

MECHANISMS FOR IMPLEMENTING INTERNATIONAL HUMAN RIGHTS LAW IN OCCUPIED TERRITORIES: LEGAL CHALLENGES AND WAYS TO ENHANCE EFFECTIVENESS

MECANISMOS PARA A IMPLEMENTAÇÃO DO DIREITO INTERNACIONAL DOS DIREITOS HUMANOS EM TERRITÓRIOS OCUPADOS: DESAFIOS JURÍDICOS E FORMAS DE AUMENTAR A EFICÁCIA

Belal Ali AbuHasballah¹ 

East China University of Political Science and Law, ECUPL, China 
erbhddf@gmail.com

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Abstract: This study analyzes the implementation of international human rights law (IHRL) in occupied territories, focusing on occupying states' obligations under "effective control." Examining United Nations (UN) resolutions, International Court of Justice rulings, and state practices reveals systemic compliance barriers: Security Council political bias, unenforceable penalties, and fragmented oversight. Case studies like Palestine demonstrate the gap between legal standards and reality, where violations—illegal settlements and denial of essential services—persist unaddressed. Proposed reforms include suspending Security Council vetoes on human rights votes, empowering the International Criminal Court (ICC) to investigate occupation crimes, and deploying permanent UN monitoring missions. The goal is to bridge legal theory and enforcement, prioritizing the dignity and protection of vulnerable populations under occupation.

Keywords: effective control; human rights monitoring; international human rights law; occupied territories; UN security council veto.

Resumo: Este estudo analisa a aplicação do direito internacional dos direitos humanos em territórios ocupados, focando nas obrigações do ocupante sob o princípio do "controle efetivo". A análise de resoluções da Organização das Nações Unidas (ONU), decisões da Corte Internacional de Justiça e práticas estatais revela barreiras sistêmicas: viés político no Conselho de Segurança, sanções inaplicáveis e fiscalização fragmentada. Casos como os territórios palestinos ilustram o abismo entre normas legais e a realidade — violações como assentamentos ilegais e negação de serviços essenciais persistem impunes. Reformas propostas incluem suspender o veto no Conselho de Segurança em votações sobre direitos humanos, capacitar o Tribunal Penal Internacional para investigar crimes de ocupação e enviar missões de monitoramento permanente da ONU. O objetivo é alinhar teoria jurídica com prática, protegendo populações vulneráveis sob ocupação.

Palavras-chave: controle efetivo; monitoramento dos direitos humanos; direito internacional dos direitos humanos; territórios ocupados; veto do Conselho de Segurança da ONU.

¹ A PhD candidate in international law at the East China University of Political Science and Law (<https://ror.org/01d1erx18>), he holds a Master's degree in public law from the Islamic University of Palestine. He has published numerous peer-reviewed articles in the field of public international law, worked as a lawyer for several years, and participated in the UNRWA Summer Games programs. He has also completed numerous training courses in human rights and international law. ORCID: <https://orcid.org/0009-0003-8459-1775>.

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1. Introduction

Human rights, affirmed by the United Nations (UN) Charter and the Universal Declaration of Human Rights, exist to safeguard every person's dignity and freedom; yet enforcing them in occupied territories—where power asymmetries and political complexity prevail—remains exceptionally difficult. Populations under occupation face systematic abuses, including restrictions on liberty, land seizures, arbitrary detention, and denial of basic needs, all in tension with international law. Although frameworks such as the Geneva Conventions and the International Covenant on Civil and Political Rights obligate occupying powers to uphold rights wherever they exercise effective control, practice often diverges from principle. The occupied Palestinian territory illustrates this gap: decades of documented violations—settlement expansion and movement restrictions among them—have persisted despite repeated UN condemnations. This persistence reflects structural deficits in enforcement, including geopolitical bias in global institutions, weak or non-existent penalties for violators, and fragmented oversight.

This study asks how international human rights law (IHRL) can be effectively implemented in occupied settings despite legal and political barriers to accountability. It examines key treaties, UN resolutions, and International Court of Justice rulings, alongside case studies—especially Palestine—to explain why mechanisms like UN committees or Security Council actions often fail to produce change on the ground. It then proposes practical reforms to bridge law and reality, including strengthening community-based documentation and advocacy, and limiting or suspending veto use in human-rights-related votes. The overarching goal is to refocus international practice on the voices and protection of affected populations and to translate legal commitments into tangible safeguards that uphold human dignity and help foster durable peace.

2. The legal basis for the application of international human rights law in occupied territories

International interest in the application of human rights in occupied territories dates back to the 1950s. The situation in the Middle East, specifically in the Arab territories occupied since 1967, was the cornerstone in determining the extent of human rights application in the occupied territories. The Security Council, in Resolution 237/1967, made clear its view that “the fundamental human rights, which cannot be compromised, must be respected even during times of war and its ravages.” Accordingly, the legal basis for the application of human rights in the occupied territories is based on the interpretation of the provisions of numerous human rights charters and treaties, in addition to the rulings and advisory opinions issued by the International Court of Justice and other legal sources, each of which we will explain as follows (United Nations, 1967).

2.1. The enforcement of human rights treaties in occupied territories based on the interpretation of their provisions

Human rights treaties apply at all times, in peace and in war. While the International Covenant on Civil and Political Rights allows limited derogations during a duly proclaimed public emergency (Article 4), core rights remain non-derogable and any restrictions must be strictly necessary and proportionate. The UN Human Rights Committee clarified in General Comment 29 (2001) that the Covenant continues to apply during armed conflicts, working alongside international humanitarian law; an occupying power therefore cannot rely on conflict or emergency to evade its human-

rights duties, and any derogation must be narrowly justified case by case (United Nations, 1966).

Treaty obligations extend to all persons under a state's jurisdiction or effective control, including outside its own territory. The Human Rights Committee has affirmed that states must ensure Covenant rights to people under their effective control, such as in situations of military occupation (United Nations, 2017). For economic, social, and cultural rights, states must use the maximum of available resources and at least secure the minimum essential levels of each right; the Committee has repeatedly urged Israel to apply the International Covenant on Economic, Social and Cultural Rights in the occupied Palestinian territory, notably on water and healthcare (Kolb; Gaggioli, 2013, p. 158). Likewise, under the Convention against Torture, the prohibition of torture is absolute wherever a state exercises *de facto* or *de jure* control—no war, instability, or emergency can justify it. In sum, effective control, not formal sovereignty, triggers human-rights obligations: when a state has factual power over people in a territory, it bears responsibility to protect their rights.

2.2. The position of the International Law Commission on the application of human rights in occupied territories

Since 2004, the International Law Commission has developed draft articles on how armed conflict—including military occupation—affects the continuity of treaties, especially human rights treaties. Drawing on Articles 31–32 of the 1969 Vienna Convention on the Law of Treaties and factors such as a conflict's nature and duration, its impact on obligations, a treaty's subject matter, and its membership, the project sets criteria to determine whether a treaty remains in force, is suspended, or terminated.

A central rule appears in Draft Article 5¹: the mere existence of armed conflict does not by itself interrupt the operation of a treaty whose object and purpose indicate continued application, in whole or in part, during conflict. An annex provides a non-exhaustive list of treaty categories presumed to continue, expressly including human rights treaties—a classification to which participating governments raised no objections.

2.3. The position of the International Court of Justice on the application of human rights in occupied territories

The International Court of Justice has made clear that IHRL applies during armed conflict and occupation, alongside international humanitarian law. In its 1996 Nuclear Weapons advisory opinion, the Court confirmed that International Covenant on Civil and Political Rights protections do not cease in wartime except through narrowly tailored derogations under Article 4; even then, measures must remain strictly necessary and proportionate (International Court of Justice, 1996). It reaffirmed this in the 2004 Wall advisory opinion, rejecting the view that IHRL is limited to peacetime and holding that human rights treaties continue to bind states during occupation (International Court of Justice, 2004).

On territorial scope, the International Court of Justice stated that states must secure human rights to all persons within their jurisdiction or effective control, including outside their sovereign territory. It held that the territories occupied by Israel since 1967 fall under its jurisdiction as an occupying power, requiring it to respect IHRL and refrain from obstructing the rights of the occupied population (Milanovic, 2020, p. 124).

3. International mechanisms for the implementation of human rights in occupied territories

The international community employs a variety of mechanisms to promote, monitor, and enforce human rights in situations of occupation. Broadly, these mechanisms fall into two categories:

3.1. Mechanisms for the implementation of human rights according to the United Nations Charter

The UN Charter assigns specific human-rights roles to its principal organs. The General Assembly adopts human-rights instruments, debates compliance, issues recommendations, and has created oversight bodies such as the Committee on Decolonization, the Special Committee against Apartheid, the Special Committee to Investigate Israeli Practices, and the Committee on the Exercise of the Inalienable Rights of the Palestinian People (Steinerte; Wallace, 2009, p. 43). These mechanisms have exposed violations and advanced decolonization, but their impact is limited because the General Assembly acts are largely non-binding; over 50 General Assembly resolutions condemning Israeli settlement activity since 1967 have not halted expansion, partly due to Security Council veto paralysis (Ben-Naftali; Shany, 2021, p. 349). The Security Council can adopt binding measures linking rights protection to peace and security—illustrated by sanctions on Rhodesia (Al-Baqirat, 2017, p. 28)—but practice is uneven: it intervened in Iraq in 1991 to protect Kurds and Shiites, yet comparable action has been blocked in the occupied Palestinian territory for political reasons. The Economic and Social Council recommends measures under Articles 62(2) and 68 of the Charter and created the Commission on Human Rights, whose limitations and politicization led to its replacement.

In 2006, the Human Rights Council replaced the Commission to strengthen independence by reporting directly to the General Assembly. The Human Rights Council retained and expanded special procedures (Special Rapporteurs, Independent Experts, Working Groups), now covering more than 30 thematic mandates since 2008; mandate-holders conduct research, country visits, and communications, with the Office of the High Commissioner for Human Rights providing legal, technical, and field support (United Nations Human Rights, 2009). The Council has repeatedly addressed the Occupied Palestinian Territory, including through Resolution 40/13 calling for civilian protection and an end to unlawful settlement activity. The International Court of Justice complements these organs through three avenues: (1) contentious cases under treaty clauses (e.g., Article 9 of the Genocide Convention); (2) advisory opinions for UN organs, such as the 2004 opinion finding the separation wall incompatible with international human rights and humanitarian law (United Nations, 2004); and (3) other consent-based contentious jurisdiction under Articles 35–36 of the International Court of Justice Statute. The Court addresses legal—not political—questions, clarifies states' duties, and may determine responsibility where jurisdiction exists, shaping implementation of IHRL (Shaw, 2017, p. 1084; United Nations, 1945).

3.2. Mechanisms for monitoring the implementation of specific human rights agreements

Human rights treaties are implemented through specialized oversight bodies that monitor compliance and offer avenues for redress. The Committee on the Elimination of Racial Discrimination (1966; in force 1969) has 18 independent experts who review periodic state reports on legislative, judicial, and administrative measures, issue recommendations, consider individual complaints under Article 14, cooperate with UN

agencies, and may request urgent information; it meets twice yearly and submits an annual report to the General Assembly, and has addressed systemic abuses such as apartheid in South Africa and requested urgent reporting from Russia on Chechnya (Thornberry, 2016, p. 89; United Nations, 2006). The Committee on the Elimination of Discrimination against Women (1979) evaluates states' efforts to eliminate discrimination against women, issues general recommendations, receives individual and group complaints via its Optional Protocol, and works with UN bodies to promote legal reform (Purvis, 2011, p. 15). The Committee on the Rights of the Child (1989) reviews state reports on children's rights, requests additional information, allows complaints under its Optional Protocols on armed conflict and exploitation, requires broad dissemination of reports, collaborates with United Nations Children's Fund, and reports biennially to the Economic and Social Council (Weissbrodt; Hansen; Nesbitt, 2011, p. 128). The Committee against Torture (1984) examines reports, investigates credible allegations, and considers complaints where its jurisdiction is recognized; under the Optional Protocol, the Subcommittee on Prevention of Torture may visit places of detention, and States must prosecute or extradite alleged torturers found in their territory (APT; CEJIL, 2008, p. 47; Nowak, 2021, p. 51).

Together with political and judicial organs—such as the General Assembly, the Human Rights Council, and the International Court of Justice—, these treaty bodies help promote and protect human rights, including in occupied territories. Their impact, however, depends on state cooperation and political will: most recommendations are authoritative but non-binding, and enforcement by the Security Council can be constrained by geopolitical considerations. Even so, the combined tools of reporting, communications/complaints, urgent action, and on-site monitoring remain central to documenting violations and pressing for compliance across areas like racial discrimination, gender equality, children's rights, and the prohibition of torture.

Given persistent structural and political constraints, existing international mechanisms do not reliably ensure that an occupying power complies with human rights obligations in territories under its effective control. They seldom create binding consequences for non-compliance, leaving an accountability gap and allowing ongoing violations to persist. To close this gap, stronger, enforceable measures are needed to move from declaratory norms to practical implementation.

First, activate criminal accountability by referring grave violations in occupied territories to the **International Criminal Court (ICC)** and, where appropriate, establishing *ad hoc* tribunals; notably, in 2021 the ICC opened a formal investigation into alleged crimes in the occupied Palestinian territory, including unlawful settlements, disproportionate force, attacks on civilians, and forcible transfer. Second, deploy permanent international observers with unhindered access to document abuses, preserve evidence, and report regularly, building on established UN monitoring practices. Third, curb paralysis by suspending or restraining the Security Council veto in human-rights protection cases so the Council can act under Chapter VII—including targeted sanctions, arms embargoes, and, if necessary, collective measures—when an occupying state refuses to meet its obligations.

4. Conclusion

International human rights law applies in occupied territories as a binding duty grounded in the principle of effective control, as confirmed by international conventions and the jurisprudence of the International Court of Justice. Yet a clear gap persists

between law and practice: serious violations—such as settlement expansion and denial of essential services—continue with limited accountability. This gap reflects structural weaknesses in existing mechanisms, including political bias and veto use in the Security Council, the lack of enforceable penalties, and an overreliance on descriptive reporting without executive follow-through.

Closing this gap requires practical, system-level reforms. Key steps include restraining or suspending the veto in human-

rights protection decisions, activating international criminal accountability through the ICC for grave violations, and deploying permanent, independent monitoring missions to document abuses, preserve evidence, and support victims. Turning these measures from proposals into practice depends on sustained international coordination and genuine political will, so that legal commitments are translated into real protection of human dignity in occupied territories.

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Note

- ¹ Article 5 states that armed conflict does not terminate or suspend treaties which are intended to continue in force during armed conflict, which applies in particular to human rights treaties such as the 1966

International Covenant on Human Rights, international humanitarian law treaties, and environmental protection treaties such as the Chemical Weapons Convention.

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