

Araştırma Makalesi/Research Article Doi: 10.47136/asbuhfd.725430
**CRISIS IN HUMAN RIGHTS KNOWLEDGE:
CASE OF PALESTINE**

İnsan Hakları Bilimindeki Kriz: Filistin Örneği

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Abstract


Crisis in knowledge, deeply affects the definition or the concept of terms related to that knowledge. Human rights, a popular term is used to express the rights of the human being who lives not in one part of the world but all around the globe. However, every day we are faced with lots of news of human rights abuses from all over the world. This invasion shows that human rights knowledge, which ripened in an extended period, is in a big crisis. In this paper, it is argued that many examples of the crises in human rights knowledge can be seen in Palestine case. In this context, the first part will discuss the historical development of human rights knowledge, and the second part will focus on the cases related to basic human rights violations from Palestine. This study concludes that the human rights concept should be redefined with the implications from given

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Makale Gönderim Tarihi/Received: 22.04.2020.

Makale Kabul Tarihi/Accepted: 03.05.2021.

Atıf/Citation: Tögel, Akif. "Crisis In Human Rights Knowledge: Case Of Palestine." *ASBÜ Hukuk Fakültesi Dergisi* 3, no. 1 (2021): 49-65.

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cases. Also, human rights violations should be terminated, starting from Palestine and spreading to all around the world to stop the crises in human rights knowledge.

Keywords: Human Rights Knowledge, Human Rights Violations, Case of Palestine, Unjust Conditions in Palestine, IslamicJerusalem Studies.

Öz

Bilgi birikiminde yaşanan kriz, bu bilgiyle ilgili terimlerin tanımını ve kavramın kendisini derinden etkiler. Popüler bir terim olarak insan hakları, sadece dünyanın bir bölümünde değil, tüm dünyada yaşayan insanların haklarını ifade etmek için kullanılmaktadır. Ancak, her gün dünyanın her yerinden birçok insan hakları ihlali haberiyle karşı karşıya kalındığı düşünüldüğünde, bu ihlaller uzun bir süre içinde olgunlaşan insan hakları biliminin büyük bir krizde olduğunu göstermektedir. Bu çalışmada, insan hakları bilimindeki krizin birçok örneğinin Filistin örneği üzerinden görülebileceği tartışılmaktadır. Bu bağlamda, ilk bölüm insan hakları bilgisinin tarihsel gelişimini tartışmakta, ikinci bölüm Filistin'den gelen yaygın insan hakları ihlalleriyle ilgili örneklere odaklanmaktadır. Bu çalışma sonucunda, insan hakları kavramının Filistin örneği üzerinden çıkan sonuçlarla yeniden tanımlanması, ayrıca insan hakları ihlallerinin Filistin'den başlayarak ve insan hakları bilimindeki krizleri durdurmak üzere tüm Dünyada önlenmesi gerektiği ileri sürülmektedir.

Anahtar Kelimeler: İnsan Hakları Bilimi, İnsan Hakları İhlalleri, Filistin Örneği, Filistindeki Haksız Koşullar, Kudüs Çalışmaları.

INTRODUCTION

The world and knowledge of human rights are complicated. In the face of the claim that the concept of human rights is virtual, many social institutions and organizations support the

development of rights collected under the human rights framework and take action against the abuse of these rights. Some many statutes and treaties regulate human rights and alleged to be in contact with each other. Within this context, there are universal human rights, individual rights, positive, negative, and active status rights. Also, when evaluated from a historical perspective, there are first, second, and third-generation rights, all of which are promoted to ensure that humanity has a free life.¹ When we are talking about the term human rights, we see that some countries or communities have resistance to human rights. Numerous people do not know the term, and they also do not know how to access these rights. However, in some 'developed' countries, human rights are seen as a legend. In most western countries, the term human rights are reflected as the endpoint of rights. Because of this perspective, it is not easy to say that these rights are real or expected. This blurred view can cause us to define human rights as a myth.² Due to this ambiguity, people with different cultures and traditions, and members of different religions recognize and interpret the concept of human rights uniquely.

There are lots of different definitions related to this different interpretation. According to one of these descriptions, human rights are defined as a lot of norms or standards of behavior that aim to preserve individuals so that they can live a full life free of fear and abuse. As a matter of fact, all of these rights are already

¹ Manfred Nowak, *Introduction to the International Human Rights Regime* (Leiden, 2003), 23.

² In most western countries, like France, Germany, and Netherlands, the term human rights are reflected like the end point of rights. Because of this perspective, it is not easy to say these rights are real or expected. This blurred view can cause to define human rights as a myth.

exists within the body of humans, since they are just human.³ This definition, which is also discussed as a theory of natural rights, human rights are innate rights and cannot be taken back by another mechanism as a mechanism does not bestow them. In this case, it is possible to define a concept that can be violated or respected only for the concept of human rights.⁴ On the other hand, according to another view, it is stated that human rights are moral demands in terms of the first occurrence, then they affect the law, and they have a relationship of inspiration between them. Because of this inspired relationship, the concept of law is not a constituent element that constitutes human rights, but a concept that comes up as an output of the idea of human rights.⁵

I. HISTORICAL DEVELOPMENT OF HUMAN RIGHTS KNOWLEDGE

Commencing from the definition, it is clear that these rights are only for human beings merely as a result of being human. Without a heading like 'human rights,' some rights and freedoms can be seen in some historical texts and declarations. Although the concept of human rights was first used in European lands in the seventeenth century, it is known that fundamental human rights such as the right to life go back to early times. Some of the earliest written records related to human rights are in the texts of some religions like the Qur'an, the Bible,

³ Definition of the Office of the United Nations High Commissioner for Human Rights, A.d: December 9, 2020 <https://www.ohchr.org>.

⁴ Ruth Gavison, "On The Relationship Between Civil and Political Rights and Social and Economic Rights," *Globalization of the Human Rights* (New York: 2002): 25.

⁵ Amartya Sen, "Elements of a Theory of Human Rights," *Philosophy and Public Affairs* 32/4 (Fall, 2004): 315.

the Torah. They are also to be found in the essays of the ancient Greek, Arab/Muslim and Chinese scholars and the codes of Rome.⁶

The struggle for rights and freedoms has mostly been experienced within the historical context. However, which of these rights are going to be accepted under the umbrella of human rights has always been the subject of debate. Because human rights have different ideological backgrounds. It is known that the Codes of Hammurabi were the first written document on human rights. These Codes of Hammurabi have made outstanding arrangements about the right to a fair trial and the right to property as of that period.⁷ Moreover, the Persian emperor, Cyrus the Great, published the Cyrus Cylinder (539), which covers some of the arrangements that overlap today's human rights. The Cyrus Cylinder is an essential step in the historical development of human rights due to the expressions that the Babylonian slaves should be free from their essence.⁸

The notion of human rights; is included in all documents such as the Medina Constitution (622), the British Declaration of Rights (1689), the French Declaration of Man and Citizen Rights (1789), the US Constitution, and the Bill of Rights (1791).⁹ However, with this inclusion, these texts were not

⁶ Manisha Aryal (Ed), "What are Human Rights," *Speak Up, Speak Out: A Toolkit for Reporting on Human Rights Issues, Internews* (Washington: 2012): 4.

⁷ Ernst Weidner, "Dünyanın En Eski Kanunnameleri," (Trans: Hasan Sevimcan), *AÜHFD* 7, no. 1 (1950): 382; The Code of Hammurabi (Trans. L.W.King), The Avalon Project-Yale Law School, A.d: January 5, 2020, avalon.law.yale.edu/ancient/hamframe.asp.

⁸ *The Cyrus Cylinder and Ancient Persia: A New Beginning* (The Paul J. Getty Museum, 2014).

⁹ For some basic Human Rights documents see: A.d: January 5, 2020 <https://humanrights.uconn.edu/human-rights-documents/>, These documents do not include Madina Constitution however it is accepted as a

universal laws at the time of their emergence. These documents were local, regional, or national laws and reflected the policies, cultures, and values of their own nation and people at that time.

It can also be said that human rights are gained as a result of universal struggles worldwide. For instance, in the 18th and 19th centuries, struggles to end slavery was carried out in the USA and slavery was abolished; In the 19th and 20th centuries, American and European asylum seekers fought a lot for women's equality; Anti-colonial struggles were made in America in the 18th century, and efforts for health and safety standards were made in Asia and Africa in the 19th and 20th centuries so that workers could work better at the workplace.¹⁰

The struggles in this process were often violent, and many people died fighting for their rights. However, unfortunately, two World Wars had to be held to talk about human rights in the context we know today. The brutality of the First World War (1914-1918), in which more than 40 million soldiers and civilians died on both sides, led to the establishment of the League of Nations. The Union tried to address human and minority rights and to regulate relations between states to prevent war. However, the League of Nations failed mainly due to the weakness of the great world powers to cooperate for this ideal.¹¹

Meanwhile, after the Second World War ended in 1945, the victorious allied forces led by the USA, Britain and the former Soviet Union united the international community to create a mechanism to promote the atmosphere of peace and human rights. This structure was called the United Nations (UN). After

rights based document Hamidullah, Muhammad. *The First Written Constitution in the World: An Important Document of the Time of the Holy Prophet* (Lahore, 1975).

¹⁰ Aryal, 5.

¹¹ History of the League of Nations (1919-1946), UNOG Library, Registry, Records and Archives Unit, 1.

establishing the United Nations, the problem was about the working procedure of this body and also the binding force of United Nations decisions. On the implementation of UN resolutions, two blocks agreed: both strongly opposed the creation of an agency that would ensure the enforcement of human rights for all. The main argument against the establishment of a treaty and decision enforcement agency that binds all states is that the implementation of human rights is an internal matter for each country. Therefore, enforcement of UN resolutions by force will violate the sovereignty of the states. However, as a result of the inclusiveness of the term human rights, 193 countries signed the Charter so far and accepted to obey the resolutions of the UN.¹²

In this context, it is clear that international human rights law is the legal body that protects human rights and supports their development. It sets out the measures and obligations that States should take regarding human rights. The state agrees to be bound by the agreement by signing that treaty; that is, the state is legally obliged to respect, protect, and fulfill the human rights stipulated in the treaty. All countries in the world, except the Vatican and the State of Palestine, are members of the United Nations. All UN member states have signed or ratified at least one of the leading human rights treaties. Also, almost eighty percent of these states have signed or ratified four or more of the main human rights treaties. As a result of human rights knowledge stated above human rights concept is defined as; "...rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our

¹² A.d: January 15, 2020, <http://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html>

human rights without discrimination. These rights are all interrelated, interdependent, and indivisible.”¹³

II. HUMAN RIGHTS KNOWLEDGE IN PALESTINE CASE

Following analyzing the situation of human rights, in theory, looking at the application of human rights, it is seen that theory and practice are very diverse, and human rights violations remain in many parts of the world. The issue of the fulfillment of UN resolutions is still controversial, and this is one of the main criticisms of the UN, particularly concerning human rights. When we look into the Palestine issue, it is tough to talk about human rights, even basic ones.

Following more than 400 years of Ottoman rule at Palestine, the sovereignty of the Ottoman Empire over Palestine was terminated following the defeat of its army at the Battle of Megiddo in September 1918. After this battle, both parties signed the Sykes-Picot Agreement in 1916. According to the agreement, it was intended that most of Palestine would become an international zone not belonging to France or Britain. On the contrary, later the First World War, Palestine remained under British Military Occupation from 1917 to 1920, where the British Civilian Administration was established with the provision of an official United Nations Mandate to the United Kingdom, which was approved in July 1922. It came into force in September 1923.¹⁴ Throughout the British mandate, the Zionist lobby was putting pressure on the British Government to establish a 'Jewish Homeland' on this Palestinian territory. On November 2, 1917,

¹³ Office of the High Commissioner of Human Rights, A.d: January 16, 2020, www.ohchr.org/EN/Issues/Pages/WhatareHuman-Rights.aspx.

¹⁴ Hilmi Salem, Hiltrud Awad and Jad Issac (Ed), "A Brief Introduction to the Palestinian Problem," *40 Years of the Israeli Occupation of the West Bank and Gaza Strip (1967–2007)*, Applied Research Institute (Jerusalem, 2007).

the British reacted to the Zionist demands with what is known as the 'Balfour Declaration'. British Foreign Secretary Arthur Balfour, at the time, sent a letter to Lord Rothschild to be forwarded to the Zionist Federation, thereby declaring support for the Zionists' plans to establish a Jewish state in Palestine, in violation of many fundamental rights of living communities in the region.¹⁵

Commencing in 1882, Jews' immigration to Palestine increased rapidly. There were many conflicts between Jewish settlers and the Palestinian people. They initially fought on land, water, habitat, religious rights, but later on, this conflict turned into a problem of 'national identity' that led to massive conflict. The Palestinian people then revolted against the British Mandate and their policy of resettling foreigners; Meanwhile, Jewish anarchists continued to attack the Palestinian people and British mandate forces. On November 29, 1947, the United Nations agreed on a 'Palestinian Division Plan' that would split Palestine into two independent States; one by the Jewish state and the other by the Arab state, keeping Jerusalem under the international rule, declaring it 'Corpus Separatum'.¹⁶ Nevertheless, the Palestinian Division Plan was not performed because of the Jewish control in Jerusalem.¹⁷

On May 14, 1948, the day before the British withdrew from the region, Jewish leaders proclaimed 'Independent State of Israel'. On May 15, 1948, shortly after the withdrawal took place, a war broke out between the technically newly established state of Israel and the neighboring Arab countries. The war ended with the establishment of the 1949 Ceasefire Lines, also called the

¹⁵ Salem at al.

¹⁶ UN General Assembly, Resolution No. 303 (9.12.1949).

¹⁷ The Plan of Partition, <http://www.un.org/Depts/dpi/palestine/ch2.pdf> (A.d: 18.1.2020)

'Green Line'.¹⁸ With this agreement, Palestinian territories are divided into three different sections. The territory occupied by the Jews during the war, forming the current State of Israel. In addition, the West Bank, including East Jerusalem, was left to the Jordanian Administration, and the Gaza Strip to the Egyptian Administration.¹⁹

The 1948 war was essential for both Israeli invaders and Palestinians whose lands were occupied. The war for the Israeli Jews represented the successful establishment of the State of Israel. But for the Palestinians, the war of 1948 was about what was called 'Al-Nakba'. During and after the 1948 war, at least 418 Palestinian villages were destroyed and displaced. Besides, about 4/5 of the Palestinian population was expelled from the occupied territory by Israel, where Israel was prohibited from returning to their homes and lands.²⁰

Looking at the expansion of the Israeli occupation in the region, it is crucial that the West Bank, including the East Jerusalem and the Gaza Strip, remained under the Jordan and Egypt Administration, from 1949 to June 4, 1967, severally. On June 5, 1967, another war occurred, and during this six-day war, Israel occupied the West Bank, including East Jerusalem, the Gaza Strip, the Egyptian Sinai, and the Syrian Golan Heights. After this invasion, another Nakba took place for the Palestinian people because more than 400,000 Palestinians had to flee during the war; some of them became refugees for the second time..²¹

Although UN Security Council Resolution 242 'requires Israel to withdraw from the Arab lands, it occupied during the

¹⁸ UN Security Council, DOCUMENT S/1302/REV.1 (3.4.1949).

¹⁹ Sami Hadawi, *Land Ownership in Palestine* (New York, 1957), 18-21.

²⁰ Salem at al.

²¹ "Palestinian Refugees Have the Right to Return," seamac.org/RightToReturn.html (A.d: 20.1.2020)

war. Egypt and Jordan adopted Resolution 242 and saw the withdrawal of Israel from all occupied territories in the 1967 war as a prerequisite for negotiations. Recognizing the decision, Israel said that withdrawal and refugee problems could only be resolved through direct talks with the Arab States and a comprehensive peace agreement. Israel, however, did not comply.²²

Following the UN resolution, Israel and Egypt approved a peace treaty known as the 'Camp David-I Agreement',²³ and until 1982, Sinai was returned to Egypt, unlike the Golan Heights still occupied today. According to this agreement, the modalities for establishing that authority, as well as its powers and responsibilities, will be determined by Israel, Egypt and Jordan. The "self-governing" authority will exercise the powers conferred upon it for five years of transition.²⁴ Also, other peace agreements were signed between Israel and the Palestine Liberation Organization (PLO) in 1993 and 1995, known as 'Oslo Agreements I and II', respectively. Although these agreements have a representative government of the Palestinian people, among other things, they did not give them full sovereignty over the occupied Palestinian land during the 1967 war. They did not help to establish an independent Palestinian State. Instead, Israel is breaking apart the Occupied Palestinian Territories with settlements, outposts, obstacles, bypass roads, and the 'Segregation Wall'. In 2007, Israel built 207 existing settlements and 217 new settlements containing about 480,000 Jewish Settlers during the forty years of occupation, thereby controlling 57% of

²² Security Council resolution 242 (1967), January 27, 2020, para.4/i, [un.org/Depts/dpi/palestine/ch3.pdf](https://www.un.org/Depts/dpi/palestine/ch3.pdf).

²³ Camp David Accords (17.9.1978).

²⁴ F'ayez A. Sayegh, "The Camp David Agreement and the Palestine Problem," *Journal of Palestine Studies* 8/2 (1979): 928.

the Occupied Palestinian Territories. These settlements and outposts have been in the West Bank since the colonization of the Gaza Strip was broken in 2005.²⁵

The year 2019 identifies 52 years since the beginning of the Israeli military occupation of the occupied Palestinian territory. Apart from the 1948 war, or “Nakba”, when around 700 thousand Palestinians were removed from their lands and became refugees, the military occupation of the occupied Palestinian territory in 1967 has been the most destructive event for Palestinians in the last century.²⁶ Of the human rights viewpoint, by the year 2018 and 2019, almost every week and day, human rights violations of occupying force is rising. For instance, on December 1st, on the International Day for Persons with Disabilities: Israeli forces killed a Palestinian civilian with a disability in Tulkarem. Five civilians were wounded in the West Bank. Israeli invaders continued to use excessive force against unarmed civilians and peaceful protestors in the Gaza Strip. Ninety-eight civilians, including twenty-eight children, four women, two journalists, and a female paramedic, were wounded; the injuries of four were reported as serious.²⁷ Every day, Israel's repression and infringements are added to the occupied territory. Ultimately, for example, Saib Ureykat, Secretary-General of the Executive Council of the Palestine Liberation Organization (PLO), said Israel is trying to prevent the general and presidential elections planned after a long break

²⁵ Salem at al.

²⁶ *50 Years of Occupation: Dispossession, Deprivation and De-development*, AIDA Report (2017), 5.

²⁷ A.d: February 8, 2020, <https://muslimnews.co.uk/news/palestine/weekly-report-israeli-human-rights-violations-occupied-palestinian-territory-29-nov-5-dec/>.

in Palestine, calling for pressure to Tel Aviv to hold elections in occupied Jerusalem.²⁸

III. CONTRIBUTION TO CURING THE CRISIS: ISLAMICJERUSALEM STUDIES

A unique and intellectually stimulating field of analysis that attempts to deal with the region of Islamicjerusalem using interdisciplinary and multidisciplinary methods. A better understanding of the importance of the occupied territory is thought to depend on the fact that the multicultural, multi-ethnic, and multi-religious structure of this place can be seen as a model of peace for all humanity. Islamicjerusalem is the name given to a region of about fifteen thousand square kilometers that encompassed not only the walled city of Aelia Capitolina (the Roman name for Jerusalem) but also the towns of Jenin in the north, Jericho in the east, Karak (in modern Jordan) and Zoar in the south and Jaffa in the west including the areas between.²⁹

This functional field of research developed when El-Awaisi, from his work in the United Kingdom, became slowly aware of the lack of serious academic study on Jerusalem from an Arab and Muslim point of view since orientalist, western, or Israeli writers have undertaken most research. Hence, the history of the region under Muslim rule has been subject to much modification and falsification.³⁰ Therefore, more academic studies are required on the same region which are conducted from objective point of view.

²⁸ A.d: February 8, 2020, <https://www.aa.com.tr/tr/dunya/israil-filistin-secimlerini-engellemeye-calisiyor/1690243>.

²⁹ Maher Abu-Munshar, *Islamic Jerusalem and Its Christians: A History of Tolerance and Tensions* (London, 2007), 2.

³⁰ Abu-Munshar, 2.

Islamicjerusalem studies, which are dynamic and ongoing work, started in the UK but spread different countries and produced many scholars.³¹ However, the research done within these studies is mostly related to historical, religious, and geopolitical issues. As it is argued above, human rights knowledge is in a deep crisis in this region, and some research should be done on the human rights area as a contribution to Islamicjerusalem studies.

Having in mind that the term human rights are globally accepted and universal, these rights should be implemented in all parts of the world. Also, the decisions of international organizations like the United Nations and judicial mechanisms like the International Court of Justice should be binding equally for all countries. The fact that Israel does not accept the enforcement power of UN resolutions, and this fact stands in front of law scholars as to the biggest crisis of human rights law in this region. It is also imperative that the decision-making mechanisms of the United Nations should play an active role in fundamentally solving this problem. Otherwise, it seems that this situation will remain a stain on the face of legal professionals and politicians for many years that the concepts of human rights are being implemented in Palestine in a two-faced way.

CONCLUSION

Even if the accretions in the struggle for human rights are registered with some national or international legal documents, it is not possible to say that the struggle is finished. Some of the threats and opportunities that the modern era brings with bring it about the recognition of new rights and the protection of existing rights. Today's social structure meets with new concepts every day with the effect of technological developments. The legal mechanism is not able to follow these modifications and

³¹ For these research see: A.d: February 12, 2020, isravakfi.org.

cannot take action to prevent the violation of rights that may occur due to these innovations.

Human rights centered research in terms of Islamicjerusalem studies can focus on noting human rights violations, on identifying national and international legal remedies and legal aid for human rights invasions. Additionally, a kind of social convention should be established to regulate the problematic issues in this multicultural, multilingual, multiethnic region. This document can be considered as a constitution for this region.

In conclusion, from the daily human rights violations from Palestine, it is clear that the knowledge of human rights is not regarded the same as in the world. All human rights and freedoms should be given to all human beings around the world, including Palestine if we want to end up these crises in human rights knowledge.

Hakem Değerlendirmesi: Çift kör hakem.

Finansal Destek: Yazar bu çalışma için finansal destek alıp almadığını belirtmemiştir.

Çıkar Çatışması: Yazar çıkar çatışması bildirmemiştir.

Etik Kurul Onayı: Yazar, etik kurul onayının gerekmediğini belirtmiştir.

Peer Review: Double peer-reviewed.

Financial Support: The author has not declared whether this work has received any financial support.

Conflict of Interest: The author has no conflict of interest to declare.

Ethics Committee Approval: The author stated that ethics committee approval is not required.

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