

# The Israel-Hamas War: Historical Context and International Law

M.T. Samuel

Mr. Samuel, who will earn a doctorate in Islamic Civilizations Studies from Emory University in spring 2024, is a legal scholar and comparativist focusing on the laws, discourses, and institutions that shape the normative relationships between Indigenous communities and the states in which they reside in the Middle East and the Anglosphere.

## Correspondence

[michael.samuel@emory.edu](mailto:michael.samuel@emory.edu)

## Abstract

This essay contextualizes the 2023 Israel-Hamas war within a century-old legal history of Palestinian dispossession that has been facilitated through the violation and misuse of international law. It argues that Hamas's attacks of October 7 were not simply driven by sanguinary hatred of Jews, as some commentators have suggested. Instead, the war crimes were motivated by the Palestinians' disillusionment with an international system that has consistently denied them their right to self-determination. This has been exacerbated by Israel's criminalization of nonviolent resistance. Such historical perspective illuminates the underlying causes not just of the present war but of the broader Israeli-Palestinian conflict.

The brutal war sparked by Hamas's attacks of October 7 has reignited a contentious debate regarding the root causes of conflict in Israel-Palestine. Those who side with Israel insist that the violence stems from murderous, antisemitic hatred; those supporting the Palestinians contend that Israel's tyrannical military occupation of their territories since 1967 is the crucial antecedent. This essay calls for a broader contextualization and argues that Hamas's assault was sparked by the misuse of international law, which enabled Palestinian dispossession and the steady erosion of their ability to employ nonviolent means to change the status quo and achieve self-determination.

At dawn on Saturday, October 7, Hamas, the Palestinian Islamic Resistance Movement governing the besieged Gaza Strip, launched a surprise attack against Israel described by one US official as "the most lethal assault against Jews since the Holocaust."<sup>1</sup> Under the cover of a barrage of

<sup>1</sup>Jacob Magid, "US Antisemitism Envoy: Barbaric Attack Most Lethal Assault on Jews Since Holocaust," *Times of Israel*, October 9, 2023, [https://www.timesofisrael.com/liveblog\\_entry/us-antisemitism-envoy-barbaric-attack-most-lethal-assault-on-jews-since-holocaust](https://www.timesofisrael.com/liveblog_entry/us-antisemitism-envoy-barbaric-attack-most-lethal-assault-on-jews-since-holocaust); The White House, "Remarks by President Biden on the October 7th Terrorist Attacks and the Resilience of the State of Israel and Its People," October 18, 2023, <https://www.whitehouse.gov>

rockets, about 1,000 fighters penetrated Israel from the land, air, and sea, storming military bases, cities, kibbutzim, moshavim, and a music festival, killing approximately 1,200 people, most of them civilians. They took 240 hostages back to the Palestinian territory; six weeks later, just about all of them remained captive.<sup>2</sup>

Israel responded with an unprecedented bombardment of Gaza, killing (at the time of this writing) more than 13,000 Palestinians, many of them women and children, while destroying in whole or in part nearly half of the enclave's housing units.<sup>3</sup> Amnesty International found this degree of death and destruction to be “damning evidence of war crimes.”<sup>4</sup> The United Nations estimates that 1.5 million Palestinians, representing two-thirds of Gaza's population, have been internally displaced as a result of this offensive.<sup>5</sup> Concurrently, Israel cut Gazans off from supplies of all food, water, electricity, gas, and, intermittently, from phone and internet services.<sup>6</sup> On November 9, after a month of fighting, Israel agreed to a daily four-hour “pause” to allow some humanitarian aid to enter and give the residents time to comply with an evacuation order demanding that they “leave [their] homes immediately and head south of Wadi Gaza,” slightly north of the midpoint of the strip.<sup>7</sup> Israeli Prime Minister Benjamin Netanyahu avowed that, following the defeat of Hamas, Israel would maintain “the overall security responsibility” in Gaza “for an indefinite period.”<sup>8</sup>

As of late November, Israel continued to vehemently reject calls for a lasting ceasefire, including one issued by UN Secretary General António Guterres, who declared to the Security Council:

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/briefing-room/speeches-remarks/2023/10/18/remarks-by-president-biden-on-the-october-7th-terrorist-attacks-and-the-resilience-of-the-state-of-israel-and-its-people-tel-aviv-israel.

<sup>2</sup> Aaron Boxerman, “What We Know About the Death Toll in Israel from the Hamas-Led Attacks,” *New York Times*, November 12, 2023, <https://www.nytimes.com/2023/11/12/world/middleeast/israel-death-toll-hamas-attack.html>. Just before this article went to press, some hostages were released during a pause in fighting.

<sup>3</sup> Lauren Irwin, “Nearly Half of Gaza Home[s] have been Destroyed, Damaged by Israel-Hamas Conflict: UN,” *The Hill*, November 11, 2023, <https://thehill.com/policy/international/4305328-nearly-half-of-gaza-home-have-been-destroyed-damaged-by-israel-hamas-conflict-un>; Matthew Lee, “Blinken Says ‘Far Too Many’ Palestinians Have Died as Israel Wages Relentless War on Hamas,” Associated Press, November 10, 2023, <https://apnews.com/article/blinken-israel-gaza-hamas-850cf28c13d8df087f75c0536462b604>; Gabrielle Tétrault-Farber, “Despite Biden’s Doubts, Humanitarian Agencies Consider Gaza Toll Reliable,” Reuters, October 27, 2023, <https://www.reuters.com/world/middle-east/despite-bidens-doubts-humanitarian-agencies-consider-gaza-toll-reliable-2023-10-27>.

<sup>4</sup> Amnesty International, “Damning Evidence of War Crimes as Israeli Attacks Wipe Out Entire Families in Gaza,” October 20, 2023, <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attackwipes-out-entire-families-in-gaza>; Raz Segal, “A Textbook Case of Genocide,” *Jewish Currents*, October 13, 2023, <http://jewishcurrents.org/a-textbook-case-of-genocide>.

<sup>5</sup> United Nations Office for the Coordination of Humanitarian Affairs, “Reported Impact Since 7 October 2023,” <https://ochaopt.org>.

<sup>6</sup> Musa al-Gharbi, “We Must Not Let the Truth Become a Casualty of This War,” *The Nation*, October 16, 2023, <https://www.thenation.com/article/world/gaza-war-facts-misinformation>; Tom Dannenbaum, “The Siege of Gaza and the Starvation War Crime,” Just Security, October 11, 2023, <https://www.justsecurity.org/89403/the-siege-of-gaza-and-the-starvation-war-crime>.

<sup>7</sup> Lara Seligman, “Under Pressure from Biden, Israel Agrees to Implement Humanitarian ‘Pauses,’” *Politico*, November 9, 2023, <https://www.politico.com/news/2023/11/09/israel-humanitarian-pauses-gaza-00126355>; Amnesty International, “Israel/OPT: Israeli Army Threats Ordering Residents of Northern Gaza to Leave May Amount to War Crimes,” October 25, 2023, <https://www.amnesty.org/en/latest/news/2023/10/israel-opt-israeli-army-threats-ordering-residents-of-northern-gaza-to-leave-may-amount-to-war-crimes>.

<sup>8</sup> Tovah Lazaroff, “Netanyahu: Israel Must Have Security Responsibility for Gaza after War,” *Jerusalem Post*, November 7, 2023, <https://www.jpost.com/israel-news/defense-news/article-772037>.

I have condemned unequivocally the horrifying and unprecedented 7 October acts of terror by Hamas in Israel. Nothing can justify the deliberate killing, injuring and kidnapping of civilians—or the launching of rockets against civilian targets. All hostages must be treated humanely and released immediately and without conditions. . . . *It is important to also recognize [that] the attacks by Hamas did not happen in a vacuum.* The Palestinian people have been subjected to 56 years of suffocating occupation. They have seen their land steadily devoured by settlements and plagued by violence; their economy stifled; their people displaced and their homes demolished. Their hopes for a political solution to their plight have been vanishing. But the grievances of the Palestinian people cannot justify the appalling attacks by Hamas. And those appalling attacks cannot justify the collective punishment of the Palestinian people. . . . To ease epic suffering, make the delivery of aid easier and safer, and facilitate the release of hostages, I reiterate my appeal for an immediate humanitarian ceasefire.<sup>9</sup>

The following day, Israel demanded that Guterres apologize and submit his resignation.<sup>10</sup> The rebuke, however, was triggered less by the UN chief's call for a ceasefire than by his insistence that Hamas's attack be placed in the relevant historical context. For Israel's far-right government, Guterres's assertion that "the attacks by Hamas did not happen in a vacuum" itself signified an implicit justification of the assault.<sup>11</sup> A similar reprimand was mounted by liberal Israeli academics against the philosopher Judith Butler and other Jewish American intellectuals, who noted in an open letter to US President Joe Biden that they "believe it is possible and in fact necessary to condemn Hamas' actions *and* acknowledge the historical and ongoing oppression of the Palestinians."<sup>12</sup> Although both Guterres and Butler unequivocally denounced Hamas's attack, their appeal to recognize the reality of Palestinian oppression was still characterized as excusing the mass atrocity.<sup>13</sup> *Haaretz* journalist Chaim Levinson contended, in his response to the Butler letter, that the appropriate historical context is not occupation and its consequences—insisting that, despite evidence from the West Bank, "Israel is not colonialistic"—but "the murder of Jews."<sup>14</sup>

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<sup>9</sup> United Nations, "Secretary-General's Remarks to the Security Council—on the Middle East," October 24, 2023, emphasis added, <https://www.un.org/sg/en/content/sg/statement/2023-10-24/secretary-generals-remarks-the-security-council-the-middle-east-delivered>.

<sup>10</sup> David Gritten, "Israel Demands UN Chief Resign Over Hamas Attack Comments," BBC, October 25, 2023, <https://www.bbc.com/news/world-middle-east-67215620>.

<sup>11</sup> Amy Teibel, "Israel Accuses U.N. Chief of Justifying Terrorism for Saying Hamas Attack 'Didn't Happen in a Vacuum,'" *Los Angeles Times*, October 25, 2023, <https://www.latimes.com/world-nation/story/2023-10-25/israel-accuses-un-chief-of-justifying-terrorism-for-saying-hamas-attack-didnt-happen-in-a-vacuum>.

<sup>12</sup> Judith Butler, Masha Gessen, Rachel Kushner, Ben Lerner, V (formerly Eve Ensler) and others, "Open letter to President Biden: we call for a ceasefire now," *Guardian*, October 19, 2023, emphasis added, <https://www.theguardian.com/commentisfree/2023/oct/19/biden-jewish-americans-israel-gaza-call-for-ceasefire>; Shmuel Lederman, "The Failure of the Left," *HaAyin HaShevi'it*, October 19, 2023, in Hebrew, <https://www.the7eye.org.il/500191>; Alexander Jakobson, "On Decolonization and the Last Line of Humanity," *Haaretz*, October 29, 2023, in Hebrew, <https://www.haaretz.co.il/opinions/2023-10-29/ty-article-opinion/.premium/0000018b-7bca-d1da-a1bb-7ffa69430000>.

<sup>13</sup> Judith Butler, "The Compass of Mourning," *London Review of Books* 45, no. 20 (October 19, 2023), <https://www.lrb.co.uk/the-paper/v45/n20/judith-butler/the-compass-of-mourning>.

<sup>14</sup> Chaim Levinson, "Dear Jewish Academics: Hamas Was Proud of Murdering Our People, Not Murdering Zionist Colonialists," *Haaretz*, October 25, 2023, in Hebrew, <https://www.haaretz.co.il/gallery/galleryfriday/chaimlevinson/2023-10-25/ty-article/.highlight/0000018b-616a-d307-adbb-657ac16e0000>.

As far as international law is concerned, Israel's oppressive, dispossessive, self-determination-denying occupation of the West Bank and its suffocating 16-year blockade of the Gaza Strip indeed provide the crucial context for Hamas's attack. Despite Israel's "disengagement" from Gaza in 2005, its status as occupier has remained unchanged.<sup>15</sup> As such, Hamas, at minimum, is not prohibited from waging an armed conflict against Israel, although it is prohibited from targeting civilians, as it did on October 7, which is a war crime.<sup>16</sup> Indeed, and more broadly, international law illuminates the necessary context for the present conflict, as it reveals that Israel's 1967 conquests of the West Bank and Gaza Strip and the unceasing violence its occupation has produced is a mere chapter in political Zionism's decades-long quest for territorial sovereignty over the entirety of Mandatory Palestine. This quest has been built on the misuse of domestic and international law and legal standards, enabling and extending colonization while foreclosing nonviolent paths of resistance.<sup>17</sup>

International law has continuously facilitated Palestinian dispossession from the moment the 1917 Balfour Declaration—which supported "Zionist aspirations" by calling for "a national home for the Jewish people" to be established in Palestine—was incorporated into the document that legalized Britain's mandatory government in that territory.<sup>18</sup> Coming into force in 1923, the mandate obligated Britain to implement Article 22 of the Covenant of the League of Nations, which "provisionally" recognized Palestine as an "independent nation" and prescribed that Britain's legal obligation was limited to the "rendering of administrative advice and assistance" to Palestinians "until such time as they are able to stand alone."<sup>19</sup> When the covenant took effect in 1920, the Zionist community in Palestine represented only 10 percent of the total population, meaning the provisional recognition of national self-determination belonged to the indigenous Palestinian community and corresponded to the entirety of the territory.<sup>20</sup> Therefore, when the League transformed the Balfour Declaration into binding international law through its incorporation into the mandate document without Palestinian consent, it effectively authorized Britain to facilitate Zionist colonization in violation of its legal obligation.<sup>21</sup>

More troubling is the basis upon which the mandate document justified the imminent dispossession of Palestinians from their land in the name of the realization of "Zionist aspirations." The preamble recognized "the historical connection of the Jewish people with Palestine and to

<sup>15</sup> Celeste Kmiotek, "Israel Claims It Is No Longer Occupying the Gaza Strip. What Does International Law Say?" Atlantic Council, October 31, 2023, <https://www.atlanticcouncil.org/blogs/menasource/gaza-israel-occupied-international-law>.

<sup>16</sup> Marco Longobardo, *The Use of Armed Force in Occupied Territory* (Cambridge: Cambridge University Press, 2018), 149–150; Human Rights Watch, "Israel/Palestine: Videos of Hamas-Led Attacks Verified," October 18, 2023, <https://www.hrw.org/news/2023/10/18/israel/palestine-videos-hamas-led-attacks-verified>; Human Rights Watch, "Hamas, Islamic Jihad: Holding Hostages Is a War Crime," October 20, 2023, <https://www.hrw.org/news/2023/10/19/hamas-islamic-jihad-holding-hostages-war-crime>.

<sup>17</sup> Mortimer Sellers, "The Purpose of International Law Is to Advance Justice—and International Law Has No Value Unless It Does So," *Proceedings of the ASIL Annual Meeting* 111 (2017): 301–305.

<sup>18</sup> Balfour Declaration 1917, The Avalon Project, Yale Law School, [https://avalon.law.yale.edu/20th\\_century/balfour.asp](https://avalon.law.yale.edu/20th_century/balfour.asp); League of Nations, Mandate for Palestine, August 12, 1922, <https://www.un.org/unispal/document/auto-insert-201057>.

<sup>19</sup> The Covenant of the League of Nations, The Peace Treaty of Versailles, June 28, 1919, [https://libraryresources.unog.ch/ld.php?content\\_id=32971179](https://libraryresources.unog.ch/ld.php?content_id=32971179).

<sup>20</sup> Aouni Bey Abdul Hadi, "The Balfour Declaration," *Annals of the American Academy of Political and Social Science* 164 (1932): 15–16; Justin McCarthy, *The Population of Palestine: Population History and Statistics of the Late Ottoman Period and the Mandate* (New York: Columbia University Press, 1990), 30.

<sup>21</sup> Pierre Crabites, "The Balfour Declaration," *Canadian Bar Review* 8, no. 7 (September 1930): 481–482; Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford, CA: Stanford University Press, 2019), 39–41.

the grounds for *reconstituting* their national home in that country.”<sup>22</sup> This short clause succinctly encapsulates the ideational foundation of Israeli sovereignty: the legal fiction that Europe’s Jewry had a pre-existing right to establish a national home in Palestine and that the mandate document simply gave that right an operational meaning.

The idea that such a right exists is premised on two interconnected claims, one genealogical and one legal—both of which are groundless. The genealogical claim, debunked by contemporary scholarship, is that European Jews are direct descendants of the ancient Hebrews who controlled the territory corresponding to that of Mandatory Palestine about 2,000 years before.<sup>23</sup> The legal claim is that the Hebrews did not just possess Palestine but enjoyed an exclusive legal title to it, and this was inherited by their Zionist descendants, making the latter the territory’s rightful owners. However, as John Quigley has explained, at the time the mandate was adopted, international law did not recognize territorial claims based on an ancient title.<sup>24</sup> Its groundlessness notwithstanding, the Zionists’ supposed right to colonize the territory was forcefully asserted by Britain during the mandate as it violently suppressed Palestinians’ resistance to their dispossession.<sup>25</sup>

Thus, in 1947, when the UN General Assembly adopted the Partition Plan for Palestine in Resolution 181 (II), the Zionists were presupposed to be legally entitled to exercise national self-determination on Palestinian land. The resolution allocated 55 percent of Mandatory Palestine to the Zionists and 42 percent to the Palestinians. The remainder, Jerusalem, was designated a special international regime to be governed by the United Nations.<sup>26</sup> As Ardi Imseis has demonstrated, the resolution was itself illegal under international law because it recommended the partition of the territory “against the will of [its] indigenous majority” *after* Palestine was provisionally recognized as an independent nation.<sup>27</sup> Worse still, during the subsequent war, the Zionists (and, after May 14, 1948, the Israelis) conquered and occupied more than half of the territory allocated for the Palestinians in the partition plan. Although this disregarded the prohibition on forcible territorial acquisition, the international community regards those occupied territories as existing within “Israel proper.”<sup>28</sup>

Israel’s 1967 conquest of the West Bank and the Gaza Strip, therefore, must be seen as part of a broader process of Palestinian dispossession that has been enabled by the misuse of international

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<sup>22</sup> League of Nations, *Mandate for Palestine*.

<sup>23</sup> Marta D. Costa et al., “A Substantial Prehistoric European Ancestry Amongst Ashkenazi Maternal Lineages,” *Nature Communications* 4, no. 2543 (2013): 1–10; Ranajit Das et al., “The Origins of Ashkenaz, Ashkenazic Jews, and Yiddish,” *Frontiers in Genetics* 8, no. 87 (2017): 1–8. See also Shlomo Sand, *The Invention of the Jewish People* (London: Verso, 2009).

<sup>24</sup> John Quigley, *The Case for Palestine: An International Law Perspective* (Durham, NC: Duke University Press, 2005), 66–72.

<sup>25</sup> Tom Segev, *One Palestine, Complete: Jews and Arabs Under the British Mandate* (New York: Henry Holt and Company, 2001), 5; Matthew Hughes, “Terror in Galilee: British-Jewish Collaboration and the Special Night Squads in Palestine During the Arab Revolt, 1938–39,” *The Journal of Imperial and Commonwealth History* 43, no. 4 (2015): 590–610.

<sup>26</sup> Benny Morris, *1948: A History of the First Arab-Israeli War* (New Haven, CT: Yale University Press, 2008), 63.

<sup>27</sup> Ardi Imseis, “The United Nations Plan of Partition for Palestine Revisited: On the Origins of Palestine’s International Legal Subalternity,” *Stanford Journal of International Law* 57, no. 1 (Winter 2021): 19.

<sup>28</sup> Mohammed Haddad, “Mapping Israeli occupation,” *Al Jazeera*, May 18, 2021, <https://www.aljazeera.com/news/2021/5/18/mapping-israeli-occupation-gaza-palestine>. The author recognizes the PLO’s “embrace [of] the two-state solution on the 1967 border” but does not conclude that this so-called “great compromise” satisfies international law’s requirement that an agreement for the transfer of title over occupied territory must favor “the victim of aggression,” i.e., the Palestinians. Zahi Zalloua, *Solidarity and the Palestinian Cause: Indigeneity, Blackness, and the Promise of Universality* (London: Bloomsbury Academic, 2023), 25; Yoram Dinstein, *The International Law of Belligerent Occupation* (New York: Cambridge University Press, 2009), 51.

law. Yet—paradoxically, given the abiding failure of this legal regime to protect them and the disillusion with the law that this naturally produces—Palestinians are expected to comply with that same body of law and wage a nonviolent struggle against Israel’s occupation.<sup>29</sup> The insistence that they do so is not only duplicitous but also increasingly impossible.

Through a slew of military orders and emergency regulations, Israel has criminalized the means through which nonviolent resistance can be carried out.<sup>30</sup> In the West Bank, Israeli Military Order 1651, issued in 2010, denies Palestinians their freedom of expression and prohibits them from uttering words or publishing information to further their struggle for national independence. Palestinians are also deprived, under 1967’s Military Order 101, of their right to peaceful assembly. A gathering of more than 10 individuals seeking to discuss any political matter, including nonviolence, is prohibited unless the organizers first request and obtain a permit from the Israeli military—a request whose denial is all but certain.<sup>31</sup> Those convicted of violating these orders can be punished with up to 10 years’ imprisonment. Further, as Neve Gordon has explained, the underlying objective of these prohibitions is to condition Palestinians to forgo any political activity that may spark the realization of their right to self-determination in their homeland.<sup>32</sup>

Emboldened by its capacity to oppress and dispossess Palestinians with impunity, Israel has also launched a devastating attack against the foremost champions of nonviolent resistance in the West Bank. Between 2020 and 2021, the state outlawed seven prominent civil-society organizations devoted to defending the human rights of children, women, prisoners, and the occupied Palestinian community as a whole. Claiming without proof that these reputable groups support terrorism, Israel designated them unlawful under Regulation 84 of the Defence (Emergency) Regulations, 1945, a British law from the mandate era, and Article 3 of the Anti-Terrorism Law, 2016.<sup>33</sup> Israel then proceeded to raid their offices while firing tear gas, confiscating documents and equipment, damaging the organizations’ property, and eventually permanently sealing their doors with large iron plates.<sup>34</sup> The designation also enables Israel to prosecute individuals who lead, administer, work in, identify with, or otherwise support these advocates and, if convicted, to sentence them to prison terms ranging from two to 25 years. Further, and more broadly, this serves to intimidate those who would consider donating money to these organizations.<sup>35</sup> At the same time, the

<sup>29</sup> Nizar Milbes, “Is Nonviolence Relevant for the Palestinian Struggle?” Mondoweiss, February 28, 2023, <https://mondoweiss.net/2023/02/is-nonviolence-relevant-for-the-palestinian-struggle>.

<sup>30</sup> Human Rights Watch, “Born Without Civil Rights,” December 17, 2019, <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress>.

<sup>31</sup> Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (Berkeley, CA: University of California Press, 2005), 126; Yael Berda, *Living Emergency: Israel’s Permit Regime in the Occupied West Bank* (Stanford, CA: Stanford University Press, 2018), 66–68.

<sup>32</sup> Neve Gordon, *Israel’s Occupation* (Berkeley, CA: University of California Press, 2008), 34.

<sup>33</sup> Adalah—The Legal Center for Arab Minority Rights in Israel, “Israel’s 2016 Counter-Terrorism Law and 1945 Emergency Regulations Regarding the Outlawing of Six Palestinian Human Rights and Civil Society Groups,” November 23, 2021, [https://www.adalah.org/uploads/uploads/Adalah\\_Expert\\_Opinion\\_Palestinian6\\_Nov2021.pdf](https://www.adalah.org/uploads/uploads/Adalah_Expert_Opinion_Palestinian6_Nov2021.pdf); Oren Ziv and Yuval Abraham, “Israel’s New Secret Document Still Fails to Tie Palestinian NGOs to ‘Terrorism,’” *+972 Magazine*, January 13, 2022, <https://www.972mag.com/israel-document-palestinian-ngos>.

<sup>34</sup> US Department of State Bureau of Democracy, Human Rights, and Labor, “2022 Country Reports on Human Rights Practices: Israel, West Bank and Gaza,” 52–53, [https://www.state.gov/wp-content/uploads/2023/03/415610\\_ISRAEL-2022-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2023/03/415610_ISRAEL-2022-HUMAN-RIGHTS-REPORT.pdf).

<sup>35</sup> Jonathan Kuttub, “An Update on Israel’s Terrorist Designation for Palestinian Civil Society Organizations,” Arab Center Washington DC, August 3, 2022, <https://arabcenterdc.org/resource/an-update-on-israels-terrorist-designation-for-palestinian-civil-society-organizations>.



state has worked tirelessly, both domestically and internationally, to deny individuals their right to call for a boycott of Israel—a hallmark of nonviolent resistance—until it complies with international law and dismantles its apartheid regime in the West Bank by removing its settlements and ending its occupation.<sup>36</sup>

These are just a few of many examples of Israel's systematic obstruction of nonviolent resistance to its bloody dispossession of Palestinians. Together they serve to underscore a simple but important point: The criminalization and suppression of nonviolence renders armed conflict the only way Palestinians can wage their struggle for self-determination. And should they seek to comply with international law by limiting such violence to the legitimate military targets of one of the most formidable armed forces in the Middle East, their defeat is certain. As history teaches us, power asymmetry makes the civilian population of the colonizing regime a prime, even if unlawful, target of the colonized.

This is the mortal cost of Israel's unyielding efforts to prevent Palestinian self-determination. As Netanyahu himself asserted before the members of the Likud, Israel's governing party, in 2019: "Those who want to thwart the establishment of a Palestinian state should support the strengthening of Hamas and the transfer of money to Hamas."<sup>37</sup> By this logic, foreclosing Palestinian statehood takes primacy over Israel's security, so the perpetuation of war and the rejection of peace remain the sole policy—regardless of the cost to Israelis and Palestinians alike. Netanyahu's argument, moreover, illuminates Israel's insidious and injudicious strategy of undermining nonviolence by fostering violence, the grave ramifications of which are now on full display.

By choosing this broader context—of Palestinian dispossession and the suppression of nonviolence facilitated through the misuse of international law—over one that places Jewish identity and the history of antisemitism at the center, do I seek to justify Hamas's brutal, unlawful attack? I do not. But this perspective should, I hope, demonstrate to the warring parties and the international community the urgent and unavoidable necessity of coming to terms with the (il)legal and structural conditions that have produced much more violence and suffering than they have peace and justice.

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<sup>36</sup> Whizy Kim, "The Boycott Movement Against Israel, Explained," Vox, October 28, 2023, <https://www.vox.com/world-politics/23935054/boycott-movement-palestine-against-israel-bds>; Amnesty International, "Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity," February 1, 2022, <https://www.amnesty.org/en/wp-content/uploads/sites/9/2022/02/MDE1551412022ARABIC.pdf>; Brian Hauss, "It's Time to Reaffirm Our First Amendment Right to Boycott," ACLU, October 20, 2022, <https://www.aclu.org/news/free-speech/its-time-to-reaffirm-our-first-amendment-right-to-boycott>.

<sup>37</sup> Gidi Weitz, "Another Concept Implodes: Israel Can't Be Managed by a Criminal Defendant," *Haaretz*, October 9, 2023, in Hebrew, <https://www.haaretz.co.il/news/politi/2023-10-09/ty-article/.highlight/0000018b-10f0-d2fb-a3df-d1f5ac2a0000>.