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## **The Revolution Will Not Be Legitimized: Armed Resistance in Occupied Palestine**

by Jordan Calazan Manalastas\*

It is said that when the invincibly oblivious Louis XVI first heard about the raid on the Bastille, the good king exclaimed, “But good God! That is a revolt!” The duc de la Rouchefoucauld replied, “No, Sir . . . *c’est la revolution.*”<sup>1</sup> I do not know if this is true, but none the less, the story *does* prefigure two essential truths about the revolutionary consciousness. For one, it made at least a cursory distinction between mere discontent and the grand *noblesse* of mind that gives “resistance” a good name. Secondly, it gave to nascent liberals and Marxists the vocabulary to invoke when making good on the ancient regicidal threat, *Sic semper tyrannis*—“thus *always* to tyrants.” In the grammar of “revolution,” violent uprising is not so much spontaneous and aberrant as it is inscribed into the laws of nature, as proper and predestined as a planetary orbit.

One sometimes has to remind oneself that this thinking laid the groundwork for our liberal and enlightened civilization, even as we celebrate it yearly. I had the

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<sup>1</sup> See Eugene Kamenka, *The Concept of a Political Revolution*, REVOLUTION 122, 125 (Carl J. Friedrich ed., 1966).

pleasure of spending the last two Fourth's of July in places where stale patriotism could not spoil the revolutionary spirit: first in France, whose revolution took cues from ours, then in occupied Palestine, whose *intifada* has not yet fully come. In the latter case, a gang of us unruly Americans had been reprimanded (by another American) for setting off celebratory fireworks in the midst of a beleaguered and occupied territory—for sensitivity's sake, and so forth—but I was moved more by the words of a Palestinian man who said, "I appreciate you celebrating your independence. I wish one day we'll have an Independence Day of our own."

So it was rather dispiriting (if unsurprising) that in the latest volley of rockets between Israel and Palestine, the United States would positively leap to the warm embrace of Israel's so-called "right to self-defense."<sup>2</sup> Not only did this blur the legal distinction between *jus ad bellum* and *jus in bello* by ignoring that the decades-long occupation of Palestine is already an act of aggression,<sup>3</sup> but it revealed as well that the safeguards of the *status quo ante* would be the only valid side. I wish neither to exonerate any particular act nor to expound on the wisdom of war generally, but some record-straightening is in order. Why is it the case that when an occupied and subjugated people resist against their Occupying Power, only the latter's force of arms

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<sup>2</sup> See, e.g., Barack Obama, Remarks by the President at the Annual Iftar Dinner (Jul. 14, 2014) (transcript available at <http://www.whitehouse.gov/the-press-office/2014/07/14/remarks-president-annual-iftar-dinner-july-14-2014>) ["[W]e've been very clear that Israel has the right to defend itself against what I consider to be inexcusable attacks from Hamas."].

<sup>3</sup> See, e.g., *Resolution on the Situation in the Middle East*, G.A. Res. 36/226A, 36 U.N. GAOR, 36th Sess., Supp. No. 51, U.N. Doc. A/RES/36/226A at 47 (Dec. 17, 1981).

is lent legitimacy? This amnesiac logic both betrays America's own post-imperial heritage and casts doubt upon how seriously we take international law and norms. It may be time to revisit our boundaries of legitimate armed resistance.

### **I. Self-Determination: From Rebellion to Revolution**

It used to be said, only a bit facetiously, that "one man's terrorist is another man's freedom fighter." The conflation of the two is a cynical reminder of *vae victus*, for it is precisely those powers from whom freedom is sought who get to name the terrorists. Of course, the less convenient underside of victor's justice means that the victor's logic must be taken seriously; and we happen to live in a world dominated by a nation founded through what the great English curmudgeon-*cum*-historian Edward Gibbon called a "criminal enterprise."<sup>4</sup>

If Gibbon's aspersions failed to gain historical currency, it has likely less to do with amnesia than with sympathy or taste. There is something eminently appealing in Thomas Jefferson's declaration that in "a long train of abuses and usurpations . . . it is [the people's] right, it is their duty, to throw off such Government."<sup>5</sup> Or, at least, to say the opposite would seem woefully passé. Jefferson's term "tyrant"<sup>6</sup> may seem antiquated, but the revolutionary aspirations in his declaration find modern expression in the principle of "self-determination," enshrined today in the first articles of both the

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<sup>4</sup> See Eliga H. Gould, *How Did the British Press Cover the American Revolution?*, FOREIGN POLICY (Jul. 3, 2012), [http://www.foreignpolicy.com/articles/2012/07/03/how\\_did\\_the\\_british\\_press\\_cover\\_the\\_american\\_revolution](http://www.foreignpolicy.com/articles/2012/07/03/how_did_the_british_press_cover_the_american_revolution).

<sup>5</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) [hereinafter DECLARATION].

<sup>6</sup> *Id.*, para. 3.

U.N. Charter<sup>7</sup> and the International Covenant on Civil and Political Rights.<sup>8</sup> By 1918, the notion that people ought by right to determine their political destinies had become a talking point for Woodrow Wilson and a rallying call for war.<sup>9</sup>

So mark the sequel. Taking cues perhaps from our American progenitors, the international community redoubled in the twentieth century the grim and unpunctual business of trimming its imperial veneers. But not all empires go down without a swing. It became clear that mere condemnatory words of U.N. resolutions would not dismantle empires; the language of violence is often the most intelligible. Here was the U.N. General Assembly, affirming in 1973 that “colonial peoples have the inherent right to struggle by all necessary means at their disposal against colonial Powers and alien domination in exercise of their right of self-determination . . . .”<sup>10</sup> And there they are again, reaffirming one year later “the legitimacy of the peoples’ struggle for liberation . . . by all available means,” with the explicit coda that “armed struggle” remained among such means.<sup>11</sup> Near the end of that seismic decade, with the African National Congress

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<sup>7</sup> U.N. Charter art. 1, para. 2.

<sup>8</sup> International Covenant on Civil and Political Rights art. 1(1), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976).

<sup>9</sup> *See, e.g.*, Woodrow Wilson, President Woodrow Wilson’s Fourteen Points (Jan. 8, 1918) (transcript available at <http://www.ourdocuments.gov/doc.php?doc=62&page=transcript>) (“What we demand in this war [includes] . . . [a] free, open-minded and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.”).

<sup>10</sup> *Resolution on Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes*, G.A. Res. 3101, 28 U.N. GAOR, 28th Sess, Supp. No. 30, U.N. Doc. A/9030, at 142 (Dec. 11, 1973).

<sup>11</sup> *Resolution on Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and*

preparing for its “people’s war” against apartheid and American forces whimpering away from Indochina, there came the First Additional Protocol to the Geneva Conventions, which proclaimed that wars of national liberation would be treated as international armed conflicts,<sup>12</sup> and their fighters not as domestic criminals, but as privileged combatants.<sup>13</sup> The drafters, to be sure, took care not to extend too liberally that combatant privilege;<sup>14</sup> but we find in this no less the apotheosis of Gibbon’s “criminal” from malcontented rebel to legitimate revolutionary. In the moral arc of international law, it was the narrative of revolution, not of empire, that set the curve.

## II. The Denial of the Palestinian Struggle

If one asks the Palestinians when their national struggle began, the answers may well vary. Some speak rather instinctively of 1967, when Israel’s swift and blistering victory in the Six-Day War left Gaza and the West Bank under Israel’s military rule. Others talk almost mythically of 1948, when their grandfathers became, in the shade of Israel’s establishment, strangers in their own land. One thing is certain: by the middle of the 1970s, the international community had agreed the Palestinians were among those

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*Observance of Human Rights*, G.A. Res. 3246, U.N. GAOR, 29th Sess. Supp. No. 31, U.N. Doc. A/9631, at 87 (Nov. 29, 1974) [hereinafter Res. 3246].

<sup>12</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 1(4), *opened for signature* Jun. 8, 1977, 1125 U.N.T.S. 3 (entered into force Dec. 7, 1978) [hereinafter Additional Protocol I].

<sup>13</sup> See *id.* at arts. 43, 44.

<sup>14</sup> See *id.* at art. 44(3) (obliging combatants to distinguish themselves from the civilian population when engaged in hostilities).

peoples deprived by foreign domination of their right to self-determination.<sup>15</sup> Jefferson had declared this to be an unalienable right.<sup>16</sup> The U.N. General Assembly had considered “any military occupation, however temporary” to be a damnable act of aggression,<sup>17</sup> affirming time and again the legitimacy of armed resistance for the sake of self-determination.<sup>18</sup> Why is this ignored when speaking of the Israeli-Palestinian “conflict”?

A cynical (and not entirely untrue) answer might be that preference and power prevail over principle. The resolutions of the General Assembly are not legally binding, and Occupying Powers such as Israel, which has not ratified the First Additional Protocol,<sup>19</sup> are hardly anxious to legitimize their enemies. To delegitimize (and thus to criminalize) resistance is to normalize the occupation. In this Gibbonesque regime, armed struggle becomes the disruptive force, while “peace” is the *status quo ante*.

However, one might say further that the Palestinian resistance has not made it any easier to distinguish freedom fighter from terrorist. History hardly recalls the

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<sup>15</sup> See, e.g., Res. 3246, *supra* note 11, at 87 (“The General Assembly . . . [s]trongly condemns all Governments which do not recognize the right to self-determination and independence of peoples under colonial and foreign domination and alien subjugation, notably the peoples of Africa and the Palestinian people.”).

<sup>16</sup> See DECLARATION, *supra* note 5, para. 2.

<sup>17</sup> *Resolution on Definition of Aggression*, G.A. Res. 3314, 29 U.N. GAOR, 29th Sess., Supp. No. 31, U.N. Doc. A/9631, at 143 (Dec. 14, 1974).

<sup>18</sup> See, e.g., Res. 3246, *supra* note 11, at 87.

<sup>19</sup> See Treaties and States Parties to Such Treaties, ICRC, [https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=470](https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470) (listing all nations to sign the *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977,) (last visited Oct. 21, 2014).

secular and democratic goals of the old-school P.L.O.<sup>20</sup> Rather, suicide bombs, human shields and the murderous charter of Hamas predominate in the public's mind. A similarly morbid fixation or fear may have motivated President Reagan, who spurned and rejected the First Additional Protocol for giving "recognition and protection to terrorist groups."<sup>21</sup> Armed struggle for liberation, it appeared, would not be endorsed by those who pioneered it.

Reagan's refusal proceeded from the fear of giving terrorists a legal imprimatur. This was not so much a matter of discrimination as it was the *failure* to discriminate—abandoning the baby, so to speak, with the criminal bathwater. In reality, the protocol already contemplates the risk of legitimizing, if I so may phrase it, the *wrong guys*: its remedy is to prohibit acts "the primary purpose of which is to spread terror among the civilian population,"<sup>22</sup> to criminalize the targeting of civilians,<sup>23</sup> and to mandate compliance with the laws of war.<sup>24</sup> Ironically enough, Reagan himself pronounced a similar guiding principle: "Freedom fighters target the military forces and the organized instruments of repression keeping dictatorial regimes in power. . . . Terrorists intentionally kill or maim unarmed civilians, often women and children, often third

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<sup>20</sup> See Edward Said, *Interview with Edward Said by Abdullah al-Sinnawi*, PEACE & ITS DISCONTENTS 165, 174 (1996) ("... I was never able to let go of the bitterness resulting from the loss of the PLO's old goal, that is the establishment of secular democracy in Palestine.").

<sup>21</sup> Ronald Reagan, Message to the Senate Transmitting a Protocol to the 1949 Geneva Conventions (Jan. 29, 1987) (transcript available at <http://www.reagan.utexas.edu/archives/speeches/1987/012987b.htm>).

<sup>22</sup> Additional Protocol I, *supra* note 12, at art. 51(2).

<sup>23</sup> See *id.* at art. 85(3)(a), (5).

<sup>24</sup> See *id.* at art. 43(1).

parties who are not in any way part of a dictatorial regime.”<sup>25</sup> In the absence of a consensual definition of terrorism,<sup>26</sup> might this not do?

The White House faces today an equivalent trouble in supporting the elusive “moderate rebels” of Syria.<sup>27</sup> We tried this before, with the anti-Sandinista Contras of Nicaragua, and with Afghanistan’s anti-Soviet *mujahideen*; the results have spared us no humiliation. One ought naturally to be wary of all insurgent forces, which are the very opposite of “moderate” nearly by definition. Still, to delegitimize all insurgent groups for the barbarism some may wreak is to absolve *status quo* regimes of the barbarism they have wrought. Legitimation has its perils—but so too does giving a functional veto power to those regimes whose rule compels resistance.

### III. The Shape of Resistance to Come

Are there any militant groups in Palestine worthy of this gamble? While working there during this past summer’s war, I heard reports that some militants, such as the oft-ignored (and secular Marxist) Popular Front for the Liberation of Palestine, had been mindful of the legal—not to mention moral—distinction between civilian targets and military objectives. Whether this was true is beyond my powers to answer, though it hints at an armed resistance that aligns with international law. More palpably, however,

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<sup>25</sup> Ronald Reagan, Radio Address to the Nation on Terrorism (May 31, 1986) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=37376>).

<sup>26</sup> “More than 70 years after the League of Nations first proposed (in 1937) a legal definition of terrorism, such an agreement is still elusive.” Alex P. Schmid, *The Definition of Terrorism*, THE ROUTLEDGE HANDBOOK OF TERRORISM RESEARCH 39, 39 (Alex P. Schmid ed., 2011).

<sup>27</sup> See, e.g., Ben Hubbard, *U.S. Goal Is to Forge Syrian Force Equal to Task*, N.Y. TIMES, Sep. 19, 2014, at A1.



I saw the horror show of the Gaza Strip reduced to a howling wilderness, with the jaundiced seeds of radicalism gestating in a new generation. One feels intuitively that encouraging militancy is the *last* thing the Levant needs.

But so long as the State of Israel insists upon ruling the unwilling, the old quarrel seems unlikely to be quelled. The First Additional Protocol, and the norms of self-determination and resistance it seeks to legitimize, provide a tenable chart by which to navigate this post-imperial mess. The liberation armies of Palestine have languished long on the criminal fringe of the international order, and have behaved accordingly. It may serve humanitarian interests to engage them as international actors, and to demand of them compliance with the attendant laws of war. At the same time, the recognition of resistance would confirm to the world that the *status quo* is neither tolerable nor lawful—in other words, that self-determination is not exclusive. The Israeli-Palestinian narrative is one long history of denial: of the Palestinians' suffering, of their agency, of their existence as a people. To deny the odiousness of occupation is to insult an injury decades in the making.