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## The Position of Islamic Jurisprudence and International Law on Armed Resistance

### The Palestinian Armed Resistance as a Model

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### Abstract:

*This research paper aims to clarify the positions of Islamic jurisprudence and international law regarding armed resistance in general, and Palestinian armed resistance in particular, especially in light of the ongoing debate about the legitimacy of this resistance in achieving its goals, particularly after the Al-Aqsa Flood battle and its significant outcomes on all levels. One of the key findings is the positive stance of both Islamic jurisprudence and international law towards armed resistance in affirming the right of peoples to defend themselves and their right to self-determination, using various means including the use of armed force. From the perspective of Islamic jurisprudence, what armed resistance, including Palestinian resistance, is doing is considered a form of defensive jihad that is mandated by Islamic law for those who meet its conditions. From the perspective of international law, various international texts enshrine and support this right, affirming its legitimacy in the pursuit of freedom.*

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## INTRODUCTION:

Our contemporary era is characterized by numerous regional and international conflicts that have become a prominent feature in the relations of many countries and regions. The phenomenon of occupation has been a primary cause of these conflicts, leading to the emergence of national liberation movements worldwide as a natural reaction to it. Armed resistance has been employed as a means and tool to confront this occupation and the resulting injustices, in pursuit of freedom, dignity, and justice. Thus, it has formed an effective mechanism for achieving the national and political goals sought by these oppressed peoples, representing a significant turning point in political and military conflicts globally.

Starting from the 1940s, the Middle East has witnessed the Arab-Israeli conflict, which has led to the emergence of Palestinian resistance in its various factions, regarded as one of the most prominent liberation movements today. With each war that breaks out between them and the occupying entity, much debate arises in various media circles and social media regarding the legitimacy of this resistance, especially with the outbreak of the Al-Aqsa Flood battle on October 7, 2023, and the significant outcomes it has achieved on various levels. This has prompted us to research and pose the following question: What is the position of Islamic jurisprudence and international law regarding Palestinian armed resistance and the current situation in Gaza? This is particularly relevant given the rising voices in media and social circles claiming that this action holds no value, especially in light of the Israeli entity's superiority in various scientific and military fields.

Through this research, we aim to clarify the positions of both Islamic jurisprudence and international law regarding armed resistance in general, and specifically regarding Palestinian armed resistance and the Al-Aqsa Flood operation, while conducting a comparison between these two positions to highlight the extent of agreement and disagreement between them. Methodologically, we found it necessary to employ an inductive approach by tracing and analyzing the relevant legal and jurisprudential texts, followed by a comparative method to highlight the similarities or differences between what is stated in Islamic jurisprudence and international law regarding armed resistance in general and Palestinian armed resistance in particular. We have divided the research into three sections: the first as a conceptual framework for the study, the second to clarify the position of Islamic jurisprudence on armed resistance, and the third to elucidate the position of international law on armed resistance.

## **THE FIRST TOPIC: Conceptual Framework of the Study:**

### **First requirement: Concept of Armed Resistance:**

#### **First section: In the Arabic Language:**

Resistance in Arabic comes from the triliteral root verb "قام" (qām), which means the act of people standing up for one another. It is said that "the animal stood" (قامت الدابة) meaning it stood up, and "he resisted him" (قاومه) in wrestling and other contexts. In war, it means that some stand up for others (تقاوموا في الحرب) (al-Razi, 1999, p. 262). Thus, the linguistic concept of resistance refers to the act of the people of an occupied land standing up against the invading enemy to repel and confront them using force of any kind to drive them away from their land.

#### **Second section: In Terminology:**

A specialized scholar can discern the novelty of this term, as it emerged after the rise of Western colonial movements in various countries around the world, and the occupied peoples' resistance to them using various means and methods, including the use of weapons. Therefore, the researcher did not find a definition for it in heritage books. This has led some contemporary researchers in Islamic jurisprudence to strive to provide a comprehensive and precise definition. For instance, one defines it as: "The response of those who are wronged against the aggressor with force, with the aim of repelling their aggression." (Adlan, s.d.) It is noteworthy that this definition is general, as it does not specify the nature of the aggressor and the victim, nor does it define the forms and means of resistance. Resistance takes various forms, including peaceful methods such as demonstrations, protests, economic and cultural boycotts, and resisting normalization with the enemy, among other means, as well as armed resistance using all types of military and warfare weapons.

Others have defined it as: "The legitimate use of all means, including armed force, to deter aggression, remove occupation and colonialism, achieve independence, and combat oppression supported by armed force, describing these as legitimate political objectives." (al-Zuhayli, 2003, p. 3) This definition was formulated to distinguish it from the term terrorism, in accordance with the provisions of Islamic law and not conflicting with international humanitarian law. This definition is considered more precise than the previous one, as it specifies the nature of the aggressor as an occupation, and the goal of resistance is to remove and expel this occupation. It also clarifies the means used in this resistance, which is armed force, and emphasizes the legitimacy of all of the above by stating that it aligns with the provisions of Islamic law and international law, serving the interests of peoples subjected to aggression and occupation.

According to legal scholars, armed resistance is defined as: "Combat operations carried out by national elements who are not members of regular armed forces in defense of national or collective interests against foreign powers,

whether those elements operate within an organization under the supervision and direction of a legal or factual authority or based on their own principles, and whether they conduct this activity above the national territory or from outside this territory." (Amer, 1977, p. 40) It is noted that this definition does not differ from what Islamic jurisprudence scholars have stated, as they agreed on the legitimacy of using armed force to expel the foreign enemy in order to achieve freedom and independence.

Based on the above, we can define armed resistance as: "A legitimate armed popular reaction against foreign occupation aggression, aimed at achieving its freedom."

## **Second requirement: The Concept of Islamic Jurisprudence:**

### **First section: In Arabic Language:**

The term "fiqh" in Arabic comes from the triliteral root {ف ق ه}. Referring to language dictionaries, it means: knowledge of a thing and understanding it (Ibn-Manzur, 1414 AH, p. 522). This term is always associated with the sciences of Sharia, as a form of honor and preference over other sciences.

### **Second section: In Terminology:**

Al-Shafi'i defined fiqh as: "the knowledge of practical legal rulings acquired from their detailed evidence." (al-Zuhayli W. , n.d, p. 31) From this definition, it becomes clear that fiqh is a term that refers to a science of Sharia that is concerned with understanding what the Wise Legislator has requested from the community of the obligated individuals, in the Holy Quran, the prophetic Sunnah, consensus, analogy, and other detailed evidence, in all areas of a Muslim's life, which include their acts of worship, financial transactions, family matters, judicial issues, civil matters, and more.

## **Third requirement: The Concept of International Law:**

The process of defining the conceptual framework of the term "international law" is somewhat difficult, as researchers in the concept of this term do not find a definitive definition agreed upon among legal schools. Instead, the perceptions vary according to the ideological and intellectual directions of these schools, and this is due to the differences in their purposes and the scope of their application since their inception, as well as the dynamics that characterize them, alongside the constant development in the life of the international community in all fields. Below are the most important concepts from various directions.

### **First section: The Traditional Approach:**

Proponents of the classical approach define international law as: "a set of legal rules that regulate relations between states." (Manaà, 2010, p. 18) According to this school, international law is what organizes relations between different states, defining for each state its rights and obligations, as well as the problems that arise between them, such as wars and disputes. The international community, according to this approach, is composed only of states as sovereign entities and

does not recognize others as members of it, which is one of the limitations raised around the concept of international law in this school.

### **Second section: The Objective Approach:**

In contrast to the traditional approach, its proponents believe that the individual is the only subject of international law, due to their possession of free will. The personality of the state is merely a hypothetical construct; it does not exist in reality, and therefore it is not one of the subjects of international law. According to the supporters of this approach, when states communicate with each other, the individual is the one intended by this communication. Consequently, the communication of states in their relations with others is merely addressing individuals who alone possess will. Thus, states are not subjects of international law; rather, individuals alone are the subjects of this law. This approach has not had as wide an impact as the previous one, as it has faced extensive criticism for denying the personality and status of the state in the international community, since recognition of sovereignty can only be attributed to the state as the sole entity that constitutes subjects of general international law. (Manaà, 2010, p. 20)

### **Third section: Modern Approach:**

The supporters of this approach attempted to reconcile the previous two approaches. Most contemporary jurists agree that the state is not the only subject of international law—although it remains the principal one—but they add other elements that collectively constitute the international community. They define international law as: "A set of legal rules that govern and regulate the international community and the relations between its various actors." (Manaà, 2010, p. 20) It is noted that the proponents of this approach have recognized the evolving nature of international life, where the state is no longer the sole component of the international community. Other active elements have emerged in international life, contributing to the formation of new legal rules for international law, such as international organizations, multinational corporations, liberation movements, and others.

Based on the above, it can be said that international law is: "A set of binding legal rules that govern the international community and regulate the relations existing between its different elements in times of peace and war".

## **THE SECOND TOPIC: The Islamic Jurisprudence Stance on Armed Resistance:**

### **First requirement: The Relationship Between Armed Resistance and Jihad:**

#### **First section: The Concept of Jihad:**

In Arabic, the term "jihad" originates from the root "جاهد" (jāhad), which comes from the root (ج • ه • د). It has several meanings, including striving and exerting effort in something, as well as making strenuous efforts and enduring hardships (Ibn-Manzur, 1414 AH, p. 147). The term "jihad" in Arabic thus implies



hardship, effort, and striving in any matter associated with this term. It often refers to fighting the enemy, which denotes the sense of struggle and effort.

In terms of Islamic jurisprudence, definitions of jihad vary among scholars. The Malikis define it as: "The fighting of a Muslim against a disbeliever who does not have a treaty, to exalt the word of Allah or to defend His land" (Ibn-arfa, 2014, p. 05), while the Hanafis define it as: "Exerting one's utmost effort and energy in fighting in the way of Allah, using oneself, wealth, or speech, among other means." (Al-Kasani, 1426 AH, p. 98) According to the Shafi'is, jihad is: "Fighting disbelievers to support Islam," (Al-Jamal, n.d, p. 98) and the Hanbalis define jihad as: "Fighting disbelievers specifically." (Al-Bahuti, 2008, p. 32) It is noted that the scholarly definitions of jihad generally revolve around fighting non-Muslims and exerting all possible effort in this endeavor, in order to exalt the word of Allah, defend the sanctity of Islam, and strengthen its position, albeit through various means and methods, whether by personal effort, wealth, or speech.

### **second section: The Ruling and Conditions of Jihad:**

All schools of thought agree that jihad, in general, is an obligation for those who meet its conditions. However, they differ on whether jihad is an individual obligation (*farḍ 'ayn*) or a communal obligation (*farḍ kifāyah*)<sup>1</sup>. The majority view is that it is a communal obligation, while a minority considers it to be an individual obligation.<sup>2</sup>

As for the conditions set by scholars for the obligation of jihad, there is almost a consensus on them, with differences mainly in the terminology used. The conditions are those required for eligibility to undertake religious duties. They include Islam, maturity, and sanity. They also include the condition of capability, which is divided into physical capability and financial capability. **Physical capability** involves having a sound body, free from debilitating diseases, and the ability to wield and use weapons effectively. **Financial capability** means having the necessary provisions and means of transport to reach the battlefield, as well as the ability to support one's family during the absence. Therefore, jihad is not obligatory for someone in debt. Additionally, there is the condition of the absence of any significant impediments preventing one from participating, such as being an indispensable person for the community, like a physician treating patients. Other conditions include the requirement of being male (jihad is not obligatory for women) and free (jihad is not obligatory for slaves). Given that engaging in jihad involves the rights of others, scholars have added the requirement to seek permission from one's parents if one is a son, and from creditors if one is in debt. (Ibn-Qudamah, 1998, pp. 197-198)

It is noteworthy that the conditions mentioned pertain to the obligation of jihad from the perspective of an individual's religious duty. As for the direct engagement in jihad and the decision to undertake it, this is the responsibility of

the ruler or those who act on his behalf, such as those responsible for making decisions on political and military matters, as will be further explained.

### **Third section: Categories of Jihad:**

Scholars agree on dividing jihad in its specific sense, which means fighting non-Muslims, into two categories:

#### **A. Jihad al-Dafaà' (Defensive Jihad):**

Ibn al-Qayyim defined it as: "Repelling the enemy when the jihadist is the one being sought and the enemy is the one seeking." (Ibn-al-Qayyim, 1993, p. 187) This definition refers to resisting an enemy who intends to invade Muslim lands, where the jihadist is called to repel the invader rather than seeking jihad himself. Defensive jihad is not limited to the case of the enemy occupying Muslim territory; it extends to any aggression against Muslims, their property, and their honor, even if the enemy has not occupied any land, such as the current situations of aerial bombardment of Muslim countries or the kidnapping of vulnerable Muslims, or attempts to force them to abandon their faith, even without actual occupation. (Ibn-al-Qayyim, 1993, p. 68) All such situations fall under defensive jihad.

Scholars unanimously agree that this type of jihad is an individual obligation (fard 'ayn).<sup>3</sup> Ibn Taymiyyah stated: "As for defensive fighting, it is the most intense form of repelling an aggressor from violating religious sanctity and is obligatory by consensus. The aggressor who corrupts religion and the world must be repelled; nothing is more obligatory after faith than repelling him... Scholars, including our own and others, have affirmed this." (Ibn-Taymiyyah, 1418 AH, p. 215).

The individual obligation falls on the inhabitants of the town where the enemy attack occurs and on those in close proximity. If the inhabitants of the town are unable to repel the enemy or fail in their duty, the obligation transfers to those next in line, and so forth, until it encompasses all Muslim lands. This type of jihad does not require all the general conditions or the conditions for offensive jihad mentioned earlier; rather, it requires repelling the aggression according to one's ability and resources. (Ibn-Taymiyyah, 1418 AH, p. 218), Scholars have permitted women, children without their parents' permission, debtors without their creditors' permission, and slaves without their masters' permission to participate in defensive jihad. (Ibn-al-Qayyim, 1993, p. 188) Scholars also allow defensive jihad without the permission of the imam if it is not possible to seek his permission due to the sudden nature of the enemy attack. (Ibn-Qudamah, 1998, p. 213).

#### **B. Jihad al-Talab (Offensive Jihad):**

Ibn al-Qayyim defined it as: "Achieving victory over the enemy by initiating the fight, when the jihadist is the seeker and the enemy is the sought." (Ibn-al-Qayyim, 1993, p. 187), Thus, jihad al-talab is the opposite of jihad al-daf'

(defensive jihad). In offensive jihad, the jihadists go to the enemy seeking them out, rather than being sought by the enemy. This type of jihad is legislated for several reasons, including ensuring the safety of the Islamic state and its borders when threatened by enemies who are preparing to attack, which can be likened to what is now referred to as a preemptive strike. It also aims to protect and propagate the faith, prevent religious corruption, or resist those who hinder the spread of the message by force. Furthermore, it is established to rescue Muslim prisoners held by the enemy or oppressed Muslims, or minorities suffering under tyrannical rulers, and to free people from the control of oppressive rulers (al-Qaradawi, 2014, pp. 68-69).

Scholars are divided into two main views regarding the ruling on this type of jihad. The first view considers it obligatory, distinguishing between two cases: the first being a communal obligation (*farḍ kifāyah*) on the general Muslim populace who meet the conditions of jihad; if a group fulfills this obligation, it is waived for the others. The second view holds that it is an individual obligation (*farḍ ‘ayn*) on the Muslim leader (imam), even if only once a year, based on the reasons mentioned earlier<sup>4</sup>. Others argue that attacking the enemy is not obligatory if Muslims are secure from harm, and they consider such expeditions to be voluntary, with the obligation arising only in cases of imminent danger or aggression.<sup>5</sup>

Since jihad al-talab involves initiating the fight against the enemy, scholars have added conditions beyond those mentioned for general jihad. The majority opinion requires that this type of jihad be conducted with the permission of the imam and under his banner, as he is authorized to declare mobilization and lead it, due to his knowledge and awareness of the matters of jihad, the enemy, their strengths and weaknesses.<sup>6</sup> The Shafi'i school views jihad without the ruler's permission as disliked (Al-Shafi'i, 1402 AH, p. 256), while Ibn Hazm permitted it (Ibn-Hazm, n.d, p. 217). There is also a narration from Imam Ahmad allowing it if Muslims have an opportunity that they fear losing and possess sufficient strength and resources (Al-Mardawi, 1995, p. 152).

Scholars have also stipulated that offensive jihad should only be undertaken if certain conditions are met. These include :

1. **Adequate Preparation:** This involves having the necessary equipment and supplies for combat, and qualified personnel who are skilled in the use of weapons and warfare techniques, according to their capacity (Ibn-Qudamah, 1998, p. 256). This is supported by the Quranic verse: "And prepare against them whatever you are able of power and steeds of war, by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know but whom Allah knows" (Qur'an 8:60).

2. **Probability of Success:** This condition requires a reasonable expectation of victory in battle, assessed by weighing the benefits and harms. If the imam



believes victory is achievable even if the enemy is numerically superior, the condition is fulfilled, and the offensive jihad can be pursued (Ibn-Qudamah, 1998, p. 256). This is supported by the verse: "O Prophet, urge the believers to battle. If there are among you twenty steadfast, they will overcome two hundred. If there are among you a hundred, they will overcome a thousand of those who disbelieve, because they are people who do not understand" (Qur'an 8:65).

The first condition is purely material, requiring only the availability of combat resources and means. The second condition is psychological, emphasizing the importance of fighting spirit and conviction, reflecting what is now referred to as military morale. Historical examples show that many battles were won by Muslims despite being outnumbered and outgunned.

The permissibility of both types of jihad is supported by the general Quranic verses and Hadiths advocating jihad. While these texts generally emphasize the legitimacy of offensive jihad, they more strongly affirm the legitimacy of defensive jihad, with the obligation of defensive jihad being considered more urgent than offensive jihad, given that defensive jihad is more immediate and necessary for the protection of the Muslim community.

#### **fourth section: Armed Resistance and Jihad:**

In Islamic jurisprudence, terms are used to convey specific concepts to ensure clarity. Thus, the meaning, not the terminology, is crucial. Jurisprudential principles state that if a term has a meaning similar to another term used in Islamic law, it is permissible to use it to convey the intended concept. This is reflected in the principle "There is no dispute in terminology," where the agreement on meaning allows for differences in naming or wording. For example, terms like "kharāj al-ra's" (head tax), "māl al-jumājim" (skull money), and "al-jāliyah" (community) all refer to the same concept of jizyah (poll tax) (Al-Shatibi, 1997, p. 114).

Armed resistance, as defined, refers to the efforts of national liberation movements to achieve freedom and independence and to repel invading colonial forces using force and weapons. It is limited to this context. In Islamic jurisprudence, jihad involves exerting effort and energy to fight against non-Muslim aggressors to protect Muslim land and support the religion of Allah. It is clear that these concepts are closely related, as the goals of armed resistance in the Islamic world, driven by European occupation and ongoing struggles, align with the objectives for which jihad was legislated. Thus, armed resistance can be viewed as a form of jihad mandated by Allah, and specifically, it aligns with defensive jihad, as both aim to resist and repel the enemy from Muslim lands according to available resources and means. It is governed by the rulings of defensive jihad as outlined by Islamic law.

#### **second requirement: Islamic Jurisprudence on Armed Palestinian Resistance:**

### **First section: Legal Classification of the Zionist Entity:**

The evidence proving the false claims of the occupying entity regarding its right to the land of Palestine is abundant. Religious evidence shows that Palestine has historically been the cradle of all messages and the birthplace of many prophets, and a refuge for many of them. Allah decreed that this land should only be ruled by Muslims and governed by prophets and the righteous. This is why Allah commanded His prophet Ibrahim (Abraham) to migrate there, and His prophet Musa (Moses) to flee to it, and to expel the pagan giants from it. Allah says: "O my people, enter the holy land which Allah has assigned to you and do not turn back from your back, lest you become losers" (Quran 5:21). This verse has been falsely cited by the Jews to claim their right to Palestine, suggesting that Allah bequeathed the land to them. However, their own Torah refutes this, as the Book of Ezekiel indicates that they were denied Jerusalem due to their disbelief and tyranny: "And the word of the Lord came to me, saying: Son of man, the inhabitants of these ruins in the land of Israel are saying: Abraham was one, and he inherited the land, but we are many; the land was given to us as a heritage. Therefore, say to them: Thus says the Lord God: You eat meat with the blood, and lift up your eyes toward your idols and shed blood. Should you then possess the land?" (Ezekiel, Chapter 33, verse 24). Similarly, the Psalms affirm that the land is to be ruled by the righteous, as stated in the Quran: "And We have already written in the Psalms after the Torah that the land is inherited by My righteous servants" (Quran 21:105). Since the Jews have disbelieved and deviated from the message of Musa, and before him the messages of Yaqub and Ibrahim, and after him the message of Muhammad (peace be upon them all), they have no right to the land of Palestine, which belongs to Muslims.

Historical evidence shows that the presence of Palestinians in the land has been continuous from the earliest times up to the occupation. The presence of Jews was limited to specific periods and places and was always followed by their expulsion, with their presence in Palestine ending each time. They would return with hopes of establishing a state on Palestinian soil. Historical sources trace the first presence of Palestinians to the migration of the Canaanite Arabs from the peninsula about 4500 years ago, while the first presence of Jews was after 1460 BCE with the entry of Joshua bin Nun into Palestine, who led them to Jericho after their wandering in Sinai for 40 years, as confirmed by their own Torah. (Al-Nabih, 2017).

The first independent Jewish rule was during the Judges' period, which lasted a short time of no more than a century and a half in small communities, governed by twelve judges. This was followed by the rule of King Saul, and then the period of the kings, including King David, who ruled from 1004 BCE to 962 BCE, followed by his son Solomon, who ruled from 962 BCE to 923 BCE and built the temple. After Solomon's death, the Jews split into two warring kingdoms: the

Kingdom of Israel with its capital in Samaria, and the Kingdom of Judah with its capital in Jerusalem. The first was destroyed by the Assyrians in 722 BCE, and the second by the Babylonians in 586 BCE, leading to their exile to Babylon and their return to dispersion. (Al-Nabih, 2017)

After 539 BCE, some Jews returned to Palestine following the defeat of the Babylonians by the Persians, with their help. They remained there without significant power until the Romans entered Palestine in 64 BCE, who forced them to convert to Christianity and expelled those who refused. This resulted in nearly two thousand years of Jewish absence from Palestine until they gathered from various countries and returned as occupiers with British assistance, starting in 1922, and established what they called "Israel" in 1948, expelling the Palestinians from their land and scattering them around the world (Al-Nabih, 2017).

It is well known to any researcher that Palestine is an exclusively Islamic land, and Muslims have a strong connection to it. They are connected religiously by making Al-Aqsa Mosque the first qibla (direction of prayer) and one of the mosques to which journeys are made for its multiplied reward. This connection is further affirmed by the Prophet Muhammad's night journey from there. Allah says: " "Glory be to Him who carried His servant by night from Al Masjid Al Haram to Al Masjid Al Aqsa; the environs of which We have blessed, that we might show him some of Our signs. Indeed He is the Hearing, the Seeing." " (Quran 17:1). It was necessary for the sanctity of Palestine to be linked to the sanctity of Mecca, and the Prophet's leading all the prophets in prayer at Al-Aqsa Mosque is another proof of the connection of Palestine's land with Muslims.

They are also politically connected since the conquest of Palestine in the fifteenth year by Abu Ubaidah ibn al-Jarrah during the reign of Umar ibn al-Khattab, and the taking of its keys from the Roman patriarch "Sophronius," and the establishment of what is known as "the Pact of Umar," which contained a clause prohibiting Jews from residing in Jerusalem (Ibn-al-Qayyim, Ahkam Ahl al-Dhimma, 1997) and making the land of Jerusalem a waqf (endowment) for all Muslims, not dividing it among the conquerors. It was customary for the Prophet Muhammad (peace be upon him) to allocate conquered lands to the army. When some objected, he replied: "I have decided to keep the lands with their people and impose upon them a tax and a tribute, which will be a share for the Muslims: the fighters and their descendants and those who come after them. " (Abu-Yusuf, n.d, p. 36). The land remained with Muslims since then, except for the years of the Crusader occupation and its recapture by Salah ad-Din al-Ayyubi, until it was occupied again after 1948.

Thus, Palestinian lands are purely Islamic lands, and Jews have no right to them. This is confirmed by the religious and historical evidence mentioned, and the legal classification of the Zionist entity is that it is an occupying force of Muslim lands and their sacred sites, representing an existential threat to all

Muslims and their religion, not just the Palestinians, but to the Islamic Ummah as a whole, as their books confirm their call for the establishment of a Greater Israel from the sea to the river. Therefore, it must be resisted and repelled by all means and methods.

### **second section: Ruling on Resistance Against the Jewish Entity:**

As we have shown, the land of Palestine is purely Islamic, and the Jews have no right to it. The Zionists are therefore occupiers of Islamic land. Their actions against Palestinians in their religion, honor, property, and lives constitute aggression that must be repelled. Their status is that of an enemy occupying Muslim land, which is addressed in jurisprudential texts, and resistance against them is legitimate and constitutes the required religious jihad supported by the texts we mentioned.

Armed resistance is a form of defensive jihad, and its ruling is the same as that of defensive jihad, which Islamic law has defined as an individual obligation upon the people of the occupied land according to their ability. Thus, what the Palestinians in various factions are doing in resisting this enemy by all means, including armed resistance, is also part of defensive jihad. Since the Zionists are aggressors who have sought out the Palestinians to fight by occupying their land, resistance against them is defensive, not offensive. The legitimacy of their resistance is supported by the general texts of Islamic law that establish the obligation of jihad in general, which applies to defensive jihad before offensive jihad.

Based on the above details, what the Palestinian resistance has done against the occupying Zionist entity, which occupies Palestine, is defensive jihad, and it is an individual obligation upon the people of Palestine first and foremost, for everyone who is able. It is sinful for those who fail to participate without an excuse. The obligation of support extends to other Muslims as a collective duty. If they cannot repel the enemy, the individual obligation transfers to those closest to them, and if they cannot, it extends to the entire Islamic Ummah. Ibn Abd al-Bar al-Maliki said: "Jihad also divides into two categories: one is a general obligation on everyone who can defend and fight, and that is when the enemy invades the land of Islam. If this occurs, all the people of that land must mobilize and go out to confront the enemy, whether young or old, men or women, free or enslaved, without needing permission from guardians or husbands. If the people of that land are unable to defend against their enemy, then those who are close to them must go out according to their ability, until they know that there is enough capacity to confront and repel them. Likewise, anyone who knows of their weakness and can assist them must also go out to aid them. Muslims are all responsible for supporting each other. Once the people of the area where the enemy has settled successfully repel the enemy, the obligation is lifted from

others. Even if the enemy is approaching the land of Islam but has not entered it, it is still necessary to confront them." (Ibn-Abd-al-Barr, 1980, pp. 462-463)

The recent Palestinian resistance in the "Al-Aqsa Flood" battle on October 7, 2023, is considered defensive jihad, which is an individual obligation. Even if the resistance initiated the attack, it does not fall under offensive jihad because they are occupiers. Those participating in this battle are engaging in defensive jihad and fulfilling an individual obligation upon them. They must be supported and assisted according to one's ability.

### **Third requirement: The Impact of Military Power Imbalance on the Legitimacy of Palestinian Resistance:**

With every war that breaks out between the Palestinian factions and the Israeli entity, the issue of the imbalance of military power and its impact on the legitimacy of this resistance is raised. This discussion has intensified recently, especially after the events of October 7, which resulted in numerous martyrs and significant destruction to the infrastructure of the Gaza Strip. From a jurisprudential perspective, it is necessary to address this issue from a legal standpoint and work on its foundational aspects."

"It is always necessary, when establishing the principles of this issue, to distinguish between **Jihad al-Talab** (the jihad of demand) and **Jihad al-Dafa'** (the jihad of defense). We have previously mentioned that the conditions required for the first are not required for the second. We have also indicated that the resistance conducted by Palestinian factions falls under Jihad al-Daf' rather than Jihad al-Talab. Therefore, applying the scriptural texts related to Jihad al-Talab to situations of repelling the enemy, resisting them, and defending oneself is incorrect and inappropriate. A person who defends himself, despite his weakness against an occupier, is not to be blamed even if it results in martyrdom. (al-Kubaisi, 2023), It is authentically reported from Abu Huraira that he said: 'A man came to the Messenger of Allah (peace be upon him) and said: "O Messenger of Allah! What if a man comes to take my wealth?" He replied: "Do not give him your wealth." The man asked: "What if he fights me?" He said: "Fight him." The man asked: "What if he kills me?" He replied: "Then you are a martyr." The man asked: "What if I kill him?" He said: "He will be in hell." (Muslim, 1955, p. 124) Even though this hadith was reported in the context of someone aiming to take another's wealth unjustly, potentially a Muslim, what about if the aggressor is an infidel occupier who has violated the honor, religion, wealth, and land of Muslims? It is even more valid that he must be repelled.

Referring to the conditions of Jihad al-Daf', scholars have required repelling the occupying enemy with all available weapons, even with stones. This obligation extends to all people, old and young, men and women, slaves and free persons, without needing permission from anyone. We have previously mentioned that this condition is lifted when the enemy has taken control of



Muslim lands. As stated in the explanation of Al-Bajouri: 'If the infidels enter a town from the lands of Muslims or come close to it, then Jihad becomes an individual obligation upon them... The people of that town are required to repel them, including children, women, slaves, and debtors, even without permission from guardians, spouses, or masters. The obligation is to repel the infidels with whatever means are available, even if it is with stones or similar.' (al-Bajuri, n.d, pp. 233-234), The scholars did not stipulate that individuals be qualified for combat; rather, they generalized the obligation to everyone as mentioned. Al-Sharbini said: "The second situation with the infidels is when they enter a town of ours, for its inhabitants are then required to repel them with whatever means possible, and Jihad becomes an individual obligation whether they are prepared for combat or not." (al-Sharbini, n.d, p. 558)

If scholars have permitted repelling the enemy even with the use of stones and have made Jihad obligatory on everyone regardless of their combat readiness, then how much more valid is the Palestinian resistance, which has advanced its jihadist performance against the Israeli enemy? The resistance has evolved from simple defensive operations with basic weapons against various attacks by the occupier to engaging in direct combat with focused operations, advanced and heavy weaponry that inflicts significant losses on the enemy. From stages of skirmishes that disturb the enemy and its stability to stages that threaten the existence of the entity itself, as witnessed in the events of October 7, 2023, all of this demonstrates the legitimacy of the resistance and its defensive jihad against this occupation."

### **THE THIRD TOPIC: The Position of International Law on Armed Resistance**

#### **First requirement: Legitimacy of Armed Resistance in International Law**

##### **First section: Legal Foundations of Armed Resistance:**

The right of colonized peoples to resist occupation and struggle for freedom by all means, including the use of force, is a legitimate right enshrined in all international customs and principles of law. This right is protected by various treaties and agreements. The Hague Conventions of 1899 and 1907 are among the first international documents to address this by recognizing the legality of national resistance against aggression and occupation, and granting members of this resistance the same rights as those of regular army personnel. Article 2 of the Regulations concerning the Laws and Customs of War on Land in the same convention defines combatants as: "Inhabitants of an occupied territory who spontaneously take up arms to resist invading forces without having time to form regular armed units according to Article 1, are considered combatants, provided they carry arms openly and observe the laws and customs of war."

The United Nations Charter asserts the right of peoples to self-determination as a fundamental basis for armed resistance. Article 1, paragraph 2, emphasizes: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." Additionally, the Charter acknowledges the right of peoples to defend themselves if attacked, as stated in Article 51: "Nothing in the Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations."

The Geneva Conventions of 1949 and their Additional Protocols further reinforced the legal status of armed resistance fighters, enhancing their legal legitimacy in fighting against their occupiers. These conventions provide legal protection and recognize their status as lawful combatants, granting them prisoner-of-war status if captured. Article 4 of the Third Geneva Convention specifies: "Prisoners of war, in the sense of this Convention, are persons belonging to one of the following categories who have fallen into the power of the enemy:

1. Members of the armed forces of a Party to the conflict, and members of militias or volunteer corps forming part of such armed forces.
2. Members of other militias and volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating within or outside their own territory, even if this territory is occupied."

Recommendation No. 3103, adopted by the General Assembly in its twenty-eighth session in 1973, is one of the most significant recommendations by the United Nations that reinforced the legitimacy of armed resistance. It affirms the full right of peoples to resist by all available means against colonialism and foreign occupation, in accordance with the principle of the right to self-determination recognized by the United Nations Charter in Article 2, paragraph 4, and the Declaration of Principles of International Law, which governs friendly relations and cooperation between states. This recommendation also states that any attempt to undermine national liberation struggles is contrary to international law and poses a threat to international peace and security. (Dehiya, 2019, p. 5)

Thus, the use of armed force by occupied peoples to liberate their homeland and achieve freedom is legitimate according to the above-mentioned legal texts. No other entity has the authority to prevent them from using this right to determine their own future, as long as this right is protected by international law. Furthermore, these laws go beyond by obligating the provision of assistance to colonized peoples for their liberation from their occupiers. The actions of colonial powers against the peoples they occupy constitute a violation of all international

treaties and customs, and an infringement on a fundamental right of peoples: their right to self-determination. Therefore, the use of armed force by these peoples is a legitimate right.

## **second section: Conditions for Armed Resistance:**

To establish the legitimacy of armed resistance and permit the use of violence in war, both the 1907 Hague Convention and the four Geneva Conventions set forth a number of conditions that must be adhered to. These conditions are imposed by the law of war, and failure to comply with them can result in the loss of this right, rendering those who violate them as terrorists. These conditions are as follows:

**A. Existence of Actual Occupation:** Article 42 of the 1907 Hague Convention states: "The territory of a State is considered occupied when it is actually placed under the authority of the hostile army. Occupation extends only to the territory where such authority can be exercised.", Actual control means that the occupying power's authority replaces the legitimate authority of the state or the occupied territory, or creates a dependent authority within the territory of another independent state (Zaydi, 2018, p. 417). The legitimate authority must express its rejection of the presence of occupying forces within its territory by all means and methods, including armed resistance. Article 2 common to the four Geneva Conventions of 1949 stipulates that these conventions apply to any territory occupied during international hostilities, even if no armed resistance is encountered.

**B. Resistance Against Occupying Forces:** Armed resistance arises as a spontaneous popular reaction when enemy forces wage aggressive war on the country, attempt to occupy it, or threaten the people's right to independence. The people then take up arms spontaneously to defend their land and nation. Thus, international law stipulates that armed resistance must always be directed against a foreign enemy, excluding various other forms of armed conflict that might occur between rebellious or separatist forces and a ruling authority (Al-Anzi & Al-Anzi, 2015, p. 282).

**C. National Motivation:** The driving force behind members of armed resistance is the abstract national interest. When they resort to armed force, it is driven by a sense of nationalism and belonging to their country, confronting any external enemy or seeking to liberate their country from occupation. Therefore, Article 4, paragraph 4, of the Additional Protocol to the four Geneva Conventions of 1977 requires a popular base to support armed resistance in order to liberate the country

or repel and deter the enemy. This is a key criterion used by international laws to distinguish between legitimate armed resistance and acts of terrorism, which are often driven by criminal motives rather than pure national interests (Dehiya, 2019, p. 05).

**D. Presence of Combatants:** Liberation movements are also required to have combatants organized to some degree, even if only minimally. They may choose the military strategy they deem appropriate, whether engaging in open warfare like state armies (as seen in the current conflict between Russia and Ukraine) or employing guerrilla warfare, which most liberation movements use, such as the conflict between Palestinian resistance factions and the occupying entity, due to the disparity in military power (Dehiya, 2019, p. 05). International law permits participation in armed resistance by individuals from outside the occupied or threatened territory, as long as their motive is not financial or material gain, thereby excluding mercenaries. (Dehiya, 2019, p. 05)

To establish the legal status of members of national liberation movements, Article 4 of the 1949 Geneva Convention III, paragraphs 1 and 2, stipulates that they must be under the command of a responsible person, have a distinctive sign visible from a distance, and carry their weapons openly. They must also follow the laws and customs of war. These conditions, however, may hinder resistance and make its combatants easy targets for the enemy due to the secrecy and concealment required for successful resistance operations.

### **Third section: General Restrictions on Armed Resistance:**

The legitimacy granted by international laws to armed resistance does not allow absolute freedom in using force against the enemy, which could lead to serious violations of human rights and harm to civilians. Therefore, the four Geneva Conventions of 1949 and their two additional protocols emphasize that national liberation movements must not direct military actions against innocent civilians, such as the elderly, women, and children, as this negatively affects public sympathy for their cause. Military actions must be directed against military and quasi-military targets and the material interests of the enemy within the occupied territories, including its soldiers and military equipment (Rabahi, 2014, p. 295).

### **Second requirement: International Law's Position on Armed Palestinian Resistance:**

#### **First section: Legal Classification of Israeli Occupation:**

The illegitimacy of the occupation by the Israeli entity is not only supported by religious and historical perspectives but also by international legal standards. Although international recognition is limited to the illegitimacy of the occupation of the 1967 territories, the UN General Assembly has issued resolutions<sup>7</sup> affirming the illegitimacy of Israel's occupation of these territories. For instance, UN General Assembly Resolution 32/20 of November 25, 1977, expressed deep concern that "the Arab territories occupied since 1967 remain, for more than ten years, under illegal Israeli occupation, reaffirming that 'acquisition of territory by force is inadmissible and all territories occupied in this way must be returned.'"

This was further confirmed by an advisory opinion from the International Court of Justice regarding the Israeli separation barrier, which stated: "The territories between the Green Line... and the former eastern borders of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. According to customary international law, these territories were occupied, and Israel held the status of an occupying power. Subsequent events in these areas... have not altered this status. All these territories (including East Jerusalem) remain occupied, and Israel continues to hold the status of an occupying power." (ICJ, 2004, paragraph 78)

On July 19, 2024, the same court issued its advisory opinion regarding the illegality of the Israeli occupation of the Palestinian territories and the resulting consequences. This opinion was based on a request submitted by the United Nations General Assembly during its seventy-seventh session on December 30, 2022. The General Assembly asked for answers to two questions: one concerning the legal consequences of Israel's ongoing violation of the Palestinian people's right to self-determination, its prolonged occupation, settlement, and annexation of the Palestinian territories since 1967, including measures aimed at altering the demographic composition, character, and status of the holy city of Jerusalem, and its adoption of discriminatory legislation and measures.<sup>8</sup> The advisory opinion reaffirmed that the continued existence of the State of Israel in the occupied Palestinian territories is illegal and that Israel is obligated to end its illegal presence in the occupied Palestinian territories as soon as possible. It also called for an immediate halt to all new settlement activities and the evacuation of all settlers from the occupied Palestinian territories, as these actions violate the Palestinian people's right to self-determination. (ICJ, 2024, p. 73)

## **second section: Legitimacy of Palestinian Resistance:**

The Israeli occupation and its allies frequently attempt to demonize Palestinian resistance and strip it of legitimacy by associating it with terrorism,



especially after October 7, 2023, and the Al-Aqsa Flood battle and its accompanying events. They accuse this resistance of illegitimacy and violation of international norms, laws, and treaties, despite the fact that international law and UN resolutions guarantee and affirm the legitimacy of such resistance, including armed resistance.

Since 1969, the UN General Assembly has issued several resolutions affirming the Palestinian people's right to self-determination and the establishment of their own state. On December 15, 1969, the General Assembly adopted Resolution 2588 in its twenty-fourth session, reaffirming that "the General Assembly reaffirms that the Palestinian people's inalienable rights" are to be recognized. In 1970, the General Assembly, during its twenty-fifth session on November 30, adopted Resolution 2649, condemning the denial of the right to self-determination, particularly for the peoples of South Africa and Palestine, recognizing the Palestinian people's right to equality and self-determination under the UN Charter. It emphasized "the legitimacy of the struggle of peoples under colonial and foreign domination—including the Palestinian people—to regain that right by any means at their disposal, including armed struggle."

The General Assembly's twenty-ninth session, in Resolution 3246 dated December 14, 1974, affirmed the legitimacy of the right of peoples to armed struggle for their liberation from occupation, stating: "Any attempt to suppress armed struggle against colonial, foreign, and racist regimes is contrary to the UN Charter and the principles of international law governing international relations and cooperation between states, as well as the Universal Declaration of Human Rights." This resolution followed Resolution 3236 of November 22, 1974, which confirmed the Palestinian people's rights, including their right to armed resistance to regain their sovereignty.

On December 4, 1986, the UN General Assembly in its forty-first session adopted Resolution A/RES/41/162A-C, which affirmed the legitimacy of Palestinian armed resistance to liberate its land, stating: "The legitimacy of the struggle of peoples—including the Palestinian people—for their independence, territorial integrity, and national unity, and liberation from colonialism, apartheid, and foreign occupation by all available means, including armed struggle."

It is important to note that all UN documents and resolutions concerning the Palestinian issue repeatedly emphasize that the Third Geneva Convention of August 12, 1949, relating to the treatment of prisoners of war, applies to the Palestinian territories occupied by Israel since 1967, including Jerusalem. According to this convention, Article 4 outlines conditions for establishing the

legitimacy of any armed resistance, specifying that it must be led by a responsible person, have a recognizable insignia, carry arms openly, and adhere to the laws and customs of war. These conditions accurately apply to the Palestinian armed resistance and align with the Hague Convention on the Laws and Customs of War on Land.

The documents and resolutions mentioned above affirm the Palestinian people's right to legally defend their land and resist occupation by all means, including armed resistance. They also confirm the legal status of the fighters of this resistance and their alignment with various international decisions and laws.

Based on this information, no party or entity can deny the Palestinian people's right to defend their land and sacred sites through resistance, including armed resistance, when the Israeli occupation persists in its aggression against Palestinians and its crimes against their civilians, prisoners, and wounded. This armed resistance has the right to punish this entity for its crimes against civilians. International treaties and conventions recognize the status of Palestinian armed resistance fighters, granting them all rights as per various international laws, including support from different countries and international organizations, as outlined in international treaties and norms.

## CONCLUSION:

From this presentation, we conclude:

1. Armed resistance in general, and Palestinian resistance in particular, is legitimate in all aspects, with no disagreement about its legitimacy between Islamic jurisprudence and international law. From a jurisprudential perspective, this resistance is considered a defensive jihad, obligatory on those who meet its conditions, each according to their capacity and ability. Legally, it falls under the principle of the right of peoples to self-determination as a legal basis for its legitimacy.
2. Islamic law encourages resisting injustice and aggression against individuals and states, which is also affirmed by international treaties and legal norms. This is the fundamental purpose of armed resistance in all countries.
3. Islamic jurisprudence supports the absolute rights of armed resistance members as mujahideen, obligating all Muslims to support them according to their ability. The protection and support recognized by international humanitarian law during international conflicts also apply to armed resistance members, and they are considered prisoners of war if captured.

4. The Al-Aqsa Flood battle and other Palestinian resistance operations are considered defensive jihad, which does not require preparation or power. It is an obligation on those who meet its conditions, and on all capable members of the Islamic nation, whether in person or financially. The obligation primarily falls on the Palestinians, and if insufficient, extends to neighboring countries, and ultimately to the entire Muslim nation.

The study also recommends :

1. The need for sufficient support from the Islamic nation for Palestinian resistance in all its forms, as an obligatory duty.
2. The international community should fulfill its legal and moral responsibilities, as outlined in various international treaties, towards the Palestinian people, to uphold their right to resist occupation by all means, including armed resistance, and to stop the Israeli war machine that has caused numerous civilian casualties and extensive damage to infrastructure.

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<sup>1</sup> This is the view of the Maliki, Hanafi, and Hanbali schools, see:

Sidi Khalil: Mukhtasar Sidi Khalil, Edited by Ahmed Jad, Dar al-Hadith, Cairo, 1st ed., 2005, p. 103.

Al-Kasani, *op. cit*, Vol. 7, p. 98.

Shams al-Din al-Ramli: Nihayat al-Muhtaj ila Sharh al-Minhaj, Dar al-Fikr, Beirut, 1st ed., 1984, Vol. 8, p. 42.

<sup>2</sup> This is the view of Saeed Ibn Al-Musayyab and Shafi'I, see:

Al-Qarafi: Al-Dhakhira, Edited by Muhammad Boukhebza et al., Dar al-Gharb al-Islami, Beirut, 1st ed., 1994, Vol. 3, p. 385.

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<sup>3</sup> See:

Al-Desouki, Al-Desouki's footnote to Al-Sharh Al-Kabir, Dar Al-Fikr, Beirut, 1<sup>st</sup> ed., vol. 2, p. 174.

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Ibn Qudamah, *op. cit*, vol. 9, p. 213.

<sup>4</sup> This is the view of the Maliki, Hanafi, Shafi'i, and Hanbali schools. See:

Ibn Rushd the Elder, Al-Muqaddimat al-Mumahhidat, edited by Muhammad Haji, Dar al-Gharb al-Islami, Beirut, 1st ed., 1988, vol. 1, p. 348.

Ibn Qudamah, *op. cit*, vol. 9, p. 198.

Al-Nawawi, Sharh Sahih Muslim, Dar Ihya' al-Turath al-Arabi, Beirut, 2nd ed., 1392 AH, vol. 8, p. 34.

Al-Kasani, *op. cit*, vol. 7, p. 98.

<sup>5</sup> The opinions of Ibn Umar, Ata, Amr ibn Dinar, Ibn Shubrumah, and many contemporary scholars. See:

Al-Jassas, Ahkam al-Qur'an, edited by Muhammad Sadiq al-Qamhawi, Dar Ihya' al-Turath al-Arabi, Beirut, n.d., vol. 3, p. 147.

Yusuf al-Qaradawi, Fiqh al-Jihad *op. cit*, vol. 1, p. 91.

<sup>6</sup> This is the view of the Maliki, Hanafi, and Hanbali schools. See:

Al-Hattab, Mawaheb al-Jalil Sharh Mukhtasar Khalil, Dar al-Fikr, Beirut, 3rd ed., 1992, vol. 3, p. 349.



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Al-Sarakhsi, Sharh al-Siyar al-Kabir, Eastern Advertising Company, Cairo, n.d., 1971, vol. 1, p. 167.

Ibn Qudamah, *op. cit*, vol. 9, p. 200.

<sup>7</sup> Among the issued resolutions, see:

UN Security Council Resolution No. 476 (1980), paragraph 1.

UN Security Council Resolution No. 478 (August 20, 1980).

UN Security Council Resolution No. 267 (1969).

UN Security Council Resolution No. 2334 (2016), paragraph 9.

General Assembly Resolution No. 60/251 dated March 15, 2006.

<sup>8</sup> See: Resolution No. A/RES/77/247, dated December 30, 2022, issued by the UN General Assembly in its 77th session.