

Israel's Right to Exist and Defend Itself: A Legal Analysis

The phrase "Israel has a right to exist and defend itself" is frequently used to justify its actions in the Israel-Palestine conflict. However, under international law, these claims are not absolute or unconditional. This response examines Israel's assertions of a "right to exist" and "self-defense" against the backdrop of occupation and Palestinian rights, drawing on key legal frameworks such as the UN Charter, Geneva Conventions, and International Court of Justice (ICJ) rulings. It argues that while Palestinians have well-established rights to life, self-determination, and resistance, Israel's legal claims in these areas are more tenuous and often misaligned with its obligations as an occupying power.

Does Israel Have a Legal "Right to Exist"?

In international law, there is no explicit "right to exist" for states. Statehood is instead a factual determination based on the *Montevideo Convention (1933)*, which requires: - A permanent population, - A defined territory, - A functioning government, and - The capacity to engage in foreign relations.

Israel meets these criteria and is a recognized UN member state. However, the idea of an inherent "right to exist" is a political assertion, not a legal principle. No treaty or customary law grants states an abstract right to perpetual existence.

By contrast, the Palestinian people have legally recognized rights despite lacking full statehood. **UN General Assembly Resolution 3236 (1974)** affirms their "inalienable rights" to self-determination and national independence. The ICJ, in its 2004 and 2024 advisory opinions, has confirmed that Palestinians are entitled to self-determination, a right obstructed by Israel's ongoing occupation. Over 140 UN member states recognize Palestine as a state, underscoring the legal weight of its aspirations. Thus, while Israel exists as a state, its claim to a "right to exist" lacks the legal grounding that Palestine's right to self-determination possesses.

Can Israel Legally Defend Itself Against an Occupied Population?

Israel often invokes **Article 51 of the UN Charter**, which permits self-defense against an armed attack, to justify military actions in Gaza, the West Bank, and East Jerusalem. However, this provision applies to interstate conflicts, not to an occupying power's actions against a population under its control. The ICJ has consistently ruled that Israel remains the occupying power in these territories, meaning its conduct is governed by

International Humanitarian Law (IHL), particularly the *Fourth Geneva Convention*, rather than Article 51.

Under IHL, an occupying power must: - Protect civilians, - Avoid collective punishment, - Refrain from settlement expansion, and - Use proportionate force.

The ICJ's 2024 opinion found that Israel's military operations, settlement policies, and Gaza blockade violate these obligations, amounting to de facto annexation and potential war crimes. As an occupying power, Israel cannot legally claim self-defense against the people it occupies; instead, it is bound to uphold their rights. This undermines the legal basis for Israel's defensive actions in these territories.

What Rights Do Palestinians Have Under International Law?

Palestinian rights are firmly rooted in international law, contrasting with Israel's more ambiguous claims:

- **Right to Life:** Enshrined in *Article 6 of the ICCPR* and *Article 3 of the UDHR*, this right is non-derogable, even in wartime. Palestinians face systematic violations through targeted killings, home demolitions, and restricted medical access, as documented by human rights groups.
- **Right to Self-Determination:** Affirmed in *Article 1 of the UN Charter*, *ICCPR*, and *ICESCR*, this right applies to all peoples. The ICJ and UN have repeatedly noted that Israel's occupation denies Palestinians this right, unlike Israel, which has already achieved statehood.

These rights give Palestinians a stronger legal position in the conflict, as they remain under foreign control while Israel exercises sovereignty.

Is Palestinian Resistance Legitimate, or Is It Terrorism?

UN General Assembly Resolution 37/43 (1982) recognizes the right of peoples under colonial or foreign domination to resist occupation, including through armed struggle, provided it complies with IHL (e.g., avoiding civilian targeting). This legitimizes Palestinian resistance to Israel's occupation.

However, Israel and the US often label such resistance as "terrorism," a term that obscures its legal basis. Historical parallels reveal this as a double standard: - The US fought a violent rebellion against British rule, including acts like the Boston Tea Party. - Israel's founding involved groups like **Irgun** and **Lehi**, labeled terrorists by the British, yet figures like **Menachem Begin** later became leaders. - During South Africa's apartheid era, the US branded Nelson Mandela and the ANC as terrorists, yet they are now celebrated for their struggle.

Denying Palestinians the same framework of legitimate resistance applied to these cases is inconsistent with history and law.

Does Recognizing Palestine “Reward Terrorism”?

Israel and the US argue that recognizing Palestine endorses violence. Yet, their own histories - Israel's insurgency against the British Mandate and America's revolutionary war - contradict this stance. **UN General Assembly Resolution 67/19 (2012)** granted Palestine non-member observer state status, reflecting global support for its self-determination, not its tactics. Recognition aligns with international law and addresses the occupation's root causes, rather than rewarding violence.

Conclusion

Israel exists as a state under international law, but there is no legal “right to exist” beyond the factual criteria of statehood. Its claim to self-defense under Article 51 does not apply to occupied territories, where IHL imposes strict duties as an occupying power - duties Israel has been found to violate. Meanwhile, Palestinians hold clear, legally protected rights to life, self-determination, and resistance, rights denied by the occupation. Labeling their struggle “terrorism” echoes discredited colonial rhetoric, as seen in the histories of the US, Israel, and South Africa. Recognizing Palestine fulfills international law and historical justice, not violence. Peace requires applying the law equally, not shielding one side with rhetorical claims.