A Closer Look at Egypt's Position on the Right to Self-Determination as Articulated Before the ICJ

Ahmed Wafai
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Egypt has articulated its position on the right to self-determination before the International Court of Justice (ICJ) on two occasions: first, in its Written Statement submitted in the Kosovo advisory proceedings; and more recently, in its Written Statement submitted in the advisory proceedings on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.

For ease of reference, Egypt's ***Kosovo Written Statement will be cited throughout as Memo 2009, para. [x],*** *and its Palestine Written Statement as Memo 2023, para. [x].*

Contextual Background

On 8 October 2008, the UN General Assembly adopted resolution 63/3 to request that the ICJ renders an advisory opinion on whether the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo, adopted on 17 February 2008, was in accordance with international law.

On 30 December 2022, the General Assembly adopted resolution 77/247 to request that the ICJ renders an advisory opinion on two questions. The first asked what legal consequences arise from Israel's ongoing violation of the Palestinian people's right to self-determination, from its prolonged occupation, settlement and annexation of territory occupied since 1967. The second asked how these policies and practices affect the legal status of the occupation itself, and what legal consequences arise for all states and the United Nations from that status.

Egypt participated in both advisory proceedings before the ICJ and set out its position on the right to self-determination as a general principle of international law. Across both proceedings, Egypt distinguishes between the right to self-determination in the colonial context (A) and **the right to self-determination beyond that context (B).**

A. The Right to Self-Determination in the Colonial Context

Egypt affirmed that ***right to self-determination in the colonial context*** constitutes an established rule of international law, **as** enshrined in Articles 1(2), 55 and 56 of the UN Charter and in common

Article 1 of the two International Covenants of 1966.

Egypt emphasized that the right to self-determination possesses an *erga omnes* character, creating legal interests and obligations for all States (*Memo 2024, para. 181*)**. It further cited** the UN International Law Commission (ILC) Commentaries to the Articles on State Responsibility for Internationally Wrongful Acts (2001)**, which considered the right to be non-derogable.**

Egypt also maintained that the right formed part of customary international law by at least 1960, when General Assembly (GA) Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples was adopted (Memo 2024, paras. 190, 196).

In substantiating its argument, Egypt recalled a series of UNGA resolutions that show "the evolution of *opinio juris*towards the creation of a rule of customary international law." It referred, inter alia, to Resolutions 421 (V), 545 (VI), 637 (VII), 738 (VIII), 833 (IX), and 1188 (XII) **(Memo 2024, paras. 193–195)**. Particular emphasis was placed on Resolution 1514 (XV), which declared that "all peoples have the right to self-determination" and may freely determine their political status and pursue their economic, social, and cultural development (Memo 2024, para. 196). Egypt also highlighted Resolution 1654 (XVI), which was **adopted unanimously and established** the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. **Among other things, this resolution demonstrates** that the right to self-determination was considered **an enforceable right under customary international law.**

Egypt **also relied extensively** on the jurisprudence of the ICJ concerning self-determination. It referred to the *Chagos Advisory Opinion* (2019), in which the Court described Resolution 1514 (XV) as a “defining moment in the consolidation of State practice regarding decolonization and recognized its declaratory character with respect to the customary norm of self-determination” (Memo 2024, paras. 180, 190, 227). Egypt also cited the *Namibia Advisory Opinion* (1971), where the Court considered Resolution 1514 (XV) an important stage in the development of international law and confirmed the applicability of self-determination to peoples who had not yet attained self-government (Memo 2024, para. 228). Egypt further relied on the *Western Sahara Advisory Opinion* (1975), in which the Court affirmed that self-determination is a right of peoples and requires the free and genuine expression of their will (Memo 2024, paras. 229–230).

Egypt additionally referred to the *East Timor Judgment* (1995), where the Court recognized self-determination as one of the essential principles of contemporary international law and confirmed its *erga omnes* character (Memo 2024, para. 231). The *Wall Advisory Opinion* (2004) was also invoked: Egypt noted that the Court recognized the existence of the Palestinian people and affirmed that their legitimate rights include the right to self-determination (Memo 2024, para. 211).

Finally, Egypt referred to the *Kosovo Advisory Opinion* (2010), in which the Court explained that the law of self-determination evolved during the second half of the twentieth century to create a right to independence for peoples subjected to alien domination, occupation, or exploitation (Memo 2024, para. 233).

On the scope of the right to self-determination in the colonial context**,** Egypt stated that the right is recognized as applying to all peoples living under foreign occupation, alien domination, or subjugation, including the Palestinian people (Memo 2024, para. 180). Egypt explained that the essential feature of the right to self-determination is the requirement that peoples freely and genuinely express their will regarding their political future (Memo 2024, para. 209).

Egypt additionally stressed that self-determination is inseparable from territorial integrity: the right is vested in peoples and can only be exercised within a specific territorial unit (Memo 2024, para. 216), such that the relevant unit cannot be fragmented or dismembered prior to the exercise of self-determination (Memo 2024, para. 217). Egypt further explains that the right applies to all inhabitants of the self-determination unit and is closely linked to territorial sovereignty (Memo 2024, paras. 218–220).

Egypt cited several General Assembly resolutions affirming this principle: Resolution 1654 (XVI) expressed concern regarding actions aimed at disrupting national unity and territorial integrity (Memo 2024, para. 222); Resolutions 2232 (XXI) and 2357 (XXII) reaffirmed that attempts to disrupt the national unity or territorial integrity of colonial territories are incompatible with the Charter of the United Nations and Resolution 1514 (XV) (Memo 2024, para. 222); and Egypt also referred to Resolution 2066 (XX), which opposed measures that would dismember the territory of Mauritius and violate its territorial integrity (Memo 2024, para. 224). In light of these resolutions, Egypt affirmed that the fragmentation of the Occupied Palestinian Territory through settlement activities and *de facto* and *de jure* annexation constitutes a violation of the Palestinian people's right to self-determination (Memo 2024, para. 225).

B. The Right to Self-Determination Beyond the Colonial Context

Egypt's Written Statement in the Kosovo proceedings addresses the right to self-determination from a different angle, focusing on its internal dimension (beyond the colonial context). Egypt states that the right to self-determination has developed into a “principle of inclusion within a society”, consisting in a people's right of participation in that society, whether in political or other spheres (Memo 2009, para. 57).

Egypt further observes that, in dealing with the rights of minorities, UN resolutions and documents maintain a balance between the right to self-determination and the principle of territorial integrity,

and notes that the exercise of self-determination internally may be achieved through legislative, administrative, cultural, and religious arrangements compatible with national legislation (Memo 2009, paras. 61-67).

Egypt develops this position by reference to the Canadian Supreme Court's *re Secession of Quebec*, citing it, *inter alia*, for the proposition that the right to self-determination of a people is normally fulfilled through internal self-determination — that is, through a people's pursuit of its political, economic, social, and cultural development within the framework of an existing state (Memo 2009, para. 69). Egypt further noted that the Supreme Court's reasoning supports the view that the right to self-determination and the principle of territorial integrity are not necessarily incompatible, so long as the government of the state in question represents the whole of its people without discrimination (Memo 2009, para. 69). Egypt noted that, at the international level, it has been observed that the right to self-determination diverges from an interpretation of the principle as an automatic guarantor of a right to statehood, tending instead toward a broader interpretation that encompasses the rights of both peoples and states (Memo 2009, para. 60).

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