]."¹⁷⁴

Many articles of the UDHR pertain to the situation in the Gaza Strip and the related human rights implications. Article One of the UDHR establishes a normative, yet hopeful framework.¹⁷⁵ Article Two addresses the UDHR's applicability to all peoples,¹⁷⁶ while Articles Six and Seven extend legal recognition¹⁷⁷ and equal protection¹⁷⁸ to all. Article Twenty-One provides for equal access to public services.¹⁷⁹

Article Three announces the most fundamental assurance of human rights,¹⁸⁰ while Article Seventeen follows up with property rights assurances.¹⁸¹ Article Twelve addresses privacy and family rights,¹⁸² and Article Sixteen explicates on the meaning of protection of the family.¹⁸³ Article Thirteen recognizes freedom of movement.¹⁸⁴

The UDHR also includes provisions for economic, social, and cultural rights. Article Twenty-Two recognizes these rights generally along with the

international law.' " *Id.* (quoting G.A. Res. 2625 (XXV), at 124, U.N. Doc. A/8082 (Oct. 24, 1970)).

173. DAVID WEISSBRODT ET AL., *SELECTED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND BIBLIOGRAPHY FOR RESEARCH ON INTERNATIONAL HUMAN RIGHTS LAW INSTRUMENTS XI* (3d ed. 2001) [hereinafter *SELECTED INSTRUMENTS*]. The International Bill of Human Rights contains the UDHR; the International Covenant on Economic, Social and Cultural Rights, *infra* note 202; and the International Covenant on Civil and Political Rights, *infra* note 242. WEISSBRODT ET AL., *supra* note 85, at 9. Also considered part of the International Bill of Human Rights are the Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 302 (*entered into force* Mar. 23, 1976); and the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, Dec. 15, 1989, 1642 U.N.T.S. 414 (*entered into force* July 11, 1991). WEISSBRODT ET AL., *supra* note 85, at 18.

174. WEISSBRODT ET AL., *supra* note 85, at 9.

175. UDHR, *supra* note 171, art. 1. "All human beings are born free and equal in dignity and rights. . . and should act towards one another in a spirit of brotherhood." *Id.*

176. *Id.* art. 2. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." *Id.*

177. *Id.* art. 6. "Everyone has the right to recognition everywhere as a person before the law." *Id.*

178. *Id.* art. 7. "All are equal before the law and are entitled without any discrimination to equal protection of the law." *Id.*

179. *Id.* art. 21, para. 2. "Everyone has the right to equal access to public service in his country." *Id.*

180. *Id.* art. 3. "Everyone has the right to life, liberty and the security of person." *Id.*

181. *Id.* art. 17. "Everyone has the right to own property. . . ." *Id.* art. 17, para. 1. "No one shall be arbitrarily deprived of his property." *Id.* art. 17, para. 2.

182. *Id.* art. 12. "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. . . ." *Id.*

183. *Id.* art. 16, para. 3. "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." *Id.*

184. *Id.* art. 13, para. 1. "Everyone has the right to freedom of movement and residence within the borders of each State." *Id.*

more specific right to social security.¹⁸⁵ Article Twenty-Three provides the right to work, choice of employment, and favorable working conditions.¹⁸⁶ Article Twenty-Five considers standard of living, health, food, clothing, medical care, social security, and welfare.¹⁸⁷ Article Twenty-Six includes a provision for education,¹⁸⁸ while Article Twenty-Seven regards cultural life.¹⁸⁹

The UDHR is not a treaty; it is a resolution.¹⁹⁰ A resolution does not legally bind a state.¹⁹¹ It does, however, still affect all member states of the United Nations.¹⁹² Because the United Nations Charter spawned the UDHR and the General Assembly adopted it, Israel, by virtue of being a United Nations member state,¹⁹³ should follow the UDHR. Even so, the norms recognized within the UDHR that have risen to the level of customary international law bind Israel.¹⁹⁴

Conversely, the Palestinian Authority would not be obliged to comply with the UDHR in the same manner as Israel because Palestine is not a United Nations member.¹⁹⁵ But, because the norms contained within the UDHR have risen to the level of customary international law,¹⁹⁶ these norms would still bind the Palestinian Authority as an international actor.¹⁹⁷

The UDHR served as the impetus of two key international human rights law treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹⁹⁸

185. *Id.* art. 22. "Everyone . . . has the right to social security and is entitled to realization . . . of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." *Id.*

186. *Id.* art. 23, para. 1. "Everyone has the right to work, to free choice of employment, [and] to just and favourable conditions of work . . ." *Id.*

187. *Id.* art. 25, para. 1. "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." *Id.*

188. *Id.* art. 26, para. 1. "Everyone has the right to education." *Id.*

189. *Id.* art. 27, para. 1. "Everyone has the right freely to participate in the cultural life of the community . . ." *Id.*

190. *Supra* note 170 and accompanying text. Resolutions are not recognized by the ICJ Statute as a source of international law. *Supra* note 83. The U.N. Charter identifies resolutions as "recommendations" only. U.N. Charter art. 10.

191. *See* U.N. Charter art. 10.

192. *Texaco Overseas Petroleum Co. v. Libya*, paras. 83, 86, 17 I.L.M. 1 (1978). Resolutions have value in that they can help determine and shape international law. *Id.*

193. *Supra* note 165.

194. *Supra* notes 102-104 and accompanying text.

195. *Supra* notes 167-68.

196. *Edwards Affidavit*, *supra* note 80, para. 15.6.

197. *Supra* notes 102-104 and accompanying text.

198. Originally, the ICESCR and the ICCPR were to be one document, covering all the rights enunciated in the UDHR. WEISSBRODT ET AL., *supra* note 85, at 88. The inherent differences between civil and political rights and economic, social, and cultural rights, as well as

3. *International Covenant on Economic, Social and Cultural Rights*

Both the United Nations Charter¹⁹⁹ and the UDHR²⁰⁰ refer to economic, social, and cultural rights broadly. Thus, a United Nations member is already obliged to promote such rights.²⁰¹ Further, the ICESCR²⁰² legally binds states parties to a multitude of additional and specifically-defined rights.²⁰³ The norms contained within the ICESCR have likely risen to the level of customary international law.²⁰⁴ Therefore, those norms would be binding on all states regardless of whether a particular state is a party to the ICESCR.²⁰⁵ The ICESCR serves as the principal source of international economic, social, and cultural rights obligations.²⁰⁶ The ICESCR embodies the “second generation” of human rights, or *egalite*.²⁰⁷ Article One, however, recognizes the right of self-determination²⁰⁸—a “third generation” right, or *fraternite*.²⁰⁹ Article One implies that first,²¹⁰ second, and third generation rights must coexist to reach the

various governments’ hesitations, may have been reasons to create separate instruments. *See id.*

199. “[T]he United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational co-operation. . . .” U.N. Charter art. 55.

200. “Everyone . . . has the right to social security and is entitled to realization . . . of the economic, social and cultural rights” UDHR, *supra* note 171, art. 22.

201. As a United Nations member, a state has the duty to promote and encourage human rights. *Supra* note 155 and accompanying text. The rights recognized within the UDHR have risen to customary international law; United Nations members, by being international actors, are implicitly bound to ensure those rights. *See supra* note 171 and accompanying text 171.

202. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter ICESCR].

203. *See generally id.*

204. Eleanor D. Kinney, *The International Human Right to Health: What Does This Mean for Our Nation and World?*, 34 IND. L. REV. 1457, 1464 (2001). *But see* U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights Israel*, ¶ 13, U.N. Doc. E/C.12/1/Add.69 (Aug. 31, 2001) (where the Committee determined that basic economic, cultural, and social rights have risen to the level of customary international law).

205. *See supra* notes 102-104 and accompanying text.

206. WEISSBRODT ET AL., *supra* note 85, at 88.

207. *See* BURNS H. WESTON, *Human Rights, in HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION* 18-19 (Richard Pierre Claude & Burns H. Weston eds., 1992).

208. “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” ICESCR, *supra* note 204, art. 1, para. 1.

209. WESTON, *supra* note 209. Third generation rights tend to be categorized as collective rights or solidarity rights. *Id.* at 19-20. “[T]he majority of these solidarity rights tend to be more aspirational than justiciable in character, enjoying as yet an ambiguous jural status as international human rights norms.” *Id.* at 20. The UDHR even alludes to these rights: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in [the UDHR] can be fully realized.” UDHR, *supra* note 171, art. 28.

210. *See infra* note 255 and accompanying text for a description of first generation rights.

ultimate goal—ensuring the penumbra of human rights.²¹¹

Some controversy has surrounded the ICESCR with regard to issues of justiciability.²¹² But, real legal obligations exist for a state party.²¹³ A state party must “undertake to take steps²¹⁴ . . . to the maximum of its available resources,²¹⁵ with a view to achieving progressively²¹⁶ the full realization of rights recognized in the [ICESCR] by all appropriate means,²¹⁷ including particularly the adoption of legislative measures.”²¹⁸ The Office of the High Commissioner for Human Rights (OHCHR)²¹⁹ assured skeptics that, despite the somewhat loose language of Article Two, a state party must take steps “within a reasonably short time” after the ICESCR enters into force.²²⁰ Therefore, the burden rests on the state party to prove it is “taking steps” to implement the ICESCR and is making progress.²²¹

The ICESCR expressly recognizes the UDHR and seeks to adhere to its

211. See ICESCR, *supra* note 204, art. 1, para. 1.

212. Some believe that civil and political rights are immediately and readily justiciable, while economic, social, and cultural rights are not. WEISSBRODT ET AL., *supra* note 85, at 88-89. See U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights, *Draft General Comment No. 9: The Domestic Application of the Covenant*, U.N. Doc. E/C.12/1998/24 (Dec. 3, 1998), for a response to justiciability concerns.

213. ICESCR, *supra* note 204, art. 2, para. 1. “Obligations of conduct” (specific action or omission required of a state party) and “obligations of result” (the state party chooses the action or omission in order to achieve a result) are implicit within the obligations of the ICESCR. See WEISSBRODT ET AL., *supra* note 85, at 89-90.

214. ICESCR, *supra* note 204, art. 2, para. 1. “[T]o take steps” may be interpreted as a general rule of international law, meaning states parties must “comply in implementing the provisions” of the ICESCR. WEISSBRODT ET AL., *supra* note 85, at 90. But, conjoined with the later phrase “to achieve progressively,” the effect may be to delay obligations. *Id.*

215. This phrase provides a state party “flexibility and discretion” in expending resources, but the Committee on Economic, Social and Cultural Rights examines a state party’s true resources. WEISSBRODT ET AL., *supra* note 85, at 92.

216. *Supra* note 212.

217. This phrase allows a state party discretion in the actions it undertakes, though the ECS Committee is the final arbiter on what is an appropriate measure. WEISSBRODT ET AL., *supra* note 85, at 90. “Appropriate measures” include, but are not limited to, “administrative, financial, educational and social measures.” U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights, *Report on the Fifth Session*, ¶ 7, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter General Comment 3].

218. ICESCR, *supra* note 204, art. 2, para. 1.

219. The OHCHR assists the High Commissioner in “implementing U.N. activities by attempting to secure respect for human rights through diplomacy and dialogue.” WEISSBRODT ET AL., *supra* note 85, at 456 n.2.

220. General Comment 3, *supra* note 219, ¶ 2. The full quote reads:

[W]hile the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.

Id.

221. WEISSBRODT ET AL., *supra* note 85, at 90.

ideals.²²² The ICESCR focuses on the individual's duties to others and the community.²²³ Like the UDHR,²²⁴ the rights recognized in the ICESCR apply to all persons.²²⁵ The ICESCR includes certain rights applicable to the Gaza situation. Article Six outlines the right to work,²²⁶ while Article Seven incorporates decent working conditions and fair wages.²²⁷ Article Eleven follows up with the right to an adequate²²⁸ standard of living.²²⁹ Article Ten announces family rights and emphasizes the importance of the family.²³⁰ It also provides special protection for children.²³¹ Article Nine deals with social security,²³² and Article Twelve sets the bar for health care rights.²³³ Article Thirteen provides a lengthy prescription for educational rights,²³⁴ while Article

222. ICESCR, *supra* note 204, pmb1. "Recognizing that, in accordance with the [UDHR], the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights . . ." *Id.*

223. *Id.* "Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the [ICESCR] . . ." *Id.*

224. See UDHR, *supra* note 171, for its language pertaining to application of rights to all.

225. ICESCR, *supra* note 204, art. 2, para. 2. "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." *Id.*

226. *Id.* art. 6, para. 1. "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts . . ." *Id.*

227. *Id.* art. 7. "[J]ust and favourable conditions of work" include "[f]air wages and equal remuneration . . . [a] decent living . . . [s]afe and healthy working conditions; [e]qual opportunity for everyone to be promoted . . . [and] [r]est, leisure and reasonable limitation of working hours . . ." *Id.*

228. "Adequate shelter means . . . adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost." U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights, *General Comment 4, The Right to Adequate Housing*, ¶ 7, U.N. Doc. E/1992/23 (1991) [hereinafter *General Comment 4*].

229. ICESCR, *supra* note 204, art. 11, para. 1. "[T]he right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." *Id.*

230. *Id.* art. 10, para. 1. "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society . . ." *Id.*

231. *Id.* art. 10, para. 3. "Special measures of protection and assistance should be taken on behalf of all children and young persons . . ." *Id.*

232. *Id.* art. 9. "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." *Id.*

233. *Id.* art. 12, para. 1. "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." *Id.*

234. *Id.* art. 13, para. 1. "The States Parties to the present Covenant recognize the right of everyone to education." *Id.* This article also defines the scope of the right to education:

- (a) Primary education shall be compulsory and available free to all; (b) Secondary education . . . shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all . . .

Fifteen includes the right to cultural participation.²³⁵

Israel ratified the ICESCR and is thus a state party.²³⁶ Therefore, Israel is legally bound to undertake the obligations of the ICESCR.²³⁷ General Comment 3 aids in determining what might qualify as a failure of obligations under the ICESCR.²³⁸ Because a state of Palestine does not exist,²³⁹ it is not and presently cannot be a state party. But, the norms within the ICESCR have arguably risen to the level of customary international law.²⁴⁰ The Palestinian Authority, as an international actor, is implicitly bound to those norms.²⁴¹

4. *International Covenant on Civil and Political Rights*

The ICCPR²⁴² also furthers the principles in the United Nations Charter.²⁴³ Given that the UDHR recognizes many civil and political rights,²⁴⁴ the ICCPR advances those norms²⁴⁵ by enunciating express rights and holding states parties legally bound to its provisions.²⁴⁶ However, the norms contained

by every appropriate means, and in particular by the progressive introduction of free education

Id. art. 13, para. 2(a-c).

235. *Id.* art. 15, para. 1(a). "The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life" *Id.*

236. Israel signed the ICESCR on Dec. 19, 1966, and ratified it Oct. 3, 1991. Office of the U.N. High Comm'r for Human Rights, International Covenant on Economic, Social and Cultural Rights New York, 16 December 1966, <http://www.ohchr.org/english/countries/ratification/3.htm> (last updated May 8, 2006) (last visited Sept. 23, 2006). It entered into force on Jan. 3, 1992. Office of the U.N. High Comm'r for Human Rights, Status of Ratification of the Principal International Human Rights Treaties, <http://www.ohchr.org/english/bodies/docs/ratificationstatus.pdf> (June 16, 2006) (last visited Sept. 23, 2006) [hereinafter Ratification Chart].

237. See Vienna Convention, *supra* note 84, art. 14.

238. "[A] State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the [ICESCR]." General Comment 3, *supra* note 219, ¶ 10.

239. *Supra* note 10 and accompanying text.

240. *Supra* note 204 and accompanying text.

241. *Supra* notes 102-104 and accompanying text.

242. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR].

243. "Considering that, in accordance with the principles proclaimed in the Charter of the United Nations," ICCPR, *supra* note 244, pmb1.

244. See, e.g., UDHR, *supra* note 171, art. 3.

245. ICCPR, *supra* note 244, pmb1.

Recognizing that, in accordance with the [UDHR], the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Id. Interestingly, the ICCPR not only makes reference to civil and political rights, but also to the complementary necessity of economic, social, and cultural rights. *Id.* This gives more credence to the idea that the ICESCR and ICCPR were to be one document. See *supra* note 198 for more information on this idea.

246. See Vienna Convention, *supra* note 84, art. 14.

within the ICCPR have risen to the level of customary international law;²⁴⁷ these norms bind all international actors.²⁴⁸ Unlike the ICESCR's flexible implementation plan,²⁴⁹ the ICCPR requires much more stringent measures of its states parties.²⁵⁰

The ICCPR focuses on humankind's inherent dignity and equal and inalienable rights.²⁵¹ Like in the UDHR²⁵² and the ICESCR,²⁵³ the rights enunciated in the ICCPR apply to all without discrimination.²⁵⁴ The ICCPR embodies "first generation" human rights, or *liberte*.²⁵⁵ Similar to the ICESCR,²⁵⁶ the ICCPR incorporates the "third generation" right of self-determination.²⁵⁷ Article One of the ICCPR, like the ICESCR, intimates that first, second, and third generation rights must be realized and promoted together.²⁵⁸

Article Six recognizes one of the most basic human rights, the inherent

247. Russell A. Miller, *Post-Conflict Justice: From Malmedy to Halabja*, 13 MICH. ST. J. INT'L L. 107, 136 n.118 (2005); see U.N. Human Rights Comm., *General Comment on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations Under Article 41 of the Covenant*, ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 11, 1994); see also Harold Hongju Koh, *Agora: Military Commissions: The Case Against Military Commissions*, 96 AM. J. INT'L L. 337, 341 n.24 (2002).

248. *Supra* notes 102-104 and accompanying text.

249. *Supra* notes 212-21 and accompanying text.

250. ICCPR, *supra* note 244, art. 2, para. 2.

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Id. See U.N. Human Rights Comm., *General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter *General Comment 31*], for more information on states parties' legal obligations under the ICCPR.

251. "[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." ICCPR, *supra* note 244, pmbl.

252. UDHR, *supra* note 171, art. 2.

253. ICESCR, *supra* note 204, art. 2, para. 2.

254. ICCPR, *supra* note 244, art. 2, para. 1.

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Id.

255. See WESTON, *supra* note 209, at 18-19.

256. See *supra* note 209 and accompanying text.

257. ICCPR, *supra* note 244, art. 1, para. 1. "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." *Id.*

258. See *id.*

right to life,²⁵⁹ though it does not abolish the death penalty per se.²⁶⁰ Article Seven, upholding another fundamental human right, abolishes the use of torture and other degrading forms of punishment.²⁶¹ Article Nine recognizes the general right to liberty and personal safety.²⁶² Article Twelve explains the right to freedom of movement,²⁶³ while Article Seventeen prohibits unlawful interferences with privacy and family.²⁶⁴ Article Twenty-Four discusses enhanced protection of children.²⁶⁵ Article Twenty-Five explains the right of equal access of public services.²⁶⁶

Article Twenty-Eight establishes the Human Rights Committee (HRC).²⁶⁷ The HRC serves as the chief United Nations body in charge of implementing the ICCPR.²⁶⁸ HRC members “serv[e] in their individual expert capacity and [are] charged to study reports submitted by the state parties on measures they have adopted that give effect to the rights recognized in the covenant.”²⁶⁹

Israel is a state party to the ICCPR.²⁷⁰ Therefore, Israel is legally bound by international law to undertake the obligations of the ICCPR.²⁷¹ The

259. *Id.* art. 6, para. 1. “Every human being has the inherent right to life. . . . No one shall be arbitrarily deprived of his life.” *Id.*

260. *See id.* art. 6, paras. 2, 4-6. The ICCPR does encourage states parties to abolish the death penalty, though. *Id.* art. 6, para. 6. The ICCPR does abolish the death penalty for persons under the age of eighteen and pregnant women. *Id.* art. 6, para. 5.

261. *Id.* art. 7. “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” *Id.*

262. *Id.* art. 9, para. 1. “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” *Id.*

263. *Id.* art. 12, para. 1. “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” *Id.* Restrictions on movement are limited. *See id.* art. 12, para. 3, for a list of restrictions. “No one shall be arbitrarily deprived of the right to enter his own country.” *Id.* art. 12, para. 4.

264. *Id.* art. 17, para. 1. “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” *Id.*

265. *Id.* art. 24, para. 1. “Every child shall have, without any discrimination . . . the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” *Id.*

266. *Id.* art. 25. “Every citizen shall have the right and the opportunity . . . [t]o take part in the conduct of public affairs . . . [t]o vote and to be elected . . . [t]o have access, on general terms of equality, to public service in his country.” *Id.*

267. *Id.* art. 28.

268. *See* WEISSBRODT ET AL., *supra* note 85, at 17.

269. WESTON, *supra* note 209, at 25.

270. Israel signed the ICCPR on Dec. 16, 1966, and ratified it on Oct. 3, 1991. Office of the U.N. High Comm’r for Human Rights, International Covenant on Civil and Political Rights New York, 16 December 1966, <http://www.ohchr.org/english/countries/ratification/4.htm#reservations> (last updated Sept. 9, 2006) (last visited Sept. 23, 2006). The ICCPR entered into force for Israel on Jan. 3, 1992. Ratification Chart, *supra* note 238.

271. *See* Vienna Convention, *supra* note 84, art. 14.

Palestinian Authority, a non-state,²⁷² is not and presently cannot be a state party to the ICCPR; however, the norms contained within the ICCPR have risen to customary international law.²⁷³ Those norms implicitly bind the Palestinian Authority as an international actor.²⁷⁴

5. *Guiding Principles on Internal Displacement*

The United Nations first raised awareness of the international crisis of internal displacement.²⁷⁵ In 1992, the Secretary-General of the United Nations appointed Mr. Francis M. Deng as the representative on internally displaced persons.²⁷⁶ Mr. Deng studied the causes and consequences of internal displacement and the status of internally displaced persons within an international law context.²⁷⁷ At the time of his report, Mr. Deng found that internal displacement affected about twenty-five million people worldwide and often involved the gross violation of human rights.²⁷⁸ Mr. Deng focused his mandate on developing normative and institutional frameworks to assist in the plight of internally displaced persons and to promote a systematic international response.²⁷⁹

In 1996, Deng submitted a "Compilation and Analysis of Legal Norms"²⁸⁰ to the Commission on Human Rights.²⁸¹ The Compilation and Analysis examined various areas of international law and concluded that there were "significant areas in which [international law] fails to provide an adequate basis for [an internally displaced person's] protection and assistance."²⁸² In response, the Commission requested that Deng prepare a more instructional report—the Guiding Principles on Internal Displacement (Guiding

272. *Supra* note 10 and accompanying text.

273. *Supra* note 247.

274. *Supra* notes 102-104 and accompanying text.

275. Representative of the Secretary-General, Francis M. Deng, *Report of the Representative of the Secretary-General on the Guiding Principles on Internal Displacement*, ¶ 4, submitted pursuant to Commission on Human Rights Resolution 1997/39, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter *Guiding Principles*].

276. *Id.* ¶ 2.

277. *Id.*

278. *Id.* ¶ 1.

279. *Id.* ¶ 3.

280. Representative of the Secretary-General, Francis M. Deng, *Report of the Representative of the Secretary-General on Internally Displaced Persons Compilation and Analysis of Legal Norms*, submitted pursuant to Commission on Human Rights Resolution 1995/57, U.N. Doc. E/CN.4/1996/52/Add.2 (Dec. 5, 1995).

281. The Commission on Human Rights is a key charter-based United Nations body pertaining to the protection of human rights. WEISSBRODT ET AL., *supra* note 85, at 15. The Commission can "initiate studies and fact-finding missions, draft conventions and declarations for approval by higher bodies, discuss specific human rights violations in public or private sessions, and initiate suggestions for improving the U.N.'s human rights procedures." *Id.* The Commission can also establish rapporteurs, consider specific state situations confidentially, and use thematic procedures to review certain alleged human rights violations. *Id.*

282. *Guiding Principles*, *supra* note 277, ¶ 7.

Principles).²⁸³

The Guiding Principles “address[es] the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection.”²⁸⁴ International human rights law and international humanitarian law serve as the backbone of the Guiding Principles.²⁸⁵ The Guiding Principles incorporates treaty-based international law and customary international law.²⁸⁶ Specifically, the Guiding Principles “address[es] gaps identified in the Compilation and Analysis,” such as the different phases of displacement, protection against arbitrary displacement, and government and institutional assistance during displacement.²⁸⁷ In this regard, the Guiding Principles, albeit soft law,²⁸⁸ is intended to act similarly to general principles of law as a gap-filler.²⁸⁹

The Guiding Principles provides guidance to states, internally displaced persons, and other authorities and institutions, such as the United Nations.²⁹⁰ Deng intended the Guiding Principles to be persuasive authority that aids states in determining the best course of action regarding internally displaced persons and their rights.²⁹¹ Additionally, the Guiding Principles was to serve as an educational and consciousness-raising tool.²⁹² Deng also hoped the Guiding Principles would ultimately help prevent crises of internal displacement.²⁹³

The Guiding Principles defines “internally displaced persons”:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.²⁹⁴

283. *Id.* ¶ 8.

284. *Id.* ¶ 9.

285. *See id.*

286. *See id.*

287. *Id.*

288. Soft law in the international context is a term of art: “Guidelines, policy declarations, or codes of conduct that set standards of conduct but are not legally binding.” BLACK’S LAW DICTIONARY 1426 (8th ed. 2004).

289. *See supra* notes 128 and accompanying text.

290. *Guiding Principles, supra* note 277, ¶ 10.

291. *Id.* ¶ 11.

292. *Id.*

293. *Id.*

294. *Id.* ¶ 2. Another United Nations document defines internally displaced persons as “persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country.” Representative of the Secretary-General, Francis M. Deng, *Report of the Representative of the Secretary-General on Internally Displaced Persons, submitted pursuant to Commission on Human Rights*

The First Principle announces that “[i]nternally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country.”²⁹⁵ The Guiding Principles prohibits discrimination against internally displaced persons regarding legal rights and freedoms²⁹⁶ and discrimination in the application of the Principles.²⁹⁷

Principle Two instructs that all authorities and persons shall observe the Guiding Principles.²⁹⁸ Further, Principle Two does not mitigate the responsibilities of international actors to adhere to international human rights law or international humanitarian law treaties or customary international law norms or rules.²⁹⁹ Principle Three identifies national authorities as the bodies primarily responsible for providing protection and assistance to internally displaced persons.³⁰⁰

Principle Five reminds authorities and international actors of their obligations under international law.³⁰¹ Principle Six recognizes the right of everyone to be protected against arbitrary displacement from their “home or place of habitual residence.”³⁰² Further, this Principle describes certain circumstances where arbitrary displacement is prohibited.³⁰³ Principle Seven instructs authorities to “ensure that all feasible alternatives are explored in order to avoid displacement altogether” when making decisions.³⁰⁴

If displacement must result, the Guiding Principles requires it be done in a manner where proper accommodation can be provided to the displaced persons.³⁰⁵ The Guiding Principles also seeks to ensure safety, health, and that

Resolutions 1993/95 and 1994/68, U.N. Doc. E/CN.4/1995/50 (Feb. 2, 1995).

295. *Guiding Principles*, *supra* note 277, principle 1, para. 1.

296. *Id.* “They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.” *Id.* See also *id.* principle 22.

297. *Id.* principle 4, ¶ 1. “These Principles shall be applied without discrimination of any kind . . .” *Id.*

298. *Id.* principle 2, ¶ 1. “These Principles shall be observed by all authorities, groups and persons irrespective of their legal status . . .” *Id.*

299. *Id.* principle 2, ¶ 2. “These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument . . .” *Id.*

300. *Id.* principle 3, ¶ 1. “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.” *Id.*

301. *Id.* principle 5. “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.” *Id.*

302. *Id.* principle 6, ¶ 1.

303. *Id.* principle 6, ¶ 2. These circumstances include displacement based on “(a) apartheid, ‘ethnic cleansing’ or similar practices”; (b) “situations of armed conflict”; (c) “cases of large-scale development projects, which are not justified by compelling and overriding public interests”; (d) “cases of disasters, unless the safety and health of those affected requires evacuation”; and (e) “collective punishment.” *Id.*

304. *Id.* principle 7, ¶ 1.

305. *Id.* principle 7, ¶ 2. “The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons .

families are kept together “to the greatest practicable extent” when displaced.³⁰⁶

When displacement does not result from the most compelling stages of armed conflict and natural disasters, certain guarantees apply to the displaced.³⁰⁷

These guarantees include an undertaking to inform the displaced of the reasons and procedures for their displacement, compensation, if applicable, the right to effective legal remedy, and an undertaking to involve the displaced persons in the decision-making process of the relocation.³⁰⁸

Principle Eight recognizes that displacement shall be carried out in a humane manner.³⁰⁹ Principle Nine informs states that they are under a particular obligation to protect against the displacement of certain classes of peoples.³¹⁰ Principle Ten recognizes the inherent right to life and prohibits violence against internally displaced persons.³¹¹ Principles Eleven and Seventeen remind international actors that every human has the right to dignity.³¹² Principle Twelve prohibits arbitrary arrest.³¹³ Principle Thirteen prohibits the involvement of children in hostilities.³¹⁴ Principle Fourteen recognizes the freedom of movement of internally displaced persons.³¹⁵ Principle Fifteen expounds upon Principle Fourteen by recognizing that internally displaced persons have the right to seek safety or asylum elsewhere and to be protected from “forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”³¹⁶

Principle Sixteen recognizes the right to information on missing internally displaced persons and asks for the cooperation of relevant international organizations in assisting governmental authorities in providing such information.³¹⁷ Principle Seventeen reiterates the right to life, further expanding the definition by including the right of family members to stay together during times of internal displacement.³¹⁸ Principle Eighteen informs of the right to an adequate standard of living, including food, water, shelter,

...” *Id.*

306. *Id.*

307. *Id.* principle 7, ¶ 3.

308. *Id.*

309. *Id.* principle 8. “Displacement shall not be carried out in a manner that violates the rights of life, dignity, liberty and security of those affected.” *Id.*

310. *Id.* principle 9. These classes include “indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.” *Id.*

311. *Id.* principle 10. In particular, Principle Ten protects against: “(a) [g]enocide; (b) [m]urder; (c) [s]ummary or arbitrary executions; and (d) [e]nforced disappearances.” *Id.* This Principle even protects against threats of the above particulars. *Id.*

312. *Id.* principle 11, ¶ 1; *see id.* principle 17, ¶ 1.

313. *Id.* principle 12, ¶ 1. “No one shall be subjected to arbitrary arrest or detention.” *Id.*

314. *Id.* principle 13, ¶ 1. “In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.” *Id.*

315. *Id.* principle 14. “Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.” *Id.* principle 14, ¶ 1.

316. *Id.* principle 15.

317. *Id.* principle 16.

318. *Id.* principle 17. “[F]amily members who wish to remain together shall be allowed to do so.” *Id.* principle 17, ¶ 2.

clothing, and medical services.³¹⁹

Principle Twenty announces that everyone “has the right to recognition everywhere as a person before the law.”³²⁰ Accordingly, authorities shall issue identifying documents to internally displaced persons when appropriate.³²¹ Principle Twenty-One prohibits the arbitrary deprivation of property and possessions.³²² Principle Twenty-Two allows the internally displaced the opportunity to seek work.³²³ Principle Twenty-Three recognizes the right to education,³²⁴ although authorities are only obligated to provide compulsory primary education to internally displaced persons.³²⁵ Principles Twenty-Four through Twenty-Seven regard humanitarian assistance.³²⁶ Finally, Principles Twenty-Eight through Thirty contain rights of return and resettlement for the internally displaced in addition to obligations for authorities.³²⁷

Many of the Principles align with provisions of the UDHR, ICESCR, ICCPR, and the norms recognized in these instruments. These instruments all seek to uphold human dignity.³²⁸ All of these instruments contain provisions prohibiting discrimination³²⁹ and recognize rights associated with the family.³³⁰

The UDHR, ICCPR, and Guiding Principles expressly recognize the inherent right to life.³³¹ While the ICESCR does not expressly recognize the right to life, it must recognize it implicitly; one cannot enjoy economic, social, and cultural rights without being alive. The UDHR, ICESCR, and Guiding Principles recognize the right to education.³³² These instruments also all recognize the right to work³³³ and the right to an adequate standard of living.³³⁴

Finally, the UDHR, ICCPR, and Guiding Principles each include provisions on the freedom of movement.³³⁵

319. *Id.* principle 18.

320. *Id.* principle 20, ¶ 1.

321. *Id.* principle 20, ¶ 2. “[T]he authorities concerned shall issue to [internally displaced persons] all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates.” *Id.*

322. *Id.* principle 21.

323. *Id.* principle 22, ¶ 1(b). “The right to seek freely opportunities for employment and to participate in economic activities[.]” *Id.*

324. *Id.* principle 23, ¶ 1.

325. *Id.* principle 23, ¶ 2.

326. *Id.* principles 24-27.

327. *Id.* principles 28-30.

328. *Supra* notes 175, 222, 251, 312, 318 and accompanying text.

329. *Supra* notes 176, 225, 254, 296, 297 and accompanying text.

330. *Supra* notes 183, 230, 264, 317, 318 and accompanying text.

331. *Supra* notes 180, 259, 311 and accompanying text.

332. *Supra* notes 188, 234, 324 and accompanying text. The ICCPR seems to implicitly support the idea of a right to education because it notes that its objectives can only be achieved when coupled with the enjoyment of economic, social, and cultural rights. *Supra* note 245 and accompanying text.

333. *Supra* notes 186, 226, 323 and accompanying text.

334. *Supra* notes 187, 228, 229, 319 and accompanying text.

335. *Supra* notes 184, 263, 315 and accompanying text.

From the numerous connections identified above, it becomes evident that these human rights instruments complement one another in the recognition and guarantee of human rights through international law. At the very least, they provide supplementary support to that idea.

C. *International Humanitarian Law—Applicable Sources and Instruments*

International humanitarian law,³³⁶ another subset of public international law, operates specifically in situations of armed conflict.³³⁷ This body of law applies to state and non-state actors³³⁸ and is based on treaties and customary international law.³³⁹ International humanitarian law “recognizes a sense of humanity in armed conflict,” and “places limits on the means and method of conducting war.”³⁴⁰ In this regard, international humanitarian law can be characterized as an “intersection of human rights law with the law of war.”³⁴¹

The rules of international humanitarian law protect civilians and persons not involved or no longer involved in combat.³⁴² Unlike international human rights law, which always applies and protects all human beings no matter the situation,³⁴³ international humanitarian law applies only during armed conflict³⁴⁴ and protects only those involved in armed conflict.³⁴⁵ International humanitarian law is situation- and context-specific in its applicability.³⁴⁶ Therefore, the scope and applicability of international humanitarian law is necessarily narrower than that of international human rights law.

1. *The Geneva Conventions*

The Geneva Conventions serve as the principal instruments governing international humanitarian law.³⁴⁷ Specifically, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War³⁴⁸ pertains to the

336. International humanitarian law is also known as “IHL” or the “law of armed conflict” or “LOAC” or the “law of war.” Edwards Affidavit, *supra* note 80, para. 36.

337. WEISSBRODT ET AL., *supra* note 85, at 29.

338. *Id.*

339. Edwards Affidavit, *supra* note 80, para. 36. International human rights law evolved from treaties and customary international law adopted at The Hague Peace Conferences of 1899 and 1907. WEISSBRODT ET AL., *supra* note 85, at 29.

340. Edwards Affidavit, *supra* note 80, para. 36.

341. WEISSBRODT ET AL., *supra* note 85, at 29.

342. Edwards Affidavit, *supra* note 80, para. 36. Examples of non-civilians include prisoners of war and *hors de combat* (“out of the fight”). *Id.*

343. *Supra* note 148 and accompanying text.

344. WEISSBRODT ET AL., *supra* note 83, at 29.

345. *Supra* note 337 and accompanying text.

346. *See supra* notes 342-45 and accompanying text.

347. WEISSBRODT ET AL., *supra* note 83, at 21.

348. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter

situation in the Gaza Strip because the territory has been, and still may be,³⁴⁹ an "occupied territory."³⁵⁰ The Fourth Geneva Convention is an international treaty,³⁵¹ however, many of the rules and norms contained within the Fourth Geneva Convention are widely accepted as customary international law.³⁵² Therefore, all international actors are implicitly bound to follow those rules and norms during armed conflict or occupation.³⁵³

Many articles in the Fourth Geneva Convention are relevant to the situation in the Gaza Strip. Article Four defines the category of persons protected as "those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."³⁵⁴ Article Twenty-Five provides for information to be forwarded regarding the status of family members,³⁵⁵ while Article Twenty-Six includes the right to reunite with dispersed family members.³⁵⁶ Article Thirty-Three prohibits using "measures of intimidation or of terrorism."³⁵⁷ Article Thirty-Four prohibits taking of hostages without distinguishing between civilian and combatant hostages.³⁵⁸ Article Forty-Nine prohibits deportations or forcible transfers of protected persons.³⁵⁹

Humanitarian law applies to internally displaced persons when such persons are in a state where armed conflict or occupation is occurring.³⁶⁰ In such a case, internally displaced persons are considered "civilians" under

Fourth Geneva Convention]. See generally Society of Professional Journalists, Reference Guide to the Geneva Conventions, <http://www.genevaconventions.org/> (last visited Oct. 14, 2006), for a helpful guide to the Geneva Conventions.

349. This topic is discussed in Part Four.A of this note, *infra*.

350. Fourth Geneva Convention, *supra* note 350, art. 2. "The [Fourth Geneva Convention] shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." *Id.*

351. INT'L COMM. OF THE RED CROSS, INTERNATIONAL HUMANITARIAN LAW ANSWERS TO YOUR QUESTIONS 10-12 (2d ed. 2004) [hereinafter ICRC ANSWERS].

352. WEISSBRODT ET AL., *supra* note 85, at 22, (citing SALLY MALLISON & WILLIAM MALLISON, ARMED CONFLICT IN LEBANON 1982: HUMANITARIAN LAW IN A REAL WORLD SETTING 67-68 (1983) and Symposium, *The Hague Peace Conferences*, 94 AM. J. INT'L L. 1 (2000)); see also ICRC ANSWERS, *supra* note 353, at 12.

353. *Supra* notes 102-104 and accompanying text.

354. Fourth Geneva Convention, *supra* note 350, art. 4.

355. *Id.* art. 25. "All persons . . . shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them . . . speedily and without undue delay." *Id.*

356. *Id.* art. 26. "Each Party to the conflict shall facilitate enquiries . . . with the object of renewing contact with [family members] and of meeting, if possible." *Id.*

357. *Id.* art. 33.

358. *Id.* art. 34.

359. *Id.* art. 49. "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country . . . are prohibited . . ." *Id.*

360. ICRC ANSWERS, *supra* note 353, at 28; see Fourth Geneva Convention, *supra* note 348, art. 2.

humanitarian law and the Fourth Geneva Convention.³⁶¹

Israel is a state party to the Fourth Geneva Convention.³⁶² The Palestinian Authority, a non-state, is not and presently cannot be a state party.³⁶³

But, since international humanitarian law and the Fourth Geneva Convention exist as customary international law, the Palestinian Authority is implicitly bound to follow and respect such rules and norms during armed conflict or occupation.³⁶⁴

2. *First Additional Protocol to the Geneva Conventions*

The First Additional Protocol to the Geneva Conventions (First Protocol)³⁶⁵ provides additional protection to victims of international armed conflicts.³⁶⁶ Articles Forty-Eight through Fifty-Six deal specifically with protection of civilians and civilian objects.³⁶⁷ Article Forty-Eight provides basic rules for protection of civilian populations and objects.³⁶⁸ Article Forty-Nine defines “attacks” as “acts of violence against the adversary, whether in offence or in defence.”³⁶⁹ Article Fifty defines “civilians” and “civilian population.”³⁷⁰ This article provides latitude on who qualifies as a civilian.³⁷¹

Article Fifty-One sets the rules of protection for civilians.³⁷² Specifically, civilians “shall not be the object of attack.”³⁷³ But, if a civilian “take[s] a direct part in hostilities,” then the protection is forfeited.³⁷⁴ Further, Article Fifty-One prohibits indiscriminate attacks.³⁷⁵ Article Fifty-Two grants protection of

361. ICRC ANSWERS, *supra* note 351, at 28.

362. ISRAELI SETTLEMENTS, *supra* note 37, at 7. Israel ratified the Fourth Geneva Convention on April 10, 1951. *Id.*

363. *Supra* note 10 and accompanying text.

364. *Supra* notes 102-104 and accompanying text.

365. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *adopted* June 8, 1977, 1125 U.N.T.S. 3 (*entered into force* Dec. 7, 1979) [hereinafter First Protocol].

366. *See generally id.*

367. *Id.* arts. 48-56.

368. *Id.* art. 48. “[T]he Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” *Id.*

369. *Id.* art. 49, para. 1.

370. *Id.* art. 50. “A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol.” *Id.* art. 50, para. 1. “The civilian population comprises all persons who are civilians.” *Id.* art. 50, para. 2.

371. *Id.* art. 50, para. 1. “In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.” *Id.*

372. *Id.* art. 51.

373. *Id.* art. 51, para. 2.

374. *Id.* art. 51, para. 3.

375. *Id.* art. 51, para. 4. This article defines “indiscriminate attacks”:

Indiscriminate attacks are: (a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be

civilian objects.³⁷⁶ Article Fifty-Four designates certain categories of objects as “indispensable to the survival of civilian populations” and provides protection.³⁷⁷ Protection does not apply when the objects are used “as sustenance solely for the members of [adverse] armed forces”³⁷⁸ or “in direct support of military action.”³⁷⁹ Article Fifty-Eight admonishes states parties to locate military objectives away from the civilian population and civilian objects.³⁸⁰

Israel is not a state party to the First Protocol.³⁸¹ The Palestinian Authority, a nonparty to the Geneva Conventions, de facto cannot be a state party to the First Protocol.³⁸² Therefore, Israel and the Palestinian Authority would only be required to follow the norms recognized within the First Protocol that have risen to customary international law. The norm of distinguishing between military and civilian objects during attacks, evident in Articles Forty-Eight and Fifty-Two of the First Protocol, exists as customary international law.³⁸³

directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

Id.

376. *Id.* art. 52. “Civilian objects are all objects which are not military objectives as defined in paragraph 2 [of Article Fifty-Two].” *Id.* art. 52, para. 1.

377. *Id.* art. 54. This article prohibits the destruction of certain categories of objects:

It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party. . . .

Id. art. 54, para. 2.

378. *Id.* art. 54, para. 3(a).

379. *Id.* art. 54, para. 3(b).

380. *Id.* art. 58.

The Parties to the conflict shall, to the maximum extent feasible: (a) . . . endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives; (b) avoid locating military objectives within or near densely populated areas; (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

Id.

381. ACT OF VENGEANCE, *supra* note 4, at 23 n.30.

382. *Supra* notes 10 and 363 and accompanying text.

383. ACT OF VENGEANCE, *supra* note 4, at 23. J. Ricou Heaton, *Civilians at War: Reexamining the Status of Civilians Accompanying the Armed Forces*, 57 A.F.L. REV. 155, 181 (2005); Thomas Michael McDonnell, *Cluster Bombs over Kosovo: A Violation of International Law?*, 44 ARIZ. L. REV. 31, 93 (2002).

PART FOUR: ALLEGED INTERNATIONAL HUMAN RIGHTS LAW AND
INTERNATIONAL HUMANITARIAN LAW VIOLATIONS RELATED TO ISRAEL'S
WITHDRAWAL FROM THE GAZA STRIP

Israel officially commenced its withdrawal from the Gaza Strip on August 15, 2005.³⁸⁴ Israeli Prime Minister Ariel Sharon initially introduced the plan in December 2003.³⁸⁵ Sharon's cabinet accepted it June 2004³⁸⁶ and the *Knesset*³⁸⁷ adopted it on October 25, 2004.³⁸⁸

The withdrawal plan aimed for peace,³⁸⁹ while the disengagement as a whole had two main purposes: "[to] enhance[e] Israel's security by reducing terrorism and [to] boost[] Israel's economy by improving the quality of life."³⁹⁰

Sharon fully supported a self-governed, democratic Palestinian state in the Gaza Strip.³⁹¹ Sharon hoped that Israel's withdrawal from the Gaza Strip could help facilitate the development of a peaceful Palestinian state.³⁹²

The withdrawal centered around Israel's Disengagement Plan Implementation Law,³⁹³ which provided for the systematic removal of all permanent Israeli military and government presence in the Gaza Strip.³⁹⁴ On August 15, 2005, the Israeli Defense Force (IDF) mobilized in the Gaza strip to begin administering the evacuation of Israeli citizens from their homes.³⁹⁵ Two days later the IDF began forcing noncompliant Israeli citizens from their homes.³⁹⁶ By August 21, 2005, the IDF had evacuated the majority of Israeli settlements in the Gaza Strip.³⁹⁷ The IDF demolished the remaining residential buildings.³⁹⁸ In total, the IDF destroyed approximately 2000 homes.³⁹⁹

384. Assoc. Press, *Timeline: Israel's Gaza Settlements*, Aug. 14, 2005, http://www.foxnews.com/printer_friendly_story/0,3566,165694,00.html.

385. DISENGAGEMENT PLAN, *supra* note 3, at 7.

386. *Id.*

387. The *Knesset* is Israel's parliamentary body. *Id.* at 5.

388. *Id.* at 7.

389. *See id.*

390. *Id.* at 8.

391. *See id.*

392. *See id.*

393. State of Isr., *The Cabinet Resolution Regarding the Disengagement Plan* (June 6, 2004), available at <http://www.mfa.gov.il> (scroll over "Peace Process" and follow "Reference Documents" hyperlink; then follow "Revised Disengagement Plan Main Principles" hyperlink).

394. *See* DISENGAGEMENT PLAN, *supra* note 3, at 5.

395. State of Isr., *Disengagement Plan Is Under Way* (Aug. 15, 2004), <http://www.mfa.gov.il> (scroll over "Government" then "Communiques" and follow "2005" hyperlink; then follow "Disengagement Plan is under way" hyperlink).

396. State of Isr., *Gaza Strip Evacuation* (Aug. 17, 2005), <http://www.mfa.gov.il> (scroll over "Government" then "Communiques" and follow "2005" hyperlink; then follow "Gaza Strip evacuation").

397. State of Isr., *Majority of Communities in the Gaza Strip Evacuated* (Aug. 21, 2005), <http://www.mfa.gov.il> (scroll over "Government" then "Communiques" and follow "2005" hyperlink; then follow "Majority of communities in the Gaza Strip evacuated" hyperlink).

398. Harvey Morris, *Israeli Bulldozers Destroy Settler Homes in Gaza* (Aug. 21, 2005), http://www.ft.com/cms/s/62039b54-1235-11da-8cc3-00000e2511c8,ft_acl=.html.

The following day, the IDF completed the evacuation pursuant to the disengagement plan.⁴⁰⁰ This marked the culmination of official Israeli military control in the Gaza Strip, ending thirty-eight years of Israeli military presence.⁴⁰¹ Overall, Israel forced out about 8000 of its citizens at a cost of approximately \$1.8 billion.⁴⁰²

The Israeli government and the IDF encountered protest and resistance by Israeli settlers who were subsequently removed.⁴⁰³ The IDF also reported attacks by Palestinians during the withdrawal.⁴⁰⁴ As a whole, the disengagement plan proceeded relatively peacefully;⁴⁰⁵ however, post-withdrawal violence has occurred in the Gaza Strip between Israel and the Palestinians.⁴⁰⁶ Also, the relocated Israelis have faced inferior housing, difficulty in finding comparable employment, and fractured communities.⁴⁰⁷

Israel claims it is free of any legal obligation pertaining to the Gaza Strip or the Palestinians living or located there.⁴⁰⁸ In contrast, the Palestinian Authority and Human Rights Watch, a non-governmental human rights organization, among others, assert that Israel's international legal obligations did not extinguish upon its withdrawal.⁴⁰⁹ Thus, various international human rights law and international humanitarian law claims have arisen since Israel's withdrawal from the Gaza Strip.

A. *Denial of Access to Education, Freedom of Movement, and Family Rights*

Mohamed Anwar Qawash, a twenty year-old Palestinian, was studying medicine in Egypt prior to Israel's withdrawal from the Gaza Strip.⁴¹⁰ In June 2005, Mohamed visited his family in the Gaza Strip and planned to return to school in September 2005.⁴¹¹ As a result of Israel's withdrawal, however,

399. *Id.*

400. State of Isr., *Evacuation of Israeli Civilians from the Gaza Strip Completed* (Aug. 22, 2005), <http://www.mfa.gov.il> (scroll over "Government" then "Communiqués" and follow "2005" hyperlink; then follow "Evacuation of Israeli civilians from the Gaza Strip completed" hyperlink) [hereinafter *Evacuation Completed*].

401. *Exit of IDF, supra* note 1.

402. *Yes, but*, *ECONOMIST*, May 27, 2006, at 43.

403. *Evacuation Completed, supra* note 402.

404. *Id.*

405. *See id.*

406. Microsoft, *Israel Continues Gaza Air Offensive* (Sept. 26, 2005), <http://www.msnbc.msn.com/id/9453473/>; Microsoft, *Israel Fires on Gaza Strip After Rocket Attack* (Dec. 28, 2005), <http://www.msnbc.msn.com/id/10627205/>.

407. *Yes, but, supra* note 404, at 43.

408. *See Exit of IDF, supra* note 1.

409. HUMAN RIGHTS WATCH, GAZA: ISRAELI OFFENSIVE MUST LIMIT HARM TO CIVILIANS (2006), <http://hrw.org/english/docs/2006/06/29/isrlpa13662.htm> [hereinafter *ISRAELI OFFENSIVE*]; *see generally* Palestinian Ctr. for Human Rights, <http://www.pchrgaza.org/> (last visited Sept. 24, 2006).

410. PALESTINIAN CTR. FOR HUMAN RIGHTS, STUDENTS STILL DEPRIVED OF RIGHT TO EDUCATION (2005), <http://www.pchrgaza.org/files/campaigns/english/gaza/stud.htm>.

411. *See id.*

Mohamed was prevented from returning to school; Israel had closed Rafah International Crossing Point, a crossing between the Gaza Strip and Egypt.⁴¹² It is unknown whether Mohamed has returned to his medical school and, if so, how much schooling he missed or what effect this delay caused.

Bilal Abu al-Amrain, a sixteen year-old living and attending high school in Qatar, visited the Gaza Strip with his family on holiday in May 2005.⁴¹³ After the Israeli disengagement plan commenced, the IDF permitted Bilal's family to return home, but the IDF required Bilal to stay.⁴¹⁴ The reason for the distinction is unknown. Bilal remained with a brother in the Gaza Strip, but apart from the rest of his family, friends, home, and school in Qatar.⁴¹⁵ It is unknown whether Bilal has been allowed to return to Qatar.

The Palestinian Centre for Human Rights (PCHR) argues that Mohamed and Bilal's cases represent a deprivation of the right to continue education.⁴¹⁶ In addition, they are potentially deprivations of the right to freedom of movement, family rights, and, specifically to Bilal, a violation of special children's rights. Other restrictions on movement have been reported by PCHR.⁴¹⁷ Assuming the stories of Mohamed and Bilal are true, Israel may be in breach of Articles Ten and Thirteen of the ICESCR⁴¹⁸ and Articles Twelve, Seventeen, and Twenty-Four of the ICCPR.⁴¹⁹ Israel may also have violated the customary international law norms recognized within Articles Twelve, Sixteen, and Twenty-Six of the UDHR.

PCHR argues that, despite the withdrawal of Israel, the Gaza Strip is still "occupied"; therefore, international humanitarian law should still apply.⁴²⁰ Presupposing that the Gaza Strip still constitutes an occupied territory, Israel may have also breached Article Twenty-Six of the Fourth Geneva Convention.⁴²¹ According to PCHR, Israel continues to reject the applicability of the ICESCR, ICCPR, and Fourth Geneva Convention to the situation in the Gaza Strip and to those Palestinians affected.⁴²² Israel, as a state party to the ICESCR, ICCPR, and Fourth Geneva Convention, has an international legal duty to follow the provisions of these treaties and not to take steps that

412. *See id.*

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. PALESTINIAN CTR. FOR HUMAN RIGHTS, SUFFERING CONTINUES FOR RESIDENTS OF AL-SAYAFA SEA; ED ENCLAVE (2005), <http://www.pchrgaza.org/files/campaigns/english/gaza/siafa.htm>.

418. *See ICESCR, supra* note 202, arts. 10, 13.

419. *See ICCPR, supra* note 242, arts. 12, 17, 24.

420. PALESTINIAN CTR. FOR HUMAN RIGHTS, SHARON'S GAZA REDEPLOYMENT PLAN: A DENIAL OF HUMAN RIGHTS, NOT AN END TO OCCUPATION 11 (2004), *available at* <http://www.pchrgaza.org/files/Reports/English/Sharons.pdf> [hereinafter PCHR RESPONSE]; *see also* ISRAELI OFFENSIVE, *supra* note 411.

421. *See* Fourth Geneva Convention, *supra* note 348, art. 26.

422. *Id.* at 15.

undermine the respective rights recognized therein.⁴²³ Israel owes this duty to all persons within Israel's borders, as well as persons that are directly affected by Israel's actions.

Additionally, in 2004 the ICJ issued an advisory opinion against Israel regarding restriction of movement.⁴²⁴ The Israeli Wall case reached the ICJ through the court's advisory jurisdiction. The General Assembly can invoke the ICJ's advisory jurisdiction regarding any legal issue.⁴²⁵ Conversely, adversary, or contentious, jurisdiction⁴²⁶ is only available to states parties to the Statute of the ICJ.⁴²⁷ A state of Palestine does not presently exist.⁴²⁸ Therefore, an advisory opinion, rather than an adversary decision, was the only feasible way for the issue to reach the ICJ.

The ICJ advised that the construction of a security wall or annexation wall⁴²⁹ by Israel violated the right of freedom of movement and was an international human rights law and international humanitarian law violation.⁴³⁰ The ICJ further advised that the construction of the wall went so far as to violate the Palestinians' right to self-determination.⁴³¹ The ICJ informed Israel that it is obligated to halt the construction of the wall, demolish portions of the wall already erected, and cease to impede the movement of any persons.⁴³² According to the ICJ, failure to comply would amount to an internationally wrongful act.⁴³³ The ICJ also included in its advisory opinion that all legislation and regulations associated with the construction of the wall must be repealed.⁴³⁴

Further, the ICJ recognized Israel's obligation to make reparations.⁴³⁵ The ICJ adopted and articulated the customary international law definition of reparation: "[A] reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all

423. See Part Three.A(1) of this Note, *supra*, for a discussion on a state's legal obligations as a state party to a treaty.

424. Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory, Advisory Opinion, 43 I.L.M. 1009 (July 9, 2004) [hereinafter Israeli Wall Case]; see Lori Fisler Damrosch & Bernard H. Oxman, *Agora: ICJ Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory: Editors' Introduction*, 99 AM. J. INT'L L. 1 (2005), for a brief review of the case and its importance.

425. Article Ninety-Six of the U.N. Charter permits "[t]he General Assembly or the Security Council [to] request the International Court of Justice to give an advisory opinion on any legal question." U.N. Charter art. 96, para. 1.

426. See WEISSBRODT ET AL., *supra* note 85, at 11, for a brief discussion on the ICJ's advisory and adversary jurisdiction.

427. ICJ Statute, *supra* note 83, art. 34, § 1.

428. *Supra* note 10 and accompanying text.

429. PCHR RESPONSE, *supra* note 422, at 14.

430. Israeli Wall Case, *supra* note 426, at 3-5.

431. *Id.* at 4.

432. *Id.* at 145.

433. *Id.*

434. *Id.* at 146.

435. *Id.* at 146-47.

probability, have existed if that act had not been committed.”⁴³⁶ The ICJ further recognized Israel’s restitution obligation and ordered Israel to “return the lands, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall.”⁴³⁷ The ICJ anticipated that if restitution was materially impossible, then Israel owes compensation to persons damaged as a result of the construction of the wall.⁴³⁸

PCHR alleges that the construction and operation of the wall violates the rights recognized in Articles Seventeen, Twenty-Three, Twenty-Five, Twenty-Six, and Twenty-Seven of the UDHR.⁴³⁹ While Israel certainly has the right to self defense under international human rights law⁴⁴⁰ and international humanitarian law,⁴⁴¹ it cannot implement defense measures that violate international law.

B. *Denial of the Right to Work*

PCHR authored a response to the Israeli disengagement plan. In its response, PCHR alleged that Israel was denying Palestinians’ access to work by closing the Rafah border⁴⁴² and Erez Military Checkpoint.⁴⁴³ PCHR also alleged that Israel intended to end all access for Palestinian workers by 2008.⁴⁴⁴

The Gaza Strip is largely isolated; therefore, Palestinians rely on the right of freedom of movement to find work.⁴⁴⁵ PCHR asserts that the Israeli disengagement plan, which includes measures for restriction of access to work, will ultimately result in severe economic loss to the Palestinians.⁴⁴⁶

If Israel does prevent Palestinians from working by way of checkpoint blockages and movement restrictions, then Israel would potentially violate Articles Six, and, by implication, Eleven of the ICESCR.⁴⁴⁷ Israel could also be in violation of Article Twelve of the ICCPR⁴⁴⁸ and the norms contained in Articles Thirteen and Twenty-Three of the UDHR.⁴⁴⁹ While Israel can patrol its borders and implement checkpoints, it cannot implement restrictive measures that curtail human rights; to do so would breach its international legal

436. *Id.* (quoting *Factory at Chorzow (F.R.G. v. Pol.)*, 1928 P.C.I.J. (ser. A) No. 17, at 41).

437. *Israeli Wall Case*, *supra* note 426, at 147-48.

438. *Id.*

439. PCHR RESPONSE, *supra* note 422, at 15.

440. “Nothing in the [UN Charter] shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations” U.N. Charter art. 51.

441. Fourth Geneva Convention, *supra* note 350, arts. 4 & 27.

442. *Gazans Celebrate*, *supra* note 2.

443. PCHR RESPONSE, *supra* note 422, at 11.

444. *Id.*

445. *Id.*

446. *Id.* at 11-12.

447. See ICESCR, *supra* note 202, arts. 6 & 11.

448. See ICCPR, *supra* note 242, art. 12.

449. See UDHR, *supra* note 169, arts. 13 & 23.

duties.⁴⁵⁰

C. *Demolition of Housing and the Right to an Adequate Standard of Living*

Part of the Israeli disengagement plan included demolishing the homes of former Israeli settlers in the Gaza Strip.⁴⁵¹ Israel coordinated this decision with the Palestinian Authority.⁴⁵² The report does not indicate that Israel destroyed any personal property of the former Israeli settlers, just the former residences.⁴⁵³

Israel, as a state party to the ICESCR, has the duty to recognize the right to an adequate standard of living, which includes housing, for all persons.⁴⁵⁴ As part of its obligations as a state party, Israel must refrain from doing anything to defeat the object and purpose of Article Eleven or the ICESCR generally.⁴⁵⁵ Also, the norms recognized within Article Twenty-Five of the UDHR are included as part of Israel's international legal obligations under customary international law.⁴⁵⁶

Since the norms articulated in the provisions of the ICESCR have arguably risen to customary international law status, the Palestinian Authority also has the duty to recognize the right to an adequate standard of living.⁴⁵⁷ Therefore, Israel and the Palestinian Authority's participation in the destruction of housing readily available for Palestinians may be in contravention of this norm.

D. *Forced Removal, Forced Eviction, and Internal Displacement*

The Israeli disengagement plan resulted in the forced removal and relocation of approximately 8000 Israelis living in the Gaza Strip.⁴⁵⁸ These "Resettlers" were forcibly relocated, but remained within the territory of Israel rather than "cross[ing] an internationally recognized State border."⁴⁵⁹ Accordingly, the Resettlers fit the definition for internally displaced persons under the Guiding Principles. Thus, at first glance the Guiding Principles seems to apply to the Resettlers' rights.

A key question is whether the displacement of the Resettlers is "arbitrary." Principle Six of the Guiding Principles prohibits arbitrary displacement and articulates particular scenarios that are arbitrary.⁴⁶⁰ These

450. See Fourth Geneva Convention, *supra* note 350, arts. 4 & 27.

451. Morris, *supra* note 398.

452. *Id.*

453. See *id.*

454. ICESCR, *supra* note 204, art. 11.

455. See Vienna Convention, *supra* note 82, art. 18.

456. See *supra* note 171 and accompanying text.

457. See *supra* note 204 and accompanying text.

458. *Evacuation Completed*, *supra* note 402.

459. *Guiding Principles*, *supra* note 277, at annex, para. 2.

460. *Id.* principle 6, para. 1.

scenarios include displacement based: on apartheid, ethnic cleansing, or similar practices; on situations of armed conflict where security reasons do not dictate displacement; on large-scale development projects that are not justifiably compelling and override public interest; on disasters that do not require evacuation based on public safety and health; and on displacement used as collective punishment.⁴⁶¹ In this instance, none of the proffered scenarios fit the Resettlers' situation. Israel's decision to withdraw from the Gaza Strip, which displaced its citizens, seemed to stem from politics rather than a legal sense⁴⁶²—a category not included among arbitrary displacement. Although Principle Six does not include all possible examples of arbitrary displacement, the resultant displacement of the Resettlers does not seem to contravene the prohibition in Principle Six.⁴⁶³

Under Principle Seven of the Guiding Principles, Israel must “ensure, to the greatest practicable extent, that proper accommodation is provided to the [Resettlers].”⁴⁶⁴ Israel provided the Resettlers with a choice of four compensation plans: (1) Resettlers who lived in the settlements for more than four years are “entitled to a replacement house of similar quality”; (2) Resettlers who lived in the settlements for less than four years or lived elsewhere during that time period are entitled to compensation based on their property value; (3) any Resettler can be relocated in an area chosen by the Israeli government; and (4) any Resettler that chooses to relocate in an area not chosen by the Israeli government is entitled to some compensation on a case-by-case basis.⁴⁶⁵

One troubling aspect of the Resettlers' displacement is the “free and informed consent” guarantee of Principle Seven.⁴⁶⁶ Since the displacement did not occur during an emergency, armed conflict, or natural disaster, Principle Seven guarantees that “free and informed consent of those to be displaced shall be sought.”⁴⁶⁷ While it seems the Resettlers were informed of the displacement many months in advance, it does not appear their consent was sought.

The Guiding Principles is soft law and not binding upon Israel.⁴⁶⁸ It does, though, mirror many of the norms of binding international human rights law.⁴⁶⁹ Israel, as a United Nations member, carries the obligation to reaffirm and promote human dignity.⁴⁷⁰ Therefore, it would behoove the Israeli government to consider the Guiding Principles in the context of the internal displacement of its own citizens. An Israeli high court even ruled in line with the Guiding

461. *Id.* principle 6, para. 2.

462. *See* DISENGAGEMENT PLAN, *supra* note 3, at 7-9.

463. *See Guiding Principles, supra* note 275, principle 6.

464. *Id.* principle 7, para. 2.

465. British Broad. Corp., *Settler Reparation Plan Unveiled*, http://news.bbc.co.uk/2/hi/middle_east/3925999.stm (last visited Sept. 24, 2006).

466. *Guiding Principles, supra* note 277, principle 7, para. 3(c).

467. *Id.*

468. *See supra* note 288 and note 290 and accompanying text.

469. *See* Part Four.B(5) of this Note, *supra*.

470. U.N. Charter pmbl.

Principles and against an Israeli military order that would forcibly relocate three individuals from the West Bank to the Gaza Strip.⁴⁷¹

E. *Kidnapping and Hostage-Taking*

On June 23, 2006, Palestinian militants kidnapped Israeli corporal Gilad Shalit.⁴⁷² Three Palestinian military groups, including the military wing of Hamas,⁴⁷³ coordinated the kidnapping, which occurred on Israeli soil.⁴⁷⁴ Human Rights Watch, a nongovernmental group, believes the Palestinians kidnapped Shalit to secure a bargaining chip in an effort to release various Palestinian prisoners.⁴⁷⁵ Regardless of the motive, Israel blamed Hamas for Shalit's fate.⁴⁷⁶

The Palestinian militants breached international legal duties by kidnapping and holding hostage Shalit. Kidnapping Shalit resulted in multiple human rights law violations, including infringement on liberty and security of person⁴⁷⁷ and restriction on freedom of movement.⁴⁷⁸ It also resulted in a humanitarian law violation.⁴⁷⁹ The Palestinian militants, as individuals in the international legal system, are accountable for these violations. Individuals are subjects of international law.⁴⁸⁰ Thus, individuals owe duties as international actors and must uphold international legal obligations.⁴⁸¹

Also, these violations could be imputed to the Palestinian Authority via Hamas. Because Hamas rose to power as the controlling party of the Palestinian Authority, it too, as an international actor, could be attributed to this violation.⁴⁸²

471. H CJ 7015/02, *Ajuri v. IDF Commander in West Bank* [2002] IsrLR 1; see Detlev F. Vagts, *International Decisions: Ajuri v. Idf Commander in West Bank*, 97 AM. J. INT'L L. 173 (2003), for a review of this case.

472. *Might Something Good Come out of It This Time?*, ECONOMIST, July 1, 2006, at 41 [hereinafter *Something Good?*].

473. The military wing of Hamas is *Izz ad-Din al-Qassam Brigades*. *Getting Worse and Worse*, ECONOMIST, July 8, 2006, at 39.

474. ISRAELI OFFENSIVE, *supra* note 411.

475. *Id.*

476. *Something Good?*, *supra* note 474, at 41.

477. ICCPR, *supra* note 242, art. 9; UDHR, *supra* note 169, art. 3.

478. ICCPR, *supra* note 242, art. 12; UDHR, *supra* note 169, art. 13.

479. Fourth Geneva Convention, *supra* note 348, art. 34; *see also* ISRAELI OFFENSIVE, *supra* note 411.

480. M.W. Janis, *Individuals as Subjects of International Law*, 17 CORNELL INT'L L.J. 61, 73-74 (1984).

481. *See* The Nuremberg Judgment, 6 F.R.D. 69, 110-12 (1946).

482. *See, e.g.*, Diplomatic and Consular Staff (U.S. v. Iran), 1980 I.C.J. 3, 37 (May 24) (recognizing potential imputability of actions of a nongovernmental actor to the state).

F. *Destruction of Civilian Objects, Indiscriminate Attacks, and Measures of Intimidation*

Israel responded to the kidnapping of Shalit by destroying a power station in the Gaza Strip.⁴⁸³ A few days later, Palestinian militants fired two Qassam rockets from the Gaza Strip into a nearby Israeli town.⁴⁸⁴ These rockets, bearing the name of Hamas's military wing, were unguided and were fired indiscriminately into Israeli civilian populations.⁴⁸⁵ Reportedly, Israel then intimidated the Palestinians in Gaza by creating sonic booms with its fighter jets.⁴⁸⁶

If the Gaza power station was not sustaining or directly supporting the Palestinian militants, then its destruction resulted in a humanitarian law violation.⁴⁸⁷ Further, a power station probably qualifies as an "object[] indispensable to the survival of the civilian population," and thus added to the severity of the act.⁴⁸⁸ Also, creating sonic booms to instill fear in a civilian population is prohibited.⁴⁸⁹

The firing of Qassam rockets into Israeli civilian populations resulted in a humanitarian law violation by the Palestinian militants.⁴⁹⁰ The rockets were unguided and clearly aimed at civilian targets, as there were no Israeli military targets in the vicinity.⁴⁹¹ Also, since the Qassam rocket attacks apparently were launched in retaliation, this constitutes another humanitarian law violation.⁴⁹²

CONCLUSION AND RECOMMENDATIONS

Ultimately, both Israel and the Palestinian Authority are bound by international law to ensure that human rights are recognized and protected for all persons in the Gaza Strip. Israel is further obligated to ensure the rights of those affected by its withdrawal from the Gaza Strip. Israel, bound by conventional and customary international law, continues to owe duties to the Palestinians in the Gaza Strip and to its own citizens who were internally displaced as a result of the withdrawal.

Failing to recognize international legal obligations to the Palestinians in Gaza would be contrary to the object and purpose of the various international human rights law treaties to which Israel is a state party. Also, Israel should

483. *Getting Worse and Worse*, *supra* note 475, at 39.

484. *Id.*

485. *See id.*

486. ISRAELI OFFENSIVE, *supra* note 411.

487. *See* First Protocol, *supra* note 367, art. 54.

488. *Id.*

489. *See* Fourth Geneva Convention, *supra* note 350, art. 33; First Protocol, *supra* note 367, art. 51, para. 2.

490. *See* First Protocol, *supra* note 367, art. 51, para. 4.

491. *See* *Getting Worse and Worse*, *supra* note 475, at 39.

492. First Protocol, *supra* note 367, art. 51, para. 6.

follow the Guiding Principles pertaining to Israeli citizens that were internally displaced because of the disengagement plan. These Resettlers fit the definition of internally displaced persons under the Guiding Principles. The Guiding Principles follows the spirit of international human rights law; Israel, as a United Nations member, has an obligation to promote this spirit.

The Palestinian Authority, as an international actor, owes duties to the Israelis and Palestinians under customary international law. Failing to recognize its international obligations would be in direct opposition to the widely accepted customary international law norms and principles that exist in the international realm. Furthermore, as the Palestinian Authority is propositioning the world for statehood, recognizing and ensuring its duties under customary international law serves the interest of all Palestinians seeking their own state. By doing so, the Palestinian Authority can demonstrate to the international community that its intentions are good and that it has the capacity to meet state responsibilities—strong support for Palestinian statehood.

Reports of alleged human rights violations in the Gaza Strip warrant further inquiry. While some nongovernmental organizations, such as Human Rights Watch, have undertaken studies and fact-finding missions, the United Nations is best suited to conduct a thorough examination of these allegations. Many options exist, such as the dispatch of a Special Rapporteur or an investigation by the Human Rights Commission or a human rights expert.⁴⁹³ Alternatively, the General Assembly or Security Council could invoke the ICJ's advisory jurisdiction, like in the Israeli Wall case,⁴⁹⁴ to determine the legal obligations of Israel pertaining to its withdrawal from the Gaza Strip. However, this request would most likely need to arise from the General Assembly rather than the Security Council. The United States is a permanent member of the United Nations Security Council,⁴⁹⁵ and, as an ally of Israel, would likely veto any such request for ICJ advisory jurisdiction originating in the Security Council.

Issues of enforcing human rights are a perennial concern. If human rights violations have occurred or are still occurring in the Gaza Strip, international legal institutions and mechanisms are in place to provide recourse. Lack of enforcement in the past or a sense that international human rights law is merely aspirational is not a compelling reason to fail to investigate alleged violations, and, if appropriate, enforce international law.

Israel and the Palestinian Authority each have international legal obligations. Both are in a position to work together to ensure international human rights law is upheld, setting a firm foundation for a new beginning in the Gaza Strip and a new age in the Middle East.

493. See WEISSBRODT ET AL., *supra* note 83, at 235-48, for more information on U.N. charter-based mechanisms for evaluation of potential human rights violations.

494. *Supra* notes 424-27 and accompanying text.

495. U.N. Charter art. 23, para. 1.