

# Palestine and Israel: Historical, Legal and Moral Issues

Saturday 28 October 2023, by [HENSAMAN Rohini](#) (Date first published: 28 October 2023).

**On 7 October, Hamas committed a war crime when in its attack on Israel, hundreds of civilians were killed, but since 1948 the scale of the crimes against the Palestinians repeatedly committed by Israel are many times larger. What can ensure peace in Palestine?**

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On 7 October 2023, Palestinian militant group Hamas launched a massive attack on Israeli territory, killing over 1300 people, many of whom were civilians; the Israeli state has responded by bombing the Gaza Strip, in which Hamas has its headquarters and over 2.3 million civilians have their homes, starving inhabitants of food, water, medicines and fuel. But why did this happen? And what can be done about it? On these questions, there is no agreement whatsoever.

## Who is to blame?

In its [editorial of 8 October 2023](#), the Israeli paper *Haaretz* was unequivocal in assigning responsibility for the death and destruction resulting from the Hamas 'Operation Al-Aqsa Flood':

*"The disaster that befell Israel on the holiday of Simchat Torah is the clear responsibility of one person: Benjamin Netanyahu. The prime minister... completely failed to identify the dangers he was consciously leading Israel into when establishing a government of annexation and dispossession, when appointing Bezalel Smotrich and Itamar Ben-Gvir to key positions, while embracing a foreign policy that openly ignored the existence and rights of Palestinians..."*

*"In the past, Netanyahu marketed himself as a cautious leader who eschewed wars and multiple casualties on Israel's side. After his victory in the last election, he replaced this caution with the policy of a "fully-right government," with overt steps taken to annex the West Bank, to carry out ethnic cleansing in parts of the Oslo-defined Area C, including the Hebron Hills and the Jordan Valley."*

*This also included a massive expansion of settlements and bolstering of the Jewish presence on Temple Mount, near the Al-Aqsa Mosque, as well as boasts of an impending peace deal with the Saudis in which the Palestinians would get nothing, with open talk of a "second Nakba" in his*

*governing coalition. As expected, signs of an outbreak of hostilities began in the West Bank, where Palestinians started feeling the heavier hand of the Israeli occupier.*

Eighty six per cent of Jewish Israelis shared the opinion that [Netanyahu and his government were to blame for the attacks](#), according to a Dialog Center poll. The criticisms of some might have been limited to the epic failure of Israeli intelligence and security agencies, but many would have in addition been revolted by the domination of the government by right-wing extremists openly pursuing a policy of ethnic cleansing in the West Bank and East Jerusalem.



*The front page of a special English edition of the Falastin newspaper featuring a four-page editorial addressed to Lord Balfour (25<sup>th</sup> March 1925) | Wikimedia*

Gideon Levy, a well-known Israeli columnist who is on the Editorial Board of Haaretz, went further. He [blamed](#)

*“Israeli arrogance, the idea that we can do whatever we like, that we’ll never pay the price and be punished for it... We’ll arrest, kill, harass, dispossess and protect the settlers busy with their pogroms... We’ll fire at innocent people, take out people’s eyes and smash their faces, expel, confiscate, rob, grab people from their beds, carry out ethnic cleansing and of course continue with the unbelievable siege of the Gaza Strip, and everything will be all right...”*

*On Saturday, they were already talking about wiping out entire neighbourhoods in Gaza, about occupying the Strip and punishing Gaza “as it has never been punished before”. But Israel hasn’t stopped punishing Gaza since 1948, not for a moment...*

Prime Minister Benjamin Netanyahu bears very great responsibility for what happened... but it didn’t start with him and it won’t end after he goes. We now have to cry bitterly for the Israeli victims, but we should also cry for Gaza. Gaza, most of whose residents are refugees created by Israel. Gaza, which has never known a single day of freedom.

Levy is referring to the ‘Nakba’ (Catastrophe), the ethnic cleansing of Palestine by Zionist militias in 1948. Most of these Palestinians ended up in refugee camps in other parts of Palestine or in neighbouring countries. But how did this happen? We need to go back further to find that out.

## **Historical background**

In the late 19<sup>th</sup> century, Palestine was a thriving part of the declining Ottoman Empire with

aspirations for independence. At the same time, a European Jewish nationalist movement - Zionism - was searching for a land to colonise. In 1920, after the Ottomans were defeated, the League of Nations, established by the victorious powers of World War I, created a system of 'mandates' to replace them in the countries they had colonised. The British received Palestine.



Map of Mandatory Palestine in 1946 | Wikimedia

The agenda was supposedly to prepare Palestine for independence, but the British imperialists treated their mandate as a colony; indeed, they had already, through the 1917 Balfour Declaration, agreed to the establishment of a Jewish national home in Palestine by the Zionist Organisation. A lengthy and thorough historical and legal examination by the UN on [the origins and evolution of the Palestine problem](#) establishes that this plan was opposed by many Jews, including Sir Edwin Montagu, the only Jewish member of the British cabinet. Yet it was eventually pushed through by the British government and accepted by the League of Nations, contrary to its own principles. As international law expert Professor Cattan, cited in the UN legal examination, says,

*“The Palestine Mandate was invalid... The first ground of invalidity of the Mandate is that by endorsing the Balfour Declaration and accepting the concept of the establishment of a Jewish national home in Palestine it violated the sovereignty of the people of Palestine and their natural rights of independence and self-determination. Palestine was the national home of the Palestinians from time immemorial. The establishment of a national home for an alien people in that country was a violation of the legitimate and fundamental rights of the inhabitants. The League of Nations did not possess the power, any more than the British Government did, to dispose of Palestine, or to grant to the Jews any political or territorial rights in that country. In so far as the Mandate purported to recognize any rights for alien Jews in Palestine, it was null and void...”*



The UN noted, 'That the Jews deserved sympathy was unquestionable. Even before the Nazi terror, this sympathy existed for the Jewish people among the Palestinian Arabs. The absence of racial rancour before the Balfour Declaration received emphasis in virtually every official report.' Historian Arnold Toynbee, also cited in the UN study, remarked, for the next 30 years, under the protection of 'British military power,' Jewish immigration and land acquisition enabled the Jewish population to grow from less than 10% of the population to nearly a third, and their land ownership from 0.025% to 6.2%, displacing large numbers of Palestinians and leading to conflict. It enabled the immigrants to arm themselves with tanks and planes. Thus, British imperialism played a key role in all the violence that has followed.

Mahatma Gandhi, despite his profound sympathy for persecuted Jews - which even extended to abandoning his rigid adherence to non-violence to argue that a war against Hitler would be justifiable - was adamant that it would be a [crime against humanity to hand over Palestine to the Zionists](#).

### The two-state 'solution'

When Britain handed over Palestine to the UN in 1947, the UN Special Committee on Palestine recommended partitioning Palestine into a Jewish state on 56% of its territory and an Arab state on 43%, with an international enclave around Jerusalem and Bethlehem.



*Map of the 1947 partition plan for Palestine | Wikimedia*

The Arab states opposed the proposal on the grounds that it violated the UN Charter, and indeed if Britain had no right to gift Palestine to Zionist settler-colonialists, neither did the UN have the right to gift more than half of Palestine to them. Yet when the proposal was put before the UN General Assembly as Resolution 181 on 29 November 1947, it passed with 33 votes for, 13 against, and 10 abstentions. (India voted against.) Far from bringing an end to the violence, this resolution was followed by the Nakba and violence that continues to this day, for which, therefore, the [UN too bears responsibility](#).

Settler colonialism differs from other types in that it strives to settle the colony with its own people by expelling and killing the indigenous people, and this was the stated

objective of Zionism...

Realising that the problem continued unabated, the UN appointed Count Folke Bernadotte, a Swedish diplomat, who had arranged the release of around 31,000 prisoners from the German concentration camps of the Second World War, to find solutions. His peace plan had three components: the right of return of Palestinian refugees, Jerusalem to be under international control, and permanent borders to prevent Israel from expanding. [He submitted the proposal to the UN General Assembly on 16 September 1948, and the very next day was assassinated by Zionist terrorists of 'Lehi' aka the 'Stern Gang'](#). His peace plan was never implemented and the assassins rose to prominent positions in Israel, but in December 1948, Resolution 194 of the UNGA incorporated the right of return of Palestinian refugees in accordance with already-established international law (Boling 2001).

Settler colonialism differs from other types in that it strives to settle the colony with its own people by expelling and killing the indigenous people, and this was the stated objective of Zionism. Israeli historian Ilan Pappé (2006) explains that its 'main goal was the ethnic cleansing of all of Palestine, which the movement coveted for its new state,' and describes in detail the gruesome massacres by means of which almost 800,000 indigenous Palestinians - more than half the population - were driven from their homes. Their livelihoods, villages and urban neighbourhoods far beyond the area allotted by Resolution 181 were seized or destroyed, starting after the partition resolution in 1947 and peaking during the Nakba in 1948. Since then, ethnic cleansing - defined as a crime against humanity in the Rome Statute of the International Criminal Court (ICC) - has been carried out continuously by the Israeli state in Palestine. By 1949, Israel had annexed 78% of Palestine.



*Palestinian refugees in 1948 | Wikimedia*

Those who could not be expelled and became residents of Israel were subjected [to an apartheid regime of discrimination, also a crime against humanity](#). In the 1967 war, the remaining parts of Palestine - the West Bank, East Jerusalem and Gaza Strip - were occupied by Israel. Negotiations between the Palestine Liberation Organisation (PLO) and Israeli government resulted in the Oslo Accords, in which Palestinian self-government in 22% of Palestine was promised in exchange for Palestinian collaboration in ensuring Israeli security. However, annexation of Palestinian land never stopped, and the Palestinian Authority, set up to implement the accords, became an object of contempt for many Palestinians. The Gaza Strip, with over 70% of its inhabitants refugees from ethnic cleansing elsewhere, became an open-air prison with Israel controlling all its borders. [Jewish settlements gradually took over the West Bank and East Jerusalem](#), converting the remaining Palestinian residential areas into ghettos and making a two-state solution impossible.

### **The genocidal logic of settler colonialism**

Moshé Machover, a founding member of the Israeli socialist group Matzpen, explains that the structural racism of the Israeli state is an inevitable consequence of its settler-colonial project, but

the government formed by Benjamin Netanyahu in December 2022 is more extreme than most previous governments. [Machover quotes two Israeli experts](#) on the history of fascism and Nazism: Professor Zeev Sternhell, who says that in statements made by two senior Israeli politicians, ‘we see not just a growing Israeli fascism but racism akin to Nazism in its early stages’; and Professor Daniel Blatman, who quoted Deputy Knesset Speaker Belazel Smotrich saying that Palestinians would become subjects without rights, and if they objected would be cleansed, and if they refused to leave would be exterminated, concluding that ‘I think it is Nazism in every way and fashion, even if comes from the school of the victims of historical Nazism.’ In fact, [Netanyahu had already begun this process in 2018 when he passed the ‘Nation-State Law,’](#) which closely follows the Nazi Nuremberg Laws of 1935. Characterisation of this state as [a fascist one](#) has been widespread among Israeli left-wingers and left-liberals before and after the Hamas attacks.

In the Genocide Convention (1948), as in the Rome Statute of the ICC (2002), ‘genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part...’ Israeli Defence Minister Yoav Gallant [declared](#) the intention to destroy the Palestinians in no uncertain terms on October 9<sup>th</sup>: ‘We are imposing a complete siege on Gaza. No electricity, no food, no water, no fuel. Everything is closed. We are fighting human animals, and we will act accordingly’. When 2.3 million Palestinians in a sealed space, half of them children, are bombed relentlessly, including hospitals, schools, churches and UN shelters, [this begins to look like the Nazi final solution.](#)



*A British ship bringing European Jews to the port of Haifa in 1945 | Zoltan Kluger (CC BY-NC-SA 2.0 DEED)*

Gallant’s statement also reveals his endorsement of the barbaric doctrine of collective punishment, which was used so pervasively by the Nazis. This is supplemented by the systematic use of ‘the big lie’; [as Hitler explained, the very boldfaced nature of these fabrications renders them among the most powerful forms of public persuasion.](#) Who could believe that when the Israeli military systematically targets hospitals, when Netanyahu’s aide Hananya Naftali tweeted that the ‘Israeli Air Force struck a Hamas terrorist base inside a hospital in Gaza’, when lies by Israeli officials have been exposed in the past, that they didn’t carry out [the airstrike on Al Ahli Baptist Hospital in Gaza which killed almost 500?](#) [The Anglican Church running the Al Ahli Hospital knew better.](#)

## **What about Hamas?**

The complete failure of the Palestinian Authority even to stem the deteriorating conditions of Palestinians led to various alternative initiatives, one of which was the establishment of Hamas, an Islamist national liberation group, in 1987. It had previously launched rockets into Israel, but the scale of the attack on 7 October was unprecedented. What does international law say about this?

[The UN affirms](#) ‘the legitimacy of the struggle of peoples for independence, territorial integrity,

national unity and liberation from colonial domination, apartheid and foreign occupation by all available means, including armed struggle,' so resorting to armed struggle does not in itself outlaw Hamas. However, even a national liberation war must abide by international law, which protects civilians, making Hamas's attack on civilians a war crime. Is it terrorism? Yes, it is terrorism, defined as acts or threats of violence against unarmed civilians in pursuit of a political goal. These crimes and its right-wing Islamist ideology make it impossible for progressives to support Hamas.

However, according to this same definition, the Israeli state was established by acts of terrorism and has continuously been engaged in terrorism to this day. Moreover, it has violated international law on a vastly greater scale than Hamas, committing crimes against humanity and genocide rather than mere war crimes. [In the words of Holocaust survivor Dr Gabor Maté](#): 'The disproportion of power and responsibility and oppression is so markedly on one side that you take the worst thing you can say about Hamas, multiply it by a thousand times, and it still will not meet the Israeli repression and killing and dispossession of Palestinians.'

### **International reactions**

The Israeli onslaught on Gaza sparked Palestine solidarity demonstrations throughout the world. Arab leaders who had done nothing to promote Palestine's liberation for decades and had been normalising relations with Israel were jolted into putting this process on hold for fear of infuriating their people. The Chinese and Russian regimes, which have made clear their rejection of universal human rights and international law, nonetheless called for a ceasefire to allow for humanitarian aid. The UN, especially its Human Rights Council, spoke up for the human rights of Palestinians.



*Gaza's Rimal neighbourhood after Israeli airstrikes on October 9 | Wafa Agency/Wikimedia*

Western leaders, headed by Joe Biden and including Ursula von der Leyen, Olaf Scholz, Rishi Sunak, Keir Starmer and Justin Trudeau, stated that 'Israel has the right to defend itself', and in some cases pledged military supplies. Volodymyr Zelensky agreed that 'Israel's right to self-defense is indisputable'. There were a few - like EU foreign policy chief Josep Borrell - who criticised Israel for violating international law, but the rest gave a green light to the slaughter of Gaza's civilians.

The Western reaction to the Israeli assault on Gaza is a severe setback to the Ukrainian struggle for freedom, because it undermines its moral legitimacy in the eyes of many by associating it with support for a genocidal fascist state.

Two things make this position bizarre. First, while the vast majority of Israelis blame Netanyahu and his government for the attacks, these leaders endorse Netanyahu's extremist regime. Second, they all back Ukraine in its national liberation struggle against Russian colonialism, yet the positions of Ukraine and Palestine are almost identical. Putin denies the existence of Ukraine and is attempting to erase it from the face of the earth by ethnic cleansing and genocide just as Netanyahu denies the existence of Palestine and is attempting to erase it by ethnic cleansing and genocide. The timelines

are different: the Zionist assault on Palestine started in 1920, whereas Putin's assault on Ukraine started in 2014, although there were earlier bouts of genocide in Ukraine and Crimea, under Tsarism, Stalin and the Nazis. And the Ukraine struggle is led by a democratically-elected government whereas there is no such government in Palestine. Yet the similarities are striking. So anyone who argues that the Israeli regime colonising Palestine has the 'right' to defend itself from a national liberation struggle by killing Palestinians in Palestine would logically have to argue that the Russian regime colonising Ukraine has the 'right' to defend itself from the national liberation struggle there by killing Ukrainians in Ukraine. The only explanation for the blatant double standard involved in supporting the colonial regime in Palestine and the liberation struggle in Ukraine is racism: Ukrainians are predominantly white, Palestinians are not. And this is a reminder that 'Western values' include fascism and Nazism, racism and White supremacism. Biden's reaction is particularly ghoulish. With the US already having provided billions of dollars that have been used to slaughter thousands of Palestinian children, he wants US taxpayers to fund more weapons to slaughter more children.

The Western reaction to the Israeli assault on Gaza is a severe setback to the Ukrainian struggle for freedom, because it undermines its moral legitimacy in the eyes of many by associating it with support for a genocidal fascist state. It is also a setback for universal human rights and international law, because it supports impunity for egregious violations of human rights and international law.

### What is to be done?

Anyone who talks about the two-state solution as a formula for 'peace' is guilty of rank hypocrisy, because today it can only be achieved by waging a bloody war to evict Israeli settlers *while the apartheid state of Israel supports them with all the weapons at its disposal*. There are far better non-violent alternatives.

The Boycott, Divestment, Sanctions movement describes itself as 'an inclusive, anti-racist human rights movement that is opposed on principle to all forms of discrimination, including anti-semitism and Islamophobia...'

In 2005, [170 Palestinian unions, refugee networks, women's organisations, professional associations, popular resistance committees and other Palestinian civil society organisations](#) called for boycotts, divestment and sanctions against Israel until it complied with international law by meeting three demands: (1) Ending Israeli occupation and colonisation of the Palestinian Occupied Territories and dismantling the 'apartheid' wall that cuts deep into Palestinian land; (2) Recognising the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; (3) Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194. All these demands are supported by international law; to say that Palestinians are not entitled to these universal rights is racist.

The Boycott, Divestment, Sanctions movement describes itself as 'an **inclusive, anti-racist** human rights movement that is **opposed** on principle to all forms of **discrimination**, including **anti-semitism** and **Islamophobia**,' and is completely non-violent. Yet a vicious campaign against it has been waged in the name of countering antisemitism as defined by the International Holocaust Remembrance Alliance (IHRA) in 2016. It is indeed important to condemn and combat antisemitism, one of the oldest forms of racism that is still rampant today, but combating it effectively requires an accurate definition of it. [The IHRA definition is vague, open-ended](#), and includes 'claiming that the existence of a State of Israel is a racist endeavor' and 'drawing comparisons of contemporary Israeli



policy to that of the Nazis’.

On 25 March 2021, the [Jerusalem Declaration on Antisemitism \(JDA\)](#) was presented by a group of over 200 eminent Jewish scholars of antisemitism studies and related fields, who felt that the IHRA definition weakened the fight against antisemitism by causing confusion and generating controversy. They defined antisemitism as ‘discrimination, prejudice, hostility or violence against Jews as Jews (or Jewish institutions as Jewish),’ and made it clear that ‘while antisemitism has certain distinctive features, the fight against it is inseparable from the overall fight against all forms of racial, ethnic, cultural, religious and gender discrimination’. They specifically excluded ‘Supporting the Palestinian demand for justice and the full grant of their political, national, civil and human rights... Criticizing or opposing Zionism as a form of nationalism... Evidence-based criticism of Israel as a state’ and comparing ‘Israel with other historical cases...’ and ‘ Boycott, divestment and sanctions’ against Israel as instances of antisemitism.

Jews are human beings like everyone else, they range from the best of humanity to the worst. There are Jewish writers and human rights activists, including rabbis, who deserve gratitude and admiration for their steadfast pursuit of truth and justice in Palestine. But there are also Jewish fascists like Netanyahu and his cabinet who deserve prosecution in the ICC for crimes against humanity and genocide. Acknowledging that is part of the fight against antisemitism.

A concerted campaign to implement BDS and universalise the adoption of the JDA definition of antisemitism can bring about peace.

## **ROHINI HENSMAN**

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