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Palestine Referendum Proposal from the Perspective of International Law; Essentials, Weaknesses and Strengths^{*}

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Abstract

The intensification of armed conflict in Palestine during the years 2023 and 2024 by the Zionist regime have brought the solutions for the long-standing tension in the Palestinian territories into the focus of international attention. Therefore, in this regard, solutions such as the two-state solution and similar proposals have been presented by various governments and organizations. For nearly two decades, Iran has also proposed the "Palestinian Referendum Proposal" in pursuit of a legal-political resolution to the Palestinian issue. This article investigates the strengths and weaknesses of the "Referendum Proposal" from the perspective of international law, as well as the essential requirements that need to be observed to enhance its effectiveness. Therefore, strengths such as "the centrality of human rights and international law in this plan", "compliance with democratic principles and historical facts" and its "universal acceptability", as well as weaknesses such as "lack of a comprehensive legal perspective, particularly in the field of humanitarian law", detrimental brevity and ignoring for political realities affecting the law, have been examined. Findings indicate that the actions of various countries against Israel in international courts and international legal organizations have turned Palestine into a target for legal convergence.

Keywords: Humanitarian Law, International Court of Justice, International Human Rights Law, Legal Convergence, Palestinian Referendum Proposal

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1. Introduction

Following the October 7th operations conducted by Palestinian liberation groups, the Israeli regime initiated unprecedented attacks on various sites, targets, and individuals, both military and civilian. The prolonged escalation of these attacks and the resultant death toll of nearly forty thousand Palestinians in less than a year have awakened global public awareness and conscience in response to these events. During this period, numerous international organizations have issued official reports, documenting multiple instances of "international crimes" (UNRWA, 2024, pp. 1-5; UNICEF, 2024, p. 7; WHO, 2024, pp. 1-3). Additionally, several international courts have commenced proceedings regarding the case of Palestine, and some states have undertaken actions within both domestic and international formal processes.

One of the issues that has regained the attention of the international community in light of these attacks is the question of possible solutions and mechanisms for ending the crisis. Throughout the history of the United Nations, various solutions such as the "Israeli-Palestinian two-state solution," the "establishment of a Jewish-Arab federal state", and similar proposals have been put forward. However, none of these have achieved success, leading to skepticism about their viability (Paudel, 2021, pp. 35-36). For more than a decade, Iran has proposed an initiative, advocating that the resolution of the Palestinian Question can be achieved through a "referendum".

The Iranian proposal for resolving the Palestinian issue, titled "The Plan for Holding a National Referendum in the Territory of Palestine", begins with the premise that the current problem in this region stems from a colonial mindset. Colonialism, characterized by "perpetuating conflict in various parts of the world" and

"disregarding national aspirations", has engaged in unwarranted actions against various countries over the past century, and continues to be sources of crisis and tension globally (Adamu, 2009, p. 299). The plan highlights the fact that Britain, as a colonial power, recognized the "Zionist regime" during its mandate over the territory of Palestine, whereas the people of the territory of Palestine were never consulted about their fate.

With this introduction, the plan aims to revive the "right to self-determination" for the native population of the territory of Palestine. The proposal emphasizes, "the right to self-determination of the people of Palestine has neither been exercised at the time of the declaration of the formation of the Zionist regime in the occupied territories of Palestine nor afterwards" (Section "Legal Basis of the Plan" of Iranian Plan of National Referendum in the territory of Palestine, pa. 4).

The governance theory of the Islamic Republic of Iran in the realm of politics is based on "justice", a criterion that has been a focal point both practically and theoretically since the establishment of this political system (Nouri & Malakouti, 1391 [2012 A.D.], p. 26). The significant role of justice in Iran's foreign policy has also been acknowledged in the works of Western scholars, although they often attempt to provide a distorted interpretation based on a Eurocentric and misinformed perspective (Koreivaite, 2015, pp. 85-87). Justice is a decisive element in both domestic and foreign policies of Iran, and many sections of the current Iranian Constitution are shaped by the theory of justice from an Islamic perspective (Principles 61, 139, 121, 156, 170, especially Principle 152 of the Iranian Constitution). In its proposal for resolving the Palestinian issue, Iran emphasizes the fairness of this idea and maintains that a "fair referendum" is the only way to

break the current political deadlock in Palestine. This approach aligns with the principle of justice and aims to return Palestinians to their "historical homeland".

This Proposal is executed in four stages: the return of Palestinian refugees to their homeland, the holding of a national referendum among Palestinians to determine the type of political system, the establishment of the political system, and the deciding on the status of the non-indigenous residents of Palestine by the political system elected by the majority. These stages are to be carried out by an international authority, with oversight provided by a United Nations committee. The funding for this extensive project will be provided by an international fund, with contributions from the international community (Section "Implementation Mechanisms" of Iranian Plan of National Referendum in the territory of Palestine, pa. 5).

This article aims to assess the feasibility of implementing the Iranian proposal for resolving the Palestinian issue. After examining the strengths of the plan from the perspective of international law, it will provide a detailed analysis of its weaknesses. Finally, the article will offer recommendations for enhancing the effectiveness of this plan and ensuring its proper pursuit within the framework of international law. The referendum proposal requires further elaboration and deepening. Although this article primarily presents viewpoints from the perspective of international law, it occasionally references existing non-legal realities due to the intertwined nature of international law and international relations.

2. Research Methodology and Theoretical Framework

In the present study, the legal analysis method has been employed. This method, which is commonly utilized by legal scholars to analyze international law and human rights law, involves a meticulous examination and derivation of legal principles from statutory texts, international agreements, legal instruments, and judicial precedents. Although this article is predominantly centered on legal discussions, the nature of the main subject necessitates addressing certain historical issues. Therefore, given the complexity of the topic, the research methodology adopted here is a "combined method". Legal authors often organize their writings based on this approach, yet they overlook the fact that this method is generally employed in a composite manner, incorporating other methods alongside legal analysis. The oversight of legal authors regarding this reality is a challenge not confined to any specific country or region (Philippopoulos & Brooks, 2017, p. 321). Following the prevalent practices in law schools and legal professions, legal writings typically commence by stating legal rules. Subsequently, they present facts and align the subject matter with the stated rules to derive a realistic legal conclusion. This method is commonly referred to as "Legal Analysis" (Edwards, 2019, pp. 31–36).

Legal Analysis considers documents, notes, case reports, judicial decisions, and even expert opinions; such investigation, although based on documented texts, faces its own challenges, one of the most significant being the selective presentation of evidence to achieve a desired outcome. This issue becomes more pronounced in studies that are not purely legal in nature, but are intertwined with politics, economics, and other fields. In the presentation of historical evidence, particularly in sections where political

narratives overshadow legal analysis, content analysis method is employed to achieve the desired results (Krippendorff, 2018). Therefore, while the author presents his analysis of the issues in this study, he also directly cites the evidence to ensure that readers do not remain simple observers, but rather assume the role of analysts, potentially surpassing the author in his interpretations.

The author acknowledges the use of historical data and, in particular, the recounting of history in his narrative. However, he refrains from characterizing this study as historical research or one based on historical methodology. Instead, the primary method employed in this research remains legal analysis, which, as necessitated by the subject, incorporates data from other historical studies.

This article aims to examine and elaborate on the proposed model for resolving the Palestinian Issue based on recourse to a referendum, grounded in eight criteria derived from the theoretical framework of international law. Theoretical framework of this article entails and includes these criteria as follows:

1. The Right to Self-Determination, as enshrined in the provisions of the United Nations Charter and international treaties, particularly the International Covenant on Civil and Political Rights.

2. Rules of International Law concerning the Recognition of states and governments.

3. Legitimacy of Referenda under international law for resolving territorial disputes and the conduct of free, inclusive, and fair referenda.

4. Rules of International Humanitarian Law and Human Rights

Norms, with particular emphasis on the rights of refugees and displaced persons, including the right of return.

5. The Principle of Territorial Integrity and the illegitimacy of the use of force for territorial acquisition, as stipulated in Resolution 3314 of United Nations General Assembly.

6. International Legal Norms Governing Occupation and Occupying Powers.

7. The Principle of Peaceful Settlement of International Disputes.

8. The Supremacy of Customary International Law, Peremptory Norms (*Jus Cogens*), and Doctrinal Principles (*Opinio Juris*), particularly those reflected in the opinions and judgments of the International Court of Justice.

The theoretical framework of this article is founded upon these well-established and definitive principles of international law. In this context, the article critically examines other relevant theories concerning state-building in Palestinian territories and evaluates the proposed recourse to a referendum.

3. Strengths

Regarding the Palestinian issue, the vast majority of states have reached a deadlock with the "two-state solution" and continue to emphasize the importance of this idea amidst ongoing military and political tensions in the region (Shemer-Kunz, 2023, pp. 3-5). In contrast, Iran's initiative is significant because it does not simply reiterate conventional positions, but illuminates a new horizon. In such crises, it is essential not only to revisit unsuccessful solutions,

but also to explore new ones. This section outlines three strengths of the Iranian proposal for resolving the Palestinian issue: its focus on human rights and international law, its alignment with democratic principles and historical facts, and its compatibility with various approaches to the Palestinian issue.

3. 1. Focus on Human Rights and International Law

The drafters of the Iranian proposal for resolving the Palestinian issue have correctly understood that a global and pervasive issue must be addressed using inclusive and universally understood language. International law comprises a series of rules created by states and subjects of international law in a horizontal space based on agreement (Klabbers, 2020, pp. 26-27). This consensus and general acceptance form the foundation of international law, resulting in the development of principles, rules, and a language that are accepted by all states and understood by all members of the international community. Other states also utilize the language of international law in similar matters (Ginsburg, 2020, pp. 221-222). Therefore, the proposal emphasizes and references the centrality of international law, particularly international human rights law, in various sections.

In the introduction of the proposal, it is highlighted that the policies and actions of the Zionist regime "are in violation of the purposes and principles of the United Nations Charter and rules of international law, particularly international humanitarian law and human rights," and this has become a key factor in the failure to resolve the Palestinian issue. Elsewhere, the proposal justifies the referendum method by its alignment with international law, explicitly stating that "It is essential that the said referendum be

held by observing the principled criteria in line with historical realities and in conformity with the democratic principles and the fundamental and imprescriptible rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights and the observance of international standards on elections". Additionally, the proposal is replete with references to human rights documents and treaties, particularly the United Nations Charter, and United Nations resolutions such as the United Nations Declaration on the Rights of Indigenous Peoples, advisory opinions of the International Court of Justice, such as the advisory opinion of 9 July 2004 on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" and the advisory opinion of 25 February 2019 on "the legal consequences of the separation of the Chagos Archipelago from Mauritius by the UK".

A prominent characteristic of human rights concepts is that in the contemporary era, these concepts lend legitimacy to the actions, opinions, and positions of states (Karlsson Schaffer, 2013, p. 11); the referendum proposal therefore seeks to bolster its legitimacy by referencing these concepts. Within the international human rights framework, this proposal places special emphasis on the right to self-determination and the "rights of refugees". Based on international law, the right to self-determination holds heightened significance in situations of colonialism, foreign occupation and apartheid, as these conditions result in the violation of the fundamental and primary rights of the people of a territory. Although the current situation in Palestine stems from colonial policies, the territory now suffers from foreign occupation and the imposition of an apartheid regime, rather than ongoing colonialism

(Tilley, 2009, pp. 277-278). However, some legal writers argue that the creeping settlement development in the West Bank and the current settlement efforts in Gaza are examples of the continuation of the colonial situation in these Palestinian territories (Busbridge, 2018, pp. 5-6). Therefore, the drafters of the proposal have structured their arguments around the right to self-determination, aligning with international law, particularly international human rights law.

One of the most crucial aspects of the Iranian proposal for resolving the Palestinian issue is its adherence to legal logic. According to international legal logic, unlawful actions cannot be recognized by states. Moreover, the passage of time does not create any rights for the violator of international law; instead, the violator is obligated to compensate for damages from the time of the violation until the cessation of the wrongful act (Henderson, 2018, pp. 32-33). Consequently, the International Court of Justice, in its advisory opinion on the “Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem” (Advisory Opinion 19 July 2024), refers to this legal logic. Since Israel is deemed in violation of *Erga Omnes* obligations, the Court obliges states and international organizations not to recognize the occupation (and its resultant consequences) and mandates Israel to withdraw from the occupied territories (ICJ, 2024, pp. 78-79). *Erga Omnes* obligations are against the concept of contractual obligations because these obligations are only binding on both parties to the contract and treaty, but *Erga Omnes*, regardless of contractual obligations, are binding on all governments, as they are rooted in the general interests of the international community (Chow, 2020, pp. 494-495). The Iranian proposal also follows this logic by referencing

Erga Omnes obligations. Since Iran views the entire existence of Israel as a product of occupation, it asserts that the structures formed based on this occupation lack legitimacy. Consequently, it affirms that the right to self-determination belongs to the indigenous Palestinians, the historical owners of the land, and ultimately, the elected Palestinian government will determine the status of non-indigenous residents. This solution is defensible from the perspective of international law due to its alignment with legal logic, particularly the principle that situations arising from unlawful actions, such as military occupation, do not gain legitimacy over time and do not create rights for the violators.

3. 2. Alignment with Democracy and Historical Truth

Among the various proposals currently being discussed regarding the Palestinian issue, the referendum proposal is the most democratic initiative put forward. Among the proposed models for resolving the issue in the Palestinian Territory, two other models, namely the formation of a federal government and the two-state solution, are also proposed in legal and political literature. The first model, which has received limited support, advocates for the establishment of a federal state (Godwin, 2019, p. 1051). According to legal principles, a federal state is an integrated and composite government wherein each federated unit enjoys extensive sovereign powers (legislative, executive, judicial, military, and law-making). The federal government, above these units, coordinates overarching policies, manages governance, and undertakes international affairs on behalf of all federated entities. Based on this theory, a government in Palestine would be established with two states—Jewish and Palestinian—under the

overarching authority of a federal government (Di Marco, 2019, p. 22). This idea has garnered limited attention from legal scholars due to the lack of a viable implementation model and has similarly been largely overlooked by states and international organizations at the institutional level.

The two-state solution, which envisions the creation of separate Jewish and Arab states, has been repeatedly emphasized by the United Nations and both Western and Eastern governments (UNSC, 2023, p. 4; African Union, 2024, p. 1; Gordon & Cohen, 2012, pp. 4–5). However, this solution has stalled due to violations of commitments, particularly breaches of international humanitarian law by Israel over the past seven decades. The most significant flaw of the two-state solution is its imposed nature. In other words, the two-state solution reflects the preferences of states and international organizations more than the will of the Palestinian people (Kyriss, 2024, p. 7), effectively imposing this solution on the Palestinians. The views of the Palestinian people have never been sought in the two-state solution or similar plans, which fundamentally constitutes a violation of their right to self-determination. The two-state solution faces both legal and practical challenges. From a legal perspective, the primary issue with this plan is that it was conceived outside Palestine and seeks to impose itself on the Palestinian people. This constitutes a violation of the right to self-determination, which has led the inhabitants of Palestinian territories to reject the plan. From a practical standpoint, this proposal has a long and contentious history. Although the Palestinian state and various Palestinian groups have accepted the two-state solution at different times and even acted upon it by reducing the sovereignty of a Palestinian state to the level of a political entity, the Israeli side has consistently failed to

demonstrate genuine commitment. Israel's unilateralism has been the key reason for the decades-long failure of the rhetoric surrounding progress toward a two-state solution (Rumley & Tibon, 2015; Gordon & Cohen, 2012, pp. 4–5). The breach of trilateral agreements, such as the Madrid Conference, the Camp David Accords, and especially the Oslo Accords, has rendered the formation of two states practically impossible (Alkidwa, 2019, p. 34). Despite claiming to support the two-state solution, Israel continued expanding its occupation and settlements, which gradually led all inhabitants of Palestinian territories to lose hope in this approach (Paudel, 2021, pp. 35–36). In addition to the weak legal and political foundation of this solution, practical experience has demonstrated its lack of feasibility in implementation. Despite its acceptance by the Israeli government and various Palestinian groups, it has never yielded results due to the lack of genuine commitment from the Israeli side (Robinson, 2019, pp. 174–175).

International law recognizes a state or government based on the democratic legitimacy of its establishment. Since the most accepted method in international law for establishing a government is through a referendum, all recent changes in this regard over the past two decades have been based on territorial referenda (Landi, 2019, p. 95) and international institutions have been established to monitor it (Fox, 2000, p. 304-305). Iran has sought to emphasize the democratic nature of the referendum proposal and to dispel the notion that the idea of a referendum stems from an ideological perspective. The proposal refers to the historical fact that even in Iran's former regime, which was not a religious system, the government's stance (Pahlavi regime) was to advocate for a referendum. The proposal states that "during the negotiations at the United Nations General Assembly in 1948, the representative of the

Government of Iran, along with the representatives of some Arab countries, objected to the partition of Palestine and considered it as a ground for war and conflict". During this meeting, the Iranian representative stated, "The United Nations Charter obliges us to respect the right of every nation to live freely and determine its destiny freely. Why, then, should we shirk this duty and impose a government on Palestine that satisfies no party? By doing so, you will not create a national hearth for the Jews, but rather a hearth that, beneath its ashes, will always harbor a fire threatening not only the Middle East but the peace of the world". He then identified Iran's proposed solution as holding a referendum, emphasizing that this referendum should include all Palestinians, "whether they are Muslim, Christian, or Jewish. Once this country gains its freedom, the inhabitants, regardless of their religion, will find a fair and just solution to the conflict that has divided them today. They will then freely choose and accept this solution, whether it involves the formation of two separate states or the creation of a federal state" (Nuroddin Kia, 1377 [1998 A.D.], p. 156).

3. 3. Lack of Conflict with Western Political Perspectives

In international law, a liberation movement enjoys the benefits of statehood when it possesses two key characteristics: a clear hierarchy and organization, and representation of the people under occupation or colonial rule (Olalia, 2005, p. 3). In Palestine, the "Palestine Liberation Organization" has long represented the Palestinian people in their struggle against the Israeli occupation, participating in international institutions and organizations. In 1988, the UN General Assembly, through Resolutions 47/176 and 47/177 adopted on December 15, 1988, referred to this organization as the "State of Palestine". Furthermore, in 2012, the

General Assembly recognized it as a "non-member observer state" (Resolution 67/19).

The current government of Palestine, which is a continuation of the political and military group "Fatah", has encountered internal rivals over the years who have responded more vigorously to the occupation through military and political actions. Due to broader popular support among Palestinians, these groups are regarded as a national liberation movement from the perspective of international law. When an entity is considered a liberation movement, it is entitled to armed resistance under international law (Kwakwa, 2023, p. 51) and may use military force to expel the occupiers.

American and European governments have consistently sought to question the legitimacy of Palestinian entities to prevent them from being recognized as a "liberation movement" (European Parliament, 2023, pp. 2-3). The political West has maintained that these groups "do not represent the Palestinian people", thereby casting doubt on their entitlement to the privileges of liberation movements (Johannsen et al., 2011, p. 4). This perspective aligns with the Iranian plan to resolve the Palestinian issue, which omits any reference to Palestinian political and military groups. Instead, the plan entrusts the execution of the proposal—which includes the return of refugees, the holding of a referendum, and the establishment of an elected government—to an international authority with the assistance of the international community. Therefore, the Iranian plan does not conflict with the Western political stance on current Palestinian liberation groups.

This issue holds significant importance from the perspective of international law as well. Legal universalism in designing a solution can contribute to the success of a plan, while particularism,

especially self-interested particularism, can lead to the failure of an initiative (Pulkowski, 2005, p. 10; Czina, 2016, p. 4). Globalism and universalism in the realm of international law imply the ability to garner collective support from states in designing and implementing an idea. In contrast, legal particularism denotes a divergence from collective solutions.

4. Weaknesses

The Iranian proposal for resolving the Palestinian issue, in its current version, contains deficiencies that need to be addressed and refined. These deficiencies, from the perspective of international law, include a lack of a comprehensive view of international human rights law, detrimental brevity, and neglect of effective realities in the legal design of an initiative. Each of these shortcomings can lead to the inefficacy of the proposal at both the suggestion and implementation stages. Therefore, in this section, while elucidating each of these deficiencies, solutions for their resolution and refinement are also discussed.

4. 1. Incomplete Utilization of Legal Literature, Especially International Humanitarian Law

While the proposal adopts the language of law to present its ideas, it exhibits several significant shortcomings from the perspective of international law. Firstly, the drafters of the proposal have relied on only two human rights concepts: the right to self-determination and the rights of refugees. However, human rights encompass a wide array of rules in the fields of civil, political, economic, social, and cultural rights. The authors of the proposal could have more

effectively utilized the capacities available within the system of international human rights law.

In the realm of human rights, three categories of concepts could have been considered in this proposal. The first category includes human rights concepts and principles which, while not directly related to the idea of a referendum, could have contributed to legitimizing the foundations of the proposal and enhancing the logic towards the realization of the violated rights of Palestinians. This is particularly significant, given that Iran, in this proposal, has aimed at achieving the "inalienable and imprescriptible rights" of the indigenous people of Palestine. Israel has a long record of human rights violations in areas such as children's rights, women's rights, prisoners' rights, the right to food, the right to health, etc. (UNRWA, 2024, pp. 1-5; UNICEF, 2024, p. 7; WHO, 2024, pp. 1-3). The authors of the proposal should have addressed these human rights dimensions in addition to the nature of the occupation.

The second category consists of human rights concepts that are directly related to the idea of a referendum. In addition to being a result of the right to self-determination, a referendum also encompasses other rights such as the right to political and social participation. From the perspective of international law, the right to self-determination against a foreign ruler (occupation or colonialism) includes the right to armed struggle until the foreign force is expelled (Kwakwa, 2023, pp. 51-53). However, if the rulers are internal and national, only the right to participate in political and social affairs arises (Fox, 1992, pp. 553-555) without the permission for armed action against the established government. In the current context of Palestine, the indigenous people are entitled to both these forms of rights; especially given that the current Palestinian government makes decisions and

agreements contrary to the general will, without regard for the victims of Israeli crimes. From the perspective of international human rights law, the right to political participation can also be employed to justify the idea of a referendum.

The third category of human rights concepts includes the rights that international law provides for "indigenous peoples", which are directly linked to the right to self-determination (Anaya, 2004, pp. 75-76). In international law, indigenous people are defined as the original inhabitants of a land whose rights are often denied and whose demographic composition is altered by the arrival of occupiers or colonizers (Thornberry, 2013, pp. 37-39). Given that this proposal refers to the Palestinian people as both "indigenous" and "genuine" Palestinians, it would have been appropriate to address the full spectrum of indigenous rights within the context of the Palestinian issue in the text.

Another deficiency of the proposal is its neglect of international humanitarian law. The international humanitarian law rules, which the Israeli regime has consistently violated, include legally binding regulations during wartime concerning the use of weapons (restrictions) and the treatment against military and civilian individuals, targets and sites (Alexander, 2015, p. 111). Numerous international reports have documented violations of humanitarian law, particularly war crimes against the Palestinian people (Human Rights Council, 2024a, p. 50). It would have been appropriate for the drafter of the proposal to reference these reports, documents, and treaties related to humanitarian law violations, just as they have cited human rights documents and violations.

For example, under international humanitarian law and international criminal law, an occupying power has obligations whose violation constitutes an "international crime" and is subject

to international criminal prosecution. Among these obligations are the "prohibition of forced displacement" in occupied territories and the "prohibition of deliberate starvation" (Human Rights Council, 2024a, pp. 24-25). This issue was explicitly addressed by the International Court of Justice in its advisory opinion on the "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" (Advisory Opinion, 19 July 2024) (ICJ, 2024, p. 45). Given the focus of the proposal on the return of refugees to their historical land, the designers could have highlighted Israel's "wrongful acts" and "crimes", particularly the forced displacement of the Palestinian people during periodic wars against Gaza and the West Bank and placing the population in dire conditions. This perspective would have further substantiated the right of return for refugees.

4. 2. Harmful Brevity

The Iranian proposal for resolving the Palestinian question is, in many instances, ambiguous and overly brief. For a proposal to be viable from a legal perspective, the intentions and objectives of its drafters must be clearly articulated, ensuring that the audience understands the mechanisms envisioned by its drafter. One area where the proposal should have provided more explanation in its introduction is the distinction between the Iranian perspective and that of others regarding the realities of Palestine. This differing perspective aligns more closely with international law, and as such, Iran could have utilized legal language to defend its legal rationale—especially considering that this legal rationale forms the fundamental basis of the proposal.

The key difference between Iran's perspective and the prevailing international viewpoint is Iran's insistence on the legal principle that an unlawful act has no legal effect. Given that the prohibition of the use of force in international law has evolved into a peremptory norm (*jus cogens*) (International Law Commission, 2022, p. 8), which cannot be violated or contravened by agreement, any state that occupies another country's territory through the use of force cannot claim ownership or sovereignty over that territory (Henderson, 2018, pp. 24-25). Based on this logic and historical facts, Iran argues that Palestine does not belong to Israel, and the presence of Zionists on this land is the result of British colonial imposition and the use of force against Palestinians. Consequently, Israel's presence in the Middle East is based on occupation and lacks legal validity.

The term "occupied territories", as referenced in international documents, originates from the 1967 partition plan, according to which Palestine was divided into Israeli and Palestinian sections. In the United Nations literature and that of international organizations such as the European Union, "Occupied Territories" refers to Israeli presence in areas allocated to Palestinians in 1967 (UNGA Resolution, 2012; European Union Statement, 2020). The International Court of Justice (ICJ), in its Advisory Opinion on the "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" (19 July 2024), has explicitly deemed Israel's presence in these areas as "illegal". The ICJ has mandated Israel to withdraw from these areas, compensate for the damages, and evacuate the existing settlements and their inhabitants (ICJ, 2024, pp. 78-79).

Although the United Nations and similar organizations have never formally challenged Iran's logic regarding the occupational

nature of Israel and its unconventional establishment, Iran's perspective is acceptable from the standpoint of international law. However, it was necessary for Iran to elucidate this legal logic within the proposal, as it forms the primary foundation of the proposal. Clarifying this logic would allow the audience to better understand Iran's use of the term "Occupation of Palestine", and comprehend the Iranian approach to the issue of occupation in Palestine.

Another criticism is that Iran does not refer to competing and prominent models regarding Palestine. Currently, the "two-state solution" is a strategy promoted by most governments (except Israel and Palestine) as the sole means to end the seven decades of violence in Palestine (Dalli, 2022) with the explanation that the Palestinian government and people have also welcomed this model in the past, but have gradually become disappointed with it (Abdelhadi, 2018, p. 5). It is thus necessary for the drafters of the plan to articulate their reasons for rejecting the "two-state solution", detail its weaknesses and strengths, and explain the superiority of the "referendum solution" over the "two-state solution". This approach would potentially persuade governments that support the two-state solution to favor the referendum plan. A robust initiative for resolving conflict and dispute results from examining all existing proposals and analyzing their shortcomings; therefore, the Iranian proposal is open to enhancement and elaboration.

4. 3. Neglect of Legal Realities

Another criticism of the Iranian proposal for resolving the Palestinian question is its neglect of global realities and their impact on international law. Although the plan attempts to reflect

its practicality by proposing a four-stage solution, the developments in the legal world indicate that the plan overlooks many crucial realities.

Firstly, the plan proposes the establishment of a "fund" to finance the large-scale project of refugee identification, holding a referendum, and forming a transitional government. This fund would be created with financial contributions from members of the international community, such as states and international organizations. International funds are recognized as instruments for financing large projects; for example, financing the International Criminal Court in pursuing cases through the establishment of a fund (Dannenbaum, 2010, p. 297) or financing projects related to Palestine through UNRWA.

In the implementation phase, this proposal is challenging to achieve because, in smaller projects, financial support for Palestine has not been particularly successful. For example, despite UN support, UNRWA has consistently faced financial difficulties (Berg et al., 2022, p. 25). The situation of Palestine, which has been under consideration by the International Criminal Court (ICC) since 2015, has seen limited progress. Despite two major wars against Palestinians, particularly in 2023 and 2024, resulting in nearly 40,000 deaths, there has been no significant advancement in transforming the "situation" of Palestine in the ICC into a "case" and achieving concrete results (ICC, 2018). The ICC prosecutor attributed the lack of progress to insufficient funding for judicial proceedings concerning Israeli crimes. Following this announcement, it was expected that Arab and Islamic states would address this concern to support Palestine. However, this did not happen, and these states, for various reasons, did not take the needed steps to provide the necessary financial support.

Another significant oversight in this proposal is the lack of consideration for the Palestinian stakeholders. As a very important and relevant point, various political, social, and military groups exist within different parts of Palestine, each playing a crucial role in the country's dynamics (Farsoun, 2018). The proposal only references the participation of "all Palestinian people including Muslims, Christians, and Jews and their descendants", but fails to address how the current structures, the existing government in Palestine, liberation groups, political and social factions, and parties will participate.

A critical challenge in the Iranian proposal is its lack of attention to the existing stakeholders in Palestine and their roles in executing the referendum. It is essential to note that the proposal is based on the right of participation for all Palestinians "who resided in Palestine before the Balfour Declaration, and their descendants". Given the deaths of many Palestinians since the Balfour Declaration, the current residents of Palestine, Palestinian migrants, refugees, and their descendants should participate in the referendum. Although, according to international law, Palestinian citizenship should be granted based on the criterion of a "genuine link" or "genuine connection" (Lawand, 1996, p. 567), identifying Palestinian migrants and their descendants presents a significant challenge.

Certain Arab and Islamic countries, influenced by Western governments, have granted citizenship to Palestinians. This granting of citizenship, which could potentially lead to the assimilation and loss of Palestinian identity, has sparked reactions from some Arab states. For instance, the Iraqi legislator has provided that "granting citizenship to Palestinians is prohibited to ensure their right of return to their homeland" (Iraqi Nationality

Law, No. 26 of 2006, Article 6, Paragraph 2). This policy reflects a broader concern among several Arab nations regarding the preservation of Palestinian national identity and the right of return, emphasizing the geopolitical and legal complexities surrounding the Palestinian issue. Another significant challenge in the proposed referendum is the inclusion of many descendants of Palestinians who currently hold citizenship in European and American countries. Ensuring their participation in the referendum requires a more transparent and robust mechanism.

5. Requirements for Enhancing the Proposal

After analyzing the strengths and weaknesses of the Palestinian referendum proposal, one question arises: What changes and improvements are necessary to enhance the proposal's efficiency and impact? In response to this question, two categories of essential reforms for the referendum proposal have been identified. These reforms include substantial amendments and procedural adjustments.

5. 1. Leveraging Legal Convergence

The intense attacks by the Israeli regime against Palestinians in 2023 and 2024 prompted numerous states to undertake legal actions in domestic and international courts against these "international crimes" committed by Israel. For instance, South Africa filed a claim against Israel at the International Court of Justice (ICJ) for violating the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa Application, 2023, pa. 3). Additionally, the International Criminal Court (ICC)

intends to convert the "situation" in Palestine to a "case" against the Israeli President and Minister of Defense. The "situation" is a general situation that indicates a series of international crimes, but when the perpetrators of these crimes are identified based on the criteria of the Statute, and then prosecution (Arrest Warrant) is issued for them, a "case" is created (Rastan, 2008, p. 449). Moreover, states and international organizations actively participated in the advisory opinion process of the ICJ, resulting in a condemnation of Israel's occupation by the UN's judicial body (ICJ, 2024, pa. 9). These developments indicate that the question of Palestine can serve as a focal point for legal convergence.

It seems essential that two strategic developments be made regarding the Palestinian referendum proposal. First, this proposal was initially presented by the government of the Islamic Republic of Iran. This initial presentation, per se, was commendable as it utilized democratic principles and the foundations of international human rights law to innovatively propose a legal mechanism for resolving a crisis. However, this alone is insufficient; the proposal must be further advanced. To achieve this, it is imperative that the referendum proposal undergoes a second round of editing and that an enhanced version be collectively presented.

Given that competing models for resolving the Palestinian issue have collective support, it is necessary for the referendum proposal to present a model that garners support from various states. Many Asian and African countries (such as South Africa, Libya, Bangladesh, Comoros, and Djibouti) and some American and European states (such as Mexico, Colombia, Bolivia, and Spain) have engaged in cases concerning Israeli crimes in the International Court of Justice and the International Criminal Court (South African Embassy, 2023, p. 3; Spain Declaration, 2024, p. 2). This

opportunity should be seized to present the referendum proposal with collective endorsement. To persuade other states to support this proposal, Iran must not only convince them of the advantages of the referendum and the shortcomings of competing models, but also redesign the referendum model accordingly.

Another strategic shift involves optimizing the use of international organizations and institutions to introduce this proposal. Currently, Iran has registered and published this plan within the United Nations and the Asian Parliamentary Assembly (UNSC, 2019, p. 2). However, the wide array of existing international, regional, and continental organizations can provide a suitable platform for Iran to introduce this model alongside its strategic partners.

5. 2. Redesign and Upgrade of the Current Version

Since the publication of the initial version of the referendum proposal, significant developments have occurred in the field of international law. The most notable of these are the issuance of three Orders by the International Court of Justice concerning the violation of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa vs. Israel), and the issuance of an advisory opinion titled "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" (Advisory Opinion 19 July 2024). Additionally, numerous legal opinions regarding Israeli actions have been published in domestic courts, international forums, and human rights bodies. Notably, official reports from the Human Rights Council's special rapporteurs on various issues related to Palestine have documented the occurrence of war crimes and genocide in the years 2023 and 2024 (Human Rights Council,

2024b, p. 24). This substantial volume of developments necessitates the presentation of a new version incorporating these legal advancements.

Iran, in producing the second version of the referendum plan, must distance itself from the previous model and design a new version tailored to diverse audiences. More specifically, Iran should create a version for Muslim and Arabic-speaking audiences in Asian and African countries, justifying Iran's arguments in legal language supported by references to Islamic Sharia. Another version should be prepared for Latin American states, incorporating legal arguments common to Iran and Latin American legal systems. The spirit of justice and anti-colonialism prevalent among Latin American peoples are two elements that should be emphasized in this version. Iran submitted its initial referendum plan to the UN Secretary-General, requesting that the proposal be brought to the attention of the Security Council (UNSC, 2019, p. 1). At this stage, it is essential for Iran to directly provide a version to Security Council members in Russian, French, and Chinese to effectively elaborate on the intended proposal.

6. Conclusion

The Palestinian referendum initiative represents a creative and noteworthy attempt to address "the world's oldest and most complicated crisis for more than seven decades," (as claimed in the text of the proposal). This proposal is structured around three main pillars: a referendum involving all indigenous Palestinians and their descendants, the establishment of a government elected by the people, and the determination of the status of non-indigenous residents of Palestine. The proposal is distinguished by its clear and

universally understandable language, its alignment with international law, its congruence with democratic principles and historical facts, and its potential compatibility with various Western and Eastern political approaches. However, the initiative faces significant challenges due to its lack of a comprehensive perspective on international legal dimensions (human rights and humanitarian law), its extreme brevity, and its disregard for certain existing realities.

From the perspective of this article, several years have passed since the initial version of this proposal, and it is now time to present a new version. This new version should reflect recent legal developments, particularly the evolutions in the Palestinian case within the International Court of Justice, the International Criminal Court, and reports by Special Rapporteurs of the United Nations Human Rights Council. Additionally, the new version must employ active diplomacy within international organizations, and be introduced as an intergovernmental initiative with support from governments across various continents. The developments concerning Palestine in 2023 and 2024, along with legal actions taken by numerous African, Latin American, Asian, and certain European countries against the war crimes and genocide committed against Palestinians, have demonstrated that Palestine can become a focal point for legal convergence.

The liberation of Palestine was identified among the core ideals of the Islamic Revolution of the Iranian people in 1977, and even before the revolution, this concern had become a public demand. Since the occurrence of the Islamic Revolution, the Palestinian Question has consistently been a focal point of Iran's foreign policy. Iran has been an active state at the level of official diplomacy, public diplomacy, and parliamentary diplomacy in

supporting justice in Palestine. Therefore, it is appropriate that, alongside other measures, the Palestine-initiative (Referendum proposal) be promoted and disseminated using more active diplomatic capacities by the Ministry of Foreign Affairs, the Iranian Parliament, and ambassadors in other countries or international organizations.

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