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. Moreover, the withdrawal represented an important change in the geopolitical stability of the Middle East. Israel's exit affected both Israeli citizens, many of who lived in settlements in the Gaza Strip, and Palestinians, who primarily inhabit the territory.

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. Palestinians and various non-governmental organizations contend that Israel still owes certain duties and obligations under international law despite its withdrawal.

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

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 DENY. 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.
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.\textsuperscript{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.\textsuperscript{17}

Originally, the 1947 United Nations partition plan for Palestine\textsuperscript{18} intended the Gaza Strip to be a Palestinian-Arab state coexisting with Israel;\textsuperscript{19} however, during the ensuing war after Israel’s independence, Egypt seized the Gaza Strip and the land fell under Egyptian military control.\textsuperscript{20} Other smaller battles followed, such as the “Ten Days War,” but the fighting eventually stopped.\textsuperscript{21} By 1949, Israel signed armistice agreements with Egypt, Lebanon, Jordan, Iraq, and Syria.\textsuperscript{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.\textsuperscript{23} The newly-acquired territory, which excluded the Gaza Strip,\textsuperscript{24} became the official boundaries of Israel by authority of the armistice agreements.\textsuperscript{25}

\textbf{B. The 1967 War}

Also known as the Six Day War\textsuperscript{26} or the June War,\textsuperscript{27} the 1967 War\textsuperscript{28} represents another watermark in the history of the Gaza Strip. Growing regional tensions prompted the war, illustrated by minor military exchanges\textsuperscript{29} and “mutual defense pacts” signed by some of Israel’s enemies.\textsuperscript{30} Scholars disagree on the issue of who started the war,\textsuperscript{31} but strong arguments exist that Israel was not the aggressor.\textsuperscript{32} Regardless, the 1967 War again pitted Egypt,
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.
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.
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.\footnote{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.\footnote{48} From sumud emerged a new assertiveness among the Palestinians that produced a more determined, militant, and desperate Palestinian people.\footnote{49} New pro-Palestinian organizations, notably the Unified National Leadership Uprising (UNLU)\footnote{50} and Hamas,\footnote{51} cast influence over Gaza.\footnote{52} Coexistent with sumud, Palestinians now perceived themselves as alone in the world and only able to rely on themselves.\footnote{53} Thus, the intifada “change[ed] the relationship of Palestinians with each other and with the world outside in the occupied territories,”\footnote{54} promulgating a Palestinian perception of worldwide abandonment.\footnote{55}

\section*{PART TWO: THE GAZA STRIP—ADMINISTRATION, AUTHORITY, AND LAW IN THE OCCUPIED TERRITORY}

After Israel officially assumed control of the Gaza Strip,\footnote{56} authoritative power in the land vested primarily in the occupying Israeli military government.\footnote{57} Gaza, as a municipality,\footnote{58} was the only such kind of government in the Strip.\footnote{59} Theoretically, the municipal government derived its authority
from an old British municipal law: the Palestine (British) municipal law of 1934. In reality, however, the Israeli military ruled the territory and law came in the form of military directives. Control often manifested itself in the form of military orders directed from Israeli military headquarters. A military commander, military-appointed mayor, or governor implemented the orders.

The Israeli municipal framework had two levels of administration: civil and military. The civil administration ran agencies necessary to ensure the stability of the social infrastructure, such as departments of health, education, and transportation. Israeli military influence still reached the civil administration, however, because Israeli officers, who were attached to the military, often ran these civil departments. All policies devised and actions taken by the civil administration required military approval. 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. The municipal government also experienced sharp fiscal restrictions that hindered both fiscal planning and problem solving. These problems affected other areas, such as urban development, industrial development, and educational planning.

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. Nevertheless, Gaza’s problems seemed to emanate primarily from the military’s control over the other branches of the municipality: a questionable form of legal authority.

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

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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. This interference blurred the line between legitimate legal authority and "whim and temperament" control by the military. Also, the military often interpreted the law. This resulted in the military determining legal issues—quite a dangerous prospect.

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." The modern day definition of international law includes other international actors, such as intergovernmental organizations and individuals, as objects and subjects of international law. International human rights law and international humanitarian law are subsets of public international law.

There are three traditional sources of international law: (1) treaties, (2)
customary international law, and (3) general principles of law. 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, as the foremost authority on treaty law, defines "treaty" as "an international agreement concluded between States in written form and governed by international law." While it is possible for non-state actors to enter into treaties, the Vienna Convention only applies to treaties between state actors. Treaties legally bind states parties under international law. Treaties are akin to contracts under pacta sunt servanda, where states parties are legally obligated to abide by the terms of the treaty.

A state's express consent to be legally bound to a treaty activates the binding effect of this source of international law. A state becomes bound when it complies with one of the acceptable methods recognized in the Vienna Convention: (1) signature; (2) exchange of instruments; (3) ratification, acceptance, or approval; and (4) accession. Once a state becomes bound to a treaty, it becomes a "state party" to that treaty. 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).


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; the state merely must "refrain from acts which would defeat the object and purpose of [the] treaty."  

2. Customary International Law

Customary international law, a second source of international law, includes unwritten rules or principles of law that exist in the international legal arena. These rules and principles become law through their widespread international acceptance as law. A customary international law norm binds all states unless a state has "expressly and persistently objected" to it. While treaty-based law binds states parties based on express consent, customary international law binds states based on implicit consent. This is an important distinction because, while treaties bind only parties, customary international law binds any international actor. 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. In other words, a state must practice the norm and follow it from a sense of legal obligation. 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. Courts look to the widespread acceptance of international law instruments and various judicial decisions as evidence of state practice.

Opinio juris is a "psychological element that requires an examination of a state's motives in engaging in a particular act or practice." 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. 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.\footnote{112}{Edwards Affidavit, supra note 78, at 26 n.22.}

It is possible for the rules and norms in a treaty to also exist independently in the field of customary international law.\footnote{113}{Id. para. 15.6.} 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.\footnote{114}{Gabcikovo-Nagymaros Project (Hung. v. Slovk.), 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).} In this regard, parts of the Vienna Convention actually represent a codification of customary international law.\footnote{115}{Gabcikovo-Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. LEXIS 2, 130 (Sept. 25, 1997); Edwards Affidavit, supra note 80, para. 14.7.} This has no effect on the treaty itself; customary international law exists parallel to treaty law.\footnote{116}{Edwards Affidavit, supra note 78, para. 15.6.} 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.\footnote{117}{Id. para. 14.7.}

A special type of customary international law, jus cogens,\footnote{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.} elevates a customary international law norm to a higher status.\footnote{119}{Edwards Affidavit, supra note 78, at 26 n.22.} A jus cogens norm is non-derogable and can only be replaced by a subsequent jus cogens norm.\footnote{120}{See Weissbrodt et al., supra note 85, at 23; Edwards Affidavit, supra note 80, para. 15.8.} Thus, a jus cogens norm can trump a contrary norm contained in a treaty \textit{contra bonos mores}.\footnote{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).} From this, it follows that jus cogens sits atop the hierarchy of international law.\footnote{122}{Prosecutor v. Furundzija, Case IT-95-17/1, Appeals Chamber Ruling (2002).} Examples of jus cogens norms include the prohibition of torture or other cruel, inhuman, or degrading treatment or punishment,\footnote{123}{Weissbrodt et al., supra note 85, at 23; Edwards Affidavit, supra note 80, para. 15.8.} the prohibition of slavery,\footnote{124}{Weissbrodt et al., supra note 85, at 23; Edwards Affidavit, supra note 80, para. 15.8.} and, more recently, the prohibition of the execution of
3. **General Principles of Law**

General principles of law serve as the last traditional source of international law. This source has been defined as a "non-treaty, non-customary, and non-consensual source of international law." 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. 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." If so, these principles should be used to fill in the gaps of international law.

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). Most general principles of law deal with procedural issues. Examples include the right to a fair trial and the right of assistance of counsel.

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. The Statute of the International Court of Justice recognizes equity as a legitimate source to decide cases. 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. In the more than eighty combined years that the ICJ and the Permanent Court of International Justice (PCIJ) have

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126. ICJ Statute, supra note 83, art. 38, § 1(c).
128. *See* Edwards Affidavit, supra note 80, para. 16.2.
129. JANIS & NOYES, supra note 78, at 137.
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.
A MODERN DAY EXODUS

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

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. 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. The Japanese military also committed inhumane acts during World War II. During and after World War II, world leaders spoke out against these and other horrors. For instance, President Franklin D. Roosevelt remarked on the importance of promoting "peace and protection of human rights" for the future. 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. Initially, international human rights law included only those rights recognized in the International Bill of Rights. 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." International human rights law protects all persons; it "must be abided by at all times in all places by all" international actors.

1. United Nations Charter

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

Article Fifty-Five obliges member states to promote "higher standards of living, full employment, and conditions of economic and social progress and development." 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.

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

147. Edwards Affidavit, supra note 80, para. 22.1.
148. Id.
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.
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. Since the Charter is a treaty, the applicant-state must become bound to it. The Charter requires ratification as the means of becoming bound. In exceptional circumstances, a state may "continue" or "succeed" another state's membership without having to submit an application and undergo the application process.

Membership in the United Nations obligates Israel to adhere to and promote the provisions of the Charter. Only states can become members of the United Nations; the Palestinian Authority cannot become a member unless it obtains statehood. 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. 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). 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. The norms contained in the UDHR have, however, risen to the level of customary international law and are therefore binding on all international actors. Municipal law, such as United States case law, has recognized the norms in the UDHR as implicitly binding. 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.
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.
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 Rights—"the most authoritative and comprehensive prescription of human rights obligations that governments undertake in joining the [United Nations]."

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. Article Two addresses the UDHR's applicability to all peoples, while Articles Six and Seven extend legal recognition and equal protection to all. Article Twenty-One provides for equal access to public services.

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

The UDHR also includes provisions for economic, social, and cultural rights. Article Twenty-Two recognizes these rights generally along with the international law."
more specific right to social security.\textsuperscript{185} Article Twenty-Three provides the right to work, choice of employment, and favorable working conditions.\textsuperscript{186} Article Twenty-Five considers standard of living, health, food, clothing, medical care, social security, and welfare.\textsuperscript{187} Article Twenty-Six includes a provision for education,\textsuperscript{188} while Article Twenty-Seven regards cultural life.\textsuperscript{189}

The UDHR is not a treaty; it is a resolution.\textsuperscript{190} A resolution does not legally bind a state.\textsuperscript{191} It does, however, still affect all member states of the United Nations.\textsuperscript{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,\textsuperscript{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.\textsuperscript{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.\textsuperscript{195} But, because the norms contained within the UDHR have risen to the level of customary international law,\textsuperscript{196} these norms would still bind the Palestinian Authority as an international actor.\textsuperscript{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).\textsuperscript{198}

\begin{itemize}
\item \textsuperscript{185} \textit{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." \textit{Id.}
\item \textsuperscript{186} \textit{Id.} art. 23, para. 1. "Everyone has the right to work, to free choice of employment, [and] to just and favourable conditions of work..." \textit{Id.}
\item \textsuperscript{187} \textit{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." \textit{Id.}
\item \textsuperscript{188} \textit{Id.} art. 26, para. 1. "Everyone has the right to education." \textit{Id.}
\item \textsuperscript{189} \textit{Id.} art. 27, para. 1. "Everyone has the right freely to participate in the cultural life of the community..." \textit{Id.}
\item \textsuperscript{190} \textit{Supra} note 170 and accompanying text. Resolutions are not recognized by the ICJ Statute as a source of international law. \textit{Supra} note 83. The U.N. Charter identifies resolutions as "recommendations" only. U.N. Charter art. 10.
\item \textsuperscript{191} \textit{See} U.N. Charter art. 10.
\item \textsuperscript{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. \textit{Id.}
\item \textsuperscript{193} \textit{Supra} note 165.
\item \textsuperscript{194} \textit{Supra} notes 102-104 and accompanying text.
\item \textsuperscript{195} \textit{Supra} notes 167-68.
\item \textsuperscript{196} Edwards Affidavit, \textit{supra} note 80, para. 15.6.
\item \textsuperscript{197} \textit{Supra} notes 102-104 and accompanying text.
\item \textsuperscript{198} Originally, the ICESCR and the ICCPR were to be one document, covering all the rights enunciated in the UDHR. \textit{Weissbrodt et al.}, \textit{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 Charter\(^\text{199}\) and the UDHR\(^\text{200}\) refer to economic, social, and cultural rights broadly. Thus, a United Nations member is already obliged to promote such rights.\(^\text{201}\) Further, the ICESCR\(^\text{202}\) legally binds states parties to a multitude of additional and specifically-defined rights.\(^\text{203}\) The norms contained within the ICESCR have likely risen to the level of customary international law.\(^\text{204}\) Therefore, those norms would be binding on all states regardless of whether a particular state is a party to the ICESCR.\(^\text{205}\) The ICESCR serves as the principal source of international economic, social, and cultural rights obligations.\(^\text{206}\) The ICESCR embodies the “second generation” of human rights, or \textit{egalite}.\(^\text{207}\) Article One, however, recognizes the right of self-determination—a “third generation” right, or \textit{fraternite}.\(^\text{208}\) Article One implies that first,\(^\text{209}\) second, and third generation rights must coexist to reach the

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\(^{199}\) “[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.


\(^{203}\) See generally id.


\(^{205}\) See supra notes 102-104 and accompanying text.

\(^{206}\) WEISSBRODT ET AL., supra note 85, at 88.


\(^{208}\) “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. \textit{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.” \textit{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.\textsuperscript{211}

Some controversy has surrounded the ICESCR with regard to issues of justiciability.\textsuperscript{212} But, real legal obligations exist for a state party.\textsuperscript{213} A state party must “undertake to take steps”\textsuperscript{214} . . . to the maximum of its available resources,\textsuperscript{215} with a view to achieving progressively\textsuperscript{216} the full realization of rights recognized in the [ICESCR] by all appropriate means,\textsuperscript{217} including particularly the adoption of legislative measures.”\textsuperscript{218} The Office of the High Commissioner for Human Rights (OHCHR)\textsuperscript{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.\textsuperscript{220} Therefore, the burden rests on the state party to prove it is “taking steps” to implement the ICESCR and is making progress.\textsuperscript{221}

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

\begin{itemize}
  \item \textsuperscript{211} See ICESCR, supra note 204, art. 1, para. 1.
  \item \textsuperscript{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.
  \item \textsuperscript{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.
  \item \textsuperscript{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. \textit{Id}.
  \item \textsuperscript{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.
  \item \textsuperscript{216} \textit{Supra} note 212.
  \item \textsuperscript{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, \textit{Report on the Fifth Session}, ¶ 7, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter General Comment 3].
  \item \textsuperscript{218} ICESCR, supra note 204, art. 2, para. 1.
  \item \textsuperscript{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.
  \item \textsuperscript{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.
  \item \textsuperscript{221} WEISSBRODT ET AL., supra note 85, at 90.
\end{itemize}
ideals. The ICESCR focuses on the individual’s duties to others and the community. Like the UDHR, the rights recognized in the ICESCR apply to all persons. The ICESCR includes certain rights applicable to the Gaza situation. Article Six outlines the right to work, while Article Seven incorporates decent working conditions and fair wages. Article Eleven follows up with the right to an adequate standard of living. Article Ten announces family rights and emphasizes the importance of the family. It also provides special protection for children. Article Nine deals with social security, and Article Twelve sets the bar for health care rights. Article Thirteen provides a lengthy prescription for educational rights, while Article

222. ICESCR, supra note 204, pmbl. "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.


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. Therefore, Israel is legally bound to undertake the obligations of the ICESCR. General Comment 3 aids in determining what might qualify as a failure of obligations under the ICESCR. Because a state of Palestine does not exist, 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. The Palestinian Authority, as an international actor, is implicitly bound to those norms.

4. International Covenant on Civil and Political Rights

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

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235. Id. art. 13, para. 2(a-c). “The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life . . . .” Id.


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.


243. “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, . . . .” ICCPR, supra note 244, pmbl.

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

245. ICCPR, supra note 244, pmbl.

246. See Vienna Convention, supra note 84, art. 14.
within the ICCPR have risen to the level of customary international law; the norms bind all international actors. Unlike the ICESCR’s flexible implementation plan, the ICCPR requires much more stringent measures of its states parties.

The ICCPR focuses on humankind’s inherent dignity and equal and inalienable rights. Like in the UDHR and the ICESCR, the rights enunciated in the ICCPR apply to all without discrimination. The ICCPR embodies “first generation” human rights, or liberté. Similar to the ICESCR, the ICCPR incorporates the “third generation” right of self-determination. Article One of the ICCPR, like the ICESCR, intimates that first, second, and third generation rights must be realized and promoted together.

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


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

Article Twenty-Eight establishes the Human Rights Committee (HRC). The HRC serves as the chief United Nations body in charge of implementing the ICCPR. HRC members "serve 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."

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

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.


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.
276. Id. ¶ 2.
277. Id.
278. Id. ¶ 1.
279. Id. ¶ 3.
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.
The Guiding Principles "address[es] the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection." International human rights law and international humanitarian law serve as the backbone of the Guiding Principles. The Guiding Principles incorporates treaty-based international law and customary international law. 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. In this regard, the Guiding Principles, albeit soft law, is intended to act similarly to general principles of law as a gap-filler.

The Guiding Principles provides guidance to states, internally displaced persons, and other authorities and institutions, such as the United Nations. 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. Additionally, the Guiding Principles was to serve as an educational and consciousness-raising tool. Deng also hoped the Guiding Principles would ultimately help prevent crises of internal displacement.

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.

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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.
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 freedoms\(^{296}\) 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

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\(^{296}\) Guiding Principles, supra note 277, principle 1, para. 1.

\(^{297}\) 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.

\(^{298}\) Id. principle 4, ¶ 1. “These Principles shall be applied without discrimination of any kind . . . .” Id.

\(^{299}\) Id. principle 2, ¶ 1. “These Principles shall be observed by all authorities, groups and persons irrespective of their legal status . . . .” 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.\textsuperscript{306} When displacement does not result from the most compelling stages of armed conflict and natural disasters, certain guarantees apply to the displaced.\textsuperscript{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.\textsuperscript{308}

Principle Eight recognizes that displacement shall be carried out in a humane manner.\textsuperscript{309} Principle Nine informs states that they are under a particular obligation to protect against the displacement of certain classes of peoples.\textsuperscript{310} Principle Ten recognizes the inherent right to life and prohibits violence against internally displaced persons.\textsuperscript{311} Principles Eleven and Seventeen remind international actors that every human has the right to dignity.\textsuperscript{312} Principle Twelve prohibits arbitrary arrest.\textsuperscript{313} Principle Thirteen prohibits the involvement of children in hostilities.\textsuperscript{314} Principle Fourteen recognizes the freedom of movement of internally displaced persons.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{318} Principle Eighteen informs of the right to an adequate standard of living, including food, water, shelter,

\begin{footnotesize}
\begin{itemize}
\item 306. \textit{Id.}
\item 307. \textit{Id.} principle 7, \S 3.
\item 308. \textit{Id.}
\item 309. \textit{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.” \textit{Id.}
\item 310. \textit{Id.} principle 9. These classes include “indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.” \textit{Id.}
\item 311. \textit{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.” \textit{Id.} This Principle even protects against threats of the above particulars. \textit{Id.}
\item 312. \textit{Id.} principle 11, \S 1; see \textit{id.} principle 17, \S 1.
\item 313. \textit{Id.} principle 12, \S 1. “No one shall be subjected to arbitrary arrest or detention.” \textit{Id.}
\item 314. \textit{Id.} principle 13, \S 1. “In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.” \textit{Id.}
\item 315. \textit{Id.} principle 14. “Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.” \textit{Id.} principle 14, \S 1.
\item 316. \textit{Id.} principle 15.
\item 317. \textit{Id.} principle 16.
\item 318. \textit{Id.} principle 17. “[F]amily members who wish to remain together shall be allowed to do so.” \textit{Id.} principle 17, \S 2.
\end{itemize}
\end{footnotesize}
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 discrimination\(^{329}\) 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 work\(^{333}\) 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, another subset of public international law, operates specifically in situations of armed conflict. This body of law applies to state and non-state actors and is based on treaties and customary international law. International humanitarian law "recognizes a sense of humanity in armed conflict," and "places limits on the means and method of conducting war." In this regard, international humanitarian law can be characterized as an "intersection of human rights law with the law of war.

The rules of international humanitarian law protect civilians and persons not involved or no longer involved in combat. Unlike international human rights law, which always applies and protects all human beings no matter the situation, international humanitarian law applies only during armed conflict and protects only those involved in armed conflict. International humanitarian law is situation- and context-specific in its applicability. 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. Specifically, the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War pertains to the
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

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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].


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.\textsuperscript{361}

Israel is a state party to the Fourth Geneva Convention.\textsuperscript{362} The Palestinian Authority, a non-state, is not and presently cannot be a state party.\textsuperscript{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.\textsuperscript{364}

2. \textit{First Additional Protocol to the Geneva Conventions}

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

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

\begin{itemize}
\item \textsuperscript{361} ICRC ANSWERS, \textit{supra} note 351, at 28.
\item \textsuperscript{362} ISRAELI SETTLEMENTS, \textit{supra} note 37, at 7. Israel ratified the Fourth Geneva Convention on April 10, 1951. \textit{id.}
\item \textsuperscript{363} \textit{Supra} note 10 and accompanying text.
\item \textsuperscript{364} \textit{Supra} notes 102-104 and accompanying text.
\item \textsuperscript{366} See generally \textit{id.}
\item \textsuperscript{367} \textit{id.} arts. 48-56.
\item \textsuperscript{368} \textit{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." \textit{id.}
\item \textsuperscript{369} \textit{id.} art. 49, para. 1.
\item \textsuperscript{370} \textit{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." \textit{id.} art. 50, para. 1. "The civilian population comprises all persons who are civilians." \textit{id.} art. 50, para. 2.
\item \textsuperscript{371} \textit{id.} art. 50, para. 1. "In case of doubt whether a person is a civilian, that person shall be considered to be a civilian." \textit{id.}
\item \textsuperscript{372} \textit{id.} art. 51.
\item \textsuperscript{373} \textit{id.} art. 51, para. 2.
\item \textsuperscript{374} \textit{id.} art. 51, para. 3.
\item \textsuperscript{375} \textit{id.} art. 51, para. 4. This article defines "indiscriminate attacks":
\begin{itemize}
\item 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. Article Fifty-Four designates certain categories of objects as "indispensable to the survival of civilian populations" and provides protection. Protection does not apply when the objects are used "as sustenance solely for the members of [adverse] armed forces" or "in direct support of military action." Article Fifty-Eight admonishes states parties to locate military objectives away from the civilian population and civilian objects.

Israel is not a state party to the First Protocol. The Palestinian Authority, a nonparty to the Geneva Conventions, de facto cannot be a state party to the First Protocol. 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.

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.

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.

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. 58.

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.

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


The withdrawal plan aimed for peace, 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.” Sharon fully supported a self-governed, democratic Palestinian state in the Gaza Strip. Sharon hoped that Israel’s withdrawal from the Gaza Strip could help facilitate the development of a peaceful Palestinian state.

The withdrawal centered around Israel’s Disengagement Plan Implementation Law, which provided for the systematic removal of all permanent Israeli military and government presence in the Gaza Strip. 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. Two days later the IDF began forcing noncompliant Israeli citizens from their homes. By August 21, 2005, the IDF had evacuated the majority of Israeli settlements in the Gaza Strip. The IDF demolished the remaining residential buildings. In total, the IDF destroyed approximately 2000 homes.
The following day, the IDF completed the evacuation pursuant to the disengagement plan. This marked the culmination of official Israeli military control in the Gaza Strip, ending thirty-eight years of Israeli military presence. Overall, Israel forced out about 8000 of its citizens at a cost of approximately $1.8 billion.

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

Israel claims it is free of any legal obligation pertaining to the Gaza Strip or the Palestinians living or located there. 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. 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. In June 2005, Mohamed visited his family in the Gaza Strip and planned to return to school in September 2005. As a result of Israel’s withdrawal, however,
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 ICESCR\(^ {418}\) 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.
\(^{418}\) See ICESCR, supra note 202, arts. 10, 13.
\(^{419}\) See ICCPR, supra note 242, arts. 12, 17, 24.
\(^{421}\) See Fourth Geneva Convention, supra note 348, art. 26.
\(^{422}\) Id. at 15.
undermine the respective rights recognized therein.\textsuperscript{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.\textsuperscript{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.\textsuperscript{425} Conversely, adversary, or contentious, jurisdiction\textsuperscript{426} is only available to states parties to the Statute of the ICJ.\textsuperscript{427} A state of Palestine does not presently exist.\textsuperscript{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 wall\textsuperscript{429} by Israel violated the right of freedom of movement and was an international human rights law and international humanitarian law violation.\textsuperscript{430} The ICJ further advised that the construction of the wall went so far as to violate the Palestinians' right to self-determination.\textsuperscript{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.\textsuperscript{432} According to the ICJ, failure to comply would amount to an internationally wrongful act.\textsuperscript{433} The ICJ also included in its advisory opinion that all legislation and regulations associated with the construction of the wall must be repealed.\textsuperscript{434}

Further, the ICJ recognized Israel's obligation to make reparations.\textsuperscript{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
probability, have existed if that act had not been committed. 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.” 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.

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. While Israel certainly has the right to self defense under international human rights law and international humanitarian law, 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 border and Erez Military Checkpoint. PCHR also alleged that Israel intended to end all access for Palestinian workers by 2008. The Gaza Strip is largely isolated; therefore, Palestinians rely on the right of freedom of movement to find work. 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.

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. Israel could also be in violation of Article Twelve of the ICCPR and the norms contained in Articles Thirteen and Twenty-Three of the UDHR. 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

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.
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. Israel coordinated this decision with the Palestinian Authority. The report does not indicate that Israel destroyed any personal property of the former Israeli settlers, just the former residences.

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. 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. 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.

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. 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. These "Resettlers" were forcibly relocated, but remained within the territory of Israel rather than "cross[ing] an internationally recognized State border." 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. These

450. See Fourth Geneva Convention, supra note 350, arts. 4 & 27.
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.
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.\textsuperscript{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 sense\textsuperscript{462}—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.\textsuperscript{463}

Under Principle Seven of the Guiding Principles, Israel must “ensure, to the greatest practicable extent, that proper accommodation is provided to the [Resettlers].”\textsuperscript{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.\textsuperscript{465}

One troubling aspect of the Resettlers’ displacement is the “free and informed consent” guarantee of Principle Seven.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{468} It does, though, mirror many of the norms of binding international human rights law.\textsuperscript{469} Israel, as a United Nations member, carries the obligation to reaffirm and promote human dignity.\textsuperscript{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

\textsuperscript{461} Id. principle 6, para. 2.
\textsuperscript{462} See Disengagement Plan, supra note 3, at 7-9.
\textsuperscript{463} See Guiding Principles, supra note 275, principle 6.
\textsuperscript{464} Id. principle 7, para. 2.
\textsuperscript{466} Guiding Principles, supra note 277, principle 7, para. 3(c).
\textsuperscript{467} Id.
\textsuperscript{468} See supra note 288 and note 290 and accompanying text.
\textsuperscript{469} See Part Four.B(5) of this Note, supra.
\textsuperscript{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.\textsuperscript{471}

\textbf{E. Kidnapping and Hostage-Taking}

On June 23, 2006, Palestinian militants kidnapped Israeli corporal Gilad Shalit.\textsuperscript{472} Three Palestinian military groups, including the military wing of Hamas,\textsuperscript{473} coordinated the kidnapping, which occurred on Israeli soil.\textsuperscript{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.\textsuperscript{475} Regardless of the motive, Israel blamed Hamas for Shalit's fate.\textsuperscript{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 person\textsuperscript{477} and restriction on freedom of movement.\textsuperscript{478} It also resulted in a humanitarian law violation.\textsuperscript{479} The Palestinian militants, as individuals in the international legal system, are accountable for these violations. Individuals are subjects of international law.\textsuperscript{480} Thus, individuals owe duties as international actors and must uphold international legal obligations.\textsuperscript{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.\textsuperscript{482}


\textsuperscript{472} \textit{Might Something Good Come out of It This Time?}, ECONOMIST, July 1, 2006, at 41 [hereinafter \textit{Something Good?}].

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

\textsuperscript{474} ISRAELI OFFENSIVE, supra note 411.

\textsuperscript{475} Id.

\textsuperscript{476} \textit{Something Good?}, supra note 474, at 41.

\textsuperscript{477} ICCPR, supra note 242, art. 9; UDHR, supra note 169, art. 3.

\textsuperscript{478} ICCPR, supra note 242, art. 12; UDHR, supra note 169, art. 13.

\textsuperscript{479} Fourth Geneva Convention, supra note 348, art. 34; see also ISRAELI OFFENSIVE, supra note 411.


\textsuperscript{481} \textit{See} The Nuremberg Judgment, 6 F.R.D. 69, 110-12 (1946).

\textsuperscript{482} \textit{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).
A MODERN DAY EXODUS

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. A few days later, Palestinian militants fired two Qassam rockets from the Gaza Strip into a nearby Israeli town. These rockets, bearing the name of Hamas’s military wing, were unguided and were fired indiscriminately into Israeli civilian populations. Reportedly, Israel then intimidated the Palestinians in Gaza by creating sonic booms with its fighter jets.

If the Gaza power station was not sustaining or directly supporting the Palestinian militants, then its destruction resulted in a humanitarian law violation. 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. Also, creating sonic booms to instill fear in a civilian population is prohibited.

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

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 positioning 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. Alternatively, the General Assembly or Security Council could invoke the ICJ’s advisory jurisdiction, like in the Israeli Wall case, 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, 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.

494. Supra notes 424-27 and accompanying text.