

DISSERTATION

**THE ROLE OF THE UNITED NATIONS IN REALIZING THE RIGHT
OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION
AND DEVELOPMENT**

ABDELRAHMAN MOHAMMAD SULAIMAN ALASTTAL
B013211039



DOCTORAL PROGRAM OF LEGAL SCIENCE
FACULTY OF LAW
HASANUDDIN UNIVERSITY
MAKASSAR

2023

DISSERTATION

**THE ROLE OF THE UNITED NATIONS IN REALIZING THE
RIGHT OF THE PALESTINIAN PEOPLE TO SELF-
DETERMINATION AND DEVELOPMENT**

ABDELRAHMAN MOHAMMAD SULAIMAN ALASTTAL

B013211039



**DOCTORAL PROGRAM OF LEGAL SCIENCE
FACULTY OF LAW
HASANUDDIN UNIVERSITY
MAKASSAR**

2023

**THE ROLE OF THE UNITED NATIONS IN REALIZING THE RIGHT
OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION
AND DEVELOPMENT**

DISSERTATION

As one of the requirements for achieving a Doctoral Degree

Study Program:

LEGAL SCIENCE

Composed and Submitted By:

**ABDELRAHMAN MOHAMMAD SULAIMAN ALASTTAL
B013211039**

To:

**DOCTORAL PROGRAM OF LEGAL SCIENCE
FACULTY OF LAW
HASANUDDIN UNIVERSITY
MAKASSAR**

2023

DISSERTATION

THE ROLE OF THE UN HUMAN RIGHTS INSTITUTIONS IN THE PROTECTION OF HUMAN RIGHTS AND ITS IMPACT ON SUSTAINABLE DEVELOPMENT IN PALESTINE

Composed and Submitted By

ABDELRAHMAN MOHAMMAD SULEIMAN ALASTTAL

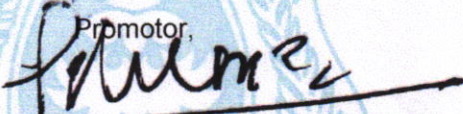
B013211039

Telah dipertahankan di hadapan Panitia Ujian yang dibentuk dalam rangka Penyelesaian Studi
Program Doktor Program Studi Ilmu Hukum Fakultas Hukum Universitas Hasanuddin


Pada hari Senin Tanggal 7 Desember 2023
Dan dinyatakan telah memenuhi syarat kelulusan

Approved by:

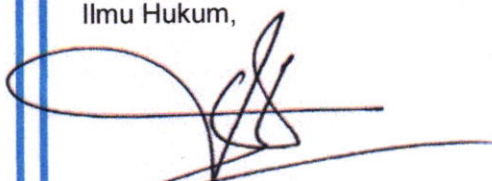
Promotor,


Prof. Dr. Abdul Maasba Magassing, S.H., M.H.
NIP 195508031984031002

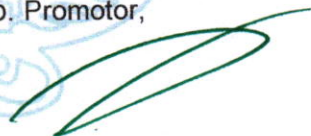
Co. Promotor,


Prof. Dr. Maskun, S.H., LL.M.
NIP 197611291999031005

Ketua Program Studi S3
Ilmu Hukum,


Prof. Dr. Marwati Riza, S.H., M.Si.
NIP 196408241991032002

Co. Promotor,


Prof. Dr. Iin Karita Sakharina, S.H., M.A.
NIP 197701202001122001

Dekan Fakultas Hukum
Universitas Hasanuddin,


Prof. Dr. Hamzah Halim, S.H., M.H., M.A.P.
NIP 197312311999031003



Statement of Dissertation Authenticity

STATEMENT OF DISSERTATION AUTHENTICITY

The undersigned below:

Name : Abdelrahman M. S. Alasttal

Student ID No. : B013211039

Study Program : Legal Science

I solemnly state that the dissertation I have written is truly my own work, not expropriation of the writings or thoughts of others. If in the future it is proven or can be proven that part or all of this dissertation is the work of others, I am willing to accept sanctions for such actions.

Makassar, December 7, 2023



Abdelrahman Alasttal

FOREWORD

Praise and gratitude, Alhamdulillah Rabbil Alamin, the author prays for the presence of Allah SWT who is only because of His help and taufiq and His guidance that has been given to the author so that he can complete the research results of this dissertation titled “The Role of the United Nations in Realizing the Right of the Palestinian People to Self-Determination and Development.” Blessings and greetings may continue to be poured out on the **Prophet Muhammad SAW**, the Prophet who has succeeded in bringing people out of darkness into light.

The author realizes that this dissertation could not be completed without the help, encouragement and guidance from various parties. Therefore, on this occasion, the author should express his appreciation and gratitude to all of them and be accompanied by a prayer that **Allah SWT** will give them a double reward for all the help that has been given so far. The author's prostrations are dedicated to both parents, father Mohammad and Mother Majdoleen for all the upbringing and sincere prayers so far. Hopefully what they have given so far will be a charity for them in the future. In addition, thank you very much, my brothers and sisters, for always standing by my side.

Appreciation, respect and gratitude, the author humbly extends to the honourable and highly educated Prof. Dr. Abdul Maasba Magassing as the Promoter, Prof. Dr. Maskun and Prof. Dr. Iin Karita Sakharina as the Co-Promoters who have spent a lot of time in providing guidance and pointing out things that are important and need to be considered with full sincerity in the process of completing this dissertation. May **Allah SWT** elevate them and bestow His mercy and grace on all of them.

The author also conveys the same words to the honourable and highly educated Prof. Dr. Syamsuddin Muhammad Noor, Prof. Dr. Judhariksawan, Prof. Dr. Marthen Napang, Dr. Birkah Latif and Dr. Irsyad Dhahri as a team of examiners who have provided many inputs, directions and suggestions that have opened the horizons of the author's thinking.

To the government of the Republic of Indonesia, Ministry of Education, Kebudayaan, Riset, dan Teknologi, who gave the author the opportunity to

study Doctoral Program (S3) with financial assistance through the Postgraduate Education Scholarship (BPPS) at the Hasanuddin University Postgraduate Program, and to the leaders of the university where the author studied, Prof. Dr. Jamaluddin Jompa as Rector of Hasanuddin University, Prof. Dr. Hamzah Halim, as the Dean of the Faculty of Law, Hasanuddin University and the Deputy Deans of the Faculty of Law, Prof. Dr. Marwati Riza as the Chair of the Doctoral Program in Law, Faculty of Law, Hasanuddin University, along with all staff, thank you for all the support, both facilities, and excellent service that has been provided during the author's education at the Faculty of Law, Hasanuddin University Makassar.

The author also extends his appreciation, respect and gratitude to Prof. Dr. Farida Patittingi, the Vice-Rector in charge of Human Resources, Alumni, and Information Systems, who has given a lot of motivation, direction and example so far, may **Allah SWT** reward her. Fellow writers and students of the Doctoral Program of Law, thank you for your prayers, cooperation, and togetherness so far.

Finally, the author hopes that the presence of this dissertation can be useful for the development of science. May **Allah SWT** always give His guidance for all the efforts we have made so far, and the value of worship by Him, Ameen.

Makassar, Dec. 7, 2023

The Author

Abdelrahman Alasttal

ABSTRACT

ABDELRAHMAN ALASTTAL. *The Role of the United Nations in Realizing the Right of the Palestinian People to Self-Determination and Development* (Supervised by Abdul Maasba Magassing, Maskun, lin Karita Sakharina)

This research aims to study (1) the historical situation of the Palestinian right to self-determination to find out the reasons for its emergence and the obstacles that prevent it from being achieved, (2) the development situation in Palestine under the Israeli occupation, (3) the role of the United Nations in this regard.

This study uses normative and empirical legal research types with the statutory, case, conceptual, and comparative approaches. The technique of the data collection was done by the literature study and the field research through interviews and questionnaires. The data were analyzed using qualitative analysis.

The study concluded that (1) the United Nations resolved the Question of the Jews by achieving their self-determination by granting them the land of the Palestinians and accepting their state's membership in the United Nations. Therefore, the United Nations created the Question of the Palestinians and contributed to preventing their right to self-determination by granting their lands to foreigners, as well as its refusal to accept full membership of the modern Palestinian state in the United Nations. It also left the Palestinian Question without providing any effective solution to it, due to the inability of the Security Council to take any action against Israel due to the full Western support for Israel. (2) The presence of the Israeli occupation is considered the main obstacle to development in Palestine; The role of the United Nations has been ineffective so far in ending this occupation, as the realization of the right to development is linked to the realization of the right to self-determination. (3) The Palestinian leadership must resort to the United Nations General Assembly in accordance with Resolution No. 377A, as this resolution grants the General Assembly, in the event that the Security Council is unable to take its decisions due to conflicts of interest of the permanent members, the right to address any situation that threatens international peace and security, as the provisions of this resolution are consistent with the status of the Palestinian Question.

Keywords: United Nations; Palestine; Right to Self-determination; Development.

Table of Contents:_Toc154150583

Dissertation's Title	ii
Dissertation Submission Page	iii
Dissertation Approval Page	iv
Statement Of Dissertation Authenticity	v
Foreword.....	vi
Abstract.....	viii
Table of Contents:.....	ix
List of Figures	xii
List of Acronyms and Abbreviations	xii
Chapter I Introduction	1
A. Background	1
B. Formulation of Problems	14
C. Research Objectives.....	15
D. Research Benefits.....	16
E. Research Originality.....	17
CHAPTER II Literature Review	18
A. Human Rights	18
1. The Historical Development of the Term Human Rights	18
2. Definition of Human Rights.....	27
3. Sources of Human Rights.....	34
A. International Conventions	36
B. International Custom.....	39
C. General Principles of Law	42
D. Subsidiary Sources	44
4. Classification of Human Rights.....	50
A. Civil and Political Rights (CPR)	52
B. Economic, Social and Cultural Rights (ESCR)	76

C. Collective Rights.....	88
B. Right to Self-Determination and Right to Development:	92
1. Right to Self-Determination	92
2. Right to Development.....	95
C. United Nations	100
1. The Birth of the United Nations.....	100
2. Definition of United Nations.....	103
3. The Principal Organs of the United Nations	108
A. General Assembly	108
B. Security Council.....	115
C. Economic and Social Council.....	121
D. The Trusteeship Council	124
F. International Court of Justice	125
G.The Secretary	129
D. Research Framework	134
E. Research Structure	136
F. The Operational Definitions	137
Chapter III Research Methods	140
A. Type of Research	140
b. Research Site	142
C. Types and Sources of Data	142
D. Data Collection Techniques.....	144
E. Research Approaches	144
Chapter IV Discussion and Results.....	147
A. UN Mechanisms in the Protection of Human Rights and the Scope of their Impact	147
1. The Human Rights Council	148
2. The Office of the High Commissioner for Human Rights.....	181
3. Commissions of Inquiry, Fact-finding Missions, and Treaty Bodies	186

4. Scope of the Effectiveness of the Role of the UN in the Field of Human Rights	189
B. The Role of the United Nations in Realizing Palestinian Right to Self-Determination.....	198
1. Reason for the Emergence of the Palestinian Right to Self-Determination	198
2. League of Nations and Balfour Declaration	215
3. The UN Partition Plan of Palestine and Resolution 242	227
4. The United Nations and Independence of the State of Palestine	238
C. The Role of the United Nations in Protecting the Palestinian Right to Development.....	262
1. The Impact of Israeli Occupation Policies on the Palestinians' Right to Development	262
2. The United Nations and the Palestinian Right to Development	277
3. Comparing the Role of the UN in Protecting the Right to Development in Rakhine.....	287
➤ Enforcement of Human Rights in Indonesia Compared to Palestine.....	294
Chapter V Closing	305
A. The Conclusions.....	305
B. The Recommendations	307
Bibliography	309
Curriculum Vitae.....	352

List of Figures

Number	Pages
1. Map of Palestine according to the UN Partition Resolution in 1947 and the Zionist Occupation in 1948:	229
2. The Distribution of Areas A, B, C, Settlements and the Path of the Apartheid Wall in West Bank:	245
3. The Israeli Blockade is imposed on the Gaza Strip:	267
4. Israeli Apartheid Wall in West Bank:	274

List of Acronyms and Abbreviations

Acronyms/Abbreviations	Meaning/Descriptions
UN	United Nations
GA	General Assembly
SC	Security Council
ECOSOC	Economic and Social Council
HRC	Human Rights Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights

Chapter I

Introduction

A. Background

Undoubtedly, the issue of human rights is one of the issues that are characterized by a global nature because it is directly related to the human person; therefore, it concerns all human beings. In addition, there can be no stability and development in a society where human rights are not respected, thus due to the importance of human rights, international conventions have been created and international organizations have been established to care for human rights, especially the matter of human rights, in some cases, may endanger world peace and security.

In other words, the tragedy of war, particularly its impact on human rights, induced essential changes in thinking about international human rights law. They have incorporated provisions into the UN Charter that have allowed for a major improvement in the ways of protection of human rights. Therefore, the issue of international human rights protection assumed great significance, especially after the Second World War.¹

¹ Tamás Lattmann and Balázs Vizi, 2014, *International Protection of Human Rights*, Institute of International Studies, Budapest, p. 15-16.

Furthermore, the free enjoyment of human rights creates the necessary conditions for sustainable development. No one is left behind in countries whose economies are just, inclusive, and participatory and where government is held accountable for its actions. Thus these states provide better outcomes for all people in the right to participate freely, effectively, and purposefully in development and prosperity under the right to development.² Therefore, human rights and development are interlinked and mutually supportive. Development cannot be sustainable in the absence of full respect for human rights. Consequently, human rights cannot advance and flourish except in a humanly developing environment that allows its people to recognize and claim their rights.³

Consequently, given the importance of human rights as a global issue affecting global stability and development, the UN issued the “Universal Declaration of Human Rights (UDHR)” in 1948. In order to implement this declaration, the United Nations created the “International Covenant on Civil and Political Rights (ICCPR)” and the “International Covenant on Economic, Social and Cultural Rights (ICESCR)” in 1966. These three instruments are known as the International Bill of Human Rights, which includes basic human rights that must be protected globally

² United Nations: A/RES/41/128 (1986).

³ Burghada Waheeda, 2008, *Human rights and the problematic of the dialectical relationship between good governance and human development*, Ben Youssef Ben Khedda University, Algeria, p. 51. (Arabic reference)

and is considered the basis of all international human rights conventions. Additionally, it lays the fundamental concepts and legal foundations for existing and future human rights treaties, and other legal papers. In a related matter, the prevailing opinion of jurists divides human rights into three groups, they are as follows:

A. Civil and political rights: include: “The right to life, Freedom from torture and inhuman treatment, Freedom from slavery, servitude or forced labour, The right to liberty and security of the person, The right to humane treatment in detention, Freedom of movement and residence, Prohibition of expulsion of aliens, Freedom of thought, conscience, and religious belief, Freedom of expression, The right to privacy, Non-imprisonment for debt, The right to fair trial, The right to personhood under the law, Equality before the law, Freedom of assembly and association, The right to marry and found a family, The rights of children, The right to practice a religion, culture and language, Prohibition of war propaganda and hate speech constituting incitement and The right to hold office and vote in free elections.”⁴

B. Economic, social, and cultural rights :include: “The right to work, just and favorable conditions of work, Social the right to social security and

⁴ United Nations: International Covenant on Civil and Political Rights (ICCPR) of 1966.

insurance, The right to protection and assistance to the family, The right to an adequate standard of living and freedom from hunger, The right to the highest attainable standard of physical and mental health, The right to education, The right to culture and to benefit from scientific progress and Equality between women and men.”⁵

C. Collective Rights: include: “The right to self-determination and permanent sovereignty over natural resources”,⁶ “The rights of national, ethnic, religious and linguistic minorities”,⁷ “The right to a healthy environment”,⁸ “The right to peace”⁹ and “The right to sustainable development”.¹⁰

Accordingly, international law of human rights is a set of legal rules that aim to protect and promote the human rights of all human beings, as they are considered natural rights that are closely related to the human being, and are not subject to waiver or division, worthy of a person as a human being regardless of his nationality, color, race, nationality, religion,

⁵ United Nations: International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

⁶ United Nations: ICCPR & ICESCR, Article 1.

⁷ United Nations: ICCPR, Article 27.

⁸ United Nations: A/HRC/RES/48/13 (2021).

⁹ United Nations: A/RES/71/189 (2017).

¹⁰ United Nations: A/RES/70/1 (2015).

place of residence or anything else.¹¹ In addition, the rules of international law also consist of a series of international covenants, declarations, and treaties related to the protection and promotion of human rights, such as the Charter of the United Nations of 1945, the Universal Declaration of Human Rights of 1948 and the two International Covenants on civil and political rights, and social, economic and social rights of 1966.¹²

In this regard, international organizations are considered one of the pillars of human rights protection in the world due to the multiple possibilities and mechanisms that they possess in promoting and defending human rights and trying to stop violations by seeking to implement international laws and treaties related to human rights, which have become a great guarantee in the protection of human rights. Among the most important international organizations that have a major role in protecting and promoting human rights is the United Nations, where the United Nations contributes through its organs and human rights institutions to the enhancement of, respect of and the protection of human rights, as the role of the United Nations has increased in influencing the decisions of the international community, government policies and public opinion, which enhances and protects human rights.

¹¹ United Nations, 2011, *International legal protection of human rights in armed conflict*, United Nations, New York, p. 5.

¹² United Nations,(SA), *Human Rights*, United Nations, New York, p. 3 & 4.

In this context, because of the terrible human rights violations during the World War II, the United Nations was founded in 1945 with the objective of preventing future hostilities through international diplomacy and negotiation. It provides mechanisms for Member States to solve problems and conflicts and address issues of humanitarian issues.¹³ It is the second multipurpose international organization with a universal membership and scope, which was founded in the 20th century. Its ancestor, the League of Nations, was dismantled in 1946 after failing to bring about world peace after being founded in 1919 as an outcome of the Treaty of Versailles.¹⁴

Therefore, the main objective behind the creation of the UN was to prevent hostilities by providing appropriate mechanisms for states to resolve their differences as well as to address humanitarian issues by strengthening the status of human rights.¹⁵ Therefore, the United Nations defined itself in the preamble to its charter by saying:

“We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, ... to reaffirm

¹³ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 5.

¹⁴ Cecelia Lynch, Aug 28, 2023, *United Nations: international organization*, (online), (<https://www.britannica.com/topic/United-Nations/Organization-and-administration> accessed Sep 1, 2023).

¹⁵ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 6-7.

faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, ... to maintain international peace and security, and... to promote social progress and better standards of life in large freedom”.

Consequently, the United Nations acts as the international forum for promoting mutual understanding, finding potential areas of cooperation, and taking coordinated action on transnational issues such as terrorism, climate change, and pandemics. Additionally, it works to advance peace, human rights, and sustainable development.¹⁶ Therefore, the United Nations, since its founding in 1945, has been working to ensure and promote security, development, and human rights throughout the world.

In a related context, since the Israeli occupation of historical Palestine, which has begun since the Palestinian Nakba in 1948 until the present day, there have been systematic violations of Palestinian human rights, which have increased dramatically since the beginning of the Israeli occupation of the rest of the lands of Palestine represented in the West Bank, including East Jerusalem, and the Gaza Strip in June 1967, these violations included policies of displacement, home demolitions, theft of

¹⁶ Chloe Bennett, Oct. 24, 2017, *10 Things You May Not Know About The UN*, (online), (<https://unfoundation.org/blog/post/10-things-may-not-know-un/> accessed Sep 5, 2022).

natural resources, killing, land confiscation, and illegal settlement, in addition to the restrictions imposed on the Palestinians' freedom of movement, construction and work, and racial discrimination against them, all of which lead to enormous suffering for the Palestinians, depriving them of their basic rights. Consequently, this affected all human, economic, political, social, and cultural levels, which are also constantly exacerbated by the blockade and wars that the Gaza Strip is exposed to, as well as the Israeli violations and crimes that the residents of the West Bank, including Jerusalem, are exposed to daily.¹⁷

This, in turn, led to the need to strengthen the role of international organizations related to the protection of human rights, such as the United Nations, on a permanent and continuous basis, not only in emergencies, with the aim of contributing to ensuring that the Palestinian people exercise their minimum economic, political, social, cultural and other rights, which achieves a positive impact on the stability and development of society, which contributes to its development and prosperity, thus improving the human rights situation in it.

Indeed, the United Nations has passed dozens of resolutions, recognizing and affirming the right of the Palestinian people to

¹⁷ United Nations: A/77/356 (2022) para. 6, & A/HRC/44/60 (2020), paras. 24 and 27.

independence, full sovereignty over their lands, and managing their natural resources by using water and conducting research and exploration for minerals, natural gas and oil within the Palestinian government's economic plans for comprehensive development. In addition to recognizing the Palestinians' right to claim compensation due to the Israeli occupation's exploitation, destruction, depletion and endangerment of Palestinian natural resources due to its settlement measures. Several UN resolutions also affirmed that the construction of the separation wall and settlements by the occupying power in the West Bank, including East Jerusalem, constitutes a violation of international law and deprives the Palestinian people of their basic rights guaranteed in the International Bill of Human Rights.

Despite this, Israel considers itself above the law and does not respect the provisions of international law or United Nations resolutions. In addition, the aforementioned violations, more than 60% of the area of the West Bank of Palestine is still under full Israeli military rule, and Palestinians are allowed to build only in 13% of the area of East Jerusalem. In this context, about 35% of East Jerusalem is covered by Israeli Jewish settlements, after Israel illegally annexed East Jerusalem in

1980.¹⁸ In addition, although the Israeli occupation withdrew its ground forces from the Gaza Strip in 2005, it continues to impose an illegal air, sea, and land blockade on the Gaza Strip and continues to maintain buffer zones, or so-called “no-entry zones,” near the Gaza Strip border.¹⁹

In this regard, Palestine is the only country in the world that is still under occupation and its people are still seeking self-determination by establishing their own independent and fully sovereign state, where the Palestinian people do not enjoy sovereignty over their land and natural resources because of the Israeli occupation.

Thus, the Palestinian people are still suffering from the brunt of the Israeli occupation, so they are still struggling to obtain their right to self-determination, which the Israeli occupation, by military force, deprives them of this right.²⁰ Undoubtedly, the right to self-determination enables the Palestinian people to determine their political status and gives them the freedom to pursue their economic, social, and cultural development, as well as that its realization is the basis for the effective guarantee and

¹⁸ Amnesty International, (SA), *Israel's Occupation: 50 Years of Dispossession*, (online), (<https://www.amnesty.org/en/latest/campaigns/2017/06/israel-occupation-50-years-of-dispossession/> accessed on Mar 16, 2022)

¹⁹ Anais Antreasyan, 2012, *Gas Finds in the Eastern Mediterranean: Gaza, Israel, and other Conflicts*, Journal of Palestine Studies, VOL. 42, No. 3 – 2012, pp. 29-47, p. 29. & United Nations: E/RES/2016/14 (2016).

²⁰ Dandan Jamaluddin, 2022, *Principle of the Right of Peoples to Self-determination Between Theory and Practice (Case Study of Palestine).*” *Journal of Legal Studies and Research*, Vol. 7, No. 1, pp. 301-286, p. 298.

respect for human rights.²¹ In addition, the right to self-determination is of great importance because it is important in the self-formation of individuals and the ability to exercise their freedom; It is also a guarantee of community protection, as it provides resistance to external threats that target the components of society and its natural resources.²²

On the other hand, the right of peoples to permanent sovereignty over their wealth and natural resources is an essential element in the right to self-determination, as the exercise of this right achieves national development and the well-being of the people.²³ And since the right to self-determination is considered a fundamental right of people, it has been enshrined in international human rights instruments.²⁴ Thus there is a close relationship between the right to self-determination and other human rights. The right to self-determination enables people to exercise their political and civil rights and promote their development, which enables them to enjoy other rights.²⁵

²¹ United Nations: HRI/GEN/1/Rev.9 (Vol. I) (2008), General Comment No. 12, Article 1.

²² Francisco Martinez Cruz, 2018, *The Right to Self-Determination of Peoples: Notes on its Compatibility with three Models of Global Order*, Mexican Law Review, Vol. XI, No. 1, pp. 86-101, p. 100.

²³ UN General Assembly resolution 1803 (XVII) (1962).

²⁴ Munafrizal Manan, 2016, *the Right of Self-Determination: Its Emergence, Development, and Controversy*, Jurnal Konstitusi, Vol. 12, No. 1, pp. 1-20, p. 17.

²⁵ Prithivi Raj, 2020, *Right to Self Determination as Human Right*, Acclaims, Vol. 9, pp. 1-11, p. 11.

Subsequently, an essential requirement for the effective guarantee and observance of human rights, as well as for their preservation and advancement, is the universal realization of all peoples' right to self-determination, including those under colonial, foreign, and alien control.²⁶

Indeed, the right to self-determination is a controversial issue. However, it has been made clear that the only issue that is more or less free of controversy is the right to self-determination in the colonial context.²⁷ Therefore, in 2004, the advisory opinion of the International Court of Justice on the wall in occupied Palestine indicated that the Palestinian right to self-determination is indisputable.²⁸ In this context, the United Nations issued several resolutions endorsing and supporting the right of the Palestinian people to self-determination, such as 3236 D-29 (1974), A/RES/77/22 (2022), and A/RES/73/19 (2018). Despite this, The Israeli occupation does not recognize the right of the Palestinian people to self-determination and opposes the establishment of an independent Palestinian state.²⁹

²⁶ United Nations: A/75/477 (2020), para. 19.

²⁷ Nasir Qadri, 2018, *The Basis of Right to self Determination*, International Islamic University, Islamabad, p. 20.

²⁸ International Court of Justice: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory : Advisory Opinion of 9 July 2004.

²⁹ Shadi Sakran, 2020, *Revisiting the 'Recognition' of the Palestinians' Right to Self-Determination: Peoples as Territories*, Groningen Journal of International Law, Vol. 7, No. 2, pp. 236-251, p.236.

In this regard, because the Palestinian people have not yet obtained their right to self-determination and independence, their right to development is violated. Consequently, development growth is still low in Palestine due to the Israeli occupation's destruction of the Palestinian economy, as social and economic conditions worsened, unemployment remained high, food insecurity increased, and more than a third of families fell below the poverty line.³⁰ In addition, the Palestinian economy is characterized by a state of uncertainty in future prospects in light of the limited sources of sustainable growth,³¹ despite the abundance of natural resources in Palestine that help it advance its development.³²

Undoubtedly, human rights and human development are interlinked and mutually supportive. Development cannot be sustainable in the absence of full respect for human rights. On the other hand, the latter cannot advance and flourish except in a humanly developing environment that allows its peoples to recognize and claim their rights.³³ Thus the right to development grants the ability to enjoy civil, political, economic, social,

³⁰ United Nations: TD/B/EX(72)/2/Corr.1 (2022).

³¹ World Bank Group, November 17th, 2021, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, World Bank, New York, p. 4,

³² World Bank Group, October 2, 2013, *Area C and the Future of the Palestinian Economy*, Report No. AUS2922, World Bank, New York.

³³ Burghada Waheeda, 2008, *Human rights and the problematic of the dialectical relationship between good governance and human development*, Ben Youssef Ben Khedda University, Algeria, p. 51. (Arabic reference)

and cultural rights.³⁴ Therefore, human rights and development are interdependent and mutually supportive. There can be no sustainable development in the absence of full respect for human rights, nor can there be full enjoyment of human rights in the absence of development.

For these reasons, the UN General Assembly issued the Declaration on the Right to Development, which confirmed that the right to development is based on the full realization of peoples' right to self-determination and their full sovereignty over their land, wealth, and natural resources.³⁵ Furthermore, the UN General Assembly reaffirmed the international affirmation of the permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, over their natural resources.³⁶ But despite UN resolutions, development in Palestine is still low and almost stopped.

B. Formulation of Problems

The research problem revolves around the nature and scope of the role of the United Nations in achieving the right of the Palestinian people to self-determination and development. Accordingly, the study seeks to answer the following questions stemming from the research problem:

³⁴ Omar Nasser, 2022, *The Right to Development within the Framework of the United Nations, between Texts and Implementation Mechanisms*, Arabic Renewal Journal, Vol. 2, No. 1, pp. 195-233.

³⁵ United Nations: A/RES/41/128 (1986).

³⁶ United Nations: A/RES/77/187 (2022).

1. How can the United Nations protect human rights?
2. What is the nature of the role of the United Nations in the realization of the Palestinian right to self-determination?
3. Why is the United Nations unable to support the right to development in Palestine?

C. Research Objectives

1. Studying the scope of the United Nations' role in the protection of human rights by analyzing the measures and mechanisms taken by the United Nations to contribute to the protection of human rights from violations and the impact of these measures on human rights conditions.
2. Examining the historical context of the role of the United Nations in achieving the Palestinian right to self-determination, with identifying the most prominent reasons that prevent the Palestinian people from realizing their right to self-determination.
3. Identifying the obstacles to development in Palestine by clarifying the political and legal status of the Palestinian territories and clarifying the Israeli tools and practices that obstruct Palestinian development, and then clarifying the role of the United Nations in overcoming these obstacles.

4. Presenting the ideal model that Palestine should apply to achieve its right to self-independence and development.

D. Research Benefits

1. Revealing the types of mechanisms adopted by the United Nations in its work to protect human rights and the extent of their contribution to the promotion and protection of human rights.

2. Highlighting the role of the United Nations in protecting Palestinian human rights from Israeli violations, especially the rights to self-determination and development, thus demonstrating its ability to force the occupation to implement human rights treaties and resolutions.

3. Giving the leaders of the United Nations, Palestine, and other supporting countries a clear picture of the effectiveness of the role of the United Nations in protecting and enhancing human rights and the most important obstacles to achieving the rights to self-determination and development in Palestine, which helps them make decisions that work to overcome obstacles and adopt new options that help achieve these two rights.

4. Providing the ideal model that Palestine should apply to achieve its right to self-independence and development.

E. Research Originality

This study is considered the first of its kind, as its subject focused on studying the role of the United Nations in the realization of the Palestinian right to self-determination and development. Therefore, it adds a great deal of knowledge in this field. Accordingly, the importance of this study is highlighted in giving a clear picture to the leaders of the United Nations, Palestine, and other supporting countries about the role of the United Nations in the realization of the Palestinian right to self-determination and development. Thus knowing the strengths and weaknesses in this regard helps them to make decisions that work to overcome obstacles and adopt new options in this regard.

CHAPTER II

Literature Review

A. Human Rights

This sub-topic deals with defining human rights, their historical development, sources, and classifications.

1. The Historical Development of the Term Human Rights

Throughout the history of civilization, there have been both the notions that all people are created equal in some respects and that all people have some inalienable rights.³⁷ Therefore, the belief in the holiness of human life had precedents in many of the world's religions and cultures.

Moreover, before human rights became organized into international law, they went through a series of historical developments, starting with their customary regulation, then in declarations and constitutional documents, and finally their international regulation.³⁸ The development of laws, political institutions, and societal developments have all played a role in the history of individual liberties and rights that have been granted to

³⁷ Rafał Wonicki and Agnieszka Nogal, 2016, *Human and Citizens Rights in a Globalized World*, The Centre for Philosophical Research, Warsaw, p. 21.

³⁸ Emad Khalil Ibrahim, 2007, *Regulating Human Rights in International Law*, Al-Rafidain for Rights, vol. (9/twelfth year) No. (34), p. 263. (Arabic reference)

people. Thus the legal culture, which emphasizes fundamental political interactions, i.e., relationships between the authorities and their subjects, is where human rights are most prominently seen.³⁹

Consequently, the development of the concept of human rights was linked to the development of human societies in various areas of life, such as the development of the foundations of state and international relations, as well as the development of the judiciary and laws.

Of course, this did not happen overnight, this development occurred in different countries and at different times, the Enlightenment era played an important role in the process that led to the creation of modern constitutions, with the recognition of human rights as a consequence of human dignity on an equal footing.⁴⁰ Therefore, the sanctity of human life had precedents in many of the world's religions, but the principles of modern human rights emerged during the economic renaissance of the early modern era.

During the Renaissance era in Europe, a revolution took place against the tyrannical rule and the rule of the church, and demands spread that the people should be the holders of power, that the rights and

³⁹ Rafał Wonicki and Agnieszka Nogal, 2016, *Human and Citizens Rights in a Globalized World*, The Centre for Philosophical Research, Warsaw, p. 21.

⁴⁰ Tamás Lattmann and Balázs Vizi, 2014, *International Protection of Human Rights*, Institute of International Studies, Budapest, p. 9-10.

freedoms of individuals be recognized, and that rulers be subject to a law that restricts their power to ensure that their tyranny does not violate rights and freedoms. One of the most important results of those revolutions was the adoption of the democratic method of assigning and devolving power, acknowledging the rights and freedoms of individuals, and issuing declarations of human rights and adopting them in constitutions, especially after the French Revolution in 1789.⁴¹

It is worth mentioning that the Magna Carta, signed in 1215, is a key document in the history of human rights since it established the concept of "the rule of law" and the basic principles of individual rights and freedoms for all, which provides protection from arbitrary prosecution and imprisonment. The principles outlined in the Magna Carta evolved into the English Bill of Rights, which became legislation enacted in 1689 in England. It has also been recognized as a model for the 1791 American Bill of Rights.⁴² The American Declaration of Independence (1776), the English Bill of Rights (1689), and the French Declaration of the Rights of Man and the Citizen (1789) are the three most important writings of this

⁴¹ Hamid Hanoun Khaled, 2012, *Human Rights*, Sanhour House, Baghdad, p. 39. (Arabic reference)

⁴² Marco Sutto, March 2019, *Human Rights evolution, a brief history*, The Coespu Magazine, CoESPU - Center of Excellence for Stability Police Units.

period; these formed the basis for the concept of constitutional government.⁴³

Thus, the naturalness, equality, and universality of rights acquired direct political expression for the first time in the English Bill of Rights of 1689, the French Declaration of the Human Rights and of the Citizen of 1776, and the American Declaration of Independence of 1789.⁴⁴ However, many of these documents when they were first translated into political practice, excluded women, people of color, and members of specific social, religious, economic, and political groups, as well as rights were sometimes granted to groups rather than to individuals and took the shape of privileges.⁴⁵

Moreover, Western colonial countries considered human rights to be an internal issue, so the principles stipulated in various declarations and documents, especially the American Declaration of Independence in 1776, the French Declaration of Human Rights in 1789, and the English Bill of Rights 1689 were directed primarily to the protection of Western human beings, while the colonized peoples were suffering from brutal acts that

⁴³ Tamás Lattmann and Balázs Vizi, 2014, *International Protection of Human Rights. National University of Public Service - Institute of International Studies*, Budapest, p. 9-10.

⁴⁴ Lynn Hunt, ed., 2013, *Inventing Human rights*, Translated by Fayga Gerges Hanna, Arabic words for translation and publishing, Egypt, p. 20.

⁴⁵ Nancy Flowers, 1998, *Human Rights Here and Now*, University of Minnesota - Human Rights Resource Center, Minnesota, part 1.

insult human dignity and violate human rights such as enslavement, murder, torture, displacement, and genocide.⁴⁶

On the other hand, most states and domestic legal systems have provided some form of human rights protection since the nineteenth century. Of course, the pace of this development, the nature of human rights recognized, and the strength of this protection differed in different countries, according to the level of development of society and the economy and many other factors that may determine this.⁴⁷

However, these early advancements were significantly less extensive than the twentieth-century practice of human rights. Following World War I, some early initiatives to create a more thorough understanding of universal human rights were established. These developments took place, though, slowly and with difficulty. However, anti-discrimination principles have been incorporated into the International Labour Organization constitution, as well as international norms on subjects like the abolition of forced labor, the eradication of poverty, and freedom of expression and association. Unfortunately, due to the withdrawal of some governments and the abstention of others, the League was unable to ratify the

⁴⁶ Sorour Talbi Al-Mal, 2015, *Public International Law*, Generation Center for Scientific Research, Lebanon, p. 12. (Arabic reference)

⁴⁷ Tamás Lattmann and Balázs Vizi, 2014, *International Protection of Human Rights*, National University of Public Service - Institute of International Studies, Budapest, p. 9-10.

protection of human rights; however, these events ultimately had an impact on the creation of the United Nations Universal Declaration on Human Rights in 1948.⁴⁸

In this regard, on the eve of the end of World War II, the international community realized that wars only result in destruction and human suffering, thus peace can only be achieved by establishing relations between states and peoples based on cooperation and respect for human dignity.⁴⁹ Therefore, contemporary international human rights law emerged in the wake of World War II.⁵⁰ At this time, on the eve of the end of World War II, human rights entered a new stage of their development, which is the international stage, a stage in which human rights issues have taken on an international character after it was purely an internal issue.⁵¹

To strengthen the status of international human rights, the United Nations appointed, shortly after its establishment, a Commission on Human Rights and charged it with the task of drafting a document explaining the meaning of the fundamental rights and freedoms

⁴⁸ Jesse Gusman, 2015, *The Concept of Human Rights: Political and Moral Approaches*, Radboud University, Netherlands, p. 7.

⁴⁹ Sorour Talbi Al-Mal, 2015, *Public International Law*, Generation Center for Scientific Research, Lebanon, p. 12. (Arabic reference)

⁵⁰ Marci Hoffman, 2013, *International human rights law*, the American Society of International Law, USA, p. 4.

⁵¹ Sherzad Ahmed Abdul Rahman, 2012, *The historical development of human rights*, Journal of the College of Basic Education, Issue 76 (2012), p. 257-258. (Arabic reference)

proclaimed in the Charter. The Commission captured the world's attention, and on December 10, 1948, the Universal Declaration of Human Rights was adopted.⁵²

In addition, in its Charter, the United Nations made human rights an integral part of international law, so Article 1(3) of the UN Charter included the promotion and support of basic freedoms and human rights as one of its aims. In addition, according to Articles 55 and 56, Member States are obligated to take "joint and separate action" in order to establish "conditions of stability and well-being" on a global scale. This includes promoting "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Thus it became evident, starting in 1945, that human rights could no longer be considered a domestic problem shrouded in state sovereignty.⁵³

In addition to the Universal Declaration of Human Rights, The United Nations ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social and Cultural Rights in 1966, collectively, these three treaties are known as the International Bill

⁵² Nancy Flowers, 1998, *Human Rights Here and Now*, university of Minnesota - Human Rights Resource Center, Minnesota, part 1.

⁵³ Sara Joseph and Adam McBeth, 2010, *Research Handbook on International Human Rights Law*, Edward Elgar Publishing Limited, UK, p. 1. & For more information see the Charter of the United Nations of 1945.

of Human Rights. It has also created more than 20 significant treaties that further define and promote human rights; these conventions protect populations at particular risk, such as refugees (Convention relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination against Women, 1979), and children (Convention on the Rights of the Child, 1989). They also prevent and prohibit specific violations, such as torture and genocide.

Moreover, the author found that since man was created, his rights arose with him as part of his existence, but awareness and recognition of these rights, and then the enjoyment of them, took a long march in human history, and this long march has made great achievements in favor of human rights thanks to the struggle of individuals and peoples throughout history against injustice and tyranny. In addition, heavenly laws and ancient civilizations, such as Hammurabi's law in the Babylonian civilization during the eighteenth century BC, contributed to laying the foundations of human rights in their current form.

Regarding Islam, Islam is considered by Muslims to be the most comprehensive legislation and the strongest charter for human rights, as it stipulates that ***"There is no superiority for an Arab over a non-Arab, nor for a non-Arab over an Arab. Neither is the white superior over the black, nor is the black superior over the white -- except by piety."***

Furthermore, it guarantees all people and races to enjoy their legitimate rights and freedoms.⁵⁴ In other words, during his calling, the Prophet Muhammad declared that all individuals are born equal, as he said in his last known public speech that “All humans are descended from Adam and Eve,” and “There is no superiority of an Arab over a non-Arab, or of a non-Arab over an Arab, and no superiority of a white person over a black person or of a black person over a white person, except on the basis of personal piety and righteousness.”⁵⁵

Also according to the Holy Qur'an, verses 42:13, 21, and 45:18, Islamic Shariah refers to a body of Islamic teachings on morality or a system of standards, laws, and values that guide human behavior. Shariah consequently encompasses all ideas and frameworks that support human existence and offers the tools, values, and guidelines required to build and sustain human well-being. It is centered on human needs and exists to ensure that people are happy in this life and the next (Qur'an, 2:30; 3:191; 6:165; 38:27; 44:38-39; 67:1-2).⁵⁶ In addition to Chapter 49, verse 13 of

⁵⁴ Muhammad Wali Allah Nadwi, 2021, *Human Rights in the Heavenly Messages*, Ajman University - Journal of Law and Human Sciences, Vol. 14 / Issue 1, p. 257. (Arabic reference)

⁵⁵ Asma Afsaruddin, 2020, *Islam's Anti-Racist Message from the 7th Century still Resonates Today*, (Online), (<https://theconversation.com/islams-anti-racist-message-from-the-7th-century-still-resonates-today-141575>, accessed July 2, 2022) (Arabic reference)

⁵⁶ Syahida Abdullah, 2015, *The Objectives of Takaful and Shariah: Towards the Achievement of Maqasid Sharia*, Universiti Teknikal Malaysia Melaka, Vol. 8, No. 1, p. 96.

Islam's sacred scripture, the Quran, declares: *"O humankind! We have made you into nations and tribes, so that you may get to know one another. The noblest of you in God's sight is the one who is most righteous."* The holy Quran said personal piety and deeds are the basis of merit, not tribal affiliation.

The author also found that since its inception in the early seventh century, Islam has confirmed through the Quranic verses and hadiths of the Holy Prophet all human rights that the world in general and the Western world, in particular, have adopted over the past centuries. It honored the human being, made his life sacred, prohibited aggression and unlawful killing, forbade the tyranny of rulers, made governance on the basis of consultation and taking into account the interests of the people, established freedom and equality, provided a decent life for people, and other rights that within the purposes of Sharia, therefore, the supreme purpose of the shariah is to guide the human being to preserve five fundamental elements in human's life that are: ad-din (religion), an-nafs (life), al-'aql (intellect), an-nasl (ancestry) and al-mal (property or wealth).

2. Definition of Human Rights

In the latter half of the eighteenth century, the phrase "human rights" was first used. Prior to this, the phrases "individual rights" and "natural

rights" were frequently used.⁵⁷ The phrase "Human Rights" was first used by Frenchman Thomas Paine while translating the French Declaration of Rights of Man and the Citizen from French to English.⁵⁸ Human refers to everyone on earth, regardless of their age, ethnicity, nationality, ideology, orientation, sex, or religious beliefs. The term "rights" refers to privileges that everyone is automatically entitled to, regardless of their age, ethnicity, nationality, ideology, orientation, sex, or religious beliefs.⁵⁹

Indeed, when we make a distinction between universal law and local laws, as well as between natural or divine law and positive law, we are expressing the concept of human rights. In other words, the concept of human rights is based on the dichotomy between law (state acts) and justice (the standard by which we evaluate the goodness of the state).⁶⁰ Moreover, Human rights are relevant in two basic ways: as legal rights and freedoms that may be enforced; and as entitlements based on particular principles or values. The underlying notion behind human rights is that they are necessarily available to a human because he or she is a human

⁵⁷ Lynn Hunt, ed., 2013, *Inventing Human Rights*, Translated by Fayqa Gerges Hanna, Arabic words for translation and publishing, Egypt, p. 19.

⁵⁸ Md. Kamruzzaman, 2016, *The Evaluation of Human Rights: An Overview in Historical Perspective*, American Journal of Service Science and Management Vol. 3, No. 2, pp. 5-12., p. 5.

⁵⁹ Ogochukwu Nweke, 15 July 2020, *Understanding Human Rights* [Poster presentation], Kings University College Law Students Union, Accra-Ghana, p. 1.

⁶⁰ Joy Gordon, 1998, *The Concept of Human Rights: The History and Meaning of its Politicization*, The Law Journals at BrooklynWork, Vol. 23 / Issue 3, p. 700-701.

being. However, not all legal rights apply from the perspective of human rights. A legal right that is established or acknowledged by law is referred to as legal.⁶¹

Thus, human rights outline the interactions between people and political systems, particularly the State. Human rights limit state power but also require states to take proactive steps to create an environment that allows everyone to exercise his rights.⁶² While it is true that "national sovereignty" has limits, it is also true that "human rights" have limits. A State's sovereignty is unquestionably constrained by its obligations under international law, to respect and uphold human rights. If these obligations are broken, the State will be held accountable not only by the victims but also by other members of the international community. However, the current positive law does not go so far as to allow a state or group of states to use human rights as a weapon to ignore the national sovereignty of another state and to interfere in its internal affairs.⁶³

Furthermore, human flourishing, dignity, obligations to family and community, natural rights, individual freedom, and social justice against

⁶¹ Ogochukwu Nweke, 15 July 2020, *Understanding Human Rights* [Poster presentation], Kings University College Law Students Union, Accra-Ghana, p. 2.

⁶² The Inter-Parliamentary Union and the United Nations, 2016, *Human Rights*, the Inter-Parliamentary Union and the United Nations, Geneva, p. 19.

⁶³ Jianming Shen, 2017, *National Sovereignty and Human Rights in a Positive Law Context*, *Brooklyn Journal of International Law*, Volume 26 | Issue 2, p. 442.

exploitation based on sex, class, or caste, all of which are used to define the moral rationale for the meaning of human rights.⁶⁴ Meaning of human rights must also have three overlapping features: rights must be “universal” applicable everywhere, “equal” one for all, “natural” inherent in the human being, and for rights to be human rights they must be held equally by all human beings everywhere on the earth for no other reason than that they are human.⁶⁵

With a deeper clarification of human rights, human rights are a set of standards that govern how individuals and groups are treated by states and non-state entities based on moral precepts pertaining to what society deems essential to a decent living. These standards are included in national and international legal frameworks, which define the steps to be taken to hold duty-bearers accountable and offer compensation to those who may have been the victims of human rights breaches.⁶⁶ In other words, human rights are rights that we all enjoy simply because we are human, and they are not granted to us by any government, these universal rights are inherent to all human beings, whatever their nationality, gender, national or ethnic origin, colour, religion, language or any other status,

⁶⁴ Stephen P. Marks. 2016, *Human Rights: A Brief Introduction*, Harvard University - FXB Center for Health & Human Rights, US, p. 3.

⁶⁵ Lynn Hunt, ed., 2013, *Inventing Human Rights*, Translated by Fayqa Gerges Hanna, Arabic words for translation and publishing, Egypt, p. 19.

⁶⁶ Stephen P. Marks. 2016, *Human Rights: A Brief Introduction*, Harvard University - FXB Center for Health & Human Rights, US, p. 1.

they are diverse and range from the most fundamental right such as the right to life to rights that make life worth living, such as the right to food, education, work, health, and freedom.⁶⁷

It should be noted that some individual rights may be exercised through collective action. For instance, society is necessary for freedom of association. Undoubtedly, freedom of association is a right of collective action. Workers' rights, family rights, and minority rights are three other examples. Individuals who are part of social groups or who fulfill social roles are entitled to these rights.⁶⁸ Therefore, it can be said that the Universal Declaration of Human Rights recognizes communitarian terms; as stated in Article 16: *"The family is the natural and fundamental group unit of society and is entitled to protection by society and the state"*. As well as some human rights are exercised collectively, such as the right to self-determination, this right is exercised by the people as a whole.

The widely accepted definition of human rights includes (1) the right to be free from what is often referred to as "atrocities," such as torture and genocide; and (2) political and civic rights, such as the right to vote, the

⁶⁷ The Office of the High Commissioner for Human Rights, *What are Human Rights*, (Online), (<https://www.ohchr.org/en/what-are-human-rights>, accessed July 25, 2022)

⁶⁸ Eko Ernada, 2005, *Challenges to the Modern Concept of Human Rights*, Jurnal Sosial-Politika, Vol. 6, No. 11, p. 7.

right to a fair trial, and the freedom of expression.⁶⁹ (3) Economic, social and cultural rights, such as the rights to food, shelter, employment, social security, family protection, and education.

In this context, the New Lexicon Webster's Dictionary of the English language defines "Human Rights" expression as "The right to be free from Governmental violations of the integrity of the persons."⁷⁰ William Blackstone, the English jurist, also defined Human Rights as "the natural liberty of the individual" meaning "the absolute rights of the individual as a free human being endowed with the power to distinguish between good and evil."⁷¹

The Indonesian legislator defined human rights as "a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, government, and all people in order to protect human dignity and worth."⁷² Moreover, Eko Ernada defined Human Rights as "human rights are rights that humans possess simply because they are

⁶⁹ Joy Gordon, 1998, *The Concept of Human Rights: The History and Meaning of its Politicization*, The Law Journals at BrooklynWork, Volume 23 / Issue 3, p. 700-701.

⁷⁰ Md. Kamruzzaman, 2016, *The Evaluation of Human Rights: An Overview in Historical Perspective*, American Journal of Service Science and Management, Vol. 3, No. 2, pp. 5-12., p. 6.

⁷¹ Lynn Hunt, ed., 2013, *Inventing Human Rights*, Translated by Fayqa Gerges Hanna, Arabic words for translation and publishing, Egypt, p. 23.

⁷² Indonesia: Law No. 39 of 1999, 1-B.

human, and that those rights are inalienable, independent, and inviolable in characteristic. Those rights are essentially rights to be free and equal. They are thus universal and apply to everyone without discrimination. In other words, human rights are political and legal claims to equal freedom in a universal perspective."⁷³ Moreover, Ogochukwu Nweke defined Human Rights as "Human rights are privileges and opportunities which a person is entitled to by the simple virtue of the fact that he is a human being."⁷⁴

According to the United Nations and the Inter-Parliamentary Union, human rights are "Human rights are rights that every human being has by virtue of his or her human dignity; human rights are rights inherent to all human beings. And human rights are the sum of individual and collective rights laid down in State constitutions and international law."⁷⁵

After mentioning the previous definitions of human rights, the author defines human rights as a set of rules that govern the treatment of individuals and groups by the state, and between them and other entities within and outside the borders of the state based on what natural law

⁷³ Eko Ernada, 2005, *Challenges to the Modern Concept of Human Rights*, Jurnal Sosial-Politika, Vol. 6, No. 11, Juli 2005, p. 2.

⁷⁴ Ogochukwu Nweke, 15 July 2020, *Understanding Human Rights* [Poster presentation], Kings University College Law Students Union, Accra-Ghana, p. 1.

⁷⁵ The Inter-Parliamentary Union and the United Nations, 2016, *Human Rights*, The Inter-Parliamentary Union and the United Nations, Geneva, p. 19.

considers fundamental to a decent life of rights and freedoms to which every human being is entitled to as a human being without discrimination, as well as human rights are characterized by universality, inalienability, and indivisibility because they are closely related to the human being.⁷⁶

3. Sources of Human Rights

Since international human rights law is one of the branches of public international law, it shares its public sources. Thus treaties, international custom, general principles of law, and other sources of international law all express and stipulate human rights.

In fact, in international law, there is neither a single legislative body nor a single enforcing institution. As a result, international law is essentially dependent on self-enforcement by the same states and can only be established with the consent of states.⁷⁷ This consent, which forms

⁷⁶ Characteristics of Human rights are 1. **Universal**, meaning that human rights belong to all people equally regardless of status and they are the same for all human beings everywhere in the world. 2. **Inalienable**, meaning that they may not be taken away or transferred; people still have human rights even when their governments violate those rights. 3. **Interconnected and interdependent**, meaning that fulfillment or violation of one right affects the fulfillment of all other rights; together human rights form a complementary framework. 4. **Indivisible**, meaning that no right can be treated in isolation; no right is more important than another. 5. **Non-discriminatory**, meaning that human rights should be respected without distinction, exclusion, restriction, or preference based on race, color, age, sex, national, or ethnic origin, language or any other status.

⁷⁷ Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abbyssinialaw.com/study-on-line/item/944-sources-of-human-rights-law>, accessed on March 1, 2022)

the basis of international law, can be represented in several ways. An explicit treaty imposing responsibilities on state parties is the most obvious kind. This "law of treaties" also constitutes a large part of contemporary international law. Consent may also be inferred from the well-established and recurrent behavior of states in their interactions with one another. Therefore, treaties and customary law are still the most significant sources of international law.⁷⁸

In this regard, Article 38 of the International Court of Justice Statute lays out the list of sources of international law that are generally recognized. This article says: "*1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59⁷⁹, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law... .*"

⁷⁸ Christoph Schreuer, [sa], *Sources of International Law: Scope and Application*, The Emirates Center for Strategic Studies and Research, UAE, p. 1.

⁷⁹ Article (59) stipulates that: "The decision of the Court has no binding force except between the parties and in respect of that particular case."

A. International Conventions

Pursuant to paragraph (a) of Article 2 of the Vienna Convention on the Law of Treaties (1969), the treaty is defined as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." In other words, the treaty means an agreement between two states/organizations or more intended to have a legal impact in line with the rules of international law. In this regard, various names, including pact, agreement, covenant, charter, protocol, memorandum of understanding, and any document concluded between two or more states may be given to treaties.⁸⁰

Undoubtedly, the most obvious source of international law is the treaties; they usually conclude between sovereign states and deal with the

⁸⁰ In practice, the charter refers to major agreements that contain legal documents, such as the Charter of the United Nations and the Charter of the League of Arab States. And the protocol is an agreement that involves a modification of an earlier agreement, the addition of detailed rules, and provisions, or an interpretation, such as the two Geneva Protocols of 1977 to the Geneva Convention of 1949. On the other hand, 'Declarations' are often adopted by the UN General Assembly to express any common position, but they are not meant to be legally binding, declarations are not treaties, but they may be a step in a process that ends with the drafting of a UN treaty. Declarations may also be utilized to assist in the interpretation of treaties.

development of international law.⁸¹ Moreover, the treaties are the basis of international human rights law.⁸²

International treaties impose reciprocal responsibilities on the states that are parties to any given treaty and are legally enforceable. Human rights treaties are unique in that they set responsibilities on states regarding how they should treat all people under their control. At present, more than 40 significant international conventions for the protection of human rights have been adopted,⁸³ such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights, and its two Optional Protocols.

International treaties are divided into: 1. Bilateral Treaties: They are the treaties concluded between two persons of international law, and do not abide by their rules except for those who signed the treaty concluded therein, such as extradition agreements. Countries also resort to this type

⁸¹ Christoph Schreuer, [sa], *Sources of International Law: Scope and Application*, The Emirates Center for Strategic Studies and Research, UAE, p. 3.

⁸² Marci Hoffman, 2013, *International Human Rights Law*, the American Society of International Law, USA. P.9.

⁸³ Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abysinnialaw.com/study-on-line/item/944-sources-of-human-rights-law>, accessed July 27, 2022)

in order to organize their relations in the manner they see fit.⁸⁴ 2. Multilateral treaties: Those treaties conclude between several persons of international law, to establish general legal rules regulating international relations of common collective interest, and protect international peace and security. Some of them may be binding on states that were not parties at the time of their conclusion because they have become an international custom, such as the Charter of the United Nations and human rights conventions.⁸⁵

In terms of implementation, the treaty can be self-executing or non-self-executing, depending on whether domestic legislation must be passed for the treaty to be judicially enforceable.⁸⁶ But states are not allowed to use contradictory domestic law to evade their international obligations. On the other hand, a treaty enters into force after the parties sign it or after ratification by a certain number of countries. The majority of treaties also contain precise sections that spell out when they become enforceable,

⁸⁴ Saud Khalaf Al-Numais, ed, 2014, *Public International Law*, Law and Economics Library, Riyadh, p. 89. (Arabic reference) & Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abbyssinialaw.com/study-on-line/item/944-sources-of-human-rights-law> accessed on 7/23/2022)

⁸⁵ Saud Khalaf Al-Numais, ed, 2014, *Public International Law*, Law and Economics Library, Riyadh, p. 89. (Arabic reference) & Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abbyssinialaw.com/study-on-line/item/944-sources-of-human-rights-law> accessed on 7/23/2022)

⁸⁶ US Citizenship and Immigration Services, 2019, *International Human Rights Law*, USCIS: RAIO Directorate – Officer Training. p. 11.

how compliance will be tracked and evaluated and how other countries can join.⁸⁷ Finally, for the treaty to have legal value toward the United Nations and its organs, the treaty must be registered with the UN secretariat and made available to the public.⁸⁸

B. International Custom

International custom is defined as a set of rules emanating from the customs considered legally and indicated by the repetition of a certain action for a period of time with a sense of obligation to it, in other meaning, it is the repetition of similar actions by states for a period of time that leads to a feeling of being bound by certain rules⁸⁹.

On the other hand, regarding the first element of international custom, the existence of "general practice," in fact, the term "general practice" is preferred over "state practice" because it more accurately captures the language used in Article 38 paragraph 1 (b) of the Statute of the International Court of Justice and recognizes that the practice of international organizations may also be related subject matter. "abstain from the act" is another aspect of this approach, and it may include both

⁸⁷ The Writing Center at Georgetown University Law Center, 2019, *A Guide To The Basics Of International Law*, The Writing Center at Georgetown University Law Center, Washington DC, p. 2.

⁸⁸ Article 2 of the Charter of the United Nations.

⁸⁹ Saud Khalaf Al-Numais, ed, 2014, *Public International Law*, Law and Economics Library, Riyadh. Page 136-137. (Arabic reference)

verbal and physical actions. As well, practice must be widespread and regular, the practice must be common and adequately representative, but the practice need not be universal, to be considered general. Additionally, there is no specific minimum amount of time required to exercise if these conditions exist.⁹⁰

In addition, the moral element, the second element of international custom, is what distinguishes the ruling derived from custom from other non-binding rulings such as international habits, international courtesies, or international ethics, so there must be a feeling that it is necessary to follow an international practice to become an international custom.⁹¹

Indeed, international custom is where international law first emerged. It shows up in (i) State diplomatic correspondence, (ii) International organization practice, (iii) State court rulings, (iv) State practice, (v) administrative acts, and others.⁹²

⁹⁰ The International Law Commission, 2014, Report of the International Law Commission, Sixty-sixth Session (May-6 June and 7 July-8 August 2014)

⁹¹ Sakhri Mohamed, 2019, *Public International Law: Definition, Origin and Development*, (Online), (<https://www.politics-dz.com/%d8%a7%d9%84%d9%82%d8%a7%d9%86%d9%88%d9%86-%d8%a7%d9%84%d8%af%d9%88%d9%84%d9%8a-%d8%a7%d9%84%d8%b9%d8%a7%d9%85-%d8%aa%d8%b9%d8%b1%d9%8a%d9%81%d9%87%d8%8c-%d9%86%d8%b4%d8%a3%d8%aa%d9%87-%d9%88%d8%aa/> accessed July 24, 2022), (Arabic reference)

⁹² Rama Rao, [sa], *Public International Law*, Msrlawbooks, India, p. 10.

In other words, international law was mostly composed of customary rules prior to the official establishment of written international treaties following World War II. Through a protracted historical process, state practices and the acceptance of their binding nature evolved into international customs. But because custom is slow to develop and occasionally has ambiguous content, written treaties have mostly taken its place. Despite this, custom nevertheless makes a considerable contribution to the formulation of international law.⁹³ According to the decisions of the International Court of Justice, states and international organizations are primarily responsible for establishing or expressing the principles of customary international law for human rights.^{94 95}

It is worth mentioning, all states are obligated to uphold the human rights outlined in customary international law. The 1948 Universal

⁹³ The University of Melbourne, 2022, *Public International Law*, (online), (<https://unimelb.libguides.com/internationallaw/sources> accessed on July 23, 2022)

⁹⁴ The International Law Commission, 2014, Report of the International Law Commission, Sixty-sixth Session (May-6 June and 7 July-8 August 2014)

⁹⁵ A decision by the Permanent Court of International Justice applied international custom in the Lotus case so that the Court decided that legal opinion should be derived from all circumstances, not just from existing facts. In addition, in Right of Passage (Portugal v. India), the International Court of Justice decided a particular practice between only two states might lead to binding customary law, thus it found that Portugal had the right of passage for civilians, but not for military officials. Moreover, in the Paquete Habana Case, the U.S. Supreme Court held that given all the facts and circumstances, there was a uniform practice of granting 'immunity' to small fishing vessels from hostilities in times of war, and this has been recognized as international customary law. For more information see Rama Rao, [sa], *Public International Law*, Msrlawbooks, India, p. 11.

Declaration of Human Rights (UDHR) has several provisions that have been acknowledged as having achieved the status of customary international law. For instance, it is acceptable to say that the prohibitions against slavery, genocide, and torture as well as the nondiscrimination principle make up customary international law.⁹⁶

C. General Principles of Law

General principles of law are one of the sources of international law that is theoretically equivalent to the treaty or customary law. However, in actuality, the main function of general principles is to fill in the gaps left by treaties and customary law.⁹⁷ These principles, according to article (38) of the Statute of the International Court of Justice, are represented in a set of general principles derived from national laws or public international law in the context of states' dealings and relations among them, provided that they are recognized by civilized nations. Civilized nations are those nations that were able to create a stable legal system, such as the Latin system, the Anglo-Saxon system, and the Islamic system.⁹⁸ Civilized

⁹⁶ United Nations Office on Drugs and Crime, 2011, *Promotion and Protection of Human Rights*, United Nations Office on Drugs and Crime, Vienna, p. 2.

⁹⁷ Christoph Schreuer, [sa], *Sources of International Law: Scope and Application*, The Emirates Center for Strategic Studies and Research, UAE, p.7.

⁹⁸ Sourour Talbi, 2015, *Public International Law*, Generation Center for Scientific Research, Lebanon, p. 46.

countries are also seen as those that respect human rights and fundamental freedoms.⁹⁹

Thus, international human rights law has many legal principles existing in domestic or international laws. First, the principles found in internal legislation, such as the principle of respect for acquired rights, the principle of equality between the parties to the case, and the principle of original innocence. Second, the principles found in public international law, such as the principles of good neighbourliness, non-interference, principles of humanitarian considerations, and good humane treatment.¹⁰⁰ Thus these principles are not limited to the application of individuals and their relations, but also apply to international relations. It is noteworthy that these principles must be consistent with internationally recognized human rights, and their application must not lead to any discrimination between individuals.¹⁰¹

Indeed, at the international level, general principles of law occupy a significant role in human rights law.¹⁰² A clear example of this is the

⁹⁹ Alaa Mohammad Mattar, 2016, *International Human Rights Law*, Israa University, Gaza, p.19. (Arabic reference)

¹⁰⁰ Mazhar Al-Shaker, 2012, *Human rights between international human rights law, international humanitarian law and Islamic law*, [sn], Baghdad, p. 29. (Arabic reference)

¹⁰¹ Youssef Hassan Youssef, 2010, *International criminal law and its sources, first edition*, National Center for Legal Publications, Egypt, p. 15. (Arabic reference)

¹⁰² Examples of some general principles of law applied in some cases: In the Mavrommatis Palestine Concessions Case, the P.C.I.J. applied the doctrine of

principle of proportionality, which is significant for human rights monitoring mechanisms in assessing whether interference with a human right is justifiable.¹⁰³

D. Subsidiary Sources

In exceptional cases, when treaties, international custom, and general principles are insufficient, the court may be guided by the decisions of the supreme courts of states, rulings of international judicial bodies, or academic works produced by the global community.¹⁰⁴

According to Article 38 of the Statute of the International Court of Justice, judicial rulings and teachings of the most qualified legal advisors serve as a subsidiary source of human rights law.

(1) Judicial decisions

It is considered an auxiliary or backup source, including decisions issued by the International Court of Justice, decisions of the Inter-

Subrogation. & In the Administrative Tribunal Case, the I.C.J. held that 'res judicata' was a well-established and generally accepted rule. Thus it applied 'res judicata'. According to this, a judgment given by a competent court precludes any suit by the parties on the same issue. For more information see Rama Rao, [sa], *Public International Law*, Msrlawbooks, India, p. 11-12.

¹⁰³ Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abysinialaw.com/study-on-line/item/944-sources-of-human-rights-law> accessed on July 24/2022)

¹⁰⁴ The Writing Center at Georgetown University Law Center, 2019, *A Guide To The Basics Of International Law*, The Writing Center at Georgetown University Law Center, Washington, p. 3.

American Court of Human Rights, decisions of the European Court of Human Rights, and decisions of the African Commission on Human Rights.¹⁰⁵ For judicial decisions, the meaning of Article 38 of the Statute of the International Court is not limited to the international court's decisions; decisions of national courts on human rights are also considered subsidiary sources.¹⁰⁶

In actual fact, the International Court of Justice greatly contributed to the development of international law,¹⁰⁷ especially in its advisory opinions. In addition to the fact that the rest of the international courts contributed to the development of some rules of international law, and also with regard to the rulings of national courts, they played a major role in the development of international human rights law.¹⁰⁸

¹⁰⁵ Mazhar Al-Shaker, 2012, *Human rights between international human rights law, international humanitarian law and Islamic law*, [sn], Baghdad, p. 29. (Arabic reference)

¹⁰⁶ Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abysinialaw.com/study-on-line/item/944-sources-of-human-rights-law> accessed on 7/24/2022)

¹⁰⁷ For example, decisions of the International Court of Justice on Fisheries issues “drew a straight baseline to determine territorial waters,” and in reparations issues. For more information see Rama Rao, [sa], *Public International Law*, Msrlawbooks, India, p 12. & Wikipedia, 29 April 2022, *Fisheries case*, (online), (https://en.wikipedia.org/wiki/Fisheries_case#Judgment accessed on July 25, 2022)

¹⁰⁸ Lina Al Smadi, October 24, 2020, *What are the sources of public international law*, (online), (<https://e3arabi.com> accessed on July 24/2022)

(2) The teachings of the most highly qualified

They are the opinions and writings of leading law authors from different countries, they do not create international legal norms but rather help to define and simplify them.¹⁰⁹ Legal jurisprudence plays an important role in the field of human rights, through the interpretation, clarification, and confirmation of legal rules and principles related to human rights and their guarantees. Legal scholars' writings are also used by states and relevant international organizations when preparing draft human rights conventions.¹¹⁰

The teachings of the most highly qualified jurists of the various nations contribute to the development and analysis of human rights law. Indeed, Scholars and experts working in human rights forums have made significant contributions, such as the United Nations Sub-Commission on the Promotion and Protection of Human Rights, as well as illustrious NGOs, such as Amnesty International and the International Commission of Jurists.¹¹¹ Among these great jurists who contributed to the development

¹⁰⁹ Sakhri Mohamed, 2019, *Public International Law: Definition, Origin and Development*, (Online), (<https://www.politics-dz.com> accessed July 24, 2022) (Arabic reference)

¹¹⁰ Alaa Mohammad Mattar, 2016, *International Human Rights Law*, Israa University, Gaza, p.19. (Arabic reference)

¹¹¹ Demelash Shiferaw and Yonas Tesfa, 2012, *Human Right Law: Sources Of Human Rights Law*, (online), (<https://www.abbyssinialaw.com/study-on-line/item/944-sources-of-human-rights-law> accessed on 7/24/2022)

of international law were Hugo Grotius, a Dutch jurist, Emer de Vattel, a Swiss jurist, and Jeremy Bentham, an English jurist.

One of the most important examples of the application of several sources of international law is the judgment issued in *The Paquete Habana*; *The Lola*, *The Paquete Habana*; *The Lola* a landmark decision of the United States Supreme Court on the applicability and recognition of international law, the Court held that the seizure of fishing vessels as trophies of war violated customary international law, and the *Paquete Habana* influenced subsequent court decisions that incorporated international law in its mandate. The case is also notable for citing a wide breadth of historical and international sources, including jurists worldwide and foreign state practices going back centuries.¹¹²

In this regard, some jurists find that declarations and resolutions of international organizations and conferences are also secondary sources of international human rights law, such as the Universal Declaration of Human Rights and UN General Assembly Resolution No. 377, called the Union for Peace Resolution.

¹¹² For more information see: Wikipedia, 2022, *The Paquete Habana*, (online), (https://en.wikipedia.org/wiki/The_Paquete_Habana#References accessed on July 25, 2022)

In fact, in addition to the previous sources, the author found two other sources: human instinct “natural law” and the heavenly religions. In actuality, these two sources are historically the primary source of human rights because it is known that most of the international conventions related to human rights were drafted in the twentieth century, and customs appeared in a period that may be long after the emergence of human gatherings, as well as the rest of the sources mentioned earlier.

Consequently, two historical sources that are considered the main source of human rights: the human instinct (natural law), customs and traditions, and the heavenly religions.

First is the human instinct: human beings are born with an instinct to love dignity, freedom, and justice in their treatment; this is what we mean by human instinct or natural law. In other words, human instinct “natural law” is a body of unwritten, unalterable principles that must be followed by everyone in every society because they derive from nature itself. It is also a type of morality that must be adhered to in every place and time, such as the principles of justice and equality. These forms of rights are inherent in human nature and are not enacted by legislators

Second is the heavenly religions also came with provisions and principles that honor the human being and stipulate his rights and

freedoms, such as Christian legislation and Islamic legislation, especially Islamic legislation which recognizes human dignity. Allah SWT said in the Holy Qur'an: *"And we have certainly honored the children of Adam and carried them on the land and sea..."* Verse (17:70). Moreover, Islam stipulates equality, justice, non-discrimination, and other human rights, as well as set rules to ensure that human rights are not diminished. Thus the entire population of different religions and ethnicities lived in equality and justice during the era of Islamic rule during the past centuries for its regions in Central and Western Asia, North Africa, and Southern and Eastern Europe. Islamic legislation also restricts the authority of rulers to ensure their good treatment of the subjects, ensure their security, and provide them with the necessities of life.

Moreover, in its preface, the 1981 Universal Islamic Declaration of Human Rights states: "Human rights in Islam are not a grant from a king or ruler or a decision issued by an authority or an international organization. Rather, they are rights that are binding by virtue of their divine source. No ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered." As Prophet Mohammed (peace be upon him) said: "there is no preference for an Arab over a non-Arab, nor for a non-Arab over an Arab, nor for a white over a black, nor for a black over a white, except with piety and good

deeds.” narrated by Ahmad in his Musnad. In addition, the Caliph Omar Ibn Al-Khattab said in his famous saying during his rule of the Islamic state: “Since when you have taken people for slaves and they were born free.” In this context, among the names of Muslim jurists who have fingerprints in international law and human rights are Muhammad al-Shaybani in his book “Al-Siyar” and Al-Auza’i in his book “Al-Siyar”.

4. Classification of Human Rights

As we mentioned previously, human rights relate to all aspects of human life, thus enabling all individuals to live their lives with freedom, equality and dignity. In addition, human rights are rights in their entirety, integrated rights and linked to each other. If some of them are violated, this will directly affect the rest of the rights. For example, if the right to security or the right to freedom is violated, this will consequently violate the rights of safety, education, work, development and other rights. Therefore, Human rights are considered an indivisible group, as they are an integrated unit. Thus there is no distinction between these rights under the Universal Declaration of Human Rights of 1948.

But later, in the context of East-West tensions during the Cold War, a differentiation was made. Due to this, two independent covenants were negotiated and adopted: one on economic, social, and cultural rights, and

the other on civil and political rights.¹¹³ In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were made available for signature. They became enforceable in 1976.¹¹⁴ It was known that the west supported the liberal system and the east supported the socialist system.

These three instruments (UDHR, ICCPR, and ICESCR) are now known as the International Bill of Human Rights. The International Bill of Human Rights outlines basic human rights that must be universally protected and the basis of all international human rights conventions, it also provides the principles and pillars of current and future human rights conventions and treaties and other legal instruments. According to the International Bill of Human Rights, human rights are divided into three groups as follows:

- A. Civil and political rights,
- B. Economic, social and cultural rights,
- C. Collective rights of peoples.

¹¹³ Office of the United Nations High Commissioner for Human Rights, [sa], *Economic, social and cultural rights*, (Online), (www.ohchr.org/en/human-rights/economic-social-cultural-rights), (accessed July 31, 2022)

¹¹⁴ Australian Human Rights Commission, [sa], *Human Rights Explained: Fact sheet 5: The International Bill of Rights*, (Online), (<https://humanrights.gov.au/our-work/education/human-rights-explained-fact-sheet-5the-international-bill-rights>), (accessed July 31, 2022)

A. Civil and Political Rights (CPR)

1. Right to life: (UDHR, art. 3) (ICCPR, art. 6)

Because all rights were created for human beings, he/she is the axis of all rights. Thus the right to life is the most fundamental one since it relates to a person's dignity and value as a human being. It is also the driving force behind a person's advancement toward the goals of humanity.¹¹⁵ Under the right to life, every human being enjoys all other rights stipulated and guaranteed in domestic constitutions and International Bill.

In this regard, the right to life also applies in cases of enforced disappearance,¹¹⁶ unlawful killing and other types of killing, such as the so-called euthanasia and abortion.

2. Freedom from torture and inhuman treatment: (UDHR, art. 5) (ICCPR, art. 7)

According to article 7(2-e) of the 1998 Rome Statute of the International Criminal Court, torture means "the intentional infliction of

¹¹⁵ Sahar Mohamed Gerges, 2019, *The Right to Life*, Al-Rafidain Journal of Rights, Volume (17), Issue (61), Year (19), p. 137.

¹¹⁶ Beatrice Hedlund, 2018, *The right to life*, (Online), (<https://www.diva-portal.org/smash/get/diva2:1483132/FULLTEXT01.pdf>), (accessed on July 31, 2022), p. 36.

severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”

Cruel, inhuman or degrading treatment or punishment is “treatment of persons which is contrary to human rights or dignity, but is not classified as torture.”¹¹⁷ Cruel, inhuman or degrading treatment, or punishment is considered a wider concept than torture. It often denotes treatment that is less severe than torture or that does not conform to the meaning of torture. It still entails mistreatment or humiliation. Although the majority of instances involve some deliberate infliction of extreme suffering or intent to injure, degrade, or debase a victim, it is not necessary for it to be intentionally inflicted or physical pain. At the very least, the goal of the behavior will be taken into consideration. Acts that degrade a person, inflict mental torment, instill fear, agony, or a sense of inferiority are examples of this type of behavior.¹¹⁸

¹¹⁷ Wikipedia, 2022, *Cruel, inhuman or degrading treatment*, (Online), ([https://en.wikipedia.org/wiki/Cruel, inhuman or degrading treatment](https://en.wikipedia.org/wiki/Cruel,_inhuman_or_degrading_treatment), (accessed Aug 1, 2022).)

¹¹⁸ Queensland Human Rights Commission, 2020, *Right to protection from torture and cruel, inhuman or degrading treatment*, (Online), (https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/19886/QHRC_factsheet_HRA_s17_Protection-from-torture-and-cruel,-inhuman-or-degrading-treatment.pdf, (accessed Aug 2, 2022))

3. Freedom from slavery, servitude or forced labour: (UDHR, art. 4)
(ICCPR, art. 8)

Article 4 of the British Human Rights Act defines Slavery, Servitude, and Forced labour as follows: *“1. Slavery is when someone actually owns you like a piece of property. 2. Servitude is similar to slavery - you might live on the person’s premises, work for them and be unable to leave, but they don’t own you. 3. Forced labour means you are forced to do work that you have not agreed to, under the threat of punishment.”*¹¹⁹

Undoubtedly, Slavery, servitude, forced labour, or human trafficking violate human rights because these acts deprive people of their inherent rights and insult human dignity.¹²⁰ Indeed, persons cannot be held in situations in which they are employed in accordance with the rights attached to ownership, in accordance with the right to be free from servitude. In addition, a person must be free from any work or services that are required of them under threat of punishment and for which they have not given their consent, under the right to be free from forced labor.¹²¹

¹¹⁹ Article 4 of The English Human Rights Act of 1998, UK.

¹²⁰ Malyadri P, 2021, *Freedom from Slavery and Forced Labour*, Global Science Research Journals, Vol. 2, No. 1, p. 151.

¹²¹ Australian government: Attorney-General’s department, (SA), *Right to freedom from slavery and forced labour*, (online), (<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector->

**4. The right to liberty and security of the person: (UDHR, art. 3)
(ICCPR, art. 9)**

The right to liberty means that "people must not be arrested and detained, unless provided for by law. Their arrest and the detention must also not be arbitrary". According to the right to security, the State must take reasonable precautions to ensure a person's security (both physical and mental).¹²²

The general principles of liberty and personal security are expressed in this article. Article 9 applies to all forms of liberty infringement. Thus any deprivation of liberty must adhere to the guidelines outlined in Article 9 of ICCPR and as developed by pertinent human rights jurisprudence. Article 9 is a substantive safeguard against both arbitrary and illegal detention; thus, it does not make the right to liberty and security of a person absolute.¹²³

[guidance-sheets/right-freedom-slavery-and-forced-labour#what-is-the-right-to-freedom-from-slavery-and-forced-labour](#), (accessed Aug 3, 2022)

¹²² Queensland Human rights Commission, 2020, *Right to liberty and security of person*, (online), (https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0008/19898/QHRC_factsheet_HRA_s29.pdf, accessed Aug 3, 2022.)

¹²³ Alice Edwards, 2011, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, online, United Nations High Commissioner for Refugees, Geneva, p. 18.

5. Right to humane treatment in detention: (ICCPR, art. 10)

The provisions of Art.10 of ICCPR are related to the provisions of the previous article (art. 9), which stipulates additional principles that must be followed in the treatment of those who have been deprived of their freedom, especially those who have been deprived of their freedom based on the provisions of the law, including minors (juveniles). They must be treated humanely and in proportion to their ages and legal status.

6. Freedom of movement and residence: (UDHR, art.13) (ICCPR, art. 12)

Freedom of movement and residence, as stated in the above Articles, includes the right to move freely within a country for those who are lawfully within the country, to leave the country and to return to it, as well as the right to change the place in which the individual resides or works, within a smooth and easy process that guarantees him the right to freedom of movement, residence, or departure and return without arbitrary restrictions, this right must be applied within the borders of his country and outside it anywhere in the world.

In countries that impose restrictions on freedom of movement or of residence, imposition of the restrictions must be in accordance with the law. However, to prevent the abuse of the right by a law issued by the

legislature, it is prohibited to enact a law imposing restrictions on the enjoyment of this freedom except on the grounds laid down in the Constitution. In addition, the imposed restriction must also be in accordance with the standards set by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as we mentioned their texts previously.

Indeed, freedom of movement appears to be a problem for international justice. People from more developed countries can easily move anywhere in the world, while people from less developed countries have to rely on irregular issuance of visas and residence cards.¹²⁴

Finally, Article 15 of the Universal Declaration of Human Rights states: *“1. Everyone has the right to a nationality. 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”*

Every person has the right to be connected to a State legally, no matter where they are in the globe. In addition to giving people a sense of identity, citizenship or nationality also confers many civil and political rights

¹²⁴ Antoine Pécoud, 2013, *Freedom of movement*, ResearchGate, p. 2.

as well as the protection of the State. Citizenship Article has been referred to be "the right to have rights".¹²⁵

7. Prohibition of expulsion of aliens: (ICCPR, art. 13)

2 of Draft Articles on the Expulsion of Aliens of 2014 defines the terms "expulsion" and "Aliens" as: "(a) "expulsion" means a formal act or conduct attributable to a State, by which an alien is compelled to leave the territory of that State; it does not include extradition to another State, surrender to an international criminal court or tribunal, or the nonadmission of an alien to a State; (b) "alien" means an individual who does not have the nationality of the State in whose territory that individual is present."

"Aliens" also include stateless persons. Moreover, the alien must be present in the state's territory, which excludes aliens who enter an embassy, consulate, military base, or another state facility, as well as aliens stopped on vessels located outside territorial waters.¹²⁶

However, the author found that the issue of expulsion of foreigners is related to the state's policies and the principle of reciprocity in its international relations.

¹²⁵ Marilyn Achiron, 2005, *Nationality and Statelessness*, Inter-Parliamentary Union, Switzerland, p. 3.

¹²⁶ Sean D. Murphy, 2013, *The Expulsion of Aliens and Other Topics: The Sixty-Fourth Session of the International Law Commission*, Washington University - Law School, p. 4.

8. Freedom of thought, conscience, and religious belief: (UDHR, art. 18) (ICCPR, art. 18)

Freedom of thought is defined as “a concept that states the freedom of an individual to have opinions or perceptions independent of the opinions of others on a particular subject.”¹²⁷ Conscience shapes “human choices and distinguishes human beings from other creatures.” Freedom of conscience is still larger than freedom of religion or belief. It covers all ethics and values a human being cherishes, whether of a religious nature or not.¹²⁸ Religious freedom consists of two components: freedom to practice one's religion and freedom from religion. Allowing people to practice whichever religion they choose is what is meant by religious freedom. And religion cannot be imposed by the government, according to the concept of freedom from religion.¹²⁹

According to the above articles, freedom of religion or belief includes not only the freedom to have a religion of beliefs but also the freedom to express and practice these religions and beliefs either individually or in

¹²⁷ Wikipedia, 2021, *Freedom of Thought*, online, (https://ar.wikipedia.org/wiki/%D8%AD%D8%B1%D9%8A%D8%A9_%D8%A7%D9%84%D9%81%D9%83%D8%B1), (accessed Aug 6, 2022)

¹²⁸ Office of the United Nations High Commissioner for Human Rights, [sa], *Module 1: Freedom of conscience*, (online), (<https://www.ohchr.org/en/faith-for-rights/faith4rights-toolkit/module-1-freedom-conscience>), (accessed Aug 6, 2022)

¹²⁹ Scott Merriman, 2021, *Freedom of Religion*, (online), (<https://learn/lesson/freedom-of-religion-history-rights.html>), (accessed on Aug 6, 2022)

community with others and in public or private. In addition, it includes the freedom to follow various branches of religion, to change religion or beliefs, to leave religion, or to adopt non-religious ideas. In addition, these articles allow the state to impose restrictions on the freedom to manifest a religion or belief only if the law provides for restrictions and they are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. As well as the freedom of parents and guardians to ensure the religious and moral education of their children cannot be restricted.

The author found in this context that freedom of thought and freedom of conscience are linked to freedom of religion. A person's thoughts and conscience are formed based on what he believes in his religion. It should also be noted that many societies and groups consider religion to be an obligation and not a right, therefore a person has no right to change his religion because changing religion in their belief is a punishable crime, not a right.

9. Freedom of expression: (UDHR, art. 19) (ICCPR, art. 19)

Freedom of expression is defined as “the ability of an individual or group of individuals to express their beliefs, thoughts, ideas, and emotions

about different issues free from government censorship.”¹³⁰ This right includes political discourse, views on religion, opinions, and expressions that are either positively accepted or considered harmless.¹³¹ This encompasses also media freedom, and other rights of journalists and media workers, as well as the right to conscientious objection to military service.¹³² It is also clear from the provisions of the above article that everyone has the right to freedom of expression without interference or harassment from the ruling authorities or others. This right includes freedom to seek, receive and impart information and ideas of all kinds by all means without arbitrary restriction, regardless of frontiers, places and times, whether orally, in writing, in print, in the form of art, or through any other way of his choice.

Although it is a fundamental right, freedom of expression is not an unspecified right and may, under the right circumstances, be restricted, in accordance with international law.¹³³ Since the development of

¹³⁰ Freedom Forum Institute, [sa], *What Is Freedom Of Expression*, (online), <https://www.freedomforuminstitute.org/about/faq/what-is-freedom-of-expression/>, (accessed Aug 7, 2022)

¹³¹ Council of Europe, [sa], *Freedom of Expression and Information*, (online), (<https://www.coe.int/en/web/freedom-expression/freedom-of-expression-and-information>, (accessed Aug 7, 2022)

¹³² United Nations OHCHR, [sa], *Freedom of Expression and Opinion*, (online), (<https://www.ohchr.org/en/topic/freedom-expression-and-opinion>, (accessed Aug 7, 2022)

¹³³ Centre for Law and Democracy (CLD) & International Media Support (IMS), 2014, *Freedom of Expression*, Centre for Law and Democracy (CLD) & International Media Support (IMS), Copenhagen, p. 5.

democracy, freedom of expression has always been restricted in some way. It is widely understood that freedom of expression is the foundation of democracy. The glory of democratic development is due to freedom of expression, while the media is one of the crucial tools for an individual's exercise of his right to freedom of expression.¹³⁴

10. Right to privacy: (UDHR, art. 12) (ICCPR, art. 17)

The right to privacy refers to “the concept that one's personal information is protected from public scrutiny.” U.S. Justice Louis Brandeis called it “the right to be left alone.”¹³⁵ In other words, privacy is “an individual tendency, wish and natural need to be away from others’ control and surveillance.”¹³⁶

The texts of the above articles protect the right to respect for one's private life, family, home and correspondence, including protecting the privacy of messages, phone calls, email and other social media, and ensuring that one's honor and reputation is protected from unlawful attacks. Protect this right from governmental or non-governmental

¹³⁴ Zafar Abbas and Muhammad Zubair Khan, 2020, *Freedom of Expression under Censorship is a threat to Democracy*, The Dialogue, Volume 15, Issue 1.

¹³⁵ Tim Sharp, 2013, *Right to Privacy: Constitutional Rights & Privacy Laws*, (online), <https://www.livescience.com/37398-right-to-privacy.html>, (accessed on Aug 8, 2022)

¹³⁶ Ali Alibeigi, Md. Karim and Abu Bakar Munir, 2019, *Right to Privacy, A Complicated Concept to Review*, ResearchGate, p, 1.

interference, but it is understood from the content of the Articles that where an exception exists, the government can interfere with these rights only when the law specifically allows it to do so, provided it is for a valid reason, such as national security or public safety.

Indeed, for a person's development, privacy is crucial. Children's and youth's perceptions of self, trust and authority are impacted by a lack of privacy. Different nations' legal surveillance regimes must operate under perfect, transparent executive systems that are subject to inspection in the interest of users, data security should be implemented through the widespread adoption and judicial and legal acknowledgment of cutting-edge encryption methods.¹³⁷

On the other hand, the Author found that this obligation does not fall solely on the government, but on other entities as well. Due to technological progress and the emergence of social media and websites for companies and organizations, all of them make a person's private information available in this virtual world, therefore, the Internet and technology companies and websites have an obligation to protect the information of users and the public by working on the development of information security and encryption systems.

¹³⁷ Kamshad Mohsin and Zainab Khan, January 2020, *Right to Privacy in Digital Era*, SSRN, p.8.

11. Non-imprisonment for debt: (ICCPR, art. 11)

The ban on imprisonment for inability to fulfill protects against imprisonment as a penalty for failure to fulfill a private debt or any sort of commercial obligation due to another individual or business.¹³⁸ It's vital to note that the above article does not prohibit incarceration in cases when there is an additional element, such as fraud or negligence. The "merely" clause is important, it does forbid imprisonment only because of the inability to make a contractual debt payment or fulfill a commercial obligation.¹³⁹

However, the author found that in order to balance the interest of the creditor and the interest of the debtor and to preserve the right of the creditor, many national laws use measures other than imprisonment when the debtor fails to comply with his contractual obligations, such as the imposition of a penalty clause, compensation or the confiscation of his bank balances, property or some of them under a court ruling.

¹³⁸ Australian government: Attorney-General's department, {sa}, *Prohibition on Imprisonment for Inability to Fulfil a Contract*, (online), (<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/prohibition-imprisonment-inability-fulfil-contract>), (accessed Aug 8, 2022)

¹³⁹ Council of Europe, {sa}, *Protocol No. 4 to the Convention*, (online), (<https://www.coe.int/en/web/echr-toolkit/protocole-4>), (accessed Aug 8, 2022)

12. Right to a fair trial: (UDHR, art. 10 & 11) (ICCPR, art. 14)

A key principle of the right to a fair trial is that every individual should be presumed innocent until proven guilty. Moreover, the rule of law requires government authorities to follow the law and be accountable. Additionally, it implies that everyone residing in a state is governed by the same laws. Thus nobody is above the law, regardless of their wealth or status. According to the rule of law, conduct should only be criminalized if it is specifically forbidden by a law that has been passed via a fair process and after it has been made public.¹⁴⁰

Furthermore, the right to a fair trial and a fair hearing shall apply to both criminal and civil measures and to cases before both courts and tribunals. Hearings for military discipline also fall under this. However, this right relates to procedural justice, not to the substantive decision of a court or tribunal.¹⁴¹

The texts of the above Articles clarify the conditions and guarantees of a fair trial. In this context, it should be noted that Article 11 (2) of the Universal Declaration of Human Rights states in its text “under national or

¹⁴⁰ Fair Trials, [sa], *The Right to a Fair Trial*, (online), (<https://www.fairtrials.org/the-right-to-a-fair-trial/>), (accessed Aug 10, 2022)

¹⁴¹ Australian government: Attorney-General's department, [sa], *Fair trial and fair hearing rights*, (online), <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/fair-trial-and-fair-hearing-rights>, (accessed Aug 10, 2022)

international law.” But often the national judiciary applies national laws. In other words, the national judiciary often does not apply international law unless it is codified in a national law. Thus there may be behavior within a country that does not constitute a crime, although it is criminalized in international law, and vice versa.

Finally, the author found that the judiciary is the mainstay in protecting human rights from violations, as it is the fortress of victims in enforcing their rights and the deterrent hand in punishing criminals. Any civilized, democratic society has a competent, independent and impartial court established by law.

13. Right to personhood under the law: (UDHR, art. 6) (ICCPR, art. 16)

Everyone has a legal personality. It requires everyone to be legally able to do things like conduct business transactions, such as buy and sell, and operate a bank account, as well as use government services. Those who lack the capacity due to mental illness or minors may be restricted by legislation to protect them.¹⁴²

¹⁴² Queensland Human Rights Commission, 2021, *Right to recognition and equality before the law*, (online), (https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0003/19884/QHRC_factsheet_HRA_s15.pdf), (accessed on Aug 11, 2022)

In other words, legal personality means the legal capacity of a person so that he is able to acquire rights, assume duties and take responsibility for his actions before the law. Therefore, many of the rights related to this right, such as the right to work, to hold public office, and to vote, these rights are considered a responsibility at the same time, so a person must have a full legal personality to enjoy these rights. In terms of mental illness and young age, they are considered an insufficiency of legal personality. Therefore, the person is restricted in the enjoyment of some rights and exempted from duties and legal responsibility in this case. Thus a person acquires from birth and being a human being a legal personality, but this legal personality is not complete for him-her unless he reaches the age of majority and is in a normal mental state.

14. Equality before the law: (UDHR, art. 7) (ICCPR, art. 26)

A fundamental and overarching principle pertaining to the protection of human rights is non-discrimination, along with equality before the law and equal treatment of the law without any discrimination.

As a result, each State party is required by Article 2 (1) of the International Covenant on Civil and Political Rights to respect and uphold the rights recognized in the Covenant for all individuals residing on its territory and under its jurisdiction, regardless of their race, color, sex,

language, religion, political opinion, national or social origin, property, birth or other status. Article 26 also guarantees equal and effective protection for everyone against discrimination on any basis, including race, color, sex, language, religion, political opinion, national or social origin, property, birth or other status. It also guarantees that everyone has the right to equality before the law and equal protection under the law. In fact, the nondiscrimination concept is so fundamental that Article 3 requires each State party to ensure that men and women have an equal right to enjoy the rights outlined in the Covenant. While Article 4 (1) permits States parties to take actions exempting themselves from some of the Covenant's requirements in times of public emergency, it also stipulates, among other things, that those actions must not discriminate on the basis of race, color, sex, language, religion or social origin. Additionally, according to Article 20 (2), state parties must make it illegal for anybody to encourage hatred on the basis of race, religion, or nationality which constitutes incitement to discrimination.¹⁴³

¹⁴³ For more information see: The 1966 International Covenant on Civil and Political Rights & UN Human Rights Committee, *General Comment No. 18: Non-discrimination, Thirty seventh session (1989)*, (online), (https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_GEC_6622_E.doc), (accessed on Aug 12, 2022) & ACT Government, *Right to Recognition, Equality and Non-Discrimination*, Section 8 - Human Rights Act 2004, (online), (<https://www.justice.act.gov.au/sites/default/files/2021-05/Fact%20Sheet%20-%20A%20-%20s%208%20-%20Right%20to%20Recognition%20and%20Equality%20-%20Human%20Rights%20Education.DOCX>), (accessed on Aug 12, 2022)

But does the idea of equality contradict the idea of justice?! We recognize equal rights, but if we apply the idea of equality in all rights absolutely, many people will feel discriminated and unjust. In other words, the concept of justice in some cases requires that some people be distinguished with additional rights or deprived of some rights. For example, the strength of a man's body is greater than that of a woman, which is why we see football and wrestling matches separating men and women. If we put the woman in this situation with the man, we will oppress the woman, and herein lies the idea of justice. Another example is that the disabled need more care, support and encouragement than healthy people. If we apply the idea of equality here, we will oppress the helpless. A final example is that the superior people who have great intelligence often the state and society prioritize them in assuming positions that require competencies, and support them because they contribute more than others in the development of society.

Therefore, the author found that the concept of justice is more comprehensive than the concept of equality, as every justice is equality, but not every equality is justice. There are rights in which there is absolute equality between people, such as the right to life, dignity, good treatment and freedom. On the other hand, some rights vary in the degree of

enjoyment depending on the different status of the person, as we mentioned in the previous examples.

15. Freedom of assembly and association: (UDHR, art. 20) (ICCPR, art. 21)

Freedom of assembly is defined as “a people’s ability to organize gatherings in both public and private settings.” These assemblies are often used as mechanisms for people to express their opinions and call for change in the form of marches or protests attended by hundreds or thousands.¹⁴⁴

Freedom of association means “the freedom of person to associate with others who have similar political, religious, or cultural beliefs.”¹⁴⁵ In other words, the right of a person to create with others a collective entity aimed at achieving his interests.

Everyone has the right to peacefully assemble and associate, which is a crucial principle of democracy. The freedom to assemble in peace extends to offline and online gatherings, strikes, protests, rallies, and sit-

¹⁴⁴ Alex Nulman, 2022, *What is Freedom of Assembly: Definition, Importance, Limitations*, (online), (<https://www.liberties.eu/en/stories/what-is-freedom-of-assembly-/44387>, (accessed on Aug 12, 2022)

¹⁴⁵ FindLaw Staff, 2022, *Freedom of Association*, (online), (<https://constitution.findlaw.com/amendment1/first-amendment-freedom-of-association.html>, (accessed on Aug 13, 2022)

ins. This also covers the ability to establish unions. Many other rights protected by international law, such as the freedom of expression and the right to participate in the running of the government, can be exercised through peaceful assembly and association.¹⁴⁶

The right to peaceful assembly and association may be restricted in some cases, but the restrictions must not be discriminatory, affect the substance of the right, or are intended to discourage participation in assembly and association.¹⁴⁷ And such limits shall be enacted by law in a democratic society in order to maintain public order, public health or morals, or to protect the rights and freedoms of others. The application of legal limitations to the exercise of this right by members of the armed services and the police is not prohibited by the International Covenant.

16. Right to marry and found a family: (UDHR, art. 16) (ICCPR, art. 23)

Under human rights treaties, the family is recognized as the fundamental group unit of society and as entitled to protection and assistance.

¹⁴⁶ Office of the United Nations High Commissioner for Human Rights, [sa], *Freedom of assembly and of association*, (online), (<https://www.ohchr.org/en/topic/freedom-assembly-and-association>, (accessed on Aug 12, 2022)

¹⁴⁷ United Nations: CCPR/C/GC/37 (2020), General comment No. 37 on the right of peaceful assembly (article 21), p. 7.

Marriage is "the state of being united to a person of the opposite sex as husband or wife in a legal, consensual, and contractual relationship recognized and sanctioned by and dissolvable only by law." Marriage is the foundation of a society. Children learn how to be good citizens, how to interact with others, and what is expected of them in society through their families. Families also teach children about relationships, how to behave, and how to be.¹⁴⁸

17. Rights of children: (UDHR, art. 25) (ICCPR, art. 24)

According to Article 25(2) of the Universal Declaration of Human Rights, the right to a standard of living adequate for the health and well-being of the child, and according to Article 26 the right of the child to education shall be free, at least at the primary and basic levels, and primary education shall be mandatory. Moreover, according to Article 24 of the International Covenant on Civil and Political Rights, the child must be protected without discrimination and the right to have a name and nationality as soon as he is born.

¹⁴⁸ Anisa Shaikh, 2016, *Right To Marry: Panoramic View*, Manupatra, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=2723339>, p. 1.

20. Right to practice a religion, culture and language: (ICCPR, art. 27)

These rights emerge strongly in countries with diverse populations that include ethnic, religious or linguistic minorities, such as India and Ethiopia. By ratifying the Covenant, the state is obligated to provide protection and freedom for these groups or minorities to practice their religious rites, culture and style of life in the manner and language it deems appropriate.

22. Prohibition of war propaganda and hate speech constituting incitement: (ICCPR, art. 20)

Article 20 of the International Covenant on Civil and Political Rights states: *“1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”*

While paragraph 2 prohibits any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, whether such propaganda or advocacy has goals that are internal or external to the State concerned, paragraph 1 prohibits all forms of propaganda that threaten or result in an act of aggression or breach of the peace contrary to the UN Charter. But in this regard, promoting the sovereign right to self-defense or the right of peoples to self-determination

and independence in conformity with the United Nations Charter is not prohibited by the requirements of Article 20, paragraph 1.¹⁴⁹ When it comes to enforcing the prohibition, the state must strike a balance between the requirement in Article 20 on the prohibition of war propaganda and the freedom of expression guaranteed by Article 19.¹⁵⁰

23. Right to hold office and vote in free elections: (UDHR, art. 21)
(ICCPR, art. 25)

Every citizen's right to participate in the management of public affairs, the right to vote and be elected, and the right to access public office are all recognized and upheld by the above articles.

The phrase "conduct of public affairs" used in Art. 25(a) of the ICCPR refers to a broad range of the exercise of political power, particularly those involving the exercise of legislative, executive, and administrative powers. Indeed, Article 25 is the cornerstone of democratic

¹⁴⁹ Office of the United Nations High Commissioner for Human Rights, *General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 200): 29/07/1983. CCPR General Comment No. 11. (General Comments)*, Geneva, Switzerland.

¹⁵⁰ Wolfgang Benedek, 2016, *Panel on Propaganda for War and Hatred and Freedom of the Media*, Paper presented at Expert meeting, the Office of the OSCE Representative on Freedom of the Media, together with the German Chairmanship, Vienna Hofburg Congress Center, Austria, 12 February 2016, p. 2.

government founded on popular consent.¹⁵¹ Thus the advancement of all human rights is made possible by engaging in public affairs, such as holding public office. These rights are essential to the advancement of democracy, the rule of law, social inclusion and economic growth, also are crucial to reducing social unrest and inequality. In addition, they are essential to empowering people and groups.¹⁵²

Moreover, to achieve equality, realize social justice in societies, advance democracy, and give people the opportunity to live safe, fulfilling lives, they must all have access to quality public services, for instance, free and open access to public health and education.¹⁵³ In addition, everyone has the right to cast a secret ballot to choose his country's governors. Elections cannot be free and fair without this privilege. It ensures the right of citizens to free expression, and the proper representation of elected officials and the legislative and executive

¹⁵¹ Office of the United Nations High Commissioner for Human Rights, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 12/07/96. CCPR/C/21/Rev.1/Add.7, General Comment No. 25. (General Comments)*, Geneva.

¹⁵² Office of the High Commissioner for Human Rights, [sa], *Guidelines for States on the Effective Implementation of The Right to Participate in Public Affairs*, Office of the High Commissioner for Human Rights Switzerland, p. 2.

¹⁵³ Daria Cibrario, 2021, *Enabling Access to Quality Local Public Services for All: A Precondition to Beat Inequality*, (online), (<https://publicservices.international/resources/news/enabling-access-to-quality-local-public-services-for-all-a-precondition-to-beat-inequality-?id=12448&lang=en>), (accessed on Aug 18, 2022)

branches, while also boosting public confidence in public institutions.¹⁵⁴

This also relates to the fact that everyone has the right and opportunity to run for elective office. Thus the right of persons to stand for election should not be unreasonably restricted.

B. Economic, Social and Cultural Rights (ESCR)

1. The right to work, just and favorable conditions of work: (UDHR, art. 23-24) (ICESCR, art. 6-7-8)

The right to work is a fundamental right that does not exclude anyone from participating in economic life, enabling him to exercise the right to participate in the production and service of the activities of the humanitarian community and to benefit from these joint activities, in a way that guarantees the human being a decent standard of living.¹⁵⁵ Everyone has the right to the chance to work to earn a living through work that they freely choose or accept. In this context, the right to create and join a union as well as the enjoyment of fair and advantageous working conditions are

¹⁵⁴ Council of Europe, [sa], *Right to free elections*, (online), (<https://www.coe.int/en/web/human-rights-convention/elections>, (accessed on Aug 18, 2022)

¹⁵⁵ Abu Al-Khair Abu Jabal, 2015, *A Guide on Workers' Rights According to International Human Rights Standards and Local Laws*, Al-Marsad - The Arab Center for Human Rights in the Golan, Syria, p. 4. (Arabic reference)

all part of one's rights at work.¹⁵⁶ The right to work also includes workplace freedom or workplace choice.¹⁵⁷

Everyone is entitled to work, the achievement of other human rights and the right to a life of dignity are both based on the freedom to work. It involves the chance to support oneself through work that is freely selected or accepted. In this regard, states are required to ensure the availability of technical and vocational measures and to take the necessary steps to create an environment that is conducive to chances for gainful work. States must also ensure that there is no discrimination in any way related to work.¹⁵⁸

Indeed, workers' rights are based on ideas of social justice. They are considered one of the social rights that require positive measures by the state and must be gradually achieved.¹⁵⁹ These measures and conditions must guarantee workers' rights, such as fair wages and equal

¹⁵⁶ Australian government: Attorney-General's department, [sa], *Right to work and rights at work*, (online), (<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-work-and-rights-work>, accessed on Aug 20, 2022)

¹⁵⁷ Will Kenton, July 26, 2022, *Right to Work Law*, (online), (<https://www.investopedia.com/terms/r/righttowork-law.asp>, accessed on Aug 19, 2022)

¹⁵⁸ International Network for Economic, Social & Cultural Rights, [sa], *The Right to Work and Workers' Rights*, (online), (<https://www.escr-net.org/rights/work>, accessed on Aug 20, 2022)

¹⁵⁹ Bob Hepple, [online], *Rights At Work*, International Institute for Labour Studies, Geneva, p. iii.

remuneration, safe and healthy working conditions, promotion, rest, leisure, limitation of working hours and periodic holidays.

One of the most significant global labor standards is the ability of workers to form and join trade unions. This implies that workers have the freedom to establish their own organizations regardless of their place of employment (the public or private sector). Protecting the rights and interests of union members as well as their promotion in an organized manner are the general goals of trade union creation.¹⁶⁰

In addition, because of the importance of the right to work and to ensure that it is provided within a reasonable scope for everyone, the International Labor Organization was established in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that comprehensive and lasting peace can only be achieved if it is based on social justice.¹⁶¹

In this regard, the author found that implementing the full rights of workers in developing countries, as well as countries that suffer from occupation or siege, such as Palestine, is very difficult, because these

¹⁶⁰ Andon Majhoshev and Katerina Krusharska Velinovska, 2017, *The Right to Form and to Join Trade Unions as Defined in International Legal Instruments*, (JPMNT) Journal of Process Management – New Technologies, Vol. 5, No 3, p. 1.

¹⁶¹ International Labour Organization, [sa], *History of the ILO*, (online), (<https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>, accessed on Aug 20, 2022)

countries suffer from weakness and deterioration of the economy. Consequently, one of the results of this is that there is high unemployment in these countries as well as low wages.

2. Right to social security and insurance: (UDHR, art. 25) (ICESCR, art. 9)

Social security is defined as “one form of social protections to ensure all people may fulfill their basic life decently.” Social insurance is defined as “a compulsory fund raising mechanism from contribution to provide protection on social economic risk suffered by participants and/or their family members.”¹⁶²

Numerous pensions and allowances are covered under Social Security. Examples of social security in various nations, particularly developed ones, include family allowance, medical benefits, old-age benefits, disability benefits, sick-and-maternity benefits, medical care for dependents, work injury benefits and unemployment benefits. These different parts of social security are guaranteed by different state funds.¹⁶³

¹⁶² Article 1 of Law of The Republic Of Indonesia Number 40 of 2004 Concerning National Social Security System.

¹⁶³ Seyed Ghasem Zamani and Ali Azadd Evin, October 2016, *The Right To Social Security Under International Law*, Mediterranean Journal of Social Sciences MCSER Publishing, Vol. 7 No. 5, p. 49.

Regarding social insurance, it is based on the understanding that economic instability in a cash economy is largely caused by interruption of income from work due to unemployment, early retirement, loss of the breadwinner, or either a short or long-term disability. Indeed, the main contribution of social insurance to economic security is to partially restore wages lost while an individual is out of work due to one of these reasons mentioned. Therefore, it is "income insurance".¹⁶⁴

3. The right to protection and assistance to the family: (ICESCR, art. 10)

The rights to safeguard families and children go beyond non-interference; they are a guarantee of institutional protection of the family and positive steps taken by society and the state to protect children and young people.¹⁶⁵

Since the family is the secret of the continuation of the human race and the first nucleus of society, international human rights law attached great importance to it. A family begins with a man and a woman marrying

¹⁶⁴ Robert M. Ball, 1961, *The Role Of Social Insurance In Preventing Economic Dependency*, Speech to National Conference on the Churches & Social Welfare, Cleveland, Ohio.

¹⁶⁵ Queensland Human Rights Commission, 2019, *Right to protection of families and children*, (Online), (https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0005/19895/QHRC_factsheet_HRA_s26.pdf), accessed on Aug 22, 2022)

and having children. For family life to be healthy and stable, the state and society must provide it with the necessary protection and assistance. A good family raises children on morals and good treatment, and vice versa. This family is the first school for children, the mother must therefore be cared for, especially during pregnancy and after childbirth, with supportive measures by the state, and children and young people must be protected from economic exploitation and work risks through guidance programs and strict laws taken by the state and other measures in this regard.

4. The right to an adequate standard of living and freedom from hunger: (UDHR, art. 25) (ICESCR, art. 11)

Adequate housing means "adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities, all at a reasonable cost."¹⁶⁶

The right to adequate food is realized when every man, woman, and kid, whether they live alone or in a community with others, have constant physical and financial access to sufficient food or the means to obtain it at all times. Therefore, it is important to avoid interpreting the right to enough

¹⁶⁶ United Nations: E/1992/23 (1992), General Comment No. 4: The Right to Adequate Housing.

food in a limited or restrictive way that equates it with a minimum amount of calories, proteins, and other specified nutrients.¹⁶⁷

To secure global food security and eradicate hunger, the Food and Agriculture Organization (FAO) was established in 1945, a specialized agency of the United Nations that leads international efforts to eradicate hunger and achieve food security for all and to ensure that people regularly get enough high-quality food to lead active and healthy lives.¹⁶⁸

Finally, Adequate clothing means the right to reasonable clothing that protects human health from the constant danger of exposure to cold, heat, wind, rain and dirt. The same goes for the shoes we wear.¹⁶⁹

Thus, Article 11 of The International Covenant on Economic, Social and Cultural Rights recognizes the right to adequate food, clothing and housing as an essential part of the right to an adequate standard of living, also explicitly recognizes “the fundamental right of everyone to be free from hunger”.

¹⁶⁷ United Nations: E/C.12/1999/5 (1999), General Comment 12, The Right To Adequate Food (Art. 11).

¹⁶⁸ Food and Agriculture Organization of United Nations, [sa], *About FAO*, (online), (<https://www.fao.org/about/en/>, accessed on Aug 22, 2022)

¹⁶⁹ Stephen James, 2008, *A Forgotten Right? The Right to Clothing in International Law*, A paper presented at The Sixteenth Annual Australian and New Zealand Society of International Law (ANZSIL) Conference: ‘Security, Scarcity, Struggle: The Dilemmas of International Law,’ Canberra, ACT, Australia, p. 1.

5. The right to the highest attainable standard of physical and mental health: (UDHR, art. 25) (ICESCR, art. 12)

The 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as *“a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”*

Both rights and entitlements are included in the right to health. The rights include the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation, as well as the right to govern one's health and body, including sexual and reproductive freedom. In contrast, the entitlements include the right to a health protection system that offers everyone an equal opportunity to achieve the highest attainable level of health. ICESCR, Article 12.1's definition of “the highest attainable level of health” takes into account a person's biological and socioeconomic preconditions as well as the State's available resources, as a result, the right to health must be interpreted as a right to take advantage of a range of resources, including products, facilities, services and conditions that are required for attaining the highest possible standard of health.¹⁷⁰

¹⁷⁰ Committee On Economic, Social And Cultural Rights Twenty-Second Session, 25 April-12 May 2000, Agenda Item 3, Substantive Issues Arising In The Implementation Of The International Covenant On Economic, Social And Cultural Rights General Comment No. 14 (2000), The Right To The Highest Attainable Standard Of Health

The right to health also includes: 1. Safe drinking water and adequate sanitation; 2. Safe food; 3. Adequate nutrition and housing; 4. Health-related education and information; 5. Gender equality; 6. Healthy working and environmental conditions.¹⁷¹ Moreover, to promote the greatest level of health, the World Health Organization was established in 1946, it works to support health systems in countries in the world, contribute to the treatment of non-communicable diseases and the promotion of health throughout, and work to prevent and treat infectious diseases.¹⁷²

6. The right to education: (UDHR, art. 26) (ICESCR, art. 13)

In addition to being a human right in itself, education is also a crucial tool for achieving other rights. Education is the main tool by which economically and socially marginalized individuals and children can escape poverty and acquire the ability to engage in their communities. Moreover, education is essential for empowering women, protecting kids from dangerous and exploitative jobs and sexual exploitation, advancing

(Article 12 Of The International Covenant on Economic, Social And Cultural Rights), Geneva.

¹⁷¹ Office of the United Nations High Commissioner for Human Rights and World Health Organization, 2008, *The Right to Health*, Fact Sheet No. 31, United Nations, Geneva, p. 3.

¹⁷² World Health Organization, [sa], *About the organization/what we do*, (online), (<https://www.who.int/ar/about/what-we-do>, accessed on Aug 23, 2022)

democracy and human rights, preserving the environment, and reducing population increase.¹⁷³

According to Article 13 of ICESCR, education is a right for everyone. Therefore, the fundamental and primary levels of education must be free. Elementary education shall be compulsory. The general availability of technical and professional education is required, secondary education must be attainable and available to anyone who expresses interest in it, whereas higher education must be equally accessible to all people while taking into account their abilities, skills, and accomplishments.

In this regard, under international human rights law, parents have the first right to choose the type of education to be provided to their children. In reality, parents should not hinder or disrupt the proper education of their children, which will also be compatible with the individual abilities and skills of the children.¹⁷⁴

¹⁷³ United Nations: E/2000/22-E/C.12/1999/11, General Comment No. 13, The Right to Education.

¹⁷⁴ Emine Zendeli, 2017, *The right to education as a fundamental human right*, Contemporary Educational Researches Journal, Volume 7, Issue 4, pp. 158-166, p. 162.

7. The right to culture and to benefit from scientific progress: (UDHR, art. 27) (ICESCR, art. 15)

Everyone has the right to participate in cultural life, which is closely related to the other cultural rights outlined in Article 15 of ICESCR: the right to benefit from scientific advancement and its applications, the right to benefit from the protection of moral and material interests resulting from any scientific, literary, or artistic production of which they are the author. The right of everyone to participate in cultural life is also inextricably linked to the right to education, which enables communities and individuals to transmit their values, religion, customs, languages and other cultural references, and supports the development of a culture of respect for one another's differences and mutual understanding. Other rights entrenched in the Covenant, such as the right of all peoples to self-determination and the right to an adequate standard of living, are interconnected with the freedom to participate in cultural life.¹⁷⁵

The freedom to engage in cultural life also includes the freedom to abstain from participating in some traditions, rituals, and behaviors that violate one's own rights and the dignity of others. It refers to the freedom to choose to belong to one or more cultural groups and to enter and exit

¹⁷⁵ United Nations: E/C.12/GC/21 (2009), General Comment No. 21, Right of everyone to take part in cultural life, art. 15, para. 1.

these cultural communities at will, without fear of physical harm or other negative consequences. So the Committee on Economic, Social and Cultural Rights identified three distinct aspects of the fundamental right to participate in cultural life: 1. The right to access cultural life, 2. The right to take part in cultural life, 3. The right to contribute to cultural life.¹⁷⁶

8. Equality between women and men: (UDHR, art. 2) (ICCPR, art. 3) (ICESCR, art. 3)

Gender equality refers to a situation in which men and women are equally empowered, responsible, and involved in all aspects of public and private life. Additionally, it refers to giving both men and women equal access to resources and valuing them equally.¹⁷⁷

In addition to the above Articles, Paragraph 3 of Article 1 of the Charter of the United Nations affirms the need to expressly recognize the same rights of men and women on an equal basis, and appropriate measures should be taken to ensure that women enjoy the benefits and the opportunity to exercise their rights. It is essential to ensure that there is no discrimination on the grounds of sex, among other reasons. This

¹⁷⁶ Farida Shaheed, [sa], *Cultural rights: what are these and why are they important for women's right to development*, Paper presented at the Asia Pacific Regional Consultation with UN Special Procedures: Women's Right to Development, [sn], Phnom Penh, p. 5.

¹⁷⁷ Council of Europe, [sa], *Equality between women and men*, (online), (<https://rm.coe.int/090000168064f51b>, accessed on Aug 24, 2022)

provision, ensuring equal enjoyment of rights between men and women and eliminating discrimination is essential for the enjoyment of political, civil, economic, social and cultural rights on the basis of equality.¹⁷⁸

C. Collective Rights

Since individual human rights do not guarantee adequate protection for indigenous peoples and other minorities who display collectivist traits, the concept of collective rights has been developed.¹⁷⁹ According to the United Nations, collective rights are as follows:

1. Right to self-determination and Permanent sovereignty over natural resources: (ICCPR, art. 1) (ICESCR, art. 1). It is detailed in the next section (B).

2. Rights of national, ethnic, religious and linguistic minorities: (ICCPR, art. 27)

Minorities and societies around the world that enjoy ethnic, linguistic, cultural and religious diversity have the rights mentioned in Article 2 of the 1992 Declaration on the Rights of Persons Belonging to National or

¹⁷⁸ UN Secretariat, 2006, *Compilation Of General Comments And General Recommendations Adopted By Human Rights Treaty Bodies, Thirty-fourth session (2005)*, General comment No. 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)*, United Nations, USA p. 122.

¹⁷⁹ Friends of the Earth International, 19 Jun 2003, *Collective rights*, (online), (<https://www.foei.org/collective-human-rights/>) (accessed on Aug 25, 2022)

Ethnic, Religious and Linguistic Minorities, which we enumerate as follows: First, People who identify as members of national or ethnic, religious, or linguistic minorities (hereinafter referred to as persons belonging to minorities) are entitled to freely enjoy their own culture, profess and practice their own religion, and use their own language in both public and private spaces, without hindrance or any form of discrimination. Second, Members of minorities have the right to actively engage in social, religious, political, economic and cultural life. Third, People who identify as members of minorities have the right to actively participate in decisions made at the national and, where appropriate, regional levels that affect the minority to which they belong or the regions in which they live, in a way that is not against national law.

Fourth, Members of minorities are allowed to create and maintain their own associations. Fifth, People who are members of a minority have the right to establish and maintain free and peaceful contacts with other members of their group and with people who are members of other minorities, as well as contacts across borders with citizens of other States to whom they are related by national or ethnic, religious, or linguistic ties. These rights are guaranteed without any form of discrimination. In this context, individuals can exercise their rights individually or collectively.

3. The right to a healthy environment:

The UN Human Rights Council passed a resolution on October 8, 2021, recognizing the human right to a safe, clean, healthy and sustainable environment. Thus accessing a healthy and sustainable environment is a universal right. Although this resolution is non-binding, it could be a first step towards closing a significant gap in international law in this regard.¹⁸⁰

4. Right to peace

Article 1 of the Declaration on the Right to Peace of 2016¹⁸¹ states that *“Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”* This provision enables all human beings to reap the benefits of the three pillars of the United Nations: peace, human rights and development.¹⁸²

In view of the importance of peace at the local and international levels, and because a person can freely enjoy his rights only when he feels peace, and also because there is no sustainable development and

¹⁸⁰ United Nations: A/HRC/RES/48/14 (2021)

¹⁸¹ United Nations: A/RES/71/189 (2017)

¹⁸² Donna J. Perry, Christian Guillermet Fernández, and David Fernández Puyana, 2017, *The Right to Peace: From Ratification to Realization*, (online), (<https://www.hhrjournal.org/2017/01/the-right-to-peace-from-ratification-to-realization/> accessed on Aug 26, 2022)

prosperity except in the case of peace, maintaining international peace and security is the first goal of the United Nations, as stated in Article 1 of the Charter of the United Nations which defined the purposes of the United Nations, the first paragraph of this article says: *“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”*

5. Right to sustainable development: It is detailed in the next section (B).

Finally, recently emerged the so-called right to homosexuality (gay rights) or the right to same-sex marriage, as well as the right to change sex or gender transition and the right to choose euthanasia, these rights have sparked great controversy at the legal, moral and religious levels about the possibility of recognizing them. Some countries recognize these rights and consider them among human rights and freedoms. Thus laws are legislated by these states to regulate and protect them, such as Western European countries and the United States. On the contrary, most countries do not recognize these rights and consider them to be contrary

to religion and contradict the laws of nature and upright human behavior, such as Islamic countries and Russia.

B. Right to Self-Determination and Right to Development:

1. Right to Self-Determination

The right of self-determination is enshrined in the two international covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As well as Article 55 of the UN Charter states: *“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”*

The right to self-determination is defined as “the right of a people to determine its own destiny. In particular, the principle allows a people to choose its own political status and to determine its own form of economic, cultural and social development.”¹⁸³ Undoubtedly, the most effective guarantee for preserving a given group's identity and the members'

¹⁸³ Unrepresented Nations and Peoples Organization, Sep 21, 2017, *Self-determination*, (online), (<https://unpo.org/article/4957> accessed on Aug 25, 2022)

cultural rights is self-determination.¹⁸⁴ Moreover, the right of peoples to self-determination is of great importance in the struggle of peoples to get rid of the yoke of colonialism.¹⁸⁵

Accordingly, due to the great importance of the right of peoples to self-determination and its direct impact on the situation of human rights, as well as international peace and security, the United Nations also issued several resolutions affirming the right to self-determination for peoples still under occupation and supporting these peoples in their struggle to achieve the right to self-determination and end colonialism, such as Resolutions No. A/RES/1514(XV) (1960), A/RES/2621(XXV) (1970), and A/RES/62/144 (2008), as all resolutions confirmed the right of peoples to realize their right to self-determination, including those that were under colonial and foreign domination, as well as these resolutions confirmed that self-determination is a prerequisite for ensuring and effectively promoting human rights.

Consequently, the right to self-determination places upon states not only the duty to respect and promote this right but also the duty to refrain from any act of aggression that would deprive peoples of the enjoyment of

¹⁸⁴ Shristi Suman, 2020, *Right to Self-Determination in International Law*, (online), (<https://blog.ipleaders.in/right-to-self-determination-in-international-law/> accessed on Aug 25, 2022)

¹⁸⁵ Aureliu Cristescu, 1981, *The Right to Self-Determination*, United Nations, New York, p. 30.

this right. In particular, the use of force to prevent people from exercising their right to self-determination is a violation of international law.¹⁸⁶

Furthermore, an essential requirement for the effective guarantee and observance of human rights, as well as for their preservation and advancement is the universal realization of all peoples' right to self-determination, including those under colonial, foreign, and alien control.¹⁸⁷ Indeed, the right to self-determination is a controversial topic. However, it has been made clear that the only issue that is more or less free of controversy is the right to self-determination in the colonial context.¹⁸⁸

In this regard, the right of peoples and nations to permanent sovereignty over their natural wealth and resources is a fundamental component of the right to self-determination. This right must be exercised for the benefit of the national development and welfare of the people of the State in question. This right also includes the exploration, development and disposal of natural resources, nationalization and expropriation, foreign investment, profit sharing, and other related issues.¹⁸⁹

¹⁸⁶ Prithivi Raj, 2020, *Right to Self Determination as Human Right*, Acclaims, Vol. 9, pp. 1-11, p 10.

¹⁸⁷ United Nations: A/75/477 (2020), para. 19.

¹⁸⁸ Nasir Qadri, 2018, *The Basis of Right to Self Determination*, International Islamic University, Islamabad, p. 20.

¹⁸⁹ UN General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"

Indeed, Palestine is the only country in the world that is still under occupation and its people are still seeking self-determination. Thus the Palestinian people do not have full sovereignty over their land and natural resources due to the Israeli occupation, so they are still struggling, by all means, to achieve self-determination in the establishment of an independent Palestinian state.

2. Right to Development

The UN General Assembly set the sustainable development goals in its resolution issued on September 25, 2015, as follows:¹⁹⁰

- 1 - Eradicating poverty in all its forms everywhere;
- 2- Ending hunger, achieving food security and improving nutrition, and promoting sustainable agriculture;
3. Ensuring healthy lives and promoting well-being for all at all ages;
4. Ensuring equitable and inclusive quality education and promoting lifelong learning opportunities for all;
5. Achieving gender equality and empowering all women and girls;
6. Ensuring the availability and sustainable management of water and sanitation for all;
7. Ensuring universal access to affordable, reliable, sustainable and modern energy;

¹⁹⁰ United Nations: A/RES/70/1 (2015)

8. Promoting inclusive and sustainable economic growth, full and productive employment, and decent work for all;
9. Building resilient infrastructure, promoting inclusive and sustainable industrialization, and promoting innovation;
10. Reducing inequality within and between countries;
11. Making cities and human settlements inclusive, safe, resilient and sustainable;
12. Ensuring sustainable consumption and production patterns;
13. Taking urgent action to address climate change and its effects;
14. Promoting the conservation and sustainable use of the oceans, seas and marine resources for sustainable development;
15. Protecting, restoring and promoting the sustainable use of terrestrial ecosystems, sustainably managing forests, combating desertification, halting and reversing land degradation and halting biodiversity loss;
16. Promoting peaceful and inclusive societies to achieve sustainable development, providing access to justice for all, and building effective, accountable and inclusive institutions at all levels;
17. Strengthening the means of implementation and revitalizing the global partnership for sustainable development.

The free enjoyment of human rights creates the necessary conditions for sustainable development. Inclusive and participatory

economies and societies where the government is accountable achieve better outcomes for all people, leaving no one behind. The right to development entitles the right of all individuals and people to free, effective and meaningful participation in progress and prosperity.¹⁹¹ Therefore, human rights and development are interlinked and mutually supportive. Development cannot be sustainable in the absence of full respect for human rights. On the other hand, human rights cannot advance and flourish except in a humanly developing environment that allows its people to recognize and claim their rights.¹⁹²

In this context, the right to development was defined by the 1986 Declaration on the Right to Development and the UN Independent Expert on the Right to Development as “a right in the process as well as in the progressive outcomes aimed at the full realization of all human rights in the context of equitable growth and sustainable employment... to promote rapid development... and effective international cooperation... in providing the developing countries with appropriate means and facilities to promote their comprehensive development, in the words of the Rural Development Department. The right to development is linked to human rights in the sense that the realization of the right to development requires

¹⁹¹ United Nations: GA Res. 41/128, (1986).

¹⁹² Burghada Waheeda, 2008, *Human rights and the problematic of the dialectical relationship between good governance and human development*, Ben Youssef Ben Khedda University – Algeria, p. 51. (Arabic reference)

governments and development partners to apply human rights in their development.”¹⁹³

Consequently, sustainable development means protecting and utilizing natural resources in the best way, to raise the standard of living and the advancement of society in all fields.¹⁹⁴ The achievement of sustainable development is based on three pillars: environmental sustainability, which focuses on preserving the quality of the environment necessary to conduct economic activities and improve people's lives, social sustainability, which seeks to guarantee human rights, and economic sustainability, which is necessary to preserve the natural, social and human capital necessary for income and living standards.¹⁹⁵ This can only be achieved by integrating the economic, environmental and social sectors into the decision-making process, that is, by integrating economic, environmental and social objectives across all sectors and regions of the country. Therefore, sustainable development requires the elimination of fragmentation, whether it is regional fragmentation, or fragmentation in the

¹⁹³ Sara Joseph & Adam McBeth, 2010, *Research Handbook on International Human Rights Law*, Edward Elgar Publishing Limited, UK, p. 169.

¹⁹⁴ Farahieh, Kamal, 2018, *development sustainable*, Journal of Research Professor for Legal and Political Studies, Vol. 11, pp. 277-295. (In Arabic) Retrieved from <http://dspace.univ-msila.dz:8080/xmlui/handle/123456789/18168>

¹⁹⁵ Tomislav Klarin, 2018, *The Concept of Sustainable Development: From its Beginning to the Contemporary Issues*, Zagreb International Review of Economics & Business, Vol. 21, No. 1, pp. 67-94, p. 68. Retrieved from <https://hrcak.srce.hr/file/295780>

environmental, social and economic sectors.¹⁹⁶ On the other hand, despite global efforts and serious attempts to achieve sustainable development in all countries and societies of the world, these attempts are still largely incomplete, for several reasons, perhaps the most important and most prominent of which is the state of political and economic instability resulting from the occupation and its repressive practices.¹⁹⁷

For these reasons, the UN General Assembly issued the Declaration on the Right to Development, which confirmed that the right to development is based on the full realization of peoples' right to self-determination and their full sovereignty over their land, wealth and natural resources.¹⁹⁸

¹⁹⁶ Rachel Emas, 2015, *The Concept of Sustainable Development: Definition and Defining Principles*, Brief for GSDR, Florida International University, Florida, p. 3. Retrieved from

<https://www.scinapse.io/papers/2184349672>

¹⁹⁷ Abdelrhman Elhassan, 2011, *Sustainable development and its requirements*, University Of Bakhtelruda, Sudan, p. 8. (Arabic reference)

¹⁹⁸ United Nations: A/RES/41/128 (1986).

C. United Nations

To gain knowledge about the role of the United Nations in protecting human rights, we first provide a brief overview of its concept and the work structure of its active organs in this field;

1. The Birth of the United Nations

In August 1941, during World War II, US President Franklin Roosevelt and British Prime Minister Winston Churchill signed the Atlantic Charter which provided for the creation of a new world organization to help manage international affairs. Subsequently, "the United Nations Declaration"¹⁹⁹ which outlined the war aims of the Allies, was signed on January 1, 1942, by 26 nations.²⁰⁰ Then, on October 30, 1943, the governments of the Soviet Union, the United Kingdom, the United States, and China called for the rapid creation of a worldwide body to uphold peace and security in a document known as "the Moscow Declaration," which was signed in Moscow. This objective was reaffirmed at the meeting

¹⁹⁹ The United Nations term originally referred to the nations that were allied against Germany, Italy and Japan. Cecelia Lynch, Aug 28, 2023, *United Nations: international organization*, (online), (<https://www.britannica.com/topic/United-Nations/Organization-and-administration> accessed Sep 1, 2023).

²⁰⁰ Jussi M. Hanhima"ki, 2008, *The United Nations: A Very Short Introduction*, Oxford University Press, Inc, New York, p. 13.

of the leaders of the United States, the USSR, and the United Kingdom in Teheran on December 1, 1943.²⁰¹

To put this goal into practice, in August 1944, delegates from China, the Soviet Union, the United Kingdom, and the United States gathered to sketch out the framework for the new international organization at Dumbarton Oaks, a real estate in Washington, D.C. Although the four nations agreed on the general purpose and functions of the new world organization,²⁰² there was no consensus on the new organization's membership, other than the need that they come from "peace-loving" countries²⁰³. Along with a seat for the Soviet Union, the Soviet Union sought seats for each of the fifteen Soviet republics. The issue of what the organization's powers should be was another area of contention between the Soviets and Western powers that emerged at Dumbarton Oaks. The organization should cover economic and social challenges in addition to severe security requirements, as both the British and the Americans

²⁰¹ United Nations, [sa], *Milestones in UN History 1941-1950*, (online), (<https://www.un.org/en/about-us/history-of-the-un/1941-1950> accessed Aug 31, 2022)

²⁰² United Nations, [sa], *Milestones in UN History 1941-1950*, (online), (<https://www.un.org/en/about-us/history-of-the-un/1941-1950> accessed Aug 31, 2022).

²⁰³ The term "peace-loving nations" was defined in Yalta to mean those countries that had declared war on the Axis Powers.

agreed. Contrarily, the Soviets were adamant that the new organization should primarily focus on security.²⁰⁴

Roosevelt, Churchill, and Stalin worked out the final compromises that served as the foundation for the San Francisco Conference on the International Organization at the crucial Yalta Conference, which took place in the Russian Crimea in February 1945. They laid the foundation for the provisions of the charter defining the authority of the Security Council. Moreover, the issue of membership was basically resolved.²⁰⁵ The three leaders also agreed that the new organization would have a trusteeship system to succeed the League of Nations mandate system.²⁰⁶ And declared their resolve to establish: "a general international organization to maintain peace and security".²⁰⁷

In conclusion, the charter was unanimously adopted and signed on June 26, 1945, at the San Francisco Conference by representatives of 50

²⁰⁴ Umair Azam, [sa], *The Founding of the United Nations - International Cooperation as an Evolutionary Process*, Academia Website, p. 14-15.

²⁰⁵ Ibid.

²⁰⁶ Cecelia Lynch, Aug 28, 2023, *United Nations: international organization*, (online), (<https://www.britannica.com/topic/United-Nations/Organization-and-administration> accessed Sep 1, 2023).

²⁰⁷ United Nations, [sa], *Milestones in UN History 1941-1950*, (online), (<https://www.un.org/en/about-us/history-of-the-un/1941-1950> accessed Aug 31, 2022).

countries from all geographical regions of the world.²⁰⁸ Thus the United Nations officially began operations on October 24, 1945.²⁰⁹

2. Definition of United Nations

The United Nations is an organization of sovereign states and was established with the goal of preventing future hostilities via international diplomacy and negotiation. In this context, the United Nations provides mechanisms for Member States to solve disputes and conflicts and address issues of humanitarian issues.²¹⁰ It was created on October 24, 1945;²¹¹ it is the second multipurpose international organization with a global membership and scope, which was founded in the 20th century. Its predecessor, the League of Nations, was established in 1919 as a result of the Treaty of Versailles and was dissolved in 1946 after failing to achieve world peace.²¹²

²⁰⁸ Cecelia Lynch, Aug 28, 2023, *United Nations: international organization*, (online), (<https://www.britannica.com/topic/United-Nations/Organization-and-administration> accessed Sep 1, 2023).

²⁰⁹ Jussi M. Hanhima"ki, 2008, *The United Nations: A Very Short Introduction*, Oxford University Press, Inc, New York, p. 13-14.

²¹⁰ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 5.

²¹¹ Robert Gordon, 5th eds, 2022, *An Introduction to the UN System and Its Role in International Peace and Security*, Peace Operations Training Institute, Williamsburg, p. 14.

²¹² Cecelia Lynch, Aug 28, 2023, *United Nations: international organization*, (online), (<https://www.britannica.com/topic/United-Nations/Organization-and-administration> accessed Sep 1, 2023).

The United Nations also defined itself in the preamble to its charter by saying: “We the Peoples of the United Nations determined to save succeeding generations from the scourge of war, ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, ... to maintain international peace and security, and... to promote social progress and better standards of life in large freedom”.²¹³

Thus, the United Nations serves as the global platform for fostering international understanding, identifying areas for collaboration, and launching coordinated action on issues that cut beyond national boundaries, such as terrorism, climate change, and pandemics. It is also engaged in promoting sustainable development, defending human rights, and advancing peace.²¹⁴ Therefore, the United Nations, since its founding in 1945, has been working to ensure and promote security, human rights and development throughout the world.

To facilitate its work, the United Nations takes all its actions based on the resolutions of Member States. Also, the United Nations does not have

²¹³ For more information see the preamble to the Charter of the United Nations.

²¹⁴ Chloe Bennett, OCT. 24, 2017, *10 Things You May Not Know About The UN*, (online), (<https://unfoundation.org/blog/post/10-things-may-not-know-un/> accessed Sep 2, 2022)

an army and does not impose taxes.²¹⁵ Instead, states participate in financing the UN budget through contributions and assessed donations, and as for their decisions, it is the responsibility of states to implement them in accordance with the Charter. It is headquartered in New York City, with regional offices in Geneva, Vienna, and Nairobi. The official languages are French, Chinese, Spanish, Arabic, English and Russian.

The United Nations is currently made up of 193 Member States, the UN and its work are guided by the purposes and principles contained in its founding Charter.²¹⁶ The Purposes of the United Nations are as follows:²¹⁷

1. Maintaining international peace and security and Settlement of international disputes by peaceful means;
2. Developing friendly relations among nations on the basis of respect for the principle of equal rights and self-determination of peoples;
3. Achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian nature, and promoting respect for human rights.

²¹⁵ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 6-7.

²¹⁶ United Nations, [sa], *About Us*, (online), (<https://www.un.org/en/about-us> accessed Sep 2, 2022)

²¹⁷ For more information see Article 1 of the Charter of the United Nations.

4. To be a center for coordinating the actions of countries in achieving these common goals.

To achieve these purposes, the United Nations and its Members shall act in accordance with the following principles:²¹⁸

1. The organization is based on the principle of equal sovereignty among all its members;

2. All members fulfill in good faith the obligations they have assumed under this Charter;

3. All members shall resolve their international disputes by peaceful means;

4. All Members shall refrain from the threat or use of force against the territorial integrity or political independence of any State;

5. Members shall provide all assistance to the United Nations in any action it takes, and refrain from providing assistance to any country against which the United Nations takes preventive or executive measures;

²¹⁸ For more information see Article 2 of the Charter of the United Nations.

6. The Organization shall ensure that States that are not members of the United Nations act in accordance with these principles in so far as it may be necessary to maintain international peace and security;

7. The United Nations may not interfere in matters within the domestic jurisdiction of any State.

It should be emphasized that the term "United Nations system" refers to all of the organization's institutional and intergovernmental organizations. The domain of United Nations intergovernmental bodies and the domain of United Nations institutional entities are two distinct but connected realms within the United Nations organization: The intergovernmental bodies of the United Nations, which may include some or all of its member nations depending on their missions, they develop international norms and standards, set policies, and oversee the organization's structures; The institutional bodies of the United Nations participate in operational activities all around the world and support intergovernmental procedures.²¹⁹ This will be detailed as follows:

²¹⁹ Nicole Ruder, Kenji Nakano and Johann Aeschlimann, eds, 2017, *The GA Handbook: A practical guide to the United Nations General Assembly*, the Permanent Mission of Switzerland to the United Nations, New York, p. 22.

3. The Principal Organs of the United Nations

The work of the United Nations is carried out almost all over the world and is done by six main organs, they are:

- 1- General Assembly;
- 2- Security Council;
- 3- Economic and Social Council;
- 4- Trusteeship Council;
- 5- International Court of Justice;
- 6- Secretariat;

A. General Assembly

Several separate provisions govern the work and composition of the General Assembly, as some of these provisions are contained in the charter, and others are contained in the bylaw of the General Assembly.

The main functions and powers of the General Assembly under the Charter of the United Nations are:

1. Discussing any questions or matters within the scope of the Charter of the United Nations or relating to the powers and functions of any of the organs provided for in the Charter, in accordance with Article 10 of the Charter;

2. Considering the general principles of cooperation in maintaining international peace and security, including the principles governing disarmament and arms regulation, discussing any questions relating to the maintenance of international peace and security, and drawing the attention of the Security Council to situations that are likely to endanger international peace and security, in accordance with Article 11.

3. Initiating studies and making recommendations for strengthening international cooperation in the political sphere, supporting the progressive development and codification of international law, strengthening international cooperation in the economic, social, cultural, educational and health fields, and contributing to the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, in accordance with Article 13.

4. Recommending measures for the peaceful adjustment of any situation, regardless of origin, which is considered likely to be prejudicial to the general welfare or friendly relations among nations, in accordance with Article 14.

5. Receiving and considering annual and special reports from the Security Council; including a statement of the actions decided or taken by the Security Council to maintain international peace and security, and Receiving and considering reports from other organs of the United Nations, in accordance with Article 15.

6. Performing the functions in connection with the International Trusteeship System as assigned to it under Chapters XII and XIII of the charter, including the approval of trusteeship agreements for areas not designated as strategic, in accordance with Article 16.

7. Considering and approving the budget of the Organization, considering and approving any financial or budgetary arrangements with the Specialized Agencies, and studying the administrative budgets of these Specialized Agencies with a view to making recommendations to the Agencies concerned, in accordance with Article 17.

Indeed, the General Assembly is the principal organ of the United Nations; its political weight gives it a special role in relation to human rights, as the General Assembly is the UN organ that chairs all other United Nations human rights institutions. It can also make recommendations for action via resolutions or declarations; it represents world public opinion on the issues it addresses, as well as the moral authority of the international community.²²⁰

In this context, the GA consists of all the Member States in the organization, in accordance with Article (9/1). And each country has one vote when voting in the General Assembly as stipulated in Article (18/1).

²²⁰ Tamás Lattmann and Balázs Vizi, 2014, *International Protection of Human Rights*, Institute of International Studies, Budapest, p. 26-27.

Moreover, each country must send one or more delegates to the Assembly, provided that the number does not exceed five, in accordance with Article (9/2).²²¹

All members represented in the Assembly are equal, each one having one vote. The Assembly meets every year from September to December; extraordinary sessions may be convened at the request of the Security Council or the request of a majority of the Members of the United Nations.²²²

However, since its forty-fourth session (1989-1990), the General Assembly has formally become "in session" all year round. There are two distinctive parts of the session. The time from mid-September to the Christmas holiday in December is called 'the main part of the session' which is the most intense working period, including general discussion and most of the work of the Main Committees. The period from January to September is called "the resumed part of the session." Most thematic discussions and working group meetings are conducted during this period.²²³

²²¹ The 1945 Charter of the United Nations.

²²² United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p.13.

²²³ Nicole Ruder, Kenji Nakano and Johann Aeschlimann, eds, 2017, *The GA Handbook: A practical guide to the United Nations General Assembly*, the Permanent Mission of Switzerland to the United Nations, New York, p. 14.

In this context, the General Assembly refers agenda items to the Main Committees for consideration and preparation of recommendations and draft resolutions to present to the General Assembly plenary.²²⁴ These main committees are:

First Committee: Disarmament and International Security: it addresses disarmament, global challenges, and threats to peace that have an impact on the global community.²²⁵

Second Committee: Economic and Financial: It is concerned with the study of economic and financial issues and focuses on information and communication technology for sustainable development, poverty eradication, and strengthening disaster relief and humanitarian aid.²²⁶

Third Committee: Social, Humanitarian and Cultural: It deals with a range of social, humanitarian and human rights issues that affect people around the world.

Fourth Committee: Special Political and Decolonization: The Committee's work includes items relating to decolonization, the effects of

²²⁴ Vanessa Manhire, eds, 2019, *United Nations Handbook*, the Ministry of Foreign Affairs and Trade/Manatū Aorere, Private, Wellington, p. 23.

²²⁵ United Nations, [sa], *Disarmament and International Security (First Committee)*, (online), (<https://www.un.org/en/ga/first/index.shtml>) accessed Sep 4, 2022)

²²⁶ Andrew Clapham, 2016, *The General Assembly*, Graduate Institute of International and Development Studies, Oxford University Press, London, p. 7.

atomic radiation, the question of peacekeeping operations and special political missions; As well as the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Israeli practices, and international cooperation in the use of outer space for peaceful purposes.²²⁷

Fifth Committee: Administrative and Budgetary: This committee is concerned with matters relating to the functional work within the United Nations; It is also responsible for preparing the organization's draft budget.²²⁸

Sixth Committee: Legal: The promotion of justice and international law, accountability and internal UN justice issues, drug control, crime prevention, and combatting international terrorism are among the issues assigned to C6.²²⁹

Moreover, there is the General Committee, this Committee assists the President in setting the agenda of the plenary meetings, setting priorities for agenda items, coordinating the proceedings of the Main

²²⁷ Nicole Ruder, Kenji Nakano and Johann Aeschlimann, eds, 2017, *The GA Handbook: A practical guide to the United Nations General Assembly*, the Permanent Mission of Switzerland to the United Nations, New York, p. 75.

²²⁸ Ziad Atta Al-Arja, 2013, *The Role of the United Nations in International Relation Organizing*, Al Albayt University, Jordan, p. 27-28. (Arabic reference)

²²⁹ Nicole Ruder, Kenji Nakano and Johann Aeschlimann, eds, 2017, *The GA Handbook: A practical guide to the United Nations General Assembly*, the Permanent Mission of Switzerland to the United Nations, New York, p. 79.

Committees, and in the general conduct of the work of the General Assembly that fall within the competence of the President. It also makes recommendations to the General Assembly for consideration.²³⁰

The GA also can establish temporary and specialized committees to follow up on issues that require knowledge of a kind of specialization, whether to understand these issues or to develop solutions to them. Therefore, these committees rely on the criterion of technical specialization. Examples of such commissions include the South West African Commission, the UN Conciliation Commission in Palestine, and the Commission for the Peaceful Use of External Judiciary.²³¹ Based on this and in accordance with Article 22 of the United Nations Charter, the General Assembly may form subsidiary organs and committees to assist it in carrying out its functions.

Regarding the situation of Palestine, the General Assembly issued several resolutions in favor of Palestine, including Resolution 3236 (D-29), adopted in 1974, which reaffirmed the inalienable rights of the Palestinian people to self-determination, independence and sovereignty, as well as the right of Palestinians to return to their homes and property. Then, on

²³⁰ Vanessa Manhire, eds, 2019, *United Nations Handbook*, the Ministry of Foreign Affairs and Trade/Manatū Aorere, Private, Wellington, p. 24.

²³¹ Ziad Atta Al-Arja, 2013, *The Role of the United Nations in International Relation Organizing*, Al Albayt University, Jordan, p. 28-29. (Arabic reference)

November 10, 1975, the UN Assembly issued Resolution No. 3376, according to which a Committee on the Exercise of the Inalienable Rights of the Palestinian People was established with the task of considering and recommending to the General Assembly an executive program aimed at enabling the Palestinian people to exercise their recognized and inalienable rights. In addition, on November 29, 2012, the General Assembly passed Resolution No. 67/19 granting Palestine the status of a non-member state at the United Nations.

B. Security Council

Despite not being an organ specifically dedicated to protecting human rights, the UN Security Council nonetheless plays a significant role in this area. While upholding international peace and security is its core duty under the Charter, it also plays a crucial role when there are human rights violations present, often on a massive scale.²³²

In this regard, the Security Council consists of 15 members, 5 of whom are permanent members: China, France, the Russian Federation (Formerly Union of Soviet Socialist Republic), the United States of America and the United Kingdom of Great Britain and Northern Ireland. The other 10 members are elected alternately by the General Assembly

²³² Tamás Lattmann and Balázs Vizi, 2014, *International Protection of Human Rights*, Institute of International Studies, Budapest, p. 28.

on a geographical representation basis for two years, in accordance with Article 23 of the charter.²³³ Each member holds the presidency of the Council in rotation for one month, in alphabetical order.²³⁴ Each member has one vote. Decisions on questions of procedure are taken by the affirmative vote of at least 9 of the fifteen members. Decisions on substantive matters require nine votes and the absence of a negative vote (veto) by any of the five permanent members, in accordance with Article 27.

However, if a permanent member does not fully agree with the proposed resolution but does not wish to cast a veto, it may choose to abstain, allowing the resolution to be adopted if it gets the required number of nine votes in favor.²³⁵ According to Article 28, the Security Council is constantly working, at the headquarters of the organization, so there should always be a representative from each member of the Security Council. Thus the Security Council does not hold regular meetings, it can

²³³ The Security Council was composed of 11: 5 permanent members and 6 non-permanent members, and the number of non-permanent members was increased to 10, bringing the total to 15 members in an amendment to Articles 23 of the Charter was adopted by the General Assembly on 17 December 1963 and came into force on 31 August 1965. For more information see: United Nations, (online), <https://www.un.org/en/about-us/un-charter/amendments>

²³⁴ The United Nations Department of Public Information, 2011, *Basic Facts about the United Nations*, United Nations, New York, p. 7-8.

²³⁵ Mohsen Avkirin, 2010, *Law of international organizations*, Arab Renaissance House, Egypt, p. 228-230. (Arabic reference)

be held at any time, even in a very short time, at any time when peace is threatened.

According to Article 24 of the Charter, the primary mandate of the Security Council is the primary responsibility for the maintenance of international peace and security. The charter stipulates several means by which the Security Council can achieve this mandate, they are as follows:

1. Inviting the parties to settle their dispute by peaceful means, such as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resorting to agencies, regional arrangements, or other peaceful means. (Art. 33)

2. Formulating plans for establishing a system to regulate armaments. (Art. 26)

3. Investigating any dispute or situation that might lead to international friction, and recommending methods of adjustment or terms of settlement. (Art. 34, Art. 36 & Art. 37)

4. Determining the existence of a threat to the peace or act of aggression and recommending what action should be taken. (Art.39)

5. Calling upon the parties concerned to comply with such provisional measures as it deems necessary to prevent an aggravation of the situation. (Art. 40)

6. Calling upon members of the United Nations to apply measures not involving the use of armed force, such as economic sanctions, to give effect to the Council's decisions. (Art. 41)

7. Recommending to the General Assembly the appointment of the Secretary General and, together with the Assembly, electing the judges of the International Court of Justice. (Art. 97)

8. Resorting to or authorizing the use of force to maintain or restore international peace and security. (Art. 42)

9. Encouraging the peaceful settlement of local disputes through regional arrangements or regional agencies and using such regional arrangements for enforcement under its authority. (Art. 52)

10. Requesting the International Court of Justice to give an advisory opinion on any legal issue. (Art. 96)

11. Recommending to the General Assembly the admission of new members to the United Nations. (Art. 4)

Thus, the main task of the Security Council is to maintain international peace and security. If there are international disputes that may constitute a threat to international peace, the Council calls on the parties to the dispute to settle their disputes by peaceful means. It may recommend ways or conditions for settlement to prevent the situation from becoming more dangerous. In some cases, if the situation constitutes a serious threat to international peace and security, the Security Council can, under Chapter VII of the Charter, decide to impose sanctions or, at worst, authorize the use of force.

In this context, according to Articles 25, 43 and 49 of the Charter, all Member States are obligated to comply with the decisions of the Council in accordance with Chapter VII of the Charter, make available to the Security Council armed forces, assistance and facilities, including the right of passage, and participation in providing mutual assistance in the implementation of actions decided by the Security Council. This may have a strong impact on human rights issues, since gross violations of human rights may constitute a threat to international peace and security, and this may have a significant impact on the decisive role of the Security Council in protecting human rights in serious cases.

As for its Committees, Article 29 of the Charter sets out that the Security Council may establish subsidiary bodies as needed for the

performance of its functions. Thus the Council has main committees to assist it in its work, these main committees are: **First: Military Staff Committee:** It was established according to Article 47 of the Charter in order to provide advice and support to the Security Council on all matters pertaining to military actions, the use and command of the military forces, the regulation of armaments, and potential disarmament; **Second: Counter-Terrorism Committee:** It works to enhance the capacity of UN Member States to address terrorist acts within their borders and across regions; **Third: Non-Proliferation Committee:** It works to prevent the proliferation and possession of weapons of mass destruction;²³⁶ **Fourth: Sanctions Committee:** It oversees sanctions compliance and enforcement, reviews procedures for requests for exemption from sanctions lists, and prepares sanctions reviews for the Council.²³⁷ **Fifth: Standing Committees and Ad Hoc Bodies or tribunals:** Standing committees are open-ended and generally created to deal with certain procedural issues, such as the admission of new members; Ad Hoc committees are created for a limited time and to deal with a specific

²³⁶ Security Council Report, 2019, *The UN Security Council Handbook: A User's Guide to Practice and Procedure*, Security Council Report, New York, p. 54-55.

²³⁷ Security Council Report, 2019, *The UN Security Council Handbook: A User's Guide to Practice and Procedure*, Security Council Report, New York, p. 46.

issue;²³⁸ Ad Hoc tribunals are established to deal with serious international crimes, such as genocide, war crimes and crimes against humanity, for example; The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda.²³⁹

With regard to Palestine, the Security Council has adopted several resolutions in favor of Palestine, some of which are related to the situation of human rights, such as Resolution No. 242 (1967), in which the Council called on Israel to withdraw from the Palestinian territories occupied in 1967, and resolution 2334 (2016), in which the Council called on Israel to immediately and completely cease all settlement activities in the Occupied Palestinian Territory, including East Jerusalem, as well as stop attacks against civilians and their property.

C. Economic and Social Council

In accordance with Article 61 of the Charter, the Economic and Social Council is composed of 54 members elected for a period of three

²³⁸ United Nations, [sa], *United Nations Security Council: Subsidiary Organs Branch*, (online). (<https://www.un.org/securitycouncil/content/subsidiary-organs-branch> accessed Sep 6, 2022)

²³⁹ International Committee of the Red Cross, 2010, *Ad hoc tribunals*, (online), (<https://www.icrc.org/en/doc/war-and-law/international-criminal-jurisdiction/ad-hoc-tribunals/overview-ad-hoc-tribunals.htm> accessed Sep 6, 2022)

years.²⁴⁰ Seats on the Council are allotted on the basis of geographical representation, with 14 seats allocated to African countries, 11 seats to Asian countries, 6 to Eastern European countries, 10 seats to Latin America and the Caribbean, and 13 seats to Western Europe and other countries.²⁴¹ Voting on decisions of the Economic and Social Council by simple majority; each member state has one vote, in accordance with Article 67. And according to Article 1 of the Council's bylaws, the Council normally holds an organizational session and two regular sessions each year.²⁴²

The functions and powers of the Economic and Social Council, in accordance with Articles 62 and 63 of the charter, are as follows:

1. Making or initiating studies and reports about international economic, social, cultural, educational, health, and related matters;
2. Making recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all;

²⁴⁰ The Economic and Social Council was composed of eighteen members, and then the amendment of Article 61, which entered into force on August 31, 1965, increased the number of members of the Economic and Social Council from eighteen to twenty-seven. Then in a subsequent amendment to that Article, which took effect on September 24, 1973, it increased the membership of the Council from twenty-seven to fifty-four. For more information see: United Nations, (online), <https://www.un.org/en/about-us/un-charter/amendments>

²⁴¹ The United Nations Department of Public Information, 2011, *Basic Facts about the United Nations*, United Nations, New York, p. 12.

²⁴² Ziad Atta Al-Arja, 2013, *The Role of the United Nations in International Relation Organizing*, Al Albayt University, Jordan, p. 43. (Arabic reference)

3. Preparing draft agreements to be submitted to the General Assembly in relation to issues within its competence.

4. Invitation to international conferences on matters within its competence.

5. Coordinating the activities of specialized agencies by consulting with these agencies and submitting recommendations to them.

In addition to coordinating and reviewing policies and making recommendations on environmental issues and the implementation of internationally agreed development goals.²⁴³

Based on the importance and scale of the responsibilities assigned to this Council, Article 68 of the Charter states that the Economic and Social Council may establish committees as needed to perform its functions and promote human rights. This illustrates the significant role that the Economic and Social Council plays in the promotion and protection of human rights throughout the world.

The Economic and Social Council has taken several decisions related to the economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian population and the contribution to improving human rights conditions in the occupied Palestinian

²⁴³ Drishti, 2022, *United Nations*, (online), (<https://www.drishtias.com/pdf/united-nations-1.pdf> accessed on Sep 6, 2022)

territories, including Resolution 2022/22, adopted on 22 July 2022, which affirmed and called for lifting the siege on the Gaza Strip, lifting all movement restrictions imposed on the Palestinian people in all the occupied Palestinian territories to alleviate the dire humanitarian situation in the occupied Palestinian territory, and also stressing the need to preserve and develop Palestinian institutions and infrastructure to provide vital public services to the Palestinian civilian population and contribute in promoting and protecting human rights, including economic and social rights, in Palestine.

D. The Trusteeship Council

Trust territory is defined as “a non-self-governing territory placed under an administrative authority by the Trusteeship Council of the United Nations.”²⁴⁴ The Trusteeship Council is composed of the members that administer these Trust Territories, members of the United Nations Security Council, and members that are chosen by the General Assembly for three-year terms on the Council.²⁴⁵ Each member has one vote and decisions are taken by a majority of the members present and voting.²⁴⁶ Under Articles 78 and 78 of the charter, the Trusteeship Council is empowered to

²⁴⁴ Drishti, 2022, *United Nations*, (online), (<https://www.drishtiiias.com/pdf/united-nations-1.pdf> accessed on Sep 7, 2022)

²⁴⁵ Article 86 of the UN charter.

²⁴⁶ Article 89 of the UN charter.

study and discuss reports from the administering power and to formulate a questionnaire on the political, economic, social, and educational progress of the inhabitants of each Trust Territory, in consultation with the administering Power, as well as to make periodic visits to the Trust Territories.

From 1945 to 1994, more than 70 colonial territories gained their independence, including all 11 trust territories.²⁴⁷ The Trusteeship Council suspended its operations on 1 November 1994 by a resolution of 25 May 1994, after Palau's independence, Palau was the last territory under a United Nations trusteeship. The Council amended its bylaws to waive the obligation to meet annually and to agree to meet based on necessity.²⁴⁸

F. International Court of Justice

It is recognized that the establishment of international peace and security on firm and stable foundations requires the establishment of bodies capable of resolving international disputes by peaceful means. To embody this, an international judicial body known as the International Court of Justice was established. This court was established in 1945 to

²⁴⁷ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 22.

²⁴⁸ Ahmad Risyad Sumartaraja, 2021, *The United Nations Trusteeship Council and The Trusteeship System: Justifications for Revival and Legal Obstacles*, Padjadjaran Journal of International Law, Volume 5, Number 2, June 2021, p. 172.

replace the Permanent Court of International Justice, which was included in the scope of the League of Nations.²⁴⁹

According to Article 92 of the UN Charter, the International Court of Justice is the principal judicial organ of the United Nations. It operates in accordance with its own Statute, which is based on the Statute of the Permanent Court of International Justice and is an integral part of the Charter of the United Nations. The International Court of Justice is the only one of the six major organs not located in New York; it is located in The Hague, Netherlands.

The function of the Court is to settle legal disputes between states; in this context, the judgment of the Court is binding on the parties to the case in question, in the event that any party to the case fails to fulfill its obligations under the judgment of the Court. The other party may have recourse to the Security Council, which may, if it deems it necessary, make recommendations or decide on measures to be taken to implement the judgment in accordance with Article 94 of the Charter. Moreover, the General Assembly and the Security Council can request the Court's advisory opinion on any legal case, and other organs of the United Nations and the specialized agencies may, after being authorized by the General

²⁴⁹ Ziad Atta Al-Arja, 2013, *The Role of the United Nations in International Relation Organizing*, Al Albayt University, Jordan, p. 48. (Arabic reference)

Assembly, request advisory opinions on legal questions within the scope of their activities in accordance with Article 96 of the Charter.

All current members of the United Nations are *de facto* parties to the Statute of the International Court of Justice. On conditions to be determined by the General Assembly in each case on the recommendation of the Security Council a State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice.²⁵⁰ However, states may only be parties to contentious cases before the court and submit disputes to it. Thus the Court does not have jurisdiction over individuals, entities or other international organizations.²⁵¹

In this regard, the International Court of Justice is composed of fifteen judges, and no more than one member may be a national of one country according to Article (3) of the Statute. These judges shall be elected from among persons of high moral character who possess in their country the qualifications required for appointment to the highest judicial office or from among jurists recognized for their competence in international law in accordance with Article (2), each member shall act independently of his government, whereby each member of the Court

²⁵⁰ Article 93 of the UN Charter.

²⁵¹ The United Nations Department of Public Information, 2011, *Basic Facts about the United Nations*, United Nations, New York, p. 17.

shall, before assuming his duties, make a solemn undertaking before an open court that he will exercise his powers impartially and conscientiously in accordance with Article (20). In this context, the General Assembly and the Security Council, independently of each other, elect the members of the Court from a list prepared by the Secretary-General. In the election of the judge, it is required that he/she obtain an absolute majority of the votes of the General Assembly and the votes of the Security Council, in accordance with Articles (4-7-8-10). The members of the Court are elected for a term of nine years and may be re-elected, in accordance with Article (13).

All questions are decided by a majority of the judges present, in the event of equal votes, the side of the president or the judge on his behalf shall prevail, in accordance with Article (55). All judgments issued by the court are final and not subject to appeal, in the event of a dispute over the meaning or pronouncement of the judgment, the court shall interpret it at the request of any party, in accordance with Article (60).²⁵²

Since 1946, the International Court of Justice has considered more than 150 cases and issued many judgments in international disputes brought to it by states. These cases include economic rights, environmental protection, non-interference in the internal affairs of states,

²⁵² Statute of the International Court of Justice.

rights of passage, diplomatic relations, non-use of force, hostage taking, asylum, and nationality.²⁵³

Regarding Palestine, On July 9, 2004, the International Court of Justice issued an advisory opinion, at the request of the General Assembly, that Israel's construction of the separation wall in the Occupied Palestinian Territory is illegal and contrary to international law, and added that construction must stop immediately and parts of the wall that have already been built must be dismantled, as well as Israel is obligated to pay compensation for any damage caused.²⁵⁴ But it remains an advisory opinion that has no binding authority.

G. The Secretary

The General Secretariat is composed of the Secretary-General and the necessary staff of the United Nations. The Secretary-General is the chief administrative officer of the Organization. He is appointed by the General Assembly on the recommendation of the Security Council,²⁵⁵ for a period of five years, subject to renewal. The General Secretariat is headed by the Secretary-General, which includes tens of thousands of United

²⁵³ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 23.

²⁵⁴ International Court of Justice: Advisory Opinion of 9 July 2004. Retrieved from: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

²⁵⁵ Article 97 of the UN charter.

Nations staff working in duty stations around the world; they are recruited internationally and locally. Some of whom work in peacekeeping missions.²⁵⁶ It should be noted that an appointee to the position of Secretary-General cannot be a citizen of any of the Security Council's five permanent members.²⁵⁷

Pursuant to Article 100 of the charter, the Secretary-General and the staff are not permitted to seek or accept directions from any governments or other external authorities in the course of their duties. They must refrain from taking any measures that would reflect badly on their position as international representatives who are subject exclusively to the organization. Member states are also obligated to respect the impartiality of the organization's staff and their international character when performing their duties.

The Secretary-General acts in all meetings of the General Assembly, Security Council, Economic and Social Council, and Trusteeship Council in his official capacity and carries out any other duties or decisions given to him by these organs. In addition, an annual report on the activities of the Organization is prepared and sent to the General Assembly by the

²⁵⁶ United Nations, [sa], *Secretariat*, (online), (www.un.org/en/about-us/secretariat accessed on Sep 8, 2022)

²⁵⁷ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 25.

Secretary-General.²⁵⁸ He may also act in humanitarian or other matters problems of particular importance.²⁵⁹ The UN Charter also empowers the Secretary-General to “bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security” in accordance with Article 99.

In this context, the United Nations has specialized agencies to facilitate its tasks. These specialized agencies are established by intergovernmental agreements and have broad international responsibilities, as stated in their basic instruments, in the fields of economics, social development, culture, education, health, human rights and other related fields, in addition to the existence of agreements linking their work to the United Nations. So the Economic and Social Council enters into agreements outlining the conditions under which the agency concerned shall be brought into a relationship with the UN organization after getting the General Assembly's approval. In addition, by consultation with and making recommendations to such agencies, the Economic and Social Council coordinates the policies and activities of the specialized agencies.²⁶⁰

²⁵⁸ Article 98 of the UN Charter.

²⁵⁹ United Nations, 2017, *Welcome to The United Nations*, United Nations – Visitor Center, New York, p. 25.

²⁶⁰ Articles 57, 58 and 63 of the UN Charter.

In other words, even though Specialized Agencies are independent legal entities, the UN maintains close working relationships with 15 international organizations that have been designated as "specialized agencies" of the UN. Under the auspices of the UN, each specialized agency runs independently, with its own governing body, set of rules for conducting functions, membership, and financing sources.²⁶¹ The specialized agencies of the United Nations promote multilateral cooperation from a professional and technical perspective in a large number of areas, including labor, education, research, culture, agriculture, human rights and health.²⁶² Thus the specialized agencies assist the United Nations in implementing its development

6. IMO: International Maritime Organization
7. ITU: International Telecommunication Union
8. UNESCO: United Nations Educational, Scientific and Cultural Organization
9. UNIDO: United Nations Industrial Development Organization
10. UNWTO: World Tourism Organization
11. UPU: Universal Postal Union
12. WHO: World Health Organization
13. WIPO: World Intellectual Property Organization
14. WMO: World Meteorological Organization
15. World Bank Group: Including:
 - (a) IBRD: International Bank for Reconstruction and Development
 - (b) IDA: International Development Association
 - (c) IFC: International Finance Corporation

D. Research Framework

After explaining what human rights and the United Nations are and clarifying the efforts of the United Nations in protecting human rights and codifying them in international conventions to enhance their presence and enhance their protection, The framework of this research can be determined by focusing on its title, which is the role of the United Nations in achieving the right of the Palestinian people to self-determination and development, Which is divided into several sub-chapters as follows:

The first chapter deals with the mechanisms of the United Nations in the protection of human rights, the scope of their influence, and the scope of the role of the United Nations in the field of human rights. In it, we show how the United Nations works through its main organs and specialized agencies to promote the status of human rights, as well as explain its preventive role in protecting human rights. We also show how United Nations human rights institutions monitor and develop the performance of states in protecting human rights and monitor violations, and analyze the mechanisms and procedures used to implement this, in addition to indicating the extent of the obligation of its decisions in the case of human rights violations.

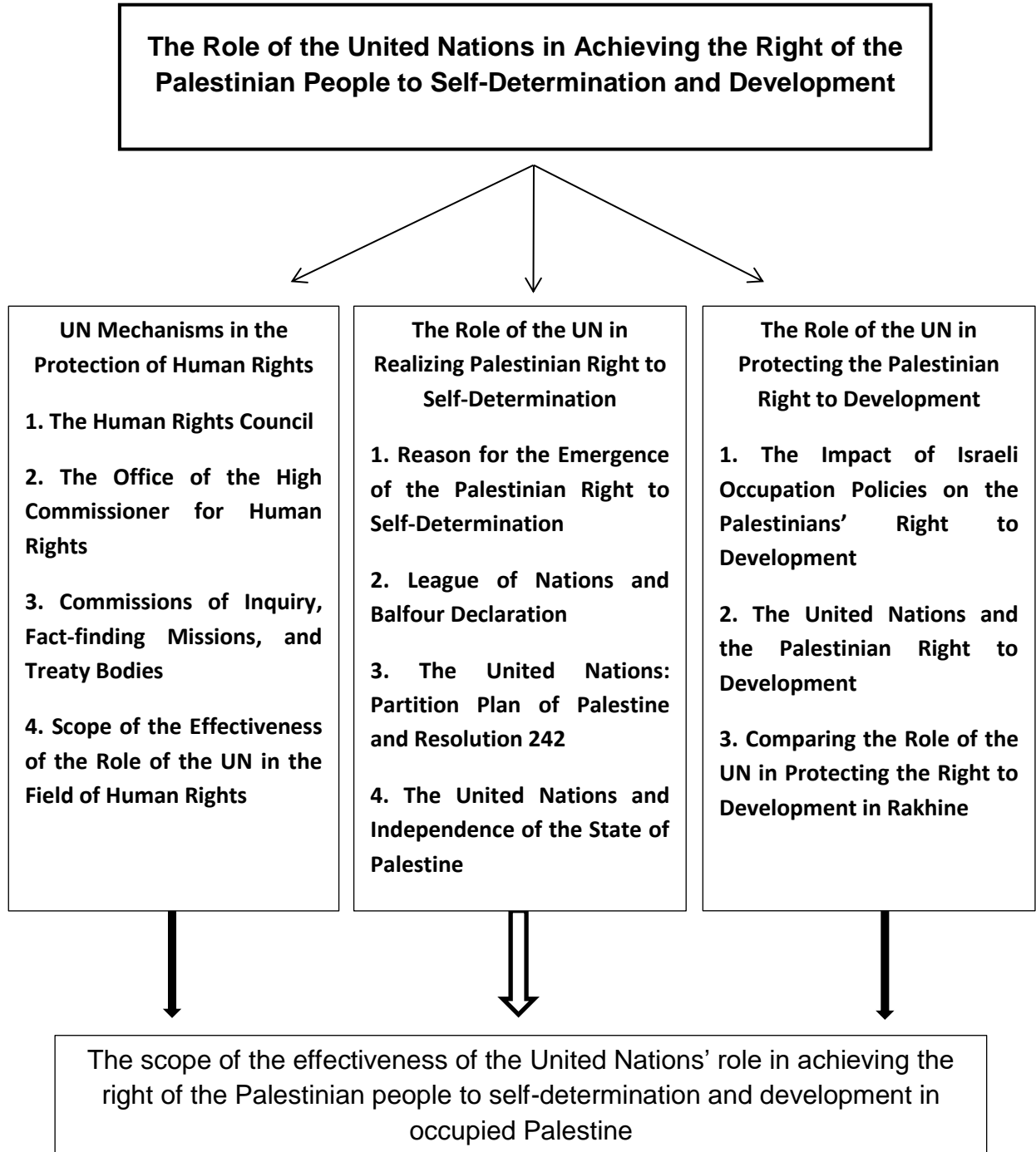
The second chapter deals with the role of the United Nations in achieving the Palestinian right to self-determination: In it, we explain the

reason for the emergence of the Palestinian right to self-determination, study its historical context, as well as analyze the most important obstacles that still prevent it from being achieved, while analyzing the role of the United Nations in this regard. In this context, we mention the Zionist allegations regarding the Jews' connection to Palestine and the response to them. We also explain the legal nature of the British Mandate of Palestine, which paved the way for the establishment of the State of Israel.

The third chapter deals with the role of the United Nations in protecting the Palestinians' right to development: In it, we show the reality of development in Palestine and analyze the obstacles to achieving it, as well as explain the Israeli policies that violate the right of the Palestinians to development and exploitation of their natural resources, and examine the role of the United Nations in this regard with a comparison with its role in Rakhine State.

By studying all of this, the study aims to know the effectiveness of the United Nations' role in achieving the right of the Palestinian people to self-determination and development in occupied Palestine.

E. Research Structure



F. The Operational Definitions

Operational definitions serve to define the framework of the study, they are as follows:

1. Human rights are a set of rules that govern the treatment of individuals and groups by the state, and between them and other entities within and outside the borders of the state based on what natural law considers fundamental to a decent life of rights and freedoms to which every human being is entitled to as a human being without discrimination.
2. The international convention is the agreement of the will of two or more persons of international law to produce certain legal effects in accordance with the rules of international law.
3. International law is the binding rules of conduct for international actors in relationships, transactions and problems that transcend national borders.
4. International law of human rights is a set of legal rules that aim to protect and promote the human rights of all human beings.
5. The International Bill of Human Rights is the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

6. The United Nations organization is an international organization founded in 1945, Currently made up of 193 Member States, the UN and its work are guided by the purposes and principles contained in its founding Charter.
7. International protection is the controls and supervisory procedures exercised by international and regional organizations and bodies towards their members to enhance respect for human rights.
8. The Office of the United Nations High Commissioner for Human Rights is the leading UN entity on human rights, it represents the world's commitment to the promotion and protection of the full range of human rights and freedoms enshrined in the Universal Declaration of Human Rights
9. The Human Rights Council is an intergovernmental body within the United Nations system responsible for promoting and protecting all human rights throughout the world and for addressing and making recommendations on issues of human rights violations.
10. The right to development is the right in the process as well as in the progressive outcomes aimed at the full realization of all human rights in the context of equitable growth and sustainable employment.

11. The right to self-determination enables people to exercise their political and civil rights and promote their development, which enables them to enjoy other rights.
12. The Arab-Israeli conflict or The Palestinian-Israeli conflict is a modern conflict whose roots go back to the end of the nineteenth century; the conflict became a major international issue with the creation of Israel in 1948 on the land of Palestine.
13. Sovereignty is the ultimate authority and/or jurisdiction over a people and territory. No other person, group, tribe or country can tell a sovereign entity what to do with its land and/or people. Any sovereign entity can decide and administer its own laws, can determine the use of its land and can do whatever it wants, without any outside influence within the limits of international law.