

# Jus ad bellum issues in the Israel-Gaza war 2008-2009



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# Content

<b><u>1 INTRODUCTION</u></b>	<b>6</b>
<b><u>2 GENERAL PRINCIPLES OF INTERNATIONAL LAW AS SUBSIDIARY SOURCE: “LEX POSTERIOR DEROGAT LEX PRIORI” AND “LEX SPECIALIS DEROGAT LEX GENERALI”</u></b>	<b>8</b>
<b><u>3 THE GAZA STRIP AS A STATE</u></b>	<b>10</b>
<b>3.1 The criteria on statehood</b>	<b>10</b>
3.1.1 The criteria based on the principle of effectiveness	10
3.1.2 The additional criteria based on the principle of withholding the statehood in case of inconsistency with the general values of the world community: human rights, rights of minorities and other important values	17
3.1.3 The actual criteria on statehood	22
<b>3.2 The Hamas and the Gaza strip comply with the current statehood criteria</b>	<b>23</b>
3.2.1 The permanent population of the Gaza Strip	23
3.2.2 The defined territory of the Gaza Strip	23
3.2.3 The Hamas as an effective government	24
3.2.4 capacity to enter into relations with other states	28
3.2.5 The Gaza Strip as a state	29
<b>3.3 A local customary law defining Palestine as a state</b>	<b>29</b>
<b>3.4 The conflict between a local custom and a “world wide” custom</b>	<b>31</b>

<b>4</b>	<b><u>THE PALESTINIAN ENTITLED TO THE RIGHT OF</u></b>	
	<b><u>SELF-DETERMINATION</u></b>	<b>33</b>
<b>4.1</b>	<b>The term “self-determination” in the UN Charter becoming customary law</b>	<b>33</b>
4.1.1	The scope of the term “self-determination” in the UN Charter	33
4.1.2	Content of the UN Charter as customary law	34
<b>4.2</b>	<b>The meaning of the term “self-determination” in the International Covenants on Human Rights becoming customary law</b>	<b>35</b>
4.2.1	Internal self-determination	35
4.2.2	Formulation of the political will free from external interventions	36
4.2.3	Exploitation of natural wealth and resources	36
4.2.4	The way to the independence	37
4.2.5	Who can apply the right of self-determination?	38
4.2.6	Content of the Human Right Covenants becoming customary law	39
<b>4.3</b>	<b>The development of customary law in the area of “external self-determination because of colonial peoples” through the “1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN”</b>	<b>40</b>
4.3.1	The legal impact of a General Assembly Resolution on international customary law	40
4.3.2	The content of the Declaration on Friendly Relations as customary law	40
<b>4.4</b>	<b>The development of customary law in the area of “external self-determination of racial and religious minorities” through the “1970 Declaration on Principles</b>	

<b>of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN”</b>	<b>44</b>
<b>4.5 The development of customary law in the area of “external self-determination of peoples subject to occupation and foreign domination”</b>	<b>45</b>
4.5.1 The impact of the content of the Declaration on Friendly Relations on the specific customary law	45
4.5.2 The impact of the content of Article 1(4) of the first Additional Protocol to the four Geneva Conventions on War Victims on customary law.	46
<b>4.6 The development of customary law in the field of internal self-determination for minorities</b>	<b>47</b>
4.6.1 The evolution of the right of minorities through the conflict about South Tirol	48
4.6.2 The impact of the saving clause of the 1970 Declaration on Friendly Relations on the customary law of internal self-determination	48
4.6.3 The content of the declaration on Friendly Relations as customary law	49
<b>4.7 The current customary law on internal and external self-determination</b>	<b>50</b>
4.7.1 The current legal customary law scope of internal self-determination	50
4.7.2 The current legal customary law scope of external self-determination	51
<b>4.8 The Palestinians right of internal self-determination</b>	<b>51</b>
<b>4.9 The Palestinian Right of external self-determination</b>	<b>55</b>
<b>4.10 Summary of the right of self-determination of the Palestinian people</b>	<b>56</b>

<b><u>5 THE USE OF THE “JUS AD BELLUM” CONCEPT IN THE ISRAEL-GAZA WAR 2008-2009</u></b>	<b>57</b>
<b>5.1 the Hamas and the use of force</b>	<b>57</b>
5.1.1 The Hamas as a national liberation movement	57
5.1.2 The right of the Hamas to use force	58
5.1.3 The rocket attacks on Israel committed by the national liberation movement Hamas	62
5.1.4 The rocket attacks on Israel committed by the State of Palestine	63
<b>5.2 Israel entitled to use force</b>	<b>64</b>
5.2.1 The Israeli attack against the State of Palestine legitimized by the right of self-defense of Article 51 UN Charter	64
5.2.2 The Israeli attack against the national liberation movement Hamas legitimized by the right of self-defense of Article 51 UN Charter	66
<b><u>6 CONCLUSION</u></b>	<b>67</b>
<b>REFERENCES</b>	<b>69</b>

## **1 Introduction**

December and January 2008/2009 was a very challenging time for the Middle East conflict resolution. After more than eight years of constant rocket attacks on its territory, Israel decided to launch a massive ground offensive on the Gaza strip. The declared aim was to stop the constant aggression from the Hamas. International law prohibits the use of force. Only two legal situations entitle parties to its use: the forcible denial of self-determination and self-defense. We will analyze in the following this right of war.

In order to answer these questions the following aspects must be analyzed: the Gaza Strip as a state, Palestine as a state, the right of self-determination of the Palestinian, Hamas as a national liberation movement, the right of a national liberation movement to use force, the official reasons for the use of force in the conflict and the right of self-defense and its scope.

The theses will be divided in three main parts. The first part is entitled “Gaza Strip as a state”. The aim is to use the customary law requirements and to compare those with the actual situation in the Gaza strip. The relation between the Gaza Strip and the entity Palestine will be important. The second part will deal with the self-determination right of the Palestinian people. The main goal here is to verify if the Hamas can be seen as their national liberation movement. The third and last part will deal with the “jus ad bellum” aspect of the war 2008/2009. We will first deal with the right to use force in a self-determination context: the Hamas and their right to use force. The second part will deal with the right of self-defense of Israel.

The aim is to find legal answers. In all the raised questions we will first define the applicable law before applying it to the factual

situation. Although this specific conflict is very political, we will not deal with the political side of it. This thesis will exclusively deal with the legal aspects.

## **2 General principles of international law as subsidiary source: “lex posterior derogat legi priori” and “lex specialis derogat legi generali”**

Before analyzing the legal situation in Gaza, do we have to study the application of two conflict rules in international law: “lex posterior derogat legi priori” and “lex specialis derogat legi generali”.

Treaties, custom, general principles of law recognized by civilized nations and judicial decisions taken *ex aequo et bono* are the main sources of international law. This is defined in Article 38.1 of the ICJ Statute.<sup>1</sup> Here, we can differentiate between the primary sources including treaties, customary law and general principles of law on one side. And the secondary sources including the judicial decisions made *ex aequo et bono* on the other side. The secondary sources are defined by the primary sources. They get their binding character through primary sources. This is the case when a treaty gives birth to an obligation.<sup>2</sup>

The question is where do to find the following conflict rules: “lex specialis derogat legi generali“ and “lex posterior derogat legi priori“. In treaty law, the only rule dealing with a conflict of rules is Article 53 of the Vienna Convention on Law of the Treaties. It establishes the principle of derogation through peremptory norms and creates the concept of *jus cogens*. It doesn't include the two conflict rules. Customary law includes material law. It is not known for including technical legal instruments. What remains are general principle of laws and judicial decisions based on the principle of equity. These general principles are the sovereign equality of states, the non-intervention in the internal or external affairs of other states, the

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<sup>1</sup> Brownlie (2003) p. 4

<sup>2</sup> Cassese (2005) p. 183



prohibition of the threat or use of force, the peaceful settlement of disputes, the respect for human rights and the principle of self-determination.<sup>3</sup> None of these principles deals obviously with conflict rules. Let us focus now on judicial decisions based on the principle of equity. Few authors would argue, that because of the nature of equity as a legal principle in international law, it includes as well other technical principles like the two conflict rules. Few steps are necessary for this conclusion. The first one is, that Article 38 of ICJ Statute defining the equitable principle as binding legal instrument is customary law. The second step would be to expand the scope on other legal instruments like the two conflict rules. Especially the second step seems to be very challenging. A different solution seems to be more elegant. Whenever rules are not applicable in the body of international law to cover gaps, one can "apply general principles of law recognized by the domestic legal orders of States"<sup>4</sup>. This source is called the "subsidiary source".<sup>5</sup> The "lex specialis derogat legi generali" and the "lex posterior derogat legi priori" rule exist without any doubt in most of the domestic legal systems all around the world. Therefore can one conclude that both conflict rules are general principles of law applicable in international law. These general principles are different from the one part of the primary source.

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<sup>3</sup> Cassese (2005) p. 46 - 60

<sup>4</sup> Cassese (2005) p. 183

<sup>5</sup> Shaw (2008) p. 98

### **3 The Gaza strip as a state**

#### 3.1 The criteria on statehood

##### 3.1.1 The criteria based on the principle of effectiveness

###### i. The Montevideo Convention

The Montevideo Convention on the Rights and Duties of States is a treaty signed on the 26 th December 1933 during the seventh International Conference of American States. Although it has just been signed by 19 states, the entire treaty can be seen as restatement of customary international law. Its content is still valid in our days. The principles apply therefore to all legal subjects of international law.<sup>6</sup>

Article 1 of the Montevideo Convention on the Rights and Duties of States defines a state as a person of international law, which must possess the following qualifications: a permanent population, a defined territory, a government and the capacity to enter into relations with other States.<sup>7</sup>

A permanent population is a mandatory requirement under the Montevideo Convention. There is no minimum limit for the size of the population. Vatican City has for example a population of 932 people.<sup>8</sup> An important aspect is as well, that the people living in a specific territory do not have to be nationals of this entity. The reason is obvious. One needs first a state before granting a citizenship to its population. The permanent population does not need the citizenship. The criterion of the permanent population is fulfilled, if people are resident in the territory of a state. They do not have to be nationals. It

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<sup>6</sup> Adams/Carfagna (2006) p.51

<sup>7</sup> Convention on the Rights and Duties of States – December 26, 1933, art 1

<sup>8</sup> Store norske leksikon (2006) p.254

is up to every state to define through municipal law, which requirements have to be given to get the citizenship.<sup>9</sup>

The second mandatory rule is the existence of a territory. There are no rules on the size of the territory. A small state is therefore still a state and has the same rights and duties as a bigger state. The Vatican City has a territory of 0.4 sq km<sup>10</sup>, followed by Monaco which has 1.5 sq km. The size of the territory can be subject to changes.<sup>11</sup> The separation of East Germany from Germany didn't raise any doubts on the validity of Germany as a state. What happens if the territory of a state is fragmented? The answer can be found in the numerous island countries around the world. The primary territory of an island country consists of one or more islands. In 2008, forty-seven countries in the world were island countries. Fragmentation can be of course a disadvantage. But it has no impact on the legal determination of the statehood. A fragmented territory can form a state. What are the consequences of claims to the territory of a state? We can differentiate two different claims. One can be related to the entire territory, the other one just to the boundaries of a state. In 1948, a dispute arose concerning the undefined borders of the Israeli territory. Although the territory was not exactly fixed by precise frontiers, no one denied the statehood of Israel.<sup>12</sup> The International Court of Justice confirmed this view in the North Sea Continental Shelf case: "There is for instance no rule that the land frontiers of a state must be fully delimited and defined, and often in various places and for long periods they are not, as it shown by the case of the entry of Albania in to the League of Nations".<sup>13</sup> The second type of claim usually arises at the admission to the United Nations. This was the case with Kuwait, Belize and Mauritania. Despite the fact that there have been claims on the entire territory the statehood was never questioned.

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<sup>9</sup> Shaw (2003) p. 178

<sup>10</sup> Store norske leksikon (2006) p. 254

<sup>11</sup> Bayefsky (2000) p. 141

<sup>12</sup> Dixon (2007) p. 115

<sup>13</sup> ICJ Rep 1969 p. 3

The third requirement is the presence of an effective government. The ILC Draft convention on state responsibility shows us the strong link between the state and its government. Article 4.1 of the Draft Articles says:” The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State” An act of a state is defined by a link to its governmental organs.

A government is a body that exercise a general control over the territory. This control must reach a certain level of law and order and the establishment of basic institutions.<sup>14</sup> The requested level depends on the circumstances. It is higher, if the formation of the entity violated international law or if the criteria analyses the subsistence of an existing state (contrary to a new born state).<sup>15</sup>

Although parts of Croatia (Eastern Slavonia) were occupied by the Yugoslav National Army, Croatia was recognized in 1992. Much more complex was the situation in the Congo after its independence. At this time, numerous secessional movements existed side by side with the government. This lead to a civil war and to the presence of UN forces. Additionally, the Republic of Congo was largely financially dependent on international aid. It was recognized in the year 1960. We can conclude that the criterion “government” is fulfilled, even if the actual power (effective control over the population, financial independence, military dependence on foreign powers) of an independent government is very low.

The last requirement is the capacity to enter into relations with other states. This criterion has to be analyzed carefully. Two main issues

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<sup>14</sup> Crawford (2006) p. 59

<sup>15</sup> Crawford (2006) p. 59

arise. First of all, “capacity” should be understood as ability.<sup>16</sup> The ability to enter into relations with other states depends largely on the power of the government. Do they have the necessary control over the population to implement obligations of ratified conventions?<sup>17</sup> An example illustrating this view is the comment of Mr. FD Berman, a UK representative against the General Assembly resolution for national liberation movements to be accorded status under the Convention on the Representation of States in their Relations with International Organizations of Universal Character: “ A national liberation movement does not have the same ability as a government to provide the guarantee of good conduct and behavior which a host country is entitled to require.” He clearly refers to guarantees of good conduct and behavior. Few of them can be found in the Vienna Convention on Diplomatic relations. Following the UK representative, a national liberation movement, for example, does not have the ability to exempt a diplomatic agent from all duties and taxes<sup>18</sup>, to grant him immunity from the criminal jurisdiction<sup>19</sup>, and to protect the premises of the mission. The capacity is defined as the factual ability to fulfill international obligations. It might be that entities claiming to be states do not have the necessary control over the territory, it might be that national liberation movements have such an extensive control. Contrary to the comment of the UK representative one can assume, that the ability of fulfilling international obligations have to be analyzed by a case-by-case study. One cannot generalize, that every national liberation movement does not have the necessary logistics to comply with international obligations. On the other side, even recognized states can not always be able to protect, for instance, diplomatic premises. This lack of protection must be linked to a factual inability, not to a political inability. The “Iran Hostage Case” was for example a political

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<sup>16</sup> Kreijen (2004) p. 22

<sup>17</sup> Crawford (2006) p. 61

<sup>18</sup> Art 34 Vienna Convention on diplomatic relations

<sup>19</sup> Art 31 Vienna Convention on diplomatic relations

incapacity.<sup>20</sup> An example of a factual inability would be if the government was not able to fulfill international obligations because of their lack of control over the population. One example is the transitional federal government of the Republic of Somalia. Piracy off the Somali coast is one of the biggest threats for the shipping industry in these areas. The government is obviously not able to protect the international shipping industry. The pirates are operating from the coasts of Somalia. The transitional federal government is responsible for these actions under the ILC Draft on state responsibilities that are customary law. As we have seen, the capacity requirement is a factual one. The capacity to enter into relations with other states is the factual ability to comply with international obligations.

i.i The elements of “effective control over a human community” and the “effective possession and control over a territory”

Quite different from the Montevideo criteria are the following requirements to define statehood: “effective control over a human community” and the “effective possession and control over a territory”.<sup>21</sup>

The effective control over a human community requires a central structure. This structure must exercise a control over the people living in the state. Following Montesquieu, a state has three different branches: the legislative, executive and judiciary branch.<sup>22</sup> A central structure has to use those three sectors to exercise effective control over the people. No one can deny, that if every single branch works correctly, an effective control is granted. These branches do not have to be separated.

The second element is the effective possession and control over a territory. The territory can not belong to any other sovereign state. An

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<sup>20</sup> Cassese (2005) p. 250

<sup>21</sup> Cassese (2005) p. 73

<sup>22</sup> Allison (1996) p.140

actual exile-government not being recognized because of a lack of territory is the one of the Chechnya exile government in Great Britain.

#### i.i.i Comparison with Art. 1 of the Montevideo Convention

If we compare those criteria with the one of Art 1 of the Montevideo Convention 1930, we can assume that they are the same. The necessity of a permanent population is included in the new requirement “effective control over a human community”. Having a defined territory is *ex equo* with the second element: “effective possession and control over a territory”. The presence of a government and the capacity to enter into relations with other states are included in the first and second requirement: “effective control over a human community” and “effective possession and control over a territory”. You need a government and the necessary logistics to comply with international obligations.

One can use both groups of criteria, the one of the Montevideo Convention and the one discussed under 2.1.1.1.2. The result would be the same.

After having defined the previous requirements, we will move on and analyze the impact of the actual recognition.

#### i.i.i.i The role of recognition

Following Art 3 Montevideo Convention, the “political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity.”<sup>23</sup> This is the key meaning of the declaratory theory on recognition.<sup>24</sup> The act of recognition has no impact on the legal personality of the entity. It doesn’t include any rights or obligations. If an entity fulfills the

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<sup>23</sup> Art 3 Montevideo Convention on Right and Duties of states

<sup>24</sup> Brownlie (2003) p. 87

criteria, it is a state independently from the recognition of another state.

This view is compatible as well with the principle of the sovereign equality of states in our days. Existing states are not authorized to decide when an entity is a state and when it is not. This could lead legally speaking to a special situation. What would happen if few states recognize an entity, others don't. Will this entity be than a state or not. The recognition itself has no impact on the legal personality of an entity. This was valid in the 1930's, and is still valid now.<sup>25</sup>

The recognition has different consequences. The first one is, that the recognizing state shows the will to initiate international interaction with the new state. Further, it grants the recognized state a certain protection vis a vis the recognizing state. The recognizing state is legally not able to alter its position concerning the recognition. But one of the most important aspects of the recognition is, that the recognizing state sees its requirements for statehood fulfilled.<sup>26</sup> If we follow these criteria, we can find a certain evolution in the state practice involving additionally the respect for human rights, the rights of minorities and the respect for existing international frontiers.<sup>27</sup> The question is, if these requirements are wide spread enough to become customary law.

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<sup>25</sup> Shaw (2008) p. 471

<sup>26</sup> Cassese (2005) p. 74

<sup>27</sup> Cassese (2005) p.75



3.1.2 The additional criteria based on the principle of withholding the statehood in case of inconsistency with the general values of the world community: human rights, rights of minorities and other important values

i. Guidelines on the recognition of new states in Eastern Europe and in the Soviet Union

After the break-up of the Soviet Union, the representatives of the European Community agreed on the “Guidelines on the recognition of the new states in eastern Europe and in the Soviet Union”. It includes five mandatory requirements for the recognition of a state. The same criteria have been used in the “Declaration on Yugoslavia” for the new born entities after the break-up.<sup>28</sup>

i.i From the criteria on recognition to the criteria on statehood

As we have seen previously is the actual act of recognition irrelevant. It is interesting that in formulating these criteria for the recognition, the members of the European Community may have give born to new criteria for statehood. It might therefore be, that an entity, after fulfilling these criteria, is automatically a state.

A state just grants recognition if it thinks that an entity is a state. An entity is a state if it fulfills the statehood criteria. Every state might have different statehood criteria. It might therefore be possible that an entity is a state for state A, but not a state for state B.

If a sufficient number of states uses the same statehood criteria for recognition, a state practice evolve which might become customary law. If it becomes customary law new additional statehood criteria with a worldwide or a regional scope emerges.

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<sup>28</sup> Tomuschat (1993) p. 324

i.i.i The criteria of the Guideline including general values of the world community

are “- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights

- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE

- respect for the inviolability of all frontiers, which can only be changed by peaceful means and by common agreement

- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability

- commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes<sup>29</sup>

i.i.i.i Application of these principles

In the Declaration on Yugoslavia, the European Community created an Arbitration Commission. Its task was to control, if the new entities resulting from the break-up of Yugoslavia fulfilled the above mentioned requirements.

The first review was the one of the Socialist Republic of Bosnia-Herzegovina. The Arbitration Commission denied the request of the Government of the Socialist Republic of Bosnia-Herzegovina. Following the Commission, the representatives of the Serbs did not approve the declarations of the government. These declarations included for example the acceptance of the United Nations Charter, the Helsinki Final Act, the Charter of Paris and the Universal

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<sup>29</sup> Musgrave (2000) p. 112

Declaration of Human Rights. The main problem was, that the elected representatives of the Serbs didn't agree with those declarations. And without their consent there can be no legitimate background for such declarations. The declaration didn't represent the will of all the peoples of Bosnia-Herzegovina. Consequently all declarations including the acceptance of the UN Charter are not binding. Therefore not a single requirement of the "Guidelines on the recognition of new states in eastern Europe and in the Soviet Union" was fulfilled.<sup>30</sup>

The second opinion dealt with the request of Croatia. Here, the Arbitration Commission denied the sovereignty. The Constitutional Act of the 4 December 1991 didn't include the "Chapter II Article 2(c) of the draft convention of the 4 November 1991" granting a special protection for minorities.<sup>31</sup> The second requirement of the "Guidelines on the recognition of new states in eastern Europe and in the Soviet Union" has therefore not been fulfilled.

In Opinion No. 6 and 7, the Arbitration Commission had to deal with the request of Macedonia and Slovenia. In both cases it approved the request for recognition, holding that both entirely fulfilled the requirements of the "Guidelines on the recognition of new states in eastern Europe and in the Soviet Union".<sup>32</sup>

i.i.i.i The requirements for recognition form the "Guidelines on the recognition of new states in eastern Europe and in the Soviet Union" as customary law

- state practice as part of customary law

Article 38.1 (b) of the ICJ Statute defines international custom as "evidence of a general practice accepted as law". Custom is made up

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<sup>30</sup> Opinion No. 4 of the Arbitration Commission of the International Conference on Yugoslavia on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States

<sup>31</sup> Opinion No. 5 of the Arbitration Commission of the International Conference on Yugoslavia on International Recognition of the Republic of Croatia by the European Community and its Member State

<sup>32</sup> Opinion No. 6 and 7 of the Arbitration Commission of the International Conference on Yugoslavia on International Recognition of the Socialist Republic of Macedonia and the Republic of Slovenia by the European Community and its Member State

of four elements: duration, uniformity, the generality of the practice (usus) and the conviction that such practice reflects law (opinio juris). Concerning the first element, no particular duration is required. A long practice is not mandatory. The rules relating to airspace and the continental shelf have emerged for example recently.

Concerning the second element, substantial uniformity is required (not completely uniformity).<sup>33</sup> In the Asylum case, the ICJ held that there were too many fluctuations and discrepancies in the exercise of a diplomatic asylum to become customary law. It denied the presence of customary law due to a lack of uniformed practices

The generality of the practice is the third requirement. The universality of a practice is not required. States may officially agree or disagree with a state practice. The main problem is the silence of a state. Silence may be an agreement or a lack of interest.

The last element is the opinio juris criterion. It is per definition included. Whenever a state recognizes a different one does it see it's statehood criteria fulfilled.

-Using these criteria, we will analyze the nature of the requirements set by the Guidelines on the recognition of new states in Eastern Europe and in the Soviet Union.

Concerning the first element, no particular duration is required. The Guidelines were adopted in the year 1991. They were applied for all new States in Eastern Europe and in the Soviet Union as well as for new States resulting from the break-up of Yugoslavia. Few requirements of the Guidelines were already applied before. This was the case in 1965, when the UN Security Council asked all states not to recognize Southern Rhodesia as independent state because of its racist policy.<sup>34</sup> This policy fulfills the second element of the guidelines: “guarantees for the rights of ethnic and national groups and minorities

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<sup>33</sup> Brownlie (2003) p. 7

<sup>34</sup> Relolution 216 and 217 of the 12 and 20 November 1965 of the UN SC

in accordance with the commitments subscribed to in the framework of the CSCE“.

Concerning the second element, substantial uniformity is required (not complete uniformity).<sup>35</sup> What is granted is that exactly the same requirements have been used to verify the sovereignty of all New States in Eastern Europe, in the Soviet Union and in Ex- Yugoslavia. As we have seen above, the second requirement was “guarantees for the rights of ethnic and national groups and minorities” “substantially already used in 1965 by the UN Security Council. The organization asked all the states not to recognize Southern Rhodesia because of its racist policy. We have consequently a wide spread uniformity of the used criteria.

The generality of the practice is the third requirement. The universality of a practice is not necessary. Obviously all the members of the European Community of the year 1991 agreed with these criteria.<sup>36</sup> They applied it. The members were at the time: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherland, Portugal, Spain and the United Kingdom. Let us analyze the application outside Europe. These statehood criteria have not been applied in the necessary scope by other countries outside Europe. The statehood requirements by the European Community were not applied in other parts of the world to the necessary extent. The generality of the state practice is not large enough to form an international customary law.<sup>37</sup>

It might be local customary law. Although the Guidelines are not applicable to all international legal subjects, they might form a local custom. The International court of Justice admitted the existence of a local custom in the Asylum case.<sup>38</sup> The following requirements must

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<sup>35</sup> Brownlie (2003) p. 7

<sup>36</sup> Musgrave (2000) p. 112

<sup>37</sup> Shaw (2008) p. 84

<sup>38</sup> Shaw (2008) p.92

be fulfilled to form a local custom: the generality of the practice (*usus*) in the specific geographical area, the conviction that such practice reflects law (*opinio juris*) in the specific geographical area, the acceptance by all the parties concerned, that the state practice is customary law and the proof of its existence by the state that invokes it.<sup>39</sup>

Although not all the European countries were members of the EC in 1991, the number was sufficient to create a local customary law. The signatory states included all the states in southern, western and central Europe (except Austria and Switzerland). The second requirement is the *opinio iuris* element. As we have seen, the states agreed that they will recognize an entity as a state if the criteria have been fulfilled. The recognition itself is a legal procedure. The requirements must therefore fulfill the *opinio iuris* element. The third element of the local custom is granted. The concerned parties agreed on these guidelines. Therefore the “consensus” is given. The last element is more a procedural element. It can just be fulfilled in a case of a dispute. Consequently the requirements for a local custom are fulfilled. Therefore the requirements of the Guidelines in the states of southern, western and central Europe (excluding Austria and Switzerland) are the new additional requirements for statehood.

### 3.1.3 The actual criteria on statehood

As we have seen, can we find two different types of statehood criteria. The first one is lead by the principle of effectiveness.<sup>40</sup> Here, we have shown two different methods: the requirements of Art 1 of the Montevideo Convention and the elements of “effective control” and “state territory”. We will use the criteria of the Montevideo Convention. Besides being the most common customary law, they are more challenging from an academic point of view. Instead of having just two different elements proposed by the other method, Art 1 offers

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<sup>39</sup> Cassese (2005) p.164

<sup>40</sup> Krejien (2004) p.148

four different criteria. They will allow us to analyze more aspects of an entity. Additional to the statehood elements of Art 1 Montevideo Convention, we have concluded, that a local custom in the states of southern, western and central Europe has emerged.

Following this logical approach, the statehood criteria outside the southern, western and central European states are just the ones mentioned by the Montevideo Convention: a permanent population; a defined territory; a government; and the capacity to enter into relations with other States.<sup>41</sup> The general values of the world community did not become customary law outside the mentioned area and are therefore not statehood criteria.

After having defined the legal concept of statehood and its criteria, we will analyze the Gaza Strip under the mentioned elements.

### 3.2 The Hamas and the Gaza strip comply with the current statehood criteria

#### 3.2.1 The permanent population of the Gaza Strip

The first criterion of Art 1 of the Montevideo Convention is the need of a permanent population. The Gaza Strip had in June 2007 a population of 1,481,080 people. As we have seen, are no minimum requirements for the the size of the population required. Vatican City has for example a population of 932 people.<sup>42</sup> Further is it enough, if the people living in the area are resident in it. They do not need a citizenship. The first element of Art 1 Montevideo Convention is therefore fulfilled.

#### 3.2.2 The defined territory of the Gaza Strip

The second element requires the existence of a territory. The Gaza Strip is a coastal strip of land and is 41 kilometers long and between 6 and 12 kilometers wide. It includes 360 square kilometers. The border

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<sup>41</sup> Mullerson (2000) p. 165

<sup>42</sup> Store norske leksikon (2006) p.254

states are Egypt and Israel. It is bigger than Monaco with its 1.4 square kilometers<sup>43</sup> and the Vatican State. As we have seen it is possible to have a fragmented state. It would therefore be theoretical possible to unite the West bank, East Jerusalem and the Gaza Strip under one flag. But because of the actual political situation, including two different political parties exercising control over different territories, it would not fulfill the third requirement of Art 1 of the Montevideo Convention. Therefore will we just focus on the Gaza Strip. Concerning the problem with the Israeli settlements and the linked issue of frontiers, we have seen that precise frontiers are not necessary. The International Court of Justice confirmed this view in the North Sea Continental Shelf case: “ There is for instance no rule that the land frontiers of a state must be fully delimited and defined, and often in various places and for long periods they are not, as it is shown by the case of the entry of Albania in to the League of Nations”.<sup>44</sup> We can consequently conclude, that the second requirement of Art 1 Montevideo Convention is entirely fulfilled.

### 3.2.3 The Hamas as an effective government

The third requirement is the presence of an effective government. A government is a body, which exercises a general control over the territory. This includes the establishment of basic institutions and a law and order system.

#### i. order

The Hamas rules the Gaza Strip with several ministries. It has an interior ministry supervising the Hamas police forces, a telecommunication ministry, a health ministry, an economy ministry, a ministry for refugee affairs and an own army called “Ezzedeen Al-Quassam Brigades”<sup>45</sup>. Further the organization has judges and an entire court system. The foreign policy is expressed by their

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<sup>43</sup> Tessler (1994) p. 401

<sup>44</sup> ICJ Rep 1969 p 3

<sup>45</sup> Chehab (2007) p.39



spokesman. We can therefore find a structure similar to most of the western countries. With these bodies, the Hamas exercises control over the population in different areas in the entire Gaza Strip. As we have seen it in the Congo, entire control over the territory is not necessary to fulfill the statehood criteria. After the Hamas took over the control of the Gaza Strip, the security standard improved amazingly. Contrary to the Congo at the time of its recognition, the opponents and the numerous street gangs were disarmed.<sup>46</sup> Contrary to Croatia at the time of its recognition, the Hamas is the only authority in the Gaza Strip. There are no foreign armies on its territory. The requirement of having established a certain degree of order is therefore fulfilled.

#### i.i law

The legal system of the Gaza Strip is strongly influenced by the Egyptian legal system. The Egyptian authorities used their penal and civil law to rule the Gaza Strip from 1948 to 1967. When the Israeli took over the control in the year 1967, they overruled the Egyptian laws and governed the place through military orders.<sup>47</sup> After gaining a certain degree of autonomy through the Oslo accords, the president of the Palestinian Authority proclaimed on the 20 May 1994, that all the laws and legislation, which have been effective before the 5 th June 1967 in the Gaza Strip, should be reestablished. Therefore the entire Egyptian legal system was applied again. After the takeover by the Hamas in 2007, new norms found access to the legal system. The newspaper Al Hayat of London reported about the implementation of Koranic punishment in the penal code.<sup>48</sup> The requirement of having a legal system is therefore fulfilled.

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<sup>46</sup> Laub (2008)

<sup>47</sup> Silverburg (2002) p.220

<sup>48</sup> Marcus/Crook (2009)

### i.i.i basic institutions

The Gaza Strip has its own medical system including hospitals taking care of the medical needs of its citizens.<sup>49</sup> Further the school system is very advanced. Fifty six percent of the population is under 18 years. They authorities have more than 400 schools for 250 000 students.<sup>50</sup> The Gaza Strip has it's own University called "Islamic University of Gaza". The Hamas has it's own Radio and TV channels.

As we can see, we can find the necessary institutions. This requirement is therefore fulfilled as well.

### i.i.i.i Financial dependence

The Hamas is largely financed by the Iranian and Syrian government.<sup>51</sup> Most of the western governments do not recognize the legitimacy of the Hamas. No financial aids are granted by the major part of west governments. Although the Republic of Congo was largely financially dependent on international aid, it has been recognized. The financial dependence of the Hamas does therefore not effect the government criteria.

### i.i.i.i.i The official position of the Hamas towards "Palastina" and the Palestinian National Council.

The Hamas is lead by Ismail Haniyeh<sup>52</sup>. After their election victory in January 2006 they appointed the Palestinian National Council Ismail Haniyeh as Prime Minister. After the violent Hamas-Fatah conflict dismissed President Mahmoud Abbas Ismail Haniyeh from its office in June 2007. Haniyeh never recognized the dismissal. Neither did the Palastinian National Council. Following their view, he is still entitled to the position of Prime Minister and therefore still exercising the

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<sup>49</sup> Westervelt (2008)

<sup>50</sup> UNICEF (2009)

<sup>51</sup> Esman (2009) p.54

<sup>52</sup> BBC NEWS (2006)

correspondent rights.<sup>53</sup> As Prime Minister of Palestine, he would exercise its functions over the entire territory of Palestine including the Gaza Strip, the West Bank and its capital Jerusalem. The question to answer is to what extent the official position of the Hamas claiming to represent whole Palestine impedes the fulfillment of the effective government criterion of the Montevideo Convention.

As we have seen previously, the Montevideo criteria are based on the principle of effectiveness.<sup>54</sup> This goes hand in hand with the declaratory theory of the actual recognition. The recognition is not a statehood criterion. It is more an evidence for the fulfillment of the respective statehood criteria. The main aim of the declaratory theory of the recognition is to provide clear criteria that are independent from the political will of another state. We can therefore conclude, that the statehood criteria have the aim to avoid a political connotation. This is why the Montevideo criteria are based on facts, on a de facto situation and not on the will of the parties. This includes of course any statement or political position of the Hamas. The Hamas and its political position towards the rest of Palestine can therefore not influence in any way the statehood criteria of the Montevideo Convention, especially not the effective government criterion. As we have seen, a government is a body exercising a general control over a territory. No political aspect or statement of the government is required. The factual situation is decisive. Otherwise the Fatah could claim to be the government of the Gaza Strip as well, basing its argumentation on the Montevideo Convention. This would of course ignore entirely the factual situation on the ground. Such interpretation of the criterion “effective government” would destroy entirely the objectivity and the legal scientific background of the Montevideo Convention.

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<sup>53</sup> BBC NEWS (2007)

<sup>54</sup> Shaw (2008) p. 198

We can conclude that the Hamas fulfills all the criteria. It is therefore an effective government.

#### i.i.i.i.i The position of Taiwan in this context

The position of Taiwan's government is very similar to the one of the Hamas. Both claim to be the official representatives of a certain territory and both do not have effective control over all the territory. Let us analyze more specifically the situation in Taiwan.

Taiwan is ruled by the "Republic of China". Their representatives claim to be an independent state. Further they consider mainland China as part of their territory.<sup>55</sup> It is problematic that the effective control over the mainland is exercised by a different body called the "People's Republic of China".<sup>56</sup> Even if Taiwan is a state under the Montevideo Convention criteria, we have to deny their claim that Mainland China is part of its state. The Montevideo criteria are based on the principle of effectiveness. They are not affected by the political wishes of an entity.

This example illustrates the importance of having a government exercising a general control over a territory. The Hamas and the Republic of China do not have the necessary control. The territory concerned can therefore not be part of their state territory.

#### 3.2.4 capacity to enter into relations with other states

As we have seen previously, has the capacity to enter into relations with other states been understood as ability to fulfill international obligations. We have to find out if the Hamas established a law and order system capable of implementing international obligations.

As we have seen under 2.2.3, the law and order system is very advanced. The Hamas has the monopoly of power in the Gaza Strip. The Fatah and other armed opponents do not exercise any control in

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<sup>55</sup> Ko Shu-Ling (2008)

<sup>56</sup> Taiwans Affairs Office of the state council (2008)

the Gaza Strip. The Hamas is therefore the de facto representative of the Gaza Strip. The Hamas has therefore the ability to implement any rights and obligations originating from international agreements.

Therefore is the requirement to enter into relations with other states fulfilled.

### 3.2.5 The Gaza Strip as a state

Following these analyses we can conclude that all the necessary statehood requirements of Art 1 Montevideo Convention are fulfilled. As we have seen in 2.1.3, the criteria involving the respect of human rights, the UN Charter and the respect of international frontiers are a local custom. The Gaza Strip is not included in the geographical area of this custom. Therefore the statehood criteria are based upon Art 1 of the Montevideo Convention. The Gaza Strip is therefore a state.

### 3.3 A local customary law defining Palestine as a state

What we have not discussed so far is the notion of Palestine vis a vis the Gaza Strip. The state of Palestine is a political entity being recognized by more than 100 states. It is composed by the Gaza Strip, the West Bank and East Jerusalem. A major part of these states are situated in the Middle East: Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, Turkey, United Arab Emirate, Cyprus and Yemen.<sup>57</sup> As we have seen previously, recognition is not a statehood criterion.<sup>58</sup> It has to be seen as evidence, that the statehood criteria of the states recognizing the other entity as a state, have been fulfilled. This means, that the statehood criteria of all the states recognizing Palestine as a state have been fulfilled. This does not mean, that all the states have the same criteria. The only conclusion possible is, that even if all the statehood criteria might be completely different from each other, the result would be the same:

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<sup>57</sup> Palestinian National Authority (2003)

<sup>58</sup> Brownlie (2003) p. 87

Palestine as a state. And this result could become customary law under specific circumstances.

We need *opinio iuris* and a sufficient wide spread state practice for the birthday of a new customary law. As we have seen above, more than 100 are states considering their individual statehood criteria as fulfilled. On the other side do we have a sufficient amount of states on a worldwide level not recognizing Palestine as a state and therefore not seeing its statehood criteria as fulfilled. We have therefore not enough state practice for the existence of a worldwide customary law. We might have the emergence of a local customary law.

A local customary law is just applicable in a certain geographical region. Additional to the *opinio iuris* element must a sufficient state practice be presented. In the case of a dispute must the initiating party prove the existence of a local custom. The region concerned would be the Middle East. Following the English Encyclopedia, the Middle East is composed by Cyprus, the Asian part of Turkey, Syria, Lebanon, Israel, the West Bank and Gaza, Jordan, Iraq, Iran, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Egypt and Libya.<sup>59</sup> If we compare this list with the countries considering its criteria of statehood as fulfilled, just Israel and Libya were not in it. We can therefore conclude, that a local state practice emerged. Due to the nature of the statehood criteria, the *opinio iuris* element is fulfilled as well. Independently from the content of the criteria have all of them in common to grant Palestine the status of a state. We can therefore conclude, that a local custom emerged in the Middle East treating Palestine as a state. The scope of this law is very narrow and specific: the state Palestine.

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<sup>59</sup> The Columbia Encyclopedia (2008)

### 3.4 The conflict between a local custom and a “world wide” custom

Following our previous analyses we have the Montevideo Convention Criteria leading us to the conclusion, that the Gaza Strip is a state. On the other side do we have a local custom law treating Palestine as a state. It is obvious, that both laws are contradicting each other. We must therefore apply conflict rules. As we have seen under chapter 2., are two conflict rules available as general principles of law. The first one states, that the more specific rule derogates the more general one. Few arguments support the opinion that the local custom is more specific. A reason supporting this view is of course the content of the local customary law: Palestine as a state. It can just be applied to this specific entity. No other entity in the geographical area of the Middle East can rely on this law. This law has Palestine as a state as content. On the other side do we the worldwide application of the Montevideo Convention Criteria.

The second conflict rule is as well confirming the derogation of the worldwide custom through a local customary rule. *Lex posterior derogat legi priori*. The younger rule derogates the older one. The Montevideo Convention 1933 was seen already at the time as a restatement of customary law.<sup>60</sup> On the other side do we have a local custom emerging after the Palestinian Declaration of Independence on the 15th November 1988<sup>61</sup>. It is obvious, that this local custom is younger than the Montevideo Convention and its content.

Few arguments can be found to deny the derogation of a worldwide custom. First, one might argue, that a local custom would lead to a local state. This entity is a state on a local level, but not on a worldwide level. This argument can be rejected by the fact, that international law does not know different categories of states. A state is an international legal subject. States with less rights and obligations

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<sup>60</sup> Adams/Carfagna (2006) p.51

<sup>61</sup> Schulze (2008) p. 135

do not exist. We can therefore conclude, that a state on a local level is as well a state on a worldwide level.

Another situation confirming the use of other criteria than the one of the Montevideo Convention is the political one in Taiwan. The government of Taiwan claims Mainland China as its own. Twenty-three states recognized the entity and therefore their claims on Mainland China.<sup>62</sup> Again, the recognition has no impact on the statehood of an entity. It has to be seen as evidence, that the statehood criteria of the recognizing states are fulfilled. It is obvious, that these criteria do not include the effective control element.

All these arguments lead me to the conclusion, that Palestine (West Bank, Gaza Strip and East Jerusalem) is a State.

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<sup>62</sup> The Hindu (2008)



## **4. The Palestinian entitled to the right of self-determination**

### 4.1 The term “self-determination” in the UN Charter becoming customary law

#### 4.1.1 The scope of the term “self-determination” in the UN Charter

The term “self-determination” is used in two different Articles. First of all in Article 1(2) UN Charter: The Purposes of the United Nations are “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”. Further, it is used in the Article 55: “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 United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>63</sup>

Following the intensive debates on the term “self-determination” by the founding fathers of the UN Charter and the wording of the Charter itself one can conclude that the term “self-determination” does not include “the right of a minority or an ethnic or national group to secede from a sovereign country”, “the right of a colonial people to achieve political independence”, “the right of the people of a

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<sup>63</sup> Duursma (2008) p.12

sovereign State to choose its rulers through regular, democratic and free elections” and “the right of two or more nations belonging either to a sovereign country or two sovereign countries to merge”(negative criteria).<sup>64</sup> Following Cassese, the term “self-determination” has to be understood as “self-government” defined in article 73(b) and 76(b) of the UN Charter. The link does make sense. Why should one grant two different scopes of self-determination\self-government in one legal framework. It would not make sense, if we had on one side the term “self-determination” granting a specific amount of rights and obligations and on the other side the term “self-governance” having a different scope of rights and obligations. Article 76(b) UN Charter leaves the state in charge of the trusteeship system the choice between promoting a system towards self-governance or independence. This means that the legal concept of “self-government” is a different one of the one of independence. As we know an independent state is entitled to the largest amount of rights and duties. A “self-government” has therefore a smaller scope of rights and duties.

The interpretation of the term “self-determination” allows us to conform with the statements of numerous states not including the “negative criteria” and the structure of the UN Charter.<sup>65</sup>

#### 4.1.2 Content of the UN Charter as customary law

Because of the widespread ratification of the UN Charter, its widespread application (state practice) and its widespread legal perception (*opinio iuris*), the content including the term “self-determination” is customary law.<sup>66</sup>

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<sup>64</sup> Cassese (1995) p.42

<sup>65</sup> Cassese (1995) p.43

<sup>66</sup> Gazzini (2008) p. 118

## 4.2 The meaning of the term “self-determination” in the International Covenants on Human Rights becoming customary law

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Culture Rights are two multilateral treaties (UN treaties) based on the Universal Declaration of Human Rights. They entered into force in 1966. Both treaties define the term self-determination in their first article. The wording is the same.

“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”<sup>67</sup>

### 4.2.1 Internal self-determination<sup>68</sup>

This article entails several new principles. The first one is formulated in Article 1(1). The people have the right to “freely determine their political status”. It is their right, to choose their political

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<sup>67</sup> Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Culture Rights

<sup>68</sup> Cassese (1995) p. 52

representatives free from any influence or intervention from their domestic authorities. We face here the relation between the will of the people and their authorities. The authorities have to accept and support the decisions of the people. This right is known as internal self-determination. In order to reach this level of self-determination, the people need to have access to all the information necessary to form a free will. The Covenant on Civil and Political Rights includes therefore among others the freedom of expression, the freedom of association, the right to vote and the right of peaceful assembly.<sup>69</sup>

#### 4.2.2 Formulation of the political will free from external interventions<sup>70</sup>

The second principal included in Article 1(1) deals with the relationship between the domestic political institutions and an external foreign power. Article 1(1) states clearly, that people have the right to determine freely their political status. This freedom of determination is not restricted to the national level. It is an absolute one. The scope includes therefore any international interference as well. A state is not allowed to influence the political status and the economic, social and cultural development of another entity. It is not allowed to influence the political will of the people of an entity. Nor is it allowed to impede it. A military occupation violates Article 1(1) as well if it violates the mentioned freedom of political self-determination.<sup>71</sup>

#### 4.2.3 Exploitation of natural wealth and resources

Article 1(2) grant the people of a specific territory the right to exploit the natural resources, which are located in the territory. Following Article 1 the inhabitants of a territory must have the right to choose their political representatives without any interference. The elected people have, then, the authority to use the natural wealth and

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<sup>69</sup> Roach (2005) p.25

<sup>70</sup> Cassese (1995) P. 53

<sup>71</sup> Roach (2005) p.25

resources to the extent covered by the will/mandate granted by the electors.<sup>72</sup>

#### 4.2.4 The way to the independence

Article 1(3) obliges the signatories of the two Covenants to promote “the realization of the right of self-determination”. The states concerned have the duty to allow people of “dependent territories”<sup>73</sup> to decide their international status. This means, that they can choose between becoming an independent state or staying with another entity/state. Dependant territories include non-self-governing and trust territories.

The obligation to promote independence was already mentioned in Article 76(b) UN Charter. Here, the administrating power had the choice between promoting a “self-government” or the “independence” of the dependent territory. The main difference was the lack of link between the term “self-determination” and the obligation to promote these two alternatives for the dependent territories. By introducing a link between Article 1(3) of both Human Right Covenants and the UN Charter, one has to assume that the two Covenants can be seen as “additional protocol” to the UN Charter. This would be valid for those parties having signed and ratified the UN Charter and at least one of the Covenants. This “additional protocol” establishes the link between the legal term “self-determination” and the right of independence of dependent territories. The term self-determination” includes therefore the duty to promote independence for dependent territories.<sup>74</sup>

The duty to promote a “self-government” does not exist anymore. Article 1 of the Human Right Covenants states clear that the main aim is to offer the concerned people the option to define their international status. The option that the administrating state can choose between

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<sup>72</sup> Orford (1995) p.145

<sup>73</sup> Cassese (1995) p. 57

<sup>74</sup> Cassese (1995) p.52

facilitating independence or a self-government has been overruled. As we have seen is the principle “lex posterior derogat legi priori” principle applicable in treaties as well as in customary international law. Therefore a young customary law will derogate an older one if it is contradictory and deals with the same subject. It is obvious that the choice of international status is in contradiction with the administrating states right to choose between independence or self-government. Article 1 UN Covenant overrules therefore Article 76(b) of the UN Charter.

Because of the customary law character of the UN Charter and the two Human Rights Covenants<sup>75</sup>, this changement is affecting all the countries on a worldwide level.

#### 4.2.5 Who can apply the right of self-determination?

The right of self-determination is applicable to the following people: “entire populations living in independent and sovereign States, entire population of territories that have yet to attain independence and populations living under foreign military occupation.”<sup>76</sup> Before ratifying the Covenant, India took a reservation. For India, the right of self-determination was just applicable to people being occupied by a foreign power. This reservation implies, that the original scope of the term “self-determination” includes not just domination by a foreign power, but as well domination by the domestic authorities. The only reason to make a reservation is to avoid that the original agreed interpretation of the term. France and Germany disagreed with India’s statement. For them, the right of self-determination has to be applicable to all the people. These statements underline the original agreed meaning of the term “self-determination”. A second problematic issue in this context is the status of minorities. Article 27 of the Covenant on Civil and Political Rights differentiate between

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<sup>75</sup> Chen (2000) p. 210

<sup>76</sup> Cassese (1995) p.59

three types of minorities: ethnic, religious and linguistic minorities. While the draft of the Covenant was debated, the majority of states agreed, that these minorities are not entitled to the right of self-determination. The main fear of these states was, that this right would create instability in established states. Therefore ethnic, religious and linguistic minorities are not entitled to the right of self-determination within a state.<sup>77</sup> This exception has to be limited to states having these minorities living within their borders. It does not affect a situation where a minority is controlled by a foreign power.

Consequently, all people are entitled to the right of self-determination excluding ethnic, religious and linguistic minorities. This exception is limited to the minority and the state they belong to.

#### 4.2.6 Content of the Human Right Covenants becoming customary law

The International Covenant on Civil and Political Rights has been signed by one hundred and thirty eight states, eight of them still have to ratify the treaty. The International Covenant on Economic, Social and Culture Rights has been signed and ratified by one hundred and sixty parties. Additionally six have signed but not ratified it yet. Because of the widespread application of its content (state practice) and its legal perception (*opinio iuris*), we can conclude that it is customary law.

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<sup>77</sup> Henrard (2000) p.295

4.3 The development of customary law in the area of “external self-determination because of colonial peoples” through the “1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN”

4.3.1 The legal impact of a General Assembly Resolution on international customary law

The “1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN” was formulated in the GA Resolution 2625(XXV) on the 24 October 1970. Before we analyze the content of the Resolution must we first define the legal impact of a GA Resolution on international customary law.

The General Assembly is composed by the member states of the United Nations. Each member state has one vote.<sup>78</sup> The resolution is the expression of the will of its member. In order to become international customary law, the content of a resolution has to become state practice and need to be applied as law (*opinio iuris*) . Every resolution of the GA fulfills the *opinio iuris* element.<sup>79</sup> The challenging part is to analyze, if the resolution is followed by the necessary amount of state practice.

4.3.2 The content of the Declaration on Friendly Relations as customary law

i. *Opinio iuris*

The fact that the principles of a Declaration on Friendly Relations have been formulated in a resolution of the GA implies that its content

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<sup>78</sup> Article 18(1) UN Charter

<sup>79</sup> Amerasinghe (2005) p. 190



is legally binding. Therefore the *opinio iuris* element is fulfilled.<sup>80</sup> The fulfillment of the “state practice” requirement has to be analyzed separately from the resolution. The content of the resolution has to be applied by a sufficient number of states to become customary law.

#### i.i State practice

In order to analyze the “state practice” side of the declaration, we will have a look at the content of it. If all the declaration or parts of it were applied by states in a sufficient amount, the state practice element would be fulfilled. Therefore must we first define the content of the Declaration. The following paragraph of the declaration deals exclusively with the right of self-determination:

“The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

- (a) To promote friendly relations and co-operation among States; and
- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

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<sup>80</sup>Lowe /Warbrick (1994) p.11

and bearing in mind that the subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the

principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.”<sup>81</sup>

As we have seen under 3.2.4, Article 1(3) of the two Human Right Covenants obliges the states to allow the “dependent territories” to choose their international status. These dependent territories were non-self-governing and trust territories. Following the wording of the Declaration on Friendly Relations were colonial territories not included in the scope of non-self-governing territories. The declaration makes a clear differentiation between colonial territories and non-self-governing territories. The question regarding the customary law issue is, if a sufficient quantity of state practice had as consequence, that the scope of self-determination has been extended to colonial territories. The International Court of Justice stated in its advisory opinion on Namibia in 1971, that “the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed and expanded to all territories whose peoples have not yet attained a full measure of self-government (Art. 73). Thus it clearly embraced territories under a colonial régime.”<sup>82</sup>

The ICJ admits the existence of customary law extending the right of self-determination to colonial territories. The reason for the existence of customary law must consequently be a large state practice combined with several GA resolutions granting colonial people the

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<sup>81</sup> GA Resolution 2625 (XXV), 24 October 1970

<sup>82</sup> ICJ Report 1971, para. 52

right of self-determination. The right of self-determination includes therefore colonial territories as well.<sup>83</sup>

4.4 The development of customary law in the area of “external self-determination of racial and religious minorities” through the “1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN”

The Declaration on Friendly Relations states, that: “Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour.” The declaration grants racial and religious minorities to get access to the political decision making process of the entity the minority belongs to. This internal-self-determination right cannot lead to an external self-determination right. Few authors argue, that by denying the right of internal self-determination to these two groups and additionally violating their human rights, they would be entitled to external self-determination. They would have the right to secede from the majority and become an own and independent entity. This view finds no support in state practice and can therefore not be seen as binding.<sup>84</sup> Racial and religious minorities have therefore no right of external self-determination.

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<sup>83</sup> Duursma (2008) p. 82

<sup>84</sup> Cassese (1995) p. 123

## 4.5 The development of customary law in the area of “external self-determination of peoples subject to occupation and foreign domination”

### 4.5.1 The impact of the content of the Declaration on Friendly Relations on the specific customary law

As we have seen under 3.3.1, does the content of a GA Resolution always fulfill the *opinio iuris* criterion. The state practice element has to be subject to a different analysis. The declaration on Friendly Relations deals extensively with self-determination of peoples subject to occupation and foreign domination. It defines the “subjection of peoples to alien subjugation, domination and exploitation”<sup>85</sup> as a violation of the self-determination principle. The other necessary element is state practice. Here, we face the problem not being able to determine the necessary amount of state practice. The main problem was the different perception of the legal terms alien subjugation, domination and exploitation.<sup>86</sup> Third World and socialist States had a much narrower application scope for the term “self-determination” than western states. This difference of state practice between the two blocs would impede the formation of a uniform customary law. No customary law emerged consequently through the Declaration on Friendly Relations in this area.<sup>87</sup> The only possibility would be the development of two different local customary laws respectively valid in each of the blocs. The unification of this concept was therefore not reached by the Declaration on Friendly Relations.

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<sup>85</sup> GA Resolution 2625 (XXV), 24 October 1970

<sup>86</sup> Cassese (1995) p.124

<sup>87</sup> Cassese (1995), p. 92

#### 4.5.2 The impact of the content of Article 1(4) of the first Additional Protocol to the four Geneva Conventions on War Victims on customary law.

Article 1(4) of the Additional Protocol extends the application of the scope to armed conflicts, where “peoples are fighting against colonial domination”<sup>88</sup>, “alien occupation and against racist regimes in the exercise of their right of self-determination.”<sup>89</sup> In January 2007, the Additional Protocol has been ratified by 167 states. Nevertheless is the customary law character of Article 1(4) very controversial.<sup>90</sup>

The major players on the international scene not having ratified the Protocol were the United States of America, Israel, Pakistan, Iran and Iraq. One reason for not ratifying the Protocol was the extension of the combatant’s immunity. It would include people not wearing uniforms or emblems. This would include terrorists as well. Another reason was the obligation to extend the protection to people fighting for their right of self-determination. If there has been a disagreement, it was due to the additional protection granted to the specific groups. No one disagreed with the notion and the scope covered by the term “colonial domination and alien occupation”.

“Colonial Domination and alien occupation” include all situations, where a Power controls people of a foreign territory by force. The “force” element is the consequence of an armed conflict. The “foreign territory” requirement is included in the words ”colonial” and “alien”. It does not include economic exploitation.<sup>91</sup> All states having ratified the convention agreed obviously with this definition. The position of the non-ratifying states on the mentioned term is therefore important. As we have seen, the reasons for not signing the Protocol were not linked to the definition of “colonial domination and alien

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<sup>88</sup> Article 1(4) of the Additional Protocol to the Geneva Convention 1949

<sup>89</sup> Article 1(4) of the Additional Protocol to the Geneva Convention 1949

<sup>90</sup> Gardam (1993) p. 157

<sup>91</sup> Cassese (1995) p.94

occupation”. We have therefore on one side one hundred sixty seven states agreeing with the scope of the definition and on the other side states being silent on this issue. No opposition on this subject has been registered in the debates.

The *opinio iuris* element is fulfilled. All the ratifying states declared to apply the articles of the Additional Protocol in their domestic legal framework. The state practice element is the challenging part. As we have seen above, no non-ratifying state disagreed with the legal scope of the term “colonial domination and alien occupation”. Additionally, in the frame of several international situations, state practice confirming the scope of Article 1(4) has been documented.<sup>92</sup> Western countries have taken most of these state practices. This does not mean, that other countries around the world had different state practices. It is just very difficult from a practical point of view to get access to the state practices of non-western countries. Most of them do not document their state practices in journals accessible to the public. Nevertheless, the wide spread documented state practice from western countries and the wide spread acceptance of the scope of the term “colonial domination and alien occupation” of the Additional Protocol leads to the conclusion that the state practice requirement is fulfilled. In Article 1(4) the defined scope of “colonial domination and alien occupation” is therefore customary law.

We can therefore conclude, that people of a foreign territory being controlled by another power by force do have the right of self-determination.

#### 4.6 The development of customary law in the field of internal self-determination for minorities

As we have seen under 3.2.1 is internal self-determination the right of the people to choose their political representatives without any

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<sup>92</sup> Cassese (1995) p. 94

interferences from domestic and external authorities. They have the right to choose their form of government. The history shows, that the access to the political decision-making process has especially been denied to racial, religious, ethnic and indigenous minorities. We will analyze to what extent emerging customary law grants these minorities the same rights as the cultural majority of an entity.

#### 4.6.1 The evolution of the right of minorities through the conflict about South Tirol

South Tirol is the name of a region in North Italy. The majority of the people are a German-speaking minority. Austria requested from Italy in the sixties to grant this minority full autonomy. It took this issue to the UN General Assembly.<sup>93</sup> This one denied its competence claiming that it belongs to the domestic jurisdiction of Italy. Few authors interpret the two general assembly resolutions dealing with the South Tirol conflict in the way, that they oblige states to grant full autonomy to minorities within their borders.<sup>94</sup> Even if one is able to prove the existence of general assembly resolutions and state declarations containing this interpretation, one has to admit the lack of a conform state practice. The obligation to grant full autonomy to minorities within a state is therefore not customary law.

#### 4.6.2 The impact of the saving clause of the 1970 Declaration on Friendly Relations on the customary law of internal self-determination

The saving clause is the following: “Nothing in the foregoing paragraph shall be construed as authorizing or encouraging any actions which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent

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<sup>93</sup> Rainey (1996) p. 31

<sup>94</sup> Cassese (1995) p. 106



states conducting themselves in compliance with the principle of equal rights and self-determination of people as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”<sup>95</sup> The term “race, creed or colour” includes all racial and religious groups.<sup>96</sup> It does not include ethnical, linguistic and national groups. This means that the saving clause grant just the racial and religious minorities the right of access to the government. These groups are entitled to the same rights than the majority of the entity.

#### 4.6.3 The content of the declaration on Friendly Relations as customary law

The question to answer is, if the part of the declaration granting internal self-determination to racial and religious groups became customary law. Because of the state practice and the General Assembly Resolutions in different situations, one can conclude, that a customary law emerged granting racial minorities the right of internal self-determination.<sup>97</sup> On the other side, no state practices have emerged granting religious minorities the rights of the declaration.<sup>98</sup> We can conclude that only racial minorities have the right of internal self-determination in the frame of an entity. They are entitled to participate in the same way as the majority at the political decision-making process.

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<sup>95</sup> 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN

<sup>96</sup> Radan (2002) p. 57

<sup>97</sup> Cassese (1995) p. 120

<sup>98</sup> Cassese (1995) p.120

#### 4.7 The current customary law on internal and external self-determination

The current legal scope of “ self-determination” is composed by two main legal concepts: the internal self-determination and the external self-determination.

##### 4.7.1 The current legal customary law scope of internal self-determination

The internal self-determination grants the people of an entity the right to choose their political representatives free from any domestic or external influences. It is their right to freely determine their political status. Additionally, racial minorities have access to the same political decision making process as the majority.

The legal perception is very interesting here. As we have seen under 3.2, the 1966 International Covenant on Human Rights defines the scope of internal self-determination. It grants all the people of an entity the right to choose their political representatives. On the other side grants customary law racial minorities the same access to the political decision making process. Other minorities belonging to the same entity do not have the right to access to the political decision-making process in the same way. Both concepts are customary law. It is obvious that both are contradicting each other. The first rule grants all the people belonging to a territory the right to participate in the political decision making process. The other gives just racial minorities the right to access to the political system to the same extent as the majority. As we have seen, the general principles of law “*lex posterior derogat legi priori*” is applicable in public international law. This would mean, that the younger rule derogate the older one, in this case the principle emerging from the International Covenant on Human Rights. We can therefore conclude, that any ethnic, linguistic, indigenous majority can base their political participation right on the

customary law emerging from the International Covenant of Human Rights. All other minorities (except the racial) can therefore not base their political decision making right on the right of internal-self-determination. We can therefore conclude, that the customary law scope of the term “internal self-determination” includes all religious, racial, ethnic, linguistic and indigenous majorities. It can as well be applied for racial minorities. Further it grants no minority the right of full autonomy. Additionally, it grants the people of a specific territory the right to exploit the natural resources, which are located within their territory.

Beside the internal self-determination we have the concept of external self-determination.

#### 4.7.2 The current legal customary law scope of external self-determination

The concept of external self-determination includes the duty to allow people living in non-self-governing territories, trust territories, colonial territories and territories under occupation or domination by another power to decide their international status. They can choose between becoming an independent state or staying with another entity. People living within the border of a state and representing an ethnic, religious, racial or linguistic minority do not have the right of external self-determination vis a vis the state they live in.

#### 4.8 The Palestinians right of internal self-determination

As we have seen, the right of internal self-determination covers the rights of the people living in an entity to choose their political representatives without any internal or external interference. It is their right to formulate their will. This right includes of course all the necessary freedoms and instruments to form a will. It is for instance impossible to formulate a political will without the necessary amount

of information or the ability to change opinions with each other. All these elements are included in the right of internal self-determination.<sup>99</sup>

The area of study is the State of Palestine and its citizen. As people living in a state, the Palestinian have the right of internal self-determination. We will focus on their relationship to Israel. Several periods are interesting. The first covers the period around the elections in January 2006. First we have to focus on the pre-election situation. As we have seen East Jerusalem is part of the Palestinian state. At the election in January 2006, the Israeli government allowed the Palestinian living in East Jerusalem to participate at the elections. Nevertheless the Hamas was banned from the election process. Their representatives were not allowed to campaign in the area of East-Jerusalem.<sup>100</sup> Further they have been briefly detained and their financial assets have been frozen. This represents a clear violation of the right to vote. The Palestinian could not express their will. Further 200 000 Palestinian are living in East Jerusalem.<sup>101</sup> This number is decisive for the formation of the will of the majority. Therefore this external intervention clearly violates the right of internal self-determination.

The second period focuses on the time between the elections and the Battle of Gaza 2007. After the formation of a Hamas-lead-government the Israeli Cabinet stopped the payment of about 50 million dollar of tax money collected on behalf of the Palestinians.<sup>102</sup> This money belonged to the Palestinian authorities. Further the Israeli government restricted the movement of money, people and goods into and out of the Gaza Strip and the West Bank.<sup>103</sup> As we have seen under 3.2.2,

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<sup>99</sup> See chapter 3.2.1

<sup>100</sup> Saul (2006)

<sup>101</sup> Saul (2006)

<sup>102</sup> CNN INTERNATIONAL (2006)

<sup>103</sup> Erlanger (2006)

can certain actions by a foreign power lead to an interference with the political decision making process. This includes the violation of the freedom of expression, the freedom of association, the right to vote and the right of a peaceful assembly determined in the International Covenant of Civil and Political Rights.

These economic sanctions did not reach a sufficient degree to have an impact on the structures necessary to form a will. Not a single mentioned freedom (expression, association...) was influenced by these measures. The tax withholding policy was applied until the Battle of Gaza 2007. Thanks to the financial aid of Iran, the lack of money and the economic sanctions didn't lead to a situation influencing the ability of the people to form their will.

A decisive turning point was the Battle of Gaza. The Battle of Gaza took place in June 2007. It was a military conflict between the Hamas and the Fatah. The result was the takeover of the Gaza Strip through the Hamas. The political consequence was the dissolution of the Palestinian government and the declaration of a state of emergency.

The third period lasts from the end of the battle of Gaza till the begin of the Israeli ground attack on Gaza in 2008. After the takeover of the Gaza Strip, the economic sanctions against the West Bank were lifted. On the other side started an extensive blockade of the Gaza Strip. This blockade consisted of a land and a sea blockade. The Israeli granted just basic humanitarian supplies access to the Strip: human food, animal food, groceries and medicines. Nevertheless two-third of the people living in Gaza are food-insecure. Other items like cars, fridges or computers are refused entrance. The fuel imports were largely cut. Because of this reduction, the Gaza power plants operated at a very low level. The economic sanction had a huge impact on business as well. Therefore the unemployment rate is around 40 %. Further, the

sanctions lead to the worsening of the health situation of the population.<sup>104</sup>

Although this huge impact of the economic sanctions, one cannot deny the fact, that the Hamas got huge foundings from the governments in Iran and Syria. Further the Hamas did stabilize the security in the Gaza Strip. It installed very advanced administrative bodies and manage its own radio and TV channel. As we have seen above, the violation is of one of the freedom principles of the International Covenant on Civil and Political Rights as well a violation of the internal self-determination principle. Not a single of these principles is affected by the economic sanctions. The right of internal self-determination is therefore not violated.

The last period covers the military conflict between the Hamas and the Israeli Government in December and January 2008/2009. We will analyze the military offensive under their compliance with the principles of the International Covenant of Civil and Political Rights: freedom of expression, freedom of association, and right of a peaceful assembly. In this Conflict, between 1166 and 1417 Palestinians and 13 Israelis were killed. Additional 4000 homes have been destroyed. Ten of thousands people have been left homeless. Among the targets hit were mosques, private houses, medical facilities and schools.<sup>105</sup> This environment impedes the exchange of information and the possibility to meet each other. All public institutions were potential targets. A war area is very freedom unfriendly. It is for instance impossible for people to meet at public places. The risk of being targeted was too high. The necessary exchange of information and the formation of a political will was therefore not possible. The right of internal self-determination is consequently violated. This violation might under certain circumstances been legitimated. This would cover any

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<sup>104</sup> Sharp (2009)

<sup>105</sup> Maqbool (2009)

intervention based on the right of self-defense of the UN Charter. We will deal with this issue in the next chapter.

#### 4.9 The Palestinian Right of external self-determination

As we have defined previously, is the State of Palestine composed by the Gaza Strip, the West Bank and East Jerusalem. East Jerusalem is still occupied by Israeli forces. The status of East Jerusalem as occupied territory results from its nature as part of the Palestinian state. It is a foreign territory being controlled by another power by force. It can therefore not be seen as non-self-governing territory, trust territory or colonial territory. This view is being approved by the 1967 United Nations Security Council Resolution 242 calling Israel to withdraw from the occupied territories.<sup>106</sup> The people living in East Jerusalem have therefore the right of external self-determination. They can choose their international status.<sup>107</sup>

The Gaza Strip and the West Bank are part of the State of Palestine. They are controlled by Palestinian parties and are therefore not non-self-governing, trust, colonial or occupied territories. Economic sanctions are not a criterion for the mentioned territories. The economic sanctions against the Gaza Strip can therefore not change the status of the Gaza Strip in a non-self-governing, trust, colonial or occupied territory. Consequently, People living in these areas do not have the right of external self-determination.

The Palestinian community living in Israel outside the State of Palestine (Gaza Strip, the West Bank and East Jerusalem) represents a religious, racial and linguistic minority, which is not entitled to the right of external self-determination.<sup>108</sup>

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<sup>106</sup> United Nations Security Council Resolution 242/22 November 1967

<sup>107</sup> Chapter 4.5

<sup>108</sup> Chapter 4.7.2

#### 4.10 Summary of the right of self-determination of the Palestinian people

As we have seen above, are the people living in the State of Palestine entitled to the right of internal self-determination. This right has been violated in East Jerusalem at the elections 2006 and in the Gaza Strip at the Israeli military offensive 2008/2009.

Further the people living in East Jerusalem are entitled to the right of external self-determination. It is the right to choose their international status.



## **5 The use of the “jus ad bellum” concept in the Israel-Gaza war 2008-2009**

### 5.1 The Hamas and the use of force

#### 5.1.1 The Hamas as a national liberation movement

##### i. The right of the people being delegated to the national liberation movement

A national liberation movement is an organized group representing people entitled to the right of self-determination.<sup>109</sup> As we have seen previously, we have two different types of self-determination: the internal and the external. A national liberation group has the aim to liberate people from a colonial domination, a racist regime or an alien occupation.<sup>110</sup> The colonial domination and the alien occupation are situations which entitle people to the right of external self-determination. As we have seen under 3.7.2 people belonging to a racial minority do not have the right of external self-determination. What they do have is the right of internal self-determination. We have therefore three different situations. In the case of a colonial domination or an alien occupation the national liberation movement represents the people and their right to choose their international status. In the case of a racist regime the national liberation movement represents the racial minority and their right to participate at the internal political decision making process. We can therefore conclude, that the action scope of a national liberation movement depends actually on the specific background.

The movement represents the interests and the rights of the concerned people. All the measures taken by the movement have therefore to be

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<sup>109</sup> Article 96.3 Protocol Additional to the Geneva Conventions of 12 August 1949

<sup>110</sup> Cassese (2005) p. 140

within the scope of the self-determination right of the people. We can therefore conclude, that all the internal and external self-determination rights of the people are delegated to the correspondent national liberation movement.

#### i.i Application of the legal concept on the Hamas

Let us apply the concept to the people living in the State of Palestine. The Hamas won the elections in 2007. It is therefore the legitimate representative organization of the people living in the State of Palestine. Further East Jerusalem is part of the State of Palestine and occupied by the Israeli forces. We can therefore conclude, that the Hamas is a national liberation movement representing the rights of the people living in the occupied East Jerusalem.

This aspect does not affect Hamas position in the Palestinian government. As we have seen previously, the leader of the Hamas is prime minister of the State of Palestine. A government function does not affect the status as national liberation movement. A group can be part of the government in one state and a national liberation movement in the same entity. This would have the legal consequence, that the group has the rights and obligations of a government. At the same time has it as well the rights and obligations of a national liberation movement. The Hamas is therefore entitled to be treated as the government of a state and as a national liberation movement.

### 5.1.2 The right of the Hamas to use force

#### i. The right of a national liberation movement to use force

A customary law emerged granting people subject to colonial domination, foreign occupation or a racist regime the right to use force, if their right of self-determination is forcibly denied.<sup>111</sup> This means, that if a power impede the peoples right of self-determination in a forcible way, they are entitled to use force.

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<sup>111</sup> Cassese (1995) p. 198

Cassese calls this right not a right, but a legal license to use force.<sup>112</sup> This is contradictory. In his book “International law” does he justify the emergence of this legal license through customary law.<sup>113</sup> This would logically mean that the *opinio iuris* criterion and the state practice criterion are fulfilled. Following the ICJ in the North Sea Continental Shelf case, we can conclude, that the *opinio iuris* is fulfilled, if a state practice is “carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law”<sup>114</sup>. The use of force is therefore a right and not just a legal license.

The scope of the right to use force is interesting as well. As we have seen it covers situations, where people are subject to colonial domination, foreign occupation or a racist regime. We have therefore two violations of external and one violation of internal self-determination. The scope of rights included in the internal and external self-determination “package” is much larger. It includes for instance the right of the people to formulate their will without external interferences.<sup>115</sup> The right to use force can consequently not be applied in any case of forcible denial of self-determination.

The right to use force covers therefore exclusively the forcible denial of self-determination for people under colonial domination, foreign occupation or racial minorities not having access to the political decision making process of a country. The other rights of self-determination cannot be enforced by the use of force.

As we have seen under 5.1.1 /i, the self-determination rights of the people are being transferred to their national liberation movements if existent. The national liberation movements are therefore entitled to use the rights transmitted to them including the right to use force.

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<sup>112</sup> Cassese (1995) p. 198

<sup>113</sup> Cassese (2005) p.374

<sup>114</sup> Evans (2003) p. 125

<sup>115</sup> See chapter 4.2.2

i.i The forcible denial of the right of external self-determination in the occupied Palestine

The right of self-determination has been violated three times by the Israeli government. First of all the people living in East Jerusalem have the right to external self-determination.<sup>116</sup> East Jerusalem has been occupied since 1967. Israel requests this territory for itself. It claims, that Jerusalem is its capital. This includes as East Jerusalem as well. In the years of occupation, the Israeli government repeatedly used force to prevent the formulation of the political will. Israeli Public Security Minister Avi Dichter ordered for instance the police to prevent the celebration of the “Jerusalem as the capital of Arabic culture for 2009” festival.<sup>117</sup> This is just one of the numerous examples where the Israeli government used force to prevent Palestinians in East Jerusalem to express their will. If the police are using riot gear and heavy arms to prevent a culture festival to take place, no one can doubt about the forceful measures taken by the government in the case of a request choosing the international status on their own. In the case of a referendum in East Jerusalem one has to be aware of the fact that the Palestinian represent the majority of the people living in East Jerusalem.<sup>118</sup> This explains the settlement policy and the denial of a referendum in East Jerusalem. We can therefore conclude, that the right of external self-determination has been denied forcible.

i.i.i The forcible denial to vote for the Hamas at the elections in January 2007

At the election in January 2006 the people living in East Jerusalem were not entitled to vote for the Hamas. Their representatives were not allowed to campaign. Further had they been detained while the

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<sup>116</sup> See chapter 4.9

<sup>117</sup> Frykberg (2009)

<sup>118</sup> Frykberg (2009)

elections took place.<sup>119</sup> The right of internal self-determination has therefore been denied forcible. The detainment of representatives of a political party is a forcible intervention in the political decision making process of another state.<sup>120</sup>

i.i.i.i The Israeli attack 2008/2009 denying forcible the right of internal-self-determination

The Israeli attack on the Gaza Strip impeded the formulation of the political will, the exchange of information and the possibility to meet each other.<sup>121</sup> All the people living in the Gaza Strip have lost several freedoms in the conflict period as defined in the International Covenant of Civil and Political rights. These freedoms are included in their right of internal self-determination. The violation of one of these rights is therefore a violation of the internal self-determination principle. We can conclude, that the Israeli Government violated the internal self-determination right. Further this violation was forcible. This violation is legitimized if it is covered by the scope of Article 51 UN Charter: the right of self-defense by Israel. If the situation does not fall under the mentioned Article, the internal self-determination right would have been denied forcible.

i.i.i.i.i Hamas right to use force against a forcible denial of the self-determination right

Hamas is the legitimized national liberation movement of the Palestinian.<sup>122</sup> The movement owns therefore all the rights of the people they represent. Israel denied forcefully in three situations the right of external and internal self-determination.

The right to use force does not include situations were people can not take part at the political decision making process without external

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<sup>119</sup> Saul (2006)

<sup>120</sup> See chapter 4.8

<sup>121</sup> See chapter 4.8

<sup>122</sup> See chapter 5.1.1/i.i

inferences. The use of force can consequently not be legitimized by the violation of the internal self-determination right at the elections 2006. The other two situations are covered by the use of force scope. The Hamas as national liberation movement is therefore entitled to use force.

### 5.1.3 The rocket attacks on Israel committed by the national liberation movement Hamas

The Hamas has the right to use force in order to reach the entitled right of self-determination. This means, that their use of force is legitimized, if the reasons for it lies in the accomplishment of the right of self-determination. We have seen three situations, where the Israeli government denied forcefully the right of self-determination. In two of them has the Hamas the right to use force. One of them might be legitimized through Article 51 UN Charter.<sup>123</sup> Let us therefore focus on the occupation of East Jerusalem.

According to our previous results the use of force must be seen as a reaction to the violation of the self-determination principle. The use of force must be seen therefore as a way to free the people living in East Jerusalem from their occupation. If the force is used for this specific result, it will be legitimized under international law. If the force is used for other purposes, it will not be lawful under public international law. The question is, if the rocket attacks between 2001 and 2007 have the purpose of granting the people their deserved right of self-determination.

The Hamas legitimizes its rocket attacks by the ongoing economic blockade of Gaza, several military operations committed by the Israeli military and the existence of Israel on Islamic Land.<sup>124</sup> The aim to free East Jerusalem is therefore included. Nevertheless is the use of force is not allowed against economic sanctions or for the establishment of a

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<sup>123</sup> See chapter 6

<sup>124</sup> Human Right Watch (2009)

Palestinian state in the entire territory of Israel. These situations do not represent a forcible denial of the right of self-determination.

We can therefore conclude, that the rocket attacks are not covered by the use of force scope granted by the self-determination right. The rocket attacks are therefore unlawful.

#### 5.1.4 The rocket attacks on Israel committed by the State of Palestine

Article 2.4 of the UN Charter prohibits the use of force in international law. The only exceptions are the use of force covered by the right of self-determination and the right of self-defense. The second exception is defined in Article 51 of the UN Charter: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

Article 51 UN Charter is applicable in the case of an armed attack committed by a state against another state. This has been determined by the ICJ in the Nicaragua case.<sup>125</sup> An armed attack is a “massive armed aggression against the territorial integrity and political independence of a State that imperils its life or government.”<sup>126</sup>

The first requirement is fulfilled. Palestine and Israel are both states. Although the State of Palestine is not member of the UN Charter, it does apply as customary law to both parties. The second element is the “armed attack” requirement. As we have seen previously, Israel did in the period of the rocket attacks never attack the Gaza Strip in such a strong way to justify an armed attack. Economic sanctions are as well not an armed aggression.

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<sup>125</sup> Shaw (2008) p. 1134

<sup>126</sup> Cassese (2005) p. 354

The question is, if the occupation of East Jerusalem constitutes an armed attack. The occupation represents a massive armed aggression against the territorial integrity of Palestine. It is per definition an armed attack. We can therefore conclude, that the State of Palestine is therefore entitled to the right of self-defense to free occupied East Jerusalem.

As we have seen previously, the rocket attacks are legitimized by the Hamas through the economic sanctions, the military interventions and the establishment of an Islamic state in the territory of Israel. The attacks are therefore not entirely covered by the right of self-defense of Article 51 UN Charter. Their aim is not just to free East Jerusalem, but to reach unlawful goals as well. The rocket attacks are therefore not justified by Article 51 UN Charter.

## 5.2 Israel entitled to use force

### 5.2.1 The Israeli attack against the State of Palestine legitimized by the right of self-defense of Article 51 UN Charter

#### i Israel entitled to the right of self-defense

Article 51 UN Charter is applicable in the case of an armed attack committed by a state against another state. This has been determined by the ICJ in the Nicaragua case.<sup>127</sup> Israel and Palestine are both states. The question is, if the rocket attacks constitute an armed attack.

7500 rockets hit the territory of Israel between 2001 and 2009.<sup>128</sup> Most of them were launched by the Izz ad-Din al-Qassam Brigades. This group is controlled by the Hamas and represents their official military wing. It can therefore be seen as regular army of the State of Palestine. A typical armed attack is the one committed by the regular army of one State against the territory of another.<sup>129</sup> This requirement is

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<sup>127</sup> Shaw (2008) p. 1134

<sup>128</sup> Rettig Gur (2009)

<sup>129</sup> Evans (2003) p. 602



fulfilled. The regular army of Palestine attacks with their rockets the Israeli territory.

A different definition requiring a massive armed aggression against the territorial integrity and political independence of a State is as well fulfilled. The amount of 7500 rockets in a period of eight years created a situation of fear and instability in the concerned Israeli regions. Two and a half rocket attacks a day represent an intensive military aggression. The element of massive armed aggression is therefore fulfilled. The caused damage was mainly in public places. The territorial integrity is therefore threatened. Further is the declared aim of the Hamas to create an Islamic State in the territory of Israel. This goal clearly violates the political independence of a state.

We can therefore conclude, that the Israeli government is entitled to the right of self-defense. The use of force must further be necessary and proportional.

#### i.i Element of necessity and proportionality

The use of force covered by the right of self-defense must be necessary and proportional. These requirements were confirmed as customary law in the Nicaragua case and the Nuclear Weapons Advisory Opinion.<sup>130</sup> The Israeli right of self-defense allows actions being necessary to stop the rocket attack. Further these actions must be proportional. The Israeli ground offensive in December and January 2008/2009 might be necessary to stop the Palestinian rocket attacks. This must be justified by a military perspective. The ground control is certainly essential to stop the attacks. This makes perfectly sense.

The proportionality requirement is not given. In the conflict, between 1166 and 1417 Palestinian were killed. Further were more than 4000

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<sup>130</sup> Evans (2003) p. 600

homes destroyed leaving tens of thousands of people without home.<sup>131</sup> This is in no way proportional to the damage caused by the Palestinian rockets.

The right of self-defense does therefore not cover the Israeli attack on the Gaza Strip.

## 5.2.2 The Israeli attack against the national liberation movement Hamas legitimized by the right of self-defense of Article 51 UN Charter

The right of self-defense can be applied if a state is being attacked by another one. The question is whether it is applicable in the case of an armed attack committed by a national liberation movement as well.

We have to analyze this new legal perception. Following “September 11” did the majority of states recognize the right of self-defense against a terrorist attack emanating from a non-state entity.<sup>132</sup> This perception became customary law (*opinio iuris* and state practice being fulfilled).

A terrorist attack is the attack of a terrorist group. A terrorist group is a group, which is not protected by the Geneva Conventions and its protocols. The Hamas as a national liberation movement is entitled to its protection.<sup>133</sup> The national liberation movement has as well the right to be bound by the Geneva Conventions. This is defined in Article 96.3 of the first Additional Protocol. A terrorist group does not have this ability. The Hamas is therefore not a terrorist group.<sup>134</sup>

We can conclude, that the rocket attacks cannot be seen as terrorist attacks. Israel can consequently not apply the right of self-defense to justify its attacks on the Hamas.

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<sup>131</sup> Lappin (2009)

<sup>132</sup> Evans (2003) p.604

<sup>133</sup> Article 1.4 of the first Additional Protocol to the Geneva Conventions

<sup>134</sup> Saul (2003) p. 76

## **6 Conclusion**

Palestine is a State. It is composed by the Gaza Strip, the West Bank and East Jerusalem. This state is lead by a Hamas lead government. The rocket attacks being launched by the Hamas are directly attributable to the State of Palestine. The Hamas has legitimized the rocket attacks as reaction to the economic sanctions, the ongoing reprisals of the Israeli military and the occupation of Palestinian territory. The attacks consequently do not just have the aim of freeing East Jerusalem. The scope is larger. We can therefore conclude, that the rocket attacks are not covered by the right of self-defense of Article 51 UN Charter and are therefore unlawful.

Further have we determined the right of self-determination of the people living in East Jerusalem. Their right has been denied in two situations: the forcible occupation of East Jerusalem and the forcible denial to non-influenced democratic elections. The external and internal right of self-determination have therefore been violated. Because of this denial and the election result in the non-occupied Palestinian territories one can assume that the Hamas is the legitimated organization representing the interests of the people living in East Jerusalem. The Hamas is therefore their national liberation movement. This movement has the same rights and obligations as the people they represent. This includes the right to use force, if specific rights of self-determination are denied forcibly. Israel denied in two situations this right. One of them, the occupation of East Jerusalem entitles the people to use force. The Hamas as their representative has therefore the right to use force in order to fulfill the self-determination right of the people living in East Jerusalem. The rocket attacks of the Hamas have been explained as reaction to the economic sanctions, the ongoing reprisals of the Israeli military and the occupation of

Palestinian territory. The attacks consequently do not just have the aim of freeing East Jerusalem. The scope is larger. We can therefore conclude, that the right to use of force does not cover the rocket attacks. They are therefore unlawful.

On the other side do we have Israelis attack on the Gaza Strip 2008/2009. The rocket attacks of the Palestinian state constitute an armed attack under Article 51 UN Charter. These armed attacks are not legal. We can consequently conclude, that Israel is entitled to the right of self-defense of Article 51 UN Charter. This right covers any necessary and proportional measures. The Israeli attack 2008/2009 was unproportional and therefore not legitimized by Article 51 right of self-determination.

The violation of the peoples right to formulate their will in the period of the Israeli attack is therefore not legitimized through Article 51 UN Charter. It is therefore a clear violation of the internal self-determination right to formulate the political will without external interferences.

## REFERENCES

### **Abbreviations:**

ICJ	International Court of Justice
GA	General Assembly
UN	United Nations

### **List of Judgements/Decisions:**

Columbia versus Peru the International Court of Justice, the Hague, 20 November 1950 (Asylum Case)

Federal Republic of Germany v. Denmark and the Netherlands The International Court of Justice, the Hague, 20 February 1969 (North Sea Continental Shelf Case)

Nicaragua v. United States The International Court of Justice, The Hague, 27 Juni 1986 (Military and paramilitary Activities in and against Nicaragua)

### **Treaties/Statutes:**

Additional Protocol I to the Geneva Conventions, 8 June 1977

Charter of the United Nations, 26 June 1945

International Covenant on Civil and Political Rights, 16 December 1966

International Covenant on Economic, Social and Culture Rights, 16  
December 1966

Geneva Conventions, 12 August 1949

Montevideo Convention on the Rights and Duties of States, 26  
December 1933

Vienna Convention on the Law of Treaties, Vienna 23 May 1969

### **Secondary Literature:**

#### Books:

Adams, Mickael and Angelo Carfagna. *Coming of age in a globalized world: the next generation*. Bloomfield (Kumarian Press) 2000

Allison, John W.F. *A continental distinction in the common law*. Oxford (Oxford Universtiy Press) 1996

Amerasinghe, Chittharanjan Felix. *Principles of the institutional law of international organizations*. Leidykla (Cambridge University Press) 2005

Bayefsky, Anne F. *Self-determination in international law*. Boston, (Kluwer academic) 2000

Brownlie, Ian. *Public International Law*. 6 th edition Oxford, (Oxford Universtiy Press) 2003

Cassese, Antonio. *International Law*. 2nd edition. Oxford, (Oxford University Press) 2005

Cassese, Antonio. *Self-determination of peoples: a legal reappraisal*. Cambridge (Cambridge University Press) 1995

Chehab, Zaki. *Inside Hamas: The Untold Story of Militants, Martyrs and Spies*. London, (I.B. Tauris and Co) 2007

Chen, Lung-Chu, *An introduction to contemporary international law: a policy-oriented perspective*. New Haven and London (Yale University Press) 1989

Crawford, James. *The Creation of States in International Law*. 2<sup>nd</sup> edition. Oxford (Oxford University Press) 2006

Dixon, Martin. *Textbook on international law*. Oxford (Oxford University Press) 2007

Duursma, Jorri. *Fragmentation and the international relations of micro-states*. Cambridge (Cambridge University Press) 2008

Esman, Milton J. *Diasporas in the Contemporary World*. San Francisco (Wiley and Sons) 2009

Gardam, Judith Gail. *Non-combatant immunity as a norm of international humanitarian law*. Boston (Nijhoff Publishers) 1993

Gazzini, Tarcisio. *The Changing Rules on the Use of Force in International Law*. Manchester (Manchester University Press) 2006

Henrard, Kristin. *Devising an adequate system of minority protection*. (M. Nijhoff) 2000

Kellerman, Aharon (1993), *Society and Settlement: Jewish Land of Israel in the Twentieth Century*. New York (State University of New York Press) 1993

Kreijen, Gerard. *State failure, sovereignty and effectiveness*. London (Brill Academic Publishers) 2004

Lappin, Yaakov. IDF releases Cast Lead casualty, *The Jerusalem Post*, March 26, 2009.

Ordford, Anne. *Reading Humanitarian Intervention: Human Rights and the Use of force in International Law*. Cambridge (Cambridge University Press) 2003

Radan, Peter. *The Break-Up of Yugoslavia and International law*. New York (Routledge) 2002

Rainey, Anson F. *Canaanite in the Amarna tablets*. (Brill Academic Publisher) 1996

Musgrave, Thomas D. *Self-determination and national minorities*. Oxford (Oxford University Press) 2000

Roach, Steven C. *Cultural Autonomy, Minority Rights and Globalization*. Burlington (Ashgate Publishing) 2005

Saul, Ben. *Defining terrorism in international law*. Oxford (Oxford University Press) 2006

Shaw, Malcolm Nathan. *International law*. Fifth Edition. Cambridge, (Cambridge university Press) 2008

Schulze, Kirsten E. *The Arab-Israel Conflict*. Second edition, London (Longman Pub Group) 2008



Tessler, Mark. A history of the Israelu-palestinian conflict. Bloomington (Indiana University Press) 1994

Edited work:

*International law*. Edited by Malcolm D. Evans. Oxford (Oxford University Press) 2003

Human Right Watch. Gaza/Israel: Hamas Rocket attacks on Civilians Unlawful (5 August 2009)  
<http://www.alertnet.org/thenews/newsdesk/HRW/9ddba754e98f206505fbc6b5a4771aeb.htm>

(visited 19 August 2009)

*Palestine and international law*. Edited by Sanford R. Silverburg. North Carolina, (McFarland and Company, Inc) 2002

*Modern law of self-determination*. Edited by Christian Tomuschat. London (Springer) 1993

Mullerson, R.A. *Ordering anarchy: International law in International Society*. Boston. (Brill Academic Pub) 2000

*The Break-Up of Yugoslavia and International Law*. Edited by Peter Radan (New York: Routledge, 2002)

The Columbia Encyclopedia, 6 th Edition (2008)

*The United Nations and the principles of international law*. Edited by Vaughan Lowe and Colin Warbrick. Routledge. (London, New York) 1994

Electronic documents:

BBC NEWS. Profile: Hamas Prime Minister Ismail Haniya. 2006  
[http://news.bbc.co.uk/2/hi/middle\\_east/4655146.stm](http://news.bbc.co.uk/2/hi/middle_east/4655146.stm) (visited 13  
August 2009)

BBC NEWS. Abbas appoints new palestinian Prime Minister. 2007  
[http://news.bbc.co.uk/2/hi/middle\\_east/6756079.stm](http://news.bbc.co.uk/2/hi/middle_east/6756079.stm) (visited 13  
August 2009)

CNN INTERNATIONAL. Israels stops payment to palestinians.  
(2006)  
<http://edition.cnn.com/2006/WORLD/meast/02/19/mideast/index.html>  
(visited the 13 August 2009)

Erlanger, Steven. *Hamas Leader Faults Israeli Sanction Plan*. (2006)  
[http://www.nytimes.com/2006/02/18/international/middleeast/18mideast.html?\\_r=1](http://www.nytimes.com/2006/02/18/international/middleeast/18mideast.html?_r=1)  
(visited the 14 August 2009)

Frykberg, Mel. *Israel under pressure over divided Jerusalem*. (25  
march 2009)  
<http://www.antiwar.com/ips/frykberg.php?articleid=14456> (visited 17  
August 2009)

Gur, Haviv Rettig. Sderot residents welcome ground op after years of  
rocketfire. (4.01.2009)  
<http://www.jpost.com/servlet/Satellite?pagename=JPost/JParticle/ShowFull&cid=1230733174132> (visited the 18 August 2009)

Shu-Ling, Ko. Ma refers to China as ROC territory in magazine  
interview. (08.10.2008)  
<http://www.taipeitimes.com/News/taiwan/archives/2008/10/08/2003425320> (visited the 24 August 2009)

Laub, Karin. Hamas Control of Gaza `Virtually complete`. Tel Aviv 2008.

[http://www.huffingtonpost.com/2008/10/18/hamas-control-of-gaza-no\\_n\\_135870.html](http://www.huffingtonpost.com/2008/10/18/hamas-control-of-gaza-no_n_135870.html) (Visited 23 July 2009)

Lappin, Yaakov. *IDF releases Cast Lead casualty*. (26 march 2009)

<http://www.jpost.com/servlet/Satellite?cid=1237727552054&pagename=JPost%2FJPArticle%2FShowFull> (visited 20 August 2009)

Palestinian National Authority. International Recognition of the state of Palestine 2003

[http://web.archive.org/web/20060404211437/http://www.pna.gov.ps/Government/gov/recognition\\_of\\_the\\_State\\_of\\_Palestine.asp](http://web.archive.org/web/20060404211437/http://www.pna.gov.ps/Government/gov/recognition_of_the_State_of_Palestine.asp) (visited 13 August 2009)

Rettig Gur, Haviv. Sderot residents welcome ground op after years of rocket-fire. (4 January 2009)

<http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1230733174132> (visited 20 August 2009)

Marcus, Itamar/Crook, Barbara. Hamas Enacts Islamic Laws, Including: Amputatiojn, Crucifixion, Lashes. Seattel 2009.

<http://newsblaze.com/story/20081224160149zzzz.nb/topstory.html> (Visited 23 July 2009)

Maqbool, Aleem. *Gaza looks like earthquake zone*. (January 19 2009)

[http://news.bbc.co.uk/2/hi/middle\\_east/7838618.stm](http://news.bbc.co.uk/2/hi/middle_east/7838618.stm) (visited 16 August 2009)

Saul, Jonathan. Election from Afar. Jerusalem (2006)

<http://www.miftah.org/display.cfm?DocId=9460&CategoryId=5> (visited the 14 August 2009)

Sharp, Heather. Guide: Gaza under blockade. Jerusalem (2009)[http://news.bbc.co.uk/2/hi/middle\\_east/7545636.stm](http://news.bbc.co.uk/2/hi/middle_east/7545636.stm) (visited the 14 August 2009)

Taiwan's Affairs Office of the state council. White paper on Taiwan issues (2008)

[http://www.gwytb.gov.cn:8088/detail.asp?table=WhitePaper&title=White%20Papers%20On%20Taiwan%20Issue&m\\_id=4](http://www.gwytb.gov.cn:8088/detail.asp?table=WhitePaper&title=White%20Papers%20On%20Taiwan%20Issue&m_id=4) (visited the 24 August 2009)

The Hindu. *Taiwan breaks ties with Malawi*. (14 January 2008)

<http://www.hindu.com/thehindu/holnus/003200801141806.htm> (visited 24 August 2009)

UNICEF. At a glance: Occupied Palestinian Territory. Gaza 2009 [http://www.unicef.org/infobycountry/oPt\\_42766.html](http://www.unicef.org/infobycountry/oPt_42766.html) (visited 23 July 2009)

Westervelt, Eric. Fighting In Gaza Overwhelms Medical System. Washington 2009.

<http://www.nr.org/templates/story/story.php?storyId=99015354> (Visited 23 July 2009)