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Prologue and Political Context

The Hamas operation of 7 October 2023 that targeted Israeli military bases and several settlements in the so-called Gaza Envelope proved to be a seismic event for Israel and international parties, as well as regional actors who, betting on the dissolution rather than the resolution of the Palestinian cause, had pursued separate peace agreements and the normalization of relations with Israel. This climate had given rise to a certain blithe lack of concern in Israel that led it to refuse to negotiate, even with the Palestinian Authority, and to disengage from the Oslo process, settling instead for the improvement of economic conditions in the West Bank by allowing more Palestinians to work in Israel. This blitheness was not only reflected in Israel's lack of intelligence preparedness but also in allowing festivals to take place along the borders of what is essentially the world's largest open-air prison, home to over two million Palestinians.

The assault was not a spontaneous outburst but rather the product of two years of planning and training, a period that saw the continuous, unprecedented expansion of settlements in the occupied territories. The year 2022 was one of the worst years for settlement expansion since the occupation of the West Bank and Jerusalem in 1967.¹ Incursions into Al-Aqsa Mosque also intensified, particularly in 2022,² demonstrating that Israel had seemingly learned nothing from Hamas's Operation Sword of Jerusalem in May 2021, despite repeated warnings about Al-Aqsa from the resistance. In these two years, too, there was growing talk about the possibility of expanding Arab normalization with Israel, coupled with an emphasis on the insignificance of the Palestinian question for Arab governments and pro-forma nods to the improvement of Palestinians' living conditions under the terms of the Abraham Accords of 2020.

The fury triggered by the 7 October operation and the upheaval it caused in Israeli society are attributable to the combination of two factors: on one hand, the magnitude of the casualties, among the military and civilian population, and the breach of military bases and, on the other, the execution of wide-ranging, synchronized attacks in areas within the 1967 borders, which has

1 There are 726,427 settlers in the occupied West Bank and Jerusalem, living in 176 colonies or settlements and 186 settlement outposts, 86 of which are agricultural outposts, according to the 2022 annual report of the Palestine Liberation Organization's Colonization and Wall Resistance Commission. The report documents the violations committed by the Israeli occupation and its settlement activities, as well as settler violations in the occupied Palestinian territories. The report points out that "the Israeli occupation authorities issued 1220 demolition notifications to Palestinian institutions in the past year under the pretext of lack of permit, in a noticeable increase compared to previous years." Additionally, a 2022 report issued by the Office of the European Union Representative (West Bank and Gaza Strip, UNRWA) on the Israeli settlements in the occupied West Bank, including East Jerusalem states, "In 2022, 28,208 units were advanced in the occupied West Bank, including East Jerusalem, compared to 22,030 in 2021, representing almost a 30% increase. In particular the advancement of settlement units in East Jerusalem contributed to this unprecedented number. In 2022, 23,861 units were advanced in East Jerusalem, compared to 4,427 in the West Bank." Addressing the UN Security Council, Tor Wennesland, special coordinator for the Middle East Peace Process, said, "In occupied East Jerusalem, the number of housing units advanced more than tripled from the previous year—from 900 units in 2021 to 3,100 units in 2022." The EU Representative Office's report stated that the advancement of the settlements and settlement plans for the year 2022 "are a serious cause of concern. If constructed, they would disconnect East Jerusalemites from major West Bank urban areas, such as Bethlehem and Ramallah, having serious implications on Palestinian urban contiguity and posing a serious threat to a viable two-state solution." The report also expressed concern about "rising settler violence" in the occupied Palestinian territories, coupled with the expansion and deepening of settlement expansion plans by the Israeli authorities. See: "Press Release about Annual Israeli Violations report 2022," *Colonization and Wall Resistance Commission*, 30/12/2022, accessed on 3/12/2023, at: <https://tinyurl.com/553tvp5>; United Nations Security Council, "The situation in the Middle East, including the Palestinian question," S/PV.9224 (New York: 2022), accessed on 3/12/2023, at: <https://tinyurl.com/4vnzabfk>; European Union, Office of the European Union Representative (West Bank And Gaza Strip, UNRWA), "2022 Report on Israeli settlements in the occupied West Bank, including East Jerusalem Reporting period -January - December 2022" (15 May 2023), p. 79, accessed on 3/12/2023, at: <https://tinyurl.com/4kmn3yrv>

2 Over 48,000 Israeli settlers stormed Al-Aqsa Mosque in the year 2022. See: "48,000 Israeli settlers stormed Al-Aqsa Mosque during 2022," *MEMO*, 30/12/2022, accessed on 3/12/2023, at: <https://tinyurl.com/4wrjatyw>



not happened since 1948. The operation was akin to a wartime offensive, more sophisticated than previous operations carried out by Palestinian organizations. Going far beyond isolated bombings, ambushes, and the like, it involved planning, surveillance, multipronged attacks, the element of surprise, control of territory, the capture of prisoners, and other military elements. Observers could be forgiven for forgetting that the perpetrators were an armed faction controlling a besieged region, internationally recognized as an occupied territory, subject to intense, round-the-clock surveillance for nearly two decades.

The Israeli government found itself grappling with an outpouring of anger and the existential fear of its citizens. The usual claim that an entity occupying the territories of other nations was facing an existential threat was more than mere propaganda this time. There was a genuine sense in Israel that if this operation passed without a response sufficient to deter any future recurrence, Israel would be in real existential danger, for the operation had dealt a severe blow to Israel's deterrent power, even in the eyes of Arab normalizers who rely on their alliance with Israel, to say nothing of the Arab peoples already opposed to normalization.

The United States echoed Israel's furious indignation about the 7 October attack. It not only parroted the Israeli narrative, but also concluded, like Israel, that Hamas needed to be eliminated, despite being fully cognizant that this would entail the destruction of the Gaza Strip and the killing of an incalculable number of civilians. Washington was also aware that a green light from America and its complicity in a full-scale war could be exploited by Israel to carry out its longstanding plans for transfer. In the first week after the operation, Netanyahu explicitly said as much to numerous visiting state officials, urging Western states to help Israel displace the population of the Gaza Strip and pressuring Egypt to cooperate in implementing the plan, which had been under discussion in the past. And this was just the senior Israeli officials. Junior officials publicly boasted in the media of their intention to commit genocide and displace Palestinians. Meanwhile, the United States marched in lockstep with Israel – the president and his secretary of state even personally participated in meetings of the Israeli war cabinet in the run-up to the ground invasion of Gaza.

US President Joe Biden's international strategy over the last two years has been focused on countering expansion of Chinese influence, containing Russia through firm, unflagging support for Ukraine, and showing zero tolerance for any hesitation from European states. With this approach, he has sought to rebuild cohesion within NATO following the damage inflicted by his predecessor, President Donald Trump, and to send a powerful message to Russia and China about the need to halt attempts to expand their spheres of influence, especially in Asia and Europe, and even in Western states themselves. This new doctrine requires the fealty of US allies in the Middle East in exchange for accommodations for their conditions and an agreement to withhold criticism of their human rights record, thereby allowing them to counter Chinese and Russian inroads in the Middle East without the need for direct American military intervention. The approach seeks to build an Israeli-Arab axis loyal to the United States that can maintain "security and stability" in the region (leaving



aside for the moment the debate over those terms) and integrate Israel as an active, acceptable part of the regional order and visions for its security and stability.

In practice, Biden's policies have diverged from Trump's in Europe, Asia, and Latin America (for example, Venezuela). In the Middle East, however, he has continued on the same path as his predecessor, following a period of brief tension with the Saudi leadership. It is reminiscent of the continuation of Cold War policies in the Middle East after the war's end, and the reason is Israel's presence in the region and the subordination of the US regional agenda to that of Israel.

Forging this axis, which is envisioned as stretching from India to the borders of Europe, requires side-lining the Palestine question. Yet, recent events, Israel's response to them, the reaction of Arab peoples, and the international public's preoccupation with the war have all demonstrated that the cause of Palestine cannot be ignored or dismissed. This explains much of the anger coming from the United States and its alignment with Israel's aim of dealing such a fatal blow to Hamas that it will be unable to regroup as a serious armed force capable of disrupting regional arrangements, or even governing and administering the Gaza Strip. That is, looking at the failure to marginalize the Palestinian cause, Biden has concluded not that a just resolution is imperative, but that Hamas – and anything else that stands in the way of this marginalization – must be eliminated.

The Economist, for better or worse depending on one's perspective, voiced the need to firmly confront Chinese and Russian (and perhaps Iranian) expansionism, urging the world to "not blink" in its support for Israel against Hamas. The issue of 28 October 2023 was titled "America's Test," emblazoned above a picture of Biden walking with a confident stride. The magazine's hard-nosed stance on Palestine, as well as Ukraine, surprised some of its liberal readers. Biden shares this confrontational, uncompromising posture in the face of the enemies of the West, even if it requires sacrificing the residents of Gaza, who may have simply had the bad luck to be born in the wrong place.

After much exaggeration, fearmongering, invocations of the Holocaust, and comparisons of Hamas and ISIS – all advanced to justify a ruthless war without constraints – Netanyahu, with the cooperation of Benny Gantz and Yoav Gallant, went to war, quoting from Winston Churchill's declaration of war on Germany, as if they too faced a global superpower. In fact, armed with the latest in aerial, naval, and terrestrial weaponry, they have waged war against a besieged people in a large concentration camp who cannot escape the bombardment.

But as the war unfolded in subsequent weeks, exposing several Israeli lies and the magnitude of suffering endured by the residents of the Gaza Strip, cracks began to appear in Western public opinion, which initially toed the US line. All of this could affect the determination of the US administration. This could very well be the first time that unconditional support for everything Israel does, in addition to the economic situation, will cost a US president the election. Support for Biden among young people, African Americans, and Latinos has evaporated – support that offsets Trump's edge among

white voters. But the current alternative is no different when it comes to this issue, and worse on many others.

What about Arab countries?

Arab states are divided between those actively involved in the aforementioned axis and other that are uninvolved, but are incapable of confronting it or taking practical steps to advance the Palestinian cause. Some of these states take an instrumental approach to the Palestinian cause, stripping them of any credibility. Other states are preoccupied with domestic conflicts in which regimes have committed atrocities that undermine their credibility when criticizing the crimes perpetrated by the Israeli occupation. One can easily imagine the sad state of Arab media coverage of events in Gaza, and Palestine in general, since 7 October were it not for the outlets sponsored by Qatar.

Arab states that have normalized relations with Israel initially shared the anger of Israel and the US. Perhaps hoping that the war would put an end to Hamas, they understood the need to temporarily shift the political discourse to one of solidarity with Gaza (while continuing to criticize and ostracize Hamas) until Israel concluded its task. Developments, however, have exacerbated their dilemma. The resistance continues to inflict losses on Israel, many Israeli lies have been exposed in the court of international and Arab public opinion, and, most importantly, the solidarity of Arab peoples with the Palestinian people and with their unwavering resistance under relentless, indiscriminate bombardment has become crystal clear.

Some of these Arab states seem to have realized the necessity of returning to initiatives that were, already, major concessions to Israel, but at least emphasized a relatively just solution as a condition for normalization. But this realization that the Palestine issue cannot be side-lined is not a principled, moral awakening, and whether it will evolve into a genuine position depends on the outcome of the war, the resilience of the resistance, and the extent of Israeli casualties. If Israel successfully achieves its objectives and gains control over parts of Gaza Strip, from which it can continue its search operations or raids on what it considers havens for the resistance, the discourse may once again shift, from the imperative of resolving the Palestinian cause justly to the need to find security and political solutions specifically for Gaza. These could either conform to the Israeli formula of a separate force controlling Gaza under Israeli supervision or an Israeli-international collaboration with Arab states after the elimination of Hamas. Both formulas mean the continued existence of two distinct, non-sovereign entities in the West Bank and Gaza (sans Hamas), which would prevent the establishment of a Palestinian state in the future.

This plan must be thwarted. Doing so is contingent on the steadfastness of the resistance, the continued pressure to stop the war, and the steadiness of the accompanying political discourse. It depends as well on a broad Arab and international public consensus on the need for a just resolution of the Palestinian cause, a rejection of any security arrangement for the Gaza Strip and Arab participation in such an arrangement, and the refusal to return to anything resembling the perpetual peace process of the past thirty years. Furthermore, the Palestinian Liberation Organization (PLO)



and institutions in the West Bank and Gaza Strip must be restructured to enable them to pursue negotiations based only if clear principles for a just solution can be imposed as a foundation of any negotiations. It requires careful thought, as positing such political projects could help to stop this war. Everything depends on the steadfastness of the resistance and human solidarity with the people in Gaza.

For Israel, there is no doubt that the military operation has resulted in a turn inwards within Israeli society and a sense of regional isolation. It has sparked a resurgence of militaristic approaches and a refusal to hold the occupation or Israel's policies responsible for what happened. Instead, the disaster has been attributed to an intelligence and military failure. Some have linked it to the Netanyahu-led government's preoccupation with priorities other than "security," such as pushing through judicial reforms in alliance with the religious Zionist movement. The reforms have divided Israeli society, with ramifications for both the army reserves and active-duty forces.

The Israeli reversion to militarization does not mean that the dominance of the religious Zionist discourse on the Palestinian cause is waning. The political figures who lead in opinion polls are extreme nationalists, including religious figures like Naftali Bennett, and secular generals. What unites them is their military-security orientation and their rejection of a just solution to the Palestinian issue. This alliance is gradually crowding out religious parties and establishing a new centre on Israel's political map.

In general, Israeli behaviour can be boiled down to tribal solidarity in search of solace and security to dispel fear. First and foremost, this requires restoring equilibrium and deterrent power through revanchist retribution against Palestinians in the Gaza Strip and the West Bank. In my opinion, this is the primary explanation for the absence of any Arabs in Israeli news studios and the reversion to treating Arab citizens of Israel as enemies, real or potential, who must keep their mouths shut and their heads down. It has been made clear once again that for the Jewish majority, Arab citizenship in Israel is not based on a democratic foundation but rather on the indulgence of the dominant majority. Citizenship, even of the second-class kind, is functional during times of forbearance for the other, but is rendered entirely non-functional when Israeli society feels threatened. Currently, this society shows no forbearance towards Arab citizens and can tolerate not even the few Israeli opinions that express solidarity with people under occupation or that question the military solution. Israel has joined the list of countries that imprison people for a tweet or expel students and professors from universities because of opinions that evince even a hint of support for or tolerance of resistance to the occupation.

One of the most telling examples of Israel's spiteful vendetta has been overlooked, as attention, rightly so, has focused on the barbaric bombing of civilians in the Gaza Strip, including residential high-rises, schools, and hospitals, in scenes that will be forever etched in our minds. The example I refer to does not involve the killing of tens of thousands, but it vividly highlights the vindictiveness. I refer to retaliation by the Jewish state itself, not merely the society, against the Gazan workers who

were trapped in Israel after 7 October. These workers – Hamas is not hiding in their midst, nor are they terrorists or "human shields for terrorists" – are laborers employed by Israelis. They are guilty of nothing more than being Palestinian Arabs caught in the midst of a big tribe driven by feelings of vengeance that cannot tolerate an other among them. These workers were arrested, stripped, robbed of their wages, and tortured; two of them were killed before some were taken to the West Bank while others were kept in detention before being cast into Gaza amidst the bombardment.

The Peculiar Wrangling over Terminology

After initially demonstrating shock and dismay and echoing the Israeli narrative about 7 October down to its last detail, governments, mainstream media, and their expert and intellectual guests began to beat the war drums in support of Israel's military operation and to adopt wholesale the Israeli narrative about operations, including falsehoods. This quickly gave rise to a totalitarian discursive atmosphere reminiscent of what the Nazis called *Gleichschaltung*. Referring to the process of directing the combined activity of state institutions and society towards the same goal, *Gleichschaltung* required a high degree of control, coordination, emotional cohesion, and docility as well.

We all remember the hostile climate that emerged after the 9 / 11 terrorist attacks on New York, the anti-Arab and anti-Muslim sentiment, and the demonization of Islam itself. It is the same climate that spread in Europe and the United States after Russia's aggression against Ukraine. It fosters an attitude that attributes evil itself, or at least a set of inherent, negative characteristics to the other party; rejects any rational explanation for the perpetrators' actions, arguing that explanation is tantamount to justification; and insists that any discussion must start with the event itself, as if history began on that date. And it culminates in mobilization for war. In such a climate, there is no solution but force, which is considered self-defence against a shocking act of violence that is self-contained and self-explanatory. It is a violent evil that can only be confronted with violent good, or, as Netanyahu has said several times since the beginning of the war on Gaza, a tale of the children of light versus the children of darkness.³ In addition to a willingness to say anything for propagandistic purposes, one needs to be wholly colourblind to classify oneself as a child of light and others as children of darkness.

In the context of mobilizing NATO countries and their people against Russia, which indeed attacked and occupied Ukraine, the assets of businessmen were seized in violation of the sacred capitalist principle of private property; musicians, sports teams, and even Russian literary works were boycotted. This hysterical behaviour can only be described as totalitarian. It reached the point of

³ See: "Excerpt from PM Netanyahu's remarks at the opening of the Winter Assembly of the 25th Knesset's Second Session," *Ministry of Foreign Affairs [Israel]*, 16/10/2023, accessed on 3/12/2023, at: <https://tinyurl.com/2zt8j59v>



absurdity when Russian cats were banned from participating in a competition organized by the International Cat Federation.⁴ (Yes, such an entity exists.)

On the level of discourse, democratic nations act like totalitarian states during wartime. Even institutions presumed to be independent of the state engage in agitation, rumour-mongering, and the dissemination of falsehoods about the adversary, ultimately demonizing them. Western nations reacted to the Hamas operation against Israel as a collective "we" that included Israel. The media joined the chorus of incitement, abandoning even the most basic principles of objectivity, even negative neutrality, behaving as if it were part of an organized campaign. Indeed, the danger lies in the fact that it was not an organized campaign and did not need to be organized; rather, the media was thinking in the same paradigms and clichés and feeling the same threat when confronting an enemy from a different culture. There is no space here to discuss the contrast between, on one hand, the humanization of Israeli victims, the telling of their personal stories, and the extensive space dedicated to hosting their relatives and acquaintances to speak about them and, on the other, the anonymity of Palestinian victims, who are barely even acknowledged as numbers and are atomized and depersonalized. We cannot even begin to list the charged idiom used in reporting about Palestinians compared to the standard language used in news coverage of Israel. I believe this topic has been addressed by many media researchers.

This reality has led some to question the values of justice, freedom, and equality as so much hypocrisy. In doing so, they forget the difference between moral values that should unite humanity and form the basis for dialogue, communication, judgment, and the positing of just demands, and moral hypocrisy, which covers interests and prejudices. These are two very different things.

No thinkers who are considered by their Arab admirers to be the bearers of universal values, whether leftist or liberal, emerged unscathed from this atmosphere, including Jürgen Habermas and Seyla Benhabib. Many of the enlightened, to use the language of the eighteenth-century France, cannot bridge the gap between the universality of values in substance and their universality in scope.

Here, I would like to remind observers who are surprised by the extent of Western interest in events since 7 October – looking at the wall-to-wall news coverage, one would imagine a war was underway in Europe or North America – that the focus of this attention is not the Palestinian people but Israel, the Jewish state. If the adversary of the Palestinian people were any other occupation besides the Israeli occupation, it would not garner such interest. One need only look at media coverage of other conflicts in the region. I say this for activists fighting for just causes in other countries, lest they envy the Palestinian people for all this attention, which is largely negative: the attention is not for the Palestinian people but Israel. This is why audio-visual media around the world are filled with endless debates and verbal sparring about events in our country of a type that Sudan, Syria, and Yemen – and even China and Japan despite their power – do not receive. One of the distinctive features of

⁴ "InternationalCatFederationbansRussianscatsfromcompetitions," *The Washington Post*, 3/3/2022, accessed on 3/12/2023, at: <https://tinyurl.com/mr3znus9>



the Palestinian cause that has made it so complex is that it is intertwined with the global issue of the Jewish question and the regional matter of the Arab question. I have previously addressed this particularity in other contexts.

Jürgen Habermas's statement⁵ against critics of Israel merits no sophisticated or academic debate. It is a concise political statement largely focused on justifying limits on the freedom of expression of critics of Israel in Germany and on rejecting the characterization of Israel's actions in Gaza as genocide. Habermas rejects the term for reasons related to Germany and its history, and also for a reason that for him is self-evident – namely, that Israel's war on Gaza, which he calls "retaliation," should not be controversial. Instead of criticizing the war that is actually underway, Habermas chooses to focus on a hypothetical war being waged in line with "guiding principles," which include "the prevention of civilian casualties," and has the goal of "future peace." I cannot believe that Habermas is deluded enough to believe that Israel is adhering to his guiding principles, but he nonetheless formulates them rhetorically as conditions, thereby making support for Israel's war seem conditional, although it is, in fact, unconditional. Habermas continues: "Despite all the concern for the fate of the Palestinian population, however, the standards of judgement slip completely when genocidal intentions are attributed to Israel's actions." You may express concern about the fate of the Palestinian population, but you may not call it genocide. Habermas himself expresses no sympathy or solidarity with Palestinians. His concern is that what they are experiencing should not be called genocide; it is a matter of the proper use of terminology. Habermas does not humour us by offering his own judgment of the cause of "concern for the fate of the Palestinian population" or tell us what to call what is happening to them. If not genocide, then what is it? The German philosopher does not say.

Habermas has no notable record or real authority when it comes to expressions of solidarity with peoples outside of Europe. His public focus is rationalizing political discourse in Europe and reconciling Enlightenment rationality with social justice and political liberalism. His stance on the US war on Iraq in 2003 was indicative of a political naivety befitting a German professor, as Marx might say, believing as he did in its goal of exporting democracy. He also embodies a kind of stunted moral sensibility and hides behind academic debates over terminology, especially when it comes to events outside the "we" of the Western world, if I may use that term. We will return to the term "genocide" below, which has preoccupied many academics in this moment, as if determining the precise name of a thing is what determines one's moral stance towards it.

The mass killing of civilians, including the indiscriminate aerial bombardment of schools and hospitals, is presumably morally condemnable, whatever it is called. The applicability of the term "genocide" is not a condition for considering it a heinous, reprehensible crime of the vilest sort; rather, it is a condition for considering it a crime under international law. Genocide is a term clearly

⁵ Jürgen Habermas and three eminent colleagues from Frankfurt University (Nicole Deitelhoff, Rainer Forst, and Klaus Günther) issued a statement of solidarity with Israel. See: Nicole Deitelhoff, Rainer Forst, Klaus Günther & Jürgen Habermas, "Principles of solidarity. A statement," *Normative Orders*, 13/11/2023, accessed on 21/11/2023, at: <https://shorturl.at/wHJLW>

defined by an international treaty, and the treaty outlines the elements of the crime, as we shall see below.

Habermas adds that "Israel's actions" (he does not specify what these actions are) "in no way justify anti-Semitic reactions, especially not in Germany." He is not concerned with what is happening to the Palestinian population or the actions of Israel, but rather with anti-Semitic reactions in Germany. The majority of critical responses to Israel that are not anti-Semitic do not interest him. He does not even bother mentioning them. The anti-Semitic reactions which he and his colleagues have managed to observe manifest as a fear among Jews in Germany who "are once again exposed to threats to life and limb and have to fear physical violence on the streets." He considers this fear "intolerable." Habermas does not offer any examples of a genuine danger to Jews in Germany in the context of protests against the war, but merely refers to the anxiety and fear they experience from threats whose genuineness we do not know, although they could be real.

Habermas describes the recognition of "Jewish life and Israel's right to exist" as "central elements" in "the democratic ethos of the Federal Republic of Germany." He precedes this with the obligation to respect human dignity, which he fails to apply to Palestinians in Gaza. He concludes his solidarity statement stating: "All those in our country who have cultivated anti-Semitic sentiments and convictions behind all kinds of pretexts and now see a welcome opportunity to express them uninhibitedly must also abide by this." By this, he means "the elementary rights to freedom and physical integrity as well as to protection from racist defamation," which he considers rights that are "indivisible and apply equally to all." Of course, we cannot help but agree with him, but his use of the phrase "those in our country," instead of citizens or Germans, is not accidental. He refers here to Arab and Muslim immigrants in Germany, who, according to him, have their own reasons for adopting anti-Semitic ideas. In his view, these individuals have become a source of anti-Semitism in Germany. The German professor finds himself in a battle against non-German presumed anti-Semites, thus closing the loop.

How can he justify this? It is baffling, as I have not heard of anyone accusing an Israeli of committing these massacres because he is Jewish, or because Israel's soldiers are Jewish. You will not find such a position held by any significant number of Arabs, Palestinians, or protesters against the aggression around the world. Habermas joins the heated debate in the Western public sphere to divert attention to another fictitious arena: the struggle against anti-Semitism. This is also the case for politicians, intellectuals, and journalists who demonstrated against anti-Semitism in France while Israel was committing massacres in Gaza. The truth is, they are not protesting anything specific, but rather against those who speak out about what is happening in Gaza. They are attempting to open another battle to obscure the massacres committed by Israel and to redraw the boundaries of freedom of expression to end where criticism of Israel begins. This behaviour cannot be understood in any other way.



Since the day the Qassam Brigades carried out their operation and the pro-Israel media campaign in the West was set in motion, Palestinians and their supporters have faced various kinds of harassment, up to and including losing their jobs. Raising the Palestinian flag and wearing the keffiyeh have been virtually banned. On 14 October, a six-year-old Palestinian American child and his mother were stabbed at their home in the US by a white man, their landlord, simply because they were Palestinian, according to the perpetrator.⁶ On 26 November, a white man opened fire on three Palestinian university students in Vermont. As far as I know, President Biden has not reached out to the families of the victims and has not embraced them as he has the Israeli abductees. Mind you, I do not object to the concern he shows for Israelis. I criticize him doing this in a context that justifies the war while he does not find it appropriate to reach out to victims of racism and hate crimes in his own country in the context of the same conflict.

Does Habermas not see that the persistence of anti-Semitism and racial discrimination in Europe manifests most clearly in the hostility towards those people with whose presence he apparently is not content? Does he not truly see that many potential anti-Semites in the West, on the right and far-right, are currently Israel's staunchest supporters? The search for an answer brings me back to, what I believe, is a fundamental shift in his thinking since Europe has witnessed extensive immigration, particularly from Muslim communities. His belief in the universality of Enlightenment ideas has been shaken, and he now sees them as rooted in what he considers Judeo-Christian civilization in Europe. I will avoid delving into this complex discussion here, although I believe that European civilization was usually identified as Christian and this Judeo-Christian combination was emphasized after the Holocaust. The roots of the Enlightenment are not found exclusively in Christian civilization (insofar as it is Christian); they also lie in critiques of it, in rational traditions including non-Christian Greek Roman and Muslim, in the scientific revolution which is wholly unrelated to religious doctrine, in the rise of the centralized state and absolute monarchy, and in the discovery of maritime trade routes and engagement with other civilizations. The Enlightenment did not originate in Christianity, whether Catholic or Protestant, and there is no necessary connection between the two. I have previously said that Habermas's late ideas on post-secularism are bound up with his understanding of the discourse of those who defend Europe's Christian character in the face of broad immigration from Muslim countries and with the concern that the lack of cultural homogeneity will erode the dominance of liberal democratic ideas in Europe. In fact, he might be right about one thing: immigration has indeed undermined the dominance of liberal democracy, but it is not because of immigrants – only a small minority are out of step with this mainstream – but because of the far-right reaction to them.

As for the matter of Palestine, Habermas and his colleagues show no sensitivity towards it. This would not matter much to me if they had remained silent about the ongoing crime in Gaza, but instead they issued this flawed, morally hypocritical statement, which is only concerned with what Israel is

⁶ A six-year-old Palestinian-American, Wadea Al Fayoume, was stabbed twenty-six times at his house in Plainfield, south of Chicago, by a seventy-year-old man, their landlord. His mother was also stabbed and strangled, resulting in serious injuries. See: "Slaying of 6-year-old Muslim in Illinois connected to Israel-Hamas war," *Politico*, 10/15/2023, accessed on 3/12/2023, at: <https://tinyurl.com/3kcd6czk>; "Illinois man pleads not guilty in killing of Palestinian-American boy," *Aljazeera*, 30/10/2023, accessed on 3/12/2023, at: <https://tinyurl.com/83e9aehu>

doing in Gaza insofar as it may spark anti-Semitic reactions in Germany or elsewhere. I do not aim here to remind him of his moral duty towards the Palestinian people, for he has no such obligation, and, in any case, moral duty is not imposed on anyone, including university professors. However, he voluntarily stakes out a position of moral hypocrisy when he insists on rejecting the term "genocide" to describe the systematic, comprehensive bombardment of Palestinian life in Gaza, which has levelled residential towers, refugee camps, schools, and hospitals and was preceded by calls for the expulsion of the population and the explicit expression of vengeful intentions by Israeli leaders. And all of this in a climate of racist hysteria in Israel and its media, some of which seeps into Western media when Israeli officials appear. Even if he disagrees with the label of genocide, Habermas has not condemned or criticized this.

Habermas was right about one thing only: his deeming of Israel's war as "retaliation." The principle of self-defence, which should be proportionate and adhere to international laws, does not apply to the occupier. The right to self-defence in the context of occupation applies to the people living under occupation, where it is known as the right of resistance. The right of resistance is the right to defend oneself against the continuous violence perpetrated by the aggression represented by the occupation. This is its moral justification. In international law, under the Hague Convention of 1907 – specifically Convention (IV) respecting the Laws and Customs of War on Land – the occupying state is prohibited from using resistance to occupation as a justification for imposing collective punishment on the occupied people.⁷ On the contrary, Palestinians have the legal right to resist occupation using any means at their disposal in accordance with the principles and charter of the United Nations,⁸ within the context of their struggle for self-determination. This right is not absolute, but is also constrained by international laws and the spirit of the UN Charter. It does not include atrocities against civilian population.

The second point in my discussion of Habermas is the issue of the Holocaust and anti-Semitism. There is undoubtedly a connection between the Holocaust against European Jews and anti-Semitism, though anti-Semitism does not fully explain the phenomenon. One cannot interpret a phenomenon

⁷ Article 50 states, "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible". See: "Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.," *International Committee of the Red Cross*, accessed on 27/11/2023, at: <https://tinyurl.com/9hdvxx2x>

⁸ General Assembly Resolution 2649 of 1970 "affirms the legitimacy of the struggle of peoples under colonial and alien domination recognised as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal." See: United Nations, "The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights," A/RES/2649(XXV) (New York: 1970), accessed on 27/11/2023, at: <https://tinyurl.com/2u2pb4ep>

General Assembly Resolution 3236 of 1974 stated that the United Nations "recognizes the right of the Palestinian people to regain its rights by all means in accordance with the purposes and principles of the Charter of the United Nations." See: United Nations, United Nations General Assembly, Resolution No. 3236 (29th session), 22 November 1974, Recognizing Palestinian Inalienable Rights and Palestinian People as Principal Party for Establishing Peace (New York: 1974), accessed on 12/11/2023, at: <https://bit.ly/3Qul6pw>

General Assembly Resolution 3236 of 1974 stated that the United Nations "recognizes the right of the Palestinian people to regain its rights by all means in accordance with the purposes and principles of the Charter of the United Nations". See: UN General Assembly, "Question of Palestine," A/RES/3376 (New York: 1975), accessed on 27/11/2023, at: <https://tinyurl.com/2mxeeczy>

On 4 December 1986, the General Assembly affirmed the legitimacy of the Palestinian armed resistance, linking it to Namibia and South Africa. The resolution stipulated "the legitimacy of the struggle of peoples for their independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation by all available means, including armed struggle." See: UN General Assembly, "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights.," A/RES/37/43 (New York: 1985), accessed on 12/11/2023 at: <https://tinyurl.com/2k8rmzmm>



of the magnitude of the Nazi Holocaust without reference to the totalitarian state, modern utilitarian rationality unconcerned with ends, bureaucratic mechanisms for neutralizing moral judgment, and the pseudo-sciences arising from the application of biological theories to society. The targeting of Jews in the Nazi Holocaust is doubtlessly related to anti-Semitism, whether it is the religious anti-Semitism that has continued since the Middle Ages, nationalist anti-Semitism that considers Jews a non-assimilative element precluding national homogeneity according to some European nationalists (not all, as some were Jews themselves), or social anti-Semitism that used incitement against Jews as a tool to divert the class struggle from the conflict against capitalism to a conflict against the Jews stereotyped as merchants, moneylenders, etc.. All of these aspects merged in the racial anti-Semitic ideology of the Nazi Party. I do not believe that the majority of European peoples believed in it, although circles in most European countries occupied by Nazi Germany, especially in France and certain Eastern European countries, collaborated in the process of rounding up Jews as a prelude to their extermination.

What does the Palestinian cause have to do with this? Palestinians, Arabs, and Muslims have no relationship with this crime committed in Europe, or with its intellectual and ideological precursors. The Palestinian people themselves have been harmed by it, though for Europeans they are a secondary victim. Before the Holocaust, Zionism had not succeeded in convincing Jews to migrate to Palestine. The great crime committed against European Jews spurred migration to Palestine, as well as European sympathy with the Zionist project, although Western interests in our region played a more significant role in generating this sympathy. In any case, Palestinians are, for Europeans, collateral damage in the endeavour to resolve the Jewish question in Europe via the establishment of a Jewish state outside it, specifically in Palestine.

The Zionist movement colluded by using the Holocaust to elicit sympathy for its colonial project in Palestine and to extort financial compensation from Germany. Thus, the pains and tragedies of the Jews were transformed into funds paid to a state that did not exist or represent them when they were subjected to genocide. This state asserts its claim of representation retroactively. There is no moral legitimacy whatsoever for such representation, as the victims did not elect Israel or its parties. On the contrary, all evidence suggests that the majority of Jews worldwide during that period were not sympathetic to Zionism or its project in Palestine. Over time, especially during the Likud era, the Holocaust has been instrumentalized in another way: not only to coerce the expression of guilt in the form of solidarity with Israel, but also to project that guilt onto the Arabs. Israeli leaders began branding Arab leaders as Nazis, although they realized that Nazism is an entirely European nationalist-socialist, and racist phenomenon.

Let us be completely honest: in narrow Arab milieux, some of these European ideas were embraced at various stages of the evolution of nationalist thought amid the conflict with French and British colonialism and after the 1967 defeat. That defeat entrenched the notion of a global Jewish conspiracy and diabolical power that enabled Israel to triumph over three Arab armies and explained the irrational, unconditional US support for Israel. In addition, some Islamist movements



revived anti-Jewish expressions from ancient traditions, particularly from the era of the Prophet, which was marked by actual wars with Jewish tribes in the Arabian Peninsula; these are the types of generalizations that were used against enemies in tribal wars in ancient and pre-modern eras. However, Arab-Islamic civilization has never seen anything like what Europe perpetrated against the Jews, not only during the Nazi era, but since the Middle Ages.

Even in the context of resistance to the occupation and the struggle against Zionist colonization by Israeli Jews, anti-Semitic slogans were not mobilized for the battle. The Palestinian national movement generally advocated democratic solutions, even when it championed the liberation of all of Palestine. Hamas initially used some such expressions, dating back to the early Islamic wars against Jewish tribes, in its original charter but later abandoned them in its revised charter. The Torah is rife with much more severe expressions against peoples considered enemies by the Jewish tribes – expressions that call for their complete annihilation and justify divinely-sanctioned genocide. Some Israeli religious and secular party leaders still invoke this Biblical legacy of the extermination of peoples who inhabited the land of Canaan, especially the Amalekites, to describe what should be done to the Palestinians.⁹

In any case, this is all theoretical talk, aimed at avoiding self-deception when discussing others and establishing a solid moral basis on which to stand when discussing them. It has nothing to do with the war currently being waged against the Palestinian people in the Gaza Strip through a series of war crimes and acts of genocide, and the moral duty to oppose this war and demand a ceasefire is wholly unrelated to anti-Semitism.

It is only Jewish critics of this war that mention the Jewish identity of the aggressor and this is because of their shared identity and their refusal to allow the aggressor to speak in their name. They refer to the Jewishness of Israel because they refuse to allow Israeli aggression to represent Jews and Judaism and they repudiate this aggression and its crimes. This goes not only for criticism of the aggression, but also to resistance to occupation. Resistance to the occupation is unrelated to the nationality, ethnicity, or religion of the occupying state, although I realize that settler colonialism in general, whether in South Africa, Algeria, or the Americas, was carried out by settlers who professed a religion different from that of the indigenous people, which served to intensify settlers' racism and their view of the non-humanity of the local population. It is no wonder, then, that oppressed peoples used religion to mobilize resistance to settler colonialism, at least initially. But the modern Palestinian national liberation movement represented by the PLO was founded as a secular national movement that brings together non-religious and religious people of different confessions. The rise of Hamas since the end of the 1980s has nothing to do with an attitude towards the Jews, but with developments in the Arab world in the 1970s and 1980s, the failure of the PLO-led peace process, and, finally, Hamas's adoption of armed resistance at a time when the main current in the Palestinian national movement had abandoned armed struggle. Certainly, the activity of armed Islamist

⁹ "Netanyahu cites 'Amalek' Theory to justify Gaza Killing," *The Times of India*, 29/10/2023, accessed on 3/12/2023, at: <https://tinyurl.com/3wnr3mtv>



movements has contributed to the failure of the peace process, but the main reason for the failure is Israel's unwillingness to accept a just and lasting solution to the issue of Palestine based on the principles of justice, even if relative.

This debate was joined by another philosophy professor, Seyla Benhabib,¹⁰ and why not? Her principal foe is Hamas. This thinker and feminist activist generally opposes the occupation, acknowledging that Gaza is a large detention camp, but Hamas, with its ideology that calls for the elimination of Israel, bears responsibility for the blockade according to her statement, which is lengthy compared to that of Habermas and his colleagues. Hamas committed war crimes on 7 October, Benhabib says, recapitulating everything said in the Israeli and Western media about the events of that day. She does add that Israel is also committing crimes. Benhabib is adamant that Hamas not emerge victorious from this war because it would hinder the rise of a moderate Palestinian leadership. She does not see Israel's role in thwarting and delegitimizing a "moderate" leadership, nor does she realize the importance of armed struggle in legitimizing the force practiced under occupation. In any case, she demands that we avoid calling Israel a settler colonial state because ultimately Israeli and Palestinian nationalism "mirror each other." We know that Zionism sees itself as a nationalist movement, even a national liberation movement, but its project in Palestine, the means it employs and its structure, cannot be understood without seeing it through the lens of settler colonialism, and this is not solely a Palestinian perspective. Benhabib is of a piece with the entire Zionist left that is currently rallying behind the war. For her, there are two national movements struggling over the same land, and what hinders a mutual understanding are extremists on both sides. Benhabib easily condemns Smotrich and Ben-Gvir, but they are not the ones currently prosecuting the war; it is rather the secular generals who "respect" women's rights in the army, and most likely LGBTQ rights. Benhabib no doubt considers these individuals to be enlightened, and perhaps some of their wives and daughters may attend this renown feminist's lectures when she visits an Israeli university.

In her view, then, Hamas cannot emerge victorious from this war. It must be defeated. But what if the cost of Hamas's defeat is the destruction of the Gaza Strip and a genocide against the Palestinian people? Her moral stance is not clear, and it becomes even more ambiguous after Benhabib accuses Hamas of placing its bases and tunnels among civilians and beneath hospitals, thereby turning Palestinians into "collateral damage" of Israeli airstrikes on these facilities and shifting responsibility for such strikes onto Hamas itself. But where did the moral position go? It gets lost amid her rational analysis (with her many errors on even the basic facts) and in an approach that sees the occupation and its victims as two equal parties. Her hostility to Islamists leads her to reject the right to resist occupation if Islamists are the ones resisting. More importantly, those she wishes to see vanquish Hamas are not the forces of enlightenment and moderation that will bring justice, fairness, and lasting peace between the two peoples, but the occupying state itself, which has still not concluded from everything that has happened that a just peace is imperative. Rather, Israel has concluded that

¹⁰ Seyla Benhabib, "An Open Letter to My Friends Who Signed 'Philosophy for Palestine'," *Medium*, 4/11/2023, accessed on 21/11/2023, at: <https://shorturl.at/NYZ78>

military errors occurred and that the occupation's control over the Palestinian people must be even tighter after the war.

In justifying an all-out war waged by an occupying state against a subjugated population, these intellectuals failed the moral test. They failed when they did not set clear limits on what the occupying state could do against innocent civilians, even if they assume that these civilians are held hostage to a terrorist movement rather than to siege and occupation.

We, however, will take up the subject of genocide; as for settler colonialism, it has been extensively discussed in another context.

The Definition of Genocide in International Conventions

Contrary to popular belief, "genocide" as a legal term was not coined to describe the Holocaust specifically, but the overall actions of the German occupying forces in European countries, which involved crimes less atrocious than the Nazi Holocaust against the Jews of Europe. Raphaël Lemkin (1900–1959), a Polish lawyer of Jewish descent, was the first to give a legal definition to the term "genocide" in his book *Axis Rule in Occupied Europe*, published in 1944, where he wrote:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation [...]. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.¹¹

According to Lemkin:

Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals. Denationalization was the word used in the past to describe the destruction of a national pattern.¹²

¹¹ Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace, 1944), p. 79.

¹² Ibid.



Under this definition, the term could not be more applicable to the Nakba of the Palestinian people if it were coined specifically for it.

However, denationalization is inadequate to describe what happened according to Lemkin, because what is meant is not denationalization by peaceful or other means, but rather the imposition of another national pattern after forcible denationalization. When Lemkin speaks of genocide, he means not only the crime perpetrated against Jews, but Germany's general practices in its occupied territories. Lemkin speaks of genocide in various spheres, including political, social, cultural, economic, biological (including racial discrimination in nutrition, endangering of health, and mass killings), religious, and moral.¹³

Genocide, the concept Lemkin helped to formulate, was first recognized as a crime under international law in 1946 by the UN General Assembly Resolution 96 (I), which states:

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore,

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices – whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds – are punishable.¹⁴

The UNGA codified genocide as a crime in the Convention on the Prevention and Punishment of the Crime of Genocide, known as the Genocide Convention, adopted unanimously by the assembly on 9 December 1948. The convention stipulates in its preamble, and Articles 1 and 2:

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

¹³ Ibid., pp. 79-80, 82 - 90.

¹⁴ UN General Assembly, "96 (I). The Crime of Genocide" (New York: 1946), pp. 188-189, accessed on 21/11/2023, at: <https://tinyurl.com/mwan324b>



Recognizing that at all periods of history genocide has inflicted great losses on humanity, and
Being convinced that, in order to liberate mankind from such an odious scourge, international co-
operation is required,

Hereby agree as hereinafter provided:

Article I

The Contracting Parties confirm that genocide, *whether committed in time of peace or in time of war*,¹⁵ is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with *intent to destroy, in whole or in part*,¹⁶ 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;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.¹⁷

It is essential to emphasize that each of these actions alone constitutes genocide, but only if it is with the specific intent to wholly or partially destroy a national group. The litmus test is not the number of casualties or those displaced from an area, but rather the intent and purpose behind such actions. In the case of Israel, the intent is clear: we have demonstrated that Israel has the intent to forcibly displace the population of the Gaza Strip. There have been public calls to expel the people of Gaza and eliminate the Palestinian presence there, as well as calls for a repetition of the Palestinian Nakba of 1948, which is not considered a crime in Israel, even retroactively, but is rather celebrated as a war of liberation and independence.

Genocide is defined in the same terms in Article 6 of the Rome Statute, the treaty that established the International Criminal Court (ICC), adopted by the UNGA in Rome, Italy on 17 July 1998 by 120 countries; the statute entered into force on 1 July 2002, upon ratification by 60 states:

¹⁵ Emphasis added by the author. This wording is an important response to those who justify acts of genocide with the claim that they occurred in wartime, in which civilians may be killed.

¹⁶ Emphasis added by the author.

¹⁷ United Nations, "Convention on the Prevention and Punishment of the Crime of Genocide," General Assembly resolution 260 A (III) (New York: 1948), accessed on 21/11/2023, at: <https://shorturl.at/nHLWZ>



For the purpose of this Statute, "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;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.¹⁸

Israel refused to ratify the Rome Statute and to join the ICC, on the grounds that the treaty classified civilian settlements in occupied territory as a war crime. According to the head of the Israeli delegation in Rome, the Rome Statute was being "blemished and abused as a potential tool in the political war against Israel." Israel's delegates to the conference, he explained, "fail to comprehend why it has been considered necessary to insert into the list of the most heinous and grievous war crimes, the action of transferring population into occupied territory."¹⁹

Under Article 7(1)(d) of the statute, the "deportation or forcible transfer of population" is considered a crime against humanity when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Forcible transfer is defined in Article 7(2)(d) as the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."²⁰

Elements of Crimes, a supplementary document to the Rome Statute, defines the elements of genocide as follows:

Article 6 (a)

Genocide by killing

Elements

1. The perpetrator killed one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

¹⁸ International Criminal Court, "The Rome Statute of the International Criminal Court," 17 July 1998, in force on 1 July 2002, *United Nations Treaty Series*, vol. 2187, no. 38544, p. 3, accessed on 23/11/2023, at: <https://shorturl.at/FQRUZ>

¹⁹ Michael Lynk, "Settlements Are the Engine of Israel's 'Forever Occupation'—and a War Crime," *Democracy for the Arab World Now*, 21/7/2023, accessed on 3/12/2023, at: <https://tinyurl.com/552kzev6>

²⁰ International Criminal Court, "The Rome Statute of the International Criminal Court," pp. 3 - 5.



4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b)

Genocide by causing serious bodily or mental harm

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (c)

Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (d)

Genocide by imposing measures intended to prevent births

Elements

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.



4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (e)

Genocide by forcibly transferring children

Elements

1. The perpetrator forcibly transferred one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.²¹

Examples of Intent to Commit Genocide

- Israeli Minister of Heritage Amihai Eliyahu proposed dropping a nuclear bomb on Gaza, adding that the Gaza Strip must be wiped off the face of the Earth and Israel must rebuild Israeli settlements there. Regarding the fate of Israeli hostages held by the Palestinian resistance, he said, "There is a price to be paid in war."²²
- Likud member of the Israeli Knesset Revital "Tally" Gotliv called on the Israeli army to use a "Doomsday weapon" against Gaza in response to Hamas's attacks, referring to a nuclear warhead, urging "violent retribution." She tweeted, in reference to missiles in Israel's arsenal: "Jericho missile! Jericho missile! Strategic alert. before considering the introduction of forces. Doomsday weapon!" In another post she said: "I urge you to do everything and use Doomsday weapons fearlessly against our enemies," adding that Israel "must use everything in its arsenal." She further tweeted: "Only an explosion that shakes the Middle East will restore this country's

²¹ Note that item 3 of each article emphasizes intent. See: International Criminal Court, "Elements of Crime," 2013, pp. 2-3, accessed on 23/11/2023, at: <https://tinyurl.com/2jfva8v>

²² Michael Bachner, "Far-right minister says nuking Gaza an option, PM suspends him from cabinet meetings," *The Times of Israel*, 5/11/2023, accessed on 27/11/2023, at: <https://tinyurl.com/yf6akjz9>



dignity, strength and security! It's time to kiss doomsday missile. Shooting powerful missiles without limit. Not flattening a neighbourhood. Crushing and flattening Gaza. [...] without mercy! without mercy!"²³

- In an interview with the Israeli Channel 12, Israel's far-right National Security Minister Itamar Ben-Gvir said that anyone who supports Hamas should be "eliminated," describing them as terrorists: "To be clear, when they say that Hamas needs to be eliminated, it also means those who sing, those who support and those who distribute candy, all of these are terrorists."²⁴

Israeli Calls for the Displacement of Palestinians

Although the Israeli government has not publicly advocated the displacement and transfer of the people of Gaza to Egypt, according to international diplomats, Israel has been actively trying to mobilize international support for it. In pitching the idea to foreign governments, Israeli leaders and diplomats have framed it as "a humanitarian initiative that would allow civilians to temporarily escape the perils of Gaza for refugee camps in the Sinai Desert, just across the border in neighboring Egypt."²⁵

A leaked Israeli intelligence report, titled "Options for a Policy Regarding Gaza's Civilian Population," published on 13 October, recommends that Gazans temporarily be herded into "tent cities" in Sinai, pending the construction of cities to house them in the northern part of the peninsula.²⁶

In an opinion piece published in *The Wall Street Journal*, Knesset members Danny Danon and Ram Ben-Barak called "for countries around the world to accept limited numbers of Gazan families who have expressed a desire to relocate." They urged global organizations with experience settling refugees to "facilitate the relocation of Gaza residents who wish to move to countries willing to accept them. We simply need a handful of the world's nations to share the responsibility of hosting Gazan residents. Even if countries took in as few as 10,000 people each, it would help alleviate the crisis."²⁷

Finance Minister Bezalel Smotrich supported Danon and Ben-Barak's proposal in a Facebook post: "I welcome the initiative of members of Knesset Ram Ben-Barak and Danny Danon on the voluntary immigration of Gaza Arabs to the countries of the world. This is the right humanitarian solution for the residents of Gaza and the entire region."²⁸

²³ "Israel MK says 'use Doomsday weapons' against Gaza," *MEMO*, 10/10/2023, accessed on 27/11/2023, at: <https://tinyurl.com/2p8zdzkp>

²⁴ "Anyone who supports Hamas should be eliminated: Israeli minister," *MEMO*, 12/11/2023, accessed on 27/11/2023, at: <https://tinyurl.com/2z4mfaky>

²⁵ Patrick Kingsley, "Israel Quietly Pushed for Egypt to Admit Large Numbers of Gazans," *The New York Times*, 5/11/2023, accessed on 3/12/2023, at: <https://tinyurl.com/2xj5wvda>

²⁶ "Expel all Palestinians from Gaza, leaked Israeli report says, in new bid to ethnically cleanse the enclave," *The New Arab*, 31/10/2023, accessed on 3/12/2023, at: <https://tinyurl.com/36abb3cx>

²⁷ "The West Should Welcome Gaza Refugees," *WSJ*, 13/11/2023, accessed on 3/12/2023, at: <https://tinyurl.com/4e5akjs3>

²⁸ "Israel's Smotrich backs proposal to expel Gaza residents to other countries," *The New Arab*, 15/11/2023, accessed on 3/12/2023, at: <https://tinyurl.com/yc46nm9x>



In an interview on Sky News, Israel's former ambassador to the US, Danny Ayalon, said: "The people of Gaza should evacuate and go to the vast expanses on the other side of Rafah at the Sinai border in Egypt where they should be hosted with shelter [...] It's not that they don't want to go, they will return, it's that Hamas is preventing them and Egypt will have to accept them."²⁹

Knesset member Ariel Kallner called for a second Nakba in Gaza, tweeting on 7 October: "Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 48."³⁰

In an interview on 12 November with the Israeli N12 channel, Agriculture Minister Avi Dichter was asked about the scene of a million people in Gaza walking south with white flags. He responded, "We need to reduce the number of residents," adding, "This is going to result in some sort of Nakba," and "[This is] a Gaza Nakba 2023, that's how it'll end."³¹

These statements were followed by many more from Israeli leaders that denied the very existence of the Palestinian people, echoing the late Prime Minister Golda Meir. "There were no such things as Palestinians," Meir said in an interview with Frank Giles, then deputy editor of *The Sunday Times*, on 15 June 1969, to mark the second anniversary of the Six-Day War. "It was not as though there was a Palestinian people in Palestine considering itself as a Palestinian people and we came and threw them out and took their country away from them. They did not exist."³²

Decades later, Finance Minister Bezalel Smotrich revived Meir's notorious dictum in a speech he gave at a conference in France in 2023: "Is there a Palestinian history or culture? There is none. [...] There is no such thing as a Palestinian people."³³

On Self-Defence in International Conventions

Article 51 of the United Nations Charter recognizes:

...the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.³⁴

²⁹ "Sky News Interview," *X*, 17/10/2023, accessed on 3/12/2023, at: <https://tinyurl.com/43888tnj>

³⁰ "Israel MK calls for a second Nakba in Gaza," *MEMO*, 9/10/2023, accessed on 3/12/2023, at: <https://tinyurl.com/4wsm36nz>

³¹ "Israeli minister Avi Dichter says 'Nakba being rolled out' in Gaza," *The New Arab*, 12/11/2023, accessed on 27/11/2023, at: <https://tinyurl.com/m56yfdy>

³² Frank Giles, "Golda Meir: 'Who can blame Israel!'," *Sunday Times*, 15 June 1969, p. 12; Mouin Rabbani, "Palestinians and Their Discontents," *Critical Sociology*, vol. 49, no. 6 (2023), p. 935.

³³ "Israeli minister says 'no such thing' as Palestinian people," *Reuters*, 20/3/2023, accessed on 3/12/2023, at: <https://tinyurl.com/3bxb2enz>

³⁴ United Nations, "United Nations Charter (full text)," accessed on 27/11/2023, at: <https://tinyurl.com/39et2732>



Israel, with the support of the United States, asserts that its recent war on Gaza and preceding actions are justified under international law, specifically under this provision. On 21 October 2023, the United States proposed a draft resolution to the UN Security Council stating that Israel has the right to self-defence under Article 51 of the UN Charter.³⁵

This logic involves brazen manipulation and deception, using international law to portray Israel as a victim of aggression that justifies self-defence. As an occupying power in the West Bank and Gaza Strip, this legal principle does not apply to Israel.³⁶ The West Bank and Gaza are not independent states outside Israel that have attacked it.

Israel attempted to use the principle of self-defence set forth in Article 51 to justify the construction of the separation wall in the West Bank. In 2004, the International Court of Justice issued a watershed advisory legal opinion in response to a request from the UNGA on the legal consequences of the construction of the wall in the occupied Palestinian territories. A majority of the judges, 14 to 1, concluded that the right of legitimate or inherent self-defence is not applicable to Israel. The court put it as follows:

Article 51 of the Charter [...] recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case.³⁷

Even if we accept that Israel has an inherent right of self-defence, on the basis that its citizens were subjected to an attack, regardless of its source, within its internationally recognized borders, this right, as stipulated in Article 51, is constrained by international law and the principle of proportionality. Additionally, the occupying power is legally responsible for the security of all people living under its occupation, not only its citizens, although Israel continuously endangers the safety of Palestinians

³⁵ Michelle Nichols, "US pushes UN to back Israel self-defense, demand Iran stop arms to Hamas," *Reuters*, 22/10/2023, accessed on 23/11/2023, at: <https://shorturl.at/nouUY>

³⁶ According to international law, occupation is not only limited to the presence of occupying ground forces in an area, but rather to whether they have "effective control" over this area. In 2009, the UN Security Council affirmed the position of Gaza in resolution 1860, "stressing that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state". Therefore, Gazan Palestinians are still "protected persons" according to fourth Geneva Convention, and they have the right to a comprehensive protection guaranteed under the laws of war. See: UN Security Council, "Resolution 1860 (2009) / adopted by the Security Council at its 6063rd meeting, on 8 January 2009," S/RES/1860(2009), accessed on 28/11/2023, at: <https://tinyurl.com/2wpmwv2f>; "Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.," *ICRC*, accessed on 28/11/2023, at: <https://tinyurl.com/r4pern3j>

³⁷ "ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT – Declaration of Judge Buergenthal – ICJ document," *United Nations*, 9/7/2004, accessed on 23/11/2023, at: <https://tinyurl.com/mrxets3a>



under occupation. The persistent invocation of the principle of the right to self-defence to justify Israel's war on Gaza, after the magnitude of the crimes committed has become obvious to all, is far more than a point in a legal debate over a provision in the UN Charter. It reflects the kind of moral depravity necessary to justify the killing of thousands of children. The moral and ethical question does not hinge on the legal interpretation of provisions in laws and charters; it is rather about the capacity to judge actions based on the collective moral conscience of humanity embodied in laws.