IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

VOLUME 2

EXPERT EVIDENCE

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REPORT ON THE IDEOLOGY, AIMS AND OBJECTIVES OF HAMAS AS REFLECTED IN ITS CHARTERS AND PURSUIT OF PEACE

BY

DR AZZAM TAMIMI

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to examine the evolution of the ideology, aims and objectives of Hamas as documented in its various charters and statements of principles, as well as its overtures towards peace in recent decades. The report will assess the allegations made against the movement that it is antisemitic and refuses to recognise Israel's 'right to exist' and respect previous agreements signed by the PLO with Israel.

B. QUALIFICATIONS

3. My mother fled from her home in Be'er-Assabea during the Nakba in 1948 and moved to Al-Khalil in the West Bank where she married my father. I was born in Al-Khalil in 1955. We later moved to Kuwait in 1962.

4. I graduated with a Bachelor of Science degree in Combined Sciences from the University of Sunderland in 1979. I obtained a Ph.D. in Political Theory from the University of Westminster in 1998.

5. From 1980-1985, I worked as a media monitor and news analyst at the U.S. government's Foreign Broadcast Information Service. I directed the Parliamentary Office of the Islamic Movement in Jordan from 1990-1991.

6. I served as a senior lecturer at the Markfield Institute of Higher Education in Leicester from 2000 to 2004. During this period, I contributed to the development of curricula focused on Islamic studies and political thought. I was a visiting professor at Kyoto University and Nagoya University in Japan between 2004 and 2007, where I lectured on topics related to Islamic movements and Middle Eastern politics.

7. I am the Chairman and Editor-in-Chief of Alhiwar TV Channel, a London-based Arabic-language satellite television channel that focuses on political, social, and cultural issues pertinent to the Arab world.

8. I am the founder and director of the Institute of Islamic Political Thought (IIPT) which has been instrumental in promoting scholarly research on Islamic political ideas and movements. The institute serves as a hub for academics and researchers interested in the intersection of Islam and politics.

9. I am the author of a number of books on Islam and politics, including a book on Hamas that offers a comprehensive analysis of the movement's role within Palestinian society drawing on personal interviews with many of the founding members and leadership.

   Books

   - Hamas: Unwritten Chapters (2007)
   - Rachid Ghannouchi: A Democrat within Islamism (2001)
   - Islam and Secularism in the Middle East (2000): Co-edited with John L. Esposito.
   - Power-Sharing Islam? (1993)

   Selected Articles

   - Yahya Sinwar died fighting Israel. His death will not defeat Hamas, Middle East Eye, 18 October 2024
   - Ismail Haniyeh: Hamas will survive leader's death as it has many times before, Middle East Eye, 31 July 2024
   - War on Gaza: Netanyahu's onslaught on Rafah is further proof of his desperation, Middle East Eye,14 February 2024
   - Israel-Palestine war: Could a long-term truce be in the offing?, Middle East Eye, 29 November 2023

- Why a visionary Palestinian leadership is urgently needed, Middle East Eye, 8 February 2022
- Saudi Arabia: Crackdown on Hamas marks another costly misstep, Middle East Eye, 10 August 2021
- Israel-Palestine: Apartheid cannot be defeated without armed resistance, Middle East Eye, 26 May 2021
- Israel-Palestine: A new generation says 'enough is enough', Middle East Eye, 20 May 2021
- Palestine elections: What's the point of this futile exercise?, Middle East Eye, 4 May 2021
- Israel annexation plan: A catastrophe begotten by a larger catastrophe, Middle East Eye, 1 July 2020
- Hamas has only the hudna to offer to lift the siege, Middle East Eye, 30 August 2018
- Palestinian reconciliation: Why is it likely to succeed now?, Middle East Eye, 5 October 2017
- Hamas' political document: What to expect, Al Jazeera, 1 May 2017
- A Hamas remake?, Middle East Eye, 24 April 2017
- Israel's war on Gaza is backed by Arab regimes, Middle East Eye, 12 February 2015
- Israel was wrong to think it could destroy Hamas, Middle East Eye, 12 February 2015
- Why peace with Israel was bad for Jordan, Al Jazeera, 26 October 2014
- The slaughter in Gaza will not defeat Hamas, Guardian, 13 July 2014
- The quest for democracy in the Arab world is an Islamic cause, Al Jazeera, 7 Februry 2014
- Our freedom is now closer, Guardian, 2 May 2011

C. INTRODUCTION

10. On 25 January 2006, the Islamic Resistance Movement in Palestine (Hamas) made a sweeping win in one of the fairest democratic exercises ever allowed to take place in the Arabic-speaking world. For almost four decades, Hamas has been a major player not just in the Palestinian arena but within the entire Middle East region.

11. Outside Arab and Muslim circles many of those who wrote about Hamas could only see it through an Israeli lens. Most of the works written on the movement have adopted the Israeli point of view, and their authors relied heavily on security agencies' reports including confessions extracted from Palestinian detainees under duress. One such example has been a book authored by Matthew Levitt, who when the book was published in 2006 was deputy assistant secretary for intelligence and analysis at the U.S. Treasury Department. *Hamas: Politics, Charity, and Terrorism in the Service of Jihad* depicts Hamas as a terrorist organization that uses "its extensive charitable and educational work to promote its foremost aim: driving Israel into the sea." Hamas's reputable charity activities are condemned as nothing but a device for

recruiting new soldiers to its "holy war" against Israel. The movement's sponsored mosques, schools, orphanages and sports leagues are portrayed as "integral parts of an overarching apparatus of terror."

12. In contrast, Hamas sees itself as an organization of Palestinians who happen to be both Arab and Muslim and who perceive themselves as the immediate victims of an unjust world order that saw fit to create a 'European' Jewish state in their own country at the very centre of Arab and Muslim heartlands. Hamas founders and affiliates see the Israelis as their oppressors who dispossessed them and their fellow countrymen and who have, since then, been persecuting them generation after generation. Resisting Israeli occupation of Palestinian land and Israeli oppression of the people of the land is one of several elements that inform the thinking of the movement and instruct its activism. The womb out of which Hamas was born was essentially a social project motivated by philanthropy and dedicated to charity, and that explains the network of civic services and activities in which the movement continues to engage.

D. ROOTS

13. Hamas was born out of the Association of Al-Ikhwan Al-Muslimun (the Muslim Brotherhood), best described by its affiliates as a comprehensive reform movement. The Ikhwan was originally Egyptian but has since its creation grown into a global network. The mother organization was founded by Hassan Al-Banna (1906-1949) in the Egyptian town of Al-Isma'iliyah in 1928 where he taught at a primary school not far from the headquarters of the British occupation troops' garrison. Combining elements of spirituality acquired from his association with the Hasafiyah Sufi order with the pristine monotheistic teachings of Islam learned inside the Salafi school of Muhammad Rashid Rida (1865-1935) – a disciple and close associate of Muhammad Abduh (1849-1905) - Al-Banna's project had a great popular appeal.

14. It did not take long for Al-Ikhwan movement to grow, quite rapidly, within Egypt and beyond it. Inside Egypt, it had four branches in 1929, 15 in 1932, 300 by 1938 and more than 2000 in 1948. By 1945, it had half a million active members in Egypt alone and between 1946 and 1948 it opened branches in Palestine, Sudan, Iraq and Syria.

15. Al-Ikhwan's long-term goals were: first, to free the Islamic homeland from all foreign authority; and second, to establish an Islamic state within the re-united Islamic homeland. But the movement's founder Al-Banna taught his followers that neither objective could be achieved without first attending to the more immediate needs of society. His project was, above all, an endeavour to 'rehabilitate' the Ummah starting with the individual, then the family, and finally ending up with society as a whole through a process of gradual reform.

16. These two same goals have been pursued, using the same methodology of gradual reform, by Al-Ikhwan offshoots across the Arab region including Palestine where the

Palestinian Ikhwan took root immediately after the end of the Second World War. Having initially opened a few local branches in the Gaza Strip, the edifice of the movement neared completion with the official inauguration on 6 May 1946 of its Central Office in Jerusalem in the presence of local dignitaries as well as guests who arrived from Cairo to represent the mother movement in Egypt.

17. The creation of Israel in two thirds of Palestine in 1948 led to a de facto split of the Palestinian Ikhwan into two separate organizations one in Gaza, which came under Egyptian military rule, and the other in the West Bank, which was annexed to the Hashemite Kingdom of Jordan.

18. The occupation of the rest of Palestine in the aftermath of the six-day war in June 1967 was a blessing in disguise for the group. From 1967 to 1977 the Ikhwan of Palestine endeavoured to unite their ranks and put their house in order. Within a few years they managed to regain some of the ground they had lost to the secular nationalist movements that gained their popularity from mounting resistance against the Israeli occupation, but that were also dealt fatal blows as a result of the loss of confidence across Palestine and the Arab region in Arab nationalism, as exemplified by Nassirism, which was held responsible for the major defeat of the Arabs and the loss of much more land to Israel in 1967.

19. However, as they rose in popularity and enhanced their appeal, the Ikhwan were being challenged to take a stand against the Israeli occupation, which the Palestinian populations of the West Bank and Gaza could no longer tolerate. Palestinian student communities, initially in Egypt and Kuwait but soon afterwards in the newly emerging Palestinian universities in the West Bank and the Gaza Strip, played a significant role in revolutionizing the thinking within the movement as a whole, prompting its leadership to take a decision in 1977 to start planning for the launch of their own resistance project that saw the light ten years later with the outburst of the Intifada.

20. This decade preceding the Intifada saw the creation of major institutions by the Ikhwan in Gaza, such as the Al-Mujammah' Al-Islami and the Islamic University, which provided Palestinian society with essential services in social, medical and educational spheres and contributed significantly to boosting the movement's standing and to enhancing its popularity. As Israeli oppressive policies took their toll on the Palestinians, deepening their sense of humiliation and entrapment, the late eighties saw the transformation of the Ikhwan into a resistance movement, more widely known today for its acronym HAMAS, a day after the incident on 8 December 1987 that sparked the first Intifada.

E. THE CHARTER

21. A document authored by Hamas Political Bureau in the mid-1990s begins with the following assertion: "*The Islamic Resistance Movement (Hamas) is a Palestinian national liberation movement that struggles for the liberation of the Palestinian occupied lands and for the recognition of Palestinian legitimate rights*."[1] The refined political discourse of this document is a far cry from the heavy religious language in which the original Hamas Charter was coined. Representing the first attempt by the movement to produce a written document for others to learn what Hamas stood for, the Charter, known in Arabic as *Al-Mithaq* (the Covenant), was released to the public on 18 August 1988, less than nine months following the birth of the movement. When the Charter was written, it honestly represented the movement's ideological and political currents at that point in time; it is a reflection of how the Ikhwan, out of whom Hamas was born, perceived the conflict in Palestine and how they saw the world then. Many would admit that insufficient thought went into the drafting and publication of the Charter. Once it had been drafted, Hamas institutions inside and outside Palestine were never adequately consulted over its content.

22. According to Khalid Mish'al, Hamas Political Bureau Chief, the Charter was hastily released to meet what was perceived at the time as a pressing need to introduce the movement to the public. It was never studied carefully within the movement whose leading institutions inside and outside Palestine had no opportunity to evaluate before it went public. He, therefore, does not consider it to be a true expression of the movement's overall vision, which "*has been formulated over the years by inputs from the movement's different institutions*." As far as he is concerned, the Charter is a historical document from which one may learn how the movement conceived of things at the time of its birth but "*should not be treated as if it were the fundamental ideological frame of reference from which the movement derives its stances or on the basis of which it justifies its actions*."[2]

23. Since then, ironically, the Hamas Charter has been more frequently invoked by the movement's opponents and critics than its members, as proof of either its inflexibility or its anti-Semitism. It has hardly ever been referred to or quoted by the top leaders of Hamas or its official spokespersons.

24. Until about 2003, very little debate had been taking place within the movement over the Charter despite the fact that much of the criticism levelled against Hamas has involved references to the Charter. It is as if Hamas totally forgot that it had a Charter or as if its leaders were completely oblivious to critique, or attacks, directed against the movement thus far. It was then that some of them began voicing their concern that it might have taken them too long to say that "*the text of the Charter does not reflect the thinking and understanding of the movement*" and that this may "*constitute an obstacle or a source of distortion or a misunderstanding vis-à-vis what the movement stands for*."[3]

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[1] This is what we struggle for: Memo prepared by Hamas Political Bureau in the late 1990s upon the request of Western diplomats in the Jordanian capital Amman

[2] Khalid Mish'al, interview with the author, Damascus, 14 August 2003

[3] Ibid

25. It was in the aftermath of 9/11 that urgency was felt for an image-building initiative to counter the endeavours by certain academic and media quarters to lump all Islamic movements and organizations in one basket together with Al-Qaeda. A series of consultations conducted in Beirut and Damascus between the beginning of 2003 and the end of 2005 bolstered the conviction by several top Hamas political bureau officials that it was time the Charter was re-written. The consultations concluded with commissioning work on a draft for a new Charter. However, in the aftermath of the Palestinian legislative elections of 25 January 2006, the project was put on hold until further notice lest the new Charter was seen as a compromise forced by outside pressure. Eventually, 11 years after these elections, a new official charter was debuted by the movement in 2017.

26. Hamas leaders, today, recognize the need to express the ideas that relate to fundamental and immutable positions within the Charter in a language that appeals to both Muslims and non-Muslims alike. Instead of adopting an overwhelming religious discourse, later Charters tell, albeit briefly, the story of the Palestinian problem as it unfolded tracing the root of the Jewish problem in 19th Century Europe. This constitutes a more universally accepted argument than the idea that Palestine is a *waqf* (endowment) "*consecrated for future Muslim generations until Judgment Day.*" As article eleven of the '88 Charter itself explains, the lands conquered by the Muslims from the time of the second Caliph Omar onwards were all assigned as *waqf* and therefore were not distributed as booties among the conquering troops. The same designation applies equally to Iraq, Persia, Egypt, North Africa and even Spain. The reference in the Charter to this issue was in the context of condemning those who were willing to give away any part of Palestine to the Israelis as part of a peace agreement. Hence is the phrase "*it is not permissible to concede it or any part of it or to give it up or any part of it; that is not the right of any single Arab state or all the Arab states together nor any king or president or all the kings and presidents together nor any single organization or all the organizations together whether Palestinian or Arab. This is so because the land of Palestine is an Islamic waqf (endowment) property consecrated to the generations of Muslims up to the Day of Resurrection; and who can presume to speak for all Muslim generations to the Day of Resurrection?*" It is widely accepted today within Hamas that this matter is strictly jurisprudential and that the Charter is not the best place for addressing it.

27. In a memo prepared by Hamas' political bureau at the request of Western diplomats in Amman in the 1990s entitled "This is what we struggle for",[4] there is no mention of Palestine as an Islamic endowment, though it is maintained that Islam is Hamas' ideological frame of reference. In a 2000 memo, from just before the eruption of the second Intifada, Palestine as an Islamic endowment is only mentioned peripherally when discussing the role of the "Islamic circle" in Palestinian liberation, after the Palestinian and Arab circles.[5] The latest 2017 charter makes no mention of the waqf.

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[4] Referred to above, in paragraph 14

[5] Memo prepared by Hamas Political Bureau in 2000 just before the eruption of the Second Intifada

Instead, Hamas' refusals to recognise Israel or legitimise any accords or deals which require surrendering the land, are framed as necessary to ensure that Palestinian rights of self-determination and return are not squandered and discarded. "*There shall be no recognition of the legitimacy of the Zionist entity. Whatever has befallen the land of Palestine in terms of occupation, settlement building, judaisation or changes to its features or falsification of facts is illegitimate. Rights never lapse*."[6] This development in articulation reflects how the movement has sought to fine-tune its articulation of grievances and garner as broad as coalition as possible.

28. The biggest problem in the initial Charter is its treatment of the Jews. Part of the problem here is language. Israelis are referred to by an average Palestinian as *yahud*, which is the Arabic equivalent for Jews. Terms such as 'Zionist' or 'Israeli' figure mostly in the writings and conversations of the secularly cultured elite. They are not current in the public lexicon and have until recently been absent from the Islamic discourse. When Arabic literature with references to the Israelis as *yahud* is translated into European languages it may indeed sound anti-Semitic. Moreover *yahud* is the term that Israelis, particularly soldiers, refer to themselves as.

29. In his series of 'testimonies' broadcast on Aljazeera Arabic satellite station between 17 April and 5 June 1999, the founder of Hamas Sheikh Ahmad Yassin refers to the Israelis interchangeably at times as Al-Isra'iliyun (the Israelis) and at times as Al-Yahud (the Jews). In the second episode of the 'testimony' broadcast on 24 April 1999 he said: "*The Israelis usually deal with the Palestinian people individually and not collectively. Even inside the prisons, they would not agree to deal with (the prisoners) except individually. However, we forced our will on them despite them and refused to deal with them except through a leadership elected by the Palestinian (prisoners) to face the Jews and resolve the problems with them*."[7] This is just one sample paragraph of what his style was like. Most Palestinians and Arabs unconsciously do the same thing. Leah Tsemel, an Israeli lawyer who has been defending Palestinians in Israeli courts for some 30 years, notes that her clients routinely describe soldiers or settlers as *al-yahud* - the Jews. They complain for instance that "*al-yahud* (the Jews) *took my ID card*," or "*al-yahud* (the Jews) *hit me*," or "*al-yahud* (the Jews) *destroyed this or that*." She expresses anxiety at the fact that Israel in the minds of its Palestinian victims becomes identified with all the Jews in the world and fears that as a consequence all the Jews in the world may be seen as soldiers and settlers.

30. This problem is not confined to Palestine but exists across the region where Jews once lived in large numbers but had, with few exceptions, long been gone. Following the creation of the State of Israel in Palestine in 1948 Jews living in various Arab countries were encouraged, at times intimidated so as, to migrate to Israel which, having expelled close to a million Palestinians, was in dire need of beefing up its

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[6] Article 19 of 2018 Charter

[7] شاهد على العصر | أحمد ياسين (2) أثر نكسة 1967 على الفلسطينيين في غزة ["Witness to the Era | Ahmed Yassin (2) The Impact of the 1967 Setback on the Palestinians in Gaza"], YouTube, uploaded by AlJazeera Arabic, May 21, 2009, https://youtu.be/CJyD_TcDyFk?si=BPjSG0xVvlPBfrHu

population. Additionally, Jews from Iraq, Yemen and Morocco provided a source of cheap labour and performed functions not 'befitting' for the Ashkenazim (Eastern European Jews) who presided over the Zionist colonial project in Palestine and treated themselves as first class citizens of the newly founded 'Jewish' state in contrast to Sephardic Jews who came from the Arab countries.

31. Until the beginning of the twentieth century Muslims, Christians and Jews coexisted peacefully throughout the Muslim world where, for many centuries, the Islamic empire, whose terrain extended over three continents, provided a milieu of tolerance under a system that guaranteed protection for what is today referred to as minorities. Islam, whose values and principles governed the public and private conduct of Muslim individuals and communities, recognized Christians and Jews as legitimate communities within the Islamic State and accorded them inalienable rights. The followers of both Christianity and Judaism participated on equal footing with the Muslims in building the Arab-Islamic civilization on whose fruits European renaissance philosophers were nourished.

32. In contrast, Jews repeatedly suffered persecution in the European lands. Whenever that happened, they sought refuge in the Muslim lands where they were welcomed and treated as 'people of the book' in accordance with the 'Covenant of God and His Messenger.' Such Muslim perception of the Jews remained unchanged until the Zionist movement, which was born in Europe, started recruiting Jews in the Muslim lands for a project that was seen by the Muslims as an attack on their faith and homeland. The change in the Muslim attitude toward the Jews came as a reaction to the claims of the Zionist movement, which associated itself with the Jews and Judaism. Despite the secular origins of the Zionist project and the atheism of many of its founding fathers, the Zionist discourse justified the creation of the State of Israel in Palestine and the dispossession of the Palestinians in religious terms. The Bible was invoked by Zionist pioneers, although few of them really believed in it or showed any respect for it, in a bid to bestow religious legitimacy on their project and gain the support of the world's Jews, most of whom had initially been opposed to political Zionism.

33. It is for this reason that the original Hamas Charter conceives of the problem in Palestine as a religious strife between the Jews and the Muslims. The continued association of Israel with the Jews and the Jews with Israel only reinforces the conviction of many Muslims that the conflict in the Middle East between the Palestinians and the Israelis is indeed a religious one. Many Arabs and Muslims find it extremely difficult to accept that anti-Zionist Jews, who not only criticize Israel but also refuse to recognize its legitimacy, do genuinely exist.

34. Subsequent documents released by the movement, as well as statements for the movement's leading figures, clarify that from the point of view of Hamas, their conflict with the Israelis is purely incidental, as a consequence only of the Israeli occupation of Palestine, and nothing to do with the Jewishness. As Hamas founder and spiritual figurehead Sheikh Ahmed Yassin has said, *"We ask for our right…*

nothing more. We don't hate the Jews and fight them because they are Jews. They are people of religion, and we are people of religion. We love all people of religion. If my brother, who has the same religion and parents as me takes my home and expels me I will fight him… So, when a Jew takes my home and expels me, I will fight him as well. I don't fight the USA, Britian or other countries. I'm at peace with all people. I love all people and wish them well – even the Jews."[8] This was reiterated in the document prepared in the late 90s upon the request of Western diplomats: "T*he movement's motivation for struggle has been expressed by its founder and leader Sheikh Ahmad Yassin: 'the movement struggles against Israel because it is the aggressing, usurping and oppressing state that hoists the rifle in the face of our sons and daughters day and night.'"*

35. On of the major weaknesses of the Charter is that it adopts conspiracy theory. It bases its analysis of the conflict in Palestine on the Protocols of the Elders of Zion, a false document that purports to represent the ideas of a secret society of Jewish elders for conquering the world. What the author of the Charter wished to convey was a direct correlation between an ongoing Jewish quest for global domination and the occupation of Palestine. Following a common trend among some Muslim writers of the time, the author of the Charter invoked the Qur'an and Hadith (Prophet's sayings) to substantiate his claim of an ongoing Jewish conspiracy against Islam and the Muslims that goes back all the way to the early days of Islam. Such selective reading, or convenient interpretation of the Scripture is not uncommon in some quarters of contemporary Muslim writings. In this particular case the Qur'anic chastisement of bad conduct and ill-manners by some of the Israelites in Biblical times or by some of the Jews during Prophet Muhammad's time are taken out of their historic context and then universalised. It is astonishing that in spite of the fact that conspiracy theory is in essence un-Islamic it was, until the early nineties of the twentieth century, widely espoused by Muslim intellectuals across the Arab world. The permeation of such thinking has been a symptom of a sensation of civilisational decline, which in turn precipitates a deep sense of desperation and frustration.

36. The only positive reference to the Jews in the initial Hamas Charter is seen in Article thirty-one which states that "*in the shade of Islam it is possible for the followers of the three religions Islam, Christianity and Judaism to live in peace and security*." Later charters and statements emerging from the movement and more reflective of its current complexion, have been cleansed from all the ludicrous claims of a Jewish conspiracy. They instead emphasize the racist nature of the Zionist project and explain that many Jews are opposed to it. The idea that not every Jew is a Zionist is already widely accepted by the Islamists who previously thought this was a myth invented by Palestinian secular nationalists.

37. The 2000 memo referred to above, is careful to make clear that the ideological opponent of Hamas as being Zionism, not Jewishness. "*The Zionist project represents the convergence of Western colonial interests in the region with the interests of the Zionist movement and its ambitions in the land of Palestine*." It is very explicit, that "*the conflict*

[8]Nizar Rayaan, B. (2017) فلسطين.. ووهم أسلمة الصراع! ["Palestine and the illusion of Islamising the conflict"], Aljazeera.net, December 18

with the Zionists is not linked to their religious affiliation but because they occupy our land, desecrate our shrines and violate our people." Article 16 of the 2017 Charter is yet more explicit: "*Hamas affirms that its conflict is with the Zionist project not with the Jews because of their religion. Hamas does not wage a struggle against the Jews because they are Jewish but wages a struggle against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jews with their own colonial project and illegal entity.*"

38. The latest document published by the movement in 2017 reflects more accurately the current thinking of Hamas, and substantially different from the original document. Unlike the '88 charter, it was carefully crafted after much consultation. By emphasising the roots of the conflict, and framing its grievances in the context of Zionist colonialism and the consequent occupation of Palestine, the charter appeals to the world's public opinion to sympathize with the Palestinian victims rather than with their Israeli oppressors. In speaking about human rights and contraventions of international law to outline its political agenda, the new charter adopts a more universal tone in order to reach out to peoples and nations across the world. And as demonstrated above, the new charter is at pains to make clear, as Sheikh Ahmad Yassin did several times until he was assassinated by the Israelis in 2004, that Hamas does not have a problem with the Jews because of their faith or race and that it does not believe the conflict in the Middle East to be between the Muslims and the Jews or between Islam and Judaism. It stresses that Islam does recognize Judaism as a legitimate religion and accords its adherents with respect and protection. As a matter of principle, the Charter stresses a position that has been expressed repeatedly by Hamas leaders over the preceding fifteen years or so, namely that contemporary Jews and Muslims can, as did earlier Muslims and Jews for many centuries, live together in peace and harmony once the Palestinians' legitimate rights are recognized and restored.

39. Consider for instance the following statement made by Hamas leader in Gaza Dr. Abd Al-Aziz Al-Rantisi on 7 March 2004 just ten days before Israel assassinated him. His words are hardly distinguishable from the discourse of freedom fighters in Latin America, South Africa or East Asia.

Hamas' strategy is underpinned by four principles: 1) We have a homeland that is in its entirety usurped; we cannot concede one inch of it; 2) there is an obvious imbalance of powers in favor of the Zionist enemy; 3) we do not possess the armament our enemy possesses but we possess a faith that generates a will that does not recognize defeat or retreat short of accomplishing the goals, a faith that demands sacrifice for the sake of faith and homeland; and 4) there is an Arab and Islamic Ummah that is weak, feeble and broken and therefore cannot support the people of Palestine, and there is an international community that is hostile to the hopes and aspirations of the Palestinian people and that supports Zionist terrorism. Hamas' strategy proceeds in two parallel lines: (1) resisting occupation and confronting Zionist aggression; and (2) preserving the unity of the Palestinian people and protecting the Palestinian ranks from the threat of internal fighting which would only distract everyone from resisting the occupation.

F. HUDNAH (TRUCE)

40. One of the frequent attacks on Hamas and reasons for opposing any form of dialogue with them is a deliberate distortion of their position in relation to a peace process. In particular, the British government's position since Hamas succeeded in the 2006 elections has been that it will not engage with the movement unless and until it renounces armed struggle, recognises Israel's 'right to exist', and agrees to respect all former agreements signed by the PLO with Israel.

41. If Hamas is to remain loyal to its founding principles it cannot afford to recognize Israel's 'right to exist'. Born out of the Intifadah (uprising) of 1987, Hamas declared that it had emerged "*in order to liberate the whole of Palestine, all of it*." The movement came to existence partly in response to the oppressive treatment the Palestinians suffered under Israeli occupation in the West Bank and Gaza and partly because Fatah, the Palestinian national liberation movement, had faltered. Like Fatah before it, most of Hamas' members and supporters had been refugees or children of refugees whose real homes were not the appalling camps in which they were born or where they grew up. Their real homes are on the other side of the so-called "green line" where Jewish immigrants, who had come from Europe and elsewhere in the world, now colonize. Like millions of Palestinians inside Palestine and in the Diaspora the founders of Hamas felt betrayed when the leadership of Fatah, having hijacked the PLO, decided to give away their right of return to their homes.

42. It is highly unlikely, therefore, that Hamas will ever recognize the legitimacy of the state of Israel or its 'right to exist'. The movement regards Israel as nothing but a colonial enclave planted in the heart of the Muslim world in order to obstruct the revival of the Ummah (global Muslim community) and to prolong Western hegemony in the region. On the other hand, Palestine is an Islamic land that has been invaded and occupied by a foreign power; it would contravene the principles of Hamas' Islamic faith to recognize the legitimacy of the foreign occupation of any Muslim land let alone one that is home to the Muslims' first Qiblah (place worshippers face during prayer) and third most important mosque on earth.

43. This position is not exclusive to Hamas. Muslim scholars, with a few exceptions, have constantly expressed their absolute opposition to recognizing the legitimacy of the creation of a "Jewish State" in Palestine. Over the past century *Ulama* (Muslim scholars and jurists) issued numerous *fatawa* (pl. of *fatwa*: religious edict) declaring null and void any agreement that legitimized the occupation of any part of Palestine. The first collective *fatwa* on this issue predates the creation of the State of Israel in Palestine. On 26 January 1935, more than two hundred Islamic scholars came to Jerusalem from around Palestine to issue a *fatwa* prohibiting the forfeiture of any part of Palestine to the Zionists. Similar conferences were held and *fatawa* issued at various junctures in the history of the Middle East conflict. During the Nassirist era (1952-1970) in Egypt, the prestigious Al-Azhar Islamic institution in Cairo maintained the position of prohibiting recognizing the State of Israel or any peace-making with it. Sheikh Yusuf Al-Qaradawi, one of the most authoritative scholars of contemporary times, repeatedly expressed that position affirming that it was

unanimously adopted by more than three hundred Islamic scholars from around the Muslim world during a meeting of the Islamic Jurisprudential Council in Kuwait in the mid-1990s. He explained that the *fatwa* which prohibited recognizing Israel was based on the consideration that "Palestine is an Islamic land that cannot be forfeited voluntarily." He added that the same *fatwa* was re-issued at a later Islamic Jurisprudence conference in Bahrain.

44. However, such a dogmatic position does not deny the right of the Jews to live in Palestine provided their existence in it is not the outcome of invasion or military occupation. Nor does it bar the Muslims, including the Hamas movement, from negotiating a cease-fire agreement with the Israeli State in order to put an end to the bloodshed and to the suffering on both sides for as long as can be agreed on.

45. The idea of a *hudnah* (truce) with Israel originated in the early nineties. It was referred to in the document prepared by the Hamas Political Bureau in the 1990s a tthe request of Western diplomats outlining its aims and objectives. The document concludes by stating that "*Hamas would be willing to consider a cease-fire agreement with the Israelis upon their agreement to end their occupation of all the territories occupied in the aftermath of the six-day war in 1967. This would entail the cessation of all hostilities on the part of Hamas in exchange, on the part of Israel, for: 1. the withdrawal of Israeli occupation troops from the West Bank and Gaza Strip; 2. the evacuation of all Jewish settlements illegally erected and populated by Jewish immigrants on Palestinian lands seized by force in both the West Bank and Gaza; and 3. recognizing the right of the Palestinian people to self-determination*."

46. A *hudnah* was also referred to by the Amman-based Head of Hamas Political Bureau, Musa Abu Marzuq, in a statement published by the Amman weekly *Al-Sabeel*, the organ of the Jordanian Islamic Movement, in February 1994. A similar first reference to it inside Palestine was made around the same period in 1994 by Hamas founder Sheikh Ahmad Yassin from his prison cell. He proposed the *hudnah* as an interim solution to the conflict between the Palestinians and the Israelis. Both Abu Marzuq and Sheikh Yassin repeated the offer on several occasions thereafter but failed to interest the Israelis. Of late, *hudnah* has been routinely referred to by various Hamas spokesperson.

47. *Hudnah* is recognized in Islamic jurisprudence as a legitimate and binding contract whose objective is to cease fighting with the enemy for an agreed period of time. The truce may be short or long depending on mutual needs or interests. A truce treaty would be different from the 'Oslo peace accords' according to which the PLO recognized the State of Israel and its right to exist. The difference is that under the terms of *hudnah* the very issue of recognition will not come up simply because Hamas cannot, as a matter of principle, accept that the land the Israelis seized from the Palestinians has become theirs; the movement has no authority to renounce the right of the Palestinians to return to the lands and the homes from which they were forced out in 1948 or at anytime afterwards. It can however say that under the present circumstances the best it can do is regain some of the land lost and secure the

release of prisoners in exchange for a cessation of hostilities. This would be somewhat similar to the IRA agreeing to negotiate an end to the conflict in Northern Ireland without recognizing British sovereignty over the territory. The Irish Catholics continue to hope or dream that one day the whole of Ireland will be united and that British rule will come to an end. Negotiating an end to violence in Northern Ireland was never conditioned upon the IRA first renouncing its dream of reuniting Ireland; had this been the case no peace would ever have prevailed.

48. In justifying *hudnah*, Hamas leaders look to the example of what happened between the Muslims and the Crusaders in the last decade of the 12th century. The conflict between the two sides in Palestine and around it lasted for nearly two hundred years. Of particular interest to Hamas in this regard is the Ramleh treaty Salah Al-Din Al-Ayyubi (Saladin) concluded with Richard the Lionhearted on 1 September 1192 CE. The truce, which marked the end of the third Crusaders campaign, held for a period of three years and three months during which the Crusaders maintained control of the coast from Jaffa to Acre and were allowed to visit Jerusalem and had the freedom to carry out their commercial activities with the Muslims.

49. Reference is often made, as well, to the first *hudnah* ever in the history of Islam. Known as Al-Hudaybiyah, which was the name of the location on the outskirts of Mecca where it was concluded, the agreement saw the suspension of hostilities between the Muslim community under the Prophet's leadership and the tribe of Quraysh inside Mecca. The duration of the *hudnah* agreed to by both sides was ten years. However, it came to an end less than two years later when Quraysh breached it with the unlawful killing of some members of the tribe of Khuza'ah that was allied to the Muslim side.

50. Once *hudnah* is concluded it is considered sacred and fulfilling its obligations becomes a religious duty; so long as the other side observes it the Muslim side cannot breach it for doing so is considered a grave sin. As in the case of other international treaties, a *hudnah* is renewable upon the expiry of its term by mutual agreement.

51. The overall long-term *hudnah* proposed by Hamas stipulates as a first condition an Israeli withdrawal to the borders of 4 June 1967, which means a return of all the land occupied by the Israelis as a result of the six-day war including East Jerusalem. Such measure would entail the removal of all Jewish settlers from those areas. In addition, Israel would have to release all Palestinians held in its prisons and detention camps. It is highly unlikely that Hamas would settle for anything less in exchange for a long term truce that may last for a quarter of a century or longer.

52. Offers of 10-year *hudnas* largely based on the above have repeatedly been made by Hamas in 1995, 1997, 2006, 2007, 2008, 2014 and 2015. In 2006, Ismail Haniyeh, shortly after being elected as Prime Minister, even sent messages both to US President George W. Bush and to Israel's leaders, offering a long-term truce

amounting to a fifty-year armistice with Israel, if a Palestinian state was created along the 1967 borders with East Jerusalem as its capital.

53. Hamas is silent about what happens when a long-term *hudnah* signed with the Israelis expires. While its leaders have left open the length of the *hudnah* term, considering this to be a subject for negotiation with the Israelis once they accepted the principle, they generally suggest that the future should be left for future generations.

54. It is usually assumed that a long term *hudnah* will likely last for a quarter of a century or more. That is seen as too long a time for someone to predict what may happen afterwards. There will always be the possibility that the *hudnah* will come to an end prematurely because of a breach. If that happens it is highly unlikely that the breach will come from the Hamas side for the simply reason that it is religiously binding upon the Islamic side to honour the agreement to the end unless violated by the other side. Should the *hudnah* last till the prescribed date, one scenario is that those in charge then will simply negotiation a renewal.

55. Another scenario that is prevalent within the thinking of some intellectual Hamas quarters is that so much will change in the world that Israel as a Zionist entity may not want, or may not have the ability, to continue to be in existence. As a matter of principle Muslims, Christians and Jews can live together in the region as they lived together for many centuries before. What Islamists usually have in mind is an Islamic state, a Caliphate, which is envisaged to encompass much of the Middle East in an undoing of the fragmentation the region was forced to undergo due to 19th century colonialism and then in accordance with the Sykes-Picot agreement of 1916. The entities created in the process became separate 'territorial states' in the aftermath of the collapse of the Ottoman order in the second decade of the 20th century. While Israel as an exclusive state for the Jews in Palestine is something an Islamic movement such as Hamas can never recognize as legitimate, the Jews can easily be accommodated as legitimate citizens of a multi-faith, multi-racial state governed by Islam. The post-Israel scenario, which has become a subject for debate within the movement, is one that envisages a Palestine, or a united Middle East, with a Jewish population but no political Zionism. This is a vision inspired by the South African reconciliation model that brought Apartheid to an end but kept all communities living together. Zionism is usually equated to Apartheid and its removal is seen as the way forward if Muslims, Christians and Jews were ever to coexist in peace in the region. It would be impossible for such a scenario to translate into a reality without a long-term *hudnah* that for the lifetime of an entire generation provides communities and peoples in the region the opportunity to restore some normalcy into their lives.

56. Those who are skeptical about the *hudnah* may argue that it means nothing but a prelude to finishing Israel altogether. But without *hudnah* too the Palestinians will still dream of the day on which Palestine, their country, is free and their right of return to their homes is restored. Without a *hudnah* there is no guarantee that they will cease to pursue that end using whatever means that are at their disposal. The

advantage of the *hudnah* is that it brings to an end the bloodshed and the suffering because of the commitment to do so for a given period of time. In the meantime, let each side dream of what they wish the future to look like while keeping the door open for all sorts of options. Under normal circumstances, the best option is the least costly option.

G. TAHDI'AH (Ceasefire)

57. A *tahdi'ah* differs from a hudnah and can be understood as a temporary ceasefire during a state of hostilities rather than a long term truce. Between 2000 and 2024, Hamas and Israel have experienced numerous cycles of conflict, ceasefires, and military actions. There have been many instances where Hamas offered ceasefires, followed by Israeli military responses, including targeted assassinations. Notable examples follow.

58. In September 1997, days before Israel attempted to assassinate Hamas political leader Khaled Meshaal in the Jordanian capital, Amman, the movement had offered Israel a 10-year truce. Following his release from detention and return to Gaza in October 1997, Sheikh Ahmad Yassin offered to suspend Hamas martyrdom operations if the Israelis were ready to "*stop their attacks on [Palestinian] civilians, end land confiscation and house demolitions, and release the prisoners and detainees*." This is not quite the same as the long term truce which he said his movement was ready to engage in provided that Israel withdrew from the West Bank and Gaza and dismantled its Jewish settlements.

59. The offer of truce was reiterated in October 1999 by Hamas armed wing, the Izzedine al-Qassam Brigades, who said it was ready to stop attacks on Israeli civilians "*provided Israel stops its settlement activities and land confiscation and provided Israeli troops and Jewish settlers stop attacking Palestinian civilians*."

60. The first *tahdi'ah*, however, was in 2002; it was brokered by EU emissary Alistair Crooke. The *tahdi'ah* was shattered several weeks later when the Israelis assassinated Hamas leader Salah Shihadah on 22 July 2002.

61. On 29 June 2003 Hamas and Islamic Jihad declared a unilateral truce. The decision to observe this *tahdi'ah* was announced by Hamas leader Abd Al-Aziz Al-Ranitisi who explained that it was a gesture to give a chance to newly appointed Palestinian Prime Minister Mahmud Abbas sort things out with the Israelis. The *tahdi'ah* came to an end seven weeks later after Israel assassinated Hamas leader Isma'il Abu Shanab on 21 August 2003. A known pragmatist, Abu Shanab had been instrumental in agreeing the ceasefire.

62. Israel alleged that the assassination was in retaliation for the bombing of a Jerusalem bus that left twenty-one Israelis dead and more than a hundred wounded. In fact, the Israelis never recognized or appreciated the unilateral truce declared by the Islamic

factions in Palestine. They pursued their strategy of eliminating whoever they considered a potential threat to their security. Throughout the month of July 2003 several Palestinians were assassinated in Nablus and Hebron. The attack in Jerusalem on 19 August 2003 was carried out by Ra'id Misk, a native of Hebron, who retaliated for the assassination of some of his friends in the town by Israeli army special units in the aftermath of the declaration of the truce. It transpired later that Hamas members in Hebron were ordered to observe the truce despite the Israeli provocations. However, they could not remain indifferent while their colleagues were being hunted down one after the other. The Israeli campaign of targeted assassinations in the Hebron area started before Hamas declared its unilateral truce and included the murder of a local Hamas leader, Sheikh Abdullah Al-Qawasimi, on 22 June 2003.

63. Israel's refusal to reciprocate led many Palestinians to lose confidence in the usefulness of declaring a unilateral truce. The sense of frustration was augmented when the European Union decided in August 2003 to proscribe Hamas and place it on the terrorism list. Encouraged by the EU decision, Israel made its first attempt to assassinate Sheikh Ahmad Yassin on 6 September 2003. An Israeli fighter jet dropped a 500lb bomb on a residential building in Gaza City where Sheikh Yassin was visiting in the company of a number of Hamas figures including Isma'il Haniyah who in 2006 became Prime Minister. Fifteen Palestinians were wounded and Sheikh Yassin escaped with scratches.

64. The Israelis also attempted to assassinate Dr. Mahmud Al-Zahar. The air strike on his family home levelled it to the ground. Dr Al-Zahar escaped with injuries but lost his elder son in the attack that left his wife permanently paralyzed and his daughter seriously wounded. At a rally held in November that year, Sheikh Yassin announced that the movement found it futile to observe a cease-fire unilaterally: He said: "*We declared a truce in the past, but it failed because Israel did not want peace or security for the Palestinian people*." Addressing the same rally, Hamas leader Al-Zahar urged the Palestinians to resume armed resistance.

65. On 22 March 2004, Israel assassinated Sheikh Ahmed Yassin. Sheikh Yassin's successor and Hamas co-founder Abdel Aziz al-Rantisi again proposed a 10-year truce, only for Israel to also assassinate him one month later on 17 April 2004.

66. Most recently, Israel assassinated Ismail Haniyeh on 31 July 2024 during a time when he was involved in negotiating a US-brokered deal that would begin with an exchange of Israeli and Palestinian prisoners before advancing into a permanent cease-fire and eventual reconstruction efforts.

H. CONCLUSION

67. The above incidents reflect a general trend of periodic compromises and attempts at garnering peace being offered by Hamas. Yet those efforts are often, strategically,

squandered by Israeli authorities. In December 2008, the IOF launched Operation Cast Lead in which some 1,400 Palestinians were killed. Much of the pretext for the offensive is provided by Hamas' official positions getting closer to the global consensus as relates to the question of Palestine. Between 1997 and 2008, 12 UNGA votes on a "Peaceful Settlement of the Question of Palestine" were accepted by most of the global community with the consistent exception of Israel and the US. Those agreements affirmed amongst other things the illegality of Israeli settlements in Palestinian occupied territory since 1967 including East Jerusalem and the need for the Israelis to withdraw from those territories, the recognition of a Palestinian right to self-determination and an independent state, and a just resolution to the issue of Palestinian refugees. A 2002 Arab League summit in Beirut unanimously forwarded a peace initiative which echoed that UN consensus, and all 57 members of the OIC adopted it.

68. At the same time, Hamas leader Khalid Mish'al, months before Cast Lead, said that "*most Palestinian forces including Hamas accept a state on '67 borders.*" Even on the long-fought over condition of accepting previous agreements, Mish'al had told US President Jimmy Carter that "*Hamas agreed to accept any peace agreement negotiated between the leaders of the PLO and Israel, provided it is subsequently approved by Palestinians in a referendum or by a democratically elected government.*" The period then just following the 2006 elections, saw Hamas participate in the democratic process within Occupied Palestine, go above and beyond in attempts to maintain ceasefires (even unilaterally), whilst also nearing the global consensus by making compromises on key stress-points between them and the Israelis. For lack of a better term, the political realism employed by the Palestinian leadership during these years posed a problem for the Israeli authorities who saw Hamas slowly emerging a potentially viable partners within a Palestinian peace process. As the advent of Obama administration loomed, the logic almost spelled itself out – to provoke Hamas into resuming attacks and reattach to the movement its bogeyman status diplomatically.

69. A similar chain of events unfolded in 1981, not with Hamas but with the PLO: Palestinian leadership was nearing a consensus on a two-state solution, and the Arab league approved a peace plan unveiled by Saudi Arabia which acknowledged similar terms. As a result, a year of Israeli provocations ensued, the most devastating of which was an attack which killed 200 civilians including 60 occupants of a Palestinian children's hospital. The PLO retaliation, which caused a single Israeli casualty, provided the backdrop onto which Operation 'Peace in Galilee' was launched, incapacitating the entity threatening most to establish a Palestinian state in the West Bank.

70. The trajectory from the '88 charter until the 2017 charter, and through various attempts at ceasefire agreements demonstrates a genuine and concerted attempt by Hamas and Palestinian leadership to bring about a cessation of hostilities. Those compromises though have often been met, with assassinations and provocations designed to indefinitely leave unresolved the Palestinian question.

I. EXPERT OBLIGATIONS

71. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

72. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

73. I confirm that I have not received any remuneration for preparing this report.



Dr Azzam Tamimi
London
UK
29 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON HAMAS' SOURCES OF LEGITIMACY[1]
BY
DR TRISTAN DUNNING

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. This expert report considers the history of Harakat al-Muqawamah al-Islamiyyah (Hamas) and its political legitimacy within the Occupied Palestinian Territory. The proscription of the organisation by the UK government stands in stark contrast to the movement, its genesis, self-conception, and activity in trying to resist the enduring occupation of the Palestinian people. This report details the multifaceted ways that Hamas has sought to bring about a political change in the material conditions of the Palestinian people – including suing for peace with Israel by recognising the 1967 borders – and how they have been consistently denied any political engagement that might bring about an effective and lasting peace.

B. QUALIFICATIONS

3. I give this Report in my personal capacity.

4. I have a PhD in Political Science awarded by University of Queensland, Brisbane, Australia in 2013. My thesis focused on critical approaches to terrorism, specifically

[1] Most of the information detailed below is derived from the overarching thesis of my book and updated where necessary. *Hamas, Jihad and Political Violence: Reinterpreting Resistance in Palestine*. London: Routledge. 2016. Much of other information is sourced from my wider publications about Hamas and the Palestinian-Israeli conflict. Some information is directly sourced from interviews while conducting research for my PhD in the West Bank and Damascus, in particular.

by reference to Hamas. This included ethnographic material stemming from fieldwork in the Middle East during 2009-2010, including interviews with key Islamist political figures in the West Bank, for instance, the Speaker of Palestinian Legislative Count (PLC), the Secretary General of the PLC, the former Deputy Prime Minister, the former Minister of Economics, the former Minister of Planning, and former Minister of Women's Affairs, for the brief Change and Reform-led government of 2006-7, as well as then Deputy Leader of the Hamas Political Bureau in Damascus, among others. This was updated and published as the peer reviewed book *Hamas, Jihad and Popular Legitimacy: Reintepreting Resistance* in Routledge's Critical Terrorism Studies series in 2016. I am also the editor of the volume *Palestine: Past and Present* (2019).

5. I have worked as a lecturer in international relations, political science and Middle Eastern studies at the University of Queensland, Australian National University, and the University of the Sunshine Coast in Australia. I have also worked at institutions in the wider Middle East; i.e. I was an Associate Professor of Political Science and Public Administration at the American University of Afghanistan from 2021 -2023, a Lecturer in Political Science at the University of Duhok in the Kurdistan Region of Iraq in 2013-2014, and Academic English Lecturer at an-Najah National University, Nablus, in the occupied West Bank while conducting fieldwork for my PhD.

6. I was a Senior Researcher for the Middle East (Executive Level One) the in the Foreign Affairs, Defence and Security Section, Research Division, at the Australian Parliamentary Library, Parliament House, Canberra in 2018. Here, I provided impartial wide-ranging briefs about the Middle East upon request to Australian federal politicians. During this time, I published a department-vetted research paper about the war in Yemen under the auspices of Parliament House.

7. I have written and spoken extensively about armed non-state actors, hybrid organizations, and conflict in the Middle East generally, among other. This has included publications about Hamas, the Islamic State Group, and armed actors in Iraq and Kurdistan in the prestigious academic journals *Critical Studies on Terrorism*, *Terrorism and Political Violence*, and *Small Wars and Insurgencies*. In a similar vein, I have published dozens of short-form analyses for public consumption and given numerous interviews in the media and invited talks regarding Hamas and the Palestinian-Israeli conflict.

8. I was the lead author of a submission prepared by a number of other experts on Hamas and the Palestinian-Israeli conflict to the Parliamentary Joint Committee on Intelligence and Security for the Australian Federal Parliament in 2022. We argued against the proscription of Hamas in its entirety and outlined the potential wider impacts of such a designation. This was cited fifteen times in the Committee's final recommendation. In a similar vein, I was a co-author for a submission to the UK Foreign Affairs Committee in November 2023 arguing against the proscription of Hamas. Subsequently, we were invited by Foreign, Commonwealth and Development Office to give a presentation about the future of Hamas in early 2024.

This was attended by approximately 110 security-vetted servants including members of the Foreign Office, the Home Office, the Ministry of Defence, the military and various intelligence agencies.

HAMAS' SOURCES OF LEGITIMACY

C. HAMAS, RESISTANCE, AND ITS SOURCES OF LEGITIMACY

9. Hamas is a localized, grassroots resistance movement focused on Palestinian rights to self-determination and resistance to Israeli occupation. Its legitimacy largely stems from the notion of resistance to foreign rule; however, for Hamas, the idea of resistance is multifaceted in its scope expanding well beyond armed resistance to encompass symbolic, political, social, and ideological resistance. Hamas alters its resistance strategies according to changes in the political opportunity structure, exigency, response to popular opinion and, to a lesser extent, international pressures.

10. Proscribing the entirety of Hamas as a terrorist organisation elides the multi-faceted nature of the movement and the important social and political roles it plays. Hamas is, in essence, a network of networks. Many of the organisations presumed to be part of Hamas are largely autonomous and informally linked rather than acting at the behest of the central leadership. In brief, Hamas is better understood as an idea underpinned by multivariant conceptions of resistance rather than a centralised organisation.

D. ARMED RESISTANCE

11. Founded in December 1987 during the First Intifada, Hamas emerged as a revolutionary movement articulating itself as an Islamic alternative to the PLO. The movement advocated for an Islamic state, though specifics of this vision have always remained vague and never implemented despite its almost two decades of control over the Gaza Strip.

12. Hamas initially operated as a street-level resistance movement, issuing communiqués and organizing demonstrations as a counterpoint to PLO-led initiatives. This led to low level violence such as throwing stones, Molotov cocktails, and finally knife attacks.

13. The first intifada led to the formation the operationally independent armed wing, the Izz al-Din al-Qassam Brigades (or Qassam Brigades) in 1991.

14. Historically, Hamas had made a clear distinction between the movement overall and the Qassam Brigades. This is hardly unique to Hamas and analogous with Sinn Fein, which had elected members in Westminster even during times of conflict, and the Provisional Irish Republican Army. Until recent years, this distinction had been

upheld by the United Kingdom and Australia, among others. It is unclear what prompted these changes in the early 2020s.

15. The Qassam Brigades do not pose a terrorist threat to foreign states. They have never perpetrated attacks outside of Israel and the Occupied Palestinian Territories. Hamas as a whole has a policy of non-interference in the internal matters of foreign states. Indicatively, most of the world does not regard Hamas as a terrorist organisation.

16. While the Qassam Brigades have undoubtedly committed acts of terrorism and war crimes,
the Palestinian people have an internationally recognised right to self-determination and the right to resist foreign occupation.

17. The Qassam Brigades have participated in lengthy ceasefires, notably reflecting changes in the political opportunity structure allowing Palestinians to pursue their rights by other means and in response to popular opinion.

18. Indeed, the 1993 Oslo Accords and subsequent addendums alongside attendant widespread popular optimism for a negotiated solution that would culminate in establishment of an independent sovereign Palestine on the territories occupied in 1967, sidelined Hamas' street-level activism.

E. THE OSLO ACCORDS, RESISTANCE AND LEGITIMACY

19. The Accords and subsequent addendums provided for limited Palestinian governance in the Occupied Palestinian Territories. The West Bank was divided into Areas A, B and C. This led to the establishment of the Palestinian Authority (PA) in 1994, dominated by the largest party of the Palestinian Liberation Organisation (PLO), Fatah, and the figure of Yasser Arafat in particular, which assumed notional autonomy over Area A, constituting a mere 17% of the West Bank, the 'sovereignty' of which has been routinely violated by occupation forces. The PA is responsible for administrative matters in Area B, but occupation forces retain security control, whereas Area C, comprising 60% of the West Bank is exclusively controlled by the Israeli occupation.

20. The arrangement created cantons separating Palestinian controlled areas from each other, the borders of each policed by Israeli security checkpoints and other obstacles restricting Palestinian movement. The closure of Israeli borders between the West Bank and the Gaza Strip during the first intifada also physically severed the ties between the two Palestinian territories.

21. Hamas, alongside other factions, such as the Popular Front for Liberation of Palestine, and prominent Palestinians, opposed the Oslo process on the grounds that there no provisions for a Palestinian state; it would merely facilitate the ongoing expansion of Israeli settlements, and serve to entrench the occupation. Prominent

Palestinian academic Edward Said, for example, labelled the Accords a "Palestinian Versailles".

22. Nonetheless, Hamas has repeatedly demonstrated pragmatism and offered Israel various iterations of a *hudna* or long term truce throughout its existence. According to Ahmed Yousef, an aide to then Prime Minister Ismail Haniyeh (assassinated by Israel during the current conflict): "A hudna extends beyond the Western concept of a cease-fire and obliges the parties to use the period to seek a permanent, nonviolent resolution to their differences."[2]

23. The Oslo Accords and subsequent amendments also led to elections for the Palestinian Legislative Elections in 1996. While this occasioned vigorous internal debate and even the formation of a nascent political party to run its stead, Hamas boycotted the elections on the grounds that participation would implicitly validate the Oslo process. The movement also had concerns vis-à-vis overall transparency and fairness.

24. Indeed, for much of the Oslo process (1993-2000) the Palestinian Authority worked in close cooperation with occupation forces to systematically repress Hamas. Nonetheless, Hamas refused to let itself be drawn into internecine violence with the PA despite the arrests and torture of many of its cadres.

25. Instead, Hamas – or rather Hamas-sympathetic individuals – successfully participated in extra-parliamentary politics, for instance, professional associations and student unions, to maintain influence and gauge popular support.

26. Despite several bouts of retaliatory violence, for instance, following Baruch Goldstein's massacre of 29 Palestinians in Hebron in 1994 and the assassination of Hamas leader Yahya Ayyash, the movement largely focused on its social agenda, promulgated via its loosely-affiliated charitable and *da'wa* (proselytising) endeavours.

27. Nevertheless, by 2000 the Qassam Brigades had been eviscerated by the combined repression of the PA and occupation forces.

28. The failure of the Oslo process and the outbreak of the Second Intifada changed all of this and catapulted armed resistance back to the forefront of the Palestinian political agenda.

29. Woefully outgunned, Palestinian factions resorted to suicide operations inflicting numerous casualties on Israeli forces and civilians alike. It is during this period that a number of international powers, including the UK, designated the Qassam Brigades (among other armed factions) as a terrorist organisation, but not the entirety of Hamas. The ensuing carnage left some 5500 Palestinians and 1000 Israelis dead.

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[2] Ahmed Yousef, 'Pause for Peace', *The New York Times*, 1 November 2006. See https://www.nytimes.com/2006/11/01/opinion/01yousef.html

F. POLITICS, RESISTANCE AND LEGITIMACY

30. While Hamas is often viewed as a rigid, religiously motivated organization, its strategies reveal a pragmatic socio-political movement, which employs resistance in all its forms and political participation to achieve its goals.

31. Hamas regards political participation as a complementary form of resistance. In brief, Hamas views politics and electoral engagement as form of jihad (struggle in name of God) in their own right, aimed at challenging the occupation, advancing its agenda, and engineering social change. In brief, for Hamas there is a dialectic between resistance and politics.

32. The movement views political participation as a means by which to safeguard the right to resistance in all its forms and prevent its criminalisation.

33. Internally, Hamas decision-making occurs through multiple levels of *shura* or consultation councils underpinned by the idea of collective decision making and consensus. The moment's internal democratic ethos is in sharp contrast with the autocratic tendencies of Fatah and the PA.

34. Externally, Hamas aligns its advocacy of democracy with putative international norms. Democratic participation counters Western narratives regarding ostensible Islamic atavism and autocracy.

35. Hamas's participation in elections reflects the evolution of the movement from its putative absolutist ideologies – notionally centred on its now defunct 1988 charter – to incorporate pragmatic strategies and political realities while maintaining its core resistance values.

36. This shift to political participation was facilitated by the death of Yasser Arafat in 2004 and the fizzling out of the Second Intifada (c2005).

37. These events resulted in a dramatic change in the political opportunity structure focused on the restructuring of the Palestinian political system and new elections at municipal, presidential and legislative levels.

38. Within the context of a battered and war weary society, this change in the political opportunity structure allowed Hamas to reconceptualise the idea of resistance to focus on institutional politics and capitalise on its elevated resistance credentials following the Second Intifada.

39. Arafat's death also led to the fragmentation of Fatah.

40. Hamas had long signalled its willingness to engage in municipal elections, arguing that these fell outside of the purview of the Oslo framework; however, Arafat stymied the emergence of local manifestations of power over the course of his rule.

41. Following the Second Intifada, Hamas (and Israeli leaders) declared the Oslo Process dead, thereby allowing the movement to participate in legislative elections under the banner of Change and Reform.

42. Nonetheless, they did not field a presidential candidate in 2005 because a key component of the presidency is to negotiate with Israel which would have potentially compromised their rhetoric of resistance.

43. In both municipal and legislative elections, Change and Reform leveraged Hamas' resistance credentials, and loosely aligned social networks and their reputation for integrity to attract disaffected voters.

44. Hamas-backed lists participated in municipal elections in 2004 and 2005 to test its grassroots support. The Reform lists demonstrated superior organization and discipline compared to the fragmentation of Fatah, which led to bitter internal disputes and the resultant splitting of the vote. Consequently, the Hamas-backed lists secured key victories in large urban areas in the West Bank and the Gaza Strip attracting the vote of a population frustrated by Fatah's corruption and inefficiency.

45. Hamas justified participating in the 2006 elections participation by the failure of the Oslo process. Throughout its campaign, the Change and Reform list capitalized on public discontent with Fatah's governance and the PA's inability to maintain law and order.

46. The elections proceeded without serious incident with a 77 per cent voter turnout. They were deemed to compare "favorably to international standards" by a delegation of 84 foreign observers sent by the National Democratic Institute in partnership with the Carter Foundation. The observers included former US president Jimmy Carter, former Swedish Prime Minister Carl Bildt, former Albanian President Rexhep Meidani and former Spanish Foreign Minister Ana Palaci. The delegation concluded that the elections were conducted in a fair and free manner and should be considered to reflect the will of the people.[3]

47. While Change and Reform only secured a popular plurality with 44.5% of the vote at a proportional level, the list won 70% of district level seats due to its superior organisation and unity of purpose.

48. The overall results were a landslide and came as surprise to most observers and, reputedly, to Hamas itself, which now found itself in the awkward position of

[3] NATIONAL DEMOCRATIC INSTITUTE FINAL REPORT ON THE PALESTINIAN LEGISLATIVE COUNCIL ELECTIONS JANUARY 25, 2006 https://www.ndi.org/sites/default/files/2068_ps_elect_012506.pdf

presenting itself and a resistance movement and the responsibilities of governance – a bind that has never truly been resolved.

49. There are a plethora of reasons for the success of Change and Reform. First was public discontent with the Fatah-run PA, which was plagued by corruption and inefficiency, thereby eroding Fatah's legitimacy at large.

50. In contrast, the Islamists' reputation for "clean hands", incorruptibility and the effective provision of social services at a community level attracted swing voters, independents and, indeed, self-identified Fatah supporters.

51. Change and Reform fielded well-regarded district-level candidates known for their piety and commitment to their respective communities. Detailed pre-election surveys guided its the selection of candidates at a district level. Change and Reform also only fielded the number of candidates they thought they could win within each district to avoid splitting the vote. The movement also leveraged its extensive social networks to facilitate grassroots mobilization.

52. Conversely, Fatah initially fielded two lists before a last minute reconciliation but the damage was done and many disgruntled Fatah members ran as 'independents' fragmenting their share of the vote.

53. Change and Reform also focussed on strategic messaging and alliances. Its focus on "Change and Reform" specifically backgrounded overt Islamist rhetoric to avoid potentially alienating member of the broader electorate. It also built alliances with non-partisan candidates and factions – including Christians in places such as Bethlehem - thereby showcasing its flexibility, pragmatism and inclusivity. While its election manifesto preserved its right to armed resistance against the occupation, the focus of the manifesto was on social and economic reform.

54. Following its surprise election, Change and Reform reached out to other factions, including Fatah, to form unity government. Fatah rebuffed this offer, clearly wanting the newly elected government to fail.

55. The Change and Reform victory led to a variety of repercussions. First, it highlighted internal divisions within Fatah.

56. Second, it intensified Palestinian inter-factional power struggles with the outgoing Fatah-led legislature bequeathing the Fatah-led presidency with additional powers including control of the interior ministry and the security forces.

57. Meanwhile, Fatah-appointed leaders of the security forces and administration publicly refused to work with the incoming administration leading to security chaos. The new government therefore formed an adjunct police force, the Executive Force, to re-establish order in the Gaza Strip.

58. The International Quartet consisting of the US, EU, UN and Russia boycotted the incoming administration unless it recognised Israel's right to exist and adhered to all of the agreements of the PLO and previous PA administrations (neither of which Hamas was a part of). This further exacerbated tensions and caused severe hardship in the blockaded Gaza Strip in particular.

59. Former UK Prime Minister and Special Envoy to the Middle East Tony Blair belatedly admitted that this was a mistake and a missed opportunity[4][5], a point echoed more recently by former Head of Middle East Policy for the UK Mission to the United Nations, Carne Ross.[6]

60. Moreover, the US was arming and training a force under Fatah-leader Mohammad Dahlan to undermine the incoming administration with the ultimate aim of overthrowing it. Ultimately, Hamas acted first in a 'pre-emptive counter-coup' driving Dahlan's forces and the Presential Guard from the Gaza Strip in a mere six days. Tellingly, the vast majority of the pre-existing security forces in the Gaza Strip and Fatah armed factions did not participate in this conflict because they did not see it as their fight. As such, this was less a 'coup' disparaged in the international media than a legally elected government enforcing its writ.

61. The conflict between the two administrations has resulted in the political separation of the West Bank and Gaza Strip, with the former being run-by presidential fiat since 2005 and the latter by the Hamas-backed administration since its election in 2006. The conflict deepened Palestinian socio-political fragmentation.

62. Despite many attempts at reconciliation, the West Bank and the Gaza Strip remain divided between the two governments (if we can call either of them that at the present given the conflict in the Gaza Strip and the expanding violence in the West Bank).

63. The upshot is that successive Israeli administration have stipulated a Catch-22 situation insofar as they will neither work the Abbas-led PA vis-à-vis peace negotiations because it would be unrepresentative, nor will they work with any administration that Israel perceives to have Hamas-aligned members.

64. Nonetheless, Israel refused to work with an unaligned technocratic Palestinian government in 2014, before ensuring Hamas' renewed popularity by pulverising the Gaza Strip in shortly thereafter.

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[4] Tristan Dunning, 'Is peace with Hamas possible? Tony Blair seems to think so,' *The Conversation*, 27 August 2015. See https://theconversation.com/is-peace-between-hamas-and-israel-possible-tony-blair-seems-to-think-so-46676

[5] 'Tony Blair: 'We were wrong to boycott Hamas after its election win'', The Guardian, 14 October 2017

[6] https://x.com/lbc?lang=en

65. Hamas attempts to change the status quo of the Palestinian-Israeli conflict through institutional political means was hampered by the Quartet-led boycott of the incoming administration in 2006. Nonetheless, the ensuing period between then and 7 October 2023, the long period of its relatively unchallenged administration, its ability to restrain other factions from attacking Israel, and the strength of its ongoing popular support, underscore the substantial legitimacy it enjoys among the Palestinian population despite facing substantial internal and external challenges.

G. CONCLUSION

66. The designation of the entirety of Hamas, rather than just the Qassam Brigades, has helped to curtail progress towards peace as it marginalised a key actor to the conflict, prevented any chance of meaningful dialogue with the de facto authorities on the ground, highlighted the hypocrisy of the West regarding democracy and human rights, and overall contributed to the pressure-cooker conditions that led to the explosion of violence on 7 October 2023.

67. The blanket design effectively disfranchises large sections of the Palestinian population, immiserates the lives of those who rely on the civil administration to survive, and impedes the ability of aid organisations to coordinate with local authorities to deliver much needed humanitarian relief.

68. Proscribing the entirety of Hamas as a terrorist organisation elides the multi-faceted nature of the movement and the important social and political roles. As the de facto rulers of the Gaza Strip (at the least until recently), the proscription of the movement in its entirety has provided Israel with near carte blanche support to target almost the entirety of the Gaza Strip (and numerous high ranking Israel politicians have openly said as much), facilitated the criminalization of the civil administration and other organisations in the enclave that need to deal with it (see the case of Israel's criminalization of United Nations Relief Works Agency for Palestinian Refugees in the Near East or UNRWA), and jeopardises the work that these collectively do in trying to stem the ongoing humanitarian crises.

H. EXPERT OBLIGATIONS

69. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

70. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

71. I confirm that I have not received any remuneration for preparing this report.



Dr Tristan Dunning (PhD)
Brisbane
Australia
16 December 2024

-IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON THE GREAT MARCH OF RETURN
BY
ROMANA RUBEO

A. INTRODUCTION

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawwamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to explain the underlying reasons behind the Great March of Return, the peaceful nature of the initiative, and the significance of the role Hamas played in it.

B. QUALIFICATIONS

3. I give this report in my personal capacity

4. Romana Rubeo is a journalist and translator based in Italy. She is the managing editor of the Palestine Chronicle where she contributes extensively on issues related to the Middle East. Her work also appears in various academic journals and online publications, often highlighting Palestinian issues.

5. Rubeo holds a Master's degree in Foreign Languages and Literature. She has a specialization in translation, focusing on both audiovisual media and journalism, which enhances her contributions to international media outlets.

6. Rubeo often collaborates with other prominent figures, such as Dr. Ramzy Baroud and Professor Ilan Pappé to provide commentary on current political issues, including Israel-Palestine relations and global indigenous movements.

7. As a respected voice on Palestinian issues, Rubeo's journalism has contributed to global conversations about conflict, activism, and rights in the Middle East through debates, conferences, presentations, and media interviews, especially through her editorial influence at The Palestine Chronicle.

8. In writing the present report I have relied principally on:

> Abusalim, Jehad. 2018. "The Great March of Return: An Organizer's Perspective." Journal of Palestine Studies 47 (4): 90–100. ETC.
>
> "Right to Return - Human Rights Watch Policy Page."
>
> "Report of the Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory (a/HRC/40/74) - Occupied Palestinian Territory." 2019
>
> Edward W. Said: The Question of Palestine. New York: Times Books, 1979.

C. DEFINITION AND AIM OF THE GREAT MARCH OF RETURN

9. The Great March of Return in Gaza (Arabic: مسيرة العودة الكبرى, Masīra al-ʿawda al-kubrā) was a series of weekly protests advocating for the right of Palestinian refugees to return to their homes in historic Palestine – today's Israel – and for an end to the Israeli blockade on Gaza.

10. The Great March of Return started on March 30, 2018, marking Palestinian Land Day, a day of commemoration for six unarmed Palestinians who were killed by Israeli occupation forces on March 30, 1976, while protesting against the seizure of land by the Israeli government in Sakhnin and Arraba.

11. The Great March of Return lasted until December 27, 2019.

12. The Right of Return for Palestinians, which has solid foundations in international law, applies not only to those who originally were exiled or forced to flee from their cities, towns and villages, but also to their descendants.

See Universal Declaration of Human Rights (December 10, 1948), Article 13(2), stating that "everyone has the right to leave any country, including his own, and to return to his country".

Also see United Nations General Assembly Resolution 194 (III) of December 11, 1948, affirming that "refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or equity, should be made good by the Governments or authorities responsible."

13. Palestinian refugees were forcibly removed from their lands, villages and towns in 1948, during the Nakba ('catastrophe' in Arabic), which refers to the mass displacement and dispossession of Palestinians by Israeli militias.

14. According to the United Nations website, the "Nakba had a profound impact on the Palestinian people, who lost their homes, their land, and their way of life. It remains a deeply traumatic event in their collective memory and continues to shape their struggle for justice and for their right to return to their homes."

    See Vs. 2024. "About the Nakba - Question of Palestine." Question of Palestine. June 27, 2024.

15. Edward Said, a prominent Palestinian intellectual, described the Nakba as an unparalleled rupture in Palestinian history, a violent expulsion of hundreds of thousands of Palestinians from their homes and lands in 1948 during the establishment of the state of Israel. He viewed the Nakba as not only a physical displacement but also a profound psychological and cultural trauma that shattered Palestinian society, leaving an enduring legacy of dispossession, exile, and resistance.

16. In his seminal volume 'The Question of Palestine', he wrote that "For the Palestinians, the establishment of Israel meant the destruction of their society and the beginning of a refugee problem that has haunted them ever since. It was, for them, a continuous catastrophe—a Nakba—that disfigured time, place, and memory."

17. He also wrote that "The Nakba was not simply an event of the past; it was and remains an ongoing process, a living reality for Palestinians wherever they are." Palestinians often refer to this concept as A*l-Nakba Al-Mustamirra*, the Ongoing Nakba.

    See Edward W. Said: The Question of Palestine. New York: Times Books, 1979.

18. Said also reflected on the enduring impact of the Nakba as a profound psychological and cultural trauma. "The tragedy of the Nakba is not just in the act of displacement but in

the continued refusal of acknowledgment, the denial of justice," he said during a speech at Columbia University in 1997.

19. In this context, that of a continuous Nakba and exile, Gaza's March of Return reflected the collective agonies of the past, but also the ever-worsening living conditions of the present. Thus it aimed to raise global awareness of the Palestinian refugee issue, and its perpetuation over time. Throughout the 11 years that followed Israel's imposition of its siege on Gaza in 2006-07, civilians in the Gaza Strip – 70% of whom are registered refugees expelled from areas now within Israel – have endured the harsh effects of Israel's blockade, deemed illegal under international law, along with several devastating wars. These wars have severely damaged Gaza's essential infrastructure, crippled its health system, and wrecked its economy.

20. The protests also aimed to demand the right of return for millions of Palestinian refugees to their ancestral homes in what is now Israel and to call for an end to the blockade.

21. The protests reached their peak on May 14, 2018, coinciding with the controversial relocation of the US embassy from Tel Aviv to Jerusalem and the 70th anniversary of the Nakba, when Palestinians mark the mass displacement and dispossession of 1948-49 following Israel's creation. On that day alone, Israeli forces killed 59 Palestinians, exemplifying a shocking use of excessive force and live ammunition against protesters who posed no imminent threat to life.

22. Notably, these protests were largely organized by civil society, underscoring a push for peaceful methods of popular mobilization and resistance. The organizers of the Great March of Return have consistently emphasized that the protests were meant to be peaceful, with participants mainly demonstrating near the fence separating the Gaza Strip from Israel.

23. Although Hamas did not directly organize the protests, it has supported them, which was understood to be a shift in Hamas' position towards a non-violent approach to resistance. As prominent scholar Tareq Baconi noted, "*[t]he protest emerged as a civil society-led effort that was given permission, supported, and ultimately managed by a committee comprising the various political parties in Gaza, including Hamas. As a governing authority, Hamas provided much of the infrastructure necessary for the mobilization, such as buses to transport activists. This was a stark departure from the means with which Hamas traditionally challenged the blockade.*"

See 'What Was Hamas Thinking?', Foreign Policy, November 22, 2023

24. In an April 9, 2018, speech, the late leader of Hamas' political bureau, Ismail Haniyeh – who was assassinated by Israel on July 31, 2024 – seemed to be symbolically underscoring this strategy while standing in front of a banner featuring images of

international historical figures known for their endorsement of non-violent, popular resistance, such as Martin Luther King Jr., Mahatma Gandhi, and Nelson Mandela.

See Al Jazeera Mubasher, https://www.youtube.com/watch?v=0bk98wcTw3U.

25. Haniyeh articulated his position on peaceful resistance in a June 2018 article summarized in Al-Jazeera Arabic, citing the British website Middle East Eye, emphasizing that, "If we can secure our rights through peaceful means, this is our preferred path. However, if peaceful efforts fail, our right to resist the occupation by all means, including armed resistance, remains legitimate and recognized."

See 'Haniyeh writes to a British website: These are the goals of the return marches', Al-Jazeera, June 7, 2018.

26. Signs that Hamas was in the process, or at least considering the possibility, of shifting its methods of Resistance were met with increased Israeli violence. In fact, as peaceful Palestinian protesters began gathering en masse, the Israeli army bolstered its presence by deploying tanks, military vehicles, and soldiers, including snipers, along the Gaza-Israel border, issuing orders to fire on anyone approaching within several hundred meters of the fence.

27. Throughout the nearly two years of protests, there have been instances during most protests where groups approached the fence, attempting to damage it, burning tires, and throwing stones at Israeli forces. Additionally, incendiary kites and balloons were launched into Israeli territory, causing damage to agricultural land and nature reserves. These incidents received disproportionate attention from mainstream corporate media despite the evident imbalance of power between limited groups of protesters and Israeli forces deployed across the fence.

28. According to official figures provided by the Palestinian Health Ministry, over 300 people were killed by Israeli forces while thousands were wounded.

See Knell, Yolande and Abu Alouf, Rushdi 2023. "Explosion Near Gaza Boundary Wall Kills Five Palestinians." BBC September 14, 2023.

29. Amnesty International noted that "the devastating toll on civilian lives in Gaza should not be measured solely by the number of Palestinians killed, but also by the number of injuries".

30. Doctors in Gaza have reported to Amnesty International that many of the severe injuries they have treated involve the lower limbs, particularly the knees. "Many have suffered extreme bone and tissue damage, as well as large exit wounds measuring between 10

and 15mm, and will likely face further complications, infections and some form of physical disability, such as paralysis or amputation."

See Amnesty International. 2021. "Six Months on: Gaza's Great March of Return." June 15, 2021.

31. A report published in the Israeli daily newspaper, Haaretz on March 6, 2020, revealed harrowing details of the military protocol followed by Israeli army snipers during the Great March of Return. The report, written by Israeli journalist Hilo Glazer included testimonies of six Israeli snipers who took part in the army violence targeting peaceful protesters in Gaza. The testimonies revealed that aiming at protesters' lower limbs was a deliberate strategy implemented by the Israeli army.

See Glazer, Hilo. 2020. "'42 Knees in One Day': Israeli Snipers Open up About Shooting Gaza Protesters - Israel News." Haaretz.Com, March 6, 2020.

32. At least three medical workers were shot and killed by Israeli forces during the Great March of Return while at least 115 paramedics and medical workers were injured. On June 1, 21-year-old Razan al-Najjar, a Palestinian paramedic, was shot in the chest and killed by Israeli sniper fire while providing first aid to injured protesters. Al-Najjar was killed despite wearing her white coat, clearly identifying her as a medic.

33. According to figures provided by Palestinian human rights organizations in Gaza, at least 31 children were killed in the first six months alone.

34. Several journalists were also killed and hundreds wounded while covering the protests. On April 6, 2018, Palestinian journalist Yasser Mortaja was killed on the spot by Israeli snipers. On April 25, 2018, Ahmed Abu Hussein died in hospital from wounds he sustained while covering the protest on April 13.

D. ISRAEL'S VIOLATIONS

35. Repressive methods employed by Israeli forces during the Great March of Return were deemed unlawful by several rights groups and international bodies.

36. On February 28, 2019, the United Commission of Inquiry on the protests in the Occupied Palestinian Territory issued the report A/HRC/40/74. The report, "submitted pursuant to Human Rights Council resolution S-28/1, the independent international commission of inquiry investigates the demonstrations held in Gaza between 30 March and 31 December 2018, the response of Israeli security forces to the demonstrations and the impact on civilians in Gaza and Israel."

37. The commission, mandated "to focus on accountability and identifying those responsible for violations of international human rights law and international humanitarian law (...) found reasonable grounds to believe that some violations may constitute international crimes."

38. The UN report found that Israel's rules of engagement permitted live fire at demonstrators. They also permitted "snipers to shoot at the legs of 'main inciters' and the use of "lethal force against any demonstrators 'directly participating in hostilities'".

39. The commission concluded that the "demonstrations were civilian in nature" and that, "despite some acts of significant violence, did not constitute combat or a military campaign". For this reason, the legal framework applicable "was that of law enforcement, based in international human rights law".

40. In this framework, potentially lethal force can only be used in the case of self-defense "or for the defense of others when there is an imminent threat to life".

41. After investigating 189 fatalities and more than 300 injuries caused by the Israeli army throughout the Great March of Return, the Commission concluded that "with the exception of one incident in North Gaza on 14 May that may have amounted to 'direct participation in hostilities' and one incident in Central Gaza on 12 October that may have constituted an imminent threat to life or serious injury to the Israeli security forces, the commission found reasonable grounds to believe that, in all other cases, the use of live ammunition by Israeli security forces against demonstrators was unlawful."

42. The commission also indicated that Israeli forces shot Palestinians "who were hundreds of meters away from the Israeli forces and visibly engaged in civilian activities", as well as "journalists and medical personnel who were clearly marked as such".

43. According to the findings, Israeli forces also opened fire at "children, women and persons with disabilities".

44. Since Israeli forces killed and maimed Palestinians who did not pose an imminent threat and were not participating in 'hostilities', the Commission "found reasonable grounds to believe that demonstrators were shot in violation of their right to life or of the principle of distinction under international humanitarian law."

45. Moreover, the right to life also includes the right to a life with dignity. "The commission found that the ongoing blockade of Gaza and its impact on the health-care system in Gaza, and the ensuing deprivation of essential goods and services necessary for a dignified life, including basic medical supplies, safe drinking water, electricity and sanitation, constitute violations of the fundamental rights to life and health, in particular of wounded demonstrators."

46. This is even more serious as Israel, as the occupying power, has "obligations under international law to ensure the health and welfare of the Palestinian population."

47. Demonstrators were not allowed to exercise that freedom of expression, of peaceful assembly, and of association, protected by international human rights law.

48. The commission found reasonable grounds to believe that Israel violated children's "rights to life, peaceful assembly, expression and the highest attainable standard of health, among other rights," protected by the Convention on the Rights of the Child.

49. The commission found reasonable grounds to believe that Israel violated the customary and conventional international humanitarian law requiring that "medical personnel be respected and protected".

50. Similarly, the commission found reasonable grounds to believe that Israel violated the right to protection afforded to journalists.

51. In this regard, Reporters Without Borders, an international non-profit and non-governmental organization headquartered in Paris and focused on safeguarding the right to freedom of information, registered "more than 140 Israeli violations against Palestinian journalists".

    See "Israel-Palestine : Four Years of Violence Against Palestinian Journalists Covering 'March of Return' Protests." RSF.

52. RSF also noted that at least 144 Palestinian journalists have been at the receiving end of live rounds, rubber bullets, stun grenades or teargas fired by Israeli soldiers or police – or their baton blows – in the Gaza Strip, the West Bank and East Jerusalem during the protests.

E. CONCLUSION

53. The Great March of Return was a Palestinian civil society initiative that was sustained over the course of nearly two years. It highlighted the dire humanitarian and political crisis faced by Palestinians in Gaza, underscoring their demands for the right of return and an end to the Israeli blockade. Despite its largely peaceful nature, the protests were met with excessive and often lethal force by Israeli security forces, resulting in over 300 deaths and thousands of injuries, including children, medical workers, and journalists. Reports by international human rights organizations and the UN indicate that Israel's use of live ammunition violated principles of international human rights and

humanitarian law, including the right to life, freedom of expression, and peaceful assembly.

54. The systematic targeting of civilians, including the deliberate maiming of protesters, the killing of marked medics, and the restriction of basic human necessities, reflects grave violations of international legal standards. Moreover, the blockade has exacerbated the suffering of Gaza's population, depriving them of a dignified life and essential services. The disproportionate and unlawful response to the protests calls for accountability under international law. Not only did the Great March of Return expose the human toll of these violations but it underscored the urgency of addressing the root causes of the conflict to ensure justice, human rights, and lasting peace for Palestinians.

E. EXPERT OBLIGATIONS

55. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete opinions on the matters to which they refer.

56. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

57. I confirm that I have not received any remuneration for preparing this report.



Romana Rubeo
Tagliacozzo (AQ)
Italy
28 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON ZIONISM AS A MAXIMALIST IDEOLOGY
BY
PROFESSOR SAMI A. AL-ARIAN

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The British government engages with the Israeli government without due regard to the centrality of Zionism as a maximalist ideology that seeks to dispossess Palestinians of their land. This report charts the history of Zionism's attempts to bring about an ethno-nationlist Zionist state across the entirety of the Palestinian land – from the river to the sea – from the time of Benzion Netanyahu to the current Prime Minister Benjamin Netanyahu.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am the Director of the Center for Islam and Global Affairs (CIGA) and Professor at Istanbul Sabahattin Zaim University in Turkey.

5. I received my PhD in Computer Engineering in 1986, and was a tenured academic in the US for 17 years receiving best teaching awards at the University of South Florida (1993 and 1994) and several grants, as well as having over forty academic publications to my credit.

6. During my four decades in the US (1975-2015), I founded numerous institutions and publications in the fields of education, research, religion and interfaith, as well as civil and human rights. I was a prolific speaker across many US campuses, especially on Palestine, Islam and the West, and Civil Rights. In 2001, I was named by *Newsweek* the "premier civil rights activist" in the US for my efforts to repeal the use of Secret Evidence in immigration courts. In 2012, I was profiled by historians in the *Encyclopedia of American Dissidents* as one of only three Muslims in the US out of 152 dissidents and prisoners of conscience that were included in the series in the past century (along with Malcolm X and Muhammad Ali). My US story was featured in 2007 in the award-winning documentary *US vs. Al-Arian*, and in 2016 in the book *Being Palestinian*.

7. I have written several studies and numerous articles focusing on US foreign policy, Palestine, and the Arab Spring phenomena. My book of poetry on Spirituality, Palestine, and Human Rights *Conspiring Against Joseph* was published in 2004. I am also the author of *The Arab Awakening Unveiled: Understanding Transformations and Revolutions in the Middle East,* Washington, DC, American Educational Trust, 2013 (under the pen name Esam Al-Amin), and *The United States and Israel: From Enabler to Strategic Partner,* IZU Publications, 2019. At CIGA I have edited several books (IZU Publications) including *Civil-Military Relations in Muslim Societies*; *Governance and Political Authority in the Muslim World*; and *Challenging Apartheid in Palestine*; and *The Global War on Terror*.

C. THE CONTINUITY OF MAXIMALIST ZIONISM

8. The situation in Gaza has been characterised by statements from Israeli lawmakers advocating for extermination, starvation, and even nuclear attacks against the Palestinian population. Such rhetoric and actions are embedded within a historical trajectory of maximalist Zionism. This ideology, deeply intertwined with fascist and racist frameworks, has perpetuated systemic violence and dispossession, most notably exemplified by the Nakba of 1948 and its ongoing implications.

9. This report examines the influence of Benzion Netanyahu, the father of Israel's current Prime Minister, Benjamin Netanyahu, and the enduring impact of Revisionist Zionism led by its founder Ze'ev Jabotinsky on contemporary Israeli politics, particularly within the Likud party. The discussion also considers how various writers have used these ideological currents to rationalise Palestinian resistance.

10. Benzion Netanyahu, born as Benzion Mileikowsky on March 25, 1910, in Poland, was a historian, encyclopaedist, and medievalist. Upon immigrating to Palestine in 1920, [1]he adopted the name 'Netanyahu,' meaning 'God has given.' This practice of name-

[1] HuffPost (2009) *Benjamin Netanyahu: A Man Shaped By His Family*, Huffington Post, https://www.huffpost.com/entry/benjamin-netanyahu-a-man_n_181918

changing was common among European colonial settlers and was often employed to project an appearance of Hebrew ancestry, obscuring their non-Middle Eastern origins. For instance, David Ben-Gurion, the founding figure of the Zionist state, was originally named David Green.[2]

11. Benzion Netanyahu espoused hawkish, racially supremacist views that significantly influenced his son. He is noted for his assertion that the "*vast majority of Israeli Arabs would choose to exterminate us if they had the option to do so.*"[3] These ethnic and nationalist narratives in Israeli statecraft are part of a broad context of Zionist expansionism.

D. REVISIONIST ZIONISM AND FASCISM

12. Of its founding principles, Revisionist Zionism advocates for 'Territorial Maximalism,' a militant vision for Jewish domination over *Eretz Yisrael*. This concept encompasses the biblical notion of Greater Israel, including all remaining Palestinian territories, as well as regions of Transjordan (modern-day Jordan), Sinai, and parts of modern day Lebanon, Syria, and Iraq.

13. The ideological roots of this perspective are traced to Ze'ev Jabotinsky, a pivotal figure in Zionist thought, who founded several militant organizations. Emerging from the World War I-era British-aligned Jewish Legion, these groups evolved into increasingly militant factions such as the Hagana and later the Irgun Zvai Leumi (Irgun) as well as the Stern gang (Lehi). The Irgun and Lehi played a leading role in the ethnic cleansing campaigns of the 1948 Nakba.[4] The Likud party had its origin[5] in these two militant groups.

14. More than a century ago, on November 4, 1923, Jabotinsky, published his article "The Iron Wall," in which he addressed the question of "colonizing Palestine." In his essay, he explicitly advocated for unyielding violence to achieve Zionist goals, famously stating that Arab resistance could only be overcome by an 'Iron Wall' of unassailable

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[2] The National Library of Israel, *Who was David Green?*, https://education-en.nli.org.il/lessons/who-was-david-green

[3] Martin D (2012) *Benzion Netanyahu, Hawkish Scholar, Dies at 102*, The New York Times, https://www.nytimes.com/2012/05/01/world/middleeast/benzion-netanyahu-dies-at-102.html

[4] Brenner L (1983) *Zionist-Revisionism: The Years of Fascism and Terror*, Institute for Palestine Studies. (n.d.), https://www.palestine-studies.org/en/node/38833.

[5] Charif, Maher, The Roots of Zionist Terrorism, Policy Paper, Institute for Palestine Studies, 2023. https://www.palestine-studies.org/en/node/1654849.

Jewish military strength as the Arabs would not willingly concede their land.[6] He wrote:

"Every native population in the world resists colonists as long as it has the slightest hope of being able to rid itself of the danger of being colonized. That is what the Arabs in Palestine are doing and what they will persist in doing as long as there remains a solitary spark of hope that they will be able to prevent the transformation of "Palestine" into the "Land of Israel."

15. In the same essay, he argued that an agreement with the Palestine Arabs (then) was impossible. He admitted that the Jews had come to colonize Palestine and noted that history proved no nation ever accepted being colonized and, therefore, revolted against the colonizers. He concluded:

    "Zionist colonization must either stop, or else proceed regardless of the native population."

16. Jabotinsky's policy of no negotiation or compromise significantly influenced Palestinian resistance and shaped its framing as a liberation struggle "*from the River to the Sea*," countering what is naturally perceived as a violent colonial enterprise.

17. In 1940, Benzion Netanyahu went to New York and served as assistant to the secretary of Jabotinsky, who was seeking to build American support for his militant New Zionists.[7]

18. In 2017, Israeli Prime Minister, Benjamin Netanuayu, said 'I have Jabotinsky's works on my shelf, and I read them often.'[8] On many occasions he boasted that he keeps the Jabotinsky's sword in his office.[9]

19. On July 18, 2023, Netanuayu, said, "One hundred years after the 'iron wall' was stamped in Jabotinsky's writings we are continuing to successfully implement these principles. I say 'continuing' because the need to stand as a powerful iron wall against our enemies has been adopted by every Government of Israel, from the right and the left."[10]

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[6] Jabotinsky Z (1923) *The Iron Wall*, Khazit

[7] Goldberg, Jeffrey (1997), "*From Peace Process To Police Process*", *The New York Times*, September 14, 1997.

[8] Bambery, Chris, *The man in whose shadow Netanyahu walks*, Counterfire.org, 15 March 2024, https://www.counterfire.org/article/the-man-in-whose-shadow-netanyahu-walks/

[9] Israeli Prime Minister Office, https://www.gov.il/en/pages/eventsword240314, 24 March 2014.

[10] Excerpt from PM Netanyahu 's Remarks at the State Memorial Ceremony for Ze'ev Jabotinsky, Israeli Prime Minister Office, https://www.gov.il/en/pages/event-ceremony180723, 18 July 2023.

E. THE WEB OF REFORMIST ZIONISM

20. Benzion Netanyahu regarded Joseph Klausner as a key intellectual mentor, adopting Klausner's view of Arabs as a threatening "*nation of half-savages*." Such views deeply influenced Benzion's son, Benjamin Netanyahu,[11] and his political strategies.

21. Benzion also maintained ties with Aba Ahimeir, whose ideologies heavily impacted militant groups such as the Irgun and Lehi. Ahimeir, self-identifying as a fascist in the late 1920s, authored a series of articles titled "*From the Notebook of a Fascist*"[12] [13] and founded *Brit HaBirionim* (Union of Zionist Rebels), a clandestine faction of the Revisionist Zionism Movement (ZRM) modelled on Italian Fascism and active between 1930 and 1933.[14] Streets in multiple Israeli cities now honour Ahimeir, and in 2002, his image was commemorated on a postage stamp.

22. Christopher Hitchens, in his 1998 article *The Iron Wall*, argued that Benzion Netanyahu's association with Ahimeir reflected fascism as a guiding ideology, which shaped Benjamin Netanyahu's policies and actions, culminating in the ongoing genocide in Gaza.

23. The Irgun, a product of Revisionist Zionism, was responsible for several acts of terrorism, most notably the 1946 bombing of the King David Hotel, which killed 91 British servicemen, marking the deadliest attack against British forces in history. This order came from Menachem Begin, who later became Israel's sixth Prime Minister and a leader of the Likud Party. The Irgun also orchestrated the 1948 Deir Yassin massacre, where over 100 Palestinian villagers, including women and children[15] were killed, prompting mass Palestinian expulsion and displacement. [16]

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[11] Armon A (2018) *How Netanyahu's father adopted the view of Arabs as savages*, Haaretz, https://www.haaretz.com/israel-news/2018-07-05/ty-article/when-netanyahus-father-adopted-the-view-of-arabs-as-savages/0000017f-e00a-d3ff-a7ff-f1aa22770000

[12] Segev T (2012) *Words that can't be retracted*, Haaretz, https://www.haaretz.com/2012-04-20/ty-article/words-that-cant-be-retracted/0000017f-dec2-df9c-a17f-fedae3120000

[13] Hitchens C (1998) *The Iron Wall*, Salon

[14] Kaplan E (2005) *The Jewish Radical Right*, University of Wisconsin Press, p.15

[15] Green DB (2021) *This Day in Jewish History: Irgun Blows Up British HQ at Jerusalem's King David Hotel, Haaretz,* https://www.haaretz.com/israel-news/2021-07-22/ty-article/this-day-in-jewish-history-irgun-blows-up-british-hq-at-jerusalems-king-david-hotel/0000017f-f5f9-ddde-abff-fdfd85990000

[16] Al Jazeera (2023) *The Deir Yassin massacre: Why it still matters 75 years later*, https://www.aljazeera.com/news/2023/4/9/the-deir-yassin-massacre-why-it-still-matters-75-years-later

24. The Lehi, another offshoot of Revisionist Zionism, also participated in the Deir Yassin massacre. Known for its vehemently anti-British stance, Lehi even sought alliances with Fascist Italy and Nazi Germany during the 1940s, viewing Britain as the primary adversary.[17] Although Lehi's repeated assassinations of European diplomats led to its designation as a terrorist organisation, its members were pardoned by the Israeli government in 1949.[18] In 1980, the Lehi Ribbon was introduced as a military honour, recognising the group's role in Israel's establishment. Yitzhak Shamir, a former leader of Lehi, became Israel's Prime Minister in 1983.

25. The Lehi newspaper *He Khazit* (The Front) famously articulated the group's militant ethos in an article titled *Terror*, stating:

> "*Neither Jewish ethics nor Jewish tradition can disqualify terrorism as a means of combat. We are very far from having any moral qualms as far as our national war goes. We have before us the command of the Torah, whose morality surpasses that of any other body of laws in the world: 'Ye shall blot them out to the last man.'*"[19]

F. THE LEGACY OF PLAN DALET AND SYSTEMATIC ETHNIC CLEANSING

26. The 1948 massacres following Deir Yassin, including those in Palestinian villages such as Qalunya, Saris, Beit Surik, and Biddu, were swift and devastating. In each instance, Hagana forces demolished homes and forcibly expelled residents in operations lasting scarcely an hour. These actions were integral to Plan Dalet, a strategic framework for the systematic destruction of Palestinian rural and urban centres aimed at ethnic cleansing.

27. Although atrocities such as Deir Yassin are often attributed to fringe groups like Irgun and Lehi, they occurred under the overarching authority of the Hagana. This organization later merged with other factions to form the modern Israeli Defence Forces (IDF). As historian Ilan Pappe observes:

> "*The systematic nature of Plan Dalet is manifested in Deir Yassin, a pastoral and cordial village that had reached a non-aggression pact with the Hagana in Jerusalem, but was doomed to be wiped out because it was within the areas designated in Plan Dalet to be cleansed... the Hagana decided to send the Irgun and Stern Gang troops, so as to absolve themselves from any official accountability. In the subsequent*

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[17] Sofer S (2007) *Zionism and the Foundations of Israeli Diplomacy*, Cambridge University Press, pp.253–254

[18] Charif M (2023) *The Roots of Zionist Terrorism*, Institute for Palestine Studies, https://www.palestine-studies.org/en/node/1654849#:~:text=The%20Lehi%20Gang%3A&text=The%20Israeli%20government%2C%20seizing%20the

[19] He Khazit (underground publication of Lehi), Issue 2, August 1943.

> *cleansings of 'friendly' villages, even this ploy would no longer be deemed necessary."*[20]

G. ZIONISM AS AN IDEOLOGICAL FRAMEWORK FOR ETHNIC CLEANSING

28. The foundational ideology of Zionism extends beyond the extremist articulations of Revisionist Zionism, embedding ethnic cleansing as a central mechanism for territorial acquisition. Figures often considered centrist, such as Yitzhak Rabin of the Labor Party, also implemented policies with devastating consequences. On July 10, 1948, Rabin, as Deputy Commander under Yigal Allon, both appointed by David Ben-Gurion, oversaw the aerial bombardment of Lydd (modern-day Lod), the first city to face such an attack. This operation resulted in 426 civilian deaths, including 176 people massacred in the Dahamish Mosque. Days later, Jewish forces expelled 50,000 residents, forcing them to march the infamous 'Snake Trail' to the West Bank.[21]

29. Unlike other strands of Zionism, Revisionist Zionism continues to openly articulate its territorial ambitions, advocating for Jewish sovereignty "*from the River to the Sea.*" This phrase, when employed by Palestinians to articulate their resistance, has been criminalised in parts of Europe.[22] Yet, the Israeli Likud Party's 1977 election platform declared:

> "*Judea and Samaria will not be placed under foreign rule; Israeli sovereignty will extend from the Sea to the Jordan River.*"[23]

30. Haaretz journalist Ravit Hecht recently branded the slogan as a call "for ethnic cleansing, similar to the one that took place in the Gaza 'envelope'."[24]

31. Menachem Begin reiterated this slogan during that time. Other contemporary genocidal rhetoric such as inflicting 'Nakba 2023' on Gaza, as well as President Hertzog's reference to Gazans as 'human animals' has gone largely unabated by western governments.[25]

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[20] Pappe I (2006) *The Ethnic Cleansing of Palestine*, Oneworld

[21] Ibid, Prof. Pappe references here 'Lydda in The Encyclopedia of Palestine'

[22] UnHerd (2024) *German government calls 'From the river to the sea' a Hamas slogan*, https://unherd.com/breaking_news/german-government-calls-from-the-river-to-the-sea-a-hamas-slogan/

[23] Begin M (1977) *Address to Likud Party Members*, Jerusalem.

[24] Goldberg A & Coninfo A (2024) *From the river to the sea': One slogan, many meanings,* Review of Democracy, https://revdem.ceu.edu/2024/03/27/from-the-river-to-the-sea-one-slogan-many-meanings/

[25] Khalidi R (2023) *It's Time to Confront Israel's Version of 'From the River to the Sea'*, The Nation, https://www.thenation.com/article/world/its-time-to-confront-israels-version-of-from-the-river-to-the-sea/

H. BENZION NETANYAHU AND HISTORICAL PARADOXES

32. Benzion Netanyahu, a noted scholar of Jewish history, paradoxically specialised in the study of Jewish flourishing under Muslim rule in Spain's golden age. During this era, Jewish communities thrived culturally, intellectually, and economically under the Umayyad Caliphate in Andalusia.

33. The golden Jewish period is usually dated from the reign of Arab Amir ʿAbd al-Raḥmān al-Dākhil (890–961) until 1066 when the Umayyad Caliphate of Cordoba ended. The later 1492 expulsion of the Jews from Christian Spain saw more than 130,000 move to Muslim lands.[26] Yet, despite this historical context, Benzion espoused deeply antagonistic views, asserting in a 2009 interview with *Maariv*:

> "*The tendency to conflict is the essence of the Arab. He is an enemy by essence. His personality won't allow him to compromise... His existence is one of perpetual war.*"[27]

I. RESISTANCE AS A RATIONAL RESPONSE

34. Edward Said underscores that Zionism's disregard for the indigenous population renders resistance inevitable. In The Question of Palestine, he writes:

> "*Such as it is, the Palestinian actuality is today, was yesterday, and most likely tomorrow will be built upon an act of resistance to this new foreign colonialism. But it is more likely that there will remain the inverse resistance which has characterized Zionism and Israel since the beginning: the refusal to admit, and the consequent denial of, the existence of Palestinian Arabs who are there not simply as an inconvenient nuisance, but as a population with an indissoluble bond with the land...*"[28]

35. Mahmoud Darwish, the Palestinian poet echoes this sentiment in "Identity Card," a poignant articulation of dispossession and resilience:

> *"You stole my forefathers' vineyards*
>
> *And the land I used to till,*
>
> *Me and all my children.*
>
> *Nothing is left for us*
>
> *Except these rocks...*

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[26] Gilber M (2010) *Past Precedents for Muslim and Jewish Peace,* History Today, https://www.historytoday.com/archive/path-peace-muslims-and-jews

[27] Vick K (2012) *Received Wisdom? How the Ideology of Netanyahu's Late Father Influenced the Son*, Time, https://world.time.com/2012/05/02/received-wisdom-how-the-ideology-of-netanyahus-late-father-influenced-the-son/

[28] Said EW (1979) *The Question of Palestine*, Vintage Books.

Will your government take them too?

Until he says:

So!

Put it on record at the top of page one:

I don't hate people,

I trespass on no one's property.

And yet, if I were to become hungry

I shall eat the flesh of my usurper."[29]

J. THE CONTINUATION OF MAXIMALIST ZIONISM

36. The current Zionist leadership intensifies the foundational ambitions of its predecessors, exacting severe human and material tolls on Palestinians. As the late Yasser Arafat declared in his 1974 UN speech:

> *"The racist entity, founded on the imperialist-colonialist concept, turned itself into a base of imperialism and into an arsenal of weapons. This enabled it to assume its role of subjugating the Arab people and of committing aggression against them, in order to satisfy its ambitions for further expansion on Palestinian and other Arab lands…*

Concluding this speech with:

> *Today I have come bearing an olive branch and a freedom-fighter's gun. Do not let the olive branch fall from my hand. I repeat: do not let the olive branch fall from my hand…"*[30]

37. The right to self-determination for the Palestinian people and their right to resist their occupiers by all means are well established in international law. In 1960, U.N. resolution 1514[31] adopted the "Declaration on the Granting of Independence to Colonial Countries and Peoples." It stated that, "All peoples have the right to self-determination", and that, "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights and is contrary to the Charter of the United Nations."

38. In 1970, the U.N. adopted Resolution 2625[32] which called on its members to support colonized people or people under occupation against their colonizers and occupiers.

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[29] Darwish M (1964) *Identity Card* in *Leaves of Olives*, [Translation]

[30] Arafat Y (1974) *Statement before the United Nations General Assembly*, United Nations, retrieved from UN Archives

[31] https://legal.un.org/avl/ha/dicc/dicc.html

[32] https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf

In addition, U.N. Resolution 3246[33] reaffirmed in 1974 "the legitimacy of the peoples' struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle."

39. In 1974,U.N. Resolution 33/24[34] strongly confirmed "the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation by all available means, particularly armed struggle," and "strongly condemned all governments" that did not recognize "the right to self-determination to the Palestinian people."

40. The escalation of maximalist policies has left no room for diplomacy, with resistance, as sanctioned in international law, emerging as the only recourse for a colonised people fighting for survival.

K. EXPERT OBLIGATIONS

41. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

42. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

43. I confirm that I have not received any remuneration for preparing this report.



Professor Sami A. Al-Arian
Center of Islam and Global Affairs
Istanbul Sabahattin Zaim Univesity
Istanbul, Turkey
21 December 2024

[33] file:///Users/alarian/Downloads/A_RES_3246(XXIX)-EN.pdf

[34] https://documents.un.org/doc/resolution/gen/nr0/360/42/pdf/nr036042.pdf

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON BRITAIN'S RELATIONSHIP WTIH ZIONISM

BY

PROFESSOR AVI SHLAIM FBA

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawwamah al-Islamiyyah ('Hamas').

2. Arthur Balfour was British Foreign Secretary from 1916 to 1919, whilst Boris Johnson occupied the role from 2016 to 2018. Between them they bookended a century in which it is instructive to examine Zionism's role in shaping British foreign policy towards Palestine and how the concept of 'antisemitism' has been weaponised to suppress criticism of Zionism.

B. QUALIFICATIONS

3. I was born in Baghdad on 31 October 1945 to a Jewish family. I have dual nationality, British and Israeli. I went to school in Israel and I served in the Israel Defence Forces ("IDF") between 1964 and 1966.

4. I received three degrees from British universities: a BA in History from Jesus College, Cambridge, in 1969; an MSc in International Relations from the London

School of Economics In 1970; and a PhD at the University of Reading where I remained a lecturer and reader in Politics from 1970 through to 1987.

5. From 1987 through to 1996, I was a Reader and then Professor of International Relations and a Fellow of St Antony's College, Oxford.I served two three-year terms as Director of Graduate Studies in International Relations.

6. I am an Emeritus Fellow of St Antony's College and an Emeritus Professor in International Relations at the University of Oxford. I was elected Fellow of the British Academy in 2006 and was awarded a British Academy Medal for Lifetime Achievement in 2017.

7. I am a historian, my academic expertise is mainly on the international relations of the Middle East, and my principal research interest is the Arab-Israeli conflict.

8. My books on the Middle East include

    - *Collusion across the Jordan: King Abdullah, the Zionist Movement, and the Partition of Palestine* (1988);
    - *War and Peace in the Middle East: A Concise History* (1995);
    - *Lion of Jordan: The Life of King Hussein in War and Peace* (2007); and
    - *Israel and Palestine: Reappraisals, Revisions, Refutations* (2009);
    - *The Iron Wall: Israel and the Arab World* (first edition 2000; updated second edition 2014).

9. My most recently published book is *Three Worlds: Memoirs of an Arab-Jew* (2023). This book was awarded the PEN Hessell-Tiltman Prize 2024.

10. I have co-edited the following books: *The Cold War and the Middle East* (1997); *The War for Palestine: Rewriting the History of 1948* (2001, second edition 2007); and *The 1967 Arab-Israeli War: Origins and Consequences* (2012).

11. I have published a large number of scholarly articles and countless newspaper articles. I am also a frequent contributor to newspapers and a commentator on radio and television on Middle Eastern affairs.

12. In order to provide more comprehensive details, I attach both my short form curriculum vitae and my long form curriculum vitae.

C. THE BALFOUR DECLARATION

13. The Israeli-Palestinian conflict is one of the most bitter, protracted, and evidently intractable international conflicts of modern times. This conflict was made in Britain. During World War I, Britain sponsored the cause of Arab independence but then switched its support to the Zionist claim for a Jewish state in Palestine. This set the scene for the inevitable conflict between Arabs and Zionists over Palestine in the aftermath of the war. There were two peoples and one land, hence the conflict. Far from being an honest broker or a mediator, Britain prepared the ground for the systematic Zionist takeover of Palestine, a process that continues today with the illegal Zionist colonial project on the West Bank.

14. Arthur James Balfour, Lord Balfour, is closely associated with the British policy of support for the Zionist movement during World War I. In a 1917 document which bears his name, the British government pledged to support the establishment of a 'national home for the Jewish people in Palestine'. The document is controversial because Balfour effectively gave away the homeland of the Palestinian people to the Zionists when it was not his to give.

15. On 2 November 1917, Arthur Balfour, Britain's Secretary of State for Foreign Affairs, addressed a letter to Lord Rothschild, one of the leaders of the British Jews, as follows:

> *I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy which has been submitted to and approved by the Cabinet: His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.*

16. The statement was exceedingly brief, consisting of a mere sixty-seven words, but its consequences were far-reaching, and its impact on the subsequent history of the Middle East was profound. It completely transformed the position of the fledgling Zionist movement vis-à-vis the Arabs of Palestine, and it provided a protective umbrella that enabled the Zionists to proceed steadily towards their ultimate goal of establishing an independent Jewish state in Palestine. Rarely in the annals of the British Empire has such a short document produced such far-reaching consequences.

17. The declaration started the process of the dispossession, dispersal, and exile of the Palestinians which culminated in the outbreak of a civil war in Palestine in 1947, the establishment of the state of Israel in 1948, and the Palestinian *nakba*, the catastrophe.

D. BALFOUR & SYKES-PICOT

18. The Zionist movement was Britain's junior ally in the dispossession of the Palestinians. Zionism was a settler colonial movement and the state of Israel, its principal political progeny, is a colonial settler-state. It is also a state guilty of the international crime of Apartheid, as defined in the 1998 Rome Statute, as four major human rights groups, including Amnesty International and Human Rights Watch, have concluded in reports they published in recent years.

19. Noam Chomsky, the radical American-Jewish academic, once observed that 'Settler colonialism is the most extreme and sadistic form of imperialism'. Over the last 106 years, the Palestinians have had the great misfortune of being at receiving end first of British imperialism and then of Zionist settler colonialism.

20. The key to understanding British policy during this period is British imperial interests in a specific geopolitical context. In World War I Britain faced Germany and two other empires, and it was in desperate need of allies. In its quest for allies, it made three incompatible promises that greatly complicated the future of Palestine.

21. In 1915, Britain promised Hussein the Sharif of Mecca, a prominent Arab leader and a descendant of the Prophet Muhammad, an independent kingdom after the war if he for his part would mount an Arab revolt against the Ottoman Empire. Sharif Hussein kept his side of the bargain by mounting the Arab Revolt in which his son Faisal fought alongside T. E. Lawrence, better known as 'Lawrence of Arabia', against the Ottomans.

22. In 1916, Britain signed a secret agreement with France, the Sykes–Picot Agreement, to divide the Middle East territories of the Ottoman Empire into spheres of influence. As the two colonial powers could not agree about Palestine, they placed it under a separate international administration. This secret agreement flatly contradicted the promise of an independent kingdom to be headed by Hussein the Sharif Hussein of Mecca.

23. An even greater betrayal followed. In 1917, Britain issued the Balfour Declaration in support of a national home for the Jewish people in Palestine with the well-known caveat about Palestinian rights. The difference between the Sykes–Picot Agreement and the Balfour Declaration is that the first was never implemented. When David Lloyd George came to power, in December 1916, he reneged on the Sykes–Picot Agreement and proceeded to issue the Balfour Declaration a year later.

24. The Sykes–Picot Agreement and the Balfour Declaration constitute the main terms of reference of Arab nationalists ever since the end of World War I. The Sykes–Picot Agreement is a symbol of Western attempts to carve up the Middle East into spheres of influence, of Western intervention in the area to promote their own imperial interests, whereas the Balfour Declaration is a symbol of the Western attempt to impose a foreign entity, a foreign people, in the heartland of the Arab world. Ever since then Arab nationalists have regarded the state of Israel not as an organic part of the region but as an artificial entity, an outpost of Western imperialism in the Middle East.

25. The Jewish writer, Arthur Koestler, famously described the Balfour Declaration as a statement in which one nation promised to a second nation the country of a third. Britain did not have any moral right to hand over Palestine to the Zionists. Nor did it have any legal right. There is in fact no basis in international law for the newly concocted concept of a 'national home'. For the Zionists and for their chief supporters in Britain – Arthur Balfour, David Lloyd George and Winston Churchill – from the beginning the national home was just a euphemism for a state.

26. In 1917, the area that was later called Palestine, was still under Ottoman rule. The Arabs constituted 90% of the population of the country, the Jews constituted 10% and the Jews owned only 2% of the land. These are the key facts, incontrovertible facts. They make the Balfour Declaration a classic colonial document which completely disregarded the rights and aspirations of the majority of the population of the country. It flagrantly violated their natural right to national self-determination. There is an Arabic saying that something that starts crooked remains crooked and the Balfour Declaration is a good example.

E. BALFOUR AND ANTISEMITISM

27. Arthur Balfour was an aloof and arrogant British aristocrat. He was also a white supremacist. He once argued that Europeans should enjoy greater privileges than Blacks in South Africa by claiming that 'men are not born equal'. His eponymous declaration granted greater rights to incoming European settlers than to indigenous Palestinians. He did not recognize the Palestinians as a people with legitimate national aspirations, but viewed them as a backward, Oriental, inert mass. In line with this Orientalist mindset, Balfour insisted that Palestinians should not be consulted about the Zionist colonisation project in their homeland.

28. Balfour claimed that support for Zionism was a noble Christian project to enable an ancient people to return to its ancestral homeland. But his real motives probably had more to do with imperialism and racism than with Biblical romanticism. Indeed, there is evidence to suggest that he was an antisemite. Cosima Wagner, the wife of the composer, was even more antisemitic as her husband. Arthur Balfour met her in Bayreuth, they discussed the Jews, and later, by his own account, he shared 'many of her antisemitic prejudices'. In 1905, as Conservative prime minister, Balfour introduced the Aliens Bill, the first anti-immigration piece of legislation in British history. Its purpose was to prevent Jews, who were facing persecution in East Europe, from coming to this country.

29. It may seem contradictory to be both antisemitic and pro-Zionist at the same time, but the contradiction is more apparent than real. It is perfectly logical for someone who does not like Jews in his or her own country, to want Jews from all over the world to be gathered in one Jewish state. Theodor Herzl, the visionary of the Jewish state, had predicted that 'The anti-Semites will become our most loyal friends'. Contemporary examples of individuals who combine both tendencies are Victor Orban of Hungary and American president Donald Trump.

30. The main driving force behind the Balfour Declaration, however, was not Foreign Secretary Balfour, but Prime Minister David Lloyd George. In domestic politics, Lloyd George was a Welsh radical, but in foreign policy, he was an old-fashioned British imperialist and a land grabber. Lloyd George wanted Palestine to be in the British sphere of influence for two reasons: to exclude the French and to secure British control over the access to the Suez Canal. Giving Palestine to the Zionists was an indirect and devious way of reneging on the Sykes–Picot Agreement.

31. Moreover, Lloyd George knew that the majority of British Jews were opposed to Zionism. So why did he privilege the Zionists? Tom Segev in his book *One Palestine*

Complete suggests the answer. The answer is that Lloyd George had a highly inflated idea of the international influence of the Jews. His support for Zionism was based on a misperception. In aligning Britain with Zionism, he acted in the mistaken, and I may add, the antisemitic view that the Jews had covert power. The Jews, he believed, had subterranean power; they made the wheels of history turn. By issuing a declaration in support of the Zionist project in Palestine, Lloyd George hoped to harness the influence of international Jewry to the British war effort.

32. The reality was that the Jews were virtually helpless with little to offer except the myth of secret Jewish power, and the Zionists were a minority within an impotent minority. Furthermore, the majority of mainstream English Jews were opposed to the nationalist idea inherent in Zionism. Sir Edwin Montague, the Secretary of State for India, was the only Jew in Lloyd George's cabinet. On the 23 August 1917, Montague submitted a memorandum to the cabinet under the heading 'The Anti-Semitism of the Present Government'. The memorandum was four pages long but, in a nutshell, it argued that Judaism is a religion, not a nation, and that to establish a Jewish state in Palestine would undermine the struggle for equal rights for Jews in Britain, in Europe, and elsewhere. If there were a Jewish state in Palestine, he argued, and Jews were being difficult, people would say to them, why don't you go to your own country? Montague concluded that Zionism was 'a mischievous political doctrine, untenable by any patriotic citizen of the UK'. This memorandum was ignored but is highly significant because it sums up the Jewish case against Zionism.

33. Lord Curzon, a member of the War Cabinet, was more troubled by the implications of the proposed move for the rights of the Arabs of Palestine than for the rights of the Jews in Britain. '*How was it proposed*', he asked his cabinet colleagues, '*to get rid of the existing majority of Mussulman inhabitants and to introduce the Jews in their place?*' In a paper to the cabinet he returned to the theme:

> *What is to become of the people of the country? . . . [The Arabs] and their forefathers have occupied the country for the best part of 1,500 years, and they own the soil. . . . They profess the Mohammedan faith. They will not be content either to be expropriated for Jewish immigrants or to act merely as hewers of wood and drawers of water for the latter.*

34. Despite the strong objections of Sir Edwin Montague and Lord Curzon, the cabinet decided to adopt the Balfour Declaration. Dr Chaim Weizmann, the leader of a small band of fanatic Zionists, mostly foreigners like himself, was sitting in the antechamber as the cabinet was deliberating. When they had finished deliberating, the Secretary of the Cabinet, Sir Mark Sykes, the same Sykes of the Sykes–Picot Agreement, came out and announced the good news: '*Dr Weizmann, it's a boy!*' This

is an early and a very striking illustration of how close the Zionists were to the centres of power in Britain.

F. THE BRITISH MANDATE IN PALESTINE

35. Balfour realized all along that his declaration contradicted the principle of national self-determination for the majority of the inhabitants, but his Christian conscience was not unduly troubled. In 1919, he wrote to Lord Curzon: '*Zionism, be it right or wrong, good or bad, is rooted in age-long traditions, in present needs, in future hopes, of far profounder import than the desires and prejudices of the 700,000 Arabs who now inhabit that ancient land*'.

36. Balfour also admitted, in 1919, that '*So far as Palestine is concerned, the Powers have made no statement of fact which is not admittedly wrong, and no declaration of policy which, at least in the letter, they have not always intended to violate*'. There can hardly be a more conclusive proof of the duplicity and cynicism of the British ruling class of this period.

37. Another major landmark in Britain's betrayal of the Palestinians involved the League of Nations which was established in the aftermath of WWI. The objective of its mandates system over the former territories of Ottoman Empire was to provide 'administrative advice and assistance by a Mandatory until such time as they are able to stand alone'. A document of 24 July 1922, appointed Britain officially as a Mandatory in control of Palestine with the aim of establishing the Jewish national home in accordance with the 1917 Balfour Declaration. This is highly significant because what had been a merely British promise to a group of Zionists became an international instrument and a binding legal obligation.

38. It must be emphasised that the Balfour declaration was incorporated in the Mandate not against the will but, on the contrary, at the insistence of the British government. These terms of the Mandate were in breach of Article 22 of the Covenant of the League of Nations because they were taken against the express wishes of the local population. The Mandate was described as 'a sacred trust of civilisation'. It included an explicit obligation to protect the civil and religious rights of the non-Jewish population in Palestine. Britain utterly failed to protect these rights. It betrayed the 'sacred trust of civilisation' that the world body had assigned to it.

39. The British Mandate was unique. All the other mandates– the French mandates for Syria and Lebanon and the British mandate for Iraq– called on the Mandatory power to prepare the country for self-government. The Palestine mandate was different

precisely because it incorporated the Balfour Declaration. In effect, the Mandatory power was asked to prepare the country not for self-government by the native population, but to prepare it for the benefit of Jews who came from Europe and from anywhere else in the world.

40. As the mandatory power, Britain favoured the Zionists from the very beginning. The first High Commissioner for Palestine was Sir Herbert Samuel, who was both a Jew and an ardent Zionist. Samuel was sent to Palestine not because of—or even despite—his Jewishness, but because he was a Zionist. During his tenure, Britain introduced a series of ordinances that allowed for unrestricted Jewish immigration and Jewish purchase of land which Palestinians had farmed for generations. Moreover, as Sahar Huneidi shows in her book, *A Broken Trust: Herbert Samuel, Zionism and the Palestinians, 1920–1925*, most of the measures Samuel took during his tenure in Palestine—in the political, economic, and administrative spheres—were designed to prepare the ground not just for a Jewish national home but for a fully-fledged Jewish state. The Palestinians demanded restrictions on Jewish immigration and land acquisitions. They also demanded a democratically elected national assembly and a democratic government. All their demands fell on deaf ears.

41. Sir Martin Gilbert, a passionate British Zionist and Churchill's biographer, wrote the following: '*The cornerstone of mandatory policy was to withhold representative institutions so long as there was in Palestine an Arab majority*'. In other words, the Mandatory power's policy was to withhold elections until the Jews became the majority.

42. British rule in Palestine was not only ant-democratic; it was also informed by a distinct undercurrent of racism. Winston Churchill, who served as Colonial Secretary after the war, was one of most fervent champions of the Zionist cause. Here is what he said in evidence to the Royal Commission of Inquiry, headed by Lord Peel, appointed in 1936 to investigate the causes of unrest in Mandatory Palestine:

> *I do not agree that the dog in a manger has the final right to the manger even though he may have lain there for a very long time. I do not admit that right. I do not admit for instance, that a great wrong has been done to the Red Indians of America or the black people of Australia. I do not admit that a wrong has been done to these people by the fact that a stronger race, a higher-grade race, a more worldly-wise race… has come in and taken their place.*

43. Churchill's language is utterly shocking but not all that surprising. Racism usually goes hand in hand with imperialism.

G. THE GREAT ARAB REVOLT

44. The Arab Revolt which broke out in 1936 and which the Peel Commission was sent to investigate, was the result of the comprehensively one-sided policy that Britain had pursued since the beginning of the Mandate. On the ground, in Palestine, the British would not tolerate any resistance. Major General Bernard Montgomery was sent to Palestine to suppress the revolt. When he arrived, his advisers tried to brief him about the background to the rebellion. Montgomery cut them short and gave them a straightforward order: kill all the troublemakers. As a result, the Arab Revolt was suppressed by the British army with the utmost brutality, which included torture, detention without trial, draconian emergency regulations, summary executions, collective punishment, house demolitions, the burning of villages, and aerial bombardment.

45. The Arab Revolt lasted three years, from 1936 to 1939. Palestinian historian Walid Khalidi estimates that the Arab casualties during this period were 5,032 dead and 19,792 wounded. By another estimate, ten percent of the adult male Arab population between 20 and 60 was killed, wounded, imprisoned or exiled. Using brute force, and knowingly breaching the laws of war, the Mandatory power decimated Palestinian society and smashed the nationalist rebellion into the ground.

46. During the revolt the British gave crucial support, training, and arms to the pre-state Zionist militia, the Haganah, and forced the flight into exile of the Grand Mufti of Jerusalem, Haj Amin al-Husseini, the leader of the Palestinian national movement. The revolt not only failed to achieve any of its immediate aims; it had far-reaching consequences for the subsequent course of Palestinian-Zionist conflict over Palestine.

47. Rashid Khalidi, the Palestinian-American historian at Columbia University, has argued that Palestine was lost not in the late 1940s, as is commonly believed, but in the late 1930s. He advances this argument in the chapter on the Palestinians, in the book that Eugene Rogan and present author co-edited under the title *The War for Palestine: Rewriting the History of 1948*. Khalidi's argument is that because of the decisive manner in which Britain crushed the Palestinian resistance in the late 1930s, by the time the struggle for Palestine entered the critical phase in 1947, the Jews were prepared for the fight while the Palestinians lacked the means to defend themselves.

48. In the aftermath of the Second World War, right-wing Zionist militias, the Irgun and the Fighters of the Freedom of Israel, better known as Stern Gang, mounted a

terrorist campaign to drive Britain out of Palestine. As a result, the cost of colonial policing kept escalating. This sapped the will of the Labour government headed by Clement Attlee to continue to discharge its duties as the Mandatory power. In February 1947, the government tossed this hot political potato into the lap of the United Nations, the successor of the League of Nations. It informed the UN of its unilateral decision to terminate the Mandate and to withdraw all its forces from Palestine by 14 May 1948.

H. THE UN PARTITION OF PALESTINE & THE NAKBA

49. On 29 November 1947, the General Assembly of the United Nations voted for the partition of Mandatory Palestine into two states, one Arab and one Jewish. The partition resolution was profoundly unfair to the Arabs: the Jews were less than half of the Arab populations and they owned only seven percent of the land, yet the plan accorded them 55 percent of the territory. The local Arabs, the Arab states, and the Arab League rejected partition as immoral, illegal, and impractical. The Jewish Agency accepted the partition plan although it had reservations about the borders of the proposed Jewish state.

50. It was a tragic situation, at least partly of Britain's own making. On the one hand there was a weak and embattled Palestinian community which had lost so much ground in the previous three decades and whose leaders had been driven into exile. On the other hand, there were the Jews of Europe, in the aftermath of the Nazi Holocaust which claimed the lives of six million victims, in desperate need of a safe haven, a piece of land they could call their own. Britain abstained in the UN vote on the partition plan. It also refused to implement the partition plan on the grounds that it was not acceptable to both sides. Instead of helping the UN to resolve the problem, Britain decided to cut its losses, regardless of the consequences, including the inevitability of a civil war. The manner in which the Mandate ended, without an orderly transfer of power to the inhabitants of the country, was the worst blot on Britain's record as the custodian of the ‘sacred trust of civilisation’.

51. The UN partition resolution was a charter of international legitimacy for a Jewish state, but it was also the signal for the outbreak of a savage civil war in Palestine. This phase of the war, between the two local communities, ended in a Palestinian defeat, the decimation of Palestinian society, the first wave of Palestinian refugees, and the proclamation of the State of Israel on 14 May 1948. The following day, the regular armies of seven Arab states invaded with the declared aim of liberating Palestine. The inter-state phase of the war ended in January 1949 with an Israeli victory and a resounding Arab defeat.

52. There is a debate between traditional Zionist historians and revisionist Israeli historians, or ‘new historians’ of whom I am one, about Britain's role as the Mandate

approached its inglorious end. The standard Zionist rendition of events claims that when Britain withdrew from Palestine, it was not reconciled to the idea of a Jewish state and that it armed and encouraged its Arab allies to invade Palestine upon expiry of the Mandate and to strangle the infant Jewish state at birth.

53. Ilan Pappé, my fellow 'new historian' and I, contest this version of events. We accept that there is a case to be made against British policy towards the end of the Mandate, but the case is not that it tried to suppress a Jewish state, but that it set out and succeeded in aborting the birth of a Palestinian state. Ilan Pappé develops this thesis in his book on *Britain and Palestine Britain and the Arab Israeli Conflict, 1948–1951*. I advance a similar thesis in my book *Collusion across the Jordan: King Abdullah, the Zionist Movement and the Partition of Palestine*. Hostility towards the Palestinians was a constant factor in British policy in 1947-1949. In British eyes a Palestinian state was synonymous with a Mufti state. The Mufti was seen as a renegade who had thrown his lot with Nazi Germany. This was the reason for Britain's refusal to enforce partition and for its decision to leave it to the two sides to fight it out.

54. The Foreign Secretary in the Labour government was Ernest Bevin. His critics claimed that his policy was driven by blind prejudice against Jews. The real key to his policy during this period, however, was Greater Transjordan, to support King Abdullah of Transjordan in his bid to grab the West Bank, the heartland of what was to be the Palestinian state. Abdullah was Britain's client. The commander of his army, the Arab Legion, was an Englishman, Sir John Bagot Glubb, or Glubb Pasha. In the Foreign Office, Abdullah was known as 'Mr Bevin's little king'. Abdullah was, in the phrase of one British official, 'a born land grabber'. So were the Zionists.

55. The first Arab-Israeli war degenerated into a general land grab. The winners were Israel, which in the course of the war increased its territory from the 55% of Palestine assigned by the UN cartographers to 78% of the country, and King Abdullah, who captured and later annexed the West Bank to his kingdom. The losers were the Palestinians. Approximately, 750,000 Palestinians lost their homes and became refugees, and the name Palestine was wiped off the map. This is the Nakba, the catastrophe, but the Nakba is not a one-off event. It's a process that continues to this day with the expansion of Israeli settlements on the West Bank and the ethnic cleansing of Palestinians from the West Bank and East Jerusalem.

I. CONTINUED BRITISH RESPONSIBILITY FOR PALESTINIAN DISPOSSESSION

56. This brief account suggests that Britain's record as the Mandatory power is shameful and indefensible. In Palestine, Britain empowered and enabled a small minority to start the systematic take-over of the country. Britain, in fact, over-fulfilled its promise

to the Zionists. It promised to view with favour the establishment of a national home for the Jewish people in Palestine, but it ended up crushing their opponents and helping them to achieve a fully-fledged state. On the other hand, and by the same token, Britain failed to honour its most minimal responsibilities towards the Palestinian majority. This is a sad story of double standards, broken promises, and betrayals stretching all the way from 1917 to the present day.

57. Given this historical record, one might expect British leaders to hang their head in shame and disavow the toxic legacy of their colonial past. One would also expect Britain to recognise the Palestinian right to independence and statehood. But several prime ministers of both main political parties - Tony Blair, Gordon Brown, Keir Starmer, and David Cameron, Theresa May, Boris Johnson, Liz Truss, and Rishi Sunak - have all displayed staunch support for Israel and utter indifference to Palestinian rights.

58. The Conservative Party and its leaders are the standard-bearers of this shameful legacy of unqualified British support for Israel and indifference to Palestinian rights. Conservative Friends of Israel (CFI) is by far the most powerful pro-Israel lobbying group in Britain, and its membership includes around 80 percent of Tory members of parliament. Since the May 2015 general election, CFI has sent almost 30 delegations with more than 180 Conservatives to visit Israel. The last four leaders of the Conservative Party have been uncritical supporters of the State of Israel. Former Prime Minister David Cameron described himself as a "passionate friend" of Israel and insisted that nothing could break that friendship.

59. Theresa May was probably the most pro-Israeli leader in Europe during her premiership. In an address to CFI in 2016, she described Israel as a "*remarkable country … a thriving democracy, a beacon of tolerance, an engine of enterprise, and an example to the rest of the world*". She spoke of Israel as "*a country where people of all religions and sexualities are free and equal in the eyes of the law*". Rubbing salt in Palestinian wounds, she called the Balfour Declaration '*one of the most important letters in history*', and she promised to celebrate it on the anniversary the following year.

60. In 2017, a petition calling on Mrs May's government to apologise for the Balfour Declaration was signed by 13,637 individuals, including the present writer. The government responded as follows:

> *The Balfour Declaration is an historic statement for which HMG does not intend to apologise. We are proud of our role in creating the state of Israel.*

The declaration was written in a world of competing imperial powers, in the midst of the First World War and in the twilight of the Ottoman Empire. In that context, establishing a homeland for the Jewish people in the land to which they had such strong historical and religious ties was the right and moral thing to do, particularly against the background of centuries of persecution.

Much has happened since 1917. We recognise that the declaration should have called for the protection of political rights of the non-Jewish communities in Palestine, particularly their right to self-determination. However, the important thing now is to look forward and establish security and justice for both Israelis and Palestinians through a lasting peace.

61. May reserved her sharpest criticism for the boycott, divestment and sanctions (BDS) movement, which works to end international support for Israel's oppression of Palestinians and to pressure Israel to comply with international law. BDS is a non-violent, global grassroots campaign whose principal demands - the right of return of 1948 refugees, an end to occupation, and equal rights for Israel's Palestinian citizens - are all grounded in international law. This movement, May stated, "*is wrong, it is unacceptable, and this party and this government will have no truck with those who subscribe to it*".

62. May reminded her audience that Britain was entering a "special time" - the centenary of the Balfour Declaration - and went on to deliver a wholly one-sided verdict on this colonial document: "*It is one of the most important letters in history. It demonstrates Britain's vital role in creating a homeland for the Jewish people. And it is an anniversary we will be marking with pride*." There was no mention of Britain's failure to uphold even the minimal rights of Palestinians.

63. Ardent Zionist though she was, Theresa May could not tolerate her Secretary of State, Priti Patel's clandestine visit to Israel and secret meetings with key officials alongside the CFI. Patel was fired by May in 2017 but would return as Home Secretary in 2019, going on to proscribe Hamas for the first time in British history. Ms Patel is currently shadow Home Secretary.

64. Boris Johnson, who succeeded Mrs May as prime minister, is famous for his mendacity and naked political opportunism. In his 2014 book, *The Churchill Factor*, he wrote that the Balfour Declaration was '*bizarre*', '*a tragically incoherent document*' and

'*an exquisite piece of FO fudgerama*'. In 2015, however, on a trip to Israel as mayor of London, Mr Johnson hailed the Balfour Declaration as '*a great thing*'.

65. In 1917 Arthur Balfour undertook to uphold the civil and religious rights of the native population of Palestine. A century later, the House of Commons added national rights as well, voting in October 2014 - by 274 votes to 12 - to recognise a Palestinian state. Cameron chose to ignore the non-binding vote; at least he was consistent in his passionate attachment to Israel, which is more than can be said about his successor. As with Johnson's approach to any subject, in his attitude towards Palestinian rights, expediency prevailed.

J. 'ANTISEMITISM' & THE IHRA DEFINITION

66. An unbroken thread of moral myopia, hypocrisy, double standards and skulduggery connects British policy on Palestine from Balfour to Boris. The Conservative government's adoption in December 2016 of the IHRA's non-legally-binding working definition of antisemitism falls squarely within this tradition of partisanship on behalf of Zionism and Israel, and disdain for Palestinians. The definition states: "*Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.*"

67. The definition does not mention Israel by name, but no fewer than seven out of the 11 "illustrative examples" that follow concern Israel. They include "*denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour*"; "*applying double standards by requiring of it a behaviour not expected or demanded of any other democratic nation*"; "*drawing comparisons of contemporary Israeli policy to that of the Nazis*"; and "*holding Jews collectively responsible for actions of the state of Israel*".

68. The 11 examples make a series of unwarranted assumptions about Israel and world Jewry. They assume that all Israelis adhere to the notion of Israel as a Jewish state; that Israel is a "democratic nation"; that Israel is not a racist endeavour; and that all Jews condemn the comparison between Israeli policy and that of the Nazis.

69. In fact, Israel is a highly heterogeneous and deeply divided society with a wide range of opinions on all these issues - and a political culture marked by fierce disputes and no-holds-barred debates. Many left-wing Israelis regard Israel as a racist endeavour. B'Tselem, the highly respected Israeli human rights organisation, issued a closely

argued position paper in January 2021 titled "*A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*." It declared: "*The entire area Israel controls between the Jordan River and the Mediterranean Sea is governed by a single regime working to advance and perpetuate the supremacy of one group over another. By geographically, demographically and physically engineering space, the regime enables Jews to live in a contiguous area with full rights, including self-determination, while Palestinians live in separate units and enjoy fewer rights.*"

70. As countless commentators, lawyers and scholars of antisemitism have pointed out, the IHRA working definition is poorly drafted, internally incoherent, hopelessly vague, vulnerable to political abuse, and altogether not fit for purpose. It does not fulfil the most elementary requirement of a definition, which is to define. The definition states that "*antisemitism is a certain perception of Jews*" but fails to spell out what this perception is. In my 54 years as a university teacher, I have not come across a more vacuous or useless definition. Yet, although it is vacuous, it is not innocuous. Kenneth Stern, the lead author of the definition, has rejected its adoption as a campus hate speech code, arguing that it "*will harm not only pro-Palestinian advocates, but also Jewish students and faculty, and the academy itself*".

71. What the non-legally-binding IHRA document does do, with the help of the examples, is shift the focus from real antisemitism to the perfectly respectable and growing phenomenon of anti-Zionism. Anti-Zionism is sometimes described by pro-Israel stakeholders as "the new antisemitism". It is essential, however, to distinguish clearly between the two.

72. Antisemitism may be simply defined as "hostility towards Jews because they are Jews". Zionism, meanwhile, is a nationalist, political ideology that called for the creation of a Jewish state, and now supports the continued existence of Israel as such a state. Anti-Zionism is opposition to the exclusive character of the state of Israel and to Israeli policies, particularly its occupation of the West Bank. Antisemitism relates to Jews anywhere in the world; anti-Zionism relates only to Israel.

73. The IHRA document, taken as a whole, is susceptible to political abuse in that it makes it possible to conflate legitimate anti-Zionism with nefarious antisemitism. Israel's energetic apologists, who were instrumental in promoting the document, conflate the two deliberately and routinely.

74. To criticise the definition for its vacuity is thus to miss a central point. In this endeavour, the definition's very vagueness confers a political advantage. It enables Israel's defenders to weaponise the definition, especially against left-wing

opponents, and to portray what in most cases is valid criticism of Israeli behaviour as the vilification and delegitimisation of the State of Israel.

75. The Labour Party discovered to its cost the divisive and damaging consequences of adopting this document. Initially, the party's code of conduct incorporated five of the IHRA examples verbatim, and an additional two with minor amendments. This did not satisfy Israel's friends either inside or outside the party. The party was bullied by the Jewish Labour Movement, the Board of Deputies of British Jews, the Community Security Trust, and the Campaign Against Antisemitism to adopt all the examples verbatim. Not to adopt all the examples exactly as they stood, it was misleadingly argued, was tantamount to a rejection of the definition. Labour's national executive committee caved in and abandoned its amendments to the remaining two examples. In the Orwellian world of the post-full-adoption Labour Party, many of the members who have been suspended or expelled for the crime of antisemitism were themselves Jewish. Several Jewish Labour Party members have been investigated since 2016, nearly all on the basis of allegations of antisemitism. This made a mockery of the claim of Keir Starmer, who succeeded the allegedly antisemitic Jeremy Corbyn as leader, to be making the Labour Party a safe place for Jews.

76. Under the new regime, the Labour Party is slavishly subservient to the benighted definition. A local Labour Party branch recently tried to submit a motion endorsing a 2023 report by B'Tselem on Israeli apartheid. It said: "*This Branch supports the call from B'Tselem for an end to the apartheid regime to 'ensure human rights, democracy, liberty and equality to all people, Palestinian and Israeli alike, living on the bit of land between the Jordan River and the Mediterranean Sea.'*" The motion was ruled out of order at the national level of the party on the grounds that, according to the IHRA's working definition, this could be seen as designating Israel a "*racist endeavour*".

77. In the rush to burnish its pro-Zionist credentials, the Labour Party turned against some of its most progressive Jewish members. Moshe Machover, the veteran Israeli British anti-Zionist, was expelled and then reinstated in 2017 after the Guardian published a letter of protest undersigned by 139 Labour Party members, including eminent Jewish lawyer Geoffrey Bindman, dismissing the insinuation of antisemitism as "*personally offensive and politically dangerous*".

78. But in 2020, Machover was suspended again. He received a 20-page letter from party bureaucrats containing a melange of old and new allegations of antisemitism, which Machover described as "full of lies" and part of a "Stalinist purge of the Labour Party". He considered resigning and slamming the door behind him but decided to give the party inquisitors a chance to further disgrace themselves by expelling him.

79. The real question is: why did the British government adopt this fundamentally flawed and deeply controversial document? The government cannot claim in self-defence that it had not been warned about the potentially harmful consequences of adoption.

80. It actually rejected calls from the House of Commons Home Affairs Committee to insert two "clarifications" to the IHRA definition and examples: firstly, to clarify that it is not antisemitic to criticise the government of Israel, without additional evidence to suggest antisemitic intent; and secondly, to clarify that "it is not antisemitic to hold the Israeli government to the same standards as other liberal democracies, or to take a particular interest in the Israeli government's policies or actions, without additional evidence to suggest antisemitic intent".

81. The clearest clue that the Conservative government was wedded to the IHRA definition as a means of curtailing debate and restricting free speech on Israel is contained in a letter from Gavin Williamson, secretary of state for education from 2019 to 2021, to university vice chancellors. Sent in October 2020 amid a national crisis of the education sector due to the Covid-19 pandemic, the letter noted that the number of universities that had adopted the IHRA definition remained "*shamefully low*". The universities who ignored it were said to be letting down their staff and students, and their Jewish students in particular.

82. The education secretary insisted that these universities stop dragging their feet and formally endorse the IHRA definition. He threatened to cut off funding to universities at which antisemitic incidents occur and which had not signed up to the definition.

83. Williamson's letter was not well received. He himself came across as authoritarian, while the tone of his missive was arrogant, hectoring and bullying. More worrying, however, was the content. It made no reference to any other form of bigotry, such as Islamophobia, homophobia or anti-Black racism. It did not escape notice that antisemitism was singled out for attention and punishment by a Conservative government that was renowned for its intensely relaxed attitude towards Islamophobia.

84. The letter assumed that universities that did not formally endorse the IHRA definition were not taking antisemitism seriously, which is far from being the case. It did not allow for the fact that most universities have rules and disciplinary

procedures for combatting most forms of discrimination and racism, including antisemitism. Even if a specific definition of antisemitism is needed, which is debatable, no reason was given for privileging the IHRA one. Above all, the letter, or rather the ultimatum, was seen as a threat to free speech, which universities and the Department for Education have a statutory duty to uphold.

85. Israel's friends in the US and Europe have claimed for the definition an international status that it does not have. They pushed hard for the adoption of the definition by as many governments as possible, because it can be used to intimidate critics of Israel and pro-Palestinian campaigners by tarnishing them with the brush of antisemitism. In Britain, the top echelons of the Conservative Party have followed the Israel lobby's lead. Indeed, in the Conservative Party as a whole, the IHRA document seems to have acquired the status of holy writ.

K. CONCLUSION

86. In October 2017, in his capacity as Foreign Secretary, Mr Johnson introduced a debate in the House of Commons on the Balfour Declaration. He repeated the mantra about Britain's pride in the part it played in creating a Jewish state in Palestine. He had the perfect opportunity to balance this with a recognition of Palestine as a state, but he firmly refused, saying the time was not right. During Mr Johnson's premiership, the International Criminal Court decided to open an investigation of war crimes committed in the occupied Palestinian territories. In a letter to the Conservatives Friends of Israel, Mr Johnson wrote that his government respected the independence of the court but that it was opposed to this particular investigation because Israel is a close friend and ally of the United Kingdom. In other words, Israel is above international law and should not be held to account for its crimes against the Palestinian people. The equivocal and lukewarm reception from Keir Starmer and David Lammy towards the recent arrest warrants issued by the ICC for Benjamin Netanyahu and former Defence Minister Yoav Gallant strongly indicates that unstinted support for Zionism is not the exclusive preserve of any political party.

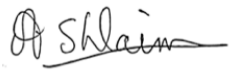
87. It would appear that despite the passage of a century, the colonial mindset of the British political elite is still deeply entrenched. Mrs May, like her World War I predecessors, continued to refer to the Arabs as 'the non-Jewish communities in Palestine'. True, her government acknowledged that the declaration should have protected the political rights of the Arabs of Palestine. But successive British governments have taken no action to promote a two-state solution to the problem they had created. Britain's rulers, like the Bourbon kings of France, have apparently learnt nothing and forgotten nothing in the intervening 107 years.

L. EXPERT OBLIGATIONS

88. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

89. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

90. I confirm that I have not received any remuneration for preparing this report.



Professor Avi Shlaim FBA

Oxford, the United Kingdom

30 November 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

REPORT ON THE 2021 DECISION TO PROSCRIBE HAMAS

BY

PROFESSOR AVI SHLAIM FBA

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to explore the political climate within which the then Home Secretary Priti Patel decided to proscribe Hamas.

B. QUALIFICATIONS

3. I was born in Baghdad on 31 October 1945 to a Jewish family. I have dual nationality, British and Israeli. I went to school in Israel and I served in the Israel Defence Forces ("IDF") between 1964 and 1966.

4. I received three degrees from British universities: a BA in History from Jesus College, Cambridge, in 1969; an MSc in International Relations from the London School of

Economics in 1970; and a PhD from the University of Reading where I remained a lecturer and reader in Politics from 1970 through to 1987.

5. From 1987 through to 2011, I was a Reader and then Professor of International Relations and a Fellow of St Antony's College, Oxford. I served two three-year terms as Director of Graduate Studies in International Relations.

6. I am an Emeritus Fellow of St Antony's College and an Emeritus Professor in International Relations at the University of Oxford. I was elected Fellow of the British Academy in 2006 and was awarded a British Academy Medal for Lifetime Achievement in 2017.

7. I am a historian, my academic expertise is mainly on the international relations of the Middle East, and my principal research interest is the Arab-Israeli conflict.

8. My books on the Middle East include

   - *Collusion across the Jordan: King Abdullah, the Zionist Movement, and the Partition of Palestine* (1988);
   - *War and Peace in the Middle East: A Concise History* (1995);
   - *Lion of Jordan: The Life of King Hussein in War and Peace* (2007); and
   - *Israel and Palestine: Reappraisals, Revisions, Refutations* (2009);
   - *The Iron Wall: Israel and the Arab World* (first edition 2000; updated second edition 2014).

9. My most recently published book is *Three Worlds: Memoirs of an Arab-Jew* (2023). This book was awarded the PEN Hessell-Tiltman Prize 2024.

10. I have co-edited the following books: *The Cold War and the Middle East* (1997); *The War for Palestine: Rewriting the History of 1948* (2001, second edition 2007); and *The 1967 Arab-Israeli War: Origins and Consequences* (2012).

11. I have published a large number of scholarly articles and countless newspaper articles. I am also a frequent contributor to newspapers and a commentator on radio and television on Middle Eastern affairs.

12. In order to provide more comprehensive details, I attach both my short form curriculum vitae and my long form curriculum vitae.

C. TERRORISM LAWS, THE UK PROSCRIPTION OF HAMAS AND PROSCRIPTION OF NGOS IN ISRAEL

13. On November 26th, 2021, the former Home Secretary Priti Patel announced that Hamas was to be proscribed as a terrorist organisation in the UK.[1] The military wing of the group was proscribed back in March 2001. Twenty years on, she extended this ban to the political wing by arguing, unconvincingly, that the distinction between the two wings was no longer tenable. The truth of the matter is that the distinction was tenable in 2001 and it is still tenable today. What is more, it is a crucial distinction that even the British government recognised as late as June 2020 when then Minister James Brokenshire stated that there was a "clear distinction between Hamas's political and military wings" with the government's aim being "to proscribe only those parts of Hamas which are directly concerned in terrorism.[2]" In February 2021, Lord Ahmad responded to a parliamentary question that the government was "supportive of Hamas-Fatah reconciliation attempts."[3] The line was repeated by then Foreign Secretary James Cleverly the following month.[4] Just four days before Ms Patel's announcement, Mr

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[1] https://www.gov.uk/government/news/islamist-terrorist-group-hamas-banned-in-the-uk
All online references accessed 14th November 2024.

[2] https://questions-statements.parliament.uk/written-questions/detail/2020-06-10/58078

[3] https://questions-statements.parliament.uk/written-questions/detail/2021-01-18/hl12261

[4] https://questions-statements.parliament.uk/written-questions/detail/2021-02-22/156361

Cleverly reiterated the long-standing British government line when asked about the distinction: "*Hamas' military wing has been proscribed as a terrorist organisation by the UK since 2001 and the UK maintains a no contact policy with Hamas in its entirety.*"[5]

14. Ms Patel's announcement came soon after Benny Gantz, Israel's defence minister, designated six Palestinian human rights and social services NGOs as terrorist organisations.[6] This designation came close on the heels of the decision by the International Criminal Court to launch a full-scale investigation of war crimes committed in the occupied Palestinian territories. Gantz was IDF's chief of staff during its assault on Gaza in in July 2014 in which 2,251 Palestinians were killed of whom 1,462 were civilians. The civilian casualties included 551 children.[7] This made Gantz a prime suspect in the ICC's war crimes probe launched in March of 2021. Hamas agreed to cooperate with the ICC investigation; Israel refused.

15. Some of the Palestinian organisations placed on Israel's terrorist list cooperated with the ICC investigation. Although the evidence produced by Israel was judged inadequate by the European Union and the US government, the terrorism label achieved its goal of stigmatising the NGOs, curbing their ability to raise funds, and disrupting their operations. The Israeli move was widely condemned as an attack on human rights. The British Home Secretary was not among the protesters.

16. At a deeper level, the shift in British policy was a product of the close ties between Israel and the Conservative Party. Israel and its powerful lobby had been pressing the British government on this issue for some time. Prime Minister Naftali Bennett urged Boris Johnson to outlaw the whole of Hamas when he met with him earlier that month at the UN climate conference in Glasgow.[8] Indeed, on the very date that Ms Patel announced her intention to proscribe Hamas, the then Israeli Minister for Foreign Affairs Yair Lapid stated that the move was "*the conclusion of an intimate and successful dialogue between Israel and the United Kingdom led by the Ministry of Foreign Affairs, the security services, and our*

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[5] https://questions-statements.parliament.uk/written-questions/detail/2021-11-08/71290

[6] https://www.aljazeera.com/news/2021/10/23/palestinian-ngos-designated-as-terrorist-call-for-support

[7] Report of the detailed findings of the Commission of Inquiry on the 2014 Gaza Conflict A/HRC/29/CRP.4, paragraph 574. Available at **https://www.ohchr.org/en/hr-bodies/hrc/co-i-gaza-conflict/report-co-i-gaza#report**

[8] https://cufi.org/issue/uk-to-label-entirety-of-hamas-as-a-terrorist-organization/

Embassy in London led by Ambassador Tzipi Hotovely, and we thank the British government for their fruitful cooperation on this issue as well."[9]

[10]

17. Ms Patel shared with Boris Johnson a Manichean view of the Middle East struggle in which Israel represents the forces of light and Palestinian Hamas the forces of darkness. The reality is slightly more complicated.

18. Reactions to Ms Patel's announcement were predictably polarised. A Hamas official said that it showed *"absolute bias towards the Israeli occupation and is a submission to Israeli blackmail and dictations"*.[11] He accused the UK of supporting *"the aggressors at the expense of the victims"*. The Board of Deputies of British Jews warmly welcomed the move.[12] In the Israeli media the British decision was hailed as a triumph for Israeli diplomacy.

19. In the parliamentary debate that followed, Alyn Smith from the Scottish National Party expressed concern that a "full impact assessment" had not been produced for the Order as no, or no significant, impact on the private, charitable, voluntary or public sector was foreseen.[13] Mr smyth questioned the logic of this considering how engrained Hamas was in the fabric of Gazan society, it being the civil administration in the area.

20. Priti Patel needed no prompting to do Israel's bidding. In August 2017, as Secretary of State for International Development, she went on a freelance trip to Israel accompanied by Lord Polak, president of Conservative Friends of Israel (CFI). She had previously served as an officer for the CFI'S Parliamentary group between 2011 and 2014.[14] While pretending to be on a private holiday, Ms Patel held a series of secret meetings with high-ranking Israeli officials, including the then Prime Minister Benjamin Netanyahu, the then Director-General of the Israeli Ministry of Foreign Affairs Yuval Rotem, and the

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[9] https://www.gov.il/en/pages/fm-lapid-s-response-to-anticipated-uk-decision-to-declare-all-wings-of-hamas-as-a-terrorist-organization

[11] https://www.euronews.com/2021/11/19/britain-palestinians-hamas

[12] https://bod.org.uk/bod-news/board-of-deputies-welcomes-hamas-proscription/

[13] https://hansard.parliament.uk/commons/2021-11-24/debates/575EBB10-93BA-4D8C-8806-7504B5200AF2/PreventionAndSuppressionOfTerrorism

[14] https://web.archive.org/web/20110213050005/https://cfoi.co.uk/aboutcfi/

former Israeli permanent representative to the United Nations Gilad Erdan. The meeting with Erdan was particularly significant given he went on to head anti-BDS efforts in Israel.[15] Upon her return she asked her officials to explore the possibility of diverting some of the foreign aid budget to enable the Israeli army to carry out humanitarian work.[16] This was intended for the military field hospital she had visited on her trip in the occupied Golan Heights.[17] She was fired by Theresa May for lying about the nature and purpose of her visit.

21. Lord Polak, Patel's companion on this now infamous trip, is worth a closer look. On entering the House of Lords in 2015, having served as CFI director for more than 25 years, he declared: "*The Prime Minister [David Cameron] has given me a once in a lifetime opportunity...which will enable me to continue to advocate for Israel*."[18] In 2022 he boasted again that he had been personally instructed by Cameron to "*stand up for Israel*."[19] His sense of "standing up for Israel" can be gleaned from the CFI's relationship to Elbit Systems, the Israeli arms manufacturer. In 2012, Lt. Gen Applegate, Elbit's chairman, boasted to undercover reporters from the Times that he had used '*discreet*' Israeli lobbying links with the CFI to have access to "*anyone from the Prime Minister down*" and to secure £500m for Elbit.[20]

22. In 2019, Conservative Baroness Sayeeda Warsi commented on Twitter that in light of how Ms Patel had been forced to resign over unofficial meetings with Israeli officials two years earlier, her then appointment as Home Secretary which placed her in charge of national security was "a disturbing appointment at a critical time for the Middle East"[21]. Ms Patel's decision to proscribe Hamas in furtherance of Israeli policy regardless of the facts suggests that Baroness Warsi's warning should have been heeded.

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15 https://www.timesofisrael.com/minister-in-charge-of-combating-bds-calls-for-airbnb-boycott/

16 https://www.independent.co.uk/news/uk/politics/priti-patel-israel-army-idf-foreign-aid-money-british-holiday-meetings-netanyahu-international-development-a8041716.html

17 https://www.haaretz.com/world-news/europe/2017-11-08/ty-article/.premium/embattled-british-minister-breached-protocol-by-visiting-golan-heights/0000017f-e6d0-dc7e-adff-f6fd959b0000

18 https://cfoi.co.uk/stuart-polak-cbe-to-become-cfis-honorary-president/

19 https://www.youtube.com/watch?v=JyAtUgGrApE&t=95s; 16:00

20 https://www.thetimes.com/article/secret-campaign-secured-pound500m-8jdswmsd8tj

21 https://twitter.com/SayeedaWarsi/status/1154088420895055873

23. Close contact with Israeli officials and lobbyists for Israel in the UK as well as her own right-wing worldview left Ms Patel eager to swallow Israel's narrative about Hamas. This narrative is utterly distorted and blatantly self-serving. Here, however, are some of the relevant facts.

D. BACKGROUND TO HAMAS AND VIOLENCE

24. Hamas emerged in 1988, at the beginning of the first Palestinian intifada (uprising) against Israel's occupation of the West Bank and the Gaza Strip. Originally, it had a dual purpose of carrying out an armed struggle against Israel and delivering social welfare programmes.

25. Its Charter defined historic Palestine, including present-day Israel, as an exclusively Islamic land and ruled out any permanent peace with the Jewish state. It is a little-known fact that despite Hamas's hostility towards Israel, and the crude anti-Semitic language of its Charter regarding Jews as a people, Israel helped the Islamic organisation in its early stages, seeing it as a useful counterweight to the secular nationalism of the PLO.[22]

26. Tacit Israeli support for Hamas ended when its military wing—the Izzedine al-Qassam Brigades—began to wage armed struggle against the occupation. Initially, this took the form of firing rockets from the Gaza Strip on Israeli towns and civilian centres. In the public eye, however, Hamas became associated with the suicide bombings it carried out inside Israel.

27. This deliberate targeting of civilians was despicable and deplorable. It amounted to the use of force against civilians for political purposes—the very definition of terrorism. Yet the term "suicide bombing" came to stand in the public eye as a particularly horrific form of warfare. Suicide bombings are in the end a means of delivering bombs to their target. Judged solely by lethal outcome, they are no more horrific than a one-tonne bomb dropped by an Israeli F-16 warplane on a residential apartment block in Gaza.

[22] 'Hamas: Background and Issues for Congress', Congressional Research Service Report, p.38. https://crsreports.congress.gov/product/pdf/R/R41514

28. Regardless of the means of delivery, killing civilians is wrong. Period. In 2004, the political leadership of Hamas made a strategic decision to end suicide bombings—not because they were morally wrong but because they were counterproductive.[23]

E. THE POLITICAL LEGITIMACY OF HAMAS

29. Following Israel's unilateral withdrawal from Gaza in August 2005, Hamas began to engage in the internal Palestinian political process, running against the mainstream Fatah party which dominated the Palestinian Authority. From its seat in Ramallah, the PA's ruled both the West Bank and the Gaza Strip. Fatah was widely perceived as corrupt and inefficient and as a sub-contractor for Israeli security in the occupied territories. Hamas, by contrast, had a reputation for probity in public life as well a record of real resistance to the Israeli occupation.

30. In January 2006, after winning an absolute majority in a free and fair election, Hamas formed a new government. Israel refused to recognise a Hamas-led government. So did the United States and European Union. In theory they favoured democracy but when the people voted for the wrong bunch of politicians, Israel and its Western allies resorted to severe diplomatic and economic sanctions to undermine a democratically elected Palestinian government.

31. In March 2007, in a moment of statesmanship which held great promise, Hamas formed a national unity government together with its arch-rival Fatah. This government proposed direct talks with Israel on a long-term ceasefire of twenty or more years. Israel refused to negotiate, plotting instead to drive Hamas out of power and replace it with a collaborationist Fatah regime.

32. Details of the plot are contained in "The Palestine Papers", the cache of 1,600 diplomatic documents leaked to Al Jazeera and the Guardian. The papers include the minutes of the ultra-secret quadripartite "Gaza Security Committee". The members of this committee were Israel, the United States, Egypt, and Fatah. Its aim was to undermine the national unity government, isolate and weaken Hamas, and prepare Fatah for military confrontation with Hamas. In short, the allies planned a coup d'état to overthrow Hamas.[24]

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[23] https://www.theguardian.com/world/2006/apr/09/israel

[24] http://www.ajtransparency.com/en/projects/thepalestinepapers/20121823365500785.html

33. Hamas pre-empted this coup with a violent seizure of power in Gaza in June 2007, driving out the pro-Fatah forces. Israel reacted by imposing a blockade of the Gaza Strip, which is still in force today after 17 years. The blockade caused the collapse of the economy, high unemployment, acute shortages of water, food, fuel, electricity, and medicines, and horrendous suffering by the overcrowded strip's two million inhabitants. A blockade is a form of collective punishment which is proscribed by international law, yet the international community failed to call Israel to account.

F. THE UK AND ISRAEL

34. True friends do not indulge their friends' addiction but try to wean them from it. Boris Johnson as Prime Minister, on the other hand, could hardly have been more indulgent. His partisanship extended to resisting all international attempts to call Israel to account for its acts of aggression and unlawful behaviour. He opposed, for example, the International Criminal Court investigation into alleged war crimes in the occupied Palestinian territories.[25]

35. In a letter to the Conservative Friends of Israel in April 2021, he said that while his government had respect for the independence of the court, it opposed this particular inquiry. "*This investigation gives the impression of being a partial and prejudicial attack on a friend and ally of the UK's*", he wrote.[26] The perverse logic of the statement is that being a friend and ally of the United Kingdom places Israel above international law and beyond international scrutiny.

36. Priti Patel claimed that designating the whole of Hamas as a terrorist organisation was to be seen through a domestic prism: it helped protect Jews in this country. This is preposterous: Hamas exercises its right under international law to resist the Israeli occupation, the most prolonged and brutal military occupation of modern times. Fearmongering and criminalising the political wing of Hamas does not make British Jews any safer.

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[25] Holmes O (2021) *ICC rules it can investigate alleged war crimes in Palestine despite Israeli objections,* The Guardian, https://www.theguardian.com/law/2021/feb/05/icc-rules-it-can-investigate-war-crimes-in-palestine-despite-israeli-objections

[26] Conservative Friends of Israel (2021) Post on X, CFoI X Account, https://x.com/CFoI/status/1382057470810587141

37. Hostilities between the military wing of Hamas and Israel make British Jews less safe rather than safer. In May of 2021, in a massively disproportionate use of force, Israel carried out an aerial bombardment of Gaza that resulted in the death of 256 Palestinians, including 66 children. The Security Community Trust, a charity concerned with the safety and security of Jews in the UK, recorded a "horrific surge" in racist attacks during that month which "surpassed anything we have seen before". The CST noted that the spike in antisemitic incidents was fuelled by reactions to the escalation of violence between Israel and Gaza. This has been mirrored since October 7 with the CST reporting 1978 instances of Jewish hate in the first half of 2024 alone.[27]

38. If the British government genuinely wants to make Jews in this country feel safer, it should stop blaming the Palestinian victims for their own misfortunes and adopt a more even-handed position. Rather than blaming the victims, it should urge its Israeli ally to respect international humanitarian law, to observe ceasefire agreements, to exercise restraint in the use of military force, and to talk to the political leadership of Hamas.

39. Priti Patel's move in 2021 only served to expose the utter bankruptcy of the Conservative government's policy towards Israel-Palestine. That government, as well as the current Labour government, claimed to support a two-state solution to the conflict. Yet despite repeated parliamentary votes in favour of recognising Palestine, they refused to budge. When he was foreign secretary Boris Johnson told the House of Commons that the Conservative government would recognise Palestine when the time was right. In June 2024 Keir Starmer delayed recognition stating it needed to be part of a 'process'.[28] The time will never be right. Timing is just an excuse to procrastinate while continuing to appease Israel.

G. EXPERT OBLIGATIONS

40. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

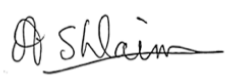
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[27] https://cst.org.uk/data/file/e/d/Antisemitic%20Incidents%20Report%20Jan-June%202024.1722863477.pdf

[28] https://www.thetimes.com/uk/politics/article/keir-starmer-recognise-palestine-state-labour-xw6cd67mb

41. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

42. I confirm that I have not received any remuneration for preparing this report.



Professor Avi Shlaim FBA

Oxford, the United Kingdom

1 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON ISRAEL'S "RIGHT TO EXIST"

BY

PROFESSOR AVI SHLAIM FBA

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. One of the preconditions the British government often provides for engaging with Hamas is that it recognises Israel's 'right to exist'. The purpose of this report is to demonstrate that no such right exists under international law and that since 1967, Israel has politicised and weaponised the phrase to obstruct peace talks and smear those who refuse to recognise the 'right' as antisemitic. I give this Report in my personal capacity.

B. QUALIFICATIONS

3. I was born in Baghdad on 31 October 1945 to a Jewish family. I have dual nationality, British and Israeli. I went to school in Israel and I served in the Israel Defence Force ("IDF") between 1964 and 1966.

4. I received three degrees from British universities. I graduated from Jesus College, Cambridge in 1969 after which I obtained a Masters in Economics the following year from the London School of Economics. I finally read my PhD at the University of Reading where I remained a lecturer and reader in politics from 1970 through to 1987.

5. From 1987 through to 1996, I held the Alastair Buchan Reader position at St Anthony's College, Oxford, which time I also became the director of graduate studies – continuing that latter role until 2001.

6. I am an Emeritus Fellow of St Antony's College and an Emeritus Professor in International Relations at the University of Oxford. I was elected Fellow of the British Academy in 2006 and was awarded a British Academy Medal for Lifetime Achievement in 2017.

7. I am a historian and my academic expertise is mainly on the international relations of the Middle East and my main research interest is the Arab-Israeli conflict.

8. My books on the Middle East include

   - *Collusion across the Jordan: King Abdullah, the Zionist Movement, and the Partition of Palestine* (1988);
   - *War and Peace in the Middle East: A Concise History* (1995);
   - *Lion of Jordan: The Life of King Hussein in War and Peace* (2007); and
   - *Israel and Palestine: Reappraisals, Revisions, Refutations* (2009);
   - *The Iron Wall: Israel and the Arab World* (first edition 2000; updated second edition 2014).

9. My most recently published book is *Three Worlds: Memoirs of an Arab-Jew* (2023).

10. I have co-edited the following books: *The Cold War and the Middle East* (1997); *The War for Palestine: Rewriting the History of 1948* (2001, second edition 2007); and *The 1967 Arab-Israeli War: Origins and Consequences* (2012).

11. I have also published a number of scholarly articles and countless newspaper articles. I am also a frequent contributor to newspapers and a commentator on radio and television on Middle Eastern affairs.

12. In order to provide more comprehensive details, I attach both my short form curriculum vitae and my long form curriculum vitae.

C. THE RIGHT TO EXIST

13. No nation has a 'right to exist' under international law and Israel is no exception. Israel's 'right to exist' is not a legal right but an ideological and emotionally loaded catch phrase. Ultimately, what matters is not the ethical question upon which there are opposing points of view, but the fact that Israel undoubtedly does exist. For that reason alone, it has exactly the same obligations concerning territory, aggression, the laws of war, military occupation, human rights etc as any other state. The key issue is the extent to which it violates them. Reasoned debate about this is within the ambit of lawful free speech.

14. One of the preconditions the British government has placed on engaging with Hamas is that it recognises Israel's 'right to exist'. Not only is there no such right under international law but the phrase has been politicised and manipulated since 1967 to smear and marginalise those who refuse to do so as antisemitic, not just Hamas but even ordinary British citizens resident in the UK. I will try to place Israel's 'right to exist' in its proper historical perspective.

D. BACKGROUND

15. On 29 November 1947, the United Nations voted in favour of the partition of mandatory Palestine into two states: one Jewish, one Arab. The Jews accepted partition; the Arabs went to war to nullify it. In the course of the 1948 war, the Jewish state extended its territory from the 55 percent granted by the UN to 78 percent of mandatory Palestine. The West Bank was captured and later annexed by Transjordan, 730,000 Palestinians became refugees, and the name Palestine was wiped off the map. After the end of hostilities Israel signed, in 1949, armistice agreements with Lebanon, Syria, Jordan, and Egypt. These are the only internationally recognised borders that Israel has ever had. On the legitimacy of Israel within these borders, however, there were conflicting opinions. Israel's critics saw it as an outpost of European colonialism, a usurping entity, and a racist project. In their eyes, the State of Israel had no legitimacy in any shape or form. In the eyes of the rest of the international community, however, Israel enjoyed legitimacy within its 1949 borders.

16. The June 1967 war changed the situation fundamentally. In the course of the war, Israel captured the Golan Heights from Syria, the West Bank from Jordan, and the Sinai Peninsula from Egypt. In the immediate aftermath of the war, Israel began to build civilian settlements on occupied Arab land in flagrant violation of the 4th Geneva Convention. Most of Israel's actions in the aftermath of the war were illegal. The annexation of Jerusalem was illegal, the annexation of the Golan Heights was illegal, and all the settlements are illegal. The blockade of Gaza, which Israel imposed in 2007 and which is still in force today, is illegal. It is a form of collective punishment which is proscribed by international law. In 1979 Israel returned the Sinai Peninsula to Egypt as the price for a peace treaty; in 1994 it signed a peace treaty with Jordan, and in 2005 it withdrew unilaterally from the Gaza Strip before re-entering it in October 2023 where it remains today. But the creeping annexation of the West Bank continues to this day.

17. Israeli governments have done their best to obliterate the Green Line (the old international border) on the West Bank and to treat the settlement blocs as part of the State of Israel. This called into question Israel's legitimacy. For Israel's radical critics this made little difference: Israel remained an illegitimate, violent, usurping entity. On the other hand, many of Israel's supporters, including liberal Israelis and Jews elsewhere, made a distinction between Israel within its 1949 borders which they consider legitimate, and the Zionist colonial project beyond the Green Line which they regard as illegitimate.

E. ISRAEL'S RIGHT TO EXIST

18. The notion of Israel's 'right to exist' thus became much more problematic in the post-1967 era. In the 1970s Israeli spokesmen insisted on this right ever more vociferously in the context of mounting criticism of the illegal occupation. On becoming prime minister Likud leader Menachem Begin stated in the Knesset 'Our very existence per se is our right to exist'. Despite this common sense position, Israel's spokesmen continued to insist that Israel's right to exist had to be acknowledged unambiguously by its opponents and that denial of this right was proof of antisemitism. Dwelling on Israel's right to exist served to divert attention from mounting international opposition to its illegal occupation and from the ever louder calls to grant the Palestinians equal rights. The truth of the matter is that it was not the Palestinians who were delegitimising Israel but the Israeli government which sponsored the occupation and violated the human rights of the Palestinians under its military rule.

19. Israel depicted the PLO as a terrorist organisation that denied its right to exist. This was certainly true of the 1968 Palestinian National Charter. But the PLO gradually moderated its political programme. In 1988, the Palestinian National Council voted to recognise Israel's right to exist, to accept all UN resolutions relating to the Israeli-Palestinian conflict going back to the 1947 partition resolution, and to renounce the armed struggle. Despite these moves, Israel's rejection of the PLO remained absolute rather than conditional. Consequently, no negotiations could take place for a peaceful resolution of the conflict.

20. On 13 September 1993, Israel and the PLO signed the Oslo Accord. This was a historic breakthrough, the first agreement between the two principal parties to the conflict. Mutual rejection was replaced by mutual recognition. The accord boosted Israel's legitimacy on the international stage and resulted in the award of the Nobel peace prize for its architects. But the terms of the agreement reflected the power relations between the two parties. The PLO explicitly recognised Israel's right to exist. The Israeli government, however, only recognised the PLO as the representative of the Palestinian people. Israel most definitely did not acknowledge that the Palestinian people have a right to national self-determination. In the Oslo Accord there is no mention, let alone a promise, of a Palestinian state. The Oslo peace process broke down (in my view primarily because of the relentless expansion of Israeli settlements on the West Bank) but one thing did not change: Israel's denial of the Palestinian right to independence and statehood.

F. CITIZENSHIP IN ISRAEL

21. The Labour Party accepted in principle the idea of a two-state solution to the conflict but the terms it offered fell short of the minimal Palestinian demands. The right-wing Likud Party, on the other hand, has consistently rejected the idea of an independent Palestinian state. It is a proponent of Greater Israel and therefore of the doctrine of permanent conflict. Its ideology maintains that the Jewish people have an exclusive right to sovereignty over Judea and Samaria (the Biblical names for the West Bank). The Likud was willing to put this claim in abeyance during peace negotiations but never abandoned it.

22. Both Labour and Likud are vociferous in their call for Arab recognition of Israel's right to exist, but they are curiously reluctant to acknowledge it when it happens. In 2002, to give one striking example, the Arab League unanimously adopted the Arab Peace Initiative at their Beirut summit. This plan called for formal peace agreements and full normalisation with all 22 members of the league in return for Israeli withdrawal from the territories occupied in June 1967. The resolution made it clear that the Arab states, individually and collectively, were ready to pay the price for peace not only by recognising Israel as a legitimate state in the area but also to normalise relations with it. Israel's response to this brave initiative was a resounding silence.

23. In 2007 Israel changed its conditions for negotiating a peace settlement with the Palestinian Authority. Previously, it used to insist that the Palestinians recognise Israel's right to exist. From now on it insisted that they recognise Israel's right to exist as a Jewish state. This demand is completely preposterous: diplomatic recognition is of a regime that rules over a clearly demarcated geographical area; it has nothing to do with the political or religious make up of state being recognised. Furthermore, the demand ignores the fact that a fifth of the citizens within Israel's pre-1967 borders are Palestinians and that they cannot possibly be expected to go along with it. Israel introduced this bizarre condition in the certain knowledge that it would be rejected. It was a non-starter designed to derail the negotiations. The purpose of the ploy was to place an insurmountable hurdle and to shift the responsibility for the ensuing diplomatic deadlock from Israel's leaders to the Palestinian Authority.

G. THE DEMAND OF RECOGNITION

24. During the premiership of Benjamin Netanyahu, from 2009 to 2021, the demand of Palestinian recognition of Israel as a Jewish state became deeply entrenched. This demand served, as it was intended, to preclude the possibility of meaningful peace negotiations with the Palestinians. Although Netanyahu is the secular leader of a secular

party, he ramped up the rhetoric about the imperative of preserving the Jewish character of the State of Israel. He also weaponised antisemitism in his campaign to discredit critics of Israeli state policies.

25. Netanyahu's principal target was BDS, the campaign for Boycott, Divestment, and Sanctions. He denounced it hysterically as antisemitic and as an existential threat to Israel. His frequently repeated but unsupported claim was that BDS denied Israel's right to exist. The reality is that BDS is a global, grassroot, non-violent movement whose objectives are grounded in international law. Its principal objectives are an end to the occupation of Palestinian lands, equal rights for the Palestinian citizens of Israel, and the right of return of the 1948 refugees.

26. In the campaign against BDS, the very definition of antisemitism has been expanded to include all types of anti-Zionism. A dangerous dynamic was thus set in motion. The worse Israel behaves towards the Palestinians, the greater is the popular appeal of BDS, and the more ferocious become Israel's attempts to delegitimise it. Israel describes its campaign against BDS as an effort to 'delegitimise the delegitimisers'. This glib phrase overlooks the part that its own malpractices and serial war crimes play in turning the country into an international pariah.

H. ISRAEL AS AN APARTHEID REGIME

27. Israel prides itself on being both a Jewish and a democratic state. This is clearly stated in the 1992 Basic Law. Pre-1967 Israel was a democracy, a flawed democracy to be sure but so are most democracies. There was a whole raft of legislation which discriminated against the Palestinian citizens of the country. Nevertheless, it was a procedural democracy with universal franchise, political parties, and elections. On the other hand, Israel plus the occupied territories is most emphatically not a democracy. It is an ethnocracy: a system of government in which one ethnic group dominates the other. There is another word for such a system of government– apartheid.

28. The claim that Israel is an apartheid state is hotly disputed but it is a fact. At least, that was the conclusion reached by B'Tselem, the highly respected Israeli human rights organisation. Until recently B'Teselem's reports used to focus on Israeli human rights violations in the occupied Palestinian territories. A point was reached, however, when Israeli practices and policies in the occupied territories could no longer be considered

separately from the regime in Israel proper. In January 2021, B'Tselem issued a closely argued position paper entitled 'A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid'.[1]

It declared: *'The entire area Israel controls between the Jordan River and the Mediterranean Sea is governed by a single regime working to advance and perpetuate the supremacy of one group over another. By geographically, demographically and physically engineering space, the regime enables Jews to live in a contiguous area with full rights, including self-determination, while Palestinians live in separate units and enjoy fewer rights'.*

29. If one accepts this report as a fair and objective description of the state of affairs in Israel/ Palestine, as I do, the whole debate about Israel's so-called right to exist becomes an irrelevance, a red herring. The report made it clear what ought to be clear in any case to any fair-minded observer, namely, that we are not dealing here with a 'conflict' between two equal parties but a most acute asymmetry of power between oppressors and oppressed, occupiers and occupied, abusers and victims.

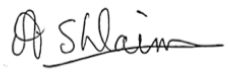
I. EXPERT OBLIGATIONS

30. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

31. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

32. I confirm that I have not received any remuneration for preparing this report.

[1] https://www.btselem.org/publications/fulltext/202101_this_is_apartheid



Professor Avi Shlaim FBA

Oxford, the United Kingdom

26 November 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

HARAKAT AL-MUQAWWAMAH AL-ISLAMIYYAH	**Applicant**
-and-	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

REPORT ON ISRAEL'S 'RIGHT TO EXIST'

Professor John Dugard SC

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawwamah al-Islamiyyah ('Hamas').

2. One of the preconditions the British government often provides for engaging with Hamas is that it recognises Israel's 'right to exist'. The purpose of this report is to demonstrate that no such right exists under international law and that no adverse consequences should flow from Hamas' refusal to recognise the same.

B. QUALIFICATIONS

3. I give this Report in my personal capacity.

4. I am an advocate of the High Court of South Africa. I was appointed as Senior Counsel (equivalent of King's Counsel) by President Mandela in 1998. I am an Associate Tenant of Doughty Street Chambers, London. I practice as a private legal consultant on matters of international law in The Hague, Netherlands.

5. I was Professor of Law at the University of the Witwatersrand, Johannesburg, for 33 years and Dean of the Faculty of Law of that University from 1975 to 1977. From 1978 to 1990 I directed the Centre for Applied Legal Studies attached to the University of the Witwatersrand which conducted research, litigation and advocacy in the field of human rights in apartheid South Africa. I was Professor of International Law at the University of Leiden, Netherlands, from 1998 to 2006.

6. I was a Visiting Professor of Law and Director of the Lauterpacht Centre for International Law at the University of Cambridge from 1995 to 1997. I hold the LLB and LLD degrees of that University.

7. I was a member of the United Nations International Law Commission from 1997 to 2011.

8. I served intermittently as Judge *ad hoc* of the International Court of Justice from 2000 to 2018.

9. I have written extensively in the field of international law, human rights and apartheid. My publications include *Dugard's International Law. A South African Perspective,* 5th ed, Juta, Cape Town, 2018; *Human Rights and the South African Legal Order,* Princeton University Press, 1978; *Recognition and the United Nations,* Grotius, Cambridge, 1987; *The Secession of States and their Recognition,* Hague Academy, 2013; *Confronting Apartheid. A Personal History of South Africa, Namibia and Palestine,* Jacana, 2018.

10. I was United Nations Special Rapporteur on the Situation of Human Rights in the Occupied Palestinian Territories from 2001 to 2008. I have chaired two international Commissions of Inquiry into violations of human rights and international humanitarian law in occupied Palestine: the first in 2001; the second in 2009. I have written a number of articles in scholarly journals on the situation in occupied Palestine.

11. I have read Practice Directions 345 and I believe that I comply with the qualifications required of an independent expert.

12. In writing the present Report I have relied principally on:

    V Kattan, *From Co-Existence to Conquest. International Law and the Origins of the Arab-Israeli Conflict,* Pluto Press 2009;
    J Quigley *The Statehood of Palestine. International Law in The Middle East Conflict,* Cambridge University Press, 2010;
    J Dugard, *Confronting Apartheid. A Personal History of South Africa, Namibia and Palestine,* Jacana, 2018.

C. THE LEGALITY OF THE CREATION OF THE STATE OF ISRAEL

13. The right of a State to exist is not a concept recognized by international law. It is not recognized in any treaty, in customary international law or in legal literature. Accordingly, the 1949 Draft Articles of the International Law Commission on Rights and Duties of States make no mention of such a right.

    See Yearbook of the International Law Commission, 1949;
    General Assembly Resolution 375 (IV) of 6 December, 1949.

14. A State has a right to its territorial integrity and political independence and not to be forcibly attacked by another State.

    See Article 2(4) of the UN Charter.

    This, however, is not a right to exist. A State may cease to exist by dissolution (as in the cases of Yugoslavia and Czechoslovakia), union with another State (as with West and East Germany), or by incorporation into another State (as with Somaliland into Somalia, 1960) without any suggestion that a right has been violated.

15. States do not come into existence in the exercise of a right. Instead they come into existence when they are recognized as a State by other States or when they are admitted to membership of the United Nations. That there is no right to exist as a State is demonstrated by the fact that a State may be recognized as a State by some States but not by others. Consequently it is a State for those States that recognize it but not for States that do not recognize it. Palestine, for instance is a recognized as a State by 146 States but its statehood is disputed by those States that do not recognize it. So too with Kosovo that is recognized by some 100 States. Neither of these States is a member of the United Nations which has refused to admit them to membership.

16. Both the decision of States to recognize an entity as a State and the decision of the United Nations to admit a State to membership (and thereby confirm its statehood) are based on political grounds. Legal standards guide States in making such decisions but in the final resort political considerations prevail. There is no right to recognition or to membership of the United Nations. In other words there is no right on the part of an entity claiming statehood to exist as a State.

17. Entities that wish to become recognized as States often make declarations of their claim to statehood. Rhodesia made such a claim when it unilaterally declared independence in 1965. But this claim of the right to exist was denied by the United Kingdom and the United Nations. So too Tibet. It claims the right to exist as a State but this is denied by China and the international community accepts this. Other entities that claim to be States are Kurdistan and Catalonia but they make no claim to a right to exist as States.

18. Israel claims that it has the right to exist because the legality of its creation was contested and is still a matter for debate. In order to assert its legitimacy as a State and the legality of its creation it asserts its "right to exist". This assertion is not made in the exercise of any right recognized by international law. It is simply a political appeal designed to justify the morality and legality of Israel's creation and existence as a State.

19. Israel's appeal for recognition of its right to exist is principally an appeal to States to recognize the legality and morality of its creation. This is clear from its Declaration of Independence of 14 May 1948. In this Declaration Israel's Provisional Council of State justified its assertion of Israel's independence and existence as a State on the history

of the Jewish people, the Balfour Declaration of 1917, the Mandate of the League of Nations, the Holocaust and the November 1947 resolution of the General Assembly recommending the partition of historic Palestine into a Jewish State and an Arab State (General Assembly Resolution 181(II)).

20. The Declaration's assertion of Israel's right to exist as a State on the basis of the Balfour Declaration, the Mandate of the League of Nations and the General Assembly's Partition Resolution are all challenged on legal grounds and have been since 1948.

21. The Balfour Declaration of 1917 did not recognize the right of the Jewish people to a State in Palestine. It simply stated that the British Government viewed "with favour the establishment in Palestine of a home for the Jewish people" but that this was to be without prejudice to the "civil and religious rights of existing non-Jewish communities in Palestine."

    See The Times, 2 November 1917 (Letter from Foreign Secretary Arthur Balfour to Lord Rothschild).

22. Although the Mandate for Palestine incorporated the provisions of the Balfour Declaration it made no provision for a Jewish State. The British Government as mandatory power accordingly sought to balance the competing interests of Jews and Arabs in Palestine without success and ultimately handed over the problem to the United Nations to resolve in 1947.

23. The Partition Plan recommended by the General Assembly in Resolution 181 (II) of 1947 was highly controversial. It was adopted by 33 votes to 13 with 10 abstentions. Unable to support the Resolution, Britain abstained from voting. Arabs in Palestine rejected the Resolution on account of its unfairness: it gave the Jewish community comprising 33 per cent of the population of Palestine 57 per cent of the land and 84 per cent of the agricultural land. The legal competence of the General Assembly to adopt Resolution 181 (II) was also seriously questioned. In these circumstances it was impossible for the United Nations to implement the Partition Plan. Accordingly the United Nations turned to other possibilities. The United States proposed that a United Nations Trusteeship be established over Palestine as a single State.

24. Britain, the Mandatory Power, announced that it would evacuate its administration on 14 May 1948. This prompted the Declaration of Independence by Israel on 14 May 1948. The new State of Israel was immediately recognized by the United States and soon after by the Soviet Union, but not by Britain.

25. The Declaration of the State of Israel resulted in armed conflict between the forces of the newly created Israel and Arab States in the region. This resulted in the displacement of 750,000 Arabs in Palestine in what is today known as the Catastrophe, the Nakba.

26. As a result of this conflict Israel expanded the territory proposed for the State of Israel by the United Nations in Resolution 181(II) from 57 per cent to 78 per cent of historic Palestine. This expansion was confirmed by an Armistice Agreement in 1949.

27. On 11 May 1949 Israel was admitted to the United Nations. Unable to support this admission, the United Kingdom abstained from voting in both the Security Council and the General Assembly.

28. Although Israel still justifies its right to exist as a State on the basis of Resolution 181 (II), the better view is that Israel forcibly seceded from the Mandate Territory of Palestine. This view is based upon the considerable expansion of Israel's borders by the use of force in 1948-1949. Thus James Crawford, former Whewell Professor of International Law at Cambridge and later judge of the International Court of Justice states:

> "Israel was effectively and lawfully established as a State by secession from Palestine in the period 1948 to 1949. Its original territory was the armistice territory, not the partition territory" (*The Creation of States in International Law, OUP*, 2nd ed, 2006, p.434).

29. This brief history of the creation of the State of Israel explains why its claim of a "right to exist" in law and morality is debatable. The principal bases of its legal claims are all contested on reasonable grounds. Furthermore the expansion of Israel's borders beyond those envisaged by Resolution 181 (II) was premised on the forcible displacement of 750, 000 Palestinians in the exercise of an ethnic cleansing which violated many fundamental principles of international law. Israel has suppressed memories of the Nakba because, in the words of a former Foreign Minister of Israel, Shlomo Ben-Ami, this would be to admit "that the Jewish state was born in sin" (*Scars of War, Wounds of Peace: the Israeli- Arab Tragedy* (2005) p.48).

D. THE LEGALITY OF ISRAEL'S PRESENT POLICIES AND PRACTICES

30. The legitimacy of Israel and its "right to exist" is today debated in the light of both the debate over the lawfulness of its creation and subsequent developments relating to the lawfulness of the occupation of Palestine, the denial of the Palestinian's right of self-determination, Israel's practices of apartheid and most recently of accusations of genocide levelled at Israel before the International Court of Justice.

31. Inevitably, it is argued that today Israel would not be recognized as a State because of its denial of self-determination to the indigenous population in the same way that Rhodesia was denied recognition as a State. Questions are asked as to why the United Nations, whose Charter proclaims the right of self-determination, did not apply the same standards to the admission of Israel to the United Nations that it was later to apply to Rhodesia when it called on States not to recognize Rhodesia.

See Crawford *op cit* pp 129-130.

32. When I was UN Special Rapporteur I drew attention in my reports to the Human Rights Council and Third Committee of the General Assembly that Israel's policies and practices in occupied Palestine resembled those of apartheid South Africa.

    See A/HRC/4/17 of 29 January 2007.

    Since then more and more evidence has been produced to support this charge, including reports by UN Special Rapporteurs, the leading Israeli human rights NGO, B'Tselem, and international Human rights NGOs, such as Amnesty International and Human Rights Watch, which show convincingly that Israel applies apartheid in Israel itself as well as in occupied Palestine.

    See the Declaration of President Salam in Legal *Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,* International Court of Justice, Advisory Opinion of 19 July, 2024. Para 30.

    See further V Tilley (ed) Beyond *Occupation. Apartheid, Colonialism and International Law in the Occupied Palestinian,* Territory, Pluto Press, 2012;
    J Dugard & J Reynolds, "Apartheid, International Law and the Occupied Palestinian Territory" (2013) 24 European *Journal of International Law 867*;
    B'Tselem, This *is Apartheid, 12*-01-2021. http://www.btselem,org/publications/fulltext/202101;
    Human Rights Watch, *Apartheid: A Threshold Crossed. Israeli Authorities and the Crime of Apartheid and Persecution,* 27 April 2021. https://www.hr.org ISBN 978-1-62313-900-1.

33. The International Court of Justice is presently considering allegations of genocide committed by Israel in Gaza (South *Africa v Israel)* and the International Criminal Court is investigating crimes committed by Israel in occupied Palestine, including war crimes, crimes against humanity, the crime of apartheid and genocide.

34. During the apartheid era in South Africa arguments were raised that South Africa should no longer be recognized as a State and should be expelled from the United Nations. Although South Africa was not expelled from membership of the United Nations, the credentials of the South African government were not accepted and it was denied the right to participate in the work of the General Assembly.

    In effect, this meant that many States believed that South Africa no longer had the right to exist as a State because of its policy of apartheid.

35. Today the same argument is raised in respect of Israel. In essence this argument is based on the principle that States should not recognize as lawful a situation created

by the serious breach of a peremptory norms of international law, such as genocide, crimes against humanity and apartheid.

> *See Articles* 40 and 41 of the Draft Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission,* 2001, Vol II, Part Two, 26.

36. Israel's claim of a right to exist as a State entails the claim that it has the right to exist in a particular territory. When Israel expanded its territory in 1948/1949 to include territory beyond the borders proposed by the Partition Plan in Resolution 181(II) its claim of a right to exist expanded to meet this new territorial acquisition. In 1967 Israel expanded its borders to include East Jerusalem, the West Bank and Gaza. Initially portrayed by Israel as a temporary belligerent occupation, this portrayal changed to include East Jerusalem as part of Israel by an act of annexation in 1980 and to include the West Bank by a process of de *facto annexation* resulting from the establishment of settlements and the construction of a so-called security wall.

37. In 2024 the International Court of Justice ruled that Israel's occupation of West Bank and Gaza and its occupation/annexation of East Jerusalem were unlawful by reason of its establishment and expansion of settlements in the West Bank and East Jerusalem, the violation of the prohibition on the acquisition of territory by force, the application of discriminatory measures and the denial of the right of self-determination.

> *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,* 19 July 2024, paras 111-229, 261-262.

In effect this finding means that Israel has no right to exist within the borders it acquired in 1967.

E. CONCLUSION

38. Israel claims of a right to exist, is a plea for acceptance of the legality, and hence legitimacy, of its creation and of the legality of its actions and policies. This claim is, however, highly contestable. The lawfulness of its creation in 1948 is disputed by reason of the doubtful legality of General Assembly Resolution 181(II) and the subsequent expansion of the borders of Israel by the use of force beyond those proposed by Resolution181(II). Moreover, the lawfulness of its policies and practices have been seriously questioned by the 19 July 2024 Advisory Opinion of the International Court of Justice on Palestine and the Orders of 26 January, 28 March and 24 May 2024 in *South Africa v Israel* involving allegations of the commission of genocide by Israel.

F. EXPERT OBLIGATIONS

39. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

40. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

41. I confirm that I have not received any remuneration for preparing this report.



Professor John Dugard SC
Jozef Israelsplein 24
The Hague, Netherlands
2 November 2024.

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE CENTRALITY OF JERUSALEM AND AL-AQSA TO THE PALESTINIAN CAUSE
BY
DR OSMAN LATIFF [1]

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. One of the issues often quoted by Hamas as a justification for its actions is the frequent Israeli attacks on the Al-Aqsa Sanctuary in occupied Jerusalem and their preventing Palestinians from worshipping there. It is important to understand the significance of Al-Aqsa to Muslims generally and to Palestinians specifically.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am a PhD trained historian with an Honorary Research Associate fellowship at Royal Holloway University of London, UK.

5. I have specialised knowledge in the field of the crusades, having completed a Masters in Crusader Studies (2005-2006) at Royal Holloway University of London, UK for which I received a pass by Distinction. The study enabled me to thoroughly understand the crusades, their origin, reasons, motivations and dynamics involved in the crusading experience and settlement of crusaders in the Holy Land.

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[1] Thanks to Ahmed Hammuda for his research assistance in preparing this report

6. I then pursued a PhD at Royal Holloway University of London, UK (2006-2010) in the Muslim effort to recapture Jerusalem with a focus on the influence of books of Fada'il al-Quds (Merits of Jerusalem) and religious poetry. The work was subsequently published into a book, 'The Cutting Edge of the Poet's Sword: Muslim Poetic Responses to the Crusades' (Brill, 2018).

7. I thereafter pursued a PostDoc in Politics and International Relations at Royal Holloway University of London, UK (2012-2014) which was subsequently published into a book, 'Navigating War, Dissent and Empathy in Arab/U.S Relations: Seeing Our Others in Darkened Spaces' (Springer, 2021). The study enabled me to understand well the discourses of war, suffering, media related studies and empathy in relation to Palestine and other areas of conflict.

8. I am the author of a wide range of articles, academic papers and other books, ranging in topics from Muslim-Christian studies, Islamic belief and practice to historical fiction. I have also provided expert advice in legal cases.

C. INTRODUCTION

9. On October 7, 2023, several Palestinian resistance groups, spearheaded by Hamas, launched a coordinated and unprecedented attack from the Gaza Strip into Israel. This marked a moment, albeit brief, where Palestinians reclaimed territories that had been seized from them during the Nakba of 1948. The operation was named "Al-Aqsa Flood", with Hamas later attributing its launch in part to the increase in Israeli settlers' incursions into the Al-Aqsa Sanctuary, describing it as an act of "aggression" that "had reached a peak."[2]

10. The surprise attacks of October 7 underline the mosque's symbolic importance to the cause of Palestinian liberation. Any threat to its sanctity carries deep political and religious implications, underlying its centrality as a unifying emblem in the Palestinians and a matter of faith. This reality has been consistently evident over the past century, beginning with the British-sponsored colonial project to establish a Jewish national home in Palestine. From the Buraq Uprising of 1929 to Israeli Prime Minister Ariel Sharon's incursion into the Holy Sanctuary, which ignited the second Al-Aqsa intifada in 2000. Al-Aqsa has remained at the heart of the Palestinian right for self-determination. An exploration of Jerusalem's profound historical and cultural legacy reveals why this sacred space remains so deeply intertwined with the Palestinian struggle.

D. THE SIGNIFICANCE OF JERUSALEM

[2] The New York Times (2023) The militants' statement cited the Aqsa Mosque. Here's why it matters, https://www.nytimes.com/live/2023/10/07/world/israel-gaza-attack#the-militants-statement-cited-the-aqsa-mosque-heres-why-it-matters

11. Jerusalem (Al-Quds) has long stood as a focal point of religious, cultural, and political significance for the three Abrahamic faiths. For Palestinians, of all faiths and none, it has played a pivotal role, not only as a symbol of national sovereignty in the face of the Zionist colonial enterprise but as the epicentre of a struggle against injustice.

12. In addition, Jerusalem's centrality to the Islamic tradition has profoundly shaped the Palestinian liberation narrative, cementing the Palestinians as the custodians of Al-Aqsa Sanctuary.

13. This report examines Jerusalem's spiritual and historical position within Islam and how this has galvanised Palestinian movements, providing a rallying cry and unifying symbol across multiple centuries of resistance. As this report is in support of the position that Harakat al-Muqawamah al-Islamiyyah should be deproscribed, it is imperative to assess the position of Jerusalem and the Al-Aqsa Sanctuary to Palestinians, and Muslims the world over.

Jerusalem in Early Abrahamic Narratives

14. According to the Gospel of Matthew, Jesus entered the Holy Sanctuary in Jerusalem late in his mission. Observing that the Pharisees had transformed the sacred precinct from a place where God is worshipped to markets and money exchanges—he overturned the tables and rebuked those profiting within the house of prayer.[3]

    "'*My house will be called a house of prayer, but you are making it a den of robbers.*" …

15. According to the tradition, the Pharisees protested, so Jesus proceeded to narrate the parable of the Landowner and the Vineyard. He asked them to consider a landlord who rents his vineyard to some farmer tenants. At harvest time, he sends his servants to collect the fruit. The tenants beat and kill the arriving servants. Repeating this, the landowner, becomes infuriated, ultimately sending his guards to kick the tenants out. The landowner represents God, and the arriving servants his prophets. By this, he identifies Jerusalem as the kingdom of God's chosen heirs—those who "*will produce its fruit*"[4], or otherwise lose their right to it.

    "*Therefore I tell you that the kingdom of God will be taken away from you and given to a people who will produce its fruit. Anyone who falls on this stone will be broken to pieces; anyone on whom it falls will be crushed.*"

16. This profound biblical motif comes to embed the purpose of Jerusalem and its heirs, prophesising its divine requisition in the coming years, until another nation arrives, capable of restoring its godly purpose. Those who fail to uphold principles of truth and justice in the land would lose their stewardship to others more worthy.

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[3] Matthew 21:12–13

[4] Matthew 21:33–44

17. In 70 CE (Christian Era), following a Jewish revolt, the Romans destroyed the Second Temple, leaving only remnants such as the Western Wall (also known as the "*Buraq Wall*" in Islamic tradition). Biblical scholars often interpret Jesus physically turning the tables in the Holy Sanctuary as symbolic portent of Jerusalem's ultimate destruction.[5] The destruction removed the function of the Jewish priesthood and the central sacrificial system, paving the way for the rise of Rabbinic Judaism by the 3rd-4th centuries CE.[6]

18. Succeeding nations would often lament the corruptions and injustices that led to eviction from the 'Vineyard' - the loss of Jerusalem. Talmud (Yoma 9b) states:

    "*Why was the first Temple destroyed? Because the three cardinal sins were rampant in society: idol worship, licentiousness, and murder… And why then was the second Temple – wherein the society was involved in Torah, commandments and acts of kindness – destroyed? Because gratuitous hatred was rampant in society.*"

19. Subsequent centuries witnessed a series of conquests and changing powers in Palestine. Between the 7th century Persian-Byzantine wars, Jewish communities attempted to regain autonomy through alliances with the Sassanid Empire, resulting in episodes of mass bloodshed. Historians determine that up to 17,000 Christians were killed and 37,000 expelled from their land during the Sassanid–Jewish recapture of Jerusalem.[7]

20. By 629 CE, Byzantines reconquered Jerusalem. In their reprisal, they killed and displaced scores of Jewish inhabitants.[8] This turbulent period set the historical stage upon which Islam's Final Prophet, Muhammad (570–632 CE) emerged in Arabia and around which the covenant of Caliph 'Umar was drafted.

E. THE ISLAMIC INHERITANCE OF JERUSALEM

21. Across the scriptures, there are dozens of names for Jerusalem, including the 'First Qibla', 'House of Purity', 'Faithful City' and the 'Oasis of Justice'. Islam's theological inheritance in Jerusalem is rooted in the idea of Prophet Mohammad being part of a

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[5] Sanders, E.P. (1985) *Jesus and Judaism*, SCM Press

[6] Goodman, M. (2000) *State and Society in Roman Galilee, AD 132–212*, Vallentine Mitchell & Co

[7] Thomson, R.W., Howard-Johnston, J., & Greenwood, T. (1999) *The Armenian History Attributed to Sebeos*, Liverpool University Press

[8] Kaegi, W.E. (2003*) Heraclius, Emperor of Byzantium*, Cambridge University Press.

prophetic continuum connected to Jerusalem, termed in Islamic literature the 'land of Prophets'.[9]

22. Himself coming from the same Abrahamic progeny 'the Patriarchs' or the 'Hebrews' linked to Jerusalem, Prophet Muhammad would remind his circle of companions about the land and its divine significance. The Qur'an and Prophetic traditions affirm that Muslims are the heirs to that legacy. The city, known as "Baitul Maqdis" or "the Home of Purity," served as the first Qiblah (direction of prayer) for Muslims before it was changed to Mecca.[10]

23. Of the many mentions of the Holy Land in the Qur'an, one of the earliest revelations records the Isra', the Prophet Muhammad's miraculous Night Journey from Mecca to Al-Aqsa Sanctuary. This event established Jerusalem's direct involvement in the institution of essential Islamic rites, such as the five daily prayers, and cements Al-Aqsa's status as one of the most important sites in the divine tradition. According to the Quran: "*…..whose surroundings We have blessed…..*"*11*

24. The large Hadith corpus, recorded in sources such as Sahih al-Bukhari, Sahih Muslim, Sunan al-Tirmidhi, and Musnad Ahmad, frequently references the blessings of the Levant (al-Shām), emanating from Jerusalem.

25. The Quran and Sunnah (tradition of the Prophet) on the significance of Jerusalem imbricate it as part of Iman (faith). Al-Aqsa Sanctuary is the first Qibla, the second Sanctuary built on earth; its heritage goes back to the first man, Prophet Adam; it is linked to all the major Prophets; it is land blessed by Allah, and it is mentioned by name in the Quran. Muslims are advised to frequent, pray and care for the Al-Aqsa Sanctuary. The rewards for praying and supporting Al-Aqsa Sanctuary are also significantly increased. Based on the Quran and Sunnah, Muslim tradition has been informed of the need to protect and defend Al-Aqsa Sanctuary.

Islamic Conquest and Governance of Jerusalem

26. In 637 CE, Jerusalem, at the time under Christian Byzantine rule, surrendered peacefully to the second Caliph ʿUmar b. al-Khaṭṭāb (r. 634–644 CE), now marking the city's physical integration into the Islamic realm. The arrangement, known as the "Umariyya Covenant," ensured religious coexistence, allowing Christians and Jews to remain and worship freely.[12]

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[9] Narrated on behalf of the Prophets companion ibn 'Abbas where he emphasises that an angel or prophet has prayed in every span in Jerusalem – related by by Shihāb al-Din al-Qalqashandi in his work *Ithāf al Ikhsā bifadā'il al Masjid al Aqsā*

[10] Al-Tabari, Tafsir (Jāmiʿ al-bayān ʿan taʾwīl āy al-Qurʾān)

11 Qur'an 17:1

[12] Tabari, Ta'rikh ar-Rusul wa'l-Muluk

"*[Umar] grants them security, to each person and their property: to their churches, their crosses, to the sick and the healthy, to all the people of their creed. We shall not station Muslim soldiers in their churches. We shall not destroy their churches nor impair any of their contents or their property or their crosses, or anything that belongs to them. We shall not compel the people of Jerusalem to renounce their beliefs, and we shall not do them any harm.*"[13]

27. Muslims consider the serene and cordial opening of the holy city as earmarking the final transfer of its custodianship to the nation of truth and justice; the followers of the Final Messenger, fulfilling Jesus' parable.

28. The Caliph Umar's first major project was to restore the Al-Aqsa Sanctuary, which was used as garbage dumping grounds by the Byzantines, by cleaning the site and constructing a Mosque.

29. This early Islamic governance fostered an environment where non-Muslim communities retained their rights, setting a precedent of religious pluralism and tolerance.[14] Significantly, ʿUmar permitted Jewish families to resettle in Jerusalem after a long Byzantine-imposed exile, reflecting the principles of inclusivity that shaped the city's cultural and religious fabric.

30. The city's population remained diverse, with Muslims forming a small military class (*Jund Falasteen*) tasked with protecting the Palestinian collective. Muslims settled in a modest district near the base of the Holy Sanctuary. Under the early Muslim governance, the population of Jerusalem remained predominantly Christian.

31. Over subsequent centuries, Jerusalem's Arabic-speaking population, linguistically congruent with its sister languages Hebrew and Aramaic, both Muslim and Christians developed a shared regional identity as Semitic Arab Palestinians. Jerusalem becoming a central point of religious and political significance for all people.[15]

32. Over the centuries, Palestinians have nurtured this heritage, connecting their identity to the city's historical and cultural importance. Today, in an attempt to avoid Christian denominational conflict, a Muslim family remains the caretaker for the keys to the Holy Sepulchre, handed to their forefathers by Umar and later Salah ad-Din al-Ayyubi (Saladin, d. 1193 CE) to facilitate access to Christianity's holiest site whenever required.[16]

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[13] Ibid

[14] Gil, M. (1997) *A History of Palestine: 634–1099*, Cambridge University Press.

[15] Masalha, N. (2018) *Palestine: A Four Thousand Year History,* Zed Books

[16] Tharoor, I. (2016) *Why Christianity's holiest shrine is guarded by two Muslim families*, The Washington Post

F. JERUSALEM UNDER THE CRUSADERS AND AYYUBIDS

33. The Crusades (1095–1291 CE) represented another crucial epoch for Jerusalem's symbolism. In 1099 CE, European Crusaders captured the city, unleashing a massacre of Muslims, Jews, and Eastern Christians. Central to their endeavour was the Church of the Holy Sepulchre which served as a potent rallying cry for the lords and knights of Christendom.

34. After years of anti-Muslim rhetoric spread by the pope and his bishops across Europe, the Crusaders stormed the city's ancient streets and narrow alleys. The result was a brutal and systematic massacre of thousands of the city's Muslim, Jewish, and Christian inhabitants, converting Mosques within the Al-Aqsa Sanctuary into Christian shrines.[17]

35. Muslims – scholars, poets and litterateurs – reacted immediately to the occupation of Jerusalem, stirred by the significance of Al-Aqsa. Inspired by Al-Aqsa's spiritual centrality, Nur al-Din Mahmud Zengi (d. 1174 CE) made the liberation of Jerusalem his banner, constructing a Mimbar (pulpit) destined for Al-Aqsa[18], and Salah ad-Din al-Ayyubi famously fulfilled this vision in 1187 CE.

36. Both Nur ad Din and Salah ad Din commissioned treatises on *fadhail al Quds* (Virtues of Jerusalem) to be read in mosques throughout their control. The works of al-Wasiti, al-Rabai, al-Rumayli, Ibn Asakir and al-Maqdisi became famous, motivating thousands to join Salah ad Din for the liberation of Jerusalem. Hillenbrand goes further and considers Muslim unification and volunteering against the Crusaders "focused on the sanctity of Palestine and more especially of Jerusalem".[19]

37. By 1187, Salah ad Din's army, nurtured by the enduring image of Al-Aqsa's golden dome, stood at the gates of Jerusalem, 88 years after the marauding Crusaders had torn through its ancient streets. After a ten-day siege, the Crusader armies were unable to defend the city any longer, Balian of Ibelin, a French nobleman, rode out to offer a bloodless surrender of the city.[20]

38. Unlike the infamous and bloody massacre that occurred during the Crusader's rampage through Jerusalem in 1099, Salah ad Din, informed by the practice of Caliph Umar, spared the Europeans the same fate. In a further display of magnanimity that won universal admiration of chroniclers for centuries to come, Salah ad Din freed

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[17] Krey, A.C. (1921) The First Crusade: The Accounts of Eyewitnesses and Participants, Legare Street Press

[18] Azzam, A.R. (2014) *Saladin: The Triumph of the Sunni Revival,* The Islamic Texts Society. p.191.

[19] Carole Hillenbrand, *The Crusades: An Islamic Perspective*, (Edinburgh, Edinburgh University Press 1999) 164.

[20] Khan, S.M. (2020) *Saladin's Conquest of Jerusalem (1187 CE)*, World History Encyclopaedia, https://www.worldhistory.org/article/1553/saladins-conquest-of-jerusalem-1187-ce/

many of the inhabitants of Jerusalem without ransom after they were taken as prisoners of war.[21]

39. From Caliph 'Umar to Salah ad Din, this legacy of justice and mercy became a foundational narrative for Palestinians, who look to these two's reclamation of Jerusalem as a paragon of principled resistance. As such, Palestine remained under the heirship of Islam, hosting members of the three Abrahamic faiths and none until the rise of Zionism and the 1948 Nakba.

G. MODERN PALESTINIAN MOVEMENTS AND THE CENTRALITY OF JERUSALEM

40. From the late 20th century onward, with the rise of Zionism and British colonial influence, Jerusalem again became the linchpin of Palestinian identity. The Buraq Uprising of 1929—named after the wall revered by Muslims as the spot where the Prophet's steed Buraq was tethered — demonstrates how threats to Jerusalem's sanctity regularly catalysed mass resistance. Again and again, the city became a recurrent rallying cry for Palestinians as Zionist settlement expansions and the 1948 Nakba violently displaced indigenous populations.

41. Post-1948, various Palestinian factions — secular, leftist, and Islamic — placed Jerusalem at the heart of their struggle. The Palestine Liberation Organisation (PLO) and Fatah, despite their secular-nationalist leaning, still heavily invoked Jerusalem as the political and cultural capital from their earliest charters. Leftist groups like the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP) also integrated Jerusalem's iconography into their liberation strategy.

42. Hamas recalling the Muslim legacy had in its founding charter calls for liberating Jerusalem as a religious duty incumbent upon the entire Muslim community.[22] Hamas' new charter (2017) lays similar emphasis on the significance of Jerusalem, stating: "*Not one stone of Jerusalem can be surrendered or relinquished.*"[23] Islamic Jihad's armed wing, another resistance faction, is aptly named the Al-Quds (Jerusalem) Brigades.

43. During the First Intifada (1987–1993) and the Second Intifada (2000–2005), Jerusalem's status and access to Al-Aqsa Sanctuary became flashpoints that rallied all of Palestine, transcending factional divides. Ariel Sharon's incursion into Al-Aqsa in September 2000 sparked the Second Intifada, called Al-Aqsa Intifada.

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[21] Azzam, A.R. (2014) *Saladin: The Triumph of the Sunni Revival,* The Islamic Texts Society. p.195.

[22] Hamas Charter, 1988

[23] Hamas. "Hamas 2017 Document: Full Text." *Middle East Eye*, May 1, 2017.

44. In May 2021, the "Sword of Jerusalem" resistance (Saif al-Quds) erupted following Israeli actions in Sheikh Jarrah and illegal incursions into Al-Aqsa during Ramadan. Occupation forces, periodically entering the Al-Aqsa Sanctuary using tear gas, stun grenades, and rubber bullets against worshippers.

45. Hamas issued ultimatums demanding Israeli authorities withdraw security forces from Al-Aqsa and halt the evictions in Sheikh Jarrah. When these ultimatums went unmet, Hamas fired a volley of rockets toward Jerusalem — an unusual and high-profile choice of target — on May 10, 2021. The actions by the besieged people delineated that despite nearly two decades of besiegement and bombardment, Jerusalem remained the focal point of the conflict, and the resistance in Gaza was willing to act at the behest of Muslims worldwide to protect it.

46. By October 2023, Jerusalem's climate had become increasingly fraught, shaped by encroaching illegal settlements and the policies of a maximalist Israeli government. Figures such as Itamar Ben-Gvir (National Security Minister), a lawyer known for defending Jewish extremist terrorism, including the suspects who firebombed the Dawabsheh family in July 2015, and Bezalel Smotrich, the finance minister with authority over parts of the West Bank administration, were vocal proponents of illegal Jewish settlement expansion over Jerusalem. Their ascendancy erased the prospect for compromise and intensified the environment of control, especially in and around Al-Aqsa Sanctuary.

47. Throughout much of 2023, Jewish nationalist groups, often accompanied by Israeli politicians, repeatedly trespassed on the Al-Aqsa Sanctuary and provoked worshippers. Such incursions, though illegal, were under heavy Israeli police guard, conveying an incremental normalisation in practice. Although the focus of unrest in 2023 often shifted to areas like Jenin and Nablus in the northern West Bank, Jerusalem was not immune. Israeli raids, arrests, and ruthless policing of Palestinian protests in Jerusalem's neighbourhoods became more frequent. Palestinian youth clashed with Israeli forces over arrests, evictions and home demolitions.

48. The Israeli government's refusal to rein in settler violence in the West Bank and its strong backing of a nationalist narrative resonated back into Jerusalem's tense environment, linking all fronts of Palestinian life under occupation.

49. By the time October arrived, Jerusalem stood as both a pressure cooker and a barometer of broader Palestinian anger. Even though Hamas operated from Gaza, it was seen as a defender of Jerusalem, being the last democratically elected government of the Palestinians. While the outbreak of the resistance in October 2023 centred on events beyond Jerusalem, the city remained a core backdrop.

50. During the attack of October 2023, Palestinians reclaimed territories that had been seized from them during the Nakba of 1948. The operation was named "Al-Aqsa Flood", with Hamas later attributing its launch in significant part to the increase in

Israeli settlers' incursions into the Al-Aqsa Sanctuary, describing it as an act of "aggression" that "had reached a peak."[24]

H. CONCLUSION

51. Jerusalem is intimately connected to Islamic eschatology and prophecy and forms part of faith, reinforcing the idea that righteous believers are destined to uphold justice there. Throughout history, Jerusalem has inspired collective identity and resistance, shaping Palestinian liberation movements that regard the city's protection and eventual liberation as both a moral and spiritual imperative. Its significance to Muslims is rooted in Quranic verses, Prophetic traditions, and centuries of Islamic governance. These provide the theological and cultural framework undergirding Palestinian efforts. By positioning Jerusalem as the ultimate prize, these movements have mobilised domestic and international Muslim solidarity.

I. EXPERT OBLIGATIONS

52. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

53. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

54. I confirm that I have not received any remuneration for preparing this report.



Dr Osman Latiff
Slough
United Kingdom
21 January 2025

[24] The New York Times (2023) The militants' statement cited the Aqsa Mosque. Here's why it matters, https://www.nytimes.com/live/2023/10/07/world/israel-gaza-attack#the-militants-statement-cited-the-aqsa-mosque-heres-why-it-matters

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
PSYCHOLOGICAL IMPACT OF PALESTINIAN DISPOSSESSION &
THE NORMALISATION OF ZIONISM IN WESTERN MENTAL HEALTH
BY
DR TAREK YOUNIS

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to centre the psychological impact of a century-long dispossession and humiliation of the Palestinian people – first by the British Mandate, and then after 1948 by the Zionist state of Israel. It begins with an explanation why experiences of Palestinian dispossession have largely been dismissed within Western mental health fields, rendering the task challenging. It then outlines the psychological harms of Zionist colonial domination, with particular focus on humiliation as a key strategy of psychological violence.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I hold the following qualifications: I have a PhD/PsyD in Clinical Psychology, obtained in February 2017 at the Université du Quebec à Montréal. I am a Registered Practitioner Psychologist with the UK's Health & Care Professions Council, and a Chartered Member of the British Psychological Society.

5. The following are my current professional roles and positions:

a. **Senior Lecturer in Psychology** at Middlesex University:
    i. Researches the intersection of race, politics, and mental health, with a focus on colonisation.
    ii. Educates on the importance of State violence and racism in mental health.
    iii. Frequently invited as a visiting lecturer and speaker in international settings on State violence, racism and mental health.

b. **Registered private clinical and community practices**:
    i. Provides therapy for individuals affected by State violence (including Palestinians), police violence and institutional racism.
    ii. Collaborates with human rights organisations to support those impacted by State violence.
    iii. Co-founded the Coming Home Project, which provides therapeutic services for Muslims impacted by racist policing, surveillance practices, and State violence, with a focus on desecuritised therapeutic spaces.

c. **Racial Justice Researcher** at Healing Justice London:
    i. Conducts research on the marginalisation of Palestinian solidarity in the British mental health settings
    ii. Develops grassroots research practices to document and validate the impact of racist State practices.
    iii. Spearheads research and development for liberatory health spaces for racialised communities.

6. Selected Publications:

a. Younis, T. (2024). Growing Islamophobia and Muslims Mental Health: Current Challenges and Future Movements. In *Report on Islamophobia: the intensification of racism against Muslim communities in the UK*. Runnymede Trust.

b. Younis, T. (2022). The Muslim, State and Mind: Psychology in Times of Islamophobia. SAGE: London.

c. Aked, H., Younis, T., & Heath-Kelly, C. (2021). Racism, mental health and pre-crime policing: The ethics of Vulnerability Support Hubs. Medact.

d. Ghumkhor, S., & Younis, T. (2021). Naming the Injury: War on Terror and the Legibility of Trauma. In *The Terror Trap: The Impact of the War on Terror on Muslim Communities*. Coalition for Civil Freedoms, The Bridge Initiative at Georgetown University, the ICNA Council for Social Justice, CAGE, Center for Islam and Global Affairs, Muslim Justice League, and United Voices for America.

e. Younis, T. (2021). Counter-Radicalisation, Public Health and Racism: A Case Analysis of Prevent. *Terrorism, Violent Radicalization and Mental Health*. Oxford University Press.

PSYCHOLOGICAL IMPACT OF PALESTINIAN DISPOSSESSION & THE NORMALISATION OF ZIONISM IN WESTERN MENTAL HEALTH

C. INTRODUCTION

7. It is impossible to qualify the full impact of a settler-colonial occupation on a population's health. As Giacaman (2017) notes, its consequences extend far beyond tolls of death, physical injury and mental illness. Palestinians bear a history of forced displacement, ethnic cleansing and unending exposure to violence, as well as the loss of social, cultural, and economic stability. Psychologists in the Global North not only fail to capture the consequences of Zionist occupation—they actively legitimise it. This legitimisation can be seen in their reduction of the Palestinian experience to that of a "conflict" with Israel, rather than one belonging within a violent relationship of domination and submission (Césaire and Kelley, 2000).

8. In the Global North, mental distress is raised as one benchmark in the process of affirming experiences of violence. In a settler-colonial occupation however, this process must be inverted. All points of departure must begin with the theft of land; this theft is supported by a military occupation that fractures the community and prevents self-determination; and this fracturing has an immense, inevitable toll on psychological health. As such, as a point of introduction, it is important to assert that mental health can never be disassociated from discussions of land.

9. As the relationship between coloniser and colonised is one of domination, feelings of humiliation, deprivation, and suffocation are inevitable. It follows then the mental health impact on Palestinians requires more than psychological support. Rather, it demands the restoration of social structures, community support, and a focus on justice, which are essential for the comprehensive recovery and well-being of Palestinian communities (Giacaman, 2018).

10. The task therefore of outlining the impact of Zionist occupation on Palestinians is complicated. The simplest reason is that mental health is an artifact of Western history, with a framework of distress and healing that centres the Global North. Palestinians have not framed nor related their distress historically within psychological frameworks before the advent of global Western relief agencies. Indeed, Samah Jabr explains how Palestinians are often burdened to translate their experience in the language of trauma to make themselves legible to the West (Goldhill, 2019). Israeli psychology, on the other hand, is invariably associated with Western psychology, not least because of the numbers emigrating from the Western world. In fact Israeli psychology is so intimately associated with the West, as the

eminent Israeli psychologist Dan Bar-On explains, "one might suggest that the apolitical tendency of Israeli psychology is also connected to the individualism of American psychology, with which Israeli academic psychology was affiliated from its beginning" (2001: 334). This issue of Eurocentrism however is pervasive to the Global South, not just Palestine. Indeed, there is something unique about Palestinian erasure. While many scholars —Samah Jabr, Nadera Shalhoub-Kevorkian, Rita Giacaman, Lara Sheehi, and others—have conducted tremendous work translating the Palestinian psychology experience to the West, the task of relating to the psychological dimensions of Palestinian dispossession is complicated by epistemic erasure.

11. The purpose of this report is to summarise why Western mental health disciplines have failed to validate the experiences of Palestinian dispossession. Then, it will surface the work of scholars who shed light on the psychological consequences of Zionist domination, with a particular focus on humiliation.

D. THE CHALLENGES IN RELATING TO PALESTINIAN DISPOSSESSION WITHIN PSYCHOLOGY

12. "*So, you are sent to treat them with texts written in Hebrew. You present the case (of your patient) in Hebrew to your Israeli supervisor. She lives in a colony on the land of your grandfather. She finds it hard to understand you although she assures you she cares about "the Arabs." She can't see any need for (therapeutic) intervention because the patient is low-functioning, a simpleton, in her words.*" (case of Ali, a trainee Sheehi and Sheehi, 2022, pg.165)

13. In affirming the Palestinian experience of dispossession, we must first address the systematic erasure of this experience in the mental health fields. There are many challenges in affirming the Palestinian experience through psychological frameworks. I will briefly address five: erasure of the *Nakba*; normalisation of colonial occupation in psychological research; active dismissal of Palestinian mental health within Israel and occupied territories; the false equivalence set out by trauma frameworks; and the problem with setting mental illness as the benchmark of oppression.

14. First, the history and significance of the *Nakba* has largely been dismissed in the West and therefore omitted within mental health fields (Sayigh, 2013). There was never any clear resistance to colonial projects within the fields of psychiatry and psychology (Linstrum, 2016). Zionism is no exception. On the contrary, as Frantz Fanon notes in the colonisation of Algeria, mental health institutions were introduced to manage and control colonial subjects, not help them (Fanon, 1990). The neglect of Zionist colonisation is thus particularly stark in the histories of psychology and, more contemporarily, trauma studies. As Sayigh (2013) summarises, the growth of trauma literature from the 1990s onwards explicitly centred on the Holocaust. Sayigh concludes, "the absence of the Nakba from the trauma genre both reflects and

reinforces the marginalization of Palestinian claims to justice and the recognition of the Nakba in world politics, and thereby, it contributes to the continuing failure to reach an equitable settlement" (2013, pg.58). In other words, the erasure of the *Nakba* denies the foundational dimension of the Palestinian experience.

15. Second, part of the challenge in relating to the distress when erasing the significance of occupation is its normalisation as "background noise." This occurs in large part because of the depoliticising impulse in psychology; the focus on mental health tends to reduce social and political issues as matters of personal experience (Younis, 2023). This reinforces the status quo—including occupation—as "normal." This deflection of politics is particularly relevant to marginalised populations. When speaking of Palestinian women's midlife health for example, Hammoudeh and colleagues (2017) relate that few women specifically named the occupation as a factor affecting their health. As the authors explain, "it is exactly that pervasiveness – the normalcy of the political context on peoples' everyday lives – that means that women sometimes felt [the occupation] too obvious to mention "normalising the abnormal" (Hammoudeh et al., 2017 citing Nguyen-Gillham et al., 2008 p.291).

16. Third, there is a history of dismissing Palestinian distress, both in Israel and in occupied territories. In the first instance, this erasure reflects a historical and cultural practice endemic to Israel's colonial project. This marginalisation of Palestinian dignity is well-documented and affirmed by human rights organisations like Amnesty International (2022). However, it is important to underline how the Palestinian experience of dispossession is particularly erased by mainstream health structures as well as Israeli mental health practitioners. To this, Lara and Stephen Sheehi (2022) provide vivid case examples of Palestinian trainee psychologists who navigate this erasure with their Israeli supervisors. In one case, the authors relate the trilateral story of a Palestinian trainee, Yoa'd, a Palestinian patient and Yoa'd's Israeli supervisor: "*[The Israeli supervisor] sees the [patient] primarily as a resistant patient who refuses to speak, to articulate thoughts, or to open up and be honest. […] To the Israeli supervisor, his silence can only be a defense, a deflection from confronting the unconscious. Without attending to the structural and material realities of his world as a Palestinian, she reads his symptoms as just "nerves" that can be medicated"* (Sheehi and Sheehi, 2022: 51).

17. The erasure of colonial occupation is not an aberration; it is symptomatic of a wider political narrative. For example, when mental health NGOs began attending to trauma in the 2000s, following the second intifada, they intentionally dismissed the experiences of Palestinians who may have been exposed to or injured by Palestinian attackers. The reason for this, as Friedman-Peleg (2017) explains, was because mental health NGOs intended to augment the distress of Israelis *while erasing* the experience of Palestinians. This phenomenon can also be seen in psychological literature, where realities of occupation and ethnic cleaning are routinely dismissed (Hakim et al., 2023).

18. Fourth, a common refrain in mental health relates to the shared experience of Israelis and Palestinians. On one side is an illegal—but, for Zionists, necessary—occupation

that causes immense harm. On the other side, there is the ever-present and sometimes realised threat of Palestinian resistance. In other words, Israelis and Palestinians are both anguished by the "Israeli-Palestinian conflict" (violent and non-violent), not a colonial relationship marked by domination. Attempts to flatten the experiences of Palestinians and Israelis is nonsensical, and the experience of settlers is revealing in this regard. In the mid-2000s, settlers were forced to evacuate their post-1967 colonial settlements within Gaza. Friedman-Peleg (2017) relates how Miriam Fogel, head of the Israeli mental health NGO MaHUT, framed this experience: "[Miriam] depicted the settlers as passive victims of trauma, like prisoners of war and Holocaust survivors, and identifies their mental vulnerability as being a result of two external threats: the ongoing Palestinian terror and the present Israeli government plan ("a very cruel act")" Friedman-Peleg (2017: 44). The ascription of trauma, as a means of identifying victims, is a political act. Later, for the purpose of this report, the focus will be on humiliation instead.

19. Fifth, and significantly, mental health is not the measure of injustice. People may find a renewed sense of togetherness, strength and resilience in oppression. This has been noted for example among support workers in Gaza, exposed to the same violence the people they support are experiencing. While trauma remains relevant, there is strength and determination to be found as well *through* the traumatic experiences (Veronese et al., 2017). As such, one must be careful not to assume a Eurocentric framework which centres "distress" as a measure of oppression. The Palestinian concept of "sumood" is significant in disrupting this assumption. Sumood relates to the steadfastness in faith, continuity and community despite settler-colonial oppression. As Samah Jabr relates, this is a significant framework in the Palestinian experience. But it also underlines how the search for mental health issues—as a means of anchoring the violence of occupation—dismisses the many ways oppressions develop new possibilities of strength, patience and faith.

E. THE MENTAL HEALTH IMPACT OF THE ZIONIST COLONISATION ON PALESTINIANS: A FOCUS ON HUMILIATION

20. *After my mother-in-law, one of the soldiers ordered me to follow him to the same room. He let me in and then left. There were two masked [female] soldiers in the room, and they were holding a huge dog. I was so scared I stayed glued to the door. I tried to leave, and they yelled at me and ordered me to stop. I told them that I was afraid of the dog, but they ordered me to take off all of my clothes. I refused to do it, and then one of the soldiers threatened to release the dog if I didn't obey. I had no choice and took off all of my clothes, including my undergarments. She ordered me to turn around in front of them, and I did. It was humiliating and degrading. I started to cry, and then they ordered me to get dressed, and some of the [male] soldiers took me back to the room with all of the women.* (B'Tselem, 2023)

21. This vignette captures the strategy of dehumanisation enacted by the Zionist occupation today. It only reflects one instance in a daily experience of humiliation.

Indeed, the psychological violence of colonial occupation is well known. The history of this has been documented by scholars like Hussein Abdilahi Bulhan (1985). Wars, ethnic conflicts, and political violence have significant public health implications, extending beyond the visible toll of death and physical injury. It impacts their very selfhood.

22. For Palestinians impacted by prolonged conflict, the effects are not limited to immediate survival but include severe psychological distress. Forced displacement, continuous exposure to violence, and the loss of social, cultural, and economic stability contribute to widespread trauma and chronic insecurity, which public health efforts often overlook. The advancement of settlers in the colonial project involves a process of ethnic cleansing which violently disassociates a people from their land; a dehumanising strategy hindering basic needs of community and belonging. This has widespread health implications, which are significant for a wider understanding of mental health impacts. These health impacts are briefly summarised below. Following this, the report will focus specifically on the Zionist application of humiliation—a particular form of colonial psychological warfare—on Palestinians.

The Significance of Humiliation as a Colonial Strategy Against Palestinians and its Impact on Mental Health

23. There are discernible psychological features in colonial violence beyond wider health considerations, such as humiliation. Humiliation is a deeply personal and social experience involving feelings of being unjustly debased, linked to a loss of dignity, honour, and justice (Giacaman et al., 2007). Frantz Fanon has written extensively on colonial projects' use of humiliation as a violent means of instilling a sense of inferiority and subduing resistance among indigenous populations (Fanon, 2002). Unsurprisingly, humiliation is hallmark of Israeli occupation as well (Giacaman et al., 2007).

24. As such, while all forms of adverse mental health outcomes are relevant in Palestine, this report will focus on humiliation as a particular tool of colonial occupation. This focus on humiliation is not only to validate the Palestinian experience *in light of* colonial occupation; it affirms, unequivocally, the colonial nature of the Zionist project. This section will first compile the various ways Israel has used humiliation that seeks to psychologically harm entire communities. Then, it will outline the psychological studies unveiling their impact on Palestinians.

25. The Zionist application of humiliation is fundamental to its colonial nature—not an excess of military activities. This is important because Israelis have argued their actions are dynamically related to those of Palestinians. Their logic offers that incessant military detention, degrading checkpoint searches, bombardments and house demolitions are all unfortunate but legitimate actions needed to secure Israel's post-1967 security. But drawing on early Palestinian testimony paints an undeniable picture: dehumanisation has been the mainstay of the Zionist project since its

establishment. Salih Baransi's village, al-Tayyiba, was taken by Zionist forces on May 7th, 1949. Baransi (1981: 7) relates what occurred soon thereafter, in his own words:

After our village had been handed over, I was at home when someone knocked at the door. When I opened it to see who was knocking, I found a policeman standing at the door and asking me if I was Salih Baransi. When I said "Yes", I was told to accompany him to the police station, and when I asked why, he said, "You can find out when you get there."

The police station consisted of three rooms side by side, with a cement bench in front, beneath which was a place for chickens and rabbits, and in front of it a large courtyard, a high wall and a gate. No sooner had I passed through the gate than they started raining blows on me until I fainted.

When I came to myself I tried to get up, but could not. Looking around me I found that I was in the place for chickens and rabbits, and because the roof was so low I could neither stand nor sit up: all I could do was to lie on my side. Of course, I could not stay lying on one side - I had to turn over.

But every time I tried to turn on to my other side, I was wounded by the roof which, as I said, was very low and made of rough cement, which cut like a knife, and when I turned back the first wounds got cut again. I stayed there for three weeks; it was summer. They put my food, which was a plate of lentils, through the narrow entrance and I had to eat lying on my face or my back. I had to answer the calls of nature in my clothes, in the same place. I contracted a severe fever; my temperature rose and I asked for a doctor, but they refused my request. When I reached the stage where I could no longer move or speak, they were obliged to let me out. They took me to another place, which consisted of a small wooden shed - a sort of hutch made of mud and roofed with wood and straw, and I stayed there for a time until the fever abated. They used to send a boy to me to tell me to clean the lavatories. The idea being that I would refuse, so that they might beat me. After a month and a half they let me go, and to this day I do not know why they arrested me and did what they did to me.

26. Baransi's testimony surfaces the incredible psychological violence wrought by Zionists and curbs any legitimacy to Israel's alleged justifications for violence. Colonial tactics of humiliation are not arbitrary; they are executed with great intent to mark a relationship of domination. Salih's case is not isolated; it is revealing of a history of practices in colonial domination. The wider impact of humiliation is discussed below.

Research studies on Humiliation

27. Recent studies have explored the psychological harms associated with the Zionist use of humiliation as a systemic strategy of domination. In 2011, a study on mental suffering surveyed a sample of 1,778 Palestinians across the West Bank, Gaza and Jerusalem (Barber et al., 2016). They found significant exposure to political violence between 1987 and 2011. During this time, 78% of Palestinians had their homes raided by Israeli military forces, while 74% witnessed acts of humiliation carried out by

either Israeli or Palestinian military or police. Sixty-two percent experienced verbal abuse firsthand. More than half (56%) reported being fired upon, 43% had been physically attacked (hit or kicked) by soldiers or police, and 26% of men had been detained as political prisoners. Additionally, 44% suffered material losses, such as the destruction or confiscation of their homes or land by the Israeli government. Movement restrictions were also a significant issue, with 68% of respondents in the West Bank stating they were unable to access medical care at some point due to obstacles such as checkpoints, barrier walls, or curfews. The authors affirms that feeling "broken or destroyed" was distinct from traditional mental health measures, consistently reliable, and experienced more commonly than depression or trauma-related stress across genders and regions.

28. In another study, researchers analysed data from the 2014 Socio-Economic & Food Security Survey, which covered 7,827 households in the West Bank and Gaza Strip (Hammoudeh et al., 2022). The study focused on several types of deprivation—subjective, material, food, and political—alongside acute political, health, and economic stressors. Results highlight that *feeling deprived* is a major determinant of mental health. These circumstances lead to profound mental health challenges, including feelings of humiliation. The internalized wounds caused by ongoing conflict hinder survivors' ability to recover. Addressing these mental health impacts requires more than physical aid; it demands the restoration of social structures, community support, and a focus on justice, which are essential for the comprehensive recovery and well-being of Palestinian communities.

29. Feelings of humiliation have a strong impact on their experience of physical and emotional complaints (Giacaman et al., 2007). Importantly, the study showed that the more types of humiliation someone experienced, the more likely they were to report many health issues. For example, people who went through humiliating experiences were 2.5 times more likely to report frequent health complaints than those who hadn’t faced any. This risk kept increasing with each additional humiliating experience. The authors argue that humiliation should be recognized as a significant cause of health problems for people in occupation, affecting health independently of other types of violence.

30. Children are particularly affected by the Zionist strategy of humiliation. As the Palestinian psychiatrist Eyad el Sarraj (2002) explains, research has revealed that 55% of children witnessed their fathers being humiliated or physically abused by Israeli soldiers during the first Intifada. This experience has a profound and far-reaching psychological impact on those children. A study in 2008 sought to understand the long-term effects of occupation on Palestinian children in the Gaza Strip (Altawil et al., 2008). The researchers randomly selected 1,137 children aged 10 to 18 from various areas of Gaza to participate in the study. Participants completed surveys measuring their traumatic experiences, PTSD symptoms, and personality traits. The findings were alarming: every child had faced at least three traumatic events. Common experiences included humiliation (99%), hearing explosions (97%),

attending funerals for martyrs (85%), and witnessing shelling by tanks or military planes (84%). The study revealed that 41% of these children suffer from PTSD.

31. There is a gendered component to the violence of humiliation. In interviews with 35 Palestinian women in Occupied Palestinian territories, Hammoudeh and colleagues (2017) found that prolonged political violence profoundly shapes Palestinian women's perceptions of their health, both directly and indirectly. Women frequently linked their health challenges to mobility restrictions imposed by Israeli checkpoints and blockades, which fuelled feelings of fear, anxiety, stress, and humiliation.

32. While there is no need to incorporate Israel's "version of events"—Palestinian testimony is sufficient—the strategy of humiliation was corroborated directly by IDF soldiers. "Break The Silence", an organisation which contains testimonies of Israeli soldiers following the Second Intifada, relates many instances of humiliation as standard procedure (Break the Silence has been critiqued, not least in its framing of the violence but also its proximity to the Israeli miliary, see Jude, 2020). These testimonies relate the mundane activities of humiliation:

    I'm thinking about that poor family whose rooftop was turned into a public bathroom by the entire company, what an awful thing. […] *I know there was one platoon where everyone – from the commander all the way down – took dumps in pots, out of some kind of operational principle. Whatever.*
    (https://www.breakingthesilence.org.il/testimonies/database/606607)

33. Humiliation figures centrally in colonial projects, and Palestinians have long been subjected to its dehumanising, psychological harms under Zionist rule. To affirm, humiliation is significant in several respects. It specifically outlines an experience that is not "equitable" between Israelis and Palestinians, for it is the tactic of a coloniser. Humiliation speaks to the profound experience of being degraded, stripped of rights and relationship to land and community. Mental health is not needed to visible the violence in this process. However, as outlined above, the anguish associated with humiliation cannot be understated either.

F. CONCLUSION: *SUMOOD* AFTER A CENTURY OF PSYCHOLOGICAL HARM

34. *"Over the last 54 years of occupation Israel has been trying to control, exhaust and terrify the Palestinians in the name of 'security'."* (Samah Jabr, 2002)

35. The experience of Palestinian dispossession, under a system of humiliation and control, has continued for at least three generations, from before the Nakba until today. As we have heard from Palestinians directly, life under a system of humiliation and colonial domination paints a grim picture for everyday life. The process of dehumanisation is deeply impactful on mental health; this has been the central message from luminaries like Victor Frankl, a psychiatrist who survived the holocaust and shared his experiences in vivid detail. The experiences of Frankl are

known; however this same recognition has not been afforded to Palestinians. If circumstances for Palestinians are to change, a recognition of their psychological experience of colonial domination is needed, followed swiftly by full justice and accountability.

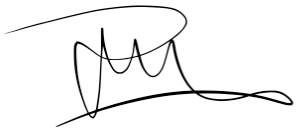
36. It is important to end on a tension raised earlier: mental health is not the measure of violence. As we have seen with Palestine for over a century, as much as a colonial project seeks to break the spirit of its people, the spirit has remained. This speaks to the astounding *sumood*. *Sumood* is often translated as steadfastness, but its significance among Palestinians extends beyond that. It's community in times of forced atomisation. It's continuity in times of violent erasure. It's resistance in times of colonial oppression. The idea of *sumood* then speaks to a tension that an emphasis on mental health fails to grasp: despite a century of erasure and systemic violence on the psyche of Palestinians, the colonial project has failed.

G. EXPERT OBLIGATIONS

37. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

38. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

39. I confirm that I have not received any remuneration for preparing this report.



Dr Tarek Younis
London
United Kingdom
13 December 2024

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IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE PALESTINIAN PRISONERS' MOVEMENT AS CENTRAL TO THE PALESTINIAN LIBERATION STRUGGLE
BY
CHARLOTTE KATES

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. This expert report examines the centrality of Palestinian political prisoners to the liberation struggle of the Palestinian people from the settler colonial conditions of their occupation. Palestinian prisoners have been celebrated and supported by resistance movements since the time of British Mandate to the contemporary moment, particularly under Israel's system of administrative detention – a system of arbitrary detention inherited by the British colonial authorities. All resistance movements, in fighting Israel, make consistent demands for their prisoners to be released, often engaging directly in the taking of Israeli hostages in order to force such releases. Over the years, Palestinian groups may have made a number of concessions to Israel, but they have never abandoned their prisoners.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am the co-founder of Samidoun Palestinian Prisoner Solidarity Network. In this context, I have written and produced numerous reports on the current situation of Palestinian prisoners as well as the historical struggle of Palestinian prisoners and the role of Palestinian prisoners of the resistance. Most of my work in this regard is available at samidoun.net.

5. I have spoken at hundreds of events, forums and activities internationally regarding the current situation and the political role of the Palestinian prisoners' movement, including at universities around the world, study centres, conferences and parliaments, including in Portugal, Brazil and the European Parliament.

6. I have travelled to Palestine on multiple occasions and met with former political prisoners and the families of current political prisoners, and produced interviews, reports and analyses of the situation facing Palestinian prisoners and their relevance to the current political moment.

7. I am the recipient of the Debra Evenson Venceremos Award from the National Lawyers Guild in the United States and the Islamic Human Rights and Human Dignity Award in Iran for my work in publicizing, advocating for and addressing the current situation and political history of Palestinian political prisoners.

8. I am active with the US National Lawyers Guild and the International Association of Democratic Lawyers

9. I graduated in 2006 from Rutgers University School of Law.

THE PALESTINIAN PRISONERS' MOVEMENT AS CENTRAL TO THE PALESTINIAN LIBERATION STRUGGLE

C. INTRODUCTION

10. The centrality of the Palestinian prisoners' movement[1] to the cause of the Palestinian liberation struggle can scarcely be overestimated. Frequently referred to as "the compass" or the "moral authority" of the Palestinian cause, the prisoners held in Israeli jails, many for lengthy sentences imposed by military courts or under arbitrary administrative detention without charge or trial, are widely regarded as symbols of principled commitment to Palestinian freedom and political symbols – and, indeed, protagonists of Palestinian unity[2]. Beyond their political importance, the Palestinian prisoners' issue is one that touches Palestinians intimately. According to many estimates, approximately 40% of Palestinian men in the West Bank and Jerusalem have spent some time in Israeli jails; prior to 2005, equal percentages could be found in Gaza[3]. Nearly every Palestinian family has some experience with imprisonment by Israeli forces, whether that is a briefer detention and interrogation or long-term incarceration. If an immediate family member has not been imprisoned, it is rare to find Palestinians in the West Bank, Jerusalem, Gaza Strip, and to some extent Palestinian citizens of Israel, who have not seen an uncle, aunt or cousin detained behind Israeli bars.

11. As a result of the political, social and cultural importance of the prisoners – alongside the general social value of honoring those who have sacrificed for the cause of liberation as veterans – every Palestinian political party and resistance organization has developed a program for their liberation. Having served time in Israeli prisons is a distinguished feature of leadership in Palestinian resistance and politics[4]. The most successful and dramatic releases of Palestinian prisoners, particularly those with a long history in armed struggle or key leadership roles in Palestinian resistance organizations, have come through prisoner exchanges with the Palestinian resistance. Indeed, many of the most well-known and spectacular Palestinian resistance operations historically, including many of the airplane hijackings of the late 1960s and early 1970s, were at least in part explicitly motivated by a demand to release Palestinian political prisoners in

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[1] The term "asra", used to describe Palestinian prisoners, can also be translated as "captives." It conveys a different meaning to those who are imprisoned in a criminal or social context. However, we are using the English term "prisoners" here for clarity, with the understanding that the term "prisoner" does not mean that it is just that they are imprisoned – on the contrary, that this term in English helps to evoke the carceral reality of the Israeli occupation for Palestinians.

[2] Norma Hashim, "Palestinian Political Prisoners in Israeli Jails: Stories of Resistance," Insight Turkey, Vo. 26, No. 1, pp. 31-40; Palestinian Youth Movement, ""Prisoners are the Compass of Our Struggle": why the release of Palestinian prisoners is central to our liberation", Shado Magazine, 6 December 2023: https://shado-mag.com/opinion/prisoners-release-palestine-israel-war/

[3] Al-Haq, "17 April: Palestinian Prisoners Day, Marks Increase in Torture, Ill treatment and Administrative Detention", 22 April 2015. https://www.alhaq.org/advocacy/6538.html

[4] Samidoun Seattle, "Palestinian prisoners are the leaders of our liberation struggle," 17 April 2024, Real Change News: https://www.realchangenews.org/news/2024/04/17/palestinian-prisoners-are-leaders-our-liberation-struggle

Israeli jails, or in Western countries' jails allied with Israel and its occupation[5].

12. Since 1967, over 800,000 Palestinians, including children, have been detained on the basis of an array of authoritarian rules enacted, enforced and adjudicated by the Israeli military.[6] As we write in December 2024, there are approximately 10,300 Palestinian political prisoners in Israeli jails. This number includes approximately 3,400 Palestinians held in administrative detention, imprisonment without charge or trial on the basis of a "secret file" that is indefinitely renewable. It also includes 345 Palestinian child prisoners, around 100 Palestinian women prisoners and 200 Palestinian political prisoners who are[7][8][9]. It is clear that this number is incomplete, as at least dozens of Palestinians from Gaza were killed under severe torture in the occupation prisons and detention camps, and the occupation has refused to release information about their names and the dates of their deaths.

13. In addition, through its practices of collective confinement in the occupied Palestinian territory, Israel reproduces a pattern of carcerality, an essential feature of settler-colonialism. This can be defined as a large-scale system of deprivation of liberty that forces into a condition of captivity entire populations, who are also dispossessed of their lands. "Over time, Israel has expanded its multifaceted hold over the Palestinians as a people, through physical, bureaucratic and digital mechanisms. Behind-bars imprisonment dovetails with confinement techniques that envelop the entire occupied Palestinian territory, accompanying and enabling arbitrary seizure of land and Palestinians' forcible displacement. This has turned Palestinian life into a "carceral continuum", where different levels of captivity co-exist: from the micro level of individual deprivation of liberty, through mass incarceration, to population entrapment in strictly controlled enclaves in which the occupied population is confined as a

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[5] Leila Khaled, *My People Shall Live: Autobiography of a Revolutionary*, 1973.

[6] 'Arbitrary deprivation of liberty in the occupied Palestinian territory: the Palestinian experience behind and beyond bars' Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 19 June-14 July 2023, A/HRC/53/59 https://documents.un.org/doc/undoc/gen/g23/116/61/pdf/g2311661.pdf

[7] Addameer Prisoner Support and Human Rights Association, "Statistics." 17 December 2024: https://www.addameer.org/statistics

[8] UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, "UN Commission finds war crimes and crimes against humanity in Israeli attacks on Gaza health facilities and treatment of detainees, hostages," https://www.ohchr.org/en/press-releases/2024/10/un-commission-finds-war-crimes-and-crimes-against-humanity-israeli-attacks

[9] Samidoun Palestinian Prisoner Solidarity Network, "Mohammed Walid Ali al-Aref martyred in Zionist prisons one week after his re-arrest," 5 December 2024: https://samidoun.net/2024/12/mohammed-walid-ali-al-aref-martyred-in-zionist-prisons-one-week-after-his-re-arrest/

collective security threat, and any form of resistance to the occupation's territorial expansion and dispossession is repressed."[10]

14. The conditions of Palestinian prisoners are also a major source of concern in Palestinian society. Israeli politicians, especially those assigned the post of "Minister of Public Security" who are, therefore, in charge of the Israel Prison Service, frequently boast about their poor treatment of Palestinian prisoners in the Hebrew-language media and seek to raise their profiles by speaking about how they aim to make life worse for Palestinian prisoners. The past two politicians holding this post, Gilad Erdan and Itamar Ben-Gvir, have been particularly notable for their promotion of poor treatment of Palestinian prisoners as they aimed to raise their profile among the right-wing and far-right-wing sectors of the Zionist movement[11].

15. Beyond the Israeli politicians' boasts, however, Palestinian prisoners and their lawyers have frequently spoken out about the poor conditions to which Palestinians detained by Israel are subjected. These conditions have routinely included severe torture under interrogation, denial of medical treatment, denial of family visits, inadequate, spoiled or inappropriate food, denial of education to imprisoned children, denial of legal visits, beatings and assaults by guards, violations of the privacy of women prisoners, and other forms of assaults on the human dignity of the Palestinian prisoners. While such treatment may have been intended to undermine or repress Palestinian resistance, it has instead helped to solidify the culture of *sumud*, or steadfastness, under interrogation and inside the prisons, alongside a firm commitment to achieve freedom and liberation[12].

16. Palestinian prisoners not only constitute a set of individual victims of the brutality of occupation soldiers or of the Israeli regime. Many are members of political parties and resistance organizations, who continue to carry on their work behind bars in clandestine

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[10] 'Arbitrary deprivation of liberty in the occupied Palestinian territory: the Palestinian experience behind and beyond bars' Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, 19 June-14 July 2023, A/HRC/53/59 https://documents.un.org/doc/undoc/gen/g23/116/61/pdf/g2311661.pdf

[11] Dr. Ramzy Baroud, "'Prisoners are heroes': Being a Palestinian prisoner in Israel," Middle East Monitor, 8 April 2019: https://www.middleeastmonitor.com/20190408-prisoners-are-heroes-being-a-palestinian-prisoner-in-israel/; Middle East Eye Staff, "Israeli minister Ben Gvir calls for execution of Palestinian prisoners to ease overcrowding," 18 April 2024: https://www.middleeasteye.net/news/israel-itamar-ben-gvir-calls-execution-palestinans-ease-overcrowding-prisons; Adalah, "Human rights organizations in Israel and the Occupied Palestinian Territory warn of a dangerous escalation in violations of Palestinian prisoners' rights due to the radical policies of the new Israeli government," 3 March 2023: https://www.adalah.org/en/content/view/10795

[12] Lena Meari, "*Sumud*: A Palestinian Philosophy of Confrontation in Colonial Prisons," South Atlantic Quarterly (2014), 113 (3): 547-578. https://doi.org/10.1215/00382876-2692182

manners that range from tiny, nearly undetectable paper messages called "capsules" to the modern equivalent of smuggled cell phones that are little more than a SIM card and circuit board. Most of the Palestinian resistance organizations, such as Hamas, the Islamic Resistance Movement; the Islamic Jihad Movement in Palestine; the Popular Front for the Liberation of Palestine; and even Fateh, the National Liberation Movement, have branches of their organizations in prison that participate in internal deliberations, cast their votes, and carry a strong moral weight behind their interventions in political activity due to their experience and sacrifices.[13]

17. All Palestinian political organizations speak frequently and openly about the need to free Palestinian prisoners and honor their role in the liberation movement. Even the Palestinian Authority in the West Bank, despite engaging in "security coordination" with the Israeli occupation authorities under the Oslo Accords, continues to provide support payments to the families of prisoners, despite demands from the Israelis and various Western governments to cease such payments, because that support for the prisoners is a key source of popular legitimacy for the Authority, and abandoning the prisoners would be widely understood as an act of national treason.[14]

D. THE PALESTINIAN PRISONERS' NATIONAL MOVEMENT

18. However, in addition to their role within the various Palestinian resistance organizations and political parties, Palestinian prisoners constitute what is generally referred to as the Palestinian prisoners' movement. This movement reflects the organization of the prisoners themselves to achieve their freedom from Israeli jails, to play their role in the liberation of Palestine from colonialism, settler colonialism and occupation, and to engage in constant and ongoing confrontations with their jailers over both these larger issues as well as a range of struggles over conditions of confinement through a range of tactics that include hunger strikes and mass civil disobedience. The Palestinian prisoners' movement also exerts an influential voice in Palestinian politics and society as a whole, with statements issued by the movement – from the 2006 "Prisoners' Document" on Palestinian national unity to calls to action on urgent issues – bearing a significant weight in setting political and action priorities.

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[13] Tadamon: International Organization of Solidarity with Palestinian Prisoners, "The Palestinian Prisoners Movement: History and Experiences." 9 September 2023: https://www.solidarity-ps.org/en/The_Palestinian_Prisoners_Movement

[14] Ramzy Baroud, "Instead of Freeing Palestinian Prisoners, New Scheme Aims at Punishing Their Families," Palestine Chronicle, 3 February 2022: https://www.palestinechronicle.com/instead-of-freeing-palestinian-prisoners-new-scheme-aims-at-punishing-their-families/

19. The Palestinian prisoners' movement is not a new development and indeed, in many ways, predates the Israeli occupation. Under the British Mandate for Palestine, 1929 witnessed a wide-scale Palestinian uprising known as the Buraq Revolution. At least 900 Palestinians were imprisoned by the British and 26 sentenced to death for participating in the revolt.[15] There was such an outcry by the Palestinian people that most of these sentences were converted to life imprisonment, with some key exceptions. On 17 June 1930, three of the earliest heroes and symbols of the Palestinian prisoners' movement, Fouad Hijazi, Atta al-Zeer and Mohammed Khalil Jamjoum, were executed by the British in Akka prison.

20. On the day of their execution, Palestinians organized a general strike throughout Palestine as large crowds gathered in major cities across the country – in Yafa, Haifa, al-Khalil and Nablus. After the executions, their bodies were handed to the men's families, who had been denied the right to bury them in their home cities. Thousands of Palestinians streamed through the streets of Akka in honor of Jamjoum, Hijazi and al-Zeer, figures and symbols of Palestinian resistance to colonialism. The song written to commemorate Hijazi, al-Zeer and Jamjoum, "From Akka Prison," today remains one of the most well-known and powerful poems of the Palestinian prisoners' movement.[16]

21. Indeed, the message to the public from Jamjoum, Hijazi and al-Zeer in many ways echoes the messages emerging from Israeli jails nearly a century later: ""Now we are at the doors of eternity, offering our lives to save the sacred homeland , for dear Palestine, we plead to all Palestinians not to forget our spilled blood and our souls that will fly in the sky of this beloved country, and to remember that we have willingly given ourselves and our skulls to be a basis for building our nation's independence and freedom, and that the nation remain persistent in its union and its struggle for the salvation of Palestine from the enemies, and to keep its lands and not to sell one inch of it to the enemies, and that its determination not be wavered and not be weakened by threat and intimidation, and to strive until it gains victory."[17]

22. While the Nakba of 1947-48 – the mass dispossession of the Palestinian people by Zionist militias establishing the Israeli state on stolen Palestinian land – is best-known for the hundreds of thousands dispossessed from their lands and forced into the West Bank, Gaza Strip, and neighbouring countries, massacres in villages like Dawaymeh and Deir

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[15] Samidoun, "93 years on the execution of the heroes of al-Buraq revolution: The prisoners' struggle against imperialism and Zionism continues!", 17 June 2023: https://samidoun.net/2023/06/93-years-on-the-execution-of-the-heroes-of-al-buraq-revolution-the-prisoners-struggle-against-imperialism-and-zionism-continues/

[16] Ibid.

[17] Ibid.

Yassin, and the destruction of hundreds of Palestinian villages, like every other major incident of colonial assault on the Palestinian people, imprisonment and the exploitation of Palestinian labour was also a key characteristic of the aggression. As documented by Salman Abu Sitta and Terry Rempel, thousands of Palestinians were imprisoned in prisoner of war camps and exploited in forced labour in order to bolster the Zionist war effort in conditions described by one International Committee of the Red Cross official as "slavery."[18] At least 5,000 Palestinian prisoners of al-Nakba were later expelled from their lands.

23. The modern Palestinian prisoners' movement, like the Palestinian liberation movement, began and escalated in 1967, although it has its roots in these earlier experiences as well as the imprisonment of many Palestinian citizens of Israel prior to 1967 under the martial law directives. Indeed, the first organization designated an "illegal organization" by the Israeli occupation was Al-Ard, an association of Palestinian citizens of Israel dedicated to reclaiming the stolen land of Palestine. [19]Today, the charge of "membership in" or "support for" an "illegal organization" – which includes all major Palestinian political parties, resistance organizations, student blocs and even the Palestine Liberation Organization, despite the Oslo Accords – is one of the most common charges under which Palestinian prisoners are held in Israeli jails.

24. Approximately one million Palestinians have been arrested and detained by the Israeli occupation forces since 1967, with the first administrative detention order issued in the West Bank on 3 September 1967. [20] Alongside the development of the Palestinian factions like Fateh, the PFLP and the DFLP, their prison organizations also grew and developed. One of the first collective hunger strike demands in 1969 of the Palestinian prisoners' movement inside Israeli jails was for paper and pencils to be able to write, and the prisoners' movement quickly "turned the prisons of the occupier into revolutionary schools," developing their organizations, sharing knowledge and building an organized political movement to which young Palestinians contributed even more significantly upon their release from prison.[21]

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[18] Salman Abu Sitta and Terry Rempel, "The ICRC and the Detention of Palestinian Civilians in Israel's 1948 POW/Labor Camps," Journal of Palestine Studies, Vol. 43 No. 4 (Summer 2014) pp. 11-38. https://doi.org/10.1525/jps.2014.43.4.11

[19] Leena Dallasheh, "Political mobilization of Palestinians in Israel: The al-'Ard movement," January 2010: https://www.researchgate.net/publication/293241109_Political_mobilization_of_palestinians_in_Israel_The_al-'Ard_movement

[20] Mandy Turner, "Locked-in conflict: Israel's repressive carceral system and the criminalisation of Palestinians was one of the catalysts for October 7," Security in Context, 26 March 2024: https://www.securityincontext.org/posts/locked-in-conflict-israels-repressive-carceral-system

[21] Khaled al-Azraq, "Israeli prisons as revolutionary universities," Electronic Intifada, 9 December 2009: https://electronicintifada.net/content/israeli-prisons-revolutionary-universities/8572

E. BATTLES OF EMPTY STOMACHS

25. The history of hunger strikes or the "battles of empty stomachs" that have characterized the Palestinian prisoners' movement have not only mobilized the prisoners themselves but also Palestinian society more broadly as well as wide-ranging global attention. Hunger strikes by Palestinian prisoners date back to 1968, with the 1969 strike for stationery being one of the first to receive widespread attention outside the prison walls.[22] This strike also demanded an end to forced labour and the requirement to address guards as "yes, sir," and ended with a crackdown on the prisoners and many held in solitary confinement.

26. Hunger strikes continued to develop as a means of prisoners' struggle behind bars, including the first hunger strike conducted by imprisoned Palestinian women at Neve Tirza in 1970 to demand access to sanitary products as well as to outdoor time. In July 1970, the first recorded martyr of the modern Palestinian prisoners' movement, Abdul-Qader Abu al-Fahm, was killed through force-feeding during a hunger strike at Asqalan prison, when the feeding tube was inserted into his lungs instead of his stomach. Hunger strikes continued through the 1970s and 1980s, including a 32-day strike at Nafha prison in 1980 in which Rasem Halawa and Ali al-Jaafari were killed through force-feeding, while prisoners won improved conditions.[23]

27. Improved conditions of Palestinian prisoners have typically been won through hunger strikes and mass action, even as Israeli political figures typically seek to appeal to their domestic audience by promising even worse conditions for jailed Palestinians. One of the most historically significant strikes took place in 1984 for 13 days at Junaid prison, when a strike by 800 prisoners gained access to a communal radio and TV, changes of clothes and better-quality food prepared by the prisoners themselves. In early 1987, a hunger strike by over 3,000 Palestinian prisoners in multiple prisons following an attempt by a new prison authority to roll back the prisoners' achievements, played a role

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[22] Basil Farraj, "How Palestinian Hunger Strikes Counter Israel's Monopoly on Violence," 12 May 2016, Al-Shabaka: https://al-shabaka.org/commentaries/how-palestinian-hunger-strikes-counter-israels-monopoly-on-violence/

[23] Zena Al Tahhan, "A timeline of Palestinian mass hunger strikes in Israel," 28 May 2017, Al Jazeera English. https://www.aljazeera.com/news/2017/5/28/a-timeline-of-palestinian-mass-hunger-strikes-in-israel

in leading up to the Intifada of the Stones, which burst into full prominence on 9 December 1987. [24]

28. In 1992, 7000 Palestinian prisoners launched a hunger strike, amid the ongoing Intifada, at multiple prisons, which led to closing the isolation section in Ramle prison, putting an end to strip searches, allowing more cooking equipment and increasing family visits. As the early Oslo period came to an end and amid the growing awareness that the Oslo Accords had brought no freedom to the Palestinian people but only renewed colonization, at least 650 Palestinian prisoners launched a collective hunger strike in January 2000 to demand an end to strip searches and allowance of family visits. Much like the 1987 strike, this was part of the growing unrest among the Palestinian population after years of settlement construction and broken promises that led to the Al-Aqsa Intifada.[25]

29. Throughout the past 25 years, individual and collective hunger strikes have remained a mainstay of the Palestinian prisoners' movement and have garnered a significant amount of external attention, within Palestinian society, across the Arab region and internationally. Collective hunger strikes in 2004, 2011, 2012, 2014, 2017 and 2023 involved hundreds to thousands of Palestinian prisoners, with an array of demands including an end to isolation and solitary confinement, ending administrative detention, and improving conditions, particularly as a form of resistance to repeated attempts by the Israeli prison administration to roll back all the achievements of the prisoners' movement over the prior decades.

30. The decade of the 2010s was also marked by a substantial rise in the number of individual hunger strikes, most frequently around the issue of administrative detention. First introduced to Palestine as part of the British Mandate's emergency laws, administrative detention has been one of the most widely practiced methods of the Israeli regime to target Palestinians for arbitrary detention, particularly when they have been unable to obtain a confession. Administrative detention is frequently used against influential Palestinians, community leaders, student activists and others who are prominent in their communities in an attempt to remove them from the scene.

31. Administrative detention orders are issued for up to six months at a time. They are issued by a military commander and then approved by a military court, although this is

[24] Ibid.

[25] Ibid.

more of a rubber-stamp procedure than any kind of meaningful due process. These orders are indefinitely renewable, and many Palestinians have spent years at a time jailed under such repeatedly renewed administrative detention orders. The use of administrative detention has been on a sustained increase for years.

32. Administrative detention also serves as a form of psychological torture for the detainee as well as collective punishment for their family members. Because they never know if or when they will be released or continually held in prison, they cannot plan for the future or determine their next steps. In addition, they do not have access to any meaningful form of appeal, as they are denied access to the "secret file" used to justify their imprisonment, as are their lawyers; therefore, they are unable to meaningfully object to any of the content contained therein. The widespread use of administrative detention therefore sparked the individual hunger strike movement of the 2010s.

33. The most prominent figure of this movement was Sheikh Khader Adnan. A baker from Jenin and a member of the Islamic Jihad Movement in Palestine, Khader Adnan conducted four successful hunger strikes in which he won his freedom from administrative detention. Of course, he was not alone; many other prominent hunger strikers included Bilal Diab, Thaer Halahleh, Hana Shalabi, Hisham Abu Hawash, Nidal Abu Aker, Bilal Kayed, Mohammed al-Qeeq, Kayed Fasfous, and many others, all of whom were held in administrative detention and many of whom gained their freedom through these strikes. [26]

34. However, the Israeli regime responded to this increase in hunger strikes with even more repression. In 2015, the Knesset officially adopted the "Law to Prevent Harm Caused by Hunger Strikers" to officially approve force-feeding of hunger-striking prisoners. The prison administration also clearly adopted a policy of refusing to respond to hunger strikers, particularly in the post-2020 era. Fewer hunger strikers were able to win their release, and on multiple occasions, Israeli officials reneged upon or denied agreements that they had made with Palestinian prisoners and their lawyers. [27]

35. In July 2022, the case of Khalil Awawdeh, on hunger strike for over 150 days, was one of the major issues in the Israeli aggression on Gaza and the response of the Palestinian resistance, as the Islamic Jihad Movement and its armed wing Saraya al-Quds

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[26] Amnesty International, "Israel/OPT: Death of Khader Adnan highlights Israel's cruel treatment of Palestinian prisoners," 3 May 2023: https://www.amnesty.org/en/latest/news/2023/05/israel-opt-death-of-khader-adnan-highlights-israels-cruel-treatment-of-palestinian-prisoners/

[27] Addameer, "Force Feeding Under International Law," 16 November 2015. http://www.addameer.org/publications/factsheet-force-feeding-under-international-law-and-medical-standards

demanded the release of Palestinian prisoners. Despite Egyptian guarantees of the release of Awawdeh and Bassam al-Saadi, a prominent leader of the movement, the Israelis reneged on the agreement and claimed to find a smuggled phone with Awawdeh upon his transfer to hospital, keeping him in administrative detention. [28]

36. In May 2023, Sheikh Khader Adnan died after 82 days on hunger strike in his most recent imprisonment, inside Israeli jails, after he was denied medical care and treatment. His wife and multiple advocacy organizations had warned on multiple occasions that the situation for Adnan was dire and that he was facing, in effect, a "slow assassination" inside Israeli jails. These incidents highlighted the limitations of the tactic of hunger strikes inside the prison to win the release of Palestinians, especially as the number of administrative detainees – and prisoners in total – continued to increase through ongoing mass arrests on a daily basis throughout the West Bank and Jerusalem.[29]

F. SELF-LIBERATION AND PRISONER ESCAPES

37. Hunger strikes were not the only mechanisms that Palestinian prisoners used in order to liberate themselves from Israeli prisons, as the Palestinian prisoners' movement consistently developed plans for prisoner escapes. Much like the prisoners' movement as a whole, these escapes have roots in the Palestinian resistance to British colonialism as well as the post-Nakba imprisonment of Palestinians prior to the emergence of the modern Palestinian national movement.

38. In 1938, one of the leaders of the 1936-1939 revolt in Palestine against British colonialism, who fought alongside Sheikh Izzedine al-Qassam, Issa Hajj Suleiman al-Battat, escaped with several other Palestinian prisoners jailed by the British in 1938 from Atlit prison. Two decades later, Shatta prison – still a prison holding Palestinian political prisoners today – was the site of the largest prison uprising and escape since the Nakba. Approximately 190 Palestinian and Arab prisoners revolted inside the Shata prison in the Jordan Valley on 31 July 1958. 77 prisoners escaped after fierce fighting in which 11 prisoners and two jailers were killed. Mohammed Jahjah, the grandfather of Zakaria Zubaidi, who would later participate in a 2021 escape, was one of the prisoners who liberated himself in this rebellion, who then participated in leading the fedayeen in

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[28] Samidoun, "Gaza ceasefire: Palestinian prisoners at the heart of the battle and the Resistance," 7 August 2022: https://samidoun.net/2022/08/gaza-ceasefire-palestinian-prisoners-at-the-heart-of-the-battle-and-the-resistance/

[29] Amnesty International. Id.

armed struggle in Irbid, Jordan, before moving with the fighters to Syria.[30]

39. Palestinian prisoner Hamza Younes, from Ara, south of Haifa, escaped from occupation prisons on three occasions, in 1964, 1967 and 1971: from Asqelan prison, from a hospital and a third time from Ramle prison, respectively, before he escaped to Lebanon where he joined the Palestinian resistance. In 1969, Mahmoud Abdullah Hammad from Silwad, near Ramallah, escaped during a prisoner transfer. He evaded occupation forces for nine months and successfully made it to Jordan.

40. In 1983, Nasser Issa Hamed was 15 years old, taken to the occupation court on 27 January. His fellow prisoners launched a confrontation inside the court and Nasser escaped into Ramallah, where he took shelter in an unfinished construction project. He hid in a well as he attempted to make his way home to Silwad, but eventually turned himself in after his mother was arrested by the occupation forces. One month later, learning of the story, Majdi Suleiman Abu al-Safa escaped in the same way from the occupation courts, making his way to Jordan and then to Colombia and Brazil, where he has remained until the present day.

41. One extremely significant prisoner escape took place on 17 May 1987, when Misbah al-Suri and his comrades Sami al-Sheikh Khalil, Mohammed al-Jamal, Imad Saftawi, Khaled Saleh and Saleh Ishteiwi escaped from Gaza Central Prison. The incident – and the "Battle of Shujaiyya" that ensued in October as the released prisoners carried out resistance operations and fought with Israeli soldiers – has been long considered one of the sparks of the great Intifada of 1987, along with the mass hunger strike earlier that year. The prisoners refashioned kitchen tools into screwdrivers and were able to smuggle in a tiny saw inside a loaf of bread. The prisoners tied bedsheets together to make a rope ladder to scale down the wall of the prison and secure their liberation. The date of the Battle of Shujaiyya – 6 October 1987 – is now marked as the anniversary of the founding of the Islamic Jihad Movement, underlining once again the importance of the prisoners to all sectors of the Palestinian liberation movement.

42. On 21 May 1990, Omar Nayef Zayed escaped from occupation prisons four years after his arrest as he was transferred to a hospital in Bethlehem. He made his way to Jordan and then to Bulgaria in 1994. In 2016, occupation forces attempted to have him extradited from Bulgaria to occupied Palestine, and he took refuge inside the Palestinian Authority embassy where he was later killed on 26 February 2016. His fight against

[30] Samidoun, "Freedom Tunnel to Al-Aqsa Flood: Prisoners, Resistance and Liberation," 6 September 2024: https://samidoun.net/2024/09/freedom-tunnel-to-al-aqsa-flood-prisoners-resistance-and-liberation/

extradition sparked an international campaign to support him and demand his freedom.

43. Saleh Tahaineh escaped from Ofer prison in a complicated plan involving his fellow struggler Nu'man Tahaineh — later also assassinated by the occupation — and another Palestinian prisoner scheduled to be released. He took the place of the prisoner whose release was scheduled, who then noted that he had not been released. He had earlier switched places with Nu'man, who had a much lower sentence. He was pursued and eventually killed by occupation forces after being captured. Both Saleh and Nu'man Tahaineh were mentors of Mahmoud and Mohammed al-Ardah, who led the 2021 Freedom Tunnel escape.

44. On 6 September 2021, six Palestinian prisoners, Mahmoud al-Ardah, Mohammed al-Ardah, Yousef Qadri, Ayham Kamamji, Munadil Nafa'at and Zakaria Zubeidi, escaped the Israeli regime's "high security" Gilboa prison. Pictures of puzzled soldiers and guards examining a tunnel crafted outside the prison by the six men circulated widely on social media and the image of the spoon – used as one of the tools to dig the tunnel out of the prison – became a national symbol of the Palestinian cause. While the men were recaptured, their escape was a beacon of hope and of Palestinians' creativity and commitment to freedom. Palestinian resistance leaders and spokespeople, including Abu Obeida, the spokesperson of the Ezz el-Din al-Qassam Brigades, the military wing of Hamas, the Islamic Resistance Movement, pledged that the six men – and other prisoners who had participated in supporting their escape – would be highly prioritized in a prisoner exchange. [31]

G. PALESTINIAN RESISTANCE AND PRISONER EXCHANGES

45. Prisoner exchanges have been the most significant mechanism of the Palestinian national movement to free large numbers of Palestinian prisoners, particularly prominent national leaders that the Israeli regime is typically unwilling to free or have been given high sentences, including life and multiple life sentences. Because of the achievements of prisoner exchanges in releasing thousands of prisoners, particularly leaders and those with high sentences, securing the prisoners of war necessary to complete an exchange has been a high priority for Palestinian resistance organizations for decades. In total, over 8,000 Palestinian prisoners have been released through exchanges, and the capture

[31] Al Mayadeen, "Hamas Military Spokesperson: No Prisoner Exchange without the 6 Gilboa Prisoners," 11 September 2021. https://english.almayadeen.net/news/politics/hamas-military-spokesperson:-no-prisoner-exchange-without-th

of Israelis and especially Israeli soldiers or settlers has been a high priority for the Palestinian resistance in the past and at present in order to achieve the liberation of additional prisoners.

46. On 23 July 1968, the first exchange was successfully completed between the Palestinian revolution and the Israeli occupation. The Popular Front for the Liberation of Palestine hijacked a plane from Rome to Tel Aviv, releasing the passengers in exchange for 37 Palestinian prisoners, some with high sentences imprisoned before 1967. On 28 February 1971, Palestinian prisoner Mahmoud Bakr Hijazi was exchanged for an Israeli soldier in an exchange agreement between Fateh and the Israeli occupation.[32]

47. On 14 March 1979, the Popular Front for the Liberation of Palestine – General Command conducted an exchange agreement with the Israeli occupation for the release of 76 Palestinian prisoners, including 12 women prisoners. In 1980, Palestinian prisoner Mehdi Bseiso was released in exchange for a collaborator captured by the Fateh movement.

48. On 23 November 1983, 4560 Palestinian detained Palestinian and Lebanese prisoners in southern Lebanon, including 65 Palestinian women prisoners were exchanged for six Israeli occupation soldiers arrested in southern Lebanon, in an exchange with the Palestine Liberation Organization.

49. On 20 May 1985, 1155 Palestinian prisoners were released in an exchange for three Israeli soldiers captured by the PFLP-GC, including 380 serving life sentences. Many of the Palestinian prisoners released later became leaders in the intifada that arose in 1987. Often called the "Jibril Agreement," after PFLP-GC leader Ahmad Jibril, those released in this exchange included Misbah al-Suri, later re-arrested, who planned the escape from Gaza Central Prison in 1987; Kozo Okamoto of the Japanese Red Army; Sheikh Ahmad Yassin, later the spiritual leader of Hamas; and Ziyad Nakhaleh, the current general secretary of the Islamic Jihad Movement.

50. In September 1997, the Mossad attempted to assassinate Hamas leader Khaled Meshaal in Jordan with a poisonous injection. Two Mossad agents were arrested in Jordan and in exchange for those agents, the Israeli state released Sheikh Ahmed Yassin, the founder and leader of the Hamas movement, then serving a life sentence in Israeli prisons.

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[32] Samidoun, "Five years on: The Wafa al-Ahrar agreement and prisoner exchange," 19 October 2016: https://samidoun.net/2016/10/five-years-on-the-wafa-al-ahrar-agreement-and-prisoner-exchange/

(Yassin had been re-arrested after the 1985 prisoner exchange.)

51. In January 2004, the Israeli occupation released 436 prisoners and returned the remains of 59 soldiers in exchange for the remains of three Israeli occupation soldiers and the release of drug dealer, businessman and potential intelligence agent Elhanan Tannenbaum, in an exchange with Hezbollah in Lebanon. In 2008, Samir Kuntar of the Palestine Liberation Front and four Hezbollah fighters were released in exchange for the remains of two Israeli occupation soldiers in southern Lebanon, in an exchange with Hezbollah.

52. In 2011, the Palestinian resistance conducted its most significant prisoner exchange since 1985, the Wafaa al-Ahrar (Faithful to the Free) prisoner exchange, in which 1027 Palestinian prisoners were released in exchange for captured occupation soldier Gilad Shalit. This exchange agreement, led by Hamas and the al-Qassam Brigades, led to the release of a number of prominent Palestinian prisoners with lengthy sentences, including Yahya Sinwar, the chairman of the Hamas movement and one of the architects of the Al-Aqsa Flood, killed in battle in Gaza on 17 October 2024; Hussam Badran; Ahlam Tamimi; Zaher Jabarin; Hussam Badran; Nael Barghouti; Samer Issawi; and many others. The Wafaa al-Ahrar agreement is credited with playing a major role in helping to develop the resistance in Gaza, particularly as many Palestinian prisoners were exiled to Gaza as part of their release, into readiness for advanced military action and armed struggle.

53. The Wafaa al-Ahrar prisoners have been repeatedly targeted for re-arrest by Israeli forces, including longest-held Palestinian prisoner Nael Barghouti, whose previous life sentence was re-imposed upon him. Like the prisoners of the Freedom Tunnel, the re-arrestees of the Wafaa al-Ahrar exchange are a high priority for the Palestinian resistance in a prisoner exchange. [33]

54. In addition, the Israeli regime refused to release multiple prominent prisoners with lengthy sentences in the Wafa al-Ahrar exchange, leading Palestinian resistance organizations to seek a stronger hand in order to obtain the freedom of prominent leaders such as Marwan Barghouti, the prominent Fateh leader; Ahmad Sa'adat, the General Secretary of the Popular Front for the Liberation of Palestine; Abdullah Barghouti, the longest-sentenced Palestinian prisoner with 67 life sentences; and Ibrahim Hamed, Abbas Sayyed and Hassan Salameh, military leaders of the Hamas movement.

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[33] Addameer, "Targeting Released Prisoners in Exchange Deals," 26 February 2024. https://www.addameer.org/news/5281

H. CONCLUSION

55. So long as the Israeli regime and its illegal occupation continue to imprison thousands of Palestinians, many of them jailed without charge or trial, in extreme and inhumane conditions, Palestinian prisoners and their political parties and resistance movements will seek their freedom by all means. The release of the Palestinian prisoners is a consensus position among Palestinians with strong support from all sectors of society, and the Israeli occupation has made clear that a prisoner exchange has been, for many years, the only effective way to ensure the release of significant numbers of imprisoned Palestinians, especially of imprisoned Palestinian national leaders.

56. Palestinian prisoners are not separate to the resistance movements operating within the Occupied Territory, they are an integral part of how resistance operates for all factions. In many ways, it cannot be overstated that the moral conscience of the historic and contemporary movement for a Palestine free of settler colonisation can be found explicitly in the centrality of political prisoners to every part of Palestinian society.

I. EXPERT OBLIGATIONS

1. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

2. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

3. I confirm that I have not received any remuneration for preparing this report.



Charlotte Kates
Co-founder, Samidoun Palestinian Prisoner Solidarity Network
Tunis
Tunisia
17 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE SOCIO-ECONOMIC CONDITIONS OF PALESTINIANS ON 6 OCTOBER 2023
BY
AMET SAIT ÖNER & ŞÜHEDA NUR UZUNTAŞ

A. INTRODUCTION

1. We have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to detail the socio-economic conditions that existed for Palestinians on the 6th of October 2023 and how the Israeli occupying regime and settlement strategy turns Palestinian society into a "control society" with the intention of rendering Palestine increasingly uninhabitable for Palestinians. The systematic violence shows that October 7 was not the beginning point; the wave of attacks initiated on October 7 can be viewed as the intensification of ongoing destruction and elevation of the assault on Palestinians to the level of genocide.

B. QUALIFICATIONS

3. We give this report in our personal capacities.

4. Amet Sait Öner Graduated from Marmara University Faculty of Law in 2003.

5. Dedicated law practitioner and actively participates as a leader in numerous civil society organisations. He has worked on several significant cases, including the

impactful February 28 Trials, the pivotal Tahşiye case linked to the July 15 coup attempt in Türkiye, and the Yasin Börü case.

6. He is currently Chairman of the ILKE Foundation. At the ILKE Foundation, he oversaw the coordination and editorial responsibilities for the annual Legal Monitoring Reports.

7. As a member of the Central Executive Board of the Association of Human Rights and Solidarity for Oppressed People (MAZLUMDER), Ahmet has been a leading advocate for the oppressed, contributing to vital human rights reports concerning events like the Avrasya Marathon and the July 15 coup trials.

8. Ahmet is also the visionary founder and current director of the Academy of Justice and Knowledge (ADİL), which focuses on empowering future law students with essential knowledge and skills.

9. Şüheda Nur Uzuntaş is a sociologist and researcher specialising in data collection, visualisation, and social analysis. She is a Project Specialist and Researcher in the Sosyal Veri project at İLKE Foundation in Istanbul, Türkiye.

10. She has a Master's degree in Sociology from Istanbul Medeniyet University.

11. She has written in the field of social thought and policy. As a project specialist in Sosyal Veri, she has published various analyses on Türkiye's social, economic and cultural issues on our project's website. Her printed publications include *Toplumun Görünümü 2023: Kent ve konut*, 2023; *The Outlook of Palestine: Palestinian society in data*, 2024.

12. She has worked on data collection on a wide range of social, economic, and violence indicators of Palestinian society. She has also publicised data on Palestine through data visualisations and has written a report as a researcher on the socio-economic situation in occupied Palestine.

C. THE SETTLEMENT POLICY AND ONGOING OCCUPATION

13. The Israeli project to settle Jews in Palestine has a long history dating back even before 1948. With the 1947 UN General Assembly Resolution 181, the groundwork for the establishment of a Jewish state in Palestine, the settlement project became policies of the occupation state. The Partition Plan aimed to divide the Palestinian lands into 56.2% for Jews and 43% for Palestinians, with Jerusalem designated as an "international city" (corpus separatum).

14. After the establishment of Israel as a state and policy toward pursuing the settlement project, the establishment of an independent and unified Palestinian state was made almost impossible. Following that, Israel expanded its occupation into the West Bank

and East Jerusalem in 1967, where settlements were established as part of a broader policy of Zionism by violating UN Resolution 181. This expansion and advantageous position of the occupying regime transformed Palestinian society into a "control society," which has facilitated the infiltration of occupation into different aspects of daily life for Palestinians.

15. Since 1967, the number of Jewish settlers in the West Bank and East Jerusalem has grown. This expansion can be viewed as Israel's de facto annexation policy, whereby it establishes legal and administrative control over the occupied territories without any legal justification.[1] While Gazans are concentrated in the Gaza Strip because of the blockade, people in the West Bank are concentrated in neighbouring areas because of the limitations on movement to facilitate settlement activities in those areas.

16. Citizens of the West Bank have been completely isolated in some areas because of the imposed restrictions. For example, in Hebron, the movement of Palestinians is severely restricted, while Israelis can move freely throughout the city. In 2016, to minimise Palestinian movement in the area, they were prohibited from crossing from one street to another. Amnesty International has labelled these high-level restrictions on an entire population as "collective punishment."[2]

17. In the West Bank, there is an increasing Jewish settler population because of the takeover of Palestinian lands. As of March 2024, Israeli occupation forces control 2380 square kilometres of Palestinian land, comprising approximately 42% of the West Bank, with the occupation forces controlling 69% of the C areas (CWRC, 2024). Whereas the Gaza Strip is under total blockade, the Separation Wall restricts the movement of Palestinians in the West Bank, infringing on the fundamental human right to freedom of movement. Indeed, it is an indication that Israel is an apartheid regime.[3]

18. Strategies such as agricultural cooperatives, settlements, colonies, and the construction of the Separation Wall — actions unrecognised by international law — are all part of a broader settler-colonial project. Besides the checkpoints, which are in accordance with the Separation Wall, there are settlements, outposts, bypass roads, military bases, closed military zones, and areas declared by Israel as nature reserves in the West Bank and the other regions in the occupied Palestinian territories.

19. Moshav and Kibbutz are cooperative agricultural villages planned and supported by the Israeli state. They serve to assert control over Palestinian natural resources,

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[1] Aral, B. (2019). *Bitmeyen ihanet: Emperyalizmin gölgesinde Filistin sorunu ve uluslararası hukuk*. Istanbul: Çıra Yayınları, pp. 160-161.

[2] Amnesty International. (2016). *Israeli authorities must end collective punishment of Palestinians in Hebron, protect human rights defenders in the city*. London: Amnesty International Ltd.

[3] Amnesty International. (2022). *Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity*. London: Amnesty International Ltd.

aiming ultimately to seize them completely. Moreover, the Separation Wall cuts through the most fertile agricultural lands of the Palestinians, rendering a tenth of these lands unusable and disrupting water sources for farmers.[4]

20. Outposts allegedly built to "ensure security" have been a critical apparatus of the occupation plan. Outposts pave the way for an increase in the Jewish population, facilitate settler violence, and lead to further displacement of Palestinians. While there was only one outpost in 1976, by 2023, the number reached 179. In addition, the number of settlements was only one in 1967, whereas it reached 176 in 2023.

21. The rising number of settlements explains the growth in the settler population, which stood at 190,000 in 1988 and quadrupled to 726,000 by 2022. As the number of outposts increases, so does the violence against Palestinians, who are often forcibly removed from their homes or land to make way for expanded settlements.

D. SETTLER-COLONIAL VIOLENCE

22. The settlement project resulted in the takeover of Palestinians' land and resources and forcibly displaced them, which made settlers colonists as well. The settler-colonial project has been enabled by systematic violence against Palestinians. While the occupation regime has been responsible for the public order and safety of the people in the occupied areas, the Israeli regime has expanded its settlements and colonies and increased the number of settlers.[5] This policy of de facto annexation implementation is perpetuated by different forms of violence against Palestinians and their rights under humanitarian law. According to Amnesty International, Israel committed 12 distinct violations of international humanitarian and human rights laws.[6]

23. Occupation forces and settler-colonists have violated Palestinians' right to live. Data shows that Israeli security forces and settler-colonists killed nearly 7000 Palestinians between 2008 and 2024, excluding casualties from the October 7 and its aftermath. [7]

24. The Zionist regime frequently violated Palestinians' rights to personal liberty, security, and equality. Yesh Din, a human rights organisation established in Israel and led by Israeli volunteers, well-documented this violation. According to data, 81% of police investigations into incidents of Israelis harming Palestinians or damaging

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[4] El-Jazairi, L. (2010). *The road to olive farming: Challenge to developing the economy of olive oil in the West Bank*. Oxfam International.

[5] See: International Committee of the Red Cross (ICRC). (1949). *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287.

[6] See: Amnesty International. (2019). *Destination: Occupation, digital tourism and Israel's illegal settlements in the occupied Palestinian territories*. London: Amnesty International Ltd, pp. 31-34.

[7] *See* OCHA, Data on Casualties. Retrieved from: https://www.ochaopt.org/data/casualties.

their property between 2005 and 2023 were unsuccessful, and 93.7% of investigations in the West Bank were closed without indictments.

25. The lack of accountability indicates to Israeli settlers that legal consequences for unlawful actions against Palestinians are unlikely. Israeli authorities persist in overlooking the legal protections for Palestinians, who, under international law, are entitled to protection. Local human rights organisations periodically report on this ongoing situation.[8]

26. The right to an effective remedy and a fair trial was also violated by the occupation regime to hinder legal channels for Palestinians seeking justice. No action was taken against Israelis who committed offenses against Palestinians in 2022, while 57.5% of Palestinian victims did not file complaints against perpetrators in 2023.[9]

27. Freedom of movement and rights to freedom of expression, assembly, and association are closely related rights violated by the Israeli regime. The presence of checkpoints is unlawful in itself because it limits the freedom of movement of Palestinians. Military checkpoints regularly impede their passage, often accompanied by violence. In addition, any kind of gathering of Palestinians is restricted through Military Order No. 101, the "Order Regarding Prohibition of Incitement and Hostile Propaganda," which permits any gathering of ten or more Palestinians to be deemed "political" and, therefore, prohibited.[10]

28. The ambiguous definition of "political" gives occupation authorities extensive powers to suppress Palestinians' freedom of expression, protest, and assembly, thus rejecting their fundamental rights through military decree. Amnesty International reports that between 1967 and 2021, over 400 Palestinian aid and solidarity organizations reporting on human rights violations and providing medical and legal aid were declared illegal by Israel without legitimate justification.[11]

29. When we compare the Palestinians' and Israelis' life conditions, Israelis living in Israel do not face such human rights violations, which underscores the extensive rights violations against Palestinians. Israel operates as an apartheid regime[12],

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[8] See: Yesh Din, *Law Enforcement on Israeli Civilians in the West Bank (Settler violence)* reports; Amnesty reports; B'tselem reports.

[9] *See* Yesh Din, *Law Enforcement on Israeli Civilians in the West Bank (Settler Violence) 2005-2023*, 2024.

[10] B'tselem. (2011). Military order 101. Retrieved from: https://www.btselem.org/demonstrations/military_order_101

[11] Amnesty International. (2022). *Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity*. London: Amnesty International Ltd, p. 13.

[12] Ibid.

systematically discriminating against Palestinians in Gaza and other occupied territories.[13]

30. Israel's policies on settlements, which it actively promotes or allows through inaction, violate Palestinians' rights to equality and non-discrimination. This settler-colonial policy also violates Palestinians' right to adequate, decent housing. The practice of establishing settlements directly denies their housing rights.

31. The United Nations' 2001 Declaration on the Fourth Geneva Convention reaffirms that Israeli settlements in Palestine violate international humanitarian law while highlighting their illegality. The Fourth Geneva Convention prohibits an occupying power from forcibly displacing the population in occupied territories.[14]

32. Israeli authorities continue to issue demolition orders regularly to evict Palestinians from their homes forcibly. According to data, between 2006 and 2024, nearly 6000 houses were demolished by the Zionist regime. The consequences of these actions have left thousands of Palestinians without homes, casting them into a struggle for shelter and stability.[15]

33. In addition to demolition orders, evacuation orders are issued in certain areas, forcing entire communities to relocate. One example is the nomad communities that face settler-colonial violence and are targeted by displacement orders of the occupation authorities. The Palestinian Bedouins are semi-nomadic communities living in rural areas of the West Bank, primarily engaged in agriculture and livestock farming. Before the establishment of Israel, Bedouins made up 25% of the population in the region, and under Israeli rule, they constituted 10% of the minority Palestinian Arab population within Israel.[16]

34. They also damage essential infrastructure, such as water and electricity, depriving Palestinians of basic needs and pressuring them to abandon their homes. According to PCBS data, 46% of households in Gaza experienced daily water cuts, and 42.6% had more than one water outage per week in 2020. In contrast, 52.6% of households in the West Bank did not experience water cuts, while 27.2% experienced multiple outages per week.[17]

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[13] See: Amnesty International. (2019). *Destination: Occupation, digital tourism and Israel's illegal settlements in the occupied Palestinian territories*. London: Amnesty International Ltd.

[14] See: International Committee of the Red Cross (ICRC). (1949). *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 75 UNTS 287.

[15] *See* B'tselem. (2023). *House Demolitions Database: Demolition on the pretext of unlawful construction.*

[16] Abu-Saad, I. (2005). *Forced sedentarisation, land rights and indigenous resistance: The Bedouin in the Negev.* In N. Masalha (Ed.), *Catastrophe remembered: Palestine, Israel and the internal refugees* (pp. 113-141). London: Zed Books.

[17] See: Uzuntaş, Ş. N., Awad, O., Elkahlout, G. & Hanafi, S. (2024). *The outlook of Palestine: Palestinian society in data* (Research Report 1 7/2024). İLKE Foundation, p. 45.

35. According to OCHA data, Gaza received only an average of 7 hours of electricity per day in 2017 and 2018, which increased to 12 hours in 2019, 13 hours in 2020 and 2021, but fell back to 10 hours in 2023. Following October 7, 2023, the ongoing conflict resulted in Gaza receiving no electricity at all by 2024.[18]

36. Local production is also the target of settler-colonial violence to seize produce and materials. Various reports have shown most of the attacks targeted the Palestinians' properties, agricultural lands, and even olive trees. During the harvest seasons, attacks by settler-colonialists, who are backed by Israeli police, had risen against Palestinian farmers. Moreover, attacks by settler-colonialists against olive trees have a long history. Tens of thousands of olive trees have reportedly been uprooted or burned by occupying authorities and settlers since 1967. These attacks on trees have severely impacted the livelihoods of Palestinian farmers.

37. In the West Bank, agricultural lands are routinely targeted, and over a two-month period in 2018 alone, more than 2000 trees were damaged, resulting in losses exceeding $100,000 for affected farmers.[19] In 2023, settler militias uprooted or damaged 21,731 trees, and in the first half of 2024, 9957 trees, including 4097 olive trees, were recorded as uprooted.[20]

38. These attacks, which have become routine for settler-colonialists, occur with impunity, as Israeli police typically fail to take preventive action, often turning a blind eye or even participating. Even when Palestinian farmers file complaints, their grievances rarely reach the courts; between 2005 and 2009, not a single complaint regarding these attacks in the West Bank resulted in a police investigation or indictment.[21]

39. Moreover, Israeli occupation forces frequently use arbitrary arrest as a form of violence against Palestinians, often conducted through administrative detention — a process of detaining individuals without charge or trial. This practice has served as a means of both psychological and physical oppression for thousands of Palestinians. The aim of the Zionist regime through administrative detention is to intimidate the Palestinians.

40. Although Israel claims these detentions are necessary for security, Amnesty International indicates that administrative detention is utilised as a form of political

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[18] Ibid.

[19] B'tselem. (2018). *Settlers destroy 2,000+ Palestinian-owned trees and vines, backed by Israeli authorities*.

[20] CWRC. (2024). *Summary of Israeli occupation state and colonizers' violations in the occupied Palestine 2023.* Ramallah: CWRC.

[21] Yesh Din. (2009). *Law enforcement on Israeli citizens who vandalized Palestinian-owned olive trees in the West Bank 2005-2009*.

imprisonment, facilitating the arbitrary arrest of Palestinians.[22] Detainees are given no opportunity to defend themselves, access legal representation, or even be informed of the reasons for their arrest. Administrative detentions can be renewed indefinitely, leaving detainees uncertain about their release dates.[23]

41. B'Tselem has documented cases where detainees have been denied family visitation rights for years, including cases involving detained children and released prisoners who are re-arrested under administrative detention.

42. Since 1989, B'Tselem reports that over 22,000 detentions have occurred in the West Bank and Jerusalem.[24] The numbers surged during the First and Second Intifadas, and in 2023, after October 7, the rate of administrative detentions reached its highest recorded level. The number of detentions in the first half of 2024 exceeded the total for the previous year. Administrative detentions usually last up to six months, but most are extended at least once. The duration of these detentions increased in 2023, and by 2024, many had been prolonged to 6-12 months.

43. It's important to note that these detentions are not limited to adults; children are also frequently detained. Data indicates that most detained children are aged 16-18, although children younger than 16 have also been arrested. Between 2008 and 2024, 3,217 children aged 16-18 were detained, while detained children aged 0-16 numbered 626.[25] The application of administrative detention to minors is especially concerning, as many children are repeatedly detained without any clear justification.[26]

44. For decades, Palestinians have endured a daily onslaught of violence from occupation authorities and settler-colonialists. Their fundamental rights — including the right to work, self-defence, housing, freedom of thought, and even the right to life — are consistently violated by Israeli authorities. Analysing data on this violence over the years or by month shows a steady increase in aggression since 2022. The surge in violence outside Gaza since October 7, driven by both occupation forces and settler-colonialists, demonstrates how October 7 has been used as a tool for intensifying these violations.

E. THE OUTLOOK OF SOCIETY UNDER OCCUPATION

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[22] Amnesty International. (2012). *Starved of justice: Palestinians detained without trial by Israel*. London: Amnesty International Ltd, p. 11.

[23] Ibid, p. 12.

[24] B'Tselem. (2024). *Welcome to hell: The Zionist state's prison system as a network of torture camps*.

[25] See: B'Tselem, *Statistics on Palestinian Minors in Israeli Custody*.

[26] See: Uzuntaş, Ş. N., Awad, O., Elkahlout, G. & Hanafi, S. (2024). *The outlook of Palestine: Palestinian society in data* (Research Report 1 7/2024). İLKE Foundation, pp. 55-57.

45. The outlook of society is illustrated through a range of socio-economic indicators that touch upon different aspects of social life. These indicators include social, economic, infrastructural, and educational aspects influenced by the interplay between the government and the community, and these indicators have evolved under the current conditions in society. In the case of Palestine, these socio-economic indicators have changed within the framework of ongoing occupation.

46. It is crucial to understand that, despite all attempts to increase the Jewish population by the Israeli regime through settlements, demographic balance is still one of the critical aspects of the conflict between Israel and Palestine. Moreover, Palestinians are still the majority in every region they reside in occupied Palestine. This fact is crucial for understanding the dynamics of the demographic changes in the area.

47. According to current total fertility rates in Palestine and Israel given in the PCBS' population projections, it was estimated that Palestinians would make up 50.4% of the population in historic Palestine by the end of 2023. This foresight stemmed from the increasing Palestinian population over the years, allowing them to preserve the dynamism of the population. However, because of the ongoing attacks and death toll in the Gaza Strip, the situation at the end of 2023 could not be calculated yet. Israel deliberately attacked or jailed young persons because of the "demographic advantage" that Palestinians hold over the self-determination issue.

48. Because of this dynamism Palestinians have had, the Israeli regime exercises the policy of spatial concentration, which is another mechanism to maintain "control society." The pressure, restrictions, and limitations imposed by the occupation regime on the Palestinian people have resulted in an excessive concentration of population in certain areas. With an area of only 365 km², the Gaza Strip's population density is above the average of Arab countries and the European Union.

49. The expansion of occupation beyond the 1948 borders, the establishment of numerous checkpoints, and the imposition of Israeli legal systems in the occupied Palestinian territories have significantly restricted Palestinians' economy.

50. The tax system imposed by Israel, a result of Israel's legal framework, involves the occupation regime collecting taxes from Palestinians on behalf of the Palestinian Authority, which has led to significant economic losses. Moreover, escalating conflicts, interventions targeting producers, and tighter restrictions have resulted in substantial losses in Palestine's value-added economic sectors. As a result, the Palestinian economy is not functioning optimally, which leads to inevitable social suffering, financial dependence, and instability.

51. The Palestinian economy grew in the 1990s, but occupation policies gradually eroded local production. Due to severe restrictions, one of the cornerstones of Palestine's

economy, agriculture, lost its potential and related sectors that enable the poorest communities to work and generate income face economic losses.[27]

52. When we examine Palestine's economy, we should consider the "occupation costs." These costs stem from the control mechanism held by occupation forces, which diminished the production income and caused a diminishing in the value-added production. For example, in the agricultural sector, export processes are hampered by several checkpoints and vehicle restrictions, resulting in occupying forces getting "payment."

53. The pressure of the "occupation costs" has led to a shift in sectors over the years: GDP contributions from agriculture and manufacturing have decreased, while the service sector has emerged as the leading sector of the Palestinian economy. Agriculture's share of GDP dropped from 12.1% in 1994 to 6% in 2022, while the share of manufacturing declined from 22.2% to 12.1%, highlighting the changing economic landscape under occupation.

54. Although Hamas won the democratic elections, it faced a blockade on Gaza and was banned from Ramallah; it was separated from the Palestinian Authority. Economic disparities between the West Bank and the Gaza Strip have deepened over the years. From 2000 to 2022, Gaza's annual GDP growth consistently remained below zero, while the West Bank saw only minimal growth.

55. The GDP growth rates from before 2006 have yet to be matched in the period from 2006 to 2022. Significant destabilising events, such as the Israeli attacks in 2008, 2012, and 2014, along with the ongoing blockade, have further exacerbated the situation. 1995 GDP was approximately $3.3 billion, reaching $19.1 billion by 2022. Since 2006, the West Bank's share in the economy has risen steadily, comprising 84% of Palestine's economy in 2023, with Gaza contributing 16%.

56. In a nation with limited economic self-sufficiency, the per capita GDP has been approximately $3,000 from 2012 to 2022. The West Bank has consistently reported a higher per capita GDP than the Gaza Strip, and the gap has nearly quadrupled in recent years. Nevertheless, the per capita GDP remains below the poverty line in both regions. Inflation has risen and particularly impacted the prices of fresh food and beverages. According to data, the poverty rate among individuals in the Gaza Strip has steadily increased over the years and reached 63.6% in the third quarter of 2023.[28]

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[27] *See* El-Jazairi, L. (2010). *The road to olive farming: Challenge to developing the economy of olive oil in the West Bank*. Oxfam International.

[28] Palestinian Central Bureau of Statistics. (2024). *Main Findings of Living Standards in the West Bank (Expenditure, Consumption and Poverty)*, 2023. Ramallah: PCBS.

57. In 2022 the per capita GDP was $3800, but it dropped by 26% to $2800 in 2023.[29] This decline in per capita income has also decreased purchasing power, leading to a higher prevalence of poverty in Gaza compared to the West Bank. Moreover, the purchasing power in Palestine is significantly lower than in Israel, where the per capita GDP has consistently been 15 to 19 times higher over the past two decades.

58. Altogether, economic disparities between Palestine and Israel, the labour market is also a target of the Israeli regime because it is another way to intervene in the domestic economy. The outlook and evolution of economic activities in Palestine show the inevitable outcomes of occupation. The data shows realities such as social change toward wage labourers, diminishing chances in the local economy, and disqualification of potential.

59. Labour force indicators for Palestine show differentiation between the Gaza Strip and the West Bank, where the unemployment rate is higher in the Gaza Strip, and the average wage is lower than in the West Bank. Although unemployment decreased in the West Bank after 2008, it peaked in the Gaza Strip that same year due to the ongoing blockade. Moreover, data reveals the impact of escalating conflicts in 2002, 2006, 2008, and 2014 on labour force indicators such as decreased population in the labour force and increasing unemployment rates in both the West Bank and the Gaza Strip.[30]

60. The labour force is divided into three categories based on place of work: the West Bank, the Gaza Strip, Israel and the settlements. The policy behind including the Palestinian labour force in Israel and the settlements is to destroy the mechanisms of the local market in Palestine. In Israel and settlements, the average wage is higher than in the West Bank and the Gaza Strip. The disparity in daily wages in Israel and the settlements causes unfair competition in the labour market and leaves limited choices to Palestinians. The number of Palestinians working in Israel and settlements has risen over the years.[31]

61. Due to ongoing restrictions and disparities in the labour market, many Palestinians are unable to maintain their businesses, which has increased wage employment since the occupation began. According to data from the third quarter of 2023, 70.6% of workers in the West Bank were wage employees, while 18.4% were self-employed.[32] Jobs in Israel and settlements have a critical role in that. Only limited sectors are open to Palestinians in Israel and settlements, and Palestinians are employed in unskilled labour generally.

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[29] Palestinian Central Bureau of Statistic, National Accounts (GDP) Statistics, Retrieved from: https://www.pcbs.gov.ps/site/lang__en/741/default.aspx

[30] Uzuntaş, Ş. N., Awad, O., Elkahlout, G. & Hanafi, S. (2024). *The outlook of Palestine: Palestinian society in data* (Research Report 1 7/2024). İLKE Foundation, pp. 22-23.

[31] Ibid, pp. 36-38.

[32] PCBS. (2023). *Labour Force Survey: (July- September 2023) Round, (Q3/2023). Press Report Labour Force Survey*. Ramallah: PCBS.

62. When we look at the distribution of the labour force by sector of occupation, current data shows differentiation between the West Bank and Israel and the settlements. According to data from the third quarter of 2023, just before October 7, 64.4% of Palestinians working in Israel and the settlements were employed in construction, and 13.5% were in mining, quarrying, and manufacturing.[33] In the West Bank, Palestinians are primarily employed in the service sector, and the public sector holds a substantial share.

63. The wage policy applied in Israel and the settlements exacerbate local economic imbalances. The wage policy implemented in Israel and the settlements aims to create imbalances in the local economy. According to third-quarter 2023 data (July-September), Palestinians working in Israel and the settlements earned an average daily wage of 297.7 ILS (1 USD = 3.75 ILS, September 2024), while the average daily wage in the West Bank was 139 ILS and 50.6 ILS in Gaza.[34]

64. Since 2015, the average earnings of Palestinians working in Israel and the settlements have been double those of workers in the West Bank and six times higher than those in Gaza. This trend, which devalues the local Palestinian economy, can be considered part of a broader policy to transition the West Bank's labour force into wage earners, akin to Gaza's less dynamic economy.

65. Moreover, because of the Israeli intervention in social life and excluding the Palestinians from economic means, most of the students are subject to dropping out of school and getting into working life.

66. Economic pressures have led to increased dropout rates among boys as many enter the labour force to support their families. Additionally, restrictions imposed by the Zionist regime drain students' motivation to pursue higher education, contributing to increased high school dropout rates. The NEET (Not in Education, Employment, or Training) rate is exceptionally high in Gaza, with more severe restrictions. From 2012 to 2019, the NEET rate in Palestine displayed a general upward trend.

67. Another noteworthy point is the high number of students affected by attacks from the occupation forces. In the 2022-2023 school year, there were 5141 disabled students enrolled in state schools in the West Bank and 2200 in the Gaza Strip, comprising 0.5% of all students.[35]

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[33] See: Uzuntaş, Ş. N., Awad, O., Elkahlout, G. & Hanafi, S. (2024). *The outlook of Palestine: Palestinian society in data* (Research Report 1 7/2024). İLKE Foundation, pp. 22-23. & PCBS. (2023b). *Labour Force Survey: (July- September 2023) Round, (Q3/2023). Press Report Labour Force Survey*. Ramallah: PCBS.

[34] PCBS. (2023). *Labour Force Survey: (July- September 2023) Round, (Q3/2023). Press Report Labour Force Survey*. Ramallah: PCBS.

[35] PCBS. (2023c). *Palestinians at the end of 2023*. Ramallah: PCBS.

68. The university system in Palestine faces significant challenges because of the Israeli regime. While most of the universities are located mainly in the West Bank, there are limited choices for universities in the Gaza Strip because of the blockade.

69. Students encounter difficulties accessing universities in the West Bank because of checkpoints, and university administrators and academics face similar restrictions, which reduces their opportunities for academic development.[36] The occupation authorities often deny visas to academics seeking international opportunities, further limiting regional academic mobility.[37]

70. In addition to direct and indirect limitations affecting the education system, there exist constraints within the healthcare system that hinder its proper functioning.

71. Three different entities provide healthcare services in the Palestinian territories. The Palestinian Authority is responsible for healthcare in the West Bank, while Hamas manages the Ministry of Health in Gaza. The United Nations Relief and Works Agency (UNRWA) also offers healthcare services to registered Palestinian refugees. However, the prominent challenge for Palestinians is accessing healthcare, which is hampered by restrictions and limitations by the Israeli government.

72. Despite the responsibility of the authorities for civilian access to primary healthcare in occupied territories, the occupation regime imposes a nine-step permit process for Palestinian patients who need treatment outside their region.[38]

73. This process, intensified by the blockade on Gaza, also applies in the West Bank and Jerusalem. Hospitals in Gaza and the West Bank lack sufficient equipment and specialists for complex cases like cancer and heart disease, leading to about 50% of cancer patients needing exit permits for treatment outside the region.[39] Between 2019 and 2020, 65% of permit applications from Gaza and 84% from the West Bank were approved, with men aged 18-40 being the most frequently denied.[40]

74. Healthcare services differ between Palestine and Israel, which shows deepened disparities because of the Israeli regime. In 2021, Palestinian per capita healthcare expenditure reached a 22-year high of $383.90, significantly lower than the global

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[36] Cemmell, J. (2009). *Academic freedom international study: Palestine.* London: UCU.

[37] Ibid.

[38] WHO. (2022). Infographics, Timeline for Gaza Patient Referral.

[39] World Bank. (2023). *Racing Against Time: World Bank Economic Monitoring Report to the Ad Hoc Liaison Committee* (English). Washington, D.C.: World Bank Group.

[40] WHO. (2023). *Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan*. A76/15.

average of $1,638.80.[41] In contrast, Israel's per capita healthcare expenditure was $4,339, which is 11 times higher than that of Palestine. The disparity in health indicators between Palestine and Israel is also growing. However, efforts by the authority to reduce households' healthcare costs in Palestine can be partly attributed to international aid.

75. Another indicator for health services is household out-of-pocket expenditures, which have risen because of the lack of government expenditures. Between 2010 and 2017, the share of household out-of-pocket spending increased from 36% to 41.7%.[42]

76. It is noteworthy to point out that, in the early 2000s, there was minimal difference in this indicator between Palestine and Israel; however, over time, Palestine's expenditure pattern has come to resemble that of other low-income countries, which highlights the growing impact of poverty on the healthcare sector in Palestine.

77. Furthermore, significant data show that public health is in danger because of the attacks by the occupation forces. They prevent people from getting enough food and make access to food challenging, which leads to malnutrition and stunting among children. Between 2000 and 2019, the rate of malnutrition in children remained below 4%, although the stunting rate among children under five reached 8.7% in 2019.

F. CONCLUSION

78. Socio-economic indicators show that Israel invades all areas of Palestinian society, with mechanisms of occupying regime over Palestinian society and how it turns Palestinian society into a "control society." Israel exerts control over all aspects of social life in Palestine, from employment to accessing education. Intervention through control mechanisms in different areas aims to empower Palestinians. Settlement policy and its apparatuses are the mechanisms that aim to challenge demographic balance, intervene in economic activities and labour markets, and create violence in social life.

79. The settlement policy fundamentally contributes to violence against Palestinians. The expansion of occupation, which extends from Palestinian land to the Palestinian economy and encompasses issues ranging from the destruction of olive trees to access to healthcare, has led to significant violations of Palestinians' rights. Beyond individual and familial displacement, Palestinians have been dispossessed collectively.

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[41] PCBS-Ministry of Health. (2020). *Palestinian Health Accounts 2000-2018*. Ramallah: PCBS. & PCBS-Ministry of Health. (2024). *Palestinian Health Accounts 2022*. Ramallah: PCBS.

[42] WHO, The Health Observatory, Health Expenditure Indicators & PCBS Ministry of Health. (2020). *Palestinian Health Accounts 2000-2018*. & PCBS Ministry of Health. (2024). *Palestinian Health Accounts 2022*.

80. The settlement strategy, by all means, gave rise to settler colonial violence, intending to render Palestine increasingly uninhabitable for Palestinians. Also, the systematic violence shows that October 7 was not the beginning point; the wave of attacks initiated on October 7 can be viewed as the intensification of ongoing destruction and elevation of the assault on Palestinians to the level of genocide. This genocidal process, deeply rooted in occupation, is not new but rather an extension of long-standing violence.

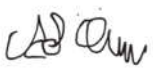
G. EXPERT OBLIGATIONS

81. We confirm that we have made clear which facts and matters referred to in this report are within our own knowledge and which are not. Those that are within our knowledge we confirm to be true. The opinions we have expressed represent our true and complete professional opinions on the matters to which they refer.

82. We understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

83. We confirm that we have not received any remuneration for preparing this report.





Şüheda Nur Uzuntaş
Istanbul, Türkiye
22 November 2024

Ahmet Sait Öner
Istanbul, Türkiye
22 November 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

REPORT ON
THE SIEGE OF GAZA
BY ROMANO RUBEO

A. INTRODUCTION

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to explain the legal and humanitarian consequences of the siege imposed by Israeli authorities on the Gaza Strip as a form of collective punishment following the victory of Hamas in the legislative elections of 2006.

B. QUALIFICATIONS

3. I have authored this report in my personal capacity.

4. I am a journalist and translator based in Italy. I am the managing editor of the Palestine Chronicle where I contribute extensively on issues related to the Middle East. My work also appears in various academic journals and online publications, often highlighting Palestinian issues.

5. I hold a Master's degree in Foreign Languages and Literature. I have a specialization in translation, focusing on both audiovisual media and journalism, which enhances my contributions to international media outlets.

6. I often collaborate with other prominent figures, such as Dr. Ramzy Baroud and Professor Ilan Pappé to provide commentary on current political issues, including Israel-Palestine relations and global indigenous movements.

7. As a respected voice on Palestinian issues, my journalism has contributed to global conversations about conflict, activism, and rights in the Middle East through debates, conferences, presentations, and media interviews, especially through my editorial influence at The Palestine Chronicle.

8. In writing the present Report, I have relied principally on:

   - *Euro-Med Human Rights Monitor. "- Suffocation and Isolation 17 Years of Israeli Blockade on Gaza."*

   - *Gaza Could Become Uninhabitable in Less Than Five Years Due to Ongoing 'De-development'– UN Report." UN News. September 1, 2015.*

   - *"The Legal Status of the West Bank and Gaza - Question of Palestine." United Nations. Question of Palestine. December 22, 2023.*

   - *"The International Committee of the Red Cross as Guardian of International Humanitarian Law." International Committee of the Red Cross. June 26, 2024.*

C. TIMELINE AND HUMANITARIAN IMPACT

9. On May 26, 2005, President Mahmoud Abbas met with US President George Bush in the White House, where President Bush affirmed his desire that Hamas would not win the upcoming elections in Palestine. US officials stated that despite the Bush administration's overt support for the democratic process, in the case of a Hamas victory, the US would refuse to engage with a government that would turn Gaza into 'Hamastan.'[1] President Bush's comments in his meeting with President Abbas suggested that Palestinians could later pay a cost if they voted the wrong way. In his words, he was sure Hamas would lose because "I think Palestinian moms want their children to grow up in peace…"[2]

10. Indeed, Hamas did win. Following a saga of interior politicking and a series of controversies, legislative elections took place in the Occupied Palestinian Territory on January 25, 2006, to elect the second Palestinian Legislative Council (PLC) – the legislative body of the Palestinian National Authority (PNA). The Islamic Resistance

[1] Weisman, S. (2005), "US to Shun Hamas Members, Even if Democratically Elected", *The New York Times*, June 7, https://www.nytimes.com/2005/06/07/politics/us-to-shun-hamas-members-even-if-democratically-elected.html

[2] "President Welcomes Palestinian President Abbas to the White House", *The White House Archives*, May 26, 2005, https://georgewbush-whitehouse.archives.gov/news/releases/2005/05/20050526.html

Movement Hamas won a surprising landslide victory, securing 74 of the 132 seats to Fatah's 45. Those elections, which had a 77% voter turnout, were deemed by many electoral experts and committees globally to have been free and fair. For instance, a delegation of 84 foreign observers sent by the National Democratic Institute in partnership with the Carter Foundation judged the process to compare "favorably to international standards. The observers included former US President Jimmy Carter, former Swedish Prime Minister Carl Bildt, former Albanian President Rexhep Meidani, and former Spanish Foreign Minister Ana Palaci. That delegation concluded that the elections were conducted in a free and fair manner and should be considered to reflect the will of the people.[3]

11. The Hamas victory presented a quagmire for US officials who had openly opposed the movement participating in the elections. Bush's immediate reaction was to refuse to recognize the newly elected authorities until they committed to a renunciation of violence and a recognition of Israel.[4] Similarly, after congratulating Abbas and the Palestinian people 'on an electoral process that was free, fair and secure', the Quartet (Russia, US, UN and EU) statement from January 26th iterated its desire that 'all participants in the democratic process' would 'renounce violence and terror, accept Israel's right to exist, and disarm.'[5] A statement four days later would affirm that adherence to these conditions would be a prerequisite for 'future assistance to any new government.'[6] All these commitments of course, were expected to come unilaterally from the Palestinian side, without Israel being expected to make any similar declarations in favour of Palestinian statehood.

12. The global reaction to the Hamas victory in 2006, provided implicit justification for the subsequent squeeze imposed by Israeli and US authorities on the Gaza Strip. On February 19, the Israeli government decided to halt the monthly transfer of approximately $50 million in tax and customs revenues to the Palestinian Authority. The US and the EU followed in suit two months later.[7] The Israelis justified this action by stating that the inauguration of a Hamas-led legislature indicated that the Palestinian leadership was now under the control of Hamas.[8] Whilst these sanctions

[3] "Final Report on the Palestinian Legislative Council Elections", *National Democratic Institute,* January 25, 2006, https://www.ndi.org/sites/default/files/2068_ps_elect_012506.pdf

[4] Goldenberg, S. MacAskill, E. (2006) "Bush demands renunciation of violence and recognition of Israel", The Guardian, January 27, https://amp.theguardian.com/world/2006/jan/27/usa.israel

[5] Quartet Statement – UNSCO, January 26, 2006, https://unsco.unmissions.org/sites/default/files/quartet_statement_26_jan_2006.pdf

[6] Quartet Statement S031/06, London, January 40, 2006, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/declarations/88201.pdf

[7] Weisman, S. Smith, C. (2006) "US and Europe Halt Aid to Palestinian Government", *The New York Times*, April 8, https://www.nytimes.com/2006/04/08/world/middleeast/us-and-europe-halt-aid-to-palestinian-government.html

[8] Erlanger, S. (2006) "Israel Suspends Tax Money Flow to Palestinians", *The New York Times*, February 20, https://www.nytimes.com/2006/02/20/world/middleeast/israel-suspends-tax-money-flow-to-palestinians.html

came with assurances that aid could reach Palestinians through other channels, in practice, US sanctions meant that banks were often deterred from transferring money to the Palestinian Authority, in order to avoid action from the United States.[9] Even President Mahmoud Abbas would say that 'the Palestinian people should not be punished for their democratic choice.'[10]

13. Though the Quartet would admit by the end of May 2006 that its policies were impacting the entire population of Palestinians, particularly in Gaza, and that this could create a humanitarian disaster[11], the policy approach adopted by foreign donors meant that the narrative grounding had been laid for the imposition of comprehensive siege conditions on Gaza by Israeli authorities. 'Hamastan' was, despite housing over 1.4 million people (838,000 of whom were under the age of 18) in 2006, nothing but a terror enclave that vehemently opposed Israel's right to exist. The license was provided for the Israelis to implement the policies they deemed necessary to solve their Gaza problem. Though it would not just "sink into the sea", as former Israeli Prime Minister Yitzhak Rabin had once wished,[12] Israeli authorities settled to turn the strip into what former British Prime Minister David Cameron referred to as an "open air prison"[13], with a series of wars and siege tactics that ushered in "16 years of de-development and suppressed human potential."[14]

14. On the 25th of June 2006, Hamas operatives launched an operation to capture Israeli soldier Gilad Shalit. In response, on the morning of June 28, 2006, Israel bombed Gaza's sole power station, firing six missiles at the stations six transformers. Two of the missiles missed, and so two more were fired minutes later, destroying the remaining transformers.[15] The IDF then launched 'Operation Summer Rain' which continued until November. By only early September, at least 240 Palestinians had been killed, with approximately one in five of the casualties being children.[16] The

[9] "US pressure on banks choking Hamas", *Al Jazeera,* April 22, 2006, https://www.aljazeera.com/news/2006/4/22/us-pressure-on-banks-choking-hamas

[10] "Palestinians decry US, EU aid halt", *Al Jazeera*, April 8, 2006, https://www.aljazeera.com/news/2006/4/8/palestinians-decry-us-eu-aid-halt

[11] "Seeking a bypass, as the money runs out", *The Economist*, May 11, 2006, https://www.economist.com/middle-east-and-africa/2006/05/11/seeking-a-bypass-as-the-money-runs-out

[12] Parks, M. (1992) Rabin Rejects 'Greater Israel' Land Claims, *Los Angeles Times,* September 4, https://www.latimes.com/archives/la-xpm-1992-09-04-mn-6429-story.html

[13] Watt, N. Sherwood, H. (2010) "David Cameron: Israeli blockade has turned Gaza Strip into a 'prison camp'", *The Guardian*, July 27, https://www.theguardian.com/politics/2010/jul/27/david-cameron-gaza-prison-camp

[14]"Developments in the economy of the Occupied Palestinian Territory", *United Nations Conference on Trade and Development – UN Report,* September 11, 2023 https://unctad.org/system/files/official-document/tdbex74d2_en.pdf

[15] Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects, *B'Tselem*, September 2006, https://www.btselem.org/publications/summaries/200609_act_of_vengeance

[16] McCarthy, R. (2006) "Palestinian children pay price of Israel's Summer Rain offensive", *The Guardian,* September 7, https://www.theguardian.com/world/2006/sep/07/israel

basic pattern of Israeli incursions that devastated Gazan infrastructure, and punished gravely the civilian Palestinian population had begun, even whilst Fatah elements were still present within the Gaza strip.

15. The walls continued to close in on Gaza's residents. In June 2007, Egypt closed its Rafah border with Gaza except for sporadic and limited openings which met only one-tenth of Gaza residents' travel needs.[17] In the same month, Israeli authorities closed the Karni crossing which had been used to transport commercial goods into Gaza. Four months later, in October, Israel announced the permanent closure of the Sufa Crossing. The amount of goods entering Gaza decreased by 71% from before the closing of the Karni crossing, from an average of 253 truckloads per day in April, to an average of 74 in October.[18]

16. Under a court order, in October 2012, the Israeli Defense Ministry disclosed a 2008 document about restrictions it imposed on the entry of food between 2007 and 2010. The document calculated the minimum number of calories needed by Gaza residents and used this to determine the quantity of food allowed into the Strip, therefore using food as a weapon in its war on the Palestinians.[19] The document reflected the callous advice offered by Israeli government adviser Dov Weisglass, to then Israeli Prime Minister Ehud Olmert in 2006: "It's like a meeting with a dietician. We have to make them much thinner, but not enough to die."[20] On November 4, 2008, Israel sealed all border crossings and prevented all humanitarian aid and staff from entering Gaza.

17. Following a move by the US to organize a Fatah-led coup against Hamas, the latter took full control of the Strip on June 15, 2007[21]. Since then, Haniyeh repeatedly called for reconciliation talks with Fatah. On September 19, 2007, Israel declared the Gaza Strip a "hostile entity," saying the Israeli side reserves the right to impose additional restrictions on the supplies of electricity and fuel to the territory if rocket fire continues from Gaza on Israel. UN Secretary General Ban Ki-Moon "called on Israel

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[17] "Movement of people between Gaza and Egypt via Rafah Crossing", *Gisha – Legal Center for Freedom of Movement,* December 26, 2023, https://gisha.org/en/movement-of-people-via-rafah-crossing/#:~:text=In%20June%202007%2C%20after%20Hamas,of%20Gaza%20residents'%20travel%20needs.

[18] Gaza Humanitarian Situation Report – UN Report, October 2007, https://www.ochaopt.org/content/gaza-humanitarian-situation-report-01-31-october-2007

[19] "Israel Used 'Calorie Count' to Limit Gaza Food During Blockade, Critics Claim." *The Guardian,* October 17, 2012.See "Israel Used 'Calorie Count' to Limit Gaza Food During Blockade, Critics Claim." The Guardian, October 17, 2012.

[20] BennAluf, A. (2006) "U.S. Backs Israel on Aid for Humanitarian Groups, Not Hamas", *Haaretz,* February 16, https://www.haaretz.com/2006-02-16/ty-article/u-s-backs-israel-on-aid-for-humanitarian-groups-not-hamas/0000017f-e8d4-da9b-a1ff-ecffd9020000

[21] Rose, D. (2008) "The Gaza Bombshell", *Vanity Fair,* March 3, HYPERLINK "https://www.vanityfair.com/news/2008/04/gaza200804?srsltid=AfmBOop56aQOhEAulnWY_GzFbHomADBLAzq6SuEeikOB30WrH12abXse"https://www.vanityfair.com/news/2008/04/gaza200804?srsltid=AfmBOop56aQOhEAulnWY_GzFbHomADBLAzq6SuEeikOB30WrH12abXse

to reconsider its position on Gaza, because this runs counter to its obligations under international humanitarian law with respect to the civilian population and aims at collective punishment of Palestinians already reeling from a continuing isolation of the strip," according to the UN News website.[22]

18. February 2008 saw the launching of Operation Hot Winter - allegedly in response to rocket fire from the Gaza Strip – an assault that killed at least 110 Palestinians including 26 children. Later that year, following a tentative ceasefire agreement, Israel launched a border raid in November, which proved to be the preamble to a bloody and devastating assault: Operation Cast Lead. For 23 days, Israeli planes pummeled the Gaza strip, killing at least 1,383 Palestinians, including 333 children and 114 women, and injuring over 5,300 more according to UN figures.[23]. Within Gaza, the human cost was devastating. The UNRWA director spoke about Gazan children being 'trapped… traumatised… terrorized.'[24] The siege conditions did not let up, even after the assault: following the ceasefire, Israel placed bans on books, music, and even clothes from entering the Gaza Strip.[25] The sick logic of 'mowing the lawn' was playing out in real time, and the trend of periodic assaults designed to degrade Gazan capabilities in a protracted 'war of attrition' was set in motion.[26]

19. On November 14, 2012, Israel launched a four-day attack on Gaza under the name Operation Pillar of Defense, killing 162 Palestinians, injuring 1,300 others, and destroying 200 homes. 2 years later, In July 2014, Israel would launch another attack under the name Operation Protective Edge. The 51-day attack would kill 2,147 Palestinians and wound 10,870 others. 17,123 homes were hit, of which 2,465 were destroyed. Whilst the people of Gaza ailed under these attacks, the humanitarian condition in Gaza continued to deteriorate. The UN in September 2015 warned for the first time in a report that Gaza could become uninhabitable in less than five years due to ongoing 'de-development.'[27] An 11-day attack on Gaza in May 2021 would kill

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[22] *See "Israel's Decision to Designate Gaza 'Hostile Entity' - Russia's Foreign Ministry Statement/Non-UN Document - Question of Palestine. March 12, 2019.*

[23] "Eight Years After the 2008-2009 (Cast Lead) Hostilities in Gaza: Lack of Accountability Persists | United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory." 2017. United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory. March 11, 2017.

[24] Balousha, H. McGreal, C. (2009) "Tanks, rockets, death and terror: A civilian catastrophe unfolding", *The Guardian,* January 5, https://www.theguardian.com/world/2009/jan/05/civilian-catasrophe-gaza

[25] Hass, A. (2009) "Israel Bans Books, Music and Clothes From Entering Gaza", Haaretz, May 17, https://www.haaretz.com/2009-05-17/ty-article/amira-hass-israel-bans-books-music-and-clothes-from-entering-gaza/0000017f-f124-da6f-a77f-f92e347a0000#:~:text=War%20Live%20Updates-,Amira%20Hass%20Israel%20Bans%20Books%2C%20Music%20and%20Clothes%20From%20Entering,food%2C%20medicine%2C%20or%20detergent.&text=Israel%20allows%20only%20food%2C%20medicine,for%20everyday%20activity%2C%20are%20forbidden.

[26] Taylor, A. (2021) "With strikes targeting rockets and tunnels, the Israeli tactic of 'mowing the grass' returns to Gaza", The Washington Post, May 14, https://www.washingtonpost.com/world/2021/05/14/israel-gaza-history/

[27] "Gaza Could Become Uninhabitable in Less Than Five Years Due to Ongoing 'De-development'– UN Report." UN News. September 1, 2015, https://news.un.org/en/story/2015/09/507762

254 Palestinians including 66 children, and injure 1,948 others, and in May 2023, a five-day assault on Gaza would kill 33 Palestinians including 6 children and 3 women.

20. On October 7, 2023, the armed wing of Hamas, the Qassam Brigades, would launch Operation Al-Aqsa Flood, attacking the military positions belonging to the Israeli army Gaza Division, as well as settlements and Kibbutzim in Southern Occupied Palestine. Much of the context and reasoning behind the offensive is provided by the siege conditions, and the untenable humanitarian crises that had perdured within the Gaza Strip for the preceding decade and a half. On October 9, 2023, then-Israeli Defense Minister Yoav Gallant order a 'total siege' on Gaza. "We are putting a complete siege on Gaza… No electricity, no food, no water, no gas – it's all closed… We are fighting animals and are acting accordingly."[28] That declaration, as shocking as it was for many, was in many ways simply a continuation of preceding policy.

D. PEACEFUL ATTEMPTS AT BREAKING THE SIEGE

21. Throughout the years, Palestinians in Gaza organized several forms of peaceful protest against the siege imposed by Israel, ranging from sit-ins, marches, rallies, or cultural activities.

22. Already in 2008, a human chain was formed to raise awareness of the hardship imposed on the Palestinian population in the Strip. At the time, Hamas leader Jamal al-Khudary, chairman of the Popular Committee against the Siege, described the initiative as "a peaceful and civilized act to let the people express their rejection of the siege and of collective punishment".[29]

23. In 2009, the International Committee for Breaking the Siege of Gaza was "established to mobilize the international community, to take action to end the illegal Israeli blockade imposed on the Gaza Strip, using all possible legal methods."[30]

24. The Committee is a founding member of the Freedom Flotilla Coalition (FFC), which is "a grassroots people-to-people solidarity movement composed of campaigns and initiatives from different parts of the world, working together to end the illegal Israeli blockade of Gaza." On May 31, 2010, Israeli soldiers boarded a flotilla of six ships manned by hundreds of pro-Palestinian activists from over 50 countries. The Gaza Freedom Flotilla was carrying 10,000 tons of humanitarian aid and had set out from Istanbul, Turkiye, in an attempt to break Israel's blockade of Gaza. The Israeli

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[28] *Afp, Le Monde With Ap And. 2023. "Israeli Army Seals off Gaza Strip in a 'complete Siege.'" Le Monde.Fr, October 9, 2023.* https://www.lemonde.fr/en/international/article/2023/10/09/israel-defense-minister-orders-complete-siege-on-gaza-strip_6158600_4.html

[29] Jazeera, Al. 2008. "Gaza Rally Condemns Israeli Siege." Al Jazeera, February 25, 2008.

[30] "About ICBSG - International Committee for Breaking the Siege of Gaza." Break Gaza Siege. May 23, 2024. https://breakgazasiege.net/en/about.

military raid killed nine people and wounded many others, receiving widespread condemnation.[31]

25. On March 30, 2018, Palestinians in Gaza launched a series of weekly protests advocating for the right of Palestinian refugees to return to their homes in historic Palestine – today's Israel – and for an end to the Israeli siege on Gaza.

26. The protests were largely organized by civil society, underscoring a push for peaceful methods of popular mobilization and resistance. The organizers of the Great March of Return have consistently emphasized that the protests were meant to be peaceful, with participants mainly demonstrating near the fence separating the Gaza Strip from Israel. Although Hamas did not directly organize the protests, it has supported them, which was understood to be a shift in Hamas' position towards a non-violent approach to resistance. Yet the protests were brutally suppressed by Israel. According to official figures provided by the Palestinian Health Ministry, over 300 people were killed by Israeli forces while thousands were wounded.[32]

27. That non-violent means have been adopted to resist occupation and oppose the siege is often under-emphasized. Former Hamas leader Yahya Sinwar would have the following to say, drawing on the experience of the Great March of Return, to place armed resistance methods in their strategical, and undesirable, context. "We know that we don't want war or fighting because it costs lives, and our people deserve peace. For long periods of time, we've tried peaceful resistance. We expected that the international community, free people and international organizations, would stop the occupation from committing crimes and massacring our people. Unfortunately, the world stood by and watched as the occupation war machine killed our young people… Does the world expect us to be well-behaved victims while we're getting killed? For us to be slaughtered without making a noise? That's impossible. We decided to defend our people with whatever weapons we have."[33]

E. LEGAL ASPECTS

28. Israel has been repeatedly accused of violating international law due to the siege imposed on the Gaza Strip and its failure to alleviate or lift the blockade. Human rights groups, as well as legal professionals and international institutions, have decried the siege as a form of collective punishment in contravention of international law, particularly the Fourth Geneva Convention.

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[31] "Israel, Blockade of Gaza and the Flotilla Incident | How Does Law Protect in War? - Online Casebook."

[32] Knell, Yolande and Abu Alouf, Rushdi 2023. "Explosion Near Gaza Boundary Wall Kills Five Palestinians." BBC September 14, 2023.

[33] "How Hamas Leader in Gaza reacted to the ceasefire", YouTube, uploaded by Vice News, June 2, 2021, https://www.youtube.com/watch?v=1Px6AyVjw2A

29. According to the United Nations, Gaza is considered an occupied territory. “The position taken by the United Nations, supported by most countries of the world on the status of the West Bank and Gaza, is to consider those areas as occupied territories.”[34]

30. Therefore, Israel’s actions in Gaza are governed by the 1907 Hague Convention on the Laws and Customs of War on Land, along with its Annexed Regulations (referred to as the "Hague Regulations"), and the 1949 Fourth Geneva Convention on the Protection of Civilian Persons in Time of War (referred to as the "IV Geneva Convention"). These legal frameworks are designed to safeguard civilians under military occupation.

31. The International Committee of the Red Cross (ICRC) also “is of the opinion that the Fourth Geneva Convention is applicable *in toto* in the occupied territories.”[35]

32. The ICRC acts as the guardian of international humanitarian law. “This special role of the ICRC is now formally recognized in the Statutes of the International Red Cross and Red Crescent Movement, which have been adopted both by the components of the Movement and by the States party to the Geneva Conventions, that is, practically all the worlds’ States.”[36]

33. In a five-page statement issued in June 2010, the ICRC explicitly said that Israel’s blockade constitutes a violation of international humanitarian law embodied in the Geneva Conventions.

34. The ICRC said in the statement that “the whole of Gaza's civilian population is being punished for acts for which they bear no responsibility. The closure therefore constitutes a collective punishment imposed in clear violation of Israel's obligations under international humanitarian law.”

35. The Fourth Geneva Convention of 1949, ratified by Israel, bans collective punishment of a civilian population.

36. In September 2011, UN experts, led by then-UN Special Rapporteur on the Situation of Human Rights in the Occupied Palestinian Territory, Richard Falk, reiterated in a statement that “decisive steps must be taken to defend the dignity and basic welfare of the civilian population of Gaza, more than half of whom are children”, adding that “The Israeli blockade of Gaza must end immediately and the people of Gaza must be afforded protection in line with international law.”

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[34] ”The Legal Status of the West Bank and Gaza - Question of Palestine.” United Nations. Question of Palestine. December 22, 2023.

[35] “*Israel, Applicability of the Fourth Convention to Occupied Territories | How Does Law Protect in War? - ICRC*

[36] “*The International Committee of the Red Cross as Guardian of International Humanitarian Law.” International Committee of the Red Cross. June 26, 2024.*

37. The statement also said that "under human rights law and international humanitarian law the people of Gaza, even while living under occupation, have the right to an adequate standard of living, and to the continued improvement of living conditions."

38. It continued, "This right includes access to affordable and adequate food, and sufficient quantities of safe, accessible and affordable water, as well as proper sanitation services and facilities. Gazans also have the right to the highest attainable standard of physical and mental health, but for many years have been experiencing declining and subsistence standards that are below minimum levels."

39. These 'minimum levels' are not met in Gaza, where, at the time of the statement, "approximately 35 per cent of Gaza's arable land and 85 per cent of its fishing waters are totally or partially inaccessible due to Israeli military measures."

40. Over time, the situation in Gaza has not improved but has instead deteriorated, as highlighted in a 2022 report by the international non-governmental organization Human Rights Watch, issued to mark the fifteenth anniversary of the 2007 closure.

41. Omar Shakir, Israel and Palestine Director at Human Rights Watch said that Israel "has turned Gaza into an open-air prison".

42. According to HRW, "Israel should end its generalized ban on travel for Gaza residents and permit free movement of people to and from Gaza, subject to, at most, individual screening and physical searches for security purposes."

43. "As an occupying power that maintains significant control over many aspects of life in Gaza, Israel has obligations under international humanitarian law to ensure the welfare of the population there. Palestinians also have the right under international human rights law to freedom of movement, in particular within the occupied territory," according to the report.

44. HRW determined that "most Palestinians who grew up in Gaza under this closure have never left the 40-by-11 kilometer (25-by-7 mile) Gaza Strip. For the last 25 years, Israel has increasingly restricted the movement of Gaza residents."

45. Moreover, for over two decades, Israeli authorities have significantly restricted Palestinians' access to Gaza's airspace and territorial waters. They have blocked the reopening of Gaza's airport, which was rendered inoperable by Israeli forces in January 2002, and prevented the construction of a seaport, forcing Palestinians to rely on land routes to travel abroad. The limited number of Palestinians allowed to cross at the Erez checkpoint are generally prohibited from using Israel's international airport and must travel abroad via Jordan instead. To leave Gaza through Erez — whether to reach the West Bank or travel internationally — Palestinians must submit

requests through the Palestinian Civil Affairs Committee in Gaza, which forwards the applications to Israeli authorities for permit approval.[37]

46. In 2022, the impact of the blockade imposed by Israel has also been analyzed by the World Health Organization (WHO), which concluded in a report that "Severe restrictions on people's movement and limitations on the entry and exit of supplies have negatively impacted conditions of life that determine health for Palestinians in the Gaza Strip. Rising unemployment, food insecurity and poverty are detrimental to health, and have been accompanied by obstacles affecting the adequate provision of clean water and sanitation that are essential for health protection."

47. The WHO also stressed that Israel implements a "regime that restricts access for Palestinian patients and their companions. From 2008 to 2022, of permit applications by patients, over 70,000 or a third (30%) were delayed or denied. For patient companion permit applications, nearly 115,000 or 44% were delayed or denied in the same period."[38]

F. CONCLUSION

48. The humanitarian and legal situation in Gaza remains dire, shaped by prolonged restrictions, repeated military offensives, and severe socio-economic decline. Israel's blockade, in place since 2007, has profoundly impacted the daily lives of Gaza's residents, limiting access to essential services, movement, and economic opportunities. The blockade has been widely criticized by international organizations, including the UN, Human Rights Watch, and the World Health Organization, as a form of collective punishment that violates international humanitarian law, particularly the Fourth Geneva Convention.

49. Living conditions in Gaza have deteriorated significantly, with widespread unemployment, food insecurity, and poverty exacerbating the challenges of inadequate access to clean water, sanitation, and healthcare. Movement restrictions and the permit system imposed by Israel further hinder access to medical treatment, with thousands of patients and their companions denied or delayed permits over the years.

50. Despite attempts at peaceful resistance, including protests and international advocacy efforts, the blockade remains, contributing to a worsening humanitarian crisis. Reports by the ICRC and other human rights bodies emphasize Israel's obligations under international law to ensure the welfare of Gaza's civilian population and call for the immediate lifting of the blockade.

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[37] Human Rights Watch. 2023. "Gaza: Israel's 'Open-Air Prison' at 15," October 11, 2023.

[38] World Health Organization, 2022. "15 Years of Blockade and Health in Gaza" July 2022.

51. The ongoing situation in Gaza underscores the urgent need for accountability, respect for international legal norms, and meaningful efforts to address the humanitarian and political dimensions of the crisis. Without significant change, the prospects for sustainable peace and improved living conditions in Gaza remain bleak.

G. EXPERT OBLIGATIONS

52. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinion on the matters to which they refer.

53. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

54. I confirm that I have not received any remuneration for preparing this report.



Romana Rubeo
Tagliacozzo (AQ)
ITALY
6 January 2025

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

REPORT ON HAMAS AND THE POST 7 OCTOBER 2023 PROPAGANDA CONFLATING IT WITH TRANSNATIONAL TERRORISM[1]
BY
ROBERT INLAKESH[2]

A. INTRODUCTION

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to demonstrate how deliberately false narratives about Hamas and the 7 October 2023 operation recklessly propagated by Western media have played an enabling role in the Israeli genocide of Palestinians in Gaza and are fundamentally undermining efforts to bring about a just and lasting peace in the region.

B. QUALIFICATIONS

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[1] This document draws from two previously published pieces that have been slightly altered to correctly reflect current political dynamics, as well as drawing on an original body of research.
ARTICLE 1: https://mondoweiss.net/2024/02/why-the-u-s-must-engage-hamas-politically/
ARTICLE 2: https://www.mintpressnews.com/hamas-israel-and-the-fog-of-october-7-what-we-know-now/288363/

[2] Robert Inkalesh has preferred to use a nom-de-plume for the purposes of this report. As a man with family ties to the Occupied Palestinian Territory, there is concern of repercussions for loved ones in the OPT that requires anonymity. The lawyers bringing the application are happy to confirm they are full aware of his real identity.

3. I have authored this report in my personal capacity.

4. I am a political analyst, journalist and documentary filmmaker specializing in Middle Eastern affairs, with a particular focus on Palestine. My work encompasses on-the-ground reporting, in-depth analysis, and documentary production, providing nuanced insights into the complexities of the region.

5. I have lived in the Occupied Palestinian Territory and provided firsthand accounts of the situation on the ground. I have authored numerous article for The Palestine Chronicle, Middle East Eye, the Cradle, and the Middle East Monitor amongst others. I also directed the documentary, "Steal of the Century: Trump's Palestine-Israel Catastrophe" which critiques the US administration's policies towards Israel and Palestine.

C. INTRODUCTION

6. By considering Hamas a terrorist organization, similar to how the Palestine Liberation Organization (PLO) was considered as such until the late 1980's, the United Kingdom and its Western allied governments are losing out on a historic opportunity to bring about a path to peace and instead are pushing the Middle East towards regional paroxysm.

7. The UK and its allies in the United States have consistently upheld that "Hamas must be eliminated,"[3] or that it cannot be allowed to remain in power in Gaza following any potential ceasefire. This was followed up through rejecting draft resolutions presented at the UN Security Council calling for a ceasefire in Gaza on the basis that Israel has a right to dismantle all the Palestinian armed movements there.

8. The United States and UK governments uphold the attack of October 7 to be a testament to the terroristic nature of the Hamas leadership, but Israel's disproportionate response that has resulted in a tragedy of much greater proportions is scarcely worthy of criticism in circles of Western power. In fact, the UK, US, and many EU states have given the Israeli military a carte blanche to displace millions of Palestinians, kill and injure over one hundred thousand while initially blocking all humanitarian aid for weeks and later letting in a trickle of the aid needed. With every hour that passes, the crimes unfolding inside the Gaza Strip make it more and more likely that the war will escalate on multiple fronts, perhaps dragging in the entire region to everyone's detriment. This is why it is time to take a critical look at what history tells us about today and how we can move forward toward peace.

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[3] Bose N & Jackson K (2023) Biden says Hamas must be eliminated, US officials warn of escalation, Reuters, https://www.reuters.com/world/middle-east/conflict-middle-east-could-escalate-us-national-security-adviser-warns-2023-10-15/

9. This report will be divided between separate segments, each of which focuses on mischaracterizations of Hamas that appear across the media. It is important in the pursuit of peace, democracy and the overall reduction of hateful narratives that often reflect negatively on minority groups in the United Kingdom that identify with the Palestinian struggle for Statehood, that a sober view be taken. This is especially important at times of heightened conflict.

D. THE OCTOBER 7 ATTACK AND ITS APPLICATION TO UNDERSTANDING HAMAS

10. The argument that the Hamas-led October 7 attack justifies labelling the Hamas movement as a terrorist organization, thus breaking off all communications with it and refusing to allow it to function within the fold of Palestinian domestic politics, is fundamentally flawed.

11. To begin with, the United Kingdom proscribed Hamas as a terrorist organization - in its totality - in November of 2021. This, in and of itself, is an admission that history did not begin on October 7, 2023.

12. If we look at the examples given on the UK government website of the kinds of acts the organization commits, the most egregious are detailed below:
"Hamas commits and participates in terrorism. Hamas has used indiscriminate rocket or mortar attacks, and raids against Israeli targets. During the May 2021 conflict, over 4,000 rockets were fired indiscriminately into Israel. Civilians, including 2 Israeli children, were killed as a result. Palestinian militant groups, including Hamas, frequently use incendiary balloons to launch attacks from Gaza into southern Israel. There was a spate of incendiary balloon attacks from Gaza during June and July 2021, causing fires in communities in southern Israel that resulted in serious damage to property."

13. Looking at these actions in isolation falls into the category of de-contextualization. Omitted from the picture are a litany of copiously documented human rights violations committed by Israel, its ongoing decades-long occupation – that is now unquestionably considered to be illegal as per the recent ruling of the International Court of Justice (ICJ) – and the unequal balance of power.

14. While the purpose of pointing this out could be interpreted as an attempt to excuse potential crimes committed by Palestinians, it is rather the opposite. It is to revive the context, challenging the artificially constructed narrow confines under which the issue is generally interrogated by the media in the UK and subsequently in circles of British power.

15. If the potential violations of international law committed by Hamas, during the 11-day battle between Gaza and Israel in May of 2021, or on October 7 of 2023, are to be considered as acts rendering the Palestinian movement a terrorist group, then the violence committed by Israel's security forces must then also render it a violent and irrational actor. Arguing that the side which has committed comparably few

potential violations of international law, in the face of Israel's actions, would be enforcing a double-standard.

16. The media coverage of the October 7 death toll and attempts to justify the much greater violence that Israel has committed undoubtedly contribute to the fundamentally flawed understanding of Hamas' violent actions.

17. On October 7, it was quickly reported[4] that at least 413 Palestinians were killed in Israeli airstrikes across the Gaza Strip. However, the Israeli death toll underwent several revisions before an accurate figure emerged. Initially, the Israeli government stated that 1,400 Israelis had been killed. On November 10, 2023, this number was revised[5] down to "around 1,200," with officials attributing the discrepancy to difficulties in differentiating between Israeli and Palestinian bodies due to severe burns.

18. The final Israeli death toll from the October 7 attack stands at 1,139[6], including 815 civilians and 324 soldiers, police, or security officers. This would suggest a civilian-to-combatant ratio of roughly 3.5:1, assuming all deaths were caused by Palestinian attackers.

19. Other accepted statistical breakdowns report 695[7] civilian deaths and 373 combatants, along with 71 foreigners. This highlights the ongoing debate over who should be classified as a civilian, as many off-duty soldiers and trained fighters took up arms during the attack, shifting their status from civilians to combatants.

20. According to a March 25 article[8] written for Newsweek by John Spencer, chair of urban warfare studies at the Modern War Institute (MWI) at West Point, "Israel has created a new standard for urban warfare" in its war on Gaza. Israeli Prime Minister Benjamin Netanyahu later cited Spencer's article during his speech[9] to the US Congress in July.

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[4] McKernan B & Beaumont P (2023) Death toll rises to more than 1,100 after surprise Hamas attack on Israel, The Guardian, https://www.theguardian.com/world/2023/oct/08/israel-gaza-hamas-attack-netanyahu-warns-of-long-and-difficult-war

[5] Frayer L (2023) Israel revises down its death toll from the Oct. 7 Hamas attacks to about 1,200, NPR, https://www.npr.org/2023/11/11/1212458974/israel-revises-death-toll-hamas-attacks-oct-7

[6] Human Rights Watch (2023) October 7 Crimes Against Humanity, War Crimes by Hamas-led Groups, HRW, https://www.hrw.org/news/2024/07/17/october-7-crimes-against-humanity-war-crimes-hamas-led-groups

[7] AFP (2023) Israel social security data reveals true picture of Oct 7 deaths, France 24, https://www.france24.com/en/live-news/20231215-israel-social-security-data-reveals-true-picture-of-oct-7-deaths

[8] Spencer J (2024) Israel Has Created a New Standard for Urban Warfare. Why Will No One Admit It?, Newsweek, https://www.newsweek.com/israel-has-created-new-standard-urban-warfare-why-will-no-one-admit-it-opinion-1883286

[9] Netanyahu B (2024) Israeli Prime Minister Benjamin Netanyahu spoke earlier at a joint session of US Congress, Zionist Federation of Australia Facebook, https://www.facebook.com/ZionistFederationAustralia/videos/israeli-prime-minister-benjamin-netanyahu-spoke-earlier-at-a-joint-session-of-us/830099542402508/

21. Spencer's argument is flawed, as he relies on Israeli ratio claims that don't hold up when examining the official death toll in Gaza, particularly when accounting for the women and children killed. Spencer references the 2016-2017 Battle of Mosul in Iraq to justify what he deems an acceptable civilian-to-combatant ratio in US wars, highlighting a 4:1 ratio where 10,000 civilians were killed for every 2,000 ISIS fighters.

22. Using this military logic and assuming Hamas was responsible for every Israeli death on October 7, they achieved a more favorable civilian-to-combatant kill ratio than the US did in Mosul. Notably, this was accomplished without the use of modern precision weapons.

23. Israeli PM Benjamin Netanyahu has even come forth and argued that if you take into consideration population sizes between the US and Israel, the October 7 attack was like "20 9/11's in one day". Well, according to the updated statistics, it would be more like 13 9/11's in one day if we accept this argument; making death tolls proportionate to population sizes. However, two can play that game, if we then look at the Gaza death toll of 413 killed in the first day of the war in Gaza, then this would be like 21 9/11's in one day. In fact, if we use the same metrics and compare the death toll in Gaza that day, proportionate to Israel's population size, it would come out to around 1,652. So, using this kind of logic, Palestinians in Gaza suffered a more devastating blow – in terms of death toll – than Israel did on October 7, 2023.

24. Although these comparisons and arguments may deviate from the core issue and are not an appropriate way to assess the events between Gaza and Israel, it is crucial to understand the flawed logic behind the Israeli narrative about October 7 – which is routinely accepted and not challenged in the media.

E. HAMAS THEN AND NOW

25. The Islamic Resistance Movement (Hamas) was originally founded in late 1987, following the eruption of the first Palestinian Intifada; a mass non-violent uprising across the occupied Palestinian territories. In its foundation, Hamas had essentially grown from a socially focused Islamic movement, an offshoot of the Muslim Brotherhood in Egypt, which was named the 'Mujamma Islamiyya' and was at first opposed to armed rebellion in the occupied territory, seeking instead to build up the Islamic civil society sector and to spread their Islamic ideology through deeds and education.

26. In the late 1970s and early to mid 1980s, the Mujamma Islamiyya was in opposition – on the question of armed struggle – to what is the second most powerful armed movement in Gaza today; Palestinian Islamic Jihad (PIJ). While the PIJ movement, headed by its secretary general Fathi Shiqaqi, was convinced that the only viable option was an armed struggle, the leaders of the Mujamma Islamiyya argued that the

time for this option was not upon the Palestinians. With the eruption of the Intifada, the visions of those who would become the Hamas leadership, namely the likes of Sheikh Ahmed Yassin, dramatically changed. It is important to note the early competition between the ideologies of the Mujamma and PIJ, as they help distinguish Hamas as a party that is rooted in civil society and is, in essence, a political movement that is involved in the military sphere due to necessity, as opposed to PIJ, which is a military movement involved in the political sphere.

27. Often today, the original Hamas charter is heavily quoted as proof that the political party's nature is of a group solely dedicated to the eradication of Jews from Palestine, yet this discounts changes and the examples of pragmatism within the movement since 1988; when the original charter was published. Added to this is the fact that leaders within Hamas voiced disagreements with the initial charter's spirit. In a Guardian interview published in September of 1988 with the founder of Hamas, Sheikh Ahmed Yassin, he is quoted as saying, "The best solution is to let all – Christians, Jews and Muslims – live in Palestine, in an Islamic state." Although it is clear that this statement expresses the desire to end the Israeli State, this is a far cry from the conventionally accepted idea that Hamas is completely committed to the expulsion or murder of every Jewish person living in Palestine.

28. In fact, in 2017, Hamas adopted a new charter for its party[10], one which condemns antisemitism as a European phenomenon, as well as accepting – in theory – the idea of a two-state settlement along the 1967 borders, in accordance with UN resolution 242. The new Hamas charter explicitly states that it is a "Palestinian Islamic national liberation and resistance movement", indicating that it is solely focused on reclaiming Palestinian territory, differentiating it from other proscribed groups like ISIS which seek to eradicate all modern states and create a worldwide system of tyrannical rule. Although Israel has gone to great lengths to link Hamas and ISIS, these two movements could not be more different.

F. HAMAS AND THE WEST

29. In 2006, Hamas won a landslide victory in the Palestinian National Authority legislative elections, beating its secular-nationalist opposition of the Fatah Party. Yet, despite the evolution within Hamas, which led to it running in a fair and democratic election, the Palestinian party was never given a chance to prove itself as a government in the occupied territory. Instead, the US, EU and Israel rejected the results of the democratic elections and imposed economic sanctions on the Hamas government. Former U.S. President Jimmy Carter, who had personally monitored the elections, argued against Washington's approach, stating the following:
"If you sponsor an election or promote democracy and freedom around the world, then when people make their own decision about their leaders, I think that all the governments should

[10] MEE Staff (2017) Hamas in 2017: The document in full, Middle East Eye, https://www.middleeasteye.net/news/hamas-2017-document-full

recognize that administration and let them form their government," he said of the US-EU approach to Hamas.

30. Instead of listening to cooler heads, like Jimmy Carter, who had argued that the American government should "give Hamas a chance," the very opposite approach was taken. The Bush administration had planned what Vanity Fair called 'Iran Contra 2.0', whereby the American government had implemented a secret initiative to remove the Hamas government in Gaza through a coup d'etat. The plan, which was spearheaded on the Palestinian side by the Fatah party's Mohammed Dahlan – the former Palestinian Authority (PA) preventative security head – was preempted by Hamas in Gaza, leading to a Hamas takeover of the coastal enclave in 2007. Another disastrous outcome of the US plot was that a violent civil war erupted between Hamas and Fatah in the occupied Palestinian territory.

31. Following this, the Israeli government imposed a comprehensive siege on the Gaza Strip, which was followed by successive military operations, the most notable coming in 2008/9, 2012, and 2014, all of which were fully backed by the US government. Also, most of the first line of the Hamas leadership, who had started the movement back in 1987, were assassinated in indiscriminate bombing attacks on densely populated neighborhoods in Gaza; Ahmed Yassin, Saleh Shehadeh, and Abdel-Aziz Rantisi to name a few. Over time, Hamas and their political rivals in Fatah – which had continued to receive financing from the U.S. to maintain limited control over the Palestinian Authority in the West Bank – tried to reach an agreement at forming a unity government, coming close in 2014, prior to Israel launching an attack on the Gaza Strip that year.

32. Since 2006, there have been no democratic national elections in Palestine, and the US and UK governments have not taken tangible action to reach such an outcome. This has led to a situation on the ground where there is no unified Palestinian leadership and hence makes it more difficult to reach any diplomatic solution to the conflict. In addition to this, the US continues its economic sanctions against the Hamas government in Gaza and considers nearly every single Palestinian political party/movement/group to be a terrorist organization, with the exception of the mainstream branch of Fatah.

33. Palestinians have not been allowed to practice democracy because every major political alternative to the Palestinian Authority is considered in the West to be a terrorist organization, and hence they will not be accepted as legitimate "peace partners." This means that the Palestinian people do not have the option of voting for any other party, whether they be secular-nationalists, socialists, or Islamic parties. They have not had any say on their fate, which has almost entirely been dictated by the Israeli government and US-UK-EU decision-makers, along with those giving aid handouts.

G. HAMAS AS A POLITICAL ACTOR

34. It is not necessary that people agree with the tactics employed by the Hamas armed wing, the Qassam Brigades, but it is certainly important to understand what led up to the offensive on October 7. The context is important to understanding why it made sense, strategically and politically, for the Palestinian movement.

35. As noted above, the Gaza Strip has been under a brutal and comprehensive siege for over 17 years. This has created a situation where roughly 2.2 million people have been forced to live with one of the highest unemployment rates in the world while living in near unlivable conditions, for example, Gaza's water supply is roughly 97% unfit for human consumption. It is also a majority child population, with over half of the besieged coastal enclave's inhabitants being under the age of 18. The blockade has robbed Hamas of the ability to function as a proper government in many respects; as the bare minimum required to provide for the people of Gaza is simply not there.

36. Since the late Hamas leader Yahya Sinwar was internally elected to power in 2017 as the Gazan leader of the movement, Hamas had tried a number of strategies attempting to find a solution for the suffering people under their rule. In 2017, Hamas nearly implemented a deal with their Fatah rivals that control the PA in the West Bank, the deal entailed handing over full civilian control of Gaza to the Fatah-run PA, in return for securing an easing of the economic blockade. This initiative eventually fell through however, at a time when Hamas was suffering economically as a governing force.

37. The following year, in 2018, Hamas temporarily adopted an approach employed by the Palestinian Authority, supporting non-violent resistance against the Israeli occupation in an attempt to lift the blockade in accordance with calls from the United Nations. The Great March of Return, which began on March 30, 2018, was an overwhelmingly non-violent, mass demonstrator movement that lasted over a year and gained the full support of Hamas. The response from the Israeli military was to commit weekly massacres against these unarmed civilians. Hundreds of Palestinians were shot dead, while tens of thousands were injured, as Israeli snipers directly targeted women, children, the elderly, journalists, medical workers, and people with disabilities. During this time, the US government continued its one-sided support of Israel and recognized Jerusalem as the capital of Israel that same year.

38. Then in early 2021, PA President Mahmoud Abbas announced that he would be holding the first Palestinian national elections in 15 years. Hamas, along with all other political parties in Palestine, prepared themselves for the elections, which were later canceled by Abbas. And yet, Israeli provocations continued to escalate.

39. Later in 2021, after Israeli occupation forces repeatedly entered Al-Aqsa Mosque, the third holiest site in Islam, assaulting worshippers throughout the Holy Month of Ramadan, Hamas issued a threat to the Israeli government, calling on them to cancel a march that was organized by extremist settler groups, which they said was to

defend to the Palestinian people. The Israeli authorities chose to assault worshippers inside Al-Aqsamosque once again, while occupied East Jerusalem erupted into chaos and riots. Finally, on May 10, Hamas opened fire and declared the battle of the "Sword of Jerusalem'. After 11 days of war, Hamas openly announced that they were preparing for a greater war, which would come in response to further attacks at Al-Aqsa Mosque. In many ways, this set the stage for "Operation Al Aqsa Flood" in October 2023.

40. Non-violent struggle was ignored, Palestinian reconciliation failed, elections were canceled, and Israeli provocations continued to escalate. What this quick recounting makes clear is that Hamas is not ISIS, it is a Palestinian political party, one that non-Western powers like Russia, Türkiye, and China will openly engage with. It is only the Western world that takes such a one-sided and hardline approach against Hamas. This approach has clearly not worked and has only resulted in the eruption of horrifying bloodshed. For this predicament to change, Hamas must be approached seriously as a political entity.

41. Eliminating Hamas is not possible,and attempting to do this will only escalate tensions. So, just like the US, EU and UK were able to drop its rhetoric about the Palestine Liberation Organization (PLO) being a terrorist group, so too must it drop its current stance against Hamas. This doesn't mean it has to ally itself with them, but it must engage with them politically. The leadership of Hamas has consistently proclaimed to be open to such a dialogue, and that time should be now. It is only arrogance and a complete disregard for the facts on the ground and human suffering that leads Washington, London and Brussels to refuse to engage with Hamas seriously.

H. AN ORIENTALIST VIEW OF HAMAS AND ITS DESTRUCTIVE OUTCOMES

42. On May 7, 2024, U.S. President Joe Biden stated[11] that Hamas had carried out the October 7 attack against Israel, "driven by ancient desire to wipeout the Jewish people off the face of the Earth". The American President's remarks portray the Palestinian people as having been born with a genetically inherited propensity towards committing violence against Jewish people.

43. This is the conclusion that countless Israeli soldiers have arrived at and expressed publicly.[12] This notion is also naturally drawn by consumers of media which employs biased language, and orientalist depictions of Palestinians and devoids the current conflict of its context. Unfortunately, Hamas is also often conflated with the entire

[11] Biden J (2024) Remarks by President Biden at the U.S. Holocaust Memorial Museum's Annual Days of Remembrance Ceremony, The White House, https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/05/07/remarks-by-president-biden-at-the-u-s-holocaust-memorial-museums-annual-days-of-remembrance-ceremony/

[12] Tirawi Y (2024) X post, https://x.com/ytirawi/status/1794826941209702699

population of Palestinians in Gaza too, which is evidenced through some of the rhetoric espoused by Joe Biden.

44. While Israel stands plausibly accused of genocide at the World Court and its Prime Minister has an outstanding ICC war crimes arrest-warrant, little attention has been directed towards the media's culpability for the ongoing crimes against humanity we see in Gaza.

45. The official death toll in Gaza is set at over 46,000, while some estimates project that up to 300,000[13] could have actually been killed and that the lower estimates are down to the inability to properly account for the dead. Either way, mass murder is ongoing in Gaza at a rate that surpasses the civilian death toll inflicted during the worst years of the Daesh/ISIS scourge[14] on Iraq.

46. Despite the avalanche of human rights reports, along with every organ of the United Nations and even the International Criminal Court, all providing expert opinions that accuse Israel of carrying out unprecedented war crimes, the Western corporate media still manages to obscure reality. Little focus has been placed upon the way the media's biased language and uncritical adoption of blatant propaganda, has influenced how we perceive the situation on the ground and the justifications made for Israel's continuation of the war.

47. Examples from Israeli soldiers' interpretations of the situation serve as powerful examples as to how the media narratives regarding Hamas and Gaza motivate them. It must then be kept in mind the kinds of conclusions that are also likely to be drawn from the media coverage in the West.

48. Take for example Israeli Major. Avinoam Goelman, a Commander in the 98th Division, who described himself as a "liberal" who had changed his mind on the idea of "peace" after the Hamas-led attack on October 7, 2023. On October 10, 2023, he writes the following:
"As time passes, the full extent of the horror and pogrom carried out by the cursed beasts from Gaza becomes clear. Rape of women, murder, looting, torture, humiliations, and abuse of babies, the elderly, and soldiers – a true Holocaust. No less. The city of Gaza, with all its residents, must be destroyed. Whoever wants to flee and save their miserable life should flee to Egypt. But the city of Gaza, with all its buildings, must be erased from existence. A city of Sodom that has no right to exist. The Hamas organization and all its people should be destroyed and lost and killed. A prey animal of the lowest kind has no right to exist."[15]

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[13] Nader R (2024) "A Horrifying Undercount": Ralph Nader Says True Gaza Death Toll Could Be Many Times Higher, Democracy Now, https://www.democracynow.org/2024/9/10/ralph_nader_gaza_death_toll

[14] Jamieson A (2016) ISIS Death Toll: 18,800 Killed in Iraq in 2 Years, U.N. Say, NBC News, https://www.nbcnews.com/storyline/isis-terror/isis-death-toll-18-800-killed-iraq-2-years-u-n499426

[15] Tirawi Y (2024) X post, https://x.com/ytirawi/status/1794830323286438314

49. That same day is when the "40 beheaded babies" hoax was spread uncritically across Western corporate media. Fox News ran the headline "At least 40 babies, some beheaded, found by Israel soldiers in Hamas-attacked village"; while Canada's National Post published an article entitled "Hamas terrorists murdered as many as 40 babies in village attack: IDF soldiers"[16]; CNN published its own 40 beheaded babies piece that read "Children found 'butchered' in Israeli kibbutz, IDF says, as horror of Hamas' attacks near border begins to emerge".[17]

50. While the actual death toll statistics prove that one Israeli baby was directly killed due to crossfire on October 7, none died at Kibbutz Kfar Aza as was reported across corporate media. Yet, the media still churned out headlines about the 40 butchered babies, despite the fact that the Israeli army had told Turkiye's Anadolu Agency, on October 10, that they couldn't confirm the beheaded babies claims.[18]

51. The first media outlet to run with the story was Israel's I24News, with the source being an extremist Israeli settler named David Ben Zion, who was quoted by the BBC as saying Hamas gunmen were "just a jihad machine to kill everybody, [people] without weapons, without nothing, just normal citizens that want to take their breakfast and that's all."[19]

52. None of these media outlets bothered to do a basic Google search, which would have revealed the "Israeli soldier" they quoted as an authority, to be an extremist who had helped incite an anti-Palestinian pogrom[20] in the West Bank and called for the town to be "wiped out". The 40 beheaded babies story was then "confirmed" on air by a CNN reporter, who later had to retract her statement.

53. October 10 was the same day when The Atlantic published an article entitled "Understanding Hamas's Genocidal Ideology".[21] MSNBC also ran a story that day

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[16] Jewish Syndicate News (2023) Hamas terrorists murdered as many as 40 babies in village attack: IDF soldiers, National Post, https://nationalpost.com/news/world/israel-middle-east/babies-murdered-hamas-terrorist-attack

[17] Darwish M, Robertson N & Moshtaghian A (2023) Children found 'butchered' in Israeli kibbutz, IDF says, as horror of Hamas' attacks near border begins to emerge, CNN World, https://edition.cnn.com/2023/10/10/middleeast/israel-kibbutzim-kfar-aza-beeri-urim-hamas-attack-intl/index.html

[18] Boyraz TA (2023) Israeli army says it does not have 'confirmation' about allegations that 'Hamas beheaded babies', Andalou Agency, https://www.aa.com.tr/en/middle-east/israeli-army-says-it-does-not-have-confirmation-about-allegations-that-hamas-beheaded-babies-/3014787

[19] Bowen J (2023) Inside Kfar Aza where Hamas militants killed families in their homes, BBC, https://www.bbc.co.uk/news/world-middle-east-67065205

[20] Blumenthal M & Rubinstein (2023) Source of dubious 'beheaded babies' claim is Israeli settler leader who incited riots to 'wipe out' Palestinian village, The Grayzone, https://thegrayzone.com/2023/10/11/beheaded-israeli-babies-settler-wipe-out-palestinian/

[21] Hoffman B (2023) Understanding Hamas's Genocidal Ideology, The Atlantic, https://www.theatlantic.com/international/archive/2023/10/hamas-covenant-israel-attack-war-genocide/675602/

entitled "Israeli official confirms women were raped during Hamas attack".[22] The very next day, The Forward ran a piece in which they quoted the Israeli military as stating they didn't yet have any evidence of rape.[23]

54. Furthermore, Palestinian women from the West Bank who suffered threats of sexual violence and were abused by Israeli forces provided testimony to Israel's top rights group B'Tselem, many with similar stories. Take the example of 47-year-old Lama al-Fakhouri[24], who provided the following testimony after her release from Israeli jail in late October, 2023:
"An interrogator came in and asked me in English what I thought about what Hamas did. He swore at me and called me a 'whore.' He said there were 20 soldiers in the room and that they would rape me like Hamas–ISIS raped Jewish women in southern Israel. He kept swearing at me and threatening me and my family. Then, a female soldier came and took me to another room with more female soldiers, who told me: 'Welcome to hell.' They sat me in a chair and started laughing at me and calling me 'whore' again and again."

55. On top of this, media pundits were repeating the mantra that the Hamas attack was the "deadliest day" and "worst slaughter" of Jewish people "since the Holocaust"[25], clearly attempting to link the Hamas attack to the Nazi genocide of Jews during the Second World War. The message here was clear: Hamas are the Nazis, they are Jihadist[26] "barbarians"[27] and "savages"[28] who butcher babies and rape women, they are on the verge of committing a holocaust.

56. These claims were spread completely uncritically in Western corporate media and, at a time when the most egregious allegations couldn't possibly be confirmed or were already being called into question, whipped up an unprecedented amount of hysteria and hate. Happening in tandem with the media coverage, were statements

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[22] MSNBC (2023) Israeli official confirms women were raped during Hamas attack, MSNBC, https://www.msnbc.com/katy-tur/watch/israeli-official-confirms-women-were-raped-during-hamas-attack-194834501813

[23] Rosenfeld A (2023) How Biden condemned Hamas for rape before the IDF had evidence it happened, Forward, https://forward.com/news/564318/sexual-assault-rape-proof-hamas-idf-israel-gaza/

[24] B'Tselem (2024) Palestinian women from Hebron area, arrested in late October and released as part of Israel's deal with Hamas, recount severe abuse in detention, B'Tselem, https://www.btselem.org/torture/20240211_palestinian_women_from_hebron_area_arrested_during_gaza_war_abused_in_detention

[25] Al Jazeera (2023) White House walks back Biden's claim he saw children beheaded by Hamas, Al Jazeera, https://www.aljazeera.com/news/2023/10/12/white-house-walks-back-bidens-claim-he-saw-children-beheaded-by-hamas

[26] Nasr W (2023) How did Hamas manage to breach Israeli security and what will be the consequences?, France 24, https://www.france24.com/en/video/20231009-how-did-hamas-manage-to-breach-israeli-security-and-what-will-be-the-consequences

[27] Baker G (2023) Hamas's Barbaric Attack and the New World Disorder, Wall Street Journal, https://www.wsj.com/articles/hamas-barbaric-attack-and-new-world-disorder-under-biden-60af6d69

[28] TOI Staff (2023) Likening Hamas 'savages' to IS, Netanyahu vows victory in war for 'our existence', The Times of Israel, https://www.timesofisrael.com/likening-hamas-to-isis-netanyahu-vows-victory-in-war-for-our-existence/

from the likes of U.S. President, Joe Biden, falsely claiming[29] to have seen confirmed images of beheaded children.

57. When you then look at the radical statements from Israeli soldiers, the narrative is often the same as the Western media's reporting. Take Captain. Elad Gabianm, of the Carmeli brigade, who said[30] on October 11 (2023) - about Palestinians in Gaza that "They need to be exterminated along with their families down to the last one. To clarify, their children also need to die; they suck this evil from the breasts of their pig mothers and will pass this evil on to their children as well."

58. Gabianm justifies his genocidal rhetoric, stating that he isn't surprised that "there are Arabs who are essentially continuing the ways of the Nazis", referring to the developing news about the October 7 attack.

59. Senior Israeli commander, Lt. Colonel Yair Maen of the 252nd Division, who was appointed to help oversee Israeli airstrikes on Gaza, openly bragged about blowing up civilian infrastructure on social media. Maen also revealed that Israel's Oz and Nir Operation[31] against Gaza's city of Khan Younis, had included the aim of completely wiping out the town of Khirbet Khuza'a as an act of revenge. He explained his motivations on November 19, in a social media post:
"An overwhelming majority of the so called innocent civilians of Gaza and the West Bank support the pogrom of October 7th: the slaughter of babies, beheadings, shooting pregnant women, murdering women and babies, killing the elderly and children, burning people alive, raping women and girls, and then murdering them and kidnapping the elderly to Gaza – all with smiles and joy. Zero humanity. And this is what the majority of Palestinian residents in Gaza and Judea and Samaria support. We will never forget and never forgive the cursed murderers and their people who support their heinous acts. Am Yisrael Chai."[32]

60. Even the media's false reporting on the Israeli death toll is relevant to the narrative that Israeli soldiers who are fighting in Gaza have cited as their reason for wanting to leave "no innocents in the strip and the total expulsion of its citizens". For some time, the Israeli death toll was set at 1,400 Israelis killed on October 7 (2023), until Israel revised it to 1,200[33] in November of 2023.

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[29] Al Jazeera (2023) White House walks back Biden's claim he saw children beheaded by Hamas, Al Jazeera, https://www.aljazeera.com/news/2023/10/12/white-house-walks-back-bidens-claim-he-saw-children-beheaded-by-hamas

[30] Tirawi Y (2024) X post, https://x.com/ytirawi/status/1794850243982286863

[31] Jerusalem Post Staff (2023) IDF intensifies southern Gaza operation named after ravaged Kibbutz, The Jerusalem Post, https://www.jpost.com/israel-hamas-war/article-780005

[32] Tirawi Y (2024) X post, https://x.com/ytirawi/status/1796127208601268732

[33] Frayer L (2023) Israel revises down its death toll from the Oct. 7 Hamas attacks to about 1,200, NPR, https://www.npr.org/2023/11/11/1212458974/israel-revises-death-toll-hamas-attacks-oct-7

61. AFP later provided a breakdown of the final death toll[34], using Israeli social security data, revealing that 695 Israeli civilians, 373 combatants, and 71 foreigners were killed, giving a total of 1,139. Yet, even after the figure was revised down, popular British media commentators/hosts like Piers Morgan continued to use the outdated figure, even inflating the number to "fifteen-hundred innocent people".[35]

62. "They killed 1,500 people,"[36] was exactly what Senior Israeli Commander, Lt. Colonel Sheila Granevich from the Kiryati Brigade, used to justify his calls for completely expelling the entire civilian population from Gaza. "Even if it takes three years, Israeli citizens will no longer live a few hundred meters from bloodthirsty Nazis. That's how it is. And in such a reality, it makes no sense to leave innocents in Gaza, assuming there are such" Granevich said on October 18.

63. While the dissemination of false allegations – often combined with loaded language – throughout Western corporate media during the initial months of the war is clear, it is important to also point out the disparity in the way Israeli and Palestinian suffering was covered. This is especially the case as many Israeli soldiers who have fought in Gaza had signed up and traveled from Western nations in order to serve in Israel's war. In other words, the media coverage there could well have directly impacted their opinions on the issue.

64. Research published on the reporting of the New York Times, Washington Post, and Wall Street Journal, revealed that – between October 7 and October 22[37] (2023) – these outlets mentioned Israeli deaths more than Palestinian ones, despite the Gaza death toll being much higher on every day after the first.

65. Another research analysis, which was published by Dana Najjar and Jan Lietava, reviewed 600 articles and 4,000 live feed posts on the BBC website between October 7, 2023, and December 2, 2023. It specifically looked at the language employed to describe Israeli and Palestinian victims, with the research revealing that humanizing language was scarcely employed to describe Palestinians[38], while there was an abundance of such words used to describe Israelis.

66. Media bias festers in the language employed by different outlets through selective choices of stories and the regurgitation of false allegations or claims made by partisan sources, it also manifests itself more blatantly in the treatment of guests on broadcast media.

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[34] AFP (2023) Israel social security data reveals true picture of Oct 7 deaths, France 24, https://www.france24.com/en/live-news/20231215-israel-social-security-data-reveals-true-picture-of-oct-7-deaths

[35] Morgan P (2023) PART 2: Andrew Tate Talks Palestine and Israel With Piers Morgan | Latest Interview, TalkTV, https://www.youtube.com/watch?v=2pMsYSR7g78

[36] Tirawi Y (2024) X post, https://x.com/ytirawi/status/1795347979710202260

[37] Najjar D & Lietava (2023) liet-git/bbc-bias, https://github.com/liet-git/bbc-bias?tab=readme-ov-file

[38] Ibid

67. Perhaps the most egregious case of mistreatment came in the case of Palestinian journalist Wafa al-Udaini, who was murdered on September 30 by an Israeli airstrike on her secondary residence in Deir al-Balah. Wafa was murdered alongside her husband and her two young daughters, one of which suffered for hours before passing away from her wounds, her two little sons were left as orphans.

68. At the beginning of the Gaza war, Wafa had worked tirelessly to cover the events unfolding inside the besieged coastal territory. Yet, her whole world was turned upside down on October 16, 2023, when she was subjected to a hostile interrogation by TalkTV's Julia Hartley-Brewer.

69. While Hartley-Brewer had just hosted Israeli military spokesperson Peter Lerner[39], treating him with courtesy, as a trustworthy authority, her body language and tone immediately changed upon bringing on Wafa to the show.[40] The TalkTV host challenged and somewhat mocked Wafa on her use of the word "massacres" to describe the killings in Gaza, despite allowing Lerner to use that very same word to describe the killings of Israelis.

70. Hartley-Brewer then began to ask Wafa why she hadn't evacuated her home in Gaza City, following the issuance of Israeli army warnings to move south. "Why should I leave? This is my homeland. If someone asks you to leave, are you going to leave your home?" Wafa answered. Hartley-Brewer replied in a condescending tone, "If someone said they were going to bomb me and my family to death, like you're saying 'a massacre,' then yes, I would leave."

71. The final question posed to Wafa was how she believed Israel should be attacking Gaza, which she attempted to answer and was interrupted after giving a response Hartley-Brewer didn't like, only for the interview to be suddenly cut off.

72. Israeli media outlets picked up on the interview[41] and the segment posted on Julia Hartley-Brewer's own X [formerly Twitter] page was saturated with Islamophobic and racist comments about Wafa Al-Udaini. Making things worse, the Palestinian journalist then received threatening calls from the Israeli military that she believed were directly linked to the interview she had given.

73. After the incident, she expressed that the interview had made her fearful for her family and said "The anchor killed me." For months after the incident, Wafa was fearful of letting anyone know her location and was not as active in her reporting.

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[39] Hartley-Brewer J (2023) Hamas 'Broke Rules Of The Game' When 'Butchering Babies' - Says IDF Lt Colonel Peter Lerner, TalkTV, https://www.youtube.com/watch?v=oSS4LODXRco

[40] Hartley-Brewer J (2023) "I'm Asking You A REASONABLE Question!" | Julia Hartley-Brewer GRILLS Palestinian Journalist, TalkTV, https://www.youtube.com/watch?v=aG0Zd2X8YJY

[41] Israel National News (2023) Palestinian journalist dodges question of proportional response, INN, https://www.israelnationalnews.com/news/378651

While the Israeli military ultimately murdered Wafa, the incredibly volatile bias that she was subjected to had directly impacted her life and was not punished by TalkTV.

74. Different Western media outlets have contributed to completely normalizing the use of biased language, spreading Israeli propaganda claims without fact-checking first and have tolerated a double-standard approach to interviewing Palestinians. While it is impossible to know how much of an influence each media outlet's reports contributed towards influencing the individual actions of Israeli soldiers, their contribution to validating false claims and an overall racist narrative, cannot be ignored.

75. This is especially the case when it comes to Hamas as an organization; instead of presenting the world with a balanced view, the terrorist label and exaggerated claims about its actions have worked to render it an insurmountable task to even provide a critical analysis of it. All that is accepted is an ultra-politicized take that serves nothing other than to continue justifying the ongoing war.

76. At a time when Ahmad Shara'a (Abu Mohammed al-Jolani), is now accepted as the de-facto leader of Syria by the United Kingdom and its Western allies, it is completely irrational to therefore isolate Hamas. Shara'a was a former commander of ISIS and went on to lead Al-Qaeda in Syria (Jabhat al-Nusra), both of which are transnational militant organizations. Whereas, in the case of Hamas, it has always described itself as being a localized national liberation movement within the borders of historic Palestine and no more.

I. A TIME FOR CHANGE

77. The potential benefits attached to opening up communications and talking to Hamas are numerous. As a start, in order to end the current war, it will take more than a simple ceasefire, and it is paramount that a number of steps be taken towards reconstruction, relief efforts, and governance in post-war Gaza. One possibility is that a deal is struck between Hamas and the Palestinian Authority, which could solve the issue of who runs the civil administration, and in the event that the PA is to have a role there, this could facilitate ending the siege and larger economic blockade.

78. Hamas is, in reality, the primary Palestinian political entity, with the Palestinian Authority representing little more than an administrative body in the West Bank and has minimal real relevance in the sphere of politics. However, as irrelevant as the PA may be as a political player, there is still a need for its involvement in the unification of the Palestinian movement. Without accepting the influence and overwhelming popularity of Hamas, attempting to strike a deal on any diplomatic solution, whether this be a short-term fix to the predicament of Gaza or a larger solution to the conflict, would prove disastrous and only lead to further bloodshed in the future.

79. The US, EU and British governments, despite being irrefutably biased in favor of Israel's national interests, hold the cards due to its influence over the Israeli government. Therefore, accepting the reality on the ground in order to foster an environment in which sustainable deals can be struck is paramount. At this current moment, there is no path toward any comprehensive solution to the conflict, yet there is a possibility for improving the lives of Palestinians and fostering the environment from which a unified national leadership can emerge.

80. The primary error the UK has made is the assumption it could control a situation where Palestinians are forced to live indefinitely under ever-deteriorating circumstances with no viable political options. The growing armed struggle inside the West Bank[42], and the enduring armed struggle in the Gaza Strip, show that this situation will only lead to further escalation if not addressed. It is crystal clear that the Palestinian people will not suffer in silence and, like any other people, need a viable path toward a brighter future. Robbing them of their democratic rights and forcing "road maps" and "peace plans" on them, over which they have no say, will not work.

81. Policy makers in London and Washington are just as responsible as any other actor for the environment that led to this current war, and the one thing that it has never tried is giving Hamas a chance, just as former U.S. President Jimmy Carter once proposed they do. If there was ever a time to look toward new solutions, it is now. The Israeli government is plausibly accused at the highest judicial body in the world, the International Court of Justice, of committing genocide in Gaza, this means that it's time to be brave, it's time to look past petty politics and search for an immediate solution that saves innocent lives. It is time that the UK engage Hamas politically and take them seriously in order to end this horror and pave the way toward progress. The alternative is only further escalation, bloodshed, and the possibility of triggering a wider regional war in the Middle East, one which could completely devastate whole nations and even eliminate them entirely.

J. EXPERT OBLIGATIONS

82. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinion on the matters to which they refer.

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[42] Hanaysha S (2024) From the cities to the countryside, armed resistance is spreading in the West Bank, Monodweiss, https://mondoweiss.net/2024/02/from-the-cities-to-the-countryside-armed-resistance-is-spreading-in-the-west-bank/

83. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

84. I confirm that I have not received any remuneration for preparing this report.



Robert Inlakesh
London
United Kingdom
15 January 2025

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON DIGNITY IN ISLAM
BY
DR SHEIKH HAITHAM AL-HADDAD

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. This report has been prepared to focus on the concept of dignity in Islam and how such a notion is central to the lives of Muslims around the world. The report provides some personal background to my own status as a Palestinian from Zeitoun, Gaza, who has been forced to live as a dispossessed person in the diaspora – and how such an existence is directly to how Palestinians understand their continued humiliation as displaced persons. The report then leads into a discussion on how Islam exists to provide human beings with a sense of dignity, and how such dignity must be provided to all human beings, including prisoners convicted of crimes.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am an Islamically trained scholar and jurist and currently serve as the Chair of the Fatwa Committee for the Islamic Council based in the UK.

5. I have studied the Islamic sciences for over twenty years under the tutelage of renowned scholars such as the late Grand Mufti of Saudi Arabia, as well as the

retired Head of the Kingdom's Higher Judiciary. I attained a BSc in Law & Islamic Law from Omdurman University in Khartoum, Sudan.

6. I have specialised in a range of Islamic Sciences, and successfully defended my doctoral thesis on the Islamic jurisprudence relating to Muslim minorities at SOAS, the University of London.

7. I have specialised knowledge in the field of *Fiqh, Usul al-Fiqh, Maqasid al-Shari'ah, Ulum al-Qur'an, Tafsir, Aqidah, and Fiqh al-Hadith*. My specialism lies in providing complex theories that address the role of Islamic jurisprudence within a Western environment, whilst also critically re-analysing the approach of Islamic jurists in forming legal rulings (*ifta'*) within a Western sociopolitical context.

8. I am the author of a wide range of articles, academic papers and books, ranging in topics from Islamic belief to the socio-political lives of Muslims. I have also provided expert evidence in legal cases in a range of legal jurisdictions across the world.

DIGNITY IN ISLAM

C. PERSONAL BACKGROUND

9. For Palestinians who grew up in the diaspora – as was my personal experience – notions of dignity have played a central role in the way we have constructed our own identity, having been consistently denied our right of return by the settler colonial Zionist regime. I share some personal background as a Palestinian as a means to situate my locus to this subject as not just a scholar of Islamic law, but as someone who has been forced to live through the consequences of our dispossession.

10. In 1948, the Zionist regime dispossessed Palestinians of the majority of our land, compelling refugees to flee to Gaza and the West Bank, which were not under the control of the occupation. At that time, regional powers agreed that Gaza would be administered by Egypt, and the West Bank by Jordan. The Jordanian government issued the Palestinians in the West Bank with Jordanian passports as a means of affording them some level of equality with its own citizens and trying to restore some level of dignity to them; by stark contrast, Egypt's policy towards the Palestinians in Gaza under its care was to enhance their humiliation, the first step of which was to deny them Egyptian passports and issue them with travel documents that in effect served to hinder, rather than facilitate, travel. These documents did not grant the bearer the right to enter Egypt unless a visa was obtained from the Egyptian consulates abroad beforehand. There were often occasions when Palestinian holders of such documents who were born in Egypt or who have lived there for most of their lives had no automatic right to stay in or re-enter the country, but who had to renew their visas every six months to three years. Many were left trapped abroad because Egyptian consulates denied their entry visa requests in summary fashion, without providing reasons.

11. My father is from Zeitoun, Gaza which is how we came to be issued with these Egyptian travel documents. My father left Gaza in 1964 to work as a teacher in a city called al-Taif in Saudi Arabia, where I was born. In 1967, Zionist forces occupied Gaza and the West Bank. My father was unable to return to his home and overnight became a refugee. My father hated the word 'refugee' because of the negative connotations associated with the term, and the implication that the bearer of the label rendered them less deserving of dignity than others. He would often dissuade my siblings and I from using the term to describe ourselves.

12. I grew up knowing that I am Palestinian, but I had little idea of what this meant as an identity beyond the simple title that I was Palestinian. While I was growing up in Saudi Arabia, I experienced a lot of racism at the hands of some local Saudis, who used to verbally abuse us – they would disparagingly call us *musharrad* in Arabic, which while linguistically meaning 'homeless' was used as a pejorative description for our being refugees – hence perhaps why my father despised the word.

13. Everyone around us would be able to speak about their *qabila* (tribe) or city, except us – we could never speak about this because our family was not around us. They were in Gaza in Palestine. I would see the amount of stress my parents, especially my father would live with. I didn't understand what it meant to be Palestinian as they did – what it meant to be dispossessed of our lands. In Saudia Arabia we used to require an *iqamah* (residency permit), but it would be an extremely stressful administrative process which would always leave you feeling precarious living in a country that never truly accepted you.

14. My father was a very proud man, and of his identity as a Palestinian. However, myself, I was not proud of my Palestinian identity because of an inferiority complex that had developed in me as a result of growing up as a member of a ridiculed and despised minority. It has only been in my later life that I have embraced my Palestinian identity because of how I came to understand the inferiority complex that had grown in me. It makes you a defeated person, not one who holds himself with dignity – one who has aspirations to achieve in life. We learned many things from our parents – the chief of which was obtaining a good education – otherwise you would have no place in the world, as people would not respect you.

15. My father used to always hold the leaders of the Arab world in complete disdain, almost spitting on the TV when they would appear due to their betrayal of the Palestinian people. He would say, "*All of them sold Palestine, all of them conspired with the Zionists and the British to sell Palestine*." I recall once watching the TV when I was very young – maybe 6 or 7 – and seeing the images of refugees fleeing a conflict, with my father bemoaning that they should not have left. I asked him why we had left our country in that case, to which he became very animated, and protested that we had never left, but on the contrary, had been forcibly stopped from returning.

16. Throughout his life, my father held on to a piece of land he could never return to. He refused to sell it his entire life because he never once wanted anyone to say that he sold a piece of his homeland, that he sold a piece of Palestine to anyone else. This was even at a time when people were spending well over the asking price in Hayy al-Rimal where the land was located close to, in the north of Gaza – now completely destroyed by the Zionist forces.

17. When I finished my studies, I wanted to continue my studies abroad, and for the first time I was confronted with not having a passport. Eventually, my father managed to procure for me an Egyptian travel document – except that there was almost no place in the world I could travel to on such a document – including Egypt. The only thing that can be said of the process of procuring the travel document from Egypt, is that the process is purposefully humiliating. In my father's life and in my life, there has never been anything more humiliating than going to the Egyptian embassy to procure this document.

18. With my travel document, I could not go anywhere. I could not even go to Egypt. I called Arab embassy after Arab embassy to try and secure a visa for a place at university. I vividly recall a conversation with a Syrian embassy official who lectured me on how great Syria was and how it welcomed Arabs from all over the world, only to deny me entry when he learned that I was a Palestinian. Even Yemen, which was a very poor country at the time, told me that I could not travel there to further my studies. It was only after the Sabra and Shatila massacre in Lebanon in 1982 that King Fahad declared that all Palestinians in Saudi Arabia should be treated as equals with Saudi citizens. So we went to King Abdul Aziz University to seek admissions – because going to university was a dream for us. Again though, we were faced with the humiliation of being told that there were no instructions to allow us to study there.

19. The core lesson we learned from our experiences was that the Arab regimes were exploiting the Palestinian cause as a means to further their own interests. They did not care for us … None of them were really interested in our freedom or our dignity. Our cause was a currency for their people, not as a genuine means of liberation for our people. To live as a Palestinian in the Arab world, was to be routinely humiliated for having been dispossessed – regardless of the role those very countries played. Despite this, Palestinians have developed their own dignity through their concept of *sumud*, a steadfastness to reclaim our lands and our sense of dignity.

20. While I grew up despising my identity because of its association with repression, dispossession and humiliation, the actions and behaviour of the people of Gaza in their resistance, their resilience, their pride, their honour and their dignity, despite the attempts to exterminate them, have instilled a level of pride in me in my identity as a Palestinian that I never thought could happen.

D. INTRODUCTION TO DIGNITY IN ISLAM

21. Dignity is one of the translations of the Arabic term, *karamah* كـــرامـــة which is derived from the root word *karam* كـرم . The meanings of this word i.e. كـرم in Arabic revolves around generosity, goodness, honour and positivity[1]. Hence dignity or كرامة as a term can be defined as **the right of every human being to be respected and valued as human beings.[2]** Dignity, therefore, represents the intrinsic and earned respect that every individual deserves. It encompasses preservation of the five human necessities that Islam stated; life, religion, wealth, intellect, and lineage. Life including notions of health.

22. Rooted in Qur'anic principles and the teachings of the Prophet Muhammad (peace by upon him), dignity is a cornerstone of Islamic ethics, shaping personal conduct, societal interactions, and even the treatment of adversaries. It is demonstrated through refined speech, courteous *akhlaq* (conduct), and steadfastness in the face of trials and tribulations, embodying a deep sense of honour and self-restraint in both personal and social interactions.

23. We can demarcate dignity in Islam into two categories, "God-given dignity" and "earned dignity". God-given dignity is inherent to every human being, irrespective of status, achievements, or circumstances, as affirmed in the Qur'an and this forms the foundation of human rights and ethical treatment. Allah says in the Qur'an,

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُم مِّنَ الطَّيِّبَاتِ
وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلاً

"And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference."[3]

24. In fact, the centrality of human dignity from an Islamic perspective goes back to the story of the creation of the prophet Adam, the father of humanity. Allah confirmed this by stating clearly that He created Adam by his own Hands and commanded the angels to prostrate for him to show him how much Allah loves him and how much He honoured him. We read the following in Quran, "*O Iblis, what prevented you from prostrating to that which I created with My Hands? Were you arrogant [then], or were you [already] among the haughty?*"[4] The Quranic evidences that confirm this reality i.e. that Allah honour mankind, are countless. This gives a very key reason behind the status of human dignity in Islam. It is a God-given gift and violating it is in fact violating Allah's rights.

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[1] See alkaramah al-insaniyyah fi al-asawor al-islami wa tatbiqatiha al-fiqhiyah Dr Ahmed Gomaa Mohamed, al-sharia wa alqanoun Journal 2020 page 1691. alkaramah al-insaniyyah fi al-Shariah al-Islamiyyah, page 10 & Dr Fakhir al-Dawoudi, Damascus 2020.

[2] Ibid

[3] Surah al-Israa 17:70

[4] Surah Sad 38:75

25. Earned dignity, on the other hand, is acquired through virtuous behaviour, such as integrity, courage, and kindness. The prophets of Allah epitomised this, maintaining unwavering dignity even in the face of severe trials and opposition. Their steadfastness, rooted in t*aqwa* (God-consciousness), inspired a balance of justice, humility, and respect towards all, even their enemies. Despite enduring immense trials, rejection, abuse, and even torture — some to the extent of sacrificing their lives — they remained unwavering in their commitment to dignity. In the face of adversity, they upheld supreme self-respect and moral integrity, refusing to stoop to the level of their enemies. Their steadfastness was rooted in t*aqwa* (God-consciousness), which empowered them to navigate hardship with a profound sense of *karama* (honour and dignity). They understood that Allah was ever-watchful, that ultimate justice belonged to Him, and that His guidance called for resisting the clouding of judgment by injustice or oppression. Instead, they exemplified the principle of upholding justice and dignity towards oneself and others, even in the most challenging circumstances.

26. It is vital to understand that the entire earth with all that is on it was created for mankind. Allah says *"And He has subjected to you whatever is in the heavens and whatever is on the earth – all from Him. Indeed in that are signs for a people who give thought."*[5] Having said that, it should be noted that Islam gives consideration to the earned dignity in certain circumstances that would not violate the higher aims and objectives of Islam, including justice. For example, Islam encourages respecting elderly people. It is reported that the Prophet Muhammad (peace be upon him) said, "*Part of respect for Allah is to show respect to an old Muslim and to someone who knows the Qur'an, as long as he does not go to excess in it nor turn away from it, and to respect a just ruler.*"[6]

E. ISLAM AND DIGNITY IN HISTORICAL CONTEXT

27. Islam's contribution to human dignity is best appreciated when viewed within the broader context of world history. Societies have long been plagued by inequities based on social class, race, gender, and creed, often resulting in the subjugation and enslavement of individuals with darker skin, the oppression of women, and the marginalisation of those adhering to different beliefs. Guided by the Quranic principles of justice, dignity, and fairness, Islam introduced social structures designed to uphold the inherent dignity of all individuals as a fundamental human right. These structures also created an environment where those who earned honour through their character and actions could thrive.

28. Bilal ibn Rabah (ra), a former enslaved man of African descent, exemplifies Islam's rejection of racial superiority. Appointed as the first *mu'adhin* (caller to prayer), his rise symbolised the emphasis on individual merit and piety over race or background.

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[5] Surah Jathiyah 45:13

[6] Al-Adab al-Mufrad 357

The Prophet Muhammad (peace be upon him) is reported to have said, "*There is no superiority of an Arab over a non-Arab, or a non-Arab over an Arab; nor of a white person over a black person, or a black person over a white person, except by piety and good deeds.*"[7] This declaration underscores Islam's commitment to equality and the dignity of all people, regardless of their race or background.

29. The last sermon of the Prophet laid down the foundations of the Islamic ethics and values. In fact, many scholars consider it as the Islamic universal declaration of rights (creator and creation including humans). Among the key statements of that sermon is, "*O People! just as you regard this month, this day, this city as sacred, so regard the life and property of every Muslim a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord, and that he will indeed reckon your deeds.*"[8]

30. The principles of dignity and justice are also evident in Islam's groundbreaking reforms for women. At a time when women were denied basic rights, Islam granted them the ability to own, inherit, and manage wealth independently. Allah says in the Quran, *"For men is a share of what they have earned, and for women is a share of what they have earned."*[9] In fact, the final sermon of the Prophet that was mentioned earlier included the affirmation of women's rights in Islam. He said, "*O People it is true that you have certain rights with regard to your women but they also have rights over you. Remember that you have taken them as your wives only under Allah's trust and with His permission. If they abide by your right then to them belongs the right to be fed and clothed in kindness. Do treat your women well and be kind to them for they are your partners and committed helpers. And it is your right that they do not make friends with any one of whom you do not approve, as well never to be unchaste.*"[10]

31. Islam also abolished the barbaric practice of female infanticide prevalent in pre-Islamic Arabia. The Quran condemns this act, stating: *"When the female infant buried alive is asked for what sin she was killed."*[11]

32. Imam Al-Shatibi (d. 1388 CE), a scholar of *Maqasid al-Shariah* (objectives of Islamic Law), argued that the preservation of dignity is one of the primary objectives of Islamic law. This includes protecting faith, life, intellect, progeny, and wealth, as these are essential for ensuring human dignity. He stated, "*The Muslim nation – or rather all nations – has collectively agreed on the fact that the shari'ah aims at the preservation of the five necessities, which are: religion, life, intellect, lineage and property. Knowledge of this is an essential part of religion. This was not established through a specific textual evidence; rather, it was known to conform to the shari'ah through numerous pieces of*

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[7] Ahmad, Musnad

[8] Ahmad, Musnad 19774

[9] Surah al-Nisa 4:32

[10] Ahmad, Musnad 19774

[11] Surah al-Takwir 81:8-9

evidence that cannot possibly be listed in one chapter." As we notice here that Al-Shatibi confirmed that all nations do agree that these are the essential needs of human beings. Similarly, Muslims scholars, agreed to them as well. However, some can say that dignity goes beyond these basic needs to include respect and values – the opposite of which is humiliation and degrading treatment.[12] Imam Ibn Qayyim Al-Jawziyyah (d. 1350 CE) linked dignity to justice, stating that maintaining human dignity requires upholding justice, preventing oppression, and ensuring the welfare of all people, regardless of faith or status.[13]

33. Having said that we can easily disagree with the comment of some researchers, such as Miklós Maróth and his co-authors, who concluded that human dignity is a new concept which was unknown in antiquity and the early Middle Ages when Christendom and Islam appeared around the Mediterranean Sea, and that human dignity is not at the centre of interest of any religion.[14] On the contrary, it was at the centre of Islamic teachings.

34. Dignity is not simply a concept that relates to those who are free within an Islamic schema – but also relates to those who might have been imprisoned for criminal acts. The Caliph Ali ibn Abi Talib (ra) used to inspect the prisons, meet the prisoners in them and enquire about their circumstances. Similarly the Caliph Umar ibn Abdul Aziz used to write to his employees, telling them to see how the prisoners were and to take care of the sick among them. Much later the Abbasi Caliph al-Mu'tadid allocated 1500 dinars of the monthly budget to be spent on the needs and medical treatment of prisoners.

35. At the time of the Caliph al-Muqtadir, the wazir Ali ibn Eesaa al-Jarraah wrote to the head of the hospitals of Iraq at that time, telling him, "*I have been thinking, may Allah grant you long life, about those who are in prison. With their large numbers and rough accommodation, they are not free from disease. They are prevented from doing things which will benefit them and meeting with doctors whom they can consult about the sicknesses they are exposed to. So you have to appoint doctors for them who will go in and see them every day and take them medicine and drinks, and who will go around to all the jails and treat the sick in them and prescribe medicine for them.*" This care lasted throughout the leadership of many Abbasid rulers.[15]

F. DIGNITY AS JUSTICE

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[12] Al-Muwafaqat fi Usul al-Shariah 2/220

[13] Madarij al-Salikin

[14] See 14 - Human dignity in the Islamic world Published online by Cambridge University Press: 05 March 2015

[15] For more information, please see: Ahkaam al-Sijn wa Mu'aamilat al-Sujanaa' fi'l-Islam, p. 367-379; al-Mawsoo'ah al-Fiqhiyyah, part 16, p. 320-327

36. Islam upholds equality and justice addressing class inequality and the treatment of marginalised groups. Allah states in Surat al-Nahl, "*Indeed, Allah orders justice and kindness and giving to relatives and forbids shameful acts and evil deeds and transgression. He admonishes you that perhaps you will be reminded*"[16] The Prophet Muhammad's companion Abdullah Ibn Masood (ra) describes this verse as the most comprehensive in the Quran. The entire range of Islamic teachings is condensed within this verse. For this reason, the Ummayyad reformist Caliph Umar ibn Abdul Aziz encouraged the imams to recite this verse in the end of their Friday sermons.

37. The institution of *Zakat* redistributes wealth to reduce economic disparity and ensure support for the poor. Islam also safeguards the rights of non-Muslim minorities, granting them religious freedom and protection under Islamic governance, exemplified by treaties like that with the Christian community of Najran. The Prophet Muhammad (peace be upon him) warned against harming non-Muslims under a treaty, emphasising the severe consequences of such actions in the afterlife. Justice was upheld without exception, as demonstrated by the Prophet's declaration that even his closest relatives would face punishment if they violated the law. These principles collectively reflect Islam's commitment to creating a just and dignified society for all. All of this demonstrates that "dignity" is a cornerstone of Islamic teachings, embedded in every facet of human life. It transcends individual, communal, and even adversarial relationships, establishing a standard of honour and respect that Muslims are instructed to uphold. The Prophet emphasised respect and compassion for all individuals, regardless of age or status, stating, "*He is not one of us who does not show mercy to our young and respect to our elders.*"[17] This principle applies equally to subordinates and those under one's authority, with the Prophet urging fair and humane treatment. He also strongly discouraged harmful actions like backbiting, slander, and public shaming, warning that such behaviours violate the dignity of others[18][19]

38. Maintaining the dignity of human beings does not mean that no punishment should be subscribed for those who commit crimes. In fact, crimes are seen as violation for other members' dignity and hence the perpetrators should be punished for that violation. The punishment should also serve as a deterrent for others to repeat this crime or violations of the dignity of others. Hence, Islam prescribed punishment for killing other human beings, stealing, raping etc.

39. It should be noted that Islamic punishment should be done in a way that preserves certain elements of the dignity of the criminal. The Quran commanded as follows, "*O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do*

[16] Surah al-Nahl 16:90

[17] Sunan Abi Dawood 4943

[19] Sahih Muslim 2589

not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do."[20]

40. The Prophet declared the unjust killing of even a single person as graver in the sight of Allah than the destruction of the entire world[21], reflecting the Quranic instruction, "*do not kill the soul which Allah has forbidden, except by right*"[22] Islam safeguards dignity even in death, as demonstrated by the Prophet's respect for a passing Jewish funeral procession. When questioned about standing, he replied, "*Was he not a soul?*"[23] Such teachings emphasise the inherent value of every human life, irrespective of faith.

G. DIGNITY DURING WAR

41. This ethos is particularly evident in the Islamic approach to war, where dignity is preserved for both Muslims and their enemies. During times of war, these principles are not suspended but rather reinforced. A Muslim soldier is expected to uphold integrity and justice, respect the rights of prisoners of war and not to humiliate and torture. Islam prohibits treachery, even against an adversary and enemy. The Prophet Muhammad said, "F*ulfil your trusts to those who entrust you, and do not betray the one who betrays you*."[24]

42. Prisoners of war are also to be treated with dignity. The Quran instructs Muslims to provide them with food and humane treatment, "*And they give food in spite of love for it to the needy, the orphan, and the captive...*"[25] The Prophet strictly forbade mutilation of the dead, even during war, saying, "*Do not mutilate the dead, even if it is a rabid dog.*"[26] Islam categorically forbids harming women, children, the elderly or monks. Abu Bakr (ra), the first Caliph, instructed his army, "*Do not kill women, children, or the elderly. Do not cut down fruit-bearing trees, destroy crops, or harm animals unnecessarily.*"[27]

43. The Prophet Muhammad's leadership during battles exemplifies the preservation of dignity. After the conquest of Makkah, when his enemies were at his mercy, he

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[20] Surah al-Maidah 5:8

[21] Sunan an-Nasa'i 3987

[22] Surah al-Israa 17:33

[23] Sahih al-Bukhari 1312

[24] Sunan Abu Dawood 3535

[25] Surah al-Insan 76:8

[26] Sunan Abi Dawood 2669

[27] Shibly H (2017) War, Islam, and the Sanctity of Life: Non-Aggression in the Islamic Code of Combat, Yaqeen Institute, https://yaqeeninstitute.org/read/paper/war-islam-and-the-sanctity-of-life-non-aggression-in-the-islamic-code-of-combat

declared, "*Go, for you are free.*" This act of forgiveness and magnanimity is a powerful testament to Islam's commitment to preserving dignity, even for those who once sought to harm its prophet.

44. It was narrated that the Prophet (peace be upon him) passed by a prisoner who was in chains, and he called out, "*O Muhammad, O Muhammad!" He came to him and said, "What is the matter?" He said, "I am hungry – feed me. I am thirsty – give me water." The Prophet (peace be upon him) commanded that his needs should be met*."[28]

H. CONCLUSION

45. Dignity is a cornerstone of Islamic teachings, transcending personal, social, and even adversarial relationships. Through justice and respect for human rights, Islam provides a framework for fostering dignity and honour. These principles serve as a timeless guide, urging humanity to rise above cruelty and oppression to build a world rooted in mutual respect and dignity for all.

46. The Quran emphasises that human dignity is inherent and bestowed by Allah upon all humanity. This dignity, or *karama*, is not contingent on race, ethnicity, or faith but is a divine gift tied to the human soul and purpose. Allah says in the Quran "*And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.*"[29] Allah also says in the Quran that "*Indeed, We created humans in the best form*"[30] and that "*He is the One Who has placed you as caliphs or stewards of the earth.*"[31] Humanity's role as stewards (*caliph*) on Earth carries a responsibility to uphold dignity for oneself and others.

47. "*Upholding human dignity is integral in ensuring peace and harmony in the world today. Peace and harmony are among the fundamental prerequisites to progress, development and well-being of society. No society can move forward as one if elements of peace and harmony are absent. For countries that aim to become great and successful, it is a must, as a matter of necessity to tread along the path of peace. Peace is only achievable when we learn to respect the rights of others, accept the differences and appreciate other people's self-worth. Promoting*

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[28] Muslim 3/1263

[29] Surah al-Israa 17:70

[30] Surah al-Tin 95:4

[31] Surah Fatir 35:39

peace and harmony through upholding human dignity is the first crucial step towards the greater agenda of peaceful coexistence and unity in the world today."[32]

I. EXPERT OBLIGATIONS

48. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

49. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

50. I confirm that I have not received any remuneration for preparing this report.



Dr Sheikh Haitham al-Haddad
London
United Kingdom
7 January 2025

[32] Upholding Human Dignity for Peace in Today's World Puan Enizahura binti Abdul Aziz 12/01/2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE LEGACY OF THE MARTYR IZZ AL-DIN AL-QASSAM
BY
PROFESSOR SAMI AL-ARIAN[1]

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe *Harakat al-Muqawamah al-Islamiyyah* ('Hamas').

2. The British government has exhibited a lack of understanding and selective reading of the history of Palestine. The purpose of this report is to provide a historical overview of the life and death of Shaykh Izz al-Din al-Qassam, after whom the military wing of Hamas is named, and his significance to the continued Palestinian resistance.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

1. I am the Director of the Center for Islam and Global Affairs (CIGA) and Professor at Istanbul Sabahattin Zaim University in Turkey.

2. I received my PhD in Computer Engineering in 1986, and was a tenured academic in the US for 17 years receiving best teaching awards at the University of South Florida (1993 and 1994) and several grants, as well as having over forty academic publications to my credit.

[1] Thanks to Ahmed Jeddo for his research assistance in preparing this report

3. During my four decades in the US (1975-2015), I founded numerous institutions and publications in the fields of education, research, religion and interfaith, as well as civil and human rights. I was a prolific speaker across many US campuses, especially on Palestine, Islam and the West, and Civil Rights. In 2001, I was named by *Newsweek* the "premier civil rights activist" in the US for my efforts to repeal the use of Secret Evidence in immigration courts. In 2012, I was profiled by historians in the *Encyclopedia of American Dissidents* as one of only three Muslims in the US out of 152 dissidents and prisoners of conscience that were included in the series in the past century (along with Malcolm X and Muhammad Ali). My US story was featured in 2007 in the award-winning documentary *US vs. Al-Arian*, and in 2016 in the book *Being Palestinian*.

4. I have written several studies and numerous articles focusing on US foreign policy, Palestine, and the Arab Spring phenomena. My book of poetry on Spirituality, Palestine, and Human Rights *Conspiring Against Joseph* was published in 2004. I am also the author of *The Arab Awakening Unveiled: Understanding Transformations and Revolutions in the Middle East,* Washington, DC, American Educational Trust, 2013 (under the pen name Esam Al-Amin), and *The United States and Israel: From Enabler to Strategic Partner,* IZU Publications, 2019. At CIGA I have edited several books (IZU Publications) including *Civil-Military Relations in Muslim Societies*; *Governance and Political Authority in the Muslim World*; and *Challenging Apartheid in Palestine*; and *The Global War on Terror*.

THE LEGACY OF THE MARTYR IZZ AL-DIN AL-QASSAM

C. INTRODUCTION

5. By 1987, Israel's brutal military occupation of Palestine had created a tinderbox of rampant aggression, daily humiliation, and enforced deprivation in the Palestinian territories. Then came the spark on December 9 after an Israeli military vehicle ploughed into a civilian truck, killing four Palestinian workers and igniting a widespread uprising, or *Intifada*.[2] Amid the tumult, a new group emerged, known as the *Harakat al-Muqawamah al-Islamiyyah*/the Islamic Resistance Movement (Hamas). However, as the initially non-violent nature of the Intifada was met by relentless Israeli aggression, some members of this fledgling Islamic movement turned to violent resistance and were consequently forced into hiding. With nothing left to lose, these fugitives began launching covert attacks on Israeli targets, eventually forming Hamas' military wing, *Kata'ib al-Shahid Izz al-Din al-Qassam* or the Qassam Brigades.[3]

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[2] Finkelstein N (2018) *Gaza: An Inquest into Its Martyrdom*, University of California Press. p.6

[3] Tamimi A (2009) *Hamas: Unwritten Chapters*, Hurst & Company. p.74

6. Since his martyrdom in 1935, Izz al-Din al-Qassam — the namesake of Hamas' military wing — has remained an enduring symbol of resistance for Palestinian groups of all political and ideological persuasions. However, it was Hamas who assertively used al-Qassam's name to claim his legacy as a man who combined a scrupulous religiosity with an unflinching willingness to sacrifice everything for the cause of liberation. Article 7 of Hamas's 1988 Charter affirms this, identifying al-Qassam as the first iteration of "jihad in confronting the Zionist invasion"[4], which begins a teleological line leading directly to Hamas.[5] As this report will demonstrate, an exploration of the life of Izz al-Din al-Qassam reveals how his activism and eventual armed struggle were driven in direct response to a climate of brutality, colonialism and rampant injustice — circumstances that remain startlingly relevant to the present day.

D. FROM SYRIA TO BRITISH MANDATE PALESTINE

7. Born in 1883 in the small coastal town of Jabla in modern-day Syria, al-Qassam grew up during a tumultuous period in the late Ottoman Empire, punctuated by mounting European encroachment, interference, and invasion. After receiving his training as a religious scholar at the prestigious Al-Azhar University in Cairo, al-Qassam returned to Syria with a fervent anti-colonial impulse. Fusing both word and action, he organised a battalion to join the resistance to Italy's invasion of Libya while preaching from the pulpit the imperative of jihad against colonial incursions into Muslim lands.[6] Later, with the onset of the First World War, al-Qassam volunteered for the Ottoman Army and received full military training after refusing an administrative post, typically filled by members of the *ulama* (class of religious scholars). Following the Allied victory in Damascus in 1918, his military experience was put to use as he led an insurgency against French rule in Syria. For his troubles, al-Qassam was sentenced to death in absentia by the French occupation in 1920 but subsequently escaped to Haifa in what was by then British Palestine.

8. Al-Qassam arrived in Palestine at a time when the British colonial project to establish a Jewish national home was gaining momentum. The influx of European Jewish settlers and the colonies established by the Zionist movement across the coast and other fertile and strategic regions of Palestine "served to ensure control of a territorial springboard for the domination (and ultimately the conquest) of the country".[7] The

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[4] Institute for Palestinian Studies: https://www.palestine-studies.org/sites/default/files/mdf-articles/%D9%85%D9%8A%D8%AB%D8%A7%D9%82_%D8%AD%D8%B1%D9%83%D8%A9_%D8%A7%D9%84%D9%85%D9%82%D8%A7%D9%88%D9%85%D8%A9.pdf

[5] Sanagan M (2020) *Lightning through the Clouds: ʿIzz al-Din al-Qassam and the Making of the Modern Middle East*, University of Texas Press. p.2

[6] Nafi B (1997) *Shaykh 'Izz Al-Din Al-Qassam: A Reformist and Rebel Leader*, Journal of Islamic Studies, p.188. https://doi.org/10.1093/jis/8.2.185.

[7] Khalidi R (2020) *The Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance*, Profile Books Ltd. p.39

Palestinian people were fully attuned to Britain's machinations, and during al-Qassam's fifteen years in Palestine, they watched on despairingly as the Jewish population swelled more than five fold, from approximately 57,000 in 1919 to about 320,000 by 1935.[8]

E. BUILDING ROOTS IN HAIFA

9. As a port city and al-Qassam's new home, Haifa was the primary landing centre for Jewish immigrants from Europe, bringing its native residents into close contact with the bourgeoning Jewish community (*Yishuv*). However, their growing presence also contributed to a downturn in the social and economic fortunes of the Arab Palestinians. While Britain's industrialisation program transformed Haifa into an industrial hub, Palestinian workers observed a systemic bias from British authorities in favour of Jewish workers and against Arab labour organisations.[9] This situation, alongside the formation of the Jewish Labour Federation — *the Histadrut*, prompted Palestinian workers to form "brotherly committees" and organise their own labour movements.

10. Meanwhile, the official representatives of the Palestinian people emerged out of a carefully constructed system of patronage. A select group of families comprised Palestine's traditional leadership, but their authority was tethered to the British Mandate. A case in point was the creation of the Supreme Muslim Council (SMC) in 1921, led by al-Hajj Amin al-Husayni as the grand mufti of Jerusalem.[10] These tenuous hierarchies of leadership generally cooperated with the mandate authorities, and as the situation continued to deteriorate for a landless Palestinian underclass, they attempted in vain to "beseech, petition and beg"[11] the intransigent British in the hope of being delivered their aspiration for self-determination and an end to the mandate rule. The polite protestations of the notables in Jerusalem created a disconnect to the struggles of the Palestinian lower and middle classes in places such as Haifa and Nablus, prompting them to seek their own nationalist culture and leadership.

11. In al-Qassam, the disenfranchised of Haifa found a powerful and articulate voice for their accumulating grievances. After working as a teacher at a local school, al-Qassam was appointed the Imam of al-Istiqlal mosque, situated in the heartlands of the dockworkers, railroad mechanics and other manual labourers. His sermons drew in larger and bigger crowds of worshippers, enamoured by his charismatic aura and

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[8] Sanagan M (2020) *Lightning through the Clouds: ʿIzz al-Din al-Qassam and the Making of the Modern Middle East*, University of Texas Press. p.65

[9] Lockman Z (1996) *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948*, University of California Press

[10] Khalidi R (2020) *The Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance*, Profile Books Ltd. p.42

[11] Khalidi R (2007) *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, Oneworld Publications. p.81.

the moral force of his words, an experience likened to the impact of an earthquake.[12] Al-Qassam's message resonated not just with dockworkers but also with government clerks, villagers and urbanites who were yearning for a truly representative voice. In no uncertain terms, al-Qassam clarified to the people the root of their anger and disgruntlement — the British and the Zionists. He advocated for organising Palestinian workers into unions to counter economic exploitation; he preached steadfastness in the struggle against colonial oppression, and within a few short years, his sermons would become the fuel of revolution:

> *"An individual deeply imbued with what we might wish to call the Islamic social gospel and who was struck by the plight of Palestinian peasants and migrants. Al-Qassam's pastoral concern was linked to his moral outrage as a Muslim at the ways in which the old implicit social compact was being violated in the circumstances of British mandatory Palestine. This anger fuelled a political radicalism that drove him eventually to take up arms and marks him off from the Palestinian notable politicians."*[13]

12. Of key importance, was the central role that Shaykh Izz al-Din al-Qassam played in galvanising the Palestinian people in his locality to understand how they could challenge their dispossession. His charisma and dedication in throwing his lot in with the Palestinians made him a figure they could turn to and rally around.

F. THE INEVITABILITY OF ARMED RESISTANCE

13. In September 1928, Jews praying at the Western Wall brought chairs and placed partitions to separate men from women — a move that violated the Ottoman status quo, forbidding Jews from bringing physical structures into the sacred area.[14] The incident stoked fears over the creeping Zionist threat to the holy sanctuary, which were exacerbated by unabated Jewish immigration. In what came to be known as the Buraq Uprising, the simmering tensions precipitated an eruption of violence in August of 1929, as riots and street battles spread across the country, with scores killed on both sides. For their part, the British inflicted severe punitive measures on the Palestinians, including the execution of three Palestinian activists.[15] This moment fed an overwhelming sense among al-Qassam and others over the futility of cooperation with the British and the growing necessity of armed resistance to stem the accelerating expansion of the Zionist colonial project, particularly threatening the status of the holy sanctuaries in Jerusalem.

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[12] al-Khatīb N (1967) *Ahdath al-Nakba*, Dar Maktaba al-Haya. p.154

[13] Burke E (1993) *Struggle and Survival in the Modern Middle East*, University of California Press, p.164

[14] Winder A (2020) 'The "Western Wall" Riots of 1929: Religious Boundaries and Communal Violence', *Journal of Palestine Studies*, 42(1), 6–23. https://doi.org/10.1525/jps.2012.XLII.1.6

[15] Nafi B (1997) 'Shaykh 'Izz Al-Din Al-Qassam: A Reformist and Rebel Leader', *Journal of Islamic Studies.* p.206. https://doi.org/10.1093/jis/8.2.185.

14. Matters escalated further by 1931 when the Palestinian press published a report detailing British support in the training and arming of Jewish colonies, an action that Palestinians viewed as a virulent provocation, worsened by British restrictions preventing them from arming themselves.[16] To exacerbate tensions, Zionist labour unions continued to receive preferential treatment from the British Mandate, gaining more jobs and higher pay for Jewish workers at the expense of their Palestinian counterparts already suffering from long-standing deprivation and marginalisation.[17] In response, Palestinians began organising into secret societies that carried out small, targeted acts of resistance against the Zionist project. These covert networks coalesced around the newly formed Young Men's Muslim Association (YMMA) at al-Istiqlal Mosque, and by 1933, al-Qassam had become president of the national YMMA. This propelled him into the vanguard of the Palestinian resistance but also placed him on the radar of the British authorities, particularly as his sermons increasingly conveyed a call for Jihad in opposition to colonial oppression.

15. In December 1932, three Palestinians from *Black Hand* — a secret society connected to al-Qassam — launched a bomb attack on the Jewish colony of Nahalal, killing two Jewish settlers and resulting in the arrest of five of its members. One of the accused signed a document under duress confessing to his involvement in the murder but also implicating a list of men, including Shaykh Izz al-Din al-Qassam. This confession added to a larger dossier, linking al-Qassam's network of secret societies to what the British authorities claimed was "a campaign of terror" against the Yishuv in the aftermath of the Buraq Uprising[18].

G. "VICTORY OR MARTYRDOM"

16. The symptoms of Palestinian resistance — unchecked Jewish immigration, British inertia on the question of self-governance, and escalating tension over Jerusalem's holy sites — generated a state of continual unease in the streets of Haifa and beyond. Moreover, the daily indignities of colonial rule, Zionist provocation, economic migration, insufficient housing and persistent underdevelopment once again pushed Palestine to the brink. By 1933, Palestinian demonstrations were met by the lethal force of British police while the Yishuv continued to develop the institutions of a nation-state, both overtly in the form of the Jewish Agency and covertly with the paramilitary Haganah and its militant off-shoot Irgun.[19] The British and their Zionist

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[16] Sanagan M (2020) *Lightning through the Clouds: ʿIzz al-Din al-Qassam and the Making of the Modern Middle East*, University of Texas Press. p.89

[17] Lockman Z (1996) Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948, University of California Press

[18] "Fitgerald to Tegart, 11/12/1937," Tegart Papers, box 2, file 3 (MEC)

[19] Sanagan M (2020) *Lightning through the Clouds: ʿIzz al-Din al-Qassam and the Making of the Modern Middle East*, University of Texas Press. p.106

allies had created an intolerable situation for the Palestinians, reaching a tipping point for al-Qassam and his followers by 1935.

17. In October 1935, a Zionist attempt to smuggle a large cache of weapons into Palestine was discovered at the port of Jaffa. This incident triggered mass protests, emblematically held on 2 November — the anniversary of the infamous Balfour Declaration of 1917. For al-Qassam and his devoted band of disciples, the situation had reached its logical conclusion, and the decision was made to retreat to the mountains. In his final sermon before departing, al-Qassam brought the adoring congregation he had curated over the years to tears. He beseeched his audience, proclaiming:

> *"I have taught you the matters of your religion until each of you has become knowledgeable of them, and I have taught you the matters of your homeland until it has become your duty to perform jihad. Have I conveyed the message? O God, bear witness: To jihad, O Muslims, to jihad."*[20]

The objective had crystallised: to end the mandate and force the withdrawal of British colonial authority from Palestine. The means were unequivocal: military struggle until "victory or martyrdom."[21]

18. Mirroring his earlier years of fighting the French colonialists from the mountains of Syria, al-Qassam and his band of followers had sought cover on the mount of Faqu'a near Nuras village in northern Palestine. The plan was to maintain a low profile while gradually recruiting mujahidin from the northern villages and accumulating resources until they were adequately prepared to initiate a large-scale revolt. However, in November 1935, this plan was shattered when a small group of al-Qassam's men gunned down Jewish police sergeant, igniting a storm of repercussions.[22] After a protracted contest of evasion and pursuit, a largely assembled police force was fast closing in on al-Qassam and a group of his followers at the town of Ya'bad. In what has reached the status of legend among Palestinians, al-Qassam then called on his mujahidin to "fight to the last drop of blood" and to "die a martyr's death".[23] The ensuing gunfight raged for over three hours, and at one point, al-Qassam emerged from his cover, only to be shot in the forehead, achieving the martyrdom he had long sought.

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[20] Al Jazeera (2024) إرث عز الدين القسام!, https://www.aljazeera.net/blogs/2024/2/19/%D8%A5%D8%B1%D8%AB-%D8%B9%D8%B2-%D8%A7%D9%84%D8%AF%D9%8A%D9%86-%D8%A7%D9%84%D9%82%D8%B3%D8%A7%D9%85

[21] Al-Awal (2023) وإنه لجهاد نصر أو استشهاد. من أطلق هذا الشعار لأول مرة؟, https://al-awal.net/742

[22] Nafi B (1997) 'Shaykh 'Izz Al-Din Al-Qassam: A Reformist and Rebel Leader', *Journal of Islamic Studies*. p.212. https://doi.org/10.1093/jis/8.2.185.

[23] Ghalawanji M (1984) البطل المجاهد الشهيد الشيخ عز الدين القسام، من مجلة التراث العربي الدمشقية، العددان 13-14, https://archive.alsharekh.org/Articles/171/16104/362001

19. Writing of the demise of al-Qassam, the scholar Abdallah Schleifer described the way his martyrdom was followed by a deep sense of loss among the Palestinians, who turned up to pay their respects at his funeral in vast numbers:

> *"Called upon to surrender, al-Qassam told his men to die as martyrs, and he opened fire. Al-Qassam's defiance and manner of his death (which seemed to stun the traditional leadership) electrified the Palestinian people. Thousands forced their way past police lines at the funeral in Haifa, and the secular Arab nationalist parties invoked his memory as the symbol of resistance. It was the largest political gathering to assemble in mandatory Palestine."*[24]

20. The thousands that gathered for the funeral carried his martyred body through the streets, including those killed alongside him – the chanting of *Allahu Akbar* (God is Greater) echoing throughout Haifa. The anger at his murder led to clashes with the British police as Palestinians stoned their cars and stations as the procession walked for three and half hours before laying all the martyrs to rest in the bloodied clothes they were found in – as is the custom in Islamic law.[25] The tomb of Shaykh Izz al-Din al-Qassam is inscribed with an epitaph that captures his status with the Palestinian people:

> *"Here lies the martyr, the most noble 'alim [scholar], who was a trustworthy guide. He is our shaykh, al-Qassam, he who was the first among us to rise with the banner of jihad for the victory of Islam. He died a martyr in a pure act of grace during the battle of Ya'bad in the month of sh'aban, and so God awarded him with his finest honour — honouring him with the angels of paradise. And if you wish to describe his epitaph in history, say: "In the highest place in heaven, 'Izz al-Din al-Qassam lies."*

H. LEGACY

21. On 15 April 1936, a group of former followers of al-Qassam attacked a car near Tulkarem, killing two passengers and injuring a third. The incident sparked retaliation from the Yishuv's emergent militias, resulting in two Palestinians being murdered near Tel Aviv the following night. After a further escalation of violence, the government declared a state of emergency — the Arab Revolt had begun. A general strike swept through the cities of Palestine as a rural insurgency took root. The network of associates left by al-Qassam played a crucial role in driving and spreading the revolt, underscoring that al-Qassam's legacy would endure well beyond his death. This was the most sweeping national strike at that time spanning more than six months.

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[24] Burke E (1993) *Struggle and Survival in the Modern Middle East*, University of California Press, p.166

[25] Abufarha N (2009) The Making of a Human Bomb, Duke University Press, p.37

22. What was unique about Shaykh Izz al-Din al-Qassam was his ability to express in practical form an idea. He embodied an idea that opened new paths for political struggle for generations to come. Unlike the detached leadership of other Palestinian notables, his legitimacy was rooted in an authentic connection to the downtrodden on the streets of Palestine, combined with an inimitable ability to articulate the root cause of their despair — the Zionists and their British benefactors. In the decades since his martyrdom, groups from across Palestine's political spectrum have adopted al-Qassam's image as a symbol of resistance, steadfastness and sacrifice. As the conditions of colonialism, brutality, injustice and statelessness have only intensified through the years, al-Qassam's example will continue to be held up as a beacon of light in Palestine's ongoing struggle for self-determination.

23. In her *Heroes and Martyrs of Palestine*, Laleh Khalili cites Ted Swedenburg as evidencing how the martyrdom of al-Qassam as an anti-colonial leader became the precursor to the fighters in the Intifada.[26] Khalili's work further explores how al-Qassam's legacy was continually raised by various groups. As early as the 1960s, the Marxist-leaning DFLP chose the name al-Qassam for their armed forces due to his organising of the Palestinian working class – even referencing him as a forerunner to Che Guevara. In 1985, the Syrian backed PFLP-GC commemorated al-Qassam and by 1993, even the Abu Nidal organisation were hailing his memory.[27]

24. After the first Intifada began, a tradition began of issuing communiques as part of a praxis of commemoration, but also of sharing information on resistance. These communiques would be issued by the Unified National Leadership (UNL), Islamic Jihad and Hamas to assist in mobilisation efforts – the very first being issued on 8 January 1988 to call for a general strike. It was not Hamas or Islamic Jihad that first referenced al-Qassam, but rather the UNL who called on Palestinians on 13 January 1988 as "people of martyrs, grandsons of al-Qassam,…brothers and comrades of Abu Sharar, Khalid Nazzal and Kanafani."[28] The imagery of the communique placing a direct line between the resistance of Qassam to that of Kanafani and as Khalili explains of the centrality of al-Qassam, "The Intifada was again and again tied to the 1936-1939 revolt through invocations of Izz al-Din al-Qassam's name and the uncanny similarities between the two events."[29]

25. An illustration of the popularity of al-Qassam among all Palestinian factions is Marwan Barghouthi. For over twenty years, Barghouthi has been the most prominent leader in the secular movement Fatah, the faction led by the Palestinian Authority president Mahmoud Abbas (Abu Mazen). He has also been in an Israeli jail since 2002 and sentenced to life. But he is also known as Abu al-Qassam or the father of al-Qassam.

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[26] Khalili L (2009) *Heroes and Martyrs of Palestine: The Politics of National Commemoration*, p.131

[27] Ibid, p.132

[28] Ibid, p.198

[29] Ibid, p.199

26. In contemporary Palestine, the figure of al-Qassam looms large as the foremost resistance movement in Gaza *Kata'ib al-Shahid Izz al-Din al-Qassam* (the Martyr Izza al-Din al-Qassam Brigades) has named itself after his name, as well as the Qassam rockets they fire at the Zionist state.[30] Unlike the larger Islamic resistance movement that had begun as a non-violent protest movement, Azzam Tamimi informs us that "the Qassam Brigades were a product of the intifada itself, and had come into being as a reaction to Israel's mounting repression of what had begun as a peaceful protest."[31]

27. After the assassination and martyrdom of Shaykh Ahmad Yassin, the spiritual leader of Hamas, there was widespread commemoration across the West Bank and Gaza. In Jenin, they erected murals depicting heroes of Muslim history, including Shaykh Yassin, the founder of the Muslim Brotherhood Hassan al-Banna, and Shaykh Izz al-Din al-Qassam – linking Shaykh Yassin's legacy to a longer history of resisting colonisation. Women in the street began to chant in eulogy for al-Qassam, linking him to Shaykh Yassin directly:

> *la ilaha ill-allah, ish-shahid habib allah*
>
> No God but Allah and the martyr is Allah's beloved
>
> *ya Qassam, hat, hat, hat slah lil banaat*
>
> Oh Qassam, bring weapons to the girls
>
> *ya Yassin, irtah, irtah, ihna nuwasel el-kifah*
>
> Oh Yassin, rest, rest, we will carry on with the struggle
>
> *ya Sharon, ya haqir, dam ish-shuhada qhali ikthir*
>
> Hey Sharon, you vile, the blood of the martyrs is very dear[32]

28. The continual referencing of Shaykh Izz al-Din al-Qassam and his martyrdom across Palestinian communities and even across the political and religious divide provides

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[30] Dunning T (2016) *Hamas, Jihad and Popular Legitimacy*, Routledge, p.169

[31] Tamimi A (2009) *Hamas: Unwritten Chapters*, Hurst & Co, p.63

[32] Abufarha N (2009) The Making of a Human Bomb, Duke University Press, p.123

an important insight into the way that Palestinians memorialise their own history. The contemporary settler colonial policies of the Zionist regime are rooted in longer history that harkens back to the British Mandate presence and occupation of Palestine. The continual use of al-Qassam's iconography is a testament to how Palestinians have never forgotten that history and see their contemporary struggles as rooted in that colonial moment, and etched in their historical memory.

I. EXPERT OBLIGATIONS

29. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

30. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

31. I confirm that I have not received any remuneration for preparing this report.



Professor Sami A. Al-Arian
Center of Islam and Global Affairs
Istanbul Sabahattin Zaim Univesity
Istanbul, Turkey
21 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH

Applicant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

REPORT ON
SETTLER COLONIALISM, ZIONISM, AND THE GENOCIDE IN GAZA
BY
DR SAI ENGLERT

A. INTRODUCTION

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The purpose of this report is to detail the history of settler colonialism during the intense period of European colonialism and how Zionism is a byproduct of that movement. The report connects that history to directly to the continued genocide taking place in Gaza.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am an Assistant Professor in Middle East Studies, in the Institute for Area Studies, at Leiden University, in the Netherlands.

5. My research focusses on political economy, settler colonialism, Zionism, and antisemitism.

6. My academic research has focussed on the Israeli labour movement, its relationship with the Israeli state, as well as with Palestinian and migrant workers. I have published my work on these topics in leading journals in the field such as *Middle East Critique*, *Antipode*, *The Journal of Palestine Studies*, and the *Journal of Journal of Holy Land and Palestine Studies.*

7. I have carried out detailed fieldwork research across Israel and Palestine, while based in East Jerusalem, at the Centre of British Research in the Levant. In this context, I have interviewed over 30 respondents from across civil society.

8. I have also published a global comparative study of settler colonialism, stretching the globe and covering the last 500 years, entitled *Settler Colonialism: an Introduction*. I also co-edited a collection of essays engaging with the current unfolding genocide in Gaza, named *From the River to the Sea: Essays for a Free Palestine*. My writing has been translated into Turkish, Portuguese, Spanish, Mandarin, French, Dutch, Swedish, and German.

C. SETTLER COLONIALISM, ZIONISM AND THE GENOCIDE IN GAZA

9. The situation in Palestine and the wider region is dire beyond words. While the Israeli military increases its assaults in the West Bank and Lebanon, the scale of the genocide in Gaza – ongoing for over a year now – is difficult to capture accurately. In July, a study in the *Lancet* estimated the combined death toll from direct military assaults, as well as the subsequent famine and rampant spread of disease, at around 186,000.[1] A few months later, using the same method, the chair of Global Public Health at the University of Edinburgh, Professor Devi Sridhar, argued that the victims were more likely to surpass a third of a million.[2] The internationally renowned *Forensic Architecture* team published a report in October 2024 titled *A Cartography of Genocide*, which documented all available individual military actions undertaken by Israel in Gaza since 7 October 2023. Its 827-page long report, came to the conclusion that '[t]he patterns … observed concerning Israel's military conduct in Gaza indicate a systematic and organised campaign to destroy life, conditions necessary for life, and life-sustaining infrastructure'.[3]

10. The present text argues that to understand the causes of the unfolding genocide in Gaza and the scale of destruction and murder, it is necessary to place it in the long-durée of Israel's settler colonial project in Palestine. To do so, is to identify the ongoing historical, social, political, and economic processes that have given rise to the Israeli state and the Gaza Strip, the scale of the refugee population in the latter, and the former's desire to 'resolve' the contradictions they represent. The report proceeds in three steps. It will first define what is meant by settler colonialism; it will then discuss the applicability of the term to Israel on the basis of self-definition by early Zionist and Israeli sources; and it will conclude by applying the model to what we have come to call the Gaza Strip.

What is Settler Colonialism?

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[1] Khatib, Rasha et al. (2024), 'Counting the dead in Gaza: difficult but essential', *The Lancet*, 404(10449), pp. 237-238.

[2] Devi Sridhar (2024), 'Scientists are closing in on the true, horrifying scale of death and disease in Gaza', *The Guardian*, 5th September, https://www.theguardian.com/commentisfree/article/2024/sep/05/scientists-death-disease-gaza-polio- vaccinations-israel

[3] Forensic Architecture (2024), 'A Cartography of Genocide: Israel's Conduct in Gaza since October 2023', *Forensic Architecture*, 25th October, https://forensic-architecture.org/investigation/a-cartography-of-genocide

11. Settler colonialism, like all forms of colonialism, is first and foremost a strategy of 'accumulation on a world scale', to use Samir Amin's formulation.[4] Settler colonial regimes differ from franchise colonialism – such as British Rule in India or Dutch rule in Indonesia – because they do not limit themselves to militarily controlling conquered territories and their people, in order to extract resources, exploit the local populations, and take advantage of unequal trading relations – although they can, and do, do these things also.

12. Settler colonialism is a colonial process that aims to build lasting societies made up of metropolitan populations – which is to say settlers – that can control territory, stabilise conquest, and rule over the Indigenous peoples it invades, displaces, and dispossesses in the process.[5] Settlers settle. They do so in different ways, in different geographical and historical circumstances, and with different levels of success. However, they have in common the fact that they build states, institutions, and social relations on Indigenous land. All settler colonial societies are therefore structured by a fundamental conflict between themselves and the Indigenous people they aim to dispossess, exploit, and/or eliminate.

13. Out of this conflict a whole series of social relations emerge, which have been theorised and discussed in detail: property regimes, which form the backbone of the division between settler and Indigenous populations, and the necessary legal, military, and state apparatus to reproduce them;[6] forms of racialization that naturalise settler domination over Indigenous and enslaved populations, as well as the socio-economic differences amongst settlers themselves;[7] ideological mechanisms that justify settler rule and encourage the further dispossession, subjugation, and/or elimination of the native populations[8]; etc.

14. However, studying settler colonialism is not only relevant in trying to understand

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[4] Samir Amin (1974), *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment*, New York: Monthly Review Press.

[5] Englert, Sai (2022), *Settler Colonialism: an Introduction*, London: Pluto Press.

[6] Bhandar, Brenna (2018), *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership,* Durham: Duke University Press.Estes, Nick (2019), *Our History Is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*, London: Verso.Nichols, Robert (2020), *Theft is Property! Dispossession and Critical Theory*, Durham: Duke University Press.

[7] Day, Iyko (2016), *Alien Capital – Asian Racialization and the Logic of Settler Colonial Capitalism. Durham: Duke University Press.Forbes, Jack D. (1993), Africans and Native Americans: The Language of Race and the Evolution of Red- Peoples, Urbana: University of Illinois Press.Harris, Cheryl I. (1993), 'Whiteness as Property', Harvard Law Review, 106(8), pp.1707-1791.Karuka, Manu (2019), Empire's Tracks: Indigenous Nations, Chinese Workers, and the Transcontinental Railroad. Oakland: California University Press.Mamdani, Mahmood (2012), Define and Rule – Native as Political Identity, Cambridge: Harvard. Wolfe, Patrick (2016), Traces of History: Elementary Structures of Race, London: Verso.*

[8] Barakat, Rana (2018), 'Writing/righting Palestine Studies: Settler Colonialism, Indigenous Sovereignty and Resisting the Ghost(s) of History', *Settler Colonial Studies*, 8(3), pp. 349-363.
Coulthard, Glen Sean (2014), *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minneapolis: University of Minnesota Press.Byrd, Jody A. (2011), *The Transit of Empire: Indigenous Critiques of Colonialism*, Minneapolis: University of Minnesota Press.Rouhana, Nadim and Areej Sabbagh-Khoury (2015), 'Settler-Colonial Citizenship: Conceptualizing the Relationship between Israel and its Palestinian Citizens'. *Settler Colonial Studies*, 5(3), pp.205-225.Tatour, Lana (2019), 'The Culturalisation of Indigeneity: the Palestinian Bedouin of the Naqab and Indigenous rights', *The International Journal of Human Rights*, 23(10), pp. 1569-1593.

settler colonies themselves and their inner workings. Indeed, settler colonies play/ed a key role, from the late 15th century onwards, in the emergence and reproduction of the global modern economy through: the extraction and accumulation of land, labour, and resources; the securing of key nodal points in the trade routes of empire; and the extraction of 'undesirable' populations for economic, political, or religious reasons (which were often one and the same).

Settler Colonialism and Imperialism

15. The primary purpose of settler – or franchise – colonialism is the accumulation of capital through the extraction of natural resources, the (super-)exploitation of labour, the conquest of land, and the forceful access to new markets. Marx famously summarised this process in his discussion of the role of so-called primitive accumulation in the emergence of capitalism:

> *The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalised the rosy dawn of the era of capitalist production. These idyllic proceedings are the chief momenta of primitive*
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> *accumulation. On their heels treads the commercial war of the European nations, with the globe for a theatre*.[9]

16. These different elements of settler/colonial power do not necessarily take place at the same time, but do reinforce one another. The original colonisation of the Americas by European powers, for example, made the accumulation of gold and silver, as well as tobacco, cotton, maize and other agricultural output possible, through the enslavement first of Indigenous populations and later of their African counterparts. This in turn transformed the economic landscape of Europe, strengthening merchants and financiers vis-à-vis de landed aristocracy, and facilitating early industrialisation, which led to shifting internal power balances inside Europe, geographically (from the South to the North East of the continent) and socially (from the aristocracy to the emerging bourgeoisie), as well as between European powers and their rivals across the globe.[10]

17. In turn, growing European industry, fed by the inputs of the (settler) colonial world, made further and more rapid colonisation possible through increased production, new military, maritime and, later, railway technology. The twin processes of demographic booms and the expropriation of peasant populations that went along with Industrial Revolution also made historically unprecedented numbers of 'surplus populations' – those requiring work but unable to be integrated into the labour force – available for settlement. The combination of these factors allowed European powers to force their entry into new territories, overwhelm their populations, and lay claim

[9] Marx, Karl (1887), *Capital*, Chapter 26 https://www.marxists.org/archive/marx/works/1867-c1/ch26.htm

[10] See for example, Anievas, Alex and Kerem Nişancıoğlu (2015), *How the West Came to Rule: The Geopolitical Origins of Capitalism*. London: Pluto Press, and Banaji, Jairus (2020), *A Brief History of Commercial Capitalism*, Chicago: Haymarket Books.

over their resources, lands, and markets. Once more, the accumulation of capital made possible by these new conquests, further fuelled industry and technological development in the metropole, increasing its reach and accelerating its extractive practices even further.

18. Here, two further aspects of settler colonial power emerge. The first is the role of settler colonies in establishing permanent control of key nodes in the world economy. It is noteworthy that as late as the 19th century, settler colonialism could be understood by European political economists as a the 'classical' form of colonialism,[11] shedding light on Europe's need to rely on permanent settlement to project its power around the world. It is only in the advanced stages of the industrial revolution that the balance of power between Europe and the rest of the world was transformed so definitively in favour of the former that it could rule its colonial empires increasingly 'indirectly' by moving soldiers, armament, and goods around the world more rapidly.

19. European settlement across the West African Coast, in the Cape and the Falklands, or in North Africa – to name but a few – were founded to secure important strategic points along global trading routes. Populations were settled to secure trade – in goods and people, maintain port infrastructure and defend it from Indigenous resistance, and/or undermine the maritime power of local powers. Growing settler populations and trade infrastructure pushed settlers further inland and increased confrontations with Indigenous populations.[12] French settlement of much of Algeria, for example, was the outcome of metropolitan attempts to crush Indigenous resistance to foreign rule, by pursuing them inland – and this despite France's chronic lack of available settlers.[13]

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[11] Foley, Tadhg (2011), '"An unknown and Feeble Body": How Settler Colonialism was Theorised in the Nineteenth Century', in Fiona Bateman and Lionel Pilkington, eds., *Studies in Settler colonialism*, Basingstoke: Palgrave Macmillan, pp. 10–27.

[12] For the classic account of these processes see Denoon, Donald (1986), *Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere*. Oxford: Oxford University Press.

[13] On the movement between franchise and settler colonialism in Algeria (and elsewhere) see Fieldhouse, David K. (1982 [1966]), *The Colonial Empires: A Comparative Survey from the 18th Century*, New York: Dell. On French metropolitan debates

20. The last aspect of settler colonialism's global role worth mentioning here is the way settler colonies made the export of 'undesirables' possible, turning the religious, economic, or political unwanted (who often were one and the same) at home into the vanguard of metropolitan power and expansion abroad. In doing so, settler colonialism serves as a pressure valve, diminishing social tensions through the export of surplus populations, while making the latter agents of dispossession across the colonial world.[14] The Puritans turned Pilgrims settling in North America, the transformation of the urban poor and early trade union organisers in Britain to Australia, the deportation of the survivors of the Paris Commune to Algeria, are all such examples. Arriving in the settler colony, those oppressed in the Metropole were integrated into the structures of empire and turned into its representatives, displacing and dispossessing Indigenous populations – and creating new surplus populations in the process.[15] The latter would either fight back, leading to either victory or savage military repression (and therefore also greater displacement and dispossession), or retreat, increasing the pressure on the resources of the Indigenous populations in those territories, weakening their collective ability to fight back against further settler encroachment.[16]

21. Finally, this points to a reality that bears repeating in the face of the growing contemporary tendency to minimise the consequences of colonial rule in revisionist writing. These global structures of power were only possible through the continuous exertion of extraordinary levels of violence, both structural and military. While it is not possible to do justice to this topic in full here, suffice it to say that violence is required at every stage of the settler colonial process: to complete conquest, to displace and/or forcibly exploit/enslave entire peoples, to capture land and extract resources, and to crush the inevitable moments of Indigenous resistance and national liberation struggles. The examples abound and are well known: genocides across the Americas and Oceania, the mass murder of Indigenous African and American populations through slavery and forced labour in plantations and mines, the extraordinary amounts of violence meted out in the repression of Indigenous uprisings.[17]

The Historical Trajectory of the Study of Settler Colonialism

22. The nature of settler colonialism and its specific characteristics have long been the

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[14] Horne, Gerald (2018), *The Apocalypse of Settler Colonialism: The Roots of Slavery, White Supremacy, and Capitalism in the Seventeenth-Century North America and the Caribbean*, New York: Monthly Review Press; Anievas andNişancıoğlu, *How the West Came to Rule*.

[15] Coulthard, *Red Skins, White Masks*.

[16] Wolfe, *Traces of History,* p.21,

[17] The sources are too many to cite. Good places to start in the context of the americas are: Davis, Mike (2002), *Late Victorian Holocausts: El Niño Famines and the Making of the Third World*. London: Verso. Dunbar-Ortiz, Roxanne (2014), *An Indigenous Peoples' History of the United States*, Boston: Beacon Press.Estes, Nick (2019), *Our History Is the Future: Standing Rock versus the Dakota Access Pipeline, and the Long Tradition of Indigenous Resistance*, London: Verso. Galeano, Eduardo (2009), *Open Veins of Latin America.* London: Serpent's Tail.Horne, Gerald (2020), *The Dawning of the Apocalypse: The Roots of Slavery, White Supremacy, Settler Colonialism and Capitalism in the long Sixteenth Century*, New York: Monthly Review Press. Williams, Eric (1994[1944]), *Capitalism and Slavery*, Chapel Hill: University of North Carolina Press.

subject of analysis, critique, and debate. It is important to underline this fact. As already pointed out above, contemporary commentators have tried to depict the study of settler colonialism as a new phenomenon, lacking intellectual rigor, and serving as a moral rather than analytical category – especially in relation to Zionism, Israel, and Palestine.[18] The facts are quite different. In its modern form, the study of settler colonialism has a long intellectual history that stretches

throughout the second half 20th century. Moreover, as already mentioned above, the issue was hotly debated in the 19th century, under the name of 'classical colonialism', amongst political economists in Europe,[19] which is to say nothing about how Indigenous thinkers reflected on the colonial powers they encountered and fought.[20]

23. The first of these modern historical threads is located in Indigenous struggles for national liberation against settler colonial regimes. Palestine was an important locus in the development of this tradition, as was North America. Rana Barakat notes, for example, that in the 1960s and 70s an analysis of Zionist settler colonialism was put forward by a variety of Palestinian authors.[21] For example, she points out that Fayez A. Sayegh does so in his *Zionist Colonialism in Palestine*,[22] and that the concept of 'elimination', so central to contemporary analyses (see below), was put forward by Rosemary Sayigh in the same period.[23] To these examples, could also be added George Jabbour's comparative study of settler colonialism in Palestine and Southern Africa. In his book, Jabbour defines settler colonialism as:

> *Once established in their new settlements, the settlers, as befits all colonialists, used to deal with the natives inhumanly. As settler colonialism is different from traditional colonialism because settlers are permanently there, and permanently in contact with the natives, this discriminatory inhuman treatment of the natives has been more systematic, intense and brutal than that which the natives were subjected to by overseas colonialist authorities. Declared espousal of discrimination, on the basis of race, colour, or creed, without the need to feel apologetic about it, is the distinguishing feature of settler colonialism. Because the settlers are well entrenched in the lands they*

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[18] See for example Michael Powell (2024), 'The Curious Rise of *Settler Colonialism* and *Turtle Island*', *The Atlantic*, 5th January, https://www.theatlantic.com/ideas/archive/2024/01/curious-rise-settler-colonialism-and-turtle-island/677005/ or Adam Kirsch (2024), *On Settler Colonialism: Ideology, Violence, and Justice*, New York: WW Norton & Co.

[19] Tadhg, '"An unknown and Feeble Body".

[20] See a discussion on some such authors in Nichols, *Theft is Property!*

[21] Rana Barakat (2018), 'Writing/righting Palestine Studies: Settler Colonialism, Indigenous Sovereignty and Resisting the Ghost(s) of History', *Settler Colonial Studies*, 8(3), pp. 349-363. Older debates can also be traced in Indigenous, settler and European literature. For the sake of clarity and space, the book will focus on the contemporary era.

[22] Fayez A. Sayegh (1965), *Zionist Colonialism in Palestine*, Beirut: Research Centre of the Palestinian Liberation Organization. Sayegh's text has more recently been reproduced in part in the 2012 special issue of *Settler Colonial Studies*, 2(1), edited by Omar Jabary Salamanca, Mezna Qato, Kareem Rabie and Sobhi Samour: 'Past is Present: Settler Colonialism in Palestine'.

[23] Rosemary Sayigh (2007 [1979]), *The Palestinians: From Peasants to Revolutionaries*, London: Zed books. In fact, Sayegh also highlights the issue of elimination in *Zionist Colonialism in Palestine*, on pp. 26-27.

acquire, settler colonialism is not as easy to dismantle as traditional colonialism. The colonialists here were not overseas agents who came to the colonies on duty; they were permanently stationed in the colony, permanently in control of the natives and permanently fortifying their positions of strength.[24]

24. Here Jabbour develops themes that have remained central to the study of settler colonialism into the present: the enduring presence of settlers, the direct and ongoing conflict between them and the native population, the importance of land and control over it in this process, as well as the centrality of racism in structuring social relations in the settler colonial world. This early indigenous tradition located the importance of studying settler colonies primarily within the context of struggles for national liberation, which had been so successful across the African continent in this period – from Algeria to Angola, from Kenya to South Africa.[25] There are also many other Palestinian writers, as Brenna Bhandar and Rafeef Ziadah point out, who have contributed to the development of an analysis of settler colonialism in Palestine (as elsewhere) without necessarily naming it as such.[26]

25. J Kēhaulani Kauanui makes a similar point in discussing the contribution made by authors, such as Haunani-Kay Trask, Candace Fujikane, and Jonathan Y. Okamura to the study of settler colonialism in Hawaii.[27] Moreover, to this list must be added those activists and scholars who were involved in the Red Power movement during the 1960s and 1970s in the United States and Canada. The movement developed in relation to both the civil rights movement and global struggles against colonialism, which reinvigorated the struggle for Indigenous liberation in North America, and found its most famous organisational form in the establishment of the American Indian Movement (AIM). It also laid the foundation for the institutionalisation of Native American and Indigenous studies in the North American context. Some key early contributions here are, amongst many others, Vine Deloria Jr.'s *Custer Died for Your Sins: An Indian Manifesto*, Paul Chaat Smith and Robert Warrior's *Like. A Hurricane: The Indian Movement from Alcatraz to Wounded Knee*, Elizabeth Cook-Lynn *Why I can't read Wallace Stegner and Other Essays: a tribal voice*, Howard Adams' *Prison of Grass: Canada from a Native Point of View* and Jack D. Forbes' *Columbus and other Cannibals.*

26. Much like their counterparts in Palestine, these Indigenous scholars developed political and historical analyses of settler colonialism as part of their engagement with Indigenous struggles, history, and intellectual traditions. They also centred the issue of land as key to both their political and scholarly concerns, and prioritised Indigenous epistemologies as the framework for their writings. It was to understand the specific circumstances faced by Indigenous peoples, and thereby participate in the

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[24] George Jabbour (1970), *Settler Colonialism in Southern Africa and the Middle East*, Beirut: Palestine Liberation Organisation Research centre, pp. 7-8.

[25] Roxanne Dubar-Ortiz (2016), 'The Relationship between Marxism and Indigenous Struggles and Implications of the Theoretical Framework for International Indigenous Struggles', *Historical Materialism,* 24(3), pp.76-91

[26] Brenna Bhandar and Rafeef Ziadah (2016), 'Acts and Omissions: Framing Settler Colonialism in Palestine Studies', *Jadaliyya*, 14th January, https://www.jadaliyya.com/Details/32857/Acts-and-Omissions-Framing-Settler-Colonialism-in- Palestine-Studies.

[27] J. Kēhaulani Kauanui (2016),'"A Structure, Not an Event": Settler Colonialism and Enduring Indigeneity', *Lateral*, 5(1), p.5, n.7.

process of liberation itself, that these analyses emerged and were developed.[28] In fact, as Omar Jabary Salamanca, Mezna Qato, Kareem Rabie and Sobhi Samour point out, the receding of settler colonialism as an analytical framework to understand Zionism, within the Palestinian context, corresponds to the rise of the Oslo process in the 1990s. As the Palestinian leadership increasingly turned towards (an ever-elusive process of) state building, and in doing so jettisoned the anti-colonial nature of their struggle, so did the analytical framework of settler colonialism fall by the wayside. They write:

> *[T]he Palestinian liberation movement has seen a series of ruptures and changes in emphasis, and in many ways scholarly production accurately mirrors the dynamics of incoherent contemporary Palestinian politics. Recent Palestinian political history has been a long march away from a liberation agenda and towards a piecemeal approach to the establishment of some kind of sovereignty under the structure of the Israeli settler colonial regime. In this environment, it is not surprising that even scholarship written in solidarity with Palestinians tends to shy away from structural questions.*

27. Alongside this literature, a second body of work addressed – roughly in the same period – the issue of settler colonialism, but did so with quite different motivations and approaches. Emerging from, and writing within, largely European academia, historians of empire developed a series of classifications to study and categorise colonial regimes. These approaches were based on identifying broad trends amongst European colonial states and establishing ideal models, within which these could be grouped. The work of D.K. Fieldhouse is exemplary of this approach. A rather conservative figure, Fieldhouse developed such a classificatory system in his *The Colonial Empires: A Comparative Survey from the 18th Century.*[29] First, Fieldhouse divided the colonial world

between 'colonies of settlement' and 'colonies of occupation'. The first were those colonies where Europeans had settled and developed European societies, whereas the latter were those that had been militarily conquered but had not seen the development of a (significant) settler population. In short, he made a distinction between settler and franchise colonialism. Fieldhouse then divided colonies of settlement further into three different categories: pure, mixed, and plantation settlements. These correspond, respectively, to settler colonies that aim to replace Indigenous populations with settlers (North American or Oceanic settlements would fit in this category), settler colonies where minority settler population exploit the majority Indigenous populations (much of the Spanish Empire in the Americas, French Algeria, or British settler colonies in Africa would match this description), and, finally, settler colonies where small settler minorities, such as in the Caribbean or Brazil, exploited a large, overwhelmingly African, imported and enslaved workforce.

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[28] Roxanne Dubar-Ortiz makes this point in relation to Glen Coulthard's discussion of Dene political movements in the same period, in his *Red Skin White Masks*. See Roxanne Dubar-Ortiz (2016), 'The Relationship between Marxism and Indigenous Struggles and Implications of the Theoretical Framework for International Indigenous Struggles', *Historical Materialism,* 24(3), pp.76-91.

[29] David K. Fieldhouse (1982 [1966]), *The Colonial Empires: A Comparative Survey from the 18th Century*, New York: Dell. Although their classifications differ slightly, for similar but more recent approaches see Gershon Shafir (1996 [1989]), *Land, Labour, and the Origins of the Israeli-Palestinian Conflict, 1882–1914*, Berkeley: University of California Press and Jürgen

28. This approach to settler colonialism has the advantage of recognising the variety of forms of settler domination across the globe and sets out to systematically study them. In addition, Fieldhouse accounted for changes within specific settler colonies, from one form to another. He argued, for example, that while the French initially set up a colony of occupation on the Mediterranean coast of Algeria, they were drawn into the country in an attempt to put down uprisings by the native population. In time, as the amount of land under French control grew, they encouraged the settlements of Algerian land in an attempt to pacify the region. French colonial rule transformed, in the process, into a colony of settlement.[30] Similarly, in the case of South Africa, Fieldhouse argues that the struggles between Boer settlers, British colonial powers, and Indigenous resistance transformed the nature of the settlement from pure to mixed.[31]. While there is a certain elegance to this model-based approach, not least because it facilitates a global comparison between different settler regimes, it also has two important short-comings in comparison with the first approach, discussed above. First, is that it turns the approach developed by Indigenous scholars on its head, starting not with concrete historical situation but with ideal abstract categories. It therefore runs the risk of abstracting the actual social relations that give rise to and shape different settler colonial regimes. Second, and perhaps most importantly, the political aim of liberation, so central to the early theorisations discussed earlier, vanishes from view completely. The approach is then purely historical, consigning Indigenous populations to the past, and remaining largely silent about their ongoing struggles for liberation in the present.

29. The third, and today most popular, approach to the study of settler colonialism is that put forward by Patrick Wolfe, originally in his S*ettler Colonialism and the Transformation of Anthropology* at the close of the previous century.[32] Wolfe's approach is situated somewhere between the two traditions already discussed. On the one hand, he developed an ideal model for the study of settler colonialism, which considerably limited the applicability of his analysis. On the other hand, Wolfe was very clear about his commitment to decolonisation as well as to the study of the specific structures and methods that allow settler colonies to dispossess and dominate. Central to his contribution has been to bring the genocidal character of settler colonialism to the fore. His approach can be – and usually is – summarised through two of his most famous statements. In his book, mentioned above, he explained that settler colonies 'were (are) premised on the elimination of the native societies. The split tensing reflects a determinate feature of settler colonisation. The colonizers come to stay — invasion is a structure not an event'.[33] In his most quoted text, *Settler Colonialism and the Elimination of the Native*, he restates this approach in the

following terms: 'settler colonialism is an inclusive, land-centred project that

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[30] Fieldhouse, *The Colonial Empires*, p.181.

[31] Ibid. pp. 188-189.

[32] Patrick Wolfe (1999), *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event*, London: Cassell.

[33] Ibid. p. 3.

coordinates a comprehensive range of agencies, from the metropolitan centre to the frontier encampment, with a view to eliminating Indigenous societies'.[34]

30. Here the key elements of Wolfe's approach emerge. First, settler colonialism is not located in the past. It is an ongoing reality, which continues to define settler societies in a diversity of locales, such as North America, Oceania, and Palestine. Second, it is a structural form of domination in which conflict with, and the systematic murder of, Indigenous people should not be understood as isolated or random events. Instead, this is the very nature of settler colonial regimes. Indeed, the third and central claim made by Wolfe is that because settlers challenge Indigenous people's right to the land, the basis of all collective life, the defining logic of settler colonialism is the elimination of the native. Whether physically, culturally, and/or through assimilation into the settler population, that which differentiates settler colonialism from its franchise counterpart, is the eliminatory drive of settler power, necessary to lay claim on Indigenous land. The strength of this approach is that it allows both the use of a broad comparative framework that can identify similar logics of elimination and domination across the settler colonial world, while simultaneously accounting for the specific ways in which settlers in different places, at different times, dispossess Indigenous populations. Wolfe demonstrates this double ability most elegantly in his *Traces of History: Elementary Structures of Race*.

31. However, just as with the other ideal model approach, developed by Fieldhouse and others, Wolfe's approach, and that of Settler Colonial Studies after him, runs the risk of making reality fit into its theoretical formulation. This is most strikingly true when it comes to the question of elimination. While there is absolutely no doubt that, as the final section of this paper will show, settler colonialism has and continues to be eliminatory in the ways that Wolfe theorises, this alone does not cover the entirety of the settler colonial arsenal of domination. As already touched upon through the work of both Jabbour and Fieldhouse, from very different perspectives, some settler colonies are based primarily on the exploitation of the Indigenous population. This can coexist, as for example in the Spanish settler colonies in the Americas, with eliminatory practices. However, Wolfe and others after him, such as Lorenzo Veracini, precluded this possibility. For example, Wolfe wrote, in explaining the difference between settler and franchise colonies: 'In contrast to the kind of colonial formation that Cabral or Fanon confronted settler colonies were not primarily established to extract surplus value from indigenous labour. Rather, they are premised on displacing indigenes from (or replacing them on) the land'.[35] The issue with this formulation, as should hopefully already be clear, is that Algeria was a French settler colony. Similarly, Veracini, in his *Settler Colonialism: A Theoretical Overview*, writes: 'while the suppression of indigenous and exogenous alterities characterises both colonial and settler colonial formations, the former can be summarised as domination for the purpose of exploitation, the latter as domination for the purpose of transfer'.[36]

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[34] Patrick Wolfe (2006), 'Settler colonialism and the elimination of the native'. *Journal of Genocide Research*, 8(4), p. 393.

[35] Wolfe, *Settler Colonialism and the Transformation of Anthropology*, pp.1-2.

[36] Lorenzo Veracini (2010), *Settler Colonialism: A Theoretical Overview*, New York: Palgrave Macmillan, p. 34.

32. This sharp distinction between settler and franchise colonialism on the basis of elimination and exploitation, is difficult to square with reality. Not only are elimination and genocide present across the colonial world,[37] but many settler colonial regimes were based primarily on the exploitation of the Indigenous populations. By precluding the possibility of settler colonial regimes being dependent on the exploitation of the Indigenous population, the Wolfe-an model closes off large sections of the settler world from analysis, and ends up focusing overwhelmingly

    on the Anglo-settler world – especially Canada, the United States, Australia, and New Zealand – with the partial exception of Palestine.

33. Shannon Speed has made this point, for example, in relation to the lack of engagement with Spanish settlements in the Americas. She identifies the causes for this absence in the way exploitation is, by definition, located outside of the analytical framework of settler colonial studies. She writes: '[i]n places like Mexico and Central America, such labour regimes … were often the very mechanisms that dispossessed indigenous peoples of their lands, forcing them to labour in extractive undertakings on the very land that had been taken from them'.[38] Similarly, in his discussion of settler colonialism in South Africa, Robin D.G. Kelley points out that elimination and exploitation went hand in hand: 'the expropriation of the native from the land was a fundamental objective, but so was proletarianization. They wanted the land and the labour, but not the people — that is to say, they sought to eliminate stable communities and their cultures of resistance'.[39]

34. In attempting to resolve the tensions between the theoretical framework and the diversity within the settler colonial world, both Wolfe and Veracini can end up relying on rather awkward formulations. For example, in his *Land, Labour, and Difference: Elementary Structures of Race* Wolfe states in a footnote: '"pure" settler colonialism of the Australian or North American variety should be distinguished from so-called colonial settler societies that depended on indigenous labour (for example, European farm economies in southern Africa or plantation economies in South Asia)'.[40] This is only explained in the text through the doctrinal separation between franchise and settler colonialism: '[I]n the case of settler colonies, which may also encompass relations of slavery, the colonizers come to stay, expropriating the native owners of the soil, which they typically develop by means of a subordinated labour force (slaves, indentures, convicts) whom they import from elsewhere'.[41] Why this must always be the case, or why Southern African 'so- called colonial settler societies' are disqualified from being fully settler colonial is not explained. Veracini, on the other hand, in his discussion of Zionist settler colonialism in Palestine, makes a distinction between

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[37] See for example, Mike Davis (2002), *Late Victorian Holocausts: El Niño Famines and the Making of the Third World*. London: Verso; or John Newsinger (2010), *The Blood Never Dried: A People's History of the British Empire*. London: Bookmarks.

[38] Shannon Speed (2017), 'Structures of Settler Capitalism in Abya Yala', *American Quarterly*, 69(4), p. 784.

[39] Robin D. G. Kelley (2017), 'The Rest of Us: Rethinking Settler and Native', *American Quarterly*, 69(2), p. 269.

[40] Patrick Wolfe (2001), 'Land, labour, and difference: Elementary structures of race', *American Historical Review*, 106(3), p.868 n.7.

[41] Ibid. p. 868.

those Palestinian lands colonised in 1948 and in 1967, characterising the former as settler colonial and the latter as colonial, because the elimination of the native was not achieved in 1967.[42] Rana Barakat has convincingly challenged this formulation, not by questioning the centrality of elimination to the settler colonial process, but by pointing to the importance of accounting for specific material circumstances rather than relying on theoretical assumptions.[43] It is not that Israel has stopped trying to eliminate Palestinians in the territories conquered in 1967. It is that it has not been able to achieve this goal because of the 'sheer numbers of Palestinians still present'.[44] Settlers are not able to simply impose their goals in a vacuum, they have to engage with the material realities they encounter, not least the Indigenous population and their resistance to colonisation.

35. Here another danger emerges, which is to collapse settler colonial aims with material realities. For example, if a settler colony aims to eliminate the native – as Barakat discusses in the case of Israel in the West Bank and Gaza – it does not automatically follow that it will be able to achieve this outcome. Indeed, in the process it has to continuously engage with Indigenous resistance,

which can frustrate, delay, or defeat its plans. Jean O'Brien has made a similar point.[45] She points out that it is not because settlers desire to eliminate Indigenous populations through miscegenation, for example, that they can achieve this goal. She stresses therefore the difference between 'the *logic* of elimination as an *aspiration* of the coloniser', and its actual success, continuously challenged by the ongoing resistance of the Indigenous population.[46] It is for this same reason – the crucial importance of Indigenous agency – that J. Kēhaulani Kauanui argues for the importance of 'Indigeneity as a counterpart analytic to settler colonialism'.[47] The question of Indigenous agency also relates to the issue of settler exploitation of the Indigenous population. It is striking, for example, that in those settler colonies where settler economies were dependent on Indigenous labour – such as Algeria, South Africa, or Rhodesia already mentioned – the latter were able to mobilise the economic power this gave them within the colonies, in overthrowing settler rule all together. It therefore matters considerably to how one thinks about the stability and longevity of settler colonialism, whether one does or does not exclude those settler regimes that relied on the exploitation of the natives.

36. Even if one accepts that the logic of settlement is one of elimination *in opposition to* exploitation – and as argued here it is not clear that one should – the historical record

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[42] Lorenzo Veracini (2013), 'The Other Shift: Settler Colonialism, Israel and The Occupation', *Journal of Palestine Studies*, 42(2), pp.26-42.

[43] Barakat, *Writing/Righting Palestine Studies*, pp.350-351.

[44] Ibid. p. p.351.

[45] Jean M. O'Brien (2017), 'Tracing Settler Colonialism's Eliminatory Logic in Traces of History', *American Quarterly*, 69(2), pp. 249–255

[46] Ibid. p.251.

[47] J. Kēhaulani Kauanui (2016),'"A Structure, Not an Event": Settler Colonialism and Enduring Indigeneity', *Lateral*, 5(1), p.2.

remains that many settler regimes never did overwhelm Indigenous populations through large-scale immigration or importing enslaved populations, and that they therefore remained dependent on Indigenous labour. Those regimes that did – the Anglo settlements in North America and Oceania – where able to do so because of the industrial transformations of the metropolitan economies and the major population transfers this enabled. This also points to the relevance of one last critical note leveraged at settler colonial studies, rather than necessarily at Wolfe directly. In fact, Manu Vimalassery, Juliana Hu Pegues and Alyosha Goldstein have argued that a superficial engagement with Wolfe's work has led to a flattening of his analysis, thereby facilitating a discussion of settler colonialism in isolation from other historical and material realities, such as different forms of colonialism, imperialism, capitalism, and the specific social relations that these interactions throw up in different times and different places.[48] For example, the tendency, they argue, to simply state as a truism that settler colonialism is a structure and not an event, risks stabilising settler colonialism, precluding its moments (events) of failure or defeat.

Zionism and Settler Colonialism

37. While the historical record, as the pages that follow will detail, is unequivocal on the fact that Zionism is a settler colonial movement and Israel is a settler colonial state, the contemporary political debate is not. Today, despite the presence of nearly 800,000 Israeli *settlers* – who are recognised as such internationally – in the West Bank, East Jerusalem, and the Golan Heights, it is still a regular occurrence to find authors rejecting the applicability of the label in the Israeli case[49] – a tendency that has intensified in the context of Israel's 2023-2024 genocide in Gaza and the growing international solidarity campaign with the Palestinian people.[50]

38. Yet, one would struggle to find such obfuscation in the writings of the early Zionist movement and the Israeli state's founders. The settler colonial nature of their enterprise was obvious to them and certainly not something to be ashamed of or hidden from view. This should not be surprising – early Zionists were, by and large, (petit-)bourgeois Europeans of the late 19th and early 20th century. Colonialism was to them a perfectly acceptable activity, as was the resolving of internal European political, social, or economic problems through the conquest and settlement of land and the dispossession of peoples, across the world.

39. Theodore Herzl, the founder of the Zionist Organisation, wrote in his 1896 *The Jewish State*:

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[48] Manu Vimalassery, Juliana Hu Pegues, and Alyosha Goldstein (2016), 'On Colonial Unknowing', *Theory & Event*, 19(4), pp.

[49] See for example Michael Powell (2024), 'The Curious Rise of *Settler Colonialism* and *Turtle Island*', *The Atlantic*, 5th January, https://www.theatlantic.com/ideas/archive/2024/01/curious-rise-settler-colonialism-and-turtle-island/677005/ or Adam Kirsch (2024), *On Settler Colonialism: Ideology, Violence, and Justice*, New York: WW Norton & Co.

[50] That said, it certainly is not a new development either. Already in 1972, Stephen Halbrook wrote: A frequent tendency of contemporary Zionist writing has been to minimize the colonialist and class features of the Zionist movement prior to the creation of the State of Israel. These interrelated features nevertheless emerge clearly in the works of the original Zionist leaders, and are very prominent in the writings of Theodore Herzl, founder of organized Zionism. See Stephen Halbrook (1972), 'The Class Origins of Zionist Ideology', *Journal of Palestine Studies*, 2(1), p. 86

> *Here two territories come under consideration, Palestine and Argentine. In both countries important experiments in colonisation have been made, though on the mistaken principle of a gradual infiltration of Jews. An infiltration is bound to end badly. It continues till the inevitable moment when the native population feels itself threatened, and forces the Government to stop a further influx of Jews. Immigration is consequently futile unless we have the sovereign right to continue such immigration. The Society of Jews will treat with the present masters of the land, putting itself under the protectorate of the European Powers, if they prove friendly to the plan.*[51]

He continued:

> *We should there [in Palestine] form a portion of a rampart of Europe against Asia, an outpost of civilization as opposed to barbarism. We should as a neutral State remain in contact with all Europe, which would have to guarantee our existence.*[52]

40. The central tenets of Zionism were already clear in these passages of *The Jewish State*. To succeed in its colonial mission and make state building through settlement possible, the movement would need to address two key issues. It would need to defeat the Indigenous population, who would certainly 'feel [themselves] threatened'. Relatedly, the Zionist movement would need to secure the backing of an imperial power, whose interests it would serve in return. Both Palestine and Argentina, which Herzl mentions, represented strategic areas in global trade networks that European Empires were vying to control. Other settler populations played the same role in many parts of the world. British settlers in the Falklands, Afrikaner settlers in the Cape, the *Pieds Noirs* in Algeria; all accumulated Indigenous land in order to defend the trade routes of their empires. In fact, Herzl would discuss the need to learn from different settler colonial projects – from the United States to South Africa – throughout the pages of *The Jewish State*. There are many other pertinent examples in Herzl's writings, not least a note he wrote to Cecil Rhodes – the British colonial official who gave his name to the British settler colonies in today's Zambia and Zimbabwe – urging him to lend his diplomatic support to the Zionist cause. In it, Herzl writes:

> *You are being invited to help make history ... It is not in your accustomed line; it doesn't involve Africa, but a piece of Asia Minor, not Englishmen but Jews. But had this been on your path, you would have done it by now. How, then, do I happen to turn to you, since this is an out-of-the-way matter for you? How indeed? Because it is something colonial.*[53]

41. This international settler connection was also made explicit by others. Sir Ronald Storrs, the first British Military Governor of Palestine, for example, explained British support for Zionism in Palestine as the development of a 'little loyal Jewish Ulster in a sea of potentially hostile

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[51] Theodore Herzl (1896), *The Jewish State*, https://www.jewishvirtuallibrary.org/quot-the-jewish-state-quot-theodor-herzl

[52] Ibid.

[53] Halbrook (1972), 'The Class Origins of Zionist Ideology', p. 86.

Arabism.'[54] The question of the relationship between imperialism, settlement, and repressing Indigenous resistance appears once again at the forefront of the contemporary considerations surrounding Zionism. Decades later, the US Secretary of State Alexander M. Haig put it in these terms: 'Israel is the largest American aircraft carrier in the world that cannot be sunk, does not carry even one American soldier, and is located in a critical region for American national security'.[55]

42. The colonial character of Zionism would repeatedly be made obvious, unsurprisingly, as the movement started making settlement a reality on the ground in Palestine. The Zionist organisation set up the Jewish Colonial Trust (1899), for example, to finance settlement. The latter had been a central concern of Herzl's in *The Jewish State*, where he modelled his idea for a 'Jewish Company' – as he named it then – on the activities of Rhodes' British South Africa Company in the Transvaal.[56] The Zionist movement's first collective farms were called Moshavim – a word derived from the Hebrew for colony/settlement: *Moshava*. The Jewish community in Palestine before 1948 was referred to as the *Yishuv* – the settlement.

43. It is also striking, in light of contemporary polemics, to note how long the language of colonisation remained central to the self-presentation of Zionism – and Israel. For example, as Corey Robin has shown, in 1947 the Jewish National Fund could publish a 'Palestine Picture Book' aimed at English speaking audiences, which made reference to the 'Jewish colonisation of Palestine', 'Jewish settlers', 'Jewish settlement', and 'colonists'.[57] In a similar vein, but over a decade later, the French-language Israeli daily *L'Information d'Israël* published a special issue on Franco-Israeli economic relations to celebrate the 10th anniversary of the state's founding. In it, one finds repeated references to 'new colonisation', 'agricultural colonisation', and 'settlers/ colonists' (colons in French)'.[58] Strikingly it does in order to describe developments within the border of the state, after 1948, as in this passage: 'The Department for Agricultural Colonisation of the Jewish Agency is currently in charge of 446 new settlements [*colonies*] (established after the creation of the state)'. The number of 'Moshavim', 'Kibbutzim', 'Nahal settlements', 'mid-sized villages', 'expansions' of existing villages and 'farms and different educational institutions' that make up these 446 new settlements is then given. The text continues: 'The lands worked by these new settlers [*colons*] cover a surface of nearly 150,000 hectares (1,500,000 dunams),

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[54] The connection is more than a rhetorical one. Hundreds of the infamous 'Black and Tans' auxiliary force used to suppress the Irish national liberation struggle between 1918 and 1921 formed the core of the Palestine gendarmerie. See for example, David Cronin (2017), 'Winston Churchill sent the Black and Tans to Palestine', The Irish Times, 19th May, https://www.irishtimes.com/culture/books/winston-churchill-sent-the-black-and-tans-to-palestine-1.3089140

[55] Quoted in Moshe Mashover (2012), Israelis and Palestinians: Conflict and Resolution, Chicago: Haymarket, p.282.

[56] For a useful discussion on this topic see Tom Pessah (2020), 'Under Zionism, Jewish lives have always mattered more', +*972 Magazine*, 8th July, https://www.972mag.com/zionism-jewish-lives-herzl/

[57] Corey Robin (2014), *A Palestine Picture Book*, 4th September, https://coreyrobin.com/2014/09/04/a-palestine-picture-book/

[58] L'information D'Israël (1958), Franco-Israeli Economic Relations: Past, Present, and Perspectives, Special Issue, *11th July,* Tel Aviv: Pirsoumim, [French].

which represents half of all the cultivated lands in Israel'.[59]

44. The language of colonialism and settlement remained uncontroversial within the Zionist movement for much of its history – including well into the period of statehood. Only with the growing power and victories of national liberation movements around the formerly colonised world did Zionism and the Israeli state attempt to distance itself rhetorically from the language of colonisation, all the while continuing to deepen its practice across historic Palestine.

45. However, if the colonial nature of Zionism was clear and declared among its adherents from its founding moments, the exact form that its rule over the land and people in Palestine would take, became the theatre for bitter fights amongst the different wings of the Zionist movement in

Palestine during much of the first half of the 20th century. The terms of the debate are interesting here, for two reasons. First, those involved in it actively and self-consciously drew from the lessons of other settler colonies in the development of their strategies for colonisation and settlement in Palestine. Second, the central concern of all the different wings of the Zionist movement was what to do with the Palestinian population and its inevitable resistance to colonisation. The figure of the Indigenous population looms large in these discussions – their land, their labour, their resistance. This centrality also confirms the hollowness of the Zionist slogan that depicted Palestine as 'a land without a people' ripe for the taking by 'a people without a land'.

Two Colonial Strategies

46. Two broad schools of thought can be identified within the Zionist movement, in the early decades of the twentieth century: Labour Zionism and General Zionism. They would remain the two most important factions of the Zionist movement, up until the end of the 1960s, when Revisionist Zionist would rapidly grow in influence, eventually subsuming the General Zionist. It is important to note how openly these movements discussed their own presence in Palestine in terms of settlement and colonisation, and how freely and openly they drew from other settler colonial projects around the world to develop their own colonial policies.

47. On the one hand, a bourgeois Zionism took shape early on, and would find its political expression under the banner of so-called General Zionism. Its early expressions are to be found in the writings of Herzl, discussed above, as well as in the activities of some of the movement's earliest, and most important, financial supporters, such as the French Baron Edmund de Rothschild. The former modelled his ideas for a future state in Palestine on white settlement in South Africa, while the latter preferred the French settler colonial model in Algeria. They imagined that a minority of settlers would own the land and rule over a majority of Indigenous people, whom they would exploit in order to export cheap consumer goods to

[59] Ibid., p. 10.

Europe.[60] For these Zionists, the presence of Palestinians was not only acceptable, but necessary – as long as they lived under the boot of their colonial masters. They were to form, like their African counterparts, the basis for the economic sustainability of the future state.

48. Against this approach, another movement would emerge and eventually conquer the levers of power of the Yishuv. It would remain unchallenged at the helm of its institutions, and then those of the Israeli state, for half a century. The Labour Zionists opposed their bourgeois counterparts on a number of key strategic points. In their minds, the future state would have to be a workers' one – that is Jewish workers. This would require encouraging Jewish migration to Palestine in much greater numbers (something which remained an issue well into the late 1920s) and the establishment of colonial institutions controlled by the Labour Zionists. The jewel in the crown of the Labour Zionist movement was the Histadrut,[61] the Yishuv's (and then Israel's) largest trade union federation, which stated in its 1920 founding constitution that it aimed to:

> *unite all the workers and labourers in the country who live by their own labour without exploiting the labour of others, in order to arrange for all settlement, economic and also cultural affairs of all the workers in the country, so as to build a society of Jewish labour in Eretz Yisra'el.* [62]

49. To achieve either goal, the General Zionists would have to be defeated – given that Palestinian workers were more productive (they were used to the local climate, the land, and the physical demands of the work) as well as cheaper, because they made more exploitable by the repression of the British colonial regime. This put newly arrived settlers in the position of having to compete with them, while demanding higher wages for less effective work.[63]

50. The Labour Zionist launched what became known as the campaign for 'Hebrew Labour', or as the interconnected 'conquests' of labour, land, and produce, they aim of which was the development of an ethnically segregated 'Jewish sector, free of Palestinians.[64]

51. They would boycott, picket, and physically assault Palestinian workers in Jewish

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[60] For a more detailed discussion of these debates, and the attraction to the Prussian model of settlement in Poland for example, see Gershon Shafir(1996 [1989]), *Land, Labour and the Origins of the Israeli-Palestinian Conflict, 1882-1914*, Berkley: University of California Press, especially Chapter 1.

[61] In full: HaHistadrut HaKlalit shel HaOvdim B'Eretz Yisrael or the General Organization of Workers in the Land of Israel. It was previously called the General Organization of Hebrew Workers in the Land of Israel.

[62] Quoted in Zachary Lockman (1996), *Comrades and Enemies: Arab and Jewish Workers in Palestine, 1906-1948*, Berkeley: University of California Press, p 68.

[63] On the failures of early settlers in the labour market, see for example: Andrew Ross (2019), *Stone Men: The Palestinians Who Built Israel*, London: Verso, pp.58-60

[64] See Shafir, *Land, Labour and the Origins of the Israeli- Palestinian Conflict*; Lockman (1996), *Comrades and Enemies*; Anita Shapira (1977), *The Futile Struggle: Hebrew Labour, 1929–1939*, Tel Aviv: HaKibbutz HaMeuchad, [Hebrew].

owned companies their Jewish employers, or those Jewish business owners who sold goods produced by Palestinian workers.[65] Out of this struggle a number of key institutions of the Zionist movement, and later the Israeli state, would emerge, such as the Histadrut and the Kibbutzim, and militias like the Haganah that would alter form the backbone of the Israeli army. It should come as no surprise that this campaign was also rooted in deeply racist ideas. As Matan Kaminer and Zvi Ben Dor Benite point out, in the context of Zev Smilansky 1908 essay *Hebrew or Arab Workers*:

> *According to Smilansky, Jewish planters preferred Arab workers because they were still in the process of becoming civilized, unlike the Jewish population, and have not raised any concerns or made any demands ... The newly arrived workers are more dedicated to work, but landowners dislike their behaviour and sometimes even consider it dangerous and "suspicious." Nevertheless, Smilansky argued, Arab workers are lazy, incapable of learning new skills, and untrustworthy. Moreover, as their "savagery comes before their humanity," Arabs "excel in cruelty to animals," whereas Jewish workers make sure they are fed on time … As a solution, Smilansky suggested "our brethren" the "Maghrebis, Persians, Yemenis, and poor Sephardim" of the Old Yishuv, non-Ashkenazi Jews who had lived in Palestine for centuries. "We have done some statistics," he wrote, finding "that many of them would agree to work for low wages." Moreover, "some of them are quite strong."'*[66]

52. The campaign for Hebrew labour was not only defended on the grounds that the (Jewish) workers' movement should control the future state, however. It was also, its theoreticians argued, the better colonial policy. Haim Arlosoroff, a key figure in the movement, studied colonial policies towards Indigenous workers across the settler world. He found that, although '[t]here is almost no example of an effort by a people engaged in settlement' that could serve as a useful model for the Labour Zionist movement,

> *the territory of the state of South Africa, and the labour question there, is almost the only instance with sufficient similarity in objective conditions and problems to allow us to compare.*[67]

53. There too settler workers were outnumbered by their Indigenous counterparts, which he blamed – as he did the Palestinians – for bringing wages down for the settler workers. It was therefore

    vital for Jewish workers to organise themselves and develop their institutions and their economy separately from Palestinian workers.

54. The problem of building an economy that was dependent on Indigenous labour was not only a danger for settler wage levels. It was also clear that the former would rebel

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[65] Steven A. Glazer (2001), 'Picketing for Hebrew Labour: A Window on Histadrut Tactics and Strategy', *Journal of Palestine Studies*, 30(4), pp. 39–54; Glazer (2007), 'Language of Propaganda: The Histadrut, Hebrew Labour, and the Palestinian Worker', *Journal of Palestine Studies*, 36(2), pp.25–38.

[66] Matan Kaminer and and Zvi Ben-Dor Benite (unpublished), 'Workers Always Come From Elsewhere: Elements of a Global History of Agrarian Proletarianisation in Palestine/Israel', *Historical Materialism*,?(?), pp.?

[67] Quoted in Lockman (2012). 'Land, Labor and the Logic of Zionism: A Critical Engagement with Gershon Shafir'. *Settler Colonial Studies*, 2(1), p. 16.

and destabilise the settler colony by mobilising their labour power against their colonial rulers. The same mistake should be avoided at all costs in Palestine. The idea of 'transfer' – the euphemism for ethnic cleansing used by the Labour Zionists up until the Nakba – emerged out of this vision and would remain the backbone of Labour Zionism.[68] If the (Labour) Zionists failed to establish a majority in Palestine, Arlosoroff argued in a 1932 letter to Haim Weizmann – Herzl's successor at the head of the Zionist Organisation and the future first president of Israel – it would become necessary to envisage:

> *a transitional period of the organized revolutionary rule of the Jewish minority [...] a nationalist minority government which would usurp the state machinery, the administration and the military power in order to forestall the danger of our being swamped by numbers [of Palestinians] and endangered by a rising. During this period of transition a systematic policy of development, immigration and settlement would be carried out.*[69]

55. As Zachary Lockman points out, this was quite a visionary prediction, not too dissimilar from the actual developments of the 1947-1949 Nakba.

56. The danger of developing a colonial economy based on Palestinian labour was brought home powerfully during the Arab Revolt (1936-1939), when Palestinian workers organised a general strike that lasted 6 months, demanding the end of Zionist settlement and British rule. The strike turned into a general military uprising that lasted three years, during which Palestinian guerrillas took control over most of Palestine's urban centres and appeared on the brink of defeating the mighty British empire.[70] The Zionists, under the leadership of their labour movement, participated in the uprising's repression. First, the Histadrut provided strike breakers to defeat the labour stoppages in key industries. Its militias then joined Orde Wingate's 'Special Night Squads', where they were armed and trained before being tasked with guarding key infrastructure against attacks by the revolutionaries, first among which was the Iraq Petroleum Pipeline.[71] This episode would prove a key turning point for the fortunes of Zionism and lay the groundwork for the Nakba a decade later: the Palestinian national movement was crushed and politically beheaded by the British, while the Labour Zionist movement emerged better trained, armed, and politically hegemonic within the Yishuv.

57. There were also other wings in the Zionist movement, of course, although they would remain too minoritarian to deserve mention in this short overview. One exception is

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[68] For a detailed discussion of the use of 'transfer' by Zionists see Nur Masalha (1992), *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought, 1882-1948*, Washington: Institute of Palestine Studies.

[69] Lockman, 'Land, Labour and the Logic of Zionism, p. 31.

[70] For the classic account of the revolt see: Ghassan Kanafani (1972), *The 1936-39 Revolt in Palestine*, https://www.marxists.org/archive/kanafani/1972/revolt.htm. See also John Newsinger (2010), *The Blood Never Dried – A People's History of the British Empire*. London: Bookmarks, for an account of the murderous British counter assault.

[71] Important military figures in Israel's later history were trained in the squads, such as Yigal Alon (the architect of the occupation and settlement of the West Bank) and Moshe Dayan.

the Revisionist movement led by Zeev Jabotinsky. Not only would its militias play an active role in military attacks against the British before 1948, and then during the Nakba, but the Revisionists would become (and remain today) a key political force in Israeli politics, especially after their merger in the 1970s with the General Zionists to form the Likud – Benjamin Netanyahu's political party. Jabotinsky was as clear sighted as his counterparts in the other wings of the Zionist movement about the

colonial nature of Zionism and the task ahead when it came to the Palestinian population. He famously wrote in his *Iron Wall*:

> *There can be no voluntary agreement between ourselves and the Palestine Arabs. Not now, nor in the prospective future. I say this with such conviction, not because I want to hurt the moderate Zionists. I do not believe that they will be hurt. Except for those who were born blind, they realised long ago that it is utterly impossible to obtain the voluntary consent of the Palestine Arabs for converting "Palestine" from an Arab country into a country with a Jewish majority. My readers have a general idea of the history of colonisation in other countries. I suggest that they consider all the precedents with which they are acquainted, and see whether there is one solitary instance of any colonisation being carried on with the consent of the native population. There is no such precedent. The native populations, civilised or uncivilised, have always stubbornly resisted the colonists, irrespective of whether they were civilised or savage.*[72]
>
> Therefore, Jabotinsky argued,
>
> *Zionist colonization must either stop, or else proceed regardless of the native population. Which means that it can proceed and develop only under the protection of a power that is independent of the native population – behind an iron wall, which the native population cannot breach. That is our Arab policy; not what we should be, but what it actually is, whether we admit it or not. What need, otherwise, of the Balfour Declaration? Or of the Mandate? Their value to us is that outside Power has undertaken to create in the country such conditions of administration and security that if the native population should desire to hinder our work, they will find it impossible.*[73]

58. The disagreements between the different wings of Zionism were disagreements about the speed, the intensity, and the nature of conquest, settlement, and colonial rule to be imposed on the Palestinians. It was not about the settler colonial project itself, which they understood, theorised, and implemented. Tracing the back and forth between these different strategies, the conflict between them, and their encounter with Palestinian resistance to their implementation serves as a useful way to make sense of the emergence of what we think of today as the Gaza Strip – and the long trends that have led to genocide.

Gaza and Settler Colonialism

[72] Ze'ev Jabotinsky (1923), *The Iron Wall*, Jabotinsky Institute in Israel, p. 1, https://en.jabotinsky.org/media/9747/the-iron- wall.pdf

[73] Jabotinsky, *The Iron Wall*, p.6, emphasis in the original.

59. The Gaza Strip is not a naturally defined, self-contained area, nor is it a long-standing socioeconomic region. Certainly not a (quasi)-state. Yet, anyone familiar with Western media coverage of Palestine would be forgiven to think it is any – or all – of the above. The Gaza Strip is, first and foremost, the outcome of 75 years of Israeli settler colonial policy, which has aimed, time and time again, to concentrate as many Palestinians on as little land as possible. Palestinians pushed off their land, during repeated waves of ethnic cleansing, and stopped, by military force, from returning home, found themselves stuck in this enclave. Today, 77% of the strip's 2.3 million inhabitants are refugees. The strip has been controlled by different states: Britain, Egypt, Israel. Different Palestinian political organisations have enjoyed mass popular support amongst its inhabitants. But one constant remains: the strip's existence, and its majority refugee population, are permanent reminders of what Palestinians have called the ongoing Nakba, of Israel's policy of accumulating more land while limiting the Palestinian population on it, and of their failure to make the Palestinian people disappear.

60. In that sense, the Gaza Strip is not fundamentally different from other areas of large Palestinian concentration across historic Palestine. It is, however, a particularly stark, and cruel, embodiment of Israel's general policy. For the Israeli state to exist, it must do away with the Palestinian population and their collective claim over the land. This settler colonial logic is on display in a particularly gruesome way in the ongoing, relentless, and US-sponsored, genocide perpetrated by Israel against the Palestinians in Gaza since October 2023. It is the red thread that runs throughout Israeli history – from the Nakba in 1948, to the Naksa in 1967; from the massacres of Deir Yassin, Lydda, and Tantura, to Khan Younis, Sabra and Shatila, and Jenin; from Gaza in 2008, 2012, 2014 to Gaza in 2018, 2021, and today.

61. The demand for Hebrew Labour – and its twin demand for transfer – was closest to being achieved during the Nakba. Only through raw military power and repression could the newly established state make the slogan real. The Nakba did not emerge suddenly, nor in the heat of battle as Zionist historians have long claimed. It was the outcome of long-term Zionist aims and policies, made possible by the political victory of Labour Zionism within the Yishuv on the one hand, and the crushing of the Palestinian national movement during the Arab Revolt by the British on the other – as outlined above.

62. Between 1947 and 1949, Zionist militias first, and then the newly formed Israeli army expelled between 700,000 and 800,000 Palestinians, and destroyed around 500 Palestinian villages and urban centres. The refugees were then forbidden from returning - as they continue to be to this day – again debunking the claim that such an immense ethnic cleansing was unintentional.[74] The same organisations that had advocated the expulsion of Palestinians from the Yishuv became the central actors of the Nakba and its aftermath. The Zionists-militias-turned-army were central to the expulsion of Palestinians, the dispossession of their goods, and the guarding against so-called infiltrators attempting to return. Palestinian refugees were banned from doing so, while those who remained within Israel's borders were placed under military rule, only able to leave their areas with a work permit – much like in the West Bank today.

63. The Histadrut was also a key player, both as part of the body overseeing military rule, and in the distribution (and withholding) of the permits. The Kibbutzim, the Jewish only collective farms, which had first done away with Palestinian workers and Jewish bosses in the beginning of the 20th century, also participated.[75] Many soldiers were drawn from the Kibbutzim, and they appropriated much of the most arable land taken from the Palestinians. From 1947 to 1952, the land controlled by the Kibbutzim

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[74] Walid Khalidi, *Before Their Diaspora: A Photographic History of the Palestinians 1876-1948* (Washington, DC: Institute for Palestine Studies, 1984); Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousnes*s (New York: Columbia University Press, 1997); Ibrahim Abu Lughod, *The Transformation of Palestine* (Evanston: Northwestern University Press, 1987); Elia Zureik, *The Palestinians in Israe*l (Abingdon: Routledge & Kegan Paul Books, 1979); Nur Masalha, "New History, Post-Zionism and Neo-Colonialism: A Critique of the Israeli 'New Historians'", *Holy Land Studies*,10(1) (2011),1–53, Anaheed Al-Hardan, *Palestinians in Syria: Nakba Memories of Shattered Communities* (New York: Columbia University Press, 2016) and Ilan Pappe, *The Ethnic Cleansing of Palestin*e (Oxford: One World, 2007).

[75] Areej Sabbagh-Khoury, *Colonizing Palestine: The Zionist Left and the Making of the Palestinian Nakba* (Stanford: Stanford University Press, 2023).

quadrupled.[76] Overall, the UN commission for refugees estimated that the total value of goods and property accumulated through the dispossession of Palestinians in this period was $330 million – over $10 billion in 2002 equivalent value.[77] the 'Hebrew Labour' policy meant ethnic cleansing, dispossession, and redistribution through the institutions of Labour Zionism.

Creation of the Gaza Strip

64. In the course of the Nakba, Gaza was cut from the villages and agricultural hinterland that formed its wider economic, political, and social world, as well as the centuries old regional trading routes to Egypt, the Hijaz, and the rest of the Levant.[78] Instead, Gaza became a refuge for the hundreds of thousands of Palestinians who were running for their lives. Temporary camps, housing the ±200,000 refugees who joined the ±80,000 inhabitants of the area under Egyptian control, grew and solidified as their population was denied the right to return to their homes and lands. Today, of the 2/3 million Palestinians in the Gaza Strip, 77% are refugees, still waiting to return as mandated by international law.

65. The imperative for Israel became, as it was everywhere across the newly created state, how to establish permanent control over the conquered land, while stopping Palestinians from returning. Two main mechanisms were used. The first was to establish Kibbutzim on the most fertile land, which would serve as both agricultural centres and military outposts. While the Kibbutzim that were attacked on 7 October no longer play the same military role – today the military blockade imposed on the Strip's population serves that purpose – their strategic role has not disappeared. The Israeli state continues to offer subsidies to its inhabitants to encourage settlement near Gaza, as it does in East Jerusalem and the West Bank.[79]

66. Before 1967 and the Israeli conquest of the whole of historic Palestine, the militias of the Kibbutzim clashed directly with the Palestinian fedayeen fighting to return. On one such occasion, which has become famous in Zionist historiography, the head of the Nahal Oz militia was killed. Roi Rotherberg was turned into a symbol of the Israeli state's struggle against the Palestinians. When Moshe Dayan, a key military and political leader of Labour Zionism, gave his eulogy, he spoke with much clarity about what had happened:

> *Let us not hurl blame at the murderers. Why should we complain of their hatred for us? Eight years have they sat in the refugee camps of Gaza, and seen, with their own eyes, how we have made a homeland of the soil and the villages where they and their forebears once dwelt. Not from the Arabs of Gaza must we demand the blood of Roi,*

[76] Yair Aharoni, "The Changing Political Economy of Israel", *Annals of the American Academy of Political and Social Science*, 555 (1998), 129.

[77] Shimshon Bichler and Jonathan Nitzan, *The Global Political Economy of Israel* (London: Pluto Press, 2002), 97.

[78] Salim Tamari, *Mountain against the Sea: Essays on Palestinian Society and Culture* (Berkeley: California University Press, 2009).

[79] Eyal Weizman, "Exchange Rate", *London Review of Books*, 45(21), 2023, https://www.lrb.co.uk/the-paper/v45/n21/eyal- weizman/exchange-rate

but from ourselves.[80]

67. Rather than abandoning his commitment to preventing Palestinians in Gaza from returning, Dayan concluded that the Israeli state must continue to impose its military control to keep the 'Gates of Gaza' shut.

68. The second mechanism Israel used to control Gaza and the rest of the conquered territories was the construction of 'developmental towns.' These towns replaced the *ma'abarot*, the integration camps where Mizrahim – Jews from the Middle East and North Africa who migrated to Israel – where held, in terrible conditions.[81] More often than not these towns were built on top of existing Palestinian villages and cities from which the inhabitants had been expelled, located close to the borders between Israel and its neighbours. While racism prevented these towns from having the same political status as the Kibbutzim, they too guarded against Palestinian return and occupied the land. Instead of agricultural production, the developmental towns were constructed around (single) industries. Among these towns were Ashkelon and Sderot, which were also targeted on October 7.

[80] Quoted in Mitch Ginzburg, "When Moshe Dayan delivered the defining speech of Zionism", *The Times of Israel*, 28th April, 2016, https://www.timesofisrael.com/when-moshe-dayan-delivered-the-defining-speech-of-zionism/

[81] Ella Shohat, "Sephardim in Israel: Zionism from the Standpoint of its Jewish Victims", *Social Text*, 19(20), 1988, 1-35; Shlomo Shwirski , *Israel: The Oriental Majority* (London: Zed Books, 1989).

69. The 'Gaza Strip' was the result of a conscious policy to concentrate as many Palestinians on as little land as possible, outside of the borders of the Israeli state. On the one hand, it was made by the expulsion of hundreds of thousands of Palestinians from their land, and on the other, by Israeli state military, urban, and agricultural policies. This was 'Hebrew Labour' in practice: more land and more work for Israeli Jews through the dispossession and expulsion of the Palestinian inhabitants.

From Exclusion to Integration … and Back Again

70. If the 1948 Nakba attempted to resolve the contradictions of the Zionist colonisation of Palestine, 1967 and Israel's conquest of the whole of Historic Palestine, as well as the Sinai desert and the Golan Heights, intensified them. The Israeli state reopened the very problems that it had tried to do away with during the Nakba. More land now also meant more Palestinians living under Israeli rule. To employ them was to undermine the policy of Hebrew Labour and increase the structural power of Palestinian workers within the Israeli economy. To refuse to do so was to create a population that was not only politically opposed to Israel's colonial rule but who's economic precarity made them all the more likely to rebel.

71. This contradiction was particularly acute in Gaza, where previous rounds of ethnic cleansing had created a huge Palestinian population on a tiny land mass. Israel's prime minister at the time, Levi Eshkol, mused post-invasion about the Palestinians in Gaza: "Perhaps if we don't give them enough water they won't have a choice [but to leave], because the orchards will yellow and wither."[82] This is the historical root of Israel's current genocidal campaign, which has, in fact, cut off water, food, and fuel supplies, while calling on the Palestinians to 'relocate' into Egypt.

72. In the immediate aftermath of 1967, the influx of thousands of Palestinian workers, under the control of the military, was seen as a blessing for the Israeli economy. Its expansion post-1948, through a mixture of Western aid and Palestinian dispossession, had been so effective that Israel faced labour shortages, and an internal market too small for its growing economy. The occupation of the West Bank and the Gaza Strip (WBGS) created a large captive Palestinian labour force and pool of consumers, alongside new accumulation of land and resources. The occupied territories became dependent on Israel's labour market: '[b]etween 1974 and 1993, 38.4–45.4 percent of the Gaza Strip employed force was employed in Israel, compared to 28–33 percent of West Bank workers.'[83] They laboured in manufacturing, care-work, agriculture, and construction. By the mid-1980s, Palestinian workers from the territories represented 7% of the overall Israeli workforce, but 45% in agriculture and 49% in construction.[84]

73. While the exploitation of Palestinian workers seemed to resolve Israel's labour and

[82] Quoted in Jonathan Ofir, "Liberal Israeli leaders were contemplating genocide in Gaza already in 1967", *Mondoweiss,* 17th November, 2017, https://mondoweiss.net/2017/11/liberal-contemplating-genocide/

[83] Leila Farsakh, *Palestinian Labor Migration to Israel: Labor, Land, and Occupation*, (London: Routledge, 2005), 70

[84] Adam Hanieh , "From State-led Growth to Globalization: the Evolution of Israeli Capitalism", *Journal of Palestine Studies*, 32(4), 2003, 7; Zeev Rosenhek, "The Political Dynamics of a Segmented Labor Market: Palestinian Citizens, Palestinians from the Occupied Territories and Migrant Workers in Israel", *Acta Sociologica*, 46(3), 2003, 240.

consumer shortages, it also reanimated the problems that the early labour Zionists had tried to resolve. The first Palestinian intifada of 1987, the largest Palestinian popular movement since the 1930s, brought to life the spectre of their economic power. The Intifada, Israeli closures, and mass mobilisations by Palestinians across historic Palestine caused major disruptions in the industries they dominated.[85] In response, there were renewed demands for decoupling the Israeli economy from Palestinian workers – without abandoning the occupied territories.

74. The Oslo process, created the appearance of Palestinian sovereignty over the West Bank and Gaza, while Israel remained in control of the land between and around these islands of supposed autonomy. Settlement in the territories accelerated.[86] The granting of 'Palestinian autonomy' also allowed Yitzhak Rabin's government to begin to end the employment of Palestinians from the WBGS inside Israel. Palestinians were replaced by temporary migrant labour, on the model of the Gulf states. The graphs below illustrate the early success, and ultimate limits, of this process in the two industries where Palestinian, and then migrant, workers were concentrated.[87] It is worth nothing that the category of 'Israeli Citizens' on both graphs should be further divided between Palestinian and Jewish Citizens of the state.

[85]Joel Beinin, "Palestinian Workers Have a Long History of Resistance", *Jacobin*, 6 June, 2021, https://jacobinmag.com/2021/06/palestinian-labor-trade-unionsstrike-resistance-worker-solidarity-may-18-labor-history; Riya

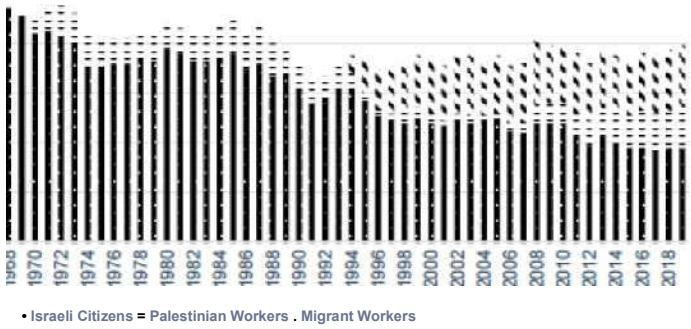
[86] Toufic Haddad, *Palestine Ltd: Neoliberalism and Nationalism in the Occupied Territory* (London: I.B. Tauris, 2016); Kareem Rabie, *Palestine Is Throwing a Party and the Whole World Is Invited: Capital and State Building in the West Bank* (Durham: Duke University Press, 2021); and Adam Hanieh, "The Oslo Accords and Palestine's Political Economy in the Shadow of Regional Turmoil", in Ian Parker, ed., *For Palestine: Essays from the Tom Hurndall Memorial Lecture Grou*p (Cambridge, UK: Open Book Publishers, 2023).

[87] Yahel Kurlander and Avinoam Cohen, "Blas as sites for the meso-level dynamics of institutionalisation: A cross-sectoral comparison", *Theoretical Inquiries in Law,* 23(2), 2022, p.254.

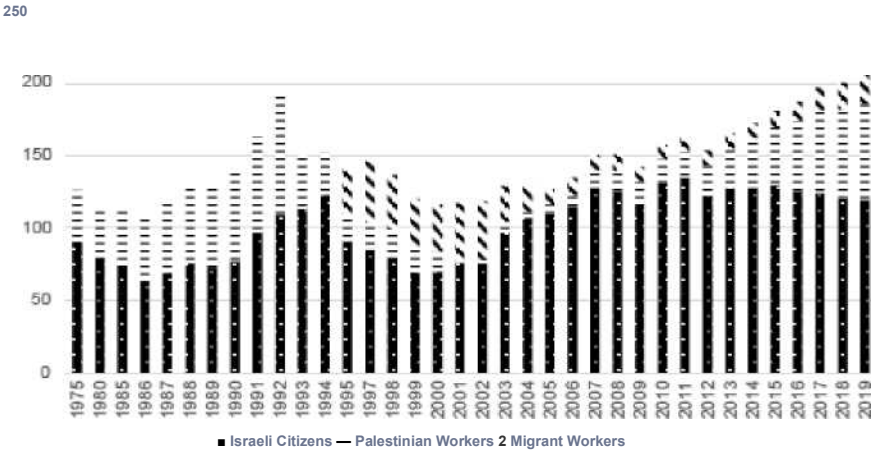
Table ll.a: Employees in the Agricultural Sector, 1980-2019.

*** Data generated based on Central Bureau of Statistics Annual Reports.**

Table H.b: Employees in the Construction Sector, 1980-2019.



75. Gaza, smaller and more densely populated than the West Bank, was more dependent on employment in Israel and was particularly hard hit by the new policy. In addition,



the ratio between settlers and the rest of the population was immense in Gaza, where 8,000 settlers controlled around 30% of the land, while 1.3 million Palestinians lived on the remaining 70%. Facing even greater deprivation than the West Bank, it is not surprising that Gaza would be a particularly active terrain of Palestinian resistance in the 1990s and early 2000s. Already in 1992, Rabin expressed the 'wish [that] I could wake up one day and find that Gaza has sunk into the sea'.[88] A desire he was not the first, and also not the last, to voice.

Diets and Mowed Grass

76. The contradictions that conquest, integration, and then decoupling generated have seemed irresolvable for Israeli policy makers, especially in Gaza. While in the West Bank and Jerusalem colonisation advanced apace, the balance of forces in the Strip led to a change in policy. With the end of the second intifada (2000-2005) and under pressure from the military and intelligence

[88] Quoted in Yousef Munayyer, "Laying Siege to Gaza Is No Solution", *Foreign Policy*, 9th October, 2023, https://foreignpolicy.com/2023/10/09/israel-palestine-gaza-hamas-invasion-genocide-united-states/

top brass (as well as from the employers in the construction industry), the Israeli labour market was reopened to Palestinian workers from the occupied territories. The hope was that Palestinian workers could be disciplined through the distribution and withholding of work permits, while the incomes generated in Israel would soften (but never resolve) the economic hardships created by the occupation.

77. More or less simultaneously, however, the decision was made to intensify the decoupling from the Gaza Strip. In 2005, prime minister Ariel Sharon judged that the continued Israeli presence in the Strip was too costly for the meagre strategic benefits. He withdrew soldiers and settlers, and imposed the first blockade of Gaza. Its inhabitants would be ruled from afar, with all vital resources, and all movement in and out of the strip, controlled by the occupier. Not surprisingly in this context, Hamas won the Palestinian elections in 2006 on a platform that rejected the Oslo accords and Fatah's corruption. Israel, the European Union, and the United States supported Fatah's coup, which was successful only in the West Bank, which was increasingly integrated into Israel through the expansion of settlements; while Hamas continued to administer a blockaded Gaza.

78. In response to the humiliation of Fatah, its *de facto* collaborator in the strip, Israel intensified its blockade. Egypt actively participated in maintaining it, underscoring Arab regimes' complicity with the Israeli state. Gaza was cut off completely from the rest of Palestine and the region. Two Israeli policies exemplify its practice since 2008. First, Israel, in the words of Dov Weisglass, adviser to prime minister Ehud Olmert, aimed to 'put the Palestinians [in Gaza] on a diet, but not to make them die of hunger'.[89] The number of calories allowed to enter the strip were calculated to avoid famine, while avoiding any comfort or stability. Access to Israel's labour market was virtually ended. The full list of items prohibited or severely limited throughout this period is too long – and absurd – to mention in full. They include at different times: steel and concrete, shampoo and writing paper, feminine hygiene products and diapers, canned tuna and powdered milk.[90]

79. The mixture between a total siege by air, land, and water, severe lack of basic goods, and mass unemployment, predictably generated military responses by the different factions of the Palestinian resistance. In response, Israel developed its second policy – 'mowing the grass'. This euphemism, used freely in Israeli military and political circles, refers to Israel's regular massacres in the Strip, carried out to collectively punish its inhabitants for resistance to the blockade. For example, Israel killed over 2,200, wounded more than 11,000 and displaced half a million Palestinians in Gaza in 2014. The vice president of the Jerusalem Institute for Strategic Studies, a former Israeli government official and senior fellow in a number of Zionist think tanks, openly mused about whether sufficient violence had been unleashed: 'Just like mowing your front lawn, this is constant, hard work. If you fail to do so, weeds grow

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[89] IMEU, "Putting Palestinians 'On a Diet': Israel's Siege & Blockade of Gaza", *Institute for Middle East Understanding*, 14th August, 2014, https://imeu.org/article/putting-palestinians-on-a-diet-israels-siege-blockade-of-gaza#:~:text=of%20the%20blockade

[90] Ibid.

wild and snakes begin to slither around in the brush [*sic*]'.[91]

80. These euphemisms could not hide the horror unleashed day after day on a population of 2.3 million people, crammed into 365 square metres, 77% of whom are refugees, and the majority of whom are children. However, even this level of violence was unable to resolve the contradictions generated by the Israeli settler colonial project – contradictions that were already acknowledged by Zionists over a century ago. Only those drunk on imperial or colonial power

could have been surprised by the fact that this poisoned cocktail would explode, as it did on 7 October 2023. In the words of Saree Makdisi:

> *what's most remarkable is that anyone in 2023 should be still surprised that conditions of absolute violence, domination, suffocation, and control produce appalling violence in turn. During the Haitian revolution in the early 19th century, former slaves massacred white settler men, women, and children. During Nat Turner's revolt in 1831, insurgent slaves massacred white men, women, and children. During the Indian uprising of 1857, Indian rebels massacred English men, women, and children. During the Mau Mau uprising of the 1950s, Kenyan rebels massacred settler men, women, and children. At Oran in 1962, Algerian revolutionaries massacred French men, women, and children. Why should anyone expect Palestinians – or anyone else – to be different? To point these things out is not to justify them; it is to understand them. Every single one of these massacres was the result of decades or centuries of colonial violence and oppression.*[92]

Unresolvable Contradictions

81. Israel's genocidal assault on Gaza is only the most recent expression of a long-held desire to 'disappear' the Palestinians and resolve the Gaza contradiction. This has been the consistent theme, from the early Zionist fantasy of a 'land without a people,' to the 'conquest' of labour through 'transfer' in the 1920s, to the Nakba, to Eshkol and Rabin's musings about Gaza — all justifying incessant massacres.

82. Israeli genocide against the Palestinians emerges out of unresolvable contradictions inherent to its settler colonial project. Unwilling to exploit but unable to eliminate the Palestinians over the long 20th century, Israel finds itself confronted with limited options. (Re)integrating the Palestinians into its economy would revive the spectre of the first intifada – social unrest and the withholding of labour. Keeping the Palestinians under occupation without integrating them in the labour market, increases social tensions and brings back the dangers of the second intifada – sustained military confrontation. Concentrating as many Palestinians as possible in camps, structured around just-not-starvation levels and collective punishment, like in the Gaza Strip, can only lead to more 7 October attacks. The only limits on Israel's

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[91] David M. Weinberg, "Israel must prove it has freedom to defend itself", *Jerusalem Post*, 13th May, 2021, https://www.jpost.com/opinion/israel-must-prove-it-has-freedom-to-defend-itself-opinion-668124

[92] Saree Makdisi, "No Human Being Can Exist", *N+1*, 25th October, 2023, https://www.nplusonemag.com/online- only/online-only/no-human-being-can-exist/

genocidal desires are imposed by Palestinian resistance, regional popular pressure, and international solidarity.

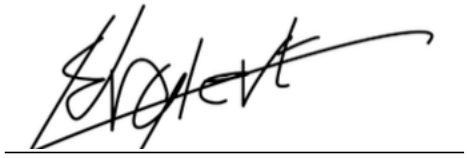
83. Nor will the unspeakable horror that is being rained down on the Palestinians in Gaza – and now on the population of Lebanon – solve these contradictions. Israel cannot 'get rid' of the Palestinians, either through mass murder or expulsion. There is another route of course – that which is mandated by international law and includes the return of the refugees, the end of the military blockade, and equal rights for all the inhabitants between the river and the sea. It is also clear that Israeli policy makers will not consider going that way without considerable pressure being meted out, across the globe.

G. EXPERT OBLIGATIONS

84. **I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.**

85. **I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.**

86. **I confirm that I have not received any remuneration for preparing this report.**



Sai Englert
Leiden University
The Netherlands
3 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
DISPOSSESSION RESISTANCE AGAINST SETTLER COLONISATION AND OCCUPATION
BY
DR ASIM QURESHI

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The British government has proscribed Hamas based on understanding that the organisation operates as a terrorist group in both its status and tactics. The purpose of this report is to assess how the dispossession of Palestinian land by the Zionist state has resulted in resistance by the Palestinian people to reclaim their land and property – a right enshrined in all natural and international law. The report further considers the legitimacy of Palestinian resistance to target settlements due to their fundamental role as part of the machinery of colonial violence.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am the Research Director of the advocacy organisation CAGE International based in London, UK. The organisation advocates for those who have been unfairly impacted by a securitised world since 11 September 2001.

5. For the last fifteen years I have advised legal teams representing individuals accused of serious violent political crimes and acts in the US, Guantanamo Bay, UK and other jurisdictions around the world in my capacity as a mitigation investigator. This work involves investigating the intergenerational socio-political-historical-environmental

trajectories of a violent actor's past as a means of understanding the full context of their acts.

6. I graduated in Law (LLB Hons, LLM), specialising in International Law. Later I completed my Ph.D. in International Conflict Analysis from the University of Kent. My work product includes having authored a number of NGO reports, academic journal articles, and mainstream media articles.

7. I am the author of the following books; *Rules of the Game: Detention, Deportation, Disappearance* (Hurst & Co, Columbia UP, 2009); *A Virtue of Disobedience* (Unbound, 2019); the editor of *I Refuse to Condemn: Resisting Racism in Times of National Security* (Manchester UP, 2020) and *When Only God Can See: The Faith of Muslim Political Prisoners* (Pluto, 2024).

DISPOSSESSION RESISTANCE AGAINST SETTLER COLONISATION AND OCCUPATION

C. INTRODUCTION

8. The Zionist state of Israel has established a complex series of settlements, fortifications, watch towers, walls, and drones – all of which serve the purpose of dispossessing Palestinians of their land from the period of the British Mandate until today. This report examines the way that dispossession has historically taken place and continues until this very day. It further considers the right of Palestinians to recover land that is dispossessed through a taxonomy of violence referred to as *dispossession resistance*.

9. Over the course of the report, the following arguments will be forwarded in defence of the right of Palestinians to exercise armed resistance for their self-determination, but also to recover all lands that were dispossessed. This work enters *dispossession resistance* into a taxonomy of violence that explains the right of those who have been denied what is rightfully theirs. This report will explain this in the following ways:

    a. By defining *dispossession resistance* as a moral right rooted in natural law. As this report is in support of deproscribing the group Harakat al-Muqawamah al-Islamiyyah (Hamas), *dispossession resistance* will also be contextualised through Qur'anic scripture as a unilateral moral right.
    b. Through showing how violence associated with colonisation is very much rooted in a European tradition of wealth extraction and fundamentally changing the nature of the indigenous lands, as well as their culture and traditions. Reaction to such forms of violence always produce resistance violence to stem colonial power.
    c. By focusing on settler colonisation specifically as an exercise in dispossessing native populations of their wealth, land and resources – it ultimately acts as part of the machinery of violence. The settlers take land and reinforce the presence of

the colonial power through the settlements, but further act as paramilitaries in defence of Israel.

d. The final section of the report will focus explicitly on the dispossession Palestinians have experienced through a Zionist ideology that seeks to dispossess them of all their lands and enforce that dispossession through a system of settlements. The report ends by showing how Palestinians have a right under international law to resist the existence of such settlements.

10. Dispossession is a moral wrong that denies the fundamental right of those who have had their lands and property stolen to recover what was lost. The Palestinian people continue to exert their right to their dispossessed land through armed resistance, a right afforded to them by natural law, international law, and their spiritual connection to the land.

D. DISPOSSESSION RESISTANCE

11. The theft of land of others is an act condemned by religious texts and traditions throughout history. Whether it is the Old Testament's injunction against moving the boundary stones of neighbours to increase the size of one's own land, the New Testament explicitly commanding that one shall not steal, to the Qur'an that the property of others should not be consumed – the Abrahamic faith traditions share a common emphasis that the property and land of others cannot be taken unlawfully. Older traditions such as the Manusmriti from Hinduism states that the theft of land should result in a restitution a thousand times the value of the land – indicating the seriousness of the offence. At its centre, dispossession is an issue of the theft or wrongful appropriation of land, either through confiscation or through settlement.

12. International law has always placed emphasis on restitution of rights where they have been lost, but it was not until 2004 that Paulo Sergio Pinheiro, the UN Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons presented the Pinheiro Principles – specific UN guidance for States to provide justice to those who are dispossessed.[1] These principles assert that all refugees should be able to return to their former homes and receive restitution of property arbitrarily or unlawfully taken from them. For Palestinian refugees, the Pinheiro Principles reinforce long-standing legal arguments supported by international law, including General Assembly Resolution 194 and subsequent UN pronouncements, which affirm the right of return and compensation for lost property.

13. The reality for Palestinians, however, has been the continued denial of their dispossession through the fiction of their land being *terra nullius* – a land that was uninhabited for Zionists to occupy – a fiction that was rooted in a longer colonial history. The late Palestinian scholar Edward W Said, in his collection of essays and

[1] OCHA (2007) *Handbook: Housing and Property Restitution for Refugees and Displaced Persons*, https://www.ohchr.org/sites/default/files/Documents/Publications/pinheiro_principles.pdf

interviews *The Politics of Dispossession*, placed the history of dispossession for his people on a timeline that dates back to the period of European colonisation of the Middle East:

> *"The present struggle between the Palestinian people and the state of Israel very much belongs to the historical relationship created over time between the Arabs and the West, and that so far as any Palestinian is concerned, the destruction of our society in 1948, the expulsion and dispossession of our people since then, as well as the military occupation of the West Bank and Gaza since 1967 is seen as extending and deepening the ravages in our midst of what began originally when Napoleon invaded Egypt in 1798, Western European colonialism."*[2]

14. Said, like many Palestinians, was sympathetic to the antisemitic racism that plagued the Jews of Europe – the profound, "extent and the overpowering legacy of suffering and despair that informed the postwar Zionist movement."[3] However, this sympathy could not be countenanced as a replacement to dispossessed Palestinian land – that the suffering of the Jews could not stand in place of "a conscious dispossession, dislocation, and displacement of another people."[4] At the centre of the Palestinian struggle, is the notion of the dispossession as a loss of land and property that they have specifically claimed restitution for, including the right of Palestinians to return to their ancestral lands.

15. Regaining that land, like many anti-colonial struggles, has produced manifold forms of resistance, from peace negotiations, concessions, to violent struggle, to campaigns of hunger-strikes in prison – all come under the general rubric of resistance to gain rights, dignity and land. Resistance groups in Palestine, including the Palestinian Liberation Organisation (PLO), the Popular Front for the Liberation of Palestine (PFLP), Harakat al-Muqawamah al-Islamiyyah (Hamas), and Palestinian Islamic Jihad (PIJ) have been engaged at various times and moments in armed struggle for the restitution of their rights – but always in an asymmetry of power with the Zionist state and its ally the United States of America. Edward Said captured this asymmetry, on how those dispossessed of their rights, have been forced to engage with those in power on unequal terms:

> *"After all, there has been no liberation movement in this or any other century that, like the Palestinian movement, has been so beset with such immense difficulties: No movement has had to deal with colonizers so morally creditable as the Jews. No movement has had to deal simultaneously with expulsion, dispossession, colonization, and a terrifying kind of international illegitimacy. No movement has had to fight from a hundred different locations (excluding a national base) against a military-political alliance (Israel and the United States) that would outclass any but*

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[2] Said EW (1995) *The Politics of Dispossession: The Struggle for Palestinian Self-Determination 1969-1994*, Vintage, p.164

[3] Ibid, p.167

[4] Ibid, p.126

one or two modern nation-states in strength, resources, and institutional power. No movement has been so unfortunate in its allies and its surrounding context."[5]

16. The constancy of Palestinian resistance and movement is not merely tied to the land as a material concern but carries spiritual implications too – there are layers of obligation that dispossession brings. For Islamic armed groups such as Hamas and PIJ, the Qur'an becomes a central source that must be considered in relation to their commitment to regaining lands that have been lost. The following section provides a Qur'an specific focus to the ethics of restitution discussed above – a unilateral right to recover property and land.

Dispossession resistance in the Qur'an

17. *"There is nothing in our book, the Qur'an, that teaches us to suffer peacefully. Our religion teaches us to be intelligent. Be peaceful, be courteous, obey the law, respect everyone; but if someone lays a hand on you, send him to the cemetery. That's a good religion."*[6]

18. These words by the martyr Malcolm X brings into sharp contrast how different systems of laws across the world engage with notions of dignity and autonomy. Malcolm's referencing the schema of defence that is presented in the Qur'an is particularly relevant due to the emphasis that a multitude of verses and chapters place on the rights of those who find themselves dispossessed of their land and property – giving a unilateral right to its reacquisition.

19. Across the world, a plethora of Muslim-majority countries implement the Qur'an and Islamic Law as part of their national legal structures, with countries such as Egypt placing the Qur'an as the highest source of law within its constitutional framework. Islamic Law as a normative legal system has a wide ranging application, even being included within framework of international law through the International Court of Justice's statute which can rely on a wide framework of legal systems to deliver its verdicts.[7] Almost 1.9 billion Muslims in the world (25% of the world's population) practise their faith to varying degrees and ways, largely holding on to the centrality of the Qur'an as a book of guidance, ethics and laws that are central to the faith across divides.

20. Texts of International Humanitarian Law (the Laws of Armed Conflict and the Use of Force) often contain references to the practice of the Prophet Muhammad and his companions, and later of the counter-Crusade leader Salah al-Din as part of their histories on the development of the conduct of hostilities. Islamic scholarship the world over has largely agreed on the Geneva Conventions as being a formalised understanding of prophetic guidance on the *jus in bello* – that protection of both

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[5] Ibid, p.73

[6] X M. (1963) *Message to the Grass Roots*. Detroit.

[7] Lombardi C (2007) *Islamic Law in the Jurisprudence of the International Court of Justice: An Analysis*, 8 CHI. J. INT'L 85, https://digitalcommons.law.uw.edu/faculty-articles/715

combatants, civilians, agriculture and communities should be maintained. It is argued here that *dispossession resistance* is rooted in a *jus ad bellum* that centres fighting against alien occupation, colonial domination and racist regimes – and is thus covered by a moral framework that understands racism and colonisation as a moral injury that is to be fought.

21. The schema of the Qur'an presents the moral injury of dispossession as one that is deserving of restitution through any means necessary to reacquire what has been lost, until what was lost is recovered. While there are other verses in the Qur'an that speak more actively about *jihad* and fighting in other contexts, for the purposes of understanding *dispossession resistance*, I want to concentrate on those that root fighting back to an ethical schema of restitution and reacquisition through violence. In *Surah al-Hajj* of the Qur'an, God informs the believers that their initial position of not responding to injuries with violence has been lifted, and that they are now permitted to defend themselves:

> *"22:39 Those who have been attacked are permitted to take up arms because they have been wronged – God has the power to help them*
> *22:40 those who have been driven unjustly from their homes only for saying, 'Our Lord is God.' If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God's name is much invoked, would have been destroyed. God is sure to help those who help His cause – God is strong and mighty."*[8]

22. There are a number of elements to these verses that are important to consider. The first is the centrality of those who "have been wronged" – an understanding that a moral injury has taken place, one that is rooted in their material conditions. The following verse explicates the injury as "those who have been driven unjustly from their homes" – a recognition that something specific and material has been lost by the early community of believers. Through the invocation of other communities that were permitted to defend their monasteries, churches and synagogues, we can also understand from these verses is that this principle is rooted in a wider morality transcending time and place.

23. In the second chapter of the Qur'an, *Surah al-Baqarah*, there are a number of verses that relate to the dispossessed being commanded to respond to the usurpation of their rights with violence:

> *"2:190 Fight in God's cause against those who fight you, but do not overstep the limits. God does not love those who overstep the limits.*
> *2:191 Kill them wherever you encounter them, and drive them out from where they drove you out, for persecution (fitna) is more serious than killing. Do not fight at the Sacred Mosque unless they fight you there. If they do fight you, kill them – this is what such disbelievers deserve -*

[8] Abdel Haleem MAS (2010) *The Qur'an*, Oxford World Classics, p.212

2:192 but if they stop, then God is most forgiving and merciful.
2:193 Fight them until there is no more persecution, and worship is devoted to God. If they cease hostilities, there can be no [further] hostility, except towards aggressors."[9]

24. Self-defence is centred at the heart of the ethical schema of the Qur'an when presented with the hostility of an aggressive force – yet limits to the inherent right to defend is qualified – to "not overstep the limits". As with the verses from *Surah al-Hajj*, there is an emphasis on the believers being driven from their homes, but more than that, that persecution is presented as being worse than killing. When the companion of the Prophet, Abdullah ibn Umar, was asked about these verses, he said, "That we did during the time of Allah's Messenger when Islam was still weak and (the Muslim) man used to face trials in his religion, such as killing or torture. When Islam became stronger (and apparent), there was no more fitnah."[10]

25. The Arabic word *mustadafin* in the Qur'an probably most closely connotes the dispossessed or oppressed, encapsulating those who are in circumstances that are beyond their control because of a power that is exerted over them. In *Surah al-Nisa*, the Qur'an connects the *mustadafin* directly to the ethical framework of fighting by calling on believers to intervene on behalf of those who are facing a system of oppression:

> *"4:75 Why should you not fight in God's cause and for those oppressed men, women and children who cry out, 'Lord, rescue us from this town whose people are oppressors! By your grace, give us a protector and give us a helper!'?"*[11]

26. Defending the oppressed and dispossessed is part of the ethical life of Muslims, and Qur'anic injunctions on its importance cannot be simply ignored within a world that has been split along national borders by a violent colonial order. The verses above all emphasise an ethical schema of fighting back and regaining what is lost, but within a certain set of limits – that Muslims should not exceed the boundaries of what is right within their own framework. The Qur'an does provide an exception to this in *Surah al-Shurah* and *Surah al-Hajj* where the Muslims are granted permission to fight their oppressors as they are fought:

> *"42:39 and defend themselves when they are oppressed.*
> *42:40 Let harm be requited by an equal harm, though anyone who forgives and puts things right will have his reward from God Himself – He does not like those who do wrong. There is no cause to act against anyone who defends himself after being wronged, but there is cause to act against those who oppress people and transgress in*

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[9] Ibid, pp.21-22

[10] Ibn Kathir, *Tafsir al-Qur'an al-'Adhim*, 2:190-193

[11] Ibid, p.57

the land against all justice – they will have an agonizing torment – though if a person is patient and forgives, this is one the greatest things."

"22:60 So it will be. God will help those who retaliate against an aggressive act merely with its like and are then wronged again: God is pardoning and most forgiving."

27. For the dispossessed, the Qur'an opens the door to reprisal in equal measure to an oppressor, "let harm be requited by an equal harm", while at the same time offering the forgiveness and the higher hand as an ideal – yet according no blame to the one who chooses reprisal after being wronged. There is even recognition in *Surah al-Hajj* that resistance in kind may even bring about a further round of violence by the aggressor, but that this should not dissuade the resistance of the believers.

28. When the Libyan resistance leader Omar Mukhtar fought Italian fascists and took prisoners of war, he refused to torture them, saying, "they are not our teachers. There is a tension between what Islamic law permits at an ethical level for those who are dispossessed, and what classical Islamic jurisprudence lays out as appropriate conduct in hostilities. One of the ways in which this tension can be resolved, is through understanding the system of violence of the coloniser as being total, one that takes place through extreme physical violence against the civilian population to subdue it, but also through civilian infrastructure, the embedding of new legal systems, and systems of incarceration that depopulate military age men from the targeted communities. The classical jurisprudence of Islamic law barely engaged with dispossession, as an assumption was built into classical texts that there is a coherent central Islamic authority, but the Qur'an does deal explicitly with dispossession – bringing about a different ethical framework – one which centres the violence of dispossession as the edifice that requires resisting with equal force. There has never been a doctrine of self-defence in early texts on jihad, largely because of a Qur'anic schema that provides guidance on defensive resistance.

29. Notwithstanding its being bound by ethical parameters forbidding the targeting of civilians and minors and other transgressions such as sexual violence, the all-encompassing and suffocating nature of a racist and colonial regime compels dispossession resistance to function in an alternative framework. There is a total absence of symmetry in any sense between parties – on that is entirely asymmetric. Grégoire Chamayou captures the nature of this disproportionality vividly in his reflection on the distance between a suicidal operation, and that of the drone operator:

"Whereas the kamikaze implies a total fusion of the fighter's body and weapon, the drone ensures their radical separation. The kamikaze: My body is a weapon. The drone: My weapon has no body. The former implies the death of the agent. The latter totally excludes it. Kamikazes are those for whom death is certain. Drone pilots are those for whom death is impossible. In this sense, they represent two opposite poles on

the spectrum of exposure to death. In between the two are classic fighters, those for whom death is a risk.
One speaks of "suicide bombing" or of "suicide assassination," but what would be the antonym? There is no specific expression to designate those who kill by explosion without ever risking their lives. Not only is it not necessary for them to die in order to kill, but it is impossible for them to be killed as they kill."[12]

30. The asymmetry between the occupying force and the dispossessed prompts a rethinking of the tactics and strategies of armed resistance, as the coloniser can no longer be met on a battlefield that he is largely absent from – whether through air strikes or targeted killings by drones. In her work on the resistance of *Abrek* fighters in the Caucasus against Russian imperialism, Rebecca Ruth Gould writes of *transgressive sanctity* as a formulation for the ways in which these Muslim fighters chose to resist the asymmetry and violence of Russian forces. Key to this concept, is the way in which their traditional understandings of Islamic law and tradition are reconfigured in order to meet the specific challenges before them:

> *"Transgressive sanctity is generated when indigenous law is emptied of its old meaning and filled with new content. This new content asserts its power by staging acts of violence against the new legal order. Transgressive sanctity differs from other kinds of violence, as well as from other kinds of sanctities, in that it thrives on performance and display."*[13]

31. Much in the way Gould theorises *transgressive sanctity*, this report centres *dispossession resistance* as a particular ethical form of armed force within a taxonomy of violence – one that permits the dispossessed to recover what was lost by any means available to them in their struggle. The following sections provide an outline of how dispossession took place across the period of European colonisation, and how that process provided a platform for Israel's settler colonisation of Palestine.

E. THE VIOLENCE OF COLONISATION

32. *"Exalted in their pain and sorrow above our – wicked – existence they went on their way and we could also see how something was happening in the heart of the boy, something that, when he grew up, could only become a viper inside him, that same thing that was now the weeping of a helpless child.*

Something struck me like lightning. All at once everything seemed to mean something different, more precisely: exile. This was exile. This was what exile was like. This was what exile looked like.

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[12] Chamayou G (2015) *Drone Theory*, Penguin, p.84

[13] Gould R (2016) *Writers & Rebels: The Literature of Insurgency in the Caucasus*, Yale Uni Press, p.4

I couldn't stay where I was. The place itself couldn't bear me. I went round to the other side. There the blind people were sitting. I hastily skirted round them. I went through the gap into the field that was bounded by the cactus hedge. Things were piling up inside me.

I had never been in the Diaspora – I said to myself – I had never known what it was like… but people had spoken to me, told me, taught me, and repeatedly recited to me, from every direction, in books and newspapers, everywhere: exile. They had played on all my nerves. Our nation's protest to the world: exile! It had entered me[…]"[14]

33. Yizhar Smilansky (writing under the *nom-de-plume* S. Yizhar) wrote these words based on his experience as a soldier in the nascent Israeli Defence Forces during the Nakba in 1948 – they capture how dispossession of Palestinian land and property was something that was familiar to a people that had experienced pogroms and the Holocaust. As Smilansky acknowledged, it was their acts of oppression that were not only making a child cry, but "could only become a viper inside him."

34. To situate the *dispossession resistance* of Palestinians, before, during and after the current enhanced genocide taking place in Palestine, it is crucial to understand how European colonial and settler colonial violence produced similar forms of resistance violence. What remains a constant, is the material reality of land dispossession and killing, nearly always leading to non-state responses to European organised violence. According to Dierk Walter in his *Colonial Violence*, the dispossession fits a pattern of wealth extraction for the purposes of enriching colonial metropoles – ultimately driving local populations to seek to arrest this global theft. While the colonisers brought a mixture of religious proselytisation, civilising missions and ideology, it was the economic impetus of capitalism that underpinned a 'discriminatory global legal system'[15], but tied to a violence that was inherent in liberalism. As Caroline Elkins shows in *Legacy of Violence*, the colonisers referenced a liberal tradition of freedom and modernity, but it was paradoxically accompanied by extreme use of violence – the economic extraction that took place could not happen without a racialising liberal order.[16]

35. In the period from the fifteen hundreds to the late eighteen hundreds alone, those who found themselves in crosshairs of Britain suffered on a 'catastrophic scale'. As evidenced by David Veevers in *The Great Defiance*, British:

> *"diseases brought over by colonists could cause demographic collapse; military violence and endemic settler violence regularly culminated in massacres and genocide; intense economic exploitation displaced people from their land and*

[14] Yizhar S (2011) *Khirbet Khizeh*, Granta Books, pp.104-105

[15] Walter D (2017) *Colonial Violence: European Empires and the Use of Force*, Hurst & Co, p.13

[16] Elkins C (2022) *Legacy of Violence: A History of the British Empire*, The Bodley Head, p.16

contributed to widespread famine; and conquest politically and culturally disenfranchised them."[17]

36. What Veevers also reminds us though, is that while the colonisers brought a level of violence that was unprecedented for these peoples, and while they were largely successful in their resource extraction, they did not have it entirely their own way. Upon encountering these non-centralised societies, the colonists were compelled to engage armed non-state entities and militias, which ostensibly would have operated in a manner akin to 'terrorism cells' against much larger colonial forces. European invaders and settlers were able to move quickly against larger cities and built-up towns, but struggled when coming into contact with habitations on the peripheries of societies, where the landscape would change to dense forests, swamps, deserts or mountains – making heavy machinery and movement far more cumbersome.[18] In various colonial contexts, euphemisms such as a 'winning hearts and minds' became central to the idea of counterinsurgency tactics that were designed to force local populations into total submission to a new colonial reality of 'benevolence' that was backed by extreme violence.[19] According to Elkins, the central idea was that the 'terrorists' could be made compliant through the use of detention and torture as a means of pacifying them in what was referred to as 'rehabilitation'. In that vein, British officials in Kenya hung the words *Mwiteithia Niateithagio* over the entrance to their worst detention camp – *abandon hope all ye who enter here*.[20]

37. The winning of hearts and minds euphemism operates as an extreme form of double-speak, for it ultimately carries the purpose of disciplining populations with the aim of controlling their behaviour. They are not 'won' as much as they are defeated into accepting the status quo. In Laleh Khalili's *Time in the Shadows*, she cites David Kilcullen – one of the foremost advocates of contemporary counterinsurgency strategy – as explaining that ultimately a hearts and minds strategy is about showing that resistance is pointless and that the suppressed population should concede on any matter of higher principle, and instead, centre their own self-interest.[21] Khalili evidences how British officers in the Northwest Frontier of India during the colonial period used civilians as part of their modalities of violence to control the behaviour of the tribes they were seeking to suppress:

"It might be worthwhile forming a "hostage corps" composed of the sons of hostiles. A couple of these in the front of a convoy would discourage the use of land mines. On

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[17] Veevers D (2023) *The Great Defiance: How the world took on the British Empire*, Ebury Press, p.9

[18] Walter D (2017) *Colonial Violence: European Empires and the Use of Force*, Hurst & Co, p.44

[19] Ibid, p.106

[20] Elkins C (2022) *Legacy of Violence: A History of the British Empire*, The Bodley Head, p.21

[21] Khalili L (2013) *Time in the Shadows: Confinement in Counterinsurgencies*, Stanford University Press, p.48

the Frontiers we often push the relatives of an outlaw in front of a police party when entering a house where an outlaw is suspected of hiding."[22]

38. What Khalili argues, is that liberal empires – those Europeans who conquered and settled on land – created a system of lawless places through a "deliberate legal process of temporarily and functionally setting aside one body of law and adopting another, or in rarer and more extreme instances, replacing legal procedures with administrative procedures."[23] Thus, in order to maintain the fiction of benevolent liberal order, a capricious system of order was created to maintain not only violence, but dispossession of the occupied population.

39. The French philosopher Grégoire Chamayou has sought to trace the development of colonial technological violence and suppression through his work *Drone Theory* – through assessing the ever-increasing distances that have been created between colonial authorities and the colonised. The drone being the final manifestation of such asymmetric violence, what he terms as the eradication of "all direct reciprocity in any exposure to hostile violence."[24] Chamayou roots the use of drones in the bombing campaigns of western colonisers as a tactic of 'annihilation' and 'execution'. Citing Sir John Bagot Glubb, who was responsible for the British aerial bombings campaigns of the Middle East in the early twentieth century, Chamayou shows how aerial bombardment had the specific goal of demoralising tribesmen into a feeling of helplessness. This perspective is reiterated by Charles Dunlap, a major general in the US Air Force, "Death per se does not extinguish the will to fight in such opponents; rather, it is the hopelessness that arises from the inevitability of death from a source they cannot fight."[25]

40. As a modern panopticon, Chamayou writes of the mass terror that drones inflict on entire populations, that "it amounts to a psychic imprisonment within a perimeter no longer defined by bars, barriers, and walls, but by the endless circling of flying watchtowers up above."[26] This 'psychic imprisonment' itself leads to a population-wide sense of grievance against the occupier where new recruits for the resistance emerge in the course of the annihilation of entire families, but there is no real success, as "successes become statistics. Their evaluation is totally disconnected from their real effects on the ground."[27] This form of annihilation has always been central to the process of genocide by European colonisers across contexts around the world. As recently cited by the Lemkin Institute in the context of Israel's continued genocide in

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[22] Ibid, p.20

[23] Ibid, p.67

[24] Chamayou G (2015) *Drone Theory*, Penguin, p.17

[25] Ibid, p.62

[26] Ibid, p.45

[27] Ibid, p.69

Palestine, the process of genocide is the pacification of populations through destruction, but also through a pattern of behaviour:

> *"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 by the oppressor's own nationals."*[28]

41. The purpose of the air-controlled violence is to establish a sense of omniscience or omnipotence over the captive population, that at all times the 'psychic imprisonment' through the drone becomes the all-seeing eye through which, "you will find out who is important in a network, where they live, where they get their support from, where their friends are."[29] However, this air-based annihilation is always devoid of any reasonable expectation of humanity – because although the killing is operated from a distance, the target population exists in a state of perpetual terror, under the ceaseless whirring rotators of the drone that are regularly error-strewn in their targeting.[30]

42. This was perhaps most recently evidenced in the video released by the Zionist Israeli Defence Forces of the last moments of the Hamas leader Yahya Sinwar. Too frightened to engage in hostilities with Hamas soldiers, a drone is flying into a decrepit building through an opening that was shelled open by the Israeli military. The drone enters a large room, hovering as it scans for signs of life, to find Sinwar sitting upright on an armchair, staring the drone directly in its camera – his eyes seemingly conveying a message of strength and resolve to those hiding behind the controllers that fly the drone. In a final act of defiance, Sinwar attempts to throw what seems to be a harmless stick at the drones, which moves in a terrified jerk away from the stick, seemingly frightened of what the Hamas leader might be capable doing with only one functional arm. As Chamayou writes, "a drone looks like the weapon of cowards."[31]

F. SETTLER COLONISATION AS A PART OF THE MACHINERY OF VIOLENCE

43. Settlements in settler colonial contexts are an integral part of the structure of violence inherent to the colonial state. Settlements operate not just as places of habitation but as mechanisms of territorial control, dispossession, and cultural erasure. These

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[28] Lemkin R (2005) *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, The Lawbook Exchange, p.79

[29] Chamayou G (2015) *Drone Theory*, Penguin, p.37

[30] Abraham Y (2024) *'Lavender': The AI machine directing Israel's bombing spree in Gaza*, +972 Magazine, https://www.972mag.com/lavender-ai-israeli-army-gaza/

[31] Chamayou G (2015) *Drone Theory*, Penguin, p.17

processes are deeply embedded in the violent logic of settler colonialism, which seeks to replace indigenous populations and establish a permanent settler presence. To understand how settlements contribute to the colonial state's structure of violence, it is essential to frame settler colonialism as an ongoing process rather than a historical event. According to Patrick Wolfe, settler colonialism is a "structure, not an event,"[32] where the primary goal is the elimination of indigenous societies to secure land for the settler population. This process is justified through various legal and ideological frameworks, such as the doctrine of *terra nullius*, which declared that land was "empty" if it was not being used in ways that European settlers deemed productive.[33]

44. The concept of structural violence, as articulated by Johan Galtung, refers to a form of violence where social structures or institutions harm individuals by preventing them from meeting their basic needs.[34] In settler colonial contexts, settlements are a form of structural violence as they disrupt indigenous ways of life, sever connections to ancestral lands, and erode traditional socio-political structures. In Canada, for example, the expansion of settlements has historically gone hand-in-hand with policies aimed at assimilating indigenous populations, such as the residential school system. These schools were explicitly designed to "kill the Indian in the child".[35] Settlements served as the material infrastructure that enabled these policies by creating spaces that excluded indigenous people or forced them into marginalised enclaves.

45. Settler colonialism is also deeply invested in the erasure of indigenous presence and histories, a process that settlements actively facilitate. As Wolfe argues, the settler colonial project is not merely about the occupation of land but also about the erasure of indigenous cultures and histories to replace them with settler narratives.[36] The construction of settlements often involves the renaming of places, the destruction of sacred sites, and the imposition of settler law and customs. In occupied Palestine, for instance, the expansion of Jewish settlements in the West Bank is often accompanied by the demolition of Palestinian homes and the appropriation of land, which not only displaces Palestinians physically but also erases their historical and cultural ties to the land.[37]

46. Settlements are also sites where direct violence against indigenous populations can occur. The appropriation of land for settlements often involves the use of military

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[32] Wolfe P (2006) *Settler Colonialism and the Elimination of the Native*, Journal of Genocide Research, 8(4), pp.387-409

[33] Veracini L (2010) *Settler Colonialism: A Theoretical Overview*, Palgrave Macmillan

[34] Galtung J (1969) *Violence, Peace, and Peace Research*, Journal of Peace Research, 6(3), pp.167-191

[35] Truth and Reconciliation Commission of Canada (2015) *Honouring the Truth, Reconciling for the Future*, Canadian Government

[36] Wolfe P (2006) *Settler Colonialism and the Elimination of the Native*, Journal of Genocide Research, 8(4), pp.387-409

[37] Pappe I (2006) *The Ethnic Cleansing of Palestine*, Oneworld Publications, p.80

force or paramilitary violence. In South Africa, during the apartheid era, the creation of settlements for white citizens was enforced through violent removals of Black South Africans, resulting in the loss of homes, livelihoods, and lives.[38] However, even in contexts where direct violence is less overt, the presence of settlements continues to inflict harm through the denial of resources, such as access to water, healthcare, or education. In Palestine, for example, the encroachment of Israeli settlements has resulted in the restriction of Palestinian movement, creating *Bantustans* where Palestinians are confined to overcrowded and under-resourced areas.[39]

Settler colonialism in Palestine

47. The Zionist occupation of Palestine is fundamentally rooted in a settler colonial framework that has persisted since the early twentieth century and continues to shape the landscape today. The processes of settler colonialism began since before the establishment of the State of Israel in 1948 through the forced migration of Jews onto Palestinian land through the British Mandate, and have been perpetuated through systematic land appropriation, settlement expansion, and the displacement of Palestinians. According to Dov Gavish:

    "[…] the roots of the modern survey system of Palestine set up by the military government are to be sought in the Balfour Declaration and its implications regarding land. The system was formally established in July 1920 with only one objective: to survey and map the lands of the country as demanded by the Zionist Organisation, in order to implement legally binding land settlement and registration of tenure rights."[40]

48. The Mandate in Palestine became intimately connected to surveying Palestinian land with the specific purpose of reconstituting the land through legal fictions. This permitted a new system of registration attributed to the migrating European Jews seeking to settle on land dispossessed of the Palestinian population.

49. The roots of the Zionist settler colonial project can be traced to before the events of 1948, known to Palestinians as the Nakba (catastrophe).[41] The creation of the State of Israel was accompanied by the expulsion of approximately 750,000 Palestinians from their homes and the destruction of over 500 villages.[42] This mass displacement was not merely incidental but was part of a deliberate strategy to secure a Jewish demographic majority on the land. Zionist leaders, such as David Ben-Gurion,

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[38] Mamdani M (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press

[39] Said E (1979) *The Question of Palestine* Vintage Books

[40] Gavish D (2005) *A Survey of Palestine Under the British Mandate*, cited in Barclay A (2018) *Mapping and "Truth": Communicating the Erasure of Palestine*, The Funambulist, https://thefunambulist.net/magazine/cartography-power/mapping-truth-communicating-erasure-palestine-ahmad-barclay

[41] Eghbariah R (2024) *Towards Nakba as a Legal Concept*, Columbia Law Review, vol.124, no.4, p.889

[42] Pappe I (2006) *The Ethnic Cleansing of Palestine*, Oneworld Publications, p.78

explicitly recognised that the establishment of a Jewish state would necessitate the removal of the indigenous Palestinian population to create a "land without a people for a people without a land."[43]

50. The Nakba represents the foundational act of settler colonial violence in Palestine, setting the stage for subsequent policies of land appropriation, demographic engineering, and settlement expansion. As Patrick Wolfe notes, settler colonialism is a structure, not an event, meaning that the displacement of Palestinians in 1948 was not a one-time occurrence but an ongoing process that continues to this day.[44] Settler colonialism in Israel-Palestine operates through both legal frameworks and ideological justifications. The Zionist project has relied heavily on the doctrine of *terra nullius*, the notion that the land was "empty" or underutilised, which justified its expropriation by Jewish settlers. This colonial logic is akin to that employed by European settlers in North America and Australia, where indigenous peoples were dispossessed based on the assumption that they did not "properly" use the land.[45]

51. Not all European Jews that arrived in a Palestine that was being emptied of its native inhabitants were willing to engage in the process of dispossession. Writing a chapter in *The Holocaust and the Nakba: A New Grammer of Trauma and History*, Alon Confino centres the story of Genya and Henryk Kowalski who arrived fresh from surviving a Nazi concentration camp to Haifa on a ship:

> *"We were shaved, we were naked, we did not cry. We did not know what a crematorium is, they lead you inside, you don't know where you are going. They told us, you see, look at the chimney there with smoke coming out, you are waiting to go inside. I never wanted to tell…In Haifa we got out [of the ship] and they took us to Pardes Katz…There were tents, and it was a hard winter in 1949, there were heavy rains and it was cold, our clothes were soaked, and we cried. So I decided I'm not staying here. The Jewish Agency promised to give us an apartment, we went to them and they gave us a key and we arrived at Jaffa. It was not far from the harbor, it was a house enclosed by a fence. We opened the gate, opened the door and went in and we couldn't believe our eyes…We were in shock. The house was beautiful but we didn't even enter the house because in the yard there was a round table set with plates, and as soon as we saw this…we were frightened. And besides the fear, we could not look, it hurt us, how could people, it reminded us how we had to leave the house and everything behind when the Germans arrived and threw us into the ghetto. And here it was just the same situation, and it was not in us to stay. I did not want to do the same thing that the Germans did. We left, returned the key, and stayed in Nachlat*

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[43] Masalha N (1992) *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought, 1882-1948*, Institute for Palestine Studies, pp.83-115

[44] Wolfe P (2006) *Settler Colonialism and the Elimination of the Native*, Journal of Genocide Research, 8(4), pp.387-409

[45] Veracini L (2010) *Settler Colonialism: A Theoretical Overview*, Palgrave Macmillan, pp.34-58

[Yehuda, south of Tel Aviv] where the family lived in a section of an orange depository located in the yard of a local family."[46]

52. Confino's essay acknowledges the extent to which the Kowalskis are exceptional – that there were very few who chose to exercise their own moral agency when faced with the prospect of dispossessing others in the way they were once dispossessed themselves, "their act spat in the face of history, that history that first made them refugees and then offered them in compensation in the form of profiteering from the refugeedom of others."[47] The Nakba was an operation of dispossessing Palestinians, as even children were permitted to loot the property of displaced Palestinians, as described by Avital Mossinsohn in his recollection of the aftermath of a Haganah attack on Balad al-Sheikh, "The next day I and two older children went to the village and got some loot. The Jews from Haifa and the kibbutz, too, went and took furniture and whatever was left. I took a pack of cards and a donkey."[48]

53. Writing of UN recognition of the state of Israel in 1949, Shahd Hammouri has written on the centrality of the Palestinian right to return to their original properties occupied by Israelis as being key to the acceptance of the Israeli state by the (very colonial) international community. Hammouri shows through officials that the Palestinian right of return was a *conditio sine qua non* (condition without which) Israel could not be recognised. This was affirmed as early as 1948 when Count Bernadotte, the official UN mediator between Israel and Palestine noted:

> *"No settlement can be just and complete if recognition is not accorded to the right of the Arab refugee to return to the home from which he has been dislodged by the hazards and strategy of the armed conflict between Arabs and Jews in Palestine. The majority of these refugees have come from territory which, under the Assembly resolution of 29 November [1947], was to be included in the Jewish State […] It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who have been rooted in the land for centuries."*[49]

54. The *conditio sine qua non* – of the right of return – cannot simply be ignored with the passage of time. The right of dispossessed Palestinians to maintain their entitlement to recover their land and property stands in stark contradistinction to the existence of Israel as a state – the lack of restitution cannot exist in conjunction with Israel's continued normalisation as a state that has dispossessed the native inhabitants of

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[46] Bashir B & Goldberg A (2017) *The Holocaust and the Nakba: A New Grammar of Trauma and History*, Columbia University Press, pp.135-136

[47] Ibid, p.136

[48] Ibid, p.141

[49] Hammouri S (2024) *A Forgotten Detail: The Right of Return was a Condition of the Establishment of the State of Israel*, Opinio Juris, https://opiniojuris.org/2024/03/11/a-forgotten-detail-the-right-of-return-was-a-condition-of-the-establishment-of-the-state-of-israel/

their rights. Of significance is UNGA Resolution ES-9/1 on 5 February 1982 which explicitly stated that Israel could no longer be considered a "peace-loving Member State":

> *"Declares that Israel's record and actions confirm that it is not a peace-loving Member State and that it has carried out neither its obligations under the Charter not its commitment under General Assembly resolution 273 (III) of 11 May 1949."*

55. Just over thirty years after the creation of the Zionist state, there was widespread recognition that Israel had not fulfilled the conditions for its existence as a Member State to be accepted. This was largely based on Israel's legal system facilitating an increased dispossession through a range of policies that began two days after the expulsion of 70,000 inhabitants of Lydda and Ramle on 15 July 1948, when the Minister of Finance was appointed to the new role of 'Custodian of Abandoned Property' – a fictional position created to steal Palestinian land and property. At the same time, the Ministry of Agriculture was permitted to 'lease' refugee land to settlers in the Kibbutzim[50] through the Absentees' Property Law of 1950, which allowed the state to confiscate the property of Palestinians who fled or were expelled during the Nakba. This law essentially rendered these refugees 'absentees' and legalised the seizure of their land. Further, the Law of Return (1950) and the Citizenship Law (1952) enabled Jews from around the world to immigrate to Israel and acquire citizenship, while denying the right of return to Palestinian refugees.[51]

56. The Six-Day War of 1967 marked a significant escalation in the Israeli settler colonial project, with Israel occupying the West Bank, Gaza Strip, East Jerusalem, and the Golan Heights. Following the war, Israel began establishing settlements in these territories in violation of international law, specifically UN Security Council Resolution 242 and the Fourth Geneva Convention, which prohibits the transfer of an occupying power's civilian population into the territory it occupies.[52] The settlement project in the West Bank has been central to Israel's settler colonial strategy, transforming the region into a fragmented landscape where Palestinian towns and villages are surrounded by ever-expanding Israeli settlements.

57. This policy has been driven by both state support and private settler organisations, often with the backing of the Israeli Defence Forces (IDF). According to the NGO Peace Now, there are currently over 450,000 Israeli settlers in the West Bank (excluding East Jerusalem), with around 150 settlements and numerous outposts.[53] Settlements are strategically located to maximise control over fertile agricultural land

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[50] Abu Sitta S (2009) Dividing the Spoils of War: Israel's Seizure, Confiscation and Sale of Palestinian Property, Palestine Land Society, p.6

[51] Khalidi R (1997) *Palestinian Identity: The Construction of Modern National Consciousness*, Columbia University Press, pp.156-178

[52] B'Tselem (2023*) Land Expropriation and Settlements*, www.btselem.org

[53] Peace Now (2022) *Settlement Watch Reports*, www.peacenow.org.il

and water resources while creating a contiguous Jewish presence that prevents the establishment of a viable Palestinian state.[54]

58. East Jerusalem, which was occupied and annexed by Israel in 1967, has been a focal point of Israel's settler colonial ambitions. The state has pursued a policy of Judaization — the systematic attempt to alter the demographic and cultural character of the city. This has involved the forced displacement of Palestinian residents, house demolitions, and the construction of Jewish neighbourhoods and settlements, such as Gilo, Har Homa, and Pisgat Ze'ev.[55] These settlements are intended to solidify Israeli control over the city and undermine Palestinian claims to it as the capital of a future state.

59. The Israeli settler colonial ambition and project can be summarised by the Hebraic word *nishul* – meaning dispossession – an active process of removing the Palestinian people from the homes and land (although Israelis prefer the word 'transfer'). The Israeli anthropologist and scholar Jeff Halper has written extensively of the process of *nishul* in his work *An Israeli in Palestine*, where he recounts that while this process of dispossession has taken many forms over the years, "all of them by necessity violent since the population being displaced can never agree to it or ever be reconciled with it."[56] Zionists saw themselves as 'returning natives' while using the words 'conquest' and 'colonization' to describe their settler colonisation.[57] Halper connects how dispossession took place in different ways, first from displacement to depopulation, finally to confinement:

> *"After the ethnic cleansing which accompanied the establishment of an expanded Israel, nishul took the form of removing Palestinians from vast tracts of the country and concentrating them in small, disconnected, and densely packed enclaves or cantons. To be sure, policies to induce emigration remained in place, targeting in particular the Palestinian middle classes, but the thrust of dispossession and de-Arabization shifted from expulsion to confinement."* [58]

60. Beyond physical settlements, Israel's settler colonial project is maintained through a range of structural mechanisms that perpetuate control over the Palestinian population. The construction of the Separation Barrier (often referred to as the "Apartheid Wall") since 2002 has had profound implications for Palestinians. The barrier, which snakes deep into the West Bank, effectively annexes large swathes of Palestinian land, separating communities from their agricultural fields, workplaces,

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[54] Amir M (2021) *The Settlements and the Occupation: Legal and Political Dimensions*, Routledge, pp.45-67

[55] Klein M (2014) *Lives in Common: Arabs and Jews in Jerusalem, Jaffa and Hebron*, Oxford University Press, pp.203-225

[56] Halper J (2008) *An Israeli in Palestine: Resisting Dispossession, Redeeming Israel*, Pluto Press, p.100

[57] Ibid, p.104

[58] Ibid, p.125

and schools. It serves not only as a physical manifestation of Israeli territorial control but also as a tool of fragmentation that isolates Palestinians from each other and from the outside world.[59] The restrictions on movement also serve to consolidate Israel's control over the West Bank and its settlements, reinforcing the spatial fragmentation of Palestinian Territories.[60] According to the former ad hoc judge to the International Court of Justice, John Dugard, in his role as Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian Territories occupied by Israel:

> *"The Wall does not follow the Green Line, that is the 1967 boundary between Israel and Palestine which is generally accepted as the border between the two entities. Instead, it follows a route that incorporates substantial parts of Palestine within Israel. At present the Wall intrudes six to seven kilometres within Palestine, but there are proposals to penetrate still deeper into Palestinian territory in order to include the settlements of Ariel, Immanuel and Kedumim. In some places the winding route creates a barrier that completely encircles Palestinian villages while at many points it separates Palestinian villages from the rest of the West Bank and converts them into isolated enclaves. Qalqiliya, a city with a population of 40,000, is completely surrounded by the Wall and residents can only enter or leave through a single military checkpoint open from 7 a.m. to 7 p.m. Palestinians between the Wall and the Green Line will effectively be cut off from their land and workplaces, schools, health clinics and other social services. Much of the Palestinian land on the Israeli side of the Wall consists of fertile agricultural land and some of the most important water wells in the region. The Wall is constructed on Palestinian lands expropriated by Israeli military order, justified on grounds of military necessity. Many fruit and olive trees had been destroyed in the course of building the barrier. B'Tselem, a leading Israeli human rights NGO, estimates that the barrier will cause direct harm to at least 210,000 Palestinians living in 67 villages, towns and cities."*[61]

61. Israel's control over Palestinian resources, particularly water and arable land, has been a key aspect of its settler colonial strategy. According to Amnesty International, Israel exploits approximately 80% of the West Bank's water resources for its own use, leaving Palestinians with limited access. The economic strangulation of the Palestinian territories has resulted in what Sara Roy terms "de-development" — a process by which economic growth is systematically impeded, leaving Palestinians dependent on Israel.[62] In the view of Jean Ziegler, the Special Rapporteur on the Right to Food:

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[59] Weizman E (2007) *Hollow Land: Israel's Architecture of Occupation*, Verso, pp.45-82

[60] Hammami R (2000) *Gender, Nakba and Nation: Palestinian Women's Presence and Absence in the Narration of 1948 Memories*, Interventions: International Journal of Postcolonial Studies, 2(3), pp.318-320

[61] Dugard J (2003) *Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967*, UN Doc E/CN.4/2004/6

[62] Roy S (1995) *The Gaza Strip: The Political Economy of De-Development*, Institute for Palestine Studies, pp.147-172

> *"The confiscation of land, extension of settlements and settler-only roads, and the building of the security fence/apartheid wall, where this deprives thousands of Palestinians of their lands, homes, crops and means of subsistence, is a violation of the right to food. The right to food requires the respect of article 49 of the Fourth Geneva Convention which prohibits settlement, given that settlements by their nature lead to the confiscation of Palestinian lands and other resources. If there were no settlements, then there would be no need for the harsh internal closures that restrict movement inside the OPT."*[63]

62. Since 2007, the blockade of Gaza has been another mechanism of structural violence that enforces Israel's settler colonial goals. The blockade restricts the movement of goods and people, effectively isolating Gaza from the outside world. This policy has led to severe economic hardship, with high levels of poverty, unemployment, and food insecurity. The ongoing blockade is accompanied by periodic military assaults that further devastate Gaza's infrastructure, as seen in the 2008-09, 2014, and 2021 offensives.[64]

63. The settler colonial project in Israel is also underpinned by religious and ideological narratives that justify the appropriation of Palestinian land. The concept of Greater Israel, which envisions Jewish sovereignty over all historical Palestine, has been a driving force behind the expansion of settlements. Religious Zionism, in particular, has played a crucial role in mobilising support for the settlement movement, with settlers viewing their presence in the West Bank as a fulfilment of Biblical prophecy.[65] Despite the entrenched nature of Israel's settler colonial project, Palestinian resistance continues to challenge its legitimacy. This resistance takes multiple forms, ranging from armed struggle to peaceful protests, legal battles, and international advocacy.[66]

Settlers as paramilitaries central to the machinery of Zionist violence and Palestinian dispossession

64. As mentioned above, recognition of Israel as a member of the United Nations was predicated on the *conditio sine qua non* that Palestinians dispossessed of their land and property must be permitted to return. The two cannot exist at the same time – Israel cannot legally be permitted to benefit from land acquired unlawfully through the dispossession of Palestine, and thus holds on to land that can be rightfully claimed. This fact alone is uncontroversial due to the consistency with which Palestinians have restated their case on the right of return – individually and

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[63] Ziegler J (2003) *The right to food Report by the Special Rapporteur, Jean Ziegle*r, UN Doc E/CN.4/2004/10/Add.2

[64] Feldman I (2018) *Life Lived in Relief: Humanitarian Predicaments and Palestinian Refugee Politics*, University of California Press, pp. 102-125

[65] Aran G (2013) *Kookism: The Roots of Gush Emunim, Jewish Settler Ideology*, Israel Studies, 18(1), 29-60, pp.35-38

[66] Barghouti O (2011) *Boycott, Divestment, Sanctions: The Global Struggle for Palestinian Rights*, Haymarket Books, pp. 23-47

collectively – a *sui generis* right. In 1975, the Committee on the exercise of the inalienable rights of the Palestinian people emphasised that:

> *"[T]he inalienable rights of the Palestinian people to self-determination could be exercised only in Palestine. Consequently, the exercise of the individual right of the Palestinian to return to his homeland was a conditio sine qua non for the exercise by this people of its rights to self-determination, national independence and sovereignty."*[67]

65. According to the scholar of international law, Shahd Hammouri, the right to return for Palestinians displaced from the mandate period to the created state of Israel in 1948 is *ipso facto* recognised by the international community[68] – with the United Nations Relief and Works Agency (UNRWA) only ever having been intended as a temporary solution until such time that the right of return could be exercised.

66. There are layers of dispossession that Palestinians have been consistently asserting their rights over – ones that are crucial to understanding their resistance efforts through political, non-violent and violent means:

    a. The dispossession of Palestinian land from the British Mandate period through to the Nakba in 1948. During the Mandate period the first Zionist settlement of Kfar Etzion was built in the West Bank in 1927, it was destroyed in 1948, only to be rebuilt in 1968[69], the same year that the first settlement was established in the major Palestinian city of Hebron. This land still belongs to the displaced Palestinian people – as evidenced by the refusal of Gertha and Henrik Kowalski from occupying the home of a Palestinian family when arriving in Palestine from Nazi concentration camps. This land and property belonged to Palestinians that have never forgone those rights.
    b. A secondary layer to the dispossession is the land that Israel occupied in the West Bank, including East Jerusalem, Gaza, and the Golan Heights after the Six-Day War in 1967. This land was occupied by the Zionist forces, but further had their

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[67] The Committee on the Exercise of the Inalienable Rights of the Palestinian People, 'The Right of Return of the Palestinian People' (1978), UN Doc. ST/SG/SER.F/2.

[68] Hammouri writes: Such recognition is implied in prior resolutions recognizing their rights as refugees. According to the UNHCR, despite falling under a separate regime administered by the UNRWA, Palestinian refugees Articles 1C, 1E, and 1F of the 1951 Refugee Convention apply to Palestinians who qualify as refugees under Article 1D. This recognition includes those who were identified as refugees in the year 1951, and those displaced by subsequent events. UNHCR, 'Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees' (2017), UN Doc. HCR/GIP/16/12, at para.17; this position is further affirmed by the CJEU in *Case C-31/09 Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal* (2010) and *Case C-364/11 Mostafa Abed El Karem El Kott, Chadi Amin A Radi, Hazem Kamel Ismail v Bevándorlási és Állampolgársági Hivatal* (2012).

[69] Eldar A & Zertal I (2007) *Lords of the Land: The War Over Israel's Settlements in the Occupied Territories, 1967-2007*, Nation Books

own civilian population settle on the occupied territory in contravention of international law.[70]

c. In 1971, Ariel Sharon, then head of the IDF's Southern Command, initiated a programme to encourage settlements in Gaza.[71] From that time through to 1984, settlements in the West Bank and Gaza dramatically increased from 5,000 after the Six Day War, to 44,000 in the occupied territories.[72] This was not a series of random settlement encroachments, but rather formed part of a systematic expansion that became a central element of the Likud party's election win with then Prime Minister Menachem Begin making settlements a part of official government policy.[73] By 1983, the Israeli Civil Administration was established over the occupied territories – explicitly integrating settlement policies into the military administration.[74]
d. After Oslo I in 1993 was signed with the creation of the Palestinian Authority, the settler population in the West Bank increased 110,000 to 200,000.[75] These settlements were provided with support by the Israeli government after the Oslo II Accord divided 60% of the West Bank into three areas – allowing for further settlement expansion.[76] By 2009, the settler population had increased to 300,000.
e. The most recent period of structural violence and dispossession of the Palestinian people came between 2012 through to 2017. In April 2012 the Israeli government began the process to legalise settlement outposts previously considered illegal under Israeli law[77], with the Levy report concluding that the West Bank is not an occupied territory, thereby recommending legalising of all outposts.[78] By 2017, the Israeli Knesset took the decision to pass the Land Regularisation Law, which retroactively legalised thousands of settler homes built on private Palestinian land[79], leading to the settler population increasing to 400,000.

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[70] UN Security Council Resolution 2334. (2016). *On the Middle East Peace Process*.

[71] Gorenberg G (2006) *The Accidental Empire: Israel and the Birth of the Settlements, 1967-1977*, Times Books

[72] Peace Now (2022) *Annual Settlement Construction Report*, https://peacenow.org.il/en/settlements-watch/settlements-data

[73] Sprinzak E (1991) *The Ascendance of Israel's Radical Right*, Oxford University Press

[74] Shehadeh R (1985) *The Law of the Land: Settlements and Land Issues under Israeli Military Occupation*, PASSIA

[75] B'Tselem (2017) *Statistics on Settlements and Settler Population*, https://www.btselem.org/settlements/statistics

[76] AbuZayyad Z & Qazzaz H (1997) *The Palestinian Economy and the Oslo Process*, Journal of Palestine Studies, 26(4), pp.52-63

[77] Staff (2012) *Netanyahu announces committee to legalise three West Bank outposts*, Times of Israel, https://www.timesofisrael.com/committee-to-legalize-west-bank-outposts-formed-by-cabinet/

[78] Levy, E, Shapira T & Baker A (2012) *The Levy Commission Report on the Legal Status of Building in Judea and Samaria*, The Levy Commission, https://assets.nationbuilder.com/truthmustbetold/pages/93/attachments/original/1450900045/The_Levy_Commission_Report.pdf?1450900045

[79] Sedecca N (2017) *Sanctioning land expropriation in the Occupied Palestinian Territory – Israel's new 'Land Regularisation Law''*, Lawyers for Palestinian Human Rights, https://lphr.org.uk/blog/sanctioning-land-expropriation-occupied-palestinian-territory-israels-new-land-regularisation-law/

67. The history of settler colonisation and subsequent encroachments by the Zionist regime have today resulted in a situation where today there are 475,000 settlers in the West Bank, excluding East Jerusalem. Israeli settlers are not a homogeneous group; they range from secular individuals seeking affordable housing to religious nationalists driven by ideological motives. Within this spectrum, certain groups are involved with organisational structures and exhibit behaviours characteristic of paramilitary entities.

68. Many settlements are established with integral local defence teams, sometimes referred to as 'rapid response teams,' which are composed of armed residents trained to respond to security incidents. These teams often operate under the guidance of a settlement's security coordinator, who liaises directly with the Israeli Defence Forces (IDF).[80] The security coordinators are typically residents appointed by the IDF and are trained and granted access to military equipment and intelligence. Furthermore, some settler groups have formed militia-like organisations. For example, the *Hilltop Youth* is a loosely organised group of young settlers known for establishing illegal 'outposts' and engaging in confrontations with Palestinians and Israeli security forces alike.[81] Their activities are often coordinated and exhibit a sophisticated level of organisation beyond spontaneous civilian actions:

> *"The military avoids confronting violent settlers as a matter of policy, although soldiers have the authority and duty to detain and arrest them. Israeli security forces routinely enable settler violence against Palestinians and their property. As a rule, the military prefers to remove Palestinians from their own farmland or pastureland rather than confront settlers, using various tactics such as issuing closed military zone orders that apply to Palestinians only, or firing tear gas, stun grenades, rubber-coated metal bullets and even live rounds. Sometimes, soldiers actively participate in the settler attacks or look on from the sidelines."*[82]

69. Incidents involving violence perpetrated by Israeli settlers against Palestinians have been well-documented. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), there has been a significant increase in settler-related violence over the past decade.[83] These incidents include physical assaults on Palestinians, property damage, agricultural sabotage and arson attacks. These actions are not random but often appear to be part of a broader strategy to intimidate and

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[80] B'Tselem (2017) *The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, B'Tselem, https://www.btselem.org/publications/summaries/201605_occupations_fig_leaf

[81] International Crisis Group (2020) *Averting War in Gaza*, Middle East Report N°202, https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/israelpalestine/b60-averting-war-gaza

[82] B'Tselem (2021) *Settler Violence = State Violence*, B'Tselem, https://www.btselem.org/settler_violence

[83] OCHA (2020) *Protection of Civilians Report*. United Nations Office for the Coordination of Humanitarian Affairs, https://www.ochaopt.org/publications/protection-of-civilians

displace Palestinian communities.[84] The 'Price Tag' policy is a manifestation of this approach, wherein settlers retaliate against Palestinians and Israeli security forces for any action perceived as threatening to the settlement enterprise.[85]

70. While the IDF is responsible for maintaining security in the occupied territories, there are instances where settlers operate with a degree of autonomy and impunity. Reports have indicated that settlers sometimes coordinate their activities with the IDF or receive assistance, whether directly or indirectly. For example, during clashes in the village of Burin in 2019, settlers attacked Palestinian residents in the presence of IDF soldiers. Instead of intervening to stop the settlers, the soldiers reportedly dispersed the Palestinians using tear gas and rubber bullets.[86] Raz Segal, writing on the implications of the Holocaust and genocide on the continued violence by settlers, begins his journal piece with the following vignette:

> *"It was the day after the Jewish holiday of Purim, and Jewish settlers stormed Huwara, a Palestinian town in the Israeli-occupied West Bank, and began dancing in celebration of the holiday. Israeli soldiers first joined them, but soon stood by as the settlers, armed with rocks, axes, and pepper spray, set upon a Palestinian family in a parked car. Footage from a security camera shows the settlers attacking the car and the family from all sides. The father, Omar, eventually managed to start the car, pull back, and speed away, but their ordeal continued: other settlers pursued them with a car and fired on them with guns. The grandfather suffered serious injuries to his head, and his two-year-old granddaughter, with her eyes burning from the pepper spray, could not open them in the hospital; in pain, in shock, in trauma, she could only scream.*
>
> *The attack came just a week after settlers descended on Huwara in a carnage of violence reported as a pogrom, a term used historically to describe violence against Jews, including during and immediately after the Holocaust. The attack so resembled horrific images of pogrom violence, especially the burning of parts of the town, that the term appeared even in the mainstream Israeli press."*[87]

71. The Israeli government's support for settlements extends beyond security coordination. Settlements receive substantial state funding for infrastructure, education, and housing incentives. Additionally, the government has been criticised for failing to hold settlers accountable for acts of violence against Palestinians.

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[84] Yesh Din (2019) *The Lawless Zone: The Transfer of Policing and Security Powers to the Civilian Security Coordinators in the Settlements and Outposts*, Yesh Din, https://www.yesh-din.org/en/the-lawless-zone-the-transfer-of-policing-and-security-to-the-civilian-security-coordinators-in-the-settlements-and-outposts/

[85] Yesh Din (2015) *Never enough evidence to convict price tag attackers,* Yesh Din, https://www.yesh-din.org/en/never-enough-evidence-to-convict-price-tag-attackers/

[86] Human Rights Watch (2019) *Born Without Civil Rights: Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank*, Human Rights Watch, https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress

[87] Segal R (2024) *Settler Antisemitism, Israeli Mass Violence, and the Crisis of Holocaust and Genocide Studies*, Journal of Palestine Studies, vol.53, no.2, p.50

According to a report by the Israeli human rights organisation Yesh Din, between 2005 and 2019, over 91% of investigations into ideologically motivated offences against Palestinians were closed without indictment.[88] This lack of accountability may embolden settlers to continue or escalate their activities.

72. In his essay for the London Review of Books, the British Israeli architect Eyal Weizman wrote *Exchange Rate* less than a month after the 7 October attacks, highlighting the specific role that dispossession has played for Palestinians resisting from Gaza. In the Spring of 1956, a group of Palestinian fighters entered the kibbutz of Nahal Oz after overcoming a ditch the Israelis had constructed to separate Gaza from the occupied land. The Palestinian fighters killed an Israeli security officer – returning back to Gaza with his body. Wiezman quotes the then chief of general staff for Israel, Moshe Dayan in response to the killing of the officer:

> *"Why should we complain of their hatred for us? Eight years they sat in the refugee camps of Gaza, and saw in front of their eyes how we turned the lands and the villages in which they and their forefathers once dwelled into our homeland."*[89]

73. What Weizman evidences is how the ditch that was initially constructed to keep Palestinians from their dispossessed land, eventually became solidified through a 'complex system of fortifications', allowing for the formalisation of what Israel called 'frontier settlements'. 67 years after Gazan fighters carried out an operation against the settlement Nahal Oz, their descendants returned in a larger and more audacious operation on 7 October 2023:

> *"Hamas struck at all the elements of this interlinked system. Nahal Oz, the closest settlement to the fence, was one of the attack's focal points. The term 'Nahal' refers to the military unit that established the frontier settlements. Nahal settlements started life as military outposts and were supposed to turn into civilian villages, mostly of the kibbutz type. But the transformation is never complete, and some residents are expected to double as defenders when the time comes."*[90]

74. 'Frontier settlements' were not simply villages or kibbutzim, they were formed explicitly in the model of an outpost to defend Israel as it increasingly encroached on Palestinian land. Of key importance, is the centrality of settler colonisation as a programme that is initiated and maintained by the Zionist state. In an attempt to create a legal fiction, Israel begin to try and create a distinction between 'settlements' and 'outposts', a distinction considered by the International Court of Justice in its 2024 Advisory Opinion:

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[88] Yesh Din (2022) *Data Sheet, December 2021: Law Enforcement on Israeli Civilians in the West Bank (Settler Violence)*, Yesh Din, https://www.yesh-din.org/en/data-sheet-december-2021-law-enforcement-on-israeli-civilians-in-the-west-bank-settler-violence/

[89] Wiezman E (2023) *Exchange Rate*, London Review of Books, https://www.lrb.co.uk/the-paper/v45/n21/eyal-weizman/exchange-rate

[90] Ibid

> *"The Court is aware that a distinction is sometimes made between "settlements" and "outposts", the latter having been established in contravention of domestic Israeli law. In the Court's view, this distinction is immaterial for the purpose of ascertaining whether the communities in question form part of Israel's settlement policy. What matters is whether they are established or maintained with Israel's support. In this regard, the Court notes that Israel regularly takes steps retroactively to legalize outposts and that it provides them with the infrastructure necessary for their maintenance."*[91]

75. The infrastructure that is made available to settlers by the Zionist state, as evidenced above, include arms and training so that settlers are able to operate as paramilitaries that maintain and defend Israel as outposts. From these positions, settlers regularly make incursions further into Palestinian territories. The IDF plays a role in this maintenance – reminding us of Wolfe's formulation that settler colonialism is a structure, not an event, and thus **settlements are central to the machinery of Zionist violence**.

G. *DISPOSSESSION RESISTANCE* IN PALESTINE

Fighting Settler Colonialism in Palestine

76. Resistance to dispossession of Palestinian land and properties began as a process well before the Nakba. The Palestinian Arab Revolt of 1936–1939 was the first significant staging-post in the uprising against British colonial rule and the increasing influx of Zionist settlers into Mandatory Palestine.[92] This revolt was largely driven by the displacement and dispossession experienced by the indigenous Arab population, exacerbated by British policies that facilitated Jewish immigration and land acquisition.[93] Such policies significantly altered the demographic and economic landscape, resulting in widespread resentment among Palestinian Arabs.[94]

77. By the early 1930s, substantial tracts of land had been purchased by Zionist organisations, often displacing Palestinian peasants (*fellahin*). The Landless Arab Inquiry Commission of 1930 noted that these land transfers frequently rendered rural Palestinian communities landless and vulnerable to poverty.[95] This landlessness,

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[91] ICJ (2024) *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory Including East Jerusalem*, International Court of Justice Advisory Opinion, #111 https://icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf

[92] Kanafani G (1972) *The 1936-39 Revolt in Palestine*, Tricontinental Society, Committee for a Democratic Palestine

[93] Swedenburg T (2003) *Memories of Revolt: The 1936-1939 Rebellion and the Palestinian National Past*, The University of Arkansas Press

[94] Khalidi R (2006) *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, Oneworld, p.121

[95] Porath Y (1974) *The Emergence of the Palestinian-Arab National Movement, 1918-1929*, Frank Cass, pp.223-225

compounded by the socio-economic pressures of British rule, fuelled growing unrest, particularly as Jewish immigration surged in response to European anti-Semitism during the 1930s.[96]

78. The Arab Revolt began in 1936 with a general strike, encompassing various sectors such as transportation and commerce. The Arab Higher Committee, led by notable figures such as Hajj Amin al-Husseini, demanded the cessation of Jewish immigration, prohibition of land sales to Zionists, and the establishment of a representative national government.[97] As the revolt progressed, it escalated into armed resistance, targeting both British administrative structures and Jewish settlements. The British responded with harsh measures, including mass arrests, demolitions, and the execution of suspected rebels.[98] The revolt was suppressed at great cost to the Palestinian Arab community. Approximately 5,000 Palestinians were killed, and thousands more were wounded or imprisoned. The revolt underscored the depth of Palestinian resentment towards their displacement and the collaboration between the British and Zionists.[99]

79. It was really the repression of the Arab Revolt in 1936-1939 that further diminished the population of Palestine, reducing the total population of Arab men by 10% who were either killed, wounded, imprisoned or exiled. The British sent a hundred thousand troops and air power to decimate the resistance – all the while Jewish immigration to escape the Nazis doubled – such that the proportion of Jews in Palestine settled from 18% in 1932, to 31% of the country's total population in 1939. The change in demographic gave the Zionists the necessary manpower to carry out the ethnic cleansing of Palestine in 1948.[100] The British army played the central role in ensuring that Palestinian resistance to Zionism was completely demobilised by a brutal system of killing and execution:

> *The refinements of callousness and cruelty employed went well beyond summary executions. For possession of a single bullet, Shaykh Farhan al-Sa'di, an eighty-one-year-old rebel leader, was put to death in 1937. Under the martial law in force at the time, that single bullet was sufficient to merit capital punishment, particularly for an accomplished guerrilla fighter like al-Sa'di. Well over a hundred such sentences of execution were handed down after summary trials by military tribunals, with many more Palestinians executed on the spot by British troops. Infuriated by rebels ambushing their convoys and blowing up their trains, the British resorted to tying Palestinian prisoners to the front of armored cars and locomotives to prevent rebel*

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[96] Segev T (2001) *One Palestine, Complete: Jews and Arabs under the British Mandate*, Metropolitan Books, p.355

[97] Mattar P (1988) *The Mufti of Jerusalem and the Politics of Palestine*, State University of New York Press, pp.96-99

[98] Pappe I (2006) *A History of Modern Palestine: One Land, Two Peoples*, Cambridge University Press, p.139

[99] Khalidi R (2006) *The Iron Cage: The Story of the Palestinian Struggle for Statehood*, Oneworld, p.134

[100] Khalidi R (2024) *The Hundred Years' War on Palestine*, Profile Books, p.4

attack, a tactic they had pioneered in a futile effort to crush resistance of the Irish during their war of independence from 1919 to 1921.[101]

80. Once the Palestinians had been dispossessed of their land after the Nakba, the resistance did not simply vanish entirely. As Yezid Sayigh evidences in his work *Armed Struggle and the Search for State*, from 1949 onwards, there was a consistent move to continue resistance in order to establish Palestinian self-determination. Sayigh argues that armed struggle was not merely a military campaign but a mechanism through which Palestinians constructed a political identity, institutional frameworks, and organisational legitimacy. The struggle provided a dynamic for building parastatal entities, creating a political class, and asserting autonomy within the regional and international arenas.[102] His book focuses on four periods that have come to symbolise the way the resistance has operated; marked by Zionist wars of 1948, 1967, 1973, and 1982, and culminating in the Oslo Accords of 1993.

81. The 1948 *Nakba* (the catastrophe), devastated Palestinian society, erasing its agrarian economy, dispersing its population, and dismantling its socio-political structures. The loss of territorial and economic bases transformed Palestinians into a fragmented refugee community, subjected to rival Arab authorities and disconnected from the nascent Arab state systems. The first major attempts at armed resistance emerged in the 1950s, notably under the influence of the Arab Nationalist Movement (ANM) and the eventual formation of Fatah in the late 1950s. Fatah co-founder Khalil al-Wazir emphasised that armed struggle was integral to reclaiming identity and autonomy, that it was:

> *"a central, comprehensive and multi-dimensional process. Its sum-total embodies the various facets and activities of the Palestinian people as a whole, whether those facets and activities are political, social, economic, military, or cultural. This is how we understand the armed struggle. This is also how we have proceeded to rebuild our people and reassert its national identity, in order to achieve its aims of return and liberation of the land. We understand [the armed struggle] as an integrated process involving three dimensions: organization, production, and combat."*[103]

82. For the next forty years Sayigh charts the impact of the 1967 war on Palestine and the ascendency of guerilla movements, leading to a period where genuine attempts were made to incrementally realise a Palestinian state – through short-term expediency and long-term ambitions. The short-term expediency contributed to the conditions being ripe for the First Intifada – born out of the lack of options the stagnating political reality posed for Palestinians. On 8 December 1987, a Zionist purposely drove an agricultural truck into two cars carrying Palestinian workers returning to

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[101] Ibid, p.44

[102] Sayigh Y (1997) *Armed Struggle and the Search for State: The Palestinian National Movement, 1949-1993*, Oxford University Press, p.viii

[103] Ibid, p.668

Gaza after working inside Israel – killing four and sparking outrage across the Palestinian territories and highlighting the disposability of Palestinian life.

83. The First Intifada marked a departure from the traditional reliance on armed struggle. This grassroots uprising was characterised by mass civil disobedience, demonstrations, and economic boycotts. While initially non-violent, escalating Israeli repression and internal divisions within the Palestinian movement led to the re-emergence of violent resistance. During this period, *Harakat al-Muqawamah al-Islamiyyah* (Hamas) emerged as a significant force, challenging the PLO's dominance. Founded in 1987 as an offshoot of the Muslim Brotherhood, Hamas combined Islamic ideology with militant tactics, offering an alternative vision for Palestinian resistance.[104] Sayigh notes that the rise of Hamas reflected broader societal shifts and frustrations with the PLO's perceived ineffectiveness and corruption.

84. Israeli authorities responded with harsh repression, including mass arrests, administrative detentions, and the use of lethal and non-lethal force, which escalated the conflict. Tactics such as curfews, deportations, and punitive economic measures further alienated the Palestinian population and pushed many towards more violent forms of resistance. By 1989, the extensive use of undercover units by the Israeli Defence Forces (IDF) and the relaxation of rules of engagement, including the use of plastic bullets, had politicised segments of the movement.

85. The events of the First Intifada brought together a negotiated peace between the Palestine Liberation Organization and the Zionist state. In the imagination of PLO leader Yasser Arafat, the purpose of this was to clear the way for the emergence of a fully sovereign Palestine state. Since then, the creation of the Palestine Authority (PA) and the failure of the Oslo Peace process has only brought into sharper focus the lack of desire on the side of the Zionist to grant any form of autonomy to the Palestinians. According to Rashid Khalidi:

> *"In the quarter century since the Oslo agreements, the situation in Palestine and Israel has often been falsely described as a clash between two near-equals, between the state of Israel and the quasi-state of the Palestinian Authority. This depiction masks the unequal, unchanged colonial reality The PA has no sovereignty, no jurisdiction, and no authority except that allowed it by Israel, which even controls a major part of its revenues in the form of customs duties and some taxes. Its primary function, to which much of its budget is devoted, is security but not for its people: it is mandated by US and Israeli dictates to provide security for Israel's settlers and occupation forces against the resistance, violent and otherwise, of other Palestinians. Since 1967, there has been one state authority in all of the territory of Mandatory Palestine: that of Israel. The creation of the PA did nothing to change that reality, rearranging the deckchairs on the Palestinian Titanic, while providing Israeli colonization and occupation with an indispensable Palestinian shield."*[105]

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[104] Ibid, p.631

[105] Khalidi R (2024) *The Hundred Years' War on Palestine*, Profile Books, p.204

86. In the period between the signing of Oslo in 1993 through to 2000, tensions were extremely high between the PA and Hamas – as the PA continually acted as a line of defence for Israel. This came to head in September 2000 when Ariel Sharon visited Masjid al-Aqsa surrounded by security personnel. There was a great increase in violence during the Second Intifada, "the eight-plus years of the First Intifada, some 1,600 people were killed, an average of 177 per year (12 percent of them Israelis). In the calmer four years that followed, 90 people died, or about 20 per year (22 percent of them Israelis). By contrast, the eight years of the Second Intifada left 6,600 dead, an average of 825 per year— about 1,100 Israelis (just under 17 percent) and 4,916 Palestinians, who were killed by Israeli security forces and settlers (over 600 Palestinians were also killed by other Palestinians). Most of the Israelis who died in the latter period were civilians killed by Palestinian suicide."[106]

87. Acts of resistance must be understood within the context of the occupation and dispossession Palestinians have suffered since the period of the British Mandate to the contemporary moment. In December 2023, the UN Special Rapporteur for the Palestinian Territories, Francesca Albanese, was interviewed by Mike Wagenheim for i24NEWS, where she clarified the international law position in relation to armed resistance by Palestinians. Taking care to explain that any targeting or injuring of civilians – including taking civilians as hostages – were not legitimate acts of resistance, she maintained that "an illegitimate act of resistance doesn't delegitimize the resistance itself." In the same interview Albanese clarifies that the killing of IDF soldiers by Hamas cannot be considered an international crime, as the right of resistance of Palestinians is linked to the oppressive conditions of their lives.[107]

88. When considering the Palestinian right to dispossession resistance within the boundaries of morality, ethics, religion and international law, it is important for groups to know what military targets look like in the process of seeking restitution for what they have lost. The Palestinian struggle is not one that is limited merely to establishing an autonomous sovereign state, but also one that has consistently pushed for the right of return of refugees and displaced (and dispossessed) Palestinians inside the Zionist state, within the West Bank and Gaza, and those who are living as refugees within the international diaspora. With that in mind, it is important to understand the nature of dispossession and settlements across the Zionist occupied territories.

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[106] Ibid, p.213

[107] Wagenheim M (2023) *'An illegitimate act of resistance doesn't delegitimize the resistance itself' UN special rapporteur tells i24NEWS*, i24NEWS, https://www.i24news.tv/en/news/israel-at-war/1702542816-an-illegitimate-act-of-resistance-doesn-t-delegitimize-the-resistance-itself-un-special-rapporteur-tells-i24news

The legitimacy of *dispossession resistance* against settlers and settlements as well as the Zionist state

89. The most significant treaty relating to the self-determination of the Palestinian people is the 1977 Additional Protocol I to the Geneva Conventions. Although this treaty has never been ratified by Israel, it is commonly accepted that the convention has attained the status of customary international law. The relevant article pertinent to Palestinian self-determination is under Article 1(4),

> *4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."*

90. To understand the fundamental nature of the Palestinian resistance, it is to understand the Zionist state as a racist apartheid regime that has established a settler colonial system of domination as well as an alien occupation over the Palestinian people. Palestinian self-determination is rooted in a dispossession resistance that seeks to reclaim what has been lost, through a multitude of means, armed resistance included.

91. Borrowing from Shahd Hammouri's detailed legal opinion *The Palestinian People Have the Right to Resistance by All means Available at their Disposal*, this report will set out to summarise her arguments in setting out the position under international law:

> *"Resistance by the Palestinian people against an illegal occupying power by all means available at their disposal is a legitimate act. To deprive peoples of such a right is to deny their right to equality and human dignity in contravention to the UN Charter. The legitimacy of resistance is prompted by the gravity of the illegality at hand, the absence of political will to seize the international community on the matter, and the asymmetrical position in which the subjugated peoples are placed."*[108]

92. Hammouri's opinion rests on five legal contentions: (1) that the Palestinian people are subjects of international law who have an inherent right to self-determination; (2) efforts to gain independence from an occupying power are legitimate in the exercise of that right; (3) resistance is consistent with international law on the use of force as a people are exercising their collective self-defence; (4) international humanitarian law permits armed resistance as the Palestinian people are not obliged to show allegiance to the occupying colonial power and may oppose it; finally (5) third party states are obliged to recognise the legitimacy of the Palestinian resistance, while Israel is obliged to refrain from persecuting Palestinians for their resistance – they are further

[108] Hammouri S (2023) *The Palestinian People Have the Right to Resistance by All means Available at their Disposal*, Law for Palestine, p.4

not permitted to cite self-defence to justify their own breaches of international law.[109] As Hammouri writes, "The Israeli occupation of Palestine is illegal. The premises of this illegality are multifaceted. First, it is a form of alien domination and subjugation, otherwise referred to as colonisation. While there are no clear criteria for what alien domination and subjugation entails, elements of systemic exploitation, dispossession, fragmentation, inhumane acts, and discrimination are common indicators."[110]

93. Setting out her argument further, Hammouri cites, the International Court of Justice Advisory Opinion in Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, who made it clear that colonisation is illegal[111] – but further that self-determination is a *jus cogens* right with *erga omnes* effects.[112] With the fundamental status of the illegality established, the opinion goes further to show that a line of UNGA resolutions, the Additional Protocol I to the Geneva Conventions and the Western Sahara case all point to a consistent state practice and *opinio juris* of the right to armed struggle to exercise self-determination[113]:

> *A similar logic is mirrored in the work of Cassese who argues that a forcible re-acquisition of territory is lawful if "all possible means for a peaceful settlement of the dispute have been used before resorting to armed violence". Furthermore, this logic echoes the Roman legal principle vim vi repellere licet ("it is permitted to repel force by force").*[114]

94. Antonio Cassese arguing that repelling force by force is a powerful one in the context of dispossession resistance, as the power dynamics are asymmetric. In the Chagos case, Judge Robinson provided a separate concurring ruling, where he explicitly recognised the power differential between the coloniser and those who are subjugated, commenting on paragraph 4 of the Declaration on the Granting of Independence[115], "This paragraph shows a sensitivity on the part of the General Assembly to the imbalance in the power relationship between a colonial administration and a dependent people."[116] The UN General Assembly asserted the

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[109] Ibid, p.4

[110] Ibid, pp.4-5

[111] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in1965, Advisory Opinion, 2019 I.C.J. Rep. Gen. List169, paras.150-153 (Feb. 25) [hereinafterICJ Chagos] para.153

[112] Hammouri S (2023) *The Palestinian People Have the Right to Resistance by All means Available at their Disposal*, Law for Palestine, p.6

[113] Ibid, p.10

[114] Ibid, p.12

[115] Ibid, p.17

[116] Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in1965, Advisory Opinion, 2019 I.C.J. Rep. Gen. List169, paras.150-153 (Feb. 25) [hereinafter ICJ Chagos] para.29

significance in Resolution 35/35 in the specific context of Palestinian right to self-determination:

> *"that the activities of Israel, in particular the denial to the Palestinian people of their right to self-determination and independence, constitute a serious and increasing threat to international peace and security*[117]*…*
> *the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation* ***by all available means, including armed struggle***[118] *[emphasis added]."*

95. The right to not only defend a people against colonial domination and the establishment of settlements is not only enshrined in international law, but also to seek restitution of the loss of land, property and rights through armed force. In an interview conducted with the populist television host Piers Morgan, Francesca Albanese clarified the status of settlements themselves as war crimes that warrant armed resistance:

> *"In line with international law, Israel had to do what they have not done in 57 years and, what the International Court of Justice has reminded all member states as of July this year, Israel needs to withdraw the occupation in whole or in part. Because the occupation has caused the conditions for violence to fester in the occupied Palestinian territory. And the court has been very specific, has said that Israel needs to withdraw the troops, dismantle the settlements which are war crimes, and including the control over the natural resources. Israel has continued to expand in the occupied territory and it continues to do that even now as it commits a genocide…*
> *It's key to understand, because Israel – the whole purpose of advancing the occupation is to continue to take Palestinian land. So my question to you is, what do Palestinians have to do? Because they have tried armed resistance, they have renounced armed resistance, they have gone to the International Court of Justice, to the ICC, they've tried… the advocacy with all member states, and member states have continued to kick the can in the air."*[119]

96. The Zionist state, as a colonial enterprise relies on an infrastructure to displace Palestinians and dispossess them of their land, property and rights. This is most significantly carried out through the use of settlers, as discussed in the section above. Settler presence and settlements are a direct part of Israel's machinery of violence and thus become legitimate military targets for the purpose of Palestinian resistance fighters gaining restitution of lands that have been dispossessed. According to Steven Ratner,

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[117] UNGA Resolution 35/35 (1980), 14 November 1980, UN Doc. A/RES/35/35.

[118] Ibid

[119] Sykes E (2024) *Watch Francesca Albanese school Piers Morgan on why "Israel didn't have the right" to genocide Gaza*, The Canary, https://www.thecanary.co/global/world-analysis/2024/11/27/francesca-albanese-piers-morgan/

> *"There's a difference with attacks on armed settlers. While they are technically civilians, because they have taken up arms, they are also paramilitaries. They are much, much harder to define as combatants or non-combatants."*[120]

97. While Ratner focuses specifically on the element of deployment of arms to settlers as indicative of the their quasi-combatant status, there are additional two features that must be borne in mind: (1) that the presence of the settlement dispossesses Palestinians and thus part of the structure of violence against them, (2) the settlers themselves, by living in the settlements, are actively engaged in the dispossession. These features produce a conundrum within international law. Settlements and settlers are central to the machinery of violence and dispossession, but at times they are unarmed – so how can the resistance attack such targets, particularly where they unarmed.

98. Some have made the argument that all settlers have undergone mandatory military conscription, which applies to all Israeli men and women above the age of 18 who have no exemption. While this makes all military age Israeli citizens complicit in the IDF and it military control of Palestine, international law does recognise that individuals lose their combatant status once they put down their arms. Instead, it is more fruitful to understand **settlements as a legitimate military objective** as defined under the *jus in bello* – international humanitarian law. Article 52 of the Additional Protocol I (API) to the Geneva Conventions defines a legitimate military target:

> *"1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.*
> *2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.*
> *3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used."*[121]

99. This report does not advocate any unequivocal right to inflict violence against all targets within settlements – those engaged in armed resistance are still under due obligations to ensure that at all times, protected persons are safe-guarded to the maximum degree possible in the process of achieving a military objective. That said, within a structure of colonial violence, settlements stand as a legitimate military target specifically due to the role the settlement plays in dispossessing Palestinians.

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[120] Dennis M interview with Ratner S (2005) *Arab-Israeli Conflict and the Laws of War*, Crimes of War Project, www.crimesofwar.org

[121] Protocol Additional to the Geneva Conventions (1949) *Article 52 – General Protection of Civilian objects*, International Committee of the Red Cross, https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-52

100. Returning to the consideration of residents of settlements as civilians, we have the wider question of how to best account for the presence of minors, the elderly, the sick, chaplains, and other protected classes of persons in the settlements? This report argues that their presence in the settlements stands contrary to international law. By settling Israeli citizens into dispossessed Palestinian territories, the Israeli government and the IDF are effectively using civilian population as a human wall between the Palestinian resistance and the Israeli colonial metropole. This is notion was built into the very DNA of Israel's founding, as David Ben Gurion explained that the establishment of settlements was to:

> *"…constitute a **human wall against the dangers of invasion**…Our territorial conquests and redemptions will not be assured if we do not succeed in erecting a great and closely linked **chain of settlements of soldiers**, on the borders, in the Negev, on the coast, in the Jerusalem corridor, around Safed, and in all other areas of strategic importance."*[122] [emphasis added]

101. Ben Gurion's desire to see a human wall of settlements has all but been achieved in the intervening years. It is important to engage with the language used by Ben Gurion – explicitly that settlers served the specific function of being a 'human wall' an effective buffer zone to proper the Zionist colonial metropole. Further, the settlements were considered as part of the martial system of colonial violence as they were always intended to be manned by soldiers. Settlements form part of what Ariel Sharon systemised through the *Matrix of Control*[123] – a means by which Palestinian society could be controlled systemically. According to Jeff Halper:

> *"it's crucial to grasp the significance of the settlement blocs, not simply individual settlements. For settlements alone were not sufficient for reconfiguring the country and guaranteeing that Judea, Samaria, East Jerusalem and Gaza could never be severed from Israel proper. To ensure the irreversibility of the Matrix, the settlements had to become part of the seamless fabric of Israel, indistinguishable from the Galilee, the Sharon Plain or the Negev. The "Green Line" had to be erased, not only from the maps of children's school books or the TV weather reports, not only in the public's consciousness, but from any barrier or sign on the ground."*[124]

102. Returning to the notion of *nishul* – the settlements exist as the manifestation of dispossession policies – one that creates a class of Israeli that protects the borders with their lives as paramilitaries-cum-settlers. As Ilan Pappe recognises in *The Biggest Prison on Earth*, there is also a class element to these settlements as certain

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[122] Halper J (2008) *An Israeli in Palestine: Resisting Dispossession, Redeeming Israel*, Pluto Press, p.121

[123] Ibid, p.152

[124] Ibid, p.121

colonial settlements "attracted the less fortunate Jewish dwellers of Jerusalem"[125] – a recognition of the disposability of settler communities to the colonial metropole.

103. Settlements are legitimate targets for the Palestinian resistance under international humanitarian law, and the land upon which they have been constructed must be returned to Palestinians, and in the interim, at least be evacuated of all civilian populations. By maintaining the presence of civilians in such settlements, it is Israel that bears the burden of Palestinian resistance strikes against legitimate military objectives. As stated above, the resistance is under a duty to comply with international humanitarian in how it targets settlements as objectives to recover dispossessed land and property in their cause for self-determination – however, the loss of civilian life in settlements carries obligations on the Zionist state to remove those civilians from being on unlawful settler land – and most definitely to cease arming, training and supporting militias among them.

H. CONCLUSION

104. Israel's status as a settler colonial regime that has dispossessed Palestinians of their land has been well established over the course of this report. That dispossession took place in the context of European powers colonising large parts of the world – leading to Zionism as a racist settler colonial ideology to not only emerge, but to be ruthlessly enforced on an indigenous Palestinian population, who were displaced and dispossessed of their lands. This settler colonialism was no different to that of other forms in the past, whether it be the genocide of Native American peoples or the French occupation and settler domination of Algeria – it exists on that continuum.

105. In circumstances of dispossession, violence inevitably emerges as a means by which dispossessed people gain their rights, land and property from their coloniser. This report centres *dispossession resistance* as part of a taxonomy of violences – one that is a natural consequence to colonisation. To quote Fanon, "decolonization is always a violent phenomenon."[126] As evidenced by the numerous historical examples presented over the course of this report, resistance to colonial powers has taken different forms, but there is always an asymmetry in power between those resisting and their occupiers/colonisers leading to forms of violence that seek to gain rights outside of a traditional total war battlefield.

106. This *dispossession resistance* is centred around a restitution of rights, land and property – all in the cause of self-determination away from the violence of colonisers whose machinery of violence is ubiquitous, not only through use of force, but also in the way that societies are restructured through new regimes of law and politics.

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[125] Pappe I (2017) *The Biggest Prison on Earth: A History of the Occupied Territories*, Oneworld. P.97

[126] Fanon F (2001) *The Wretched of the Earth*, Penguin Modern Classics, p.27

107. The Palestinian people have been resisting the settler colonial nature of Israel since before the Nakba in 1948 and have never wavered from seeking their rights through a multifaceted approach of political negotiations, civil disobedience and armed resistance. This armed resistance is protected and enshrined under international law, against all settlements that have dispossessed the Palestinians inside Israel, in the occupied territories and across the diaspora.

108. Israel's colonial machinery of violence has established settlements, dispossessing Palestinians of land that rightfully belongs to them. These settlements are legitimate military objectives for the Palestinian resistance in order to gain restitution for what they have lost – but the settlements create a human buffer zone to protect the central Israeli colonial metropole. In the course of Palestinians exercising their right to self-determination through *dispossession resistance*, Israel is under a duty to remove civilians from any settlement that is considered a legitimate target.

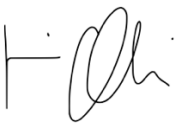
109. At times, in the course of resistance, there will be acts of violence that go beyond what is permitted under international law – these must be minimised and ended by all means possible by the leaders of the resistance – including holding war crimes to account. However, to reiterate the words of Francesca Albanese, "an illegitimate act of resistance doesn't delegitimize the resistance itself." Whereas, the existence of a settler colonial regime is always illegitimate, and must be ended by all moral conscience and by any means necessary at the disposal of the Palestinians.

I. EXPERT OBLIGATIONS

110. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

111. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

112. I confirm that I have not received any remuneration for preparing this report.



Dr Asim Qureshi
London

United Kingdom
26 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الإسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE ROOTS OF ANTI-COLONIAL VIOLENCE
BY
DR ASIM QURESHI

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. The British government has proscribed Hamas based on understanding that the organisation operates as a terrorist group in both its status and tactics. The purpose of this report is to demonstrate that the actions fit a much longer history of dispossession resistance to settler colonisation, whose violence is in legitimate reciprocity to extreme violence of settler colonial and occupation regimes. By situating the violence that has been undertaken in Palestine within a longer historical trajectory, commonalities of experience emerge – ones that find the roots of anti-colonial violence within the systems and structures of colonial occupation that brutalise local populations.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am the Research Director of the advocacy organisation CAGE International based in London, UK. The organisation advocates for those who have been unfairly impacted by a securitised world since 11 September 2001.

5. For the last fifteen years I have advised legal teams representing individuals accused of serious violent political crimes and acts in the US, Guantanamo Bay, UK and other

jurisdictions around the world in my capacity as a mitigation investigator. This work involves investigating the intergenerational socio-political-historical-environmental trajectories of a violent actor's past as a means of understanding the full context of their acts.

6. I graduated in Law (LLB Hons, LLM), specialising in International Law. Later I completed my Ph.D. in International Conflict Analysis from the University of Kent. My work product includes having authored a number of NGO reports and mainstream media articles. My academic publications include several peer-reviewed papers, predominantly published in the journal *Critical Studies on Terrorism* among others.

7. I am the author of the following books; *Rules of the Game: Detention, Deportation, Disappearance* (Hurst & Co, Columbia UP, 2009); *A Virtue of Disobedience* (Unbound, 2019); the editor of *I Refuse to Condemn: Resisting Racism in Times of National Security* (Manchester UP, 2020) and *When Only God Can See: The Faith of Muslim Political Prisoners* (Pluto, 2024).

THE ROOTS OF ANTI-COLONIAL VIOLENCE

C. INTRODUCTION

8. This report has been prepared in support of the application to deproscribe the organisation *Harakat al-Muqwamah al-Islamiyyah* (Hamas). The proscription of the organisation is based on its designation as a 'terrorist' organisation. Such a designation is a political decision more than one that is rooted in an understanding of Hamas as a resistance movement that seeks restitution of one hundred years of dispossession by British forces during the period of the Mandate, and then by Zionists since the Nakba. This report will seek to place the violence enacted by anti-colonial organisations and movements – such as Hamas – within a wider historical context of those who have sought restitution for the dispossession they have been forced to suffer at the hands of colonial authorities.

9. After providing a general theory of politicisation that accounts for violence of those who are dispossessed, this report will present six case studies of historical circumstances in which those facing settler colonialism and occupation, chose to resist violently to regain their rights. These historical instances include:

    a. Palestinian resistance to the Zionist state during the Second Intifada.
    b. Chechen resistance to imperial Russia and later Soviet rule.
    c. Moro resistance of the US occupation of the Philippines.
    d. Uyghur resistance to Chinese settler colonisation of East Turkestan.
    e. French resistance to Nazi and Vichy occupation during WWII.
    f. Algerian resistance to French colonisation.

10. These disparate instances of resistance across varied historical and political contexts share in common a trend that places the moral right of the dispossessed to engage in armed struggle among a range of actions that have taken against occupying or colonising forces. It is this moral right that Palestinians have been exercising since the Nakba until the present day, and as such, should be the only frame through which governments should consider how the resistance operates within the occupied territories, rather than to use 'terrorism' as a blunt instrument to undermine that right.

D. RESISTANCE OF THE COLONISED

11. Any theory of violence of those dispossessed of their land, property and legal status can be captured by the opening words of the Martiniquais psychiatrist and resistance thinker Frantz Fanon in *The Wretched of the Earth*:

> *"National liberation, national renaissance, the restoration of nationhood to the people, commonwealth: whatever may be the headings used or the new formulas introduced,* ***decolonization is always a violent phenomenon****."*[1] [Emphasis added]

12. In the spirit of Fanon, the act of theorising the political and resistance violence of the dispossessed becomes somewhat meaningless in the material reality of their conditions. To have been killed, raped, pillaged and imprisoned in numbers that are seemingly unquantifiable, produces its own morality of resistance – beyond a liberal order that has largely served the interests of European colonisers.

13. In the course of colonial wealth extraction that was rooted in extreme massacres and genocide, local populations reacted with their own forms of violence that sought to exact revenge for their losses. Dierk Walter neatly summarises the connectivity between such forms of violence across geographies and time:

> *"indigenous adversaries did exactly the same in response – not least because the settlers, officials and missionaries on the frontiers of empires quite rightly seemed to them to pose a very real threat to their existence. Thus, at the end of the sixteenth century the Chichimeca of Central Mexico destroyed Spanish villages and farms and indiscriminately killed women, children and slaves. The first victims of the Pueblo Uprising were 380 Spaniards in settlements and on farms, especially many priests. North American Indians made basically no distinction between European soldiers and civilians and invariably attacked outlying frontier farms first. The same was true of the Maoris and Australian Aborigines. The Maji-Maji rebels first killed planters, government officials and missionaries. Both the Herero and the Algerian revolts began with the murder of European settlers. Rebels in Northern Angola indiscriminately put to death 1,000 Europeans in 1961, It became a deliberate*

[1] Fanon F (2001) *The Wretched of the Earth*, Penguin Modern Classics, p.27

strategy of proper terror campaigns such as that launched by the FLN in the Algerian rebellion to first and foremost target civilians."[2]

14. Extreme colonial violence and control is the fertile ground on which the violence of the dispossessed finds its life blood. This creates fractures within the world of the colonised, as often the severity of colonial violence presents itself as an anathema to the cultural and spiritual practices of the dispossessed. Rules and regulations that relate to the conduct of hostilities are sometimes held to rigidly, and at other times broken in order to meet the violence of the coloniser with equal terror. The Libyan anti-colonial leader and martyr Omar Mukhtar, who fought Italian fascists in his country was once confronted with the opportunity to torture and execute prisoners of war his forces had captured - to which he responded with the words, "They are not our teachers" – indicating that the values of the resistance could not be reduced to the depravity of the fascist forces.

15. To what extent were Mukhtar's an exception in the annuls of the violence of the dispossessed, who fight for a multitude of reasons, from seeking to regain their lands to acting out of revenge for the personal losses and indignities they have been forced to endure at the hands of those with overwhelming power and technology. What of the Muslims forcibly converted to Christianity (Moriscos) living in Spain during the 1500s? Between 1511 and 1526, Ferdinand and Isabella had heightened the activities of the Spanish Inquisition, leading to a multitude of abuses against the Morisco people. 'Old Christian' priests would often take advantage of the authority they had been given and climb into the rooms of young Morisca women to rape them. Due to the impunity these priests received by the Inquisition, there was nothing the town could do to ward off their advances and often people simply had to accept the situation. The decades-long continuation of abuse resulted in Farex Aben Farex leading a group of a hundred Morisco men to carry out a massacre in the Alpujarras on Christmas Eve in 1568, when the clergy class were targeted and massacred in their homes and streets for their abuse. Writing of this incident, the Christian chronicler Diego Hurtado de Mendoza wrote:

> *"These crimes were committed partly by people whom we had persecuted for vengeance, partly by the monftes whose way of life had so conditioned them to cruelty that cruelty had become part of their natures."*[3]

16. The reaction from Farex Aben Farex does not stand in isolation in history – it forms as a part of continuity of violence that emerges in the face of alien occupation, colonial domination and the installation of racist regimes. Both within the colonial period, and in the contemporary context, the framing of Farex would be constructed through the lens of terrorism, a word that has become devoid of meaning in the way it has been applied to conflicts around the world. This violent reaction can only be understood in the severity of the material conditions that those under extreme

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[2] Walter D (2017) *Colonial Violence: European Empires and the Use of Force*, Hurst & Co, p.153

[3] Carr M (2010) Blood & Faith: The Purging of Muslim Spain, Hurst & Co

subjugation face. The creation of the United States of America through the annihilation of its first peoples and through a system of capitalism that relied heavily, first on slave labour, and then later indentured slavery produced long-lasting discontentment of those impacted by the unequal structures of society. In his travels across the US in the early 1900s, the black scholar WEB DuBois wrote of a specific interaction he had with a black farmer that led him to record it in *The Souls of Black Folk*:

> *"I remember one big red-eyed black whom we met by the roadside. Forty-five years he had labored on this farm, beginning with nothing, and still having nothing. To be sure, he had given four children a common-school training, and perhaps if the new fence-law had not allowed unfenced crops in West Dougherty he might have raised a little stock and kept ahead. As it is, he is hopelessly in debt, disappointed, and embittered. He stopped us to inquire after the black boy in Albany, whom it was said a policeman had shot and killed for loud talking on the sidewalk. And then he said slowly: "Let a white man touch me, and he dies; I don't boast this,––I don't say it around loud, or before the children,––but I mean it. I've seen them whip my father and my old mother in them cotton-rows till the blood ran..."*[4]

17. This anger is two-fold, it is not merely the material conditions of a dispossession that were purposely created and maintained in order to keep former slaves from upward mobility, but also due to the precarity of life under a racial scheme of violence. The Baptist preacher and civil rights icon Martin Luther King Jr, initially critical of his own communities engaging in the use of violence came to have his mind changed by his wife Coretta Scott King, who encouraged King to first condemn the "greatest purveyor of violence in the world today: my own government."[5] This was taken up by the civil rights writer James Baldwin, who keenly understood that black people are criticised for their use of violence as an exception to the ubiquity of similar violence by those who are deemed part of the culture of the West – such as Israelis, "[i]n the United States, violence and heroism have been made synonymous except when it comes to blacks."[6]

18. Fundamentally, it is because there is no acknowledgement that the lived reality of the dispossessed creates the conditions of violence. In the early 1990s, a moral panic was created over a connection being made between rap music and the killing of police officers. The chief of police for New York made the public case that music can incite violence and sought to link rap music to the deaths of his officers. The rebuttal was simple enough...if rap music incites violence, why were white people who listened to the same music not killing police officers too? There must have been other intervening factors, such as social deprivation, police brutality and corruption, and

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[4] Du Bois WEB (1994) *The Souls of Black Folk*, Dover Publications, p.89

[5] King Jr M.L. (2000) *The Autobiography of Martin Luther King Jr.* Abacus. p.338

[6] Baldwin J (2017) *The Fire Next Time*, Penguin Modern Classics, p.54

other markers that could then go further in explaining first why that culture existed, and second why officers were targeted.

19. Much of this non-state violence has been captured as 'terrorism' by colonising or occupation powers over the last two centuries – a word that has normalised the status quo of colonisation, and made violence to it the unlawful exception. The word itself operates as a violent construction in such material circumstances, as the response of the dispossessed is framed only through the legitimacy of the state or colonial authority. As former CIA psychiatrist Marc Sageman argues in *Turning to Political Violence*:

> *"A word like terrorist comes fully loaded with emotional associations and preconceived notions of the types of people who commit such acts of political violence. These categories are very difficult to change and require a strong cognitive effort to do so."*[7]

20. There is a process of racialisation that is ascribed to specific forms of violence that reduces violent actors to ideology, religion or the influence of a charismatic leader, which may contribute to why a person might embark on a violent path, but such ascriptions in the absence of material conditions and root causes mask other more salient environmental factors, "empirical studies have failed to discover any such zombies with little or no free will."[8] As Verena Erlenbusch-Anderson further writes in *Genealogies of Terrorism*, "we cannot give a general description of terrorism as such. Instead, we must excavate the historically specific conditions under which terrorism emerges as an apparatus of social control."[9] In his earlier work *Misunderstand Terrorism,* Sageman sets out the ways in which violent action are encoded through a matrix of terrorism, is less on the notion of 'suicide', as much as it is celebrated as "self sacrifice in defense of their endangered community."[10] What Sageman wants his readers to know, is that violence is manufactured in a dialectic:

> *"Politically violent actors did not always view themselves as political. A politicized social identity is activated and a vague and diffuse political community materializes when a serious political grievance divides people into two contrasting sides. For instance, people with a nonpolitical grievance like students, workers, or citizens gathering for a peaceful demonstration become political when the state intervenes to repress their demonstration with violence. The original grievance loses its importance*

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[7] Sageman M (2017) *Turning to Political Violence: The Emergence of Terrorism,* University of Pennsylvania Press, p.12

[8] Sageman M (2017) *Misunderstanding Terrorism,* University of Pennsylvania Press, p.98

[9] Erlenbusch-Anderson V (2018) *Genealogies of Terrorism: Revolution, State Violence, Empire*, Columbia University Press

[10] Sageman M (2017) *Misunderstanding Terrorism,* University of Pennsylvania Press, p.101

in the face of violence and activates a politicized social identity in contrast to the state."[11]

21. What he does is to reintroduce the role of the state into knowledge construction of the presence of violence in the world – rather than exceptionalising the state as a moral force somehow outside of the process. For Sageman, there is no possibility of analysing the violence of non-state actors without contextualising it within the actions of the state, which, "influences historical and social contingencies that give the path to political violence a "fits and starts" pattern, with intense periods of activity when moral outrage demands quick retaliation separated by longer period of relative calm."[12]

22. While Marc Sageman helps to create a rupture between the ubiquity of the word 'terrorism' through promoting an understanding of 'political violence' instead – it still does not capture significantly the violence of the dispossessed, whose material reality is not so much an active political choice, as much as it is a resistance steeped in the need for existential survival to protect their people and ways of life.

E. PALESTINIAN RESISTANCE TO THE ZIONIST STATE DURING THE SECOND INTIFADA

23. The conditions of Palestinians prior to the Second Intifada can be characterised by systematic restrictions, heightened tensions, and persistent human rights violations. These entrenched patterns of Israeli control did not emerge suddenly, but rather were the product of decades of occupation following 1967, and the subsequent failure of the Oslo Accords to bring about a viable and equitable resolution.[13] During the late 1990s and early 2000s, Palestinians faced severe limitations on their freedom of movement. Military checkpoints, curfews, and closures fragmented Palestinian territories, disrupting daily life, impeding economic activity, and undermining social cohesion.[14]

24. Such restrictions were accompanied by land confiscations and the expansion of Israeli settlements, which encroached upon Palestinian land and resources, generating widespread resentment and hopelessness.[15] The deepening economic hardship, coupled with the deterioration of public services, left many Palestinians

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[11] Ibid, p.118

[12] Sageman M (2017) *Turning to political violence: the emergence of terrorism,* University of Pennsylvania Press, pp.361-362

[13] Said EW (2000) *The End of the Peace Process: Oslo and After*, Vintage, p.45

[14] Hajjar L (2005) *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, University of California Press, pp.102–103

[15] Kimmerling B & Migdal JS (2003) *The Palestinian People: A History*, Harvard University Press, p.276

struggling to secure basic necessities.[16] Additionally, the Israeli security apparatus often employed excessive force against civilians, resulting in injuries, deaths, and the persistent fear of imminent violence.[17]

25. These oppressive measures contributed significantly to the growing sense among Palestinians that their aspirations for statehood, freedom, and dignity were being continually thwarted. The breakdown of diplomatic negotiations and the absence of meaningful political progress led to widespread disillusionment, laying the groundwork for renewed rebellion. In September 2000, following Ariel Sharon's antagonising visit to the Al-Aqsa Mosque compound, the simmering frustration and anger erupted into what became known as the Second Intifada. This uprising was not merely a spontaneous reaction to a single event, but rather the culmination of long-term structural violence, dispossession, and a profound sense of injustice perceived by Palestinians living under Israeli rule.[18]

26. The escalation in violence of the Second Intifada coincided with the development of suicide bombings/martyrdom operations. The discourse of *'amaliyyat istishhadiyya* (martyrdom operations) had begun with Hamas. They began to moot the idea of these operations in 1994 in the Israeli towns of Afula and Khedara as a protest against the failed Oslo process. After 1995, other groups began to use the same tactics, such as *Harakat al-Jihad al-Islami* (Islamic Jihad Movement) and also in the 2000s by more secular groups such as *Harakat al-Taharur al-Watani al-Filistini* (Palestinian Liberation Movement – Fatah) and *al-Jabha al-Shaa'biyya li Tahrir Filistin* (Popular Front for the Liberation of Palestine).

27. Returning to Palestine from the US in the middle of the Second Intifada, the Palestinian-American scholar and anthropologist Nasser Abufarha visited his home town of Jenin to study the phenomenon of martyrdom operations as an ethnography – culminating in his book *The Making of a Human Bomb: An Ethnography of Palestinian Resistance*. Abufarha's work seeks to understand the iconography of martyrdom as an attempt to seek a better life for a cause – not an act of seeking death for the individual. That the death of a person is about the life of the collective. His call is one of understanding the violence as being situated in the material realities of the dispossessed:

> "*If we seek to understand these violent practices, we must move beyond condemning them and*
> *questioning their legitimacy and examine the social and political processes that make them meaningful in their local settings. If we were to limit our discussion of this form of violence to issues of legitimacy, we would not even begin to understand its production, much less be any better equipped to deal with it. And if we continue to*

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[16] Roy S (2007) *Failing Peace: Gaza and the Palestinian-Israeli Conflict*, Pluto Press, p.54

[17] Pappé I (2006) *The Ethnic Cleansing of Palestine*, Oneworld Publications, p.182

[18] Hajjar L (2005) *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, University of California Press, pp.102–103

think of violence as fuelled by the inherent hatred of its perpetrators, we will be blinded to the social processes through which violence is constructed, and the only policy options we will have for dealing with violence will involve applying similar or greater violence, thus validating the acts of the perpetrators and leaving us hostage to cycles of violence and counter-violence. A better understanding of violent practices is a must if we seek to develop more appropriate and effective responses to it. The widespread use of suicide bombings makes clear that this form of violence is becoming more meaningful to more people around the world. And with this increase in popularity, the military response becomes increasingly invalid and ineffective. Pure military responses seem only to have contributed to the intensification of suicide bombing thus far."[19]

28. Abufarha wrote about the genesis of martyrdom operations by Hamas: at Afula, by Ra'id Zakarneh on 6 April 1994 and at Khedara, by Ammar Amaneh on 13 April 1994. Their acts were directly linked to the massacre committed earlier at the Ibrahimi Mosque by an Israeli settler in Hebron, where 29 Palestinians were killed during morning prayers, as well as the failed PLO Oslo process. Thus, the attacks were linked to a specific political context rather than any generic hatred for Israelis. It was further the collapse of the Oslo Peace process and the visit of Ariel Sharon to the al-Aqsa Mosque in September 2000, triggering the Second Intifada, that really escalated the use of martyrdom operations.

29. One of the key aspects of Abufarha's account is the extent to which Palestinians account for the banality of Israeli occupation as a form of direct terror they feel in their lives. He recounts a chance meeting with a man from his village outside a bank that is telling of the daily indignities that Palestinians feel:

> *"I needed to go to the bank to withdraw some funds. I got to the bank at 10:00 a.m. Outside the bank was a long line at the Tyme machine, about fifty people. Inside the bank I took a number for the teller: my number was 415, and the "now serving" number was 66.1 sat down only to write the day's notes because there was no point in waiting. The bank closes at noon and there was no way my number would be reached by then. As I came out of the bank I met a man from my village, Ahmed, and he commented: "What you are doing? Are you working on your research? Are you researching terror? This is the terror. The seizure is the terror. The boy barred from his school is the terror. Tell your American friends about the terror.""*[20]

30. In this regard, Nasser Abufarha moots the notion of *imaginary violence* as a theorisation of what Palestinians experience beyond the direct experiences of violence of the everyday. The notion of imaginary violence is important as it speak to a ubiquity of violence by the occupying forces and the way such violence creates terror for the Palestinian population:

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[19] Abufarha N (2009) *The Making of a Human Bomb: An Ethnography of the Palestinian Resistance*, Duke University Press, p.4

[20] Ibid, p.102

> *"The condition of suspense that people live under – crossing a ditch at the risk of being caught; fearing that they will run into a tank or hummer up the hill, around the next turn, in the valley, or next to the tree on the side of the road; sleeping in the hallway when bullets might be fired through the window at night – are all examples of violence in the imaginary (Whitehead 2004). This imaginary violence affects people more than the experiences of physical violence itself. First of all, imaginary violence has a much larger set of victims. All those who travel and who fear being caught experience violence in the imaginary; only those who actually are caught experience physical abuse at the hands of the Israeli army. The tales of those who fall victims to Israeli abuse become part of the construction of violence in the imaginary. Second, imaginary violence affects victims for an extended period: the entire time one spends away from home, or on the road, or sleeping in a hallway. There have been recent reports that the Israeli Air Force continued to fly fighter jets at low altitude over Gaza after the Israeli withdrawal, projecting sonic terror (El-Haddad 2005) on the whole city, since a missile could hit anywhere. These long periods are punctuated by moments of fear, each of which feels as if it could be one's last. The constant suspense produced by the imaginary violence affects people in different ways. Some may become psychologically traumatized, and there are many reports of children with mental problems, particularly in the Gaza Strip. Others react by deploying social processes like the one developed in the first intifada and turn enduring the abuse into a meaningful act."*[21]

31. During his research in Palestine, Abufarha was present during a martyrdom operation carried out by Hanadi Jaradat. Born in 1975, Hanadi would become known as the Bride of Haifa, as the first female to carry out a martyrdom operation. Hanadi graduated from the School of Law at that University of Jenin in 1999. She worked and trained as a lawyer for three years across two law firms. Her family described her as loving, kind and resolute. From both her father's and her mother's sides, she was dispossessed of her land since the Nakba and thus lived as an internally displaced Palestinian. The year after she graduated, she was engaged to her cousin in the year 2000 – soon after, he was murdered by the Israelis at the start of the second Intifada. Later, Hanadi would witness the killing of her other cousin and brother in front of her house, even as she attempted with the Israeli soldiers to try and save her brother's life. They knocked her out and executed her brother Fadi after having injured him. Both men were unarmed. At the funeral, Hanadi was heard uttering an oath between the *zaghruda*, "His blood will not be shed in vain. The killers will pay the price. We will not keep crying alone. Damn the whole world if our people will continue to be denied freedom and dignity."[22]

32. On 4 October 2003, Hanadi carried out a martyrdom operation in Haifa after being dropped off in a taxi with an Israeli number plate to the beachfront restaurant Maxim

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[21] Ibid, p.105

[22] Ibid, p.162

– the explosion killed 21 Israelis and injured fifty others – including the Israeli naval general Zai'v Almong. In her martyrdom note left by Hanadi, she wrote:

> *"I have chosen this path for myself by my own determination. I have worked for this until God rewarded me with martyrdom, God willing. Martyrdom is not for every human on earth, only for those who are dignified from God. Are you sad because God has dignified me in martyrdom!? Do you repay God by what he does not like and I don't like either!? Give me to God.... We are all dying. No one is eternal on this earth, but the rational who gives himself to God's call. This is a jihad country only. We live in it for jihad. It is incumbent upon us to lift the oppression we live in over the past years. I know I will not bring back Palestine. I know this fully. But I also know that this is my duty and I have done my duty in front of God. I have answered the call after my belief in my religion... My main concern has become to see the light of God. This is his country and this is his religion and they want to extinguish his light and we know that My duty towards God's religion and his obligation on me is to defend him. Nothing is in my possession other than this body, which I will turn into shrapnel, that will uproot the heart of everyone that tries to uproot us from our country. Everyone who plants death for us will get it even if it was a small fraction..."*[23]

33. In a piece of analysis written by the Palestinian writer Rashad Abu Shawar entitled *Hanadi's Litigation*, he explains the lack of options that someone like Hanadi has in life as a Palestinian:

> *"… what can the Palestinian attorney Hanadi Jaradat do? Does she litigate in the courts of the thieves that occupy her homeland? Should she ask for justice from her people's oppressors? According to the articles of what law would Hanadi litigate before Sharon's, Mofaz's, and Yalon's courts? How would she persuade the bulldozer drivers to stop tearing down homes over the heads of their Palestinian residents? How would she go by invoking mercy and humanistic feeling in the hearts of the Apache leaders, and the leaders of the Markava tanks that harvest Palestinians daily and terrify their children and daughters, and humiliate them at the roadblocks!?*
>
> *Should Hanadi litigate before the Security Council? Before the representatives of the five Great Powers? By what language would Hanadi convince the American representative of the extent of suffering and injustice that Palestinians are subjected to? The injustice that is supported by the American blessing, is executed by American aircrafts, and is protected by the readiness of the American Veto all the time?*
>
> *Why are Hanadi's people denied a free homeland with a simple life where the human has the right to drink tea with his relative, or his wife, or fiancée under the olive tree, or a fruiting fig tree, and instead is being taken over by death decided and executed by the occupiers? Why do Hanadi's people have to pay daily in death, destroyed homes,*

[23] Ibid, p.163

uprooted trees while the Zionist assembly continues to live near the seas of Haifa, Jaffa and Acre, clear of worries and relaxed in their security, feeling secure as long as their war machine grinds the Palestinians and as long as their defense army harasses Palestinians!?

What a litigation Hanadi exploded in Haifa. Destroying the sense of calm from the life of a reckless human assembly that shows off carelessness, relaxed for the wisdom of its generals, police, and security apparatuses that sentence Palestinians based on the security needs of the settlers…

Hanadi's litigation is one of the Palestinian litigations that say in the articulation of blood that the roots in this land are Arab Palestinian roots that will be impossible to uproot. These roots are protected by sacrifice and not by the litigation of writers, journalists, and corrupt leaders."[24]

34. Twenty years and four days after Hanadi's specific form of *litigation,* an operation carried out by Hamas on 7 October 2023 led to a breaking out of militants and civilians from the concentration of Gaza into neighbouring settlements. Israeli soldiers, settler paramilitaries, and civilians were attacked in the chaos of the security fence surrounding Gaza being breached. Since 2004, there has been an acknowledgement by security officials within Israel that Israel that Gaza is a "huge concentration camp" as stated by Israel's National Security Director Giora Eiland in private communications with counterparts in the US.[25]

35. What does it mean, twenty years after Hanadi, to have Israelis – the majority of whom who can be assumed to be above the eighteen and thus to have either still be in, or have completed their military service in the Israel Defense Forces – to be dancing and raving in Re'im, less than three miles from Gaza? Re'im, a kibbutz, was established in 1949 by the Hashomer Hatzair youth movement, settling immigrants from Eastern Europe into the area. Although Re'im was not a Palestinian town, it is close to the dispossessed villages of al-Muharraqa and Najd from which Palestinians were forced to leave after the Nakba. The festival ravers chose to dance on dispossessed Palestinian land, made more significant considering that 70% of Gazans are refugees or descendants of refugees dispossessed from that region during the Nakba. In thinking about Hamas initiated operation on 7 October, the US-based lawyer and anthropologist Darryl Li reflected on the proximity of Gaza to the targets of the Hamas attack:

> *"there is another force of nature metaphor that's right in the name: the Deluge of al-Aqsa, Hamas's name for the October 7 attack. What's a deluge other than an unfathomable number of little drops that on their own seem tiny but when brought together can wash away so much, in ways so indiscriminate and unpredictable? Including very basic assumptions like, there is Israel, this "normal" country that just*

[24] Ibid pp.169-170

[25] Prashad V (2015) *Gaza, the Ruin*, Economic and Political Weekly, vol.50, no.50, p.34

happens to be next to the very abnormal Gaza Strip, this isolated, besieged enclave, object of colonial violence, humanitarian pity, or both. Gaza is so exotic to most Israelis it might as well be the other side of the moon, but Palestinians there know all too well how close by their old villages are. These events shattered those psychological barriers and highlighted – in ways terrifying to many Israeli Jews – the proximity, the geographical contiguity that Zionism has worked so feverishly to deny.

As the Palestinian anthropologist Hadeel Assali reminds us, Gaza is a city in southern Palestine – the eponymous "Gaza Strip" is an amputated geography produced by the Nakba. Compounding this violent spatial language is this phrase the Israelis have that I detest, עוטף עזה, or the "Gaza Envelope," which refers to the area surrounding the Gaza Strip. Here, instead, was a situation where it seemed like it was Gaza that was doing the enveloping, as fighters and civilians crossed what had until then been a one-way frontier and literally unsettled Zionism's grip on the surrounding lands, however temporarily."[26]

F. RUSSIAN IMPERIAL DOMINATION OF THE CAUCASUS

36. In 1722, Tsarist Russia attempted to conquer the Caucasus region with a vastly superior army to that of the people of the Caucasus. Although there was small-scale rebellion in the early years, the main resistance began in 1785 under Shaykh Mansur Ushurma who had the dream of establishing an Islamic state subject to shariah law throughout the region. By 1791 Shaykh Mansur had been arrested and was executed while imprisoned at Slisselarg.

37. Although damaging the resistance, the quelling of this early insurrection did not immobilise it completely. In the mid-1800s insurgencies erupted in response to a genocide spearheaded by newly-appointed General Yermelov leading a huge military operation across the region. Imam Shamil emerged to unite the Chechen, Dagestani and Ingush insurgents – who fought the Russians from 1834 until 1864 - until they were annihilated through Russia's policy of total war. In these ways, small bands of rebels managed to hold out against a superior force for a period of 142 years before they were forced to submit.

38. It was this period that Imam Shamil surrendered to the Tsarist forces in 1859 after having led a valiant resistance to Russian attempts to conquer the Caucasus – ultimately becoming a trophy wheeled out at Russian imperial high society events. For the following five years, there entered a different stage of resistance as figures such as Haji Murad (fictionalised by Leo Tolstoy) and other *na'ibs* of Shamil who emerged to continue resistance against imperial forces – refusing to surrender and feeling betrayed by Imam Shamil. These resistance fighters came to be known as the *abrek*, those who refused to accept dispossession of the Caucasus by imperial forces –

[26] Saba D (2023) *Tectonic Shifts: A Conversation with Darryl Li*, The Baffler, https://thebaffler.com/latest/tectonic-shifts-saba

but also being forced to engage in a new theory of resistance that broke from traditional understandings of the peoples of the region:

> *"…the abrek violates coercively imposed legal norms in the process of fulfilling the mandate of a higher ethical order. In crafting an alternative ethical system by violating an external legal order, he also reconfigures indigenous norms. Paradoxically, these violations, when performed against laws that have been coercively imposed, validate transgressions that would otherwise be seen as unethical. Transfixed by an ethically ambiguous aestheticization of violence, transgressive sanctity makes the profane sacred and the sacred profane. Through the workings of transgressive sanctity, figures who violated indigenous laws came to be locally regarded as sacred as a result of the colonial dispensation's naturalization of violence."*[27]

39. As per Gould's *transgressive sanctity*,[28] different tactics were envisaged by the *abrek* fighters, who would attempt to find ways of carrying out raids against imperial forces – specifically with the purpose of the reversing the dispossession they had experienced. The years of conflict culminated in the Battle of Daggers in 1864, the largest scale battle in Chechnya since the surrender of Imam Shamil after 3000 Muslim men and women gathered in the village of Shali in order to protest the unlawful imprisonment of the pacifist Sufi leader Kunta Hajji[29]:

> *"When their demand for Kunta Hajji's release was refused, the Chechens assembled at the Shali fort in 1864 and began loudly performing the chanting ritual (dhikr) their leader had learned in Baghdad. Traditionally addressed to God, the dhikr as practiced by Chechens had more recently come to be associated with anticolonial protest. The protestors' peaceful chanting frightened the soldiers, who began shooting in the air. The Chechens then picked up their daggers and stormed the troops. Daggers were no match for bullets, and the pious but weakly armed insurgents were drastically unprepared for the confrontation that awaited them."*[30]

40. It is estimated that anywhere between one hundred to four hundred Chechens were killed that day.[31] This incident began a renewed cycle of violence where those who subscribed to Kunta Hajji's pacifist approach decided to take up arms and join the *abrek*, leading to further abuses by the Tsarist state.[32] In 1865, Russia decided to deport 5,000 Chechen families to Ottoman territories in order to begin its programme of ethnic cleansing. This method of large-scale genocide set a model case for

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[27] Ibid, p.7

[28] Ibid, p.37

[29] Ibid, p.41

[30] Ibid, p.41

[31] Ibid, p.41

[32] Ibid, p.44

subsequent ethnic cleansing programmes, whether Tsarist or Soviet. The wave of pogroms against the Jews followed as a direct result of the massacre of the Muslims. Seeing that they had an effective way of dealing with ethnic groupings that they did not want living within their territories, the Russians simply rid themselves of minorities.[33]

41. Between 1865 through to 1917, with the formation of the Soviet Union, the Chechens made multiple attempts to gain autonomy – taking any opportunities they had to reclaim dispossessed land. The Russian Revolutions of 1905, 1917, and the ensuing Civil War all provided platforms to stage insurgencies. On 20 January 1921, the Commissar for Nationalities, Joseph Stalin, supported the sovereignty of Chechnya and Ingushetia as an autonomous region under Soviet control which would be allowed to rule by Islamic law and have all captured territory returned.[34] The autonomous Chechen Republic that had been granted was dissolved quickly by the end of 1924. It was not until 1929 though that the Soviets really put forward their policy of Collectivisation and decided to incorporate the northern Caucasus into the Federated Socialist Republic.

42. The promises that had been made to a people who felt that they had finally achieved self-determination were all too quickly broken, prompting the war-stricken Chechens to swiftly take up arms once again to fight for their political independence. The fighting kept on going until March 1930 when Stalin made a tactical retreat. From then on the Soviets used terror tactics in Chechnya harassing and hurting the people through the internal security agency The People's Commissariat for Internal Affairs (NKVD) who were backed by the Soviet army.[35] Stalin rid himself of the Chechen problem through a simple solution. He decided to liquidate the whole Chechen-Ingushetia political entity. Despite the existence of other warring peoples against the Soviet regime, Stalin decided to annihilate only the Chechens due to their long-standing rebellion.

43. He managed to justify such a strategy by claiming that the people would have collaborated with the Germans during World War II when they had reached the Malgobek hills in Ingushetia. The reality of the situation is that the German army did not reach anywhere near the Chechens and Stalin was using this as a weak excuse for what he saw to be a final solution.[36] Red Army Memorial Day for the Soviet people was supposed to be a day when the population were expected to be celebrating in their respective villages. In February 1944, Stalin chose this day specifically to act as the moment when the Chechen people would finally be liquidated. Lavrenty Beria,

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[33] McCarthy J (1999) *Death and Exile. The Ethnic Cleansing of Ottoman Muslims 1821-1922,* Princeton University Press

[34] Armstrong P (1999) *Conflict in Chechnya: A Background Perspective*, The Journal of Conflict Studies

[35] Ibid

[36] Kullberg A (2003) *The Background of Chechen Independence Movement III: The Secular Independence Movement*, The Eurasian Politician

chief of the NKVD, said that the secret service laid siege to all the Chechen villages effectively imprisoning them.

44. Those who resisted and all those unable to endure the coming relocation were shot on sight. Pregnant women, the elderly and children were not spared the horror. In the village of Khaibakh, 700 villagers were taken to a granary where they were burned alive inside. This was the holocaust of the Chechen people.[37] The genocide that resulted from these mass deportations and massacres led to the slaughter of over 60 percent of the Chechen population. Those who survived the trip to the Gulags usually died of hunger, cold or disease.[38] It was the aim of Stalin to completely wipe from the memory of history the existence of these people. Any literature, academic works, archives and memorials were burnt to the ground.

45. By 1957, Nikita Khrushchev eventually permitted a limited return of the Chechen people, with limited autonomy though, resulting in a political contestation with the Soviet State that resulted in moments of tension between the Soviet state and the Caucasus, ultimately leading to First and Second Chechen Wars. It was in May 2000, that Russian President Vladimir Putin carpet bombed the Chechen capital Grozny, killing thousands of Chechens – initiating the second Chechen war, one that would result in a great deal of asymmetric violence that harkened back to the violence of the *abrek* from the 1800s, including that by female *shahidkas*:

> *"On 29 November 2001, Aizan Gazueva of Urus-Martan, twenty-five kilometers south of Grozny and Chechnya's second-largest city, visited the barracks of Gaidar Gadzhiev, a Daghestani general who had killed her husband before her eyes. Shortly prior to killing her husband, Gadzhiev had kidnapped and killed Gazueva's brothers under secret circumstances. Gazueva addressed to the general a simple question in Russian: "Do you recognize me?" (Vyi menya uznaete?). Gazueva wanted to know whether the general recognized her as the woman whose husband he had recently killed. Rather than acknowledge her gaze, Gadzhiev dismissed her. "Go away!" he said. "I don't have time to speak with you!" Then there was an explosion. "A young widow detonated the instrument hidden on her body," runs one journalists account. According to the human rights organization Memorial, two soldiers were killed, and Gadzhiev died the next day from his wounds."*[39]

46. In *Beyond Mothers Monsters Whores* Caron Gentry and Laura Sjoberg highlight the Russian analysis of *zombirovniye* – of Chechen women fighter after the second levelling of Grozny being turned into zombies through the use of psychotropic

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[37] Williams B (2000) *The Ethnic Cleansing of the Chechens. An Analysis of the 1944 Deportation of the Chechens and the Role of Communal Trauma in the Post-Soviet Russo-Chechen Wars*, History and Memory

[38] Ibid

[39] Gould R (2016) *Writers & Rebels: The Literature of Insurgency in the Caucasus*, Yale Uni Press, p.205

drugs[40] – hailing back to a somewhat mythical history of Hassan al-Sabah's drugged assassins, the *hashashiyun*. The zombification of these women became the only frame that their actions could be understood, instead of the material reality of not only witnessing the entire levelling of their communities through carpet bombing, but built on two hundred years of colonial repression and dispossession.

G. RESISTANCE OF THE MOROS TO US OCCUPATION IN THE PHILIPPINES

47. The annexation of the Philippines by the United States following the Spanish-American War, culminating in the Philippine-American War (1899–1902), and the subsequent occupation well into the early twentieth century, was marked by widespread brutality, coercive policies, and grievous abuses against Filipino combatants and civilians. Although often justified under the rubric of 'benevolent assimilation', American military conduct revealed a systemic pattern of violence and oppression. The conflict, which began ostensibly as an effort to counter Filipino aspirations for independence, became a war of subjugation, leaving enduring legacies of trauma and resistance within the archipelago's communities.

48. Under the 1898 Treaty of Paris, Spain ceded the Philippines to the United States, effectively discarding Filipino claims to self-rule that had been articulated during the anti-colonial revolution against Spain. From the outset, the United States refused to acknowledge the legitimacy of the First Philippine Republic. Instead, American forces, after a brief period of uneasy truce, confronted Filipino independence fighters led by Emilio Aguinaldo. The initial skirmish on the night of 4 February 1899 near Manila rapidly escalated into a protracted war, characterised by the markedly asymmetrical capabilities of the two sides. American troops, equipped with modern firearms, artillery, and later machine guns, quickly resorted to tactics that exceeded conventional rules of engagement, often treating Filipino combatants and civilians interchangeably.[41]

49. Central to the brutality of the occupation was the American army's use of the 'water cure' (water-boarding), a form of torture that involved forcing large amounts of water into a prisoner's mouth and nose until near-asphyxiation – a form of mock execution. Ostensibly used to extract intelligence on the whereabouts of insurgents, weapons caches, and supply lines, the water cure symbolised a calculated form of cruelty designed to terrorise local populations into submission. Although some American officers expressed discomfort with these methods, their use was neither isolated nor marginal. Rather, it was condoned — tacitly or openly — by high-ranking military officials who considered the Filipino insurgents as racial inferiors

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[40] Gentry CE & Sjoberg L (2015) *Beyond Mothers Monsters Whores: Thinking about women's violence in global politics*, Zed, p.131

[41] Miller SC (1982) *"Benevolent Assimilation": The American Conquest of the Philippines, 1899–1903.* New Yale University Press, pp.55-58

and unworthy of legal protections accorded to enemies in European conflicts.[42] Newspaper reports and testimonies from soldiers themselves corroborate that the water cure and other forms of abuse were not exceptional instances, but integral parts of American counterinsurgency practice.[43]

50. The racialised dimension of American brutality cannot be overstated. The United States' imperial endeavour in the Philippines was deeply intertwined with contemporary beliefs in Anglo-Saxon superiority and the so-called 'white man's burden.' American soldiers, many hailing from an increasingly segregated and racially charged homeland, carried with them racial slurs and demeaning stereotypes that dehumanised Filipinos. Such views contributed directly to the normalisation of cruelty, making it easier for officers and enlisted men alike to rationalise atrocities. The conflation of Filipinos with perceived racial inferiors led to summary executions, the burning of entire villages, and the internment of civilians in concentration camps known as reconcentration zones.[44] These camps, established to separate insurgents from their civilian support base, were often unsanitary and overcrowded, causing the spread of disease and significant civilian mortality.[45]

51. In addition to extrajudicial executions, forced labour, and the appropriation of local produce and property, one of the most systematic expressions of brutality was the "scorched earth" strategy. Particularly notorious was General J. Franklin Bell's campaign in Batangas and Laguna provinces in 1901–1902. Bell's tactics included the destruction of food supplies, the burning of homes, and the removal of civilians into concentration camps under conditions designed to break the will of the population. Within these "protected zones," civilians lived under strict surveillance and curfews, and anyone found outside designated areas could be shot on sight. As Glenn Anthony May notes, mortality rates soared in these camps because of disease and malnutrition, directly attributable to American policies that prioritised military convenience over human life.[46] Such measures aimed at "teaching the Filipinos a lesson" exemplify how violence was not merely reactive but strategic, intended to dissuade any future resistance to colonial rule.

52. By 1906, the United States had consolidated its hold over most of the Philippine archipelago, leaving only the predominantly Muslim areas of Mindanao and the Sulu Archipelago yet to be fully brought under colonial authority. The Muslim communities in these regions were commonly labelled 'Moros,' a designation derived from the Spanish term 'Moors.' At this stage, the American public knew

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[42] Kramer PA (2006) *The Blood of Government: Race, Empire, the United States, and the Philippines,* University of North Carolina Press, pp.143-145

[43] Linn BM (2000) *The Philippine War, 1899–1902,* University Press of Kansas, p.165

[44] Miller SC (1982) *"Benevolent Assimilation": The American Conquest of the Philippines, 1899–1903.* New Yale University Press, p.112

[45] Linn BM (2000) *The Philippine War, 1899–1902,* University Press of Kansas, pp.169-171

[46] May GA (1991) *Battle for Batangas: A Philippine Province at War,* Yale University Press, p.222

remarkably little about the Moros, aside from impressions formed through George Ade's musical *The Sultan of Sulu*, or through encounters at the 1904 Louisiana Purchase Exposition, where some Moros were exhibited in the Philippine Reservation in a manner akin to zoo displays.[47]

53. In the province of Jolo, the Americans had installed a military governor, Colonel W. M. Wallace, in 1903. Although he was technically under the authority of the local maharajah, he in practice wielded autonomous power. In March of that year, following a disturbance in the Jolo marketplace, several datus (local traders) were arrested and sent to Manila's prisons, provoking widespread anger among the Moro population over perceived American encroachments. As tensions continued to rise, U.S. forces soon found themselves facing opposition from *juramentados*:

> "*The American military colony was in a commotion when we arrived. A soldier had been terribly gashed and killed by a juramentado. These juramentados, as the Spanish word expresses, are religious maniacs, who, after having undergone certain exorcisms in the mosque, proceed to kill any non-Mahommedan and then commit suicide, in order to obtain a happy existence in paradise. This makes it rather unpleasant for those who do not believe in the Koran, for one never knows when one of these devils may be about and treacherously hack one to pieces.*"[48]

54. The U.S. now faced a formidable adversary: the *juramentados*, whose political grievances against foreign occupiers were cast as expressions of inherent malevolence. Such attacks included an incident on 14 March 1903 when three Moros entered the marketplace at Tando Point in Jolo and targeted both local residents and members of the U.S. 15th Cavalry Regiment — ultimately, all three attackers were killed. Drawing on Spanish-era sources describing Moros before and during their own occupation, U.S. troops adopted the Spanish portrayal of *juramentados* (meaning 'oath-takers' in Spanish) as frenzied fanatics seeking martyrdom and eternal reward through the mass killing of Christians.[49]

55. From the perspective of the Moros themselves, what the Americans and Spaniards called *juramentado* had a distinct local meaning. Known as *parang sabil* — war in the path of Allah — it was far more nuanced than the colonial interpretation. Unlike the restrictive colonial definition of *juramentado*, *parang sabil* could also apply to women and children who were unjustly killed, and who were thus considered martyrs. Although it had clear origins in an Islamic tradition of martyrdom, *parang sabil* or *juramentado* was neither reducible to a simplistic notion of jihad nor the product of a deranged mind. Instead, it was a historically shaped, multifaceted phenomenon that was as much social and political as it was religious. [50]

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[47] Wagner KA (2024) *Massacre in the Clouds*: *An American Atrocity and the Erasure of History,* PublicAffairs, p.3

[48] Ibid, p.19

[49] Ibid, p.20

[50] Ibid, p.27

56. Islam took root in the Sulu region during the fourteenth century, spread along the trade and pilgrimage networks that spanned the Indian Ocean. By around 1450, the first Muslim sultan had established his rule in Jolo. About a century later, the Spanish arrived, occupying the northern islands of the Philippines and enforcing a policy of compulsory conversion to Roman Catholicism. In 1578, they launched the first of many military campaigns against Jolo, both to assert authority in the South and to convert the Moros of the Sulu Archipelago. For the following three centuries, the Moros fiercely resisted Spanish incursions through near-constant and often brutal conflicts. In the absence of a unifying national identity, religion served as a critical source of collective mobilisation. Just as conquest and conversion were integral to the Iberian imperial project, Moro resistance to colonial rule was intimately bound up with the defence of Islam. Under foreign domination, faith itself seemed under attack, inspiring a religious ethos that emphasised a willingness to sacrifice one's life in the struggle against non-believers—a pattern also evident in other Muslim regions, including Malabar and Aceh.[51]

57. The Spanish narrative of *juramentado* — on which the Americans placed considerable reliance — was originally recorded by a French observer, Dr Joseph Montano, who visited Jolo around 1880. Montano personally witnessed an attack and even photographed its aftermath. Portions of his account were translated into Spanish, but the version the Americans accessed was incomplete, omitting many of its key elements. According to Montano, after the sultan accepted Spanish control of Jolo in 1876, several prominent *datus* continued to resist colonial rule, resorting to small-scale, suicidal assaults. He characterised the *juramentado* as essentially an enslaved individual who earned his family's freedom by sacrificing his own life against the Spanish. While Montano did depict the *juramentado* as a frenzied, suicidal fighter expecting death and heavenly reward, he also provided crucial political and socioeconomic context for the practice — context the Americans never fully acknowledged. Following Montano's original description, juramentado in the 1870s appears as part of an open struggle against Spanish occupation, framed in religious terms as a defence of the faith. By 1903, however, it had largely become a symbolic act of despair: an ongoing armed resistance expressed through religious language at a time when conventional warfare was no longer possible.[52]

58. To the Americans, *juramentado* attacks seemed to be nothing more than mindless eruptions of frenzied fanaticism, yet they were in reality influenced by a host of specific, contextual factors. Concerns about cholera outbreaks, rising food prices, and political unrest occurred alongside festivities honouring Muslims who had recently completed the pilgrimage to Mecca — factors suggesting that the timing of these assaults was far from random. Almost alone among the Americans in grasping the complexity of Moro life, the US-Lebanese military physician Najeeb Saleeby acknowledged the political significance behind the attacks:

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[51] Ibid.

[52] Ibid, p.29

> *""Juramentados" are not religious fanatics.... There has been no greater misunderstanding by Spaniards and Americans on any one Moro subject than on this – the juramentado question. The juramentado is not actuated by a religious feeling. It is fierce patriotism that excites his rashness.... A man who runs amuck in a manner avenges himself and his personal grievances, but the juramentado avenges his people and his chief. His chief's call for vengeance rings in his ears and he immediately comes forward as the hero and avenger of the datuship."*[53]

59. As the historian Kim Wagner accounts in *Massacre in the Clouds*, the US racialised dehumanisation of the Moros resulted in one of the worst massacres in US military history at Bud Dajo – worse indeed than the My Lai massacre that would take place 62 years later in Vietnam. The level of violence was indicative of how US military personnel in the region failed to understand the basic humanity of the Moro peoples. The Moros had consistently fought the Spanish and then the Americans in a desperate attempt to hold on to their land, their local economies, but most importantly, to their religion and way of life. The emergence of the *juramentado* was only ever a response to an exceptional situation, one where resistance became necessary in an entirely asymmetric context.

H. THE SETTLER COLONISATION OF EAST TURKESTAN BY CHINA

60. The region historically known as East Turkestan, more commonly referred to in Chinese state discourse as Xinjiang, has been a site of intense contestation and settler colonialism since its incorporation into the Qing Empire in the mid-eighteenth century and, more aggressively, under the People's Republic of China (PRC) in the twentieth and twenty-first centuries. The term 'settler colonisation' here denotes a process wherein the ruling power encourages, or enforces, the migration of its own dominant ethnic group — primarily Han Chinese — into a territory inhabited predominantly by another people — in this case, Uyghurs, as well as other Turkic and Islamic communities — aiming to replace, subdue, or assimilate them. This project has been accompanied by patterns of brutality, encompassing violent suppression of local resistance, forced cultural assimilation, systematic marginalisation of the local populace, and the destruction of religious and cultural sites. Such brutality manifests itself across military, economic, cultural, and demographic domains.

61. The Qing Empire's conquest of the Tarim Basin in the mid-eighteenth century initiated a long trajectory of foreign domination over East Turkestan's indigenous Muslim Turkic populations. Although the Qing approach was initially one of military occupation and relatively loose administrative control, it also set important precedents for future strategies. The Qing, for instance, sponsored Han and Hui (Chinese-speaking Muslim) migration into the region, albeit on a modest scale, and

[53] Ibid, p.31

utilised military garrisons to ensure loyalty and quell dissent.[54] Over time, Qing authorities sought to transform the region into a frontier of imperial stability, but faced recurrent rebellions, particularly those under Yaqub Beg in the late nineteenth century, which were met with harsh reprisals.[55] The legacy of Qing brutality — ranging from mass executions of rebels to punitive tax regimes — helped create a deep reservoir of local resentment. After the fall of the Qing Dynasty in 1912, the Republican and subsequently Nationalist governments in China struggled to maintain control. Warlords and local strongmen vied for power, and periodic attempts to tighten Han Chinese rule produced violence and suffering. Although the scale of Han settlement was not yet massive, the groundwork had been laid for the region's later reconfiguration under the People's Republic of China (PRC), which would set in motion a more systematic and centralised programme of settler colonisation.[56]

62. According to Sean R Roberts in his book *The War on the Uyghurs*, the Uyghur of East Turkestan have experienced two forms of colonisation by China:

> *"…the Uyghur homeland is a colony that is geographically contiguous to China. Such situations generally foster one of two different colonial relationships – a frontier colony that is held at arms-length from the colonial metropole and a settler colony that is absorbed into the colonial power's polity and settled by the dominant colonizing population."*[57]

63. In the early 1930s a rebellion began against the Han leadership of Xinjiang in the Kumul Khanate, which eventually spread across the entirety of the province. By the end of 1932, the Muslim population of Xinjiang was in open rebellion when forces trained by the nascent Soviet State under the command of Sheng Shicai arrived to regain control of the region. In 1933, Sheng signed an agreement retaining control of northern Xinjiang, but allowing for the south to found the first Eastern Turkestan Republic (ETR) – the first modern manifestation of an East Turkestani state. By March 1934, the Soviet Union militarily assisted Sheng to decimate the ETR by sacking Kashgar leaving Sheng the ruler of Xinjiang – but only as a proxy to the Soviet Union.[58] Sheng's policies resulted in a further revolt in 1937 in Kashgar and Khotan, which again with the assistance of the Soviets resulted in the decimation of the Uyghur rebellion – being denied the right to exercise their autonomy.

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[54] Millward JA (2017) *Eurasian Crossroads: A History of Xinjiang*, Columbia University Press, p.95

[55] Millward JA (2017) *Eurasian Crossroads: A History of Xinjiang*, Columbia University Press, pp.130-133

[56] Newby L (2005) *The Empire and the Khanate: A Political History of Qing Relations with Khoqand c. 1760–1860*, Brill, p.54

[57] Roberts SR (2020) *The War on the Uyghurs: China's Campaign Against Xinjiang's Muslims*, Manchester UP, pp.24-25

[58] Ibid, pp.35-36

64. With the establishment of the PRC in 1949, the Chinese Communist Party (CCP) brought East Turkestan under a regime that aimed to integrate it politically, economically, and culturally into the Chinese nation-state. Although the PRC initially acknowledged the region's cultural diversity and created the nominal Xinjiang Uyghur Autonomous Region (XUAR) in 1955, the reality was a concerted effort to dilute the Uyghur majority and their claims to the land. Central to this effort was the state-sponsored in-migration of Han Chinese settlers. Through the Xinjiang Production and Construction Corps (Bingtuan), founded in 1954, the government provided incentives and infrastructure to facilitate large-scale Han settlement.[59] The result was a demographic transformation: whereas Han made up a negligible share of the population at the start of the PRC era, by the twenty-first century, they accounted for at least 40% of the population in some areas.[60]

65. This demographic engineering was accompanied by administrative and legal frameworks designed to control and marginalise indigenous communities. State policies have long prioritised Han cultural norms and the Mandarin language. Educational reforms sidelined Turkic languages, while official media and cultural industries promoted narratives that framed Uyghurs and other indigenous groups as "backward" and in need of "modernisation" through Han guidance.[61] In practice, these policies reinforced a settler colonial order in which the indigenous population was systematically excluded from centres of political and economic power, leading to structural violence and dispossession.

66. Following the formation of the XUAR in 1955, and the PRC's intensified programmes of economic development and Han in-migration, resistance took on new dimensions. As the Uyghur experienced increasing marginalisation in their own homeland, a range of opposition strategies emerged. In the early decades of the PRC's rule, open revolts were sporadic but recurrent, often triggered by violent state measures and policies targeting religious leaders and cultural institutions.[62] Although such movements were invariably met with heavy state suppression, their very existence highlights an enduring desire for political self-determination.

67. At the core of Chinese settler colonisation lies the state's willingness to employ direct physical violence, both episodic and systematic, against indigenous inhabitants. Since at least the 1990s, crackdowns on even the slightest sign of Uyghur dissent have been severe – being framed as acts of 'terrorism' and 'extremism' by the Chinese state as a means of delegitimising their grievances:

68. *In April 1990, a major disturbance broke out in a rural area of the XUAR called Baren township near the southern city of Kashgar. Although the details of the 'Baren incident'*

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[59] Becquelin N (2004) *Staged Development in Xinjiang*, The China Quarterly, 178, pp.358–378

[60] Clarke M (2011) *Xinjiang and China's Rise in Central Asia – A History*, Routledge, p.77

[61] Dillon M (2004) *Xinjiang – China's Muslim Far Northwest*, Routledge, p.42

[62] Dillon M (2004) *Xinjiang – China's Muslim Far Northwest*, Routledge, p.115

remain unclear, the event ended in the occupation of local government buildings for nearly three days until Chinese military and security forces were able to take back the buildings and either kill or arrest the Uyghurs who had occupied them. Some reports suggest that the violence that broke out in Baren was spontaneous, occurring after the Chinese military clashed with some 200 Uyghur demonstrators protesting against recently applied limits on the number of births allotted to minority families. Other reports, including official Chinese sources, maintain that the incident was a premeditated attempt to overthrow state control of this small rural area by a religiously oriented pro-independence group calling itself the East Turkistan Islamic Party (ETIP).[63]

69. The Uyghur uprisings of the 1990s and subsequent rounds of violence sporadic violence resulted in further entrenching of Chinese policy to the Uyghur population as one that is subversive to the state. The CCP's *Strike Hard Campaign Against Violent Terrorism* launched in the early 2010s, has provided the legal and rhetorical pretext for mass arbitrary detentions and extrajudicial arrests on an unprecedented scale. According to Smith Finley the intensification of securitisation measures included the establishment of a vast network of internment camps — officially termed 're-education centres' — in which an estimated one million or more Uyghurs, Kazakhs, and other Muslim minorities have been detained.[64] Reports of torture, including beatings, electric shocks, and sexual abuse, have emerged from detainees.[65]

70. The brutality of this campaign is not merely a by-product of authoritarian governance; it is a key instrument in transforming East Turkestan into a region in which the indigenous population is too intimidated or broken to resist the influx of settlers and the destruction of their cultural lifeways. Here, settler colonialism is intertwined with what some scholars have labelled "cultural genocide," a term used to describe attempts to eradicate cultural and religious identity through oppressive, and sometimes violent, means.[66]

71. Settler colonialism often relies on economic exploitation and dispossession, and East Turkestan is no exception. The PRC's intensive development strategies, involving resource extraction, agricultural colonisation, and industrial projects, have overwhelmingly benefited Han settlers and state-owned enterprises. The fertile oases, once predominantly farmed by Uyghurs practising traditional agriculture, have been targeted for large-scale cotton production and other cash crops under the guidance of the Bingtuan.[67] Uyghur farmers often find themselves dispossessed of their ancestral lands through opaque legal processes, facing coercive "land transfers"

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[63] Roberts SR (2020) *The War on the Uyghurs: China's Campaign Against Xinjiang's Muslims*, Manchester UP, p.53

[64] Smith Finley J (2019) *Securitization, Insecurity and Conflict in Contemporary Xinjiang*, Central Asian Survey, 38(1), p.12

[65] Zenz, A. (2019) *"Thoroughly Reforming Them Towards a Healthy Heart Attitude": China's Political Re-Education Campaign in Xinjiang*, Central Asian Survey, 38(1), p.38

[66] Roberts SR (2020) *The War on the Uyghurs: China's Campaign Against Xinjiang's Muslims*, Manchester UP, p.117

[67] Becquelin N (2004) *Staged Development in Xinjiang*, The China Quarterly, 178, pp.47-50

that favour Han newcomers. This pattern of economic transformation parallels settler colonial dynamics seen elsewhere, where the colonising group uses superior political power, legal regimes, and security forces to seize control of resources and ensure economic domination. The resulting economic inequalities reinforce the power imbalance, as Uyghurs are pushed into low-paying or precarious forms of employment, or else forced into labour programmes that further erode their autonomy and cultural integrity.[68] Under these conditions, economic development ceases to be neutral: it becomes a weapon of demographic and cultural engineering.

72. Since 11 September 2001 and the attacks on the World Trade Centre by al-Qaeda, the Chinese government has attempted to frame the disaffection that East Turkistani Uyghurs have with the Chinese government as being part of a campaign against terrorism. Despite the predominantly Sufi practice of the Uyghur population of Xinjiang – where the vast majority of the Uyghur population live – there have been constant efforts by China to frame their response within the language of the 'global War on Terror'.[69] In 2013, China's Foreign Minister Wang Yi's justified their position by stating:

> *"The efforts are completely in line with the direction the international community has taken to combat terrorism, and are an important part of the global fight against terrorism."*[70]

73. The US were willing to initially accept this due to their actions at Guantanamo Bay, Cuba, where they were detaining Muslims without charge or trial, among whom were Uyghur detainees. The Chinese requested that these men be placed on the US Treasury's Financial Sanctions List in September 2002, which the US complied with – seeking to reinforce the global nature of their concern around terrorism. Starting in 2006 with an initial set of releases to Albania, it was not until 2014, that determinations were made that all the Uyghur men who had been detained there had no associations to terrorism[71], but their relocations were nearly always to countries where they did not speak the local languages or were familiar with local customs – thus often resulting in a form of social imprisonment.

74. With the 're-education through labour' programme coming to an end in 2013, there emerged a focused emphasis on the re-education of Uyghur communities in particular, picking up pace by 2017 as 1 million Uyghur were detained in re-education camps (concentration camps), about one tenth of their population in

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[68] Millward JA (2017) *Eurasian Crossroads: A History of Xinjiang*, Columbia University Press, p.212

[69] Chung C (2002) *China's "War on Terror": September 11 and Uighur Separatism*. Foreign Affairs. Vol. 81, No. 4 (Jul. - Aug., 2002), p.8

[70] Ahmad AS (2018) *China Is Using U.S. 'War On Terror' Rhetoric To Justify Detaining 1 Million People*, Huffington Post

[71] Ibid

Xinjiang.[72] Those kept at the camps have admitted to international media organisations allowed into the euphemistically titled 're-education centres', that they are there because they have made 'mistakes' or that they have been holding on to their Islamic beliefs of Uyghur cultural practices that are out of concordance with the Communist beliefs of the People's Republic of China.[73] Much of this has been framed through riots that took place in Lhasa (2008) and Ürümqi (2009) and then later acts of political violence between 2013-2014. These incidents were largely based around Uyghur disaffection with the Chinese government, but was presented as examples of Uyghur terrorist ambitions, prompting an increased emphasis on assimilating Uyghurs into hegemonic Han cultural norms.[74]

75. Those permitted to speak to outside journalists explain that they are present in the re-education centres voluntarily, after having been convinced by local police officers or courts that they suffered from 'extremist beliefs', a notion that appears to be amorphous at best. These accusations turn everyday life into potential moments of pathologising, as normal human behaviour can be seen as resulting in extremism. As Maj Stulam explained to one journalist:

> *"The people in the divorce court told me I was infected by extremist thoughts and said I was doing something illegal, and I realised my mistake after they told me those laws and regulations. So I voluntarily applied for a position in this vocational and training centre. I am very glad I did, and very grateful for this free education opportunity and chance to remove those extremist thoughts from my mind."*[75]

76. It is details such as these that begin to provide a picture of the way in which Chinese attempts to forcefully assimilate the Uyghur has resulted in people being accused of 'extremism' as part of the mundanity of everyday life. Those with grudges against one another, policemen on a 'power-trip', locals who do not get their way, all are given the power and opportunity to denounce one another, as the system calls for both technological and human surveillance at all times.

77. Uyghurs who hail from East Turkestan have consistently asserted their rights to their autonomy, not only in their land, but also in their cultural and religious practice. The settler colonial policies of the Chinese state have consistently denied them such autonomy, but further systemically denied them the ability to assert their own culture – what is now being referred to as cultural genocide – a practice that is found to be consistent among colonial contexts.

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[72] Carle R (2019) *China's War on Terror*. Religion Unplugged

[73] Sudworth J (2019) *China's Hidden Camps: What's happened to the vanished Uighurs of Xinjiang?* BBC News

[74] Zenz A (2018) "*Thoroughly Reforming Them Towards a Healthy Heart Attitude*" *- China's Political Re-Education Campaign in Xinjiang,* Central Asian Survey. p.4

[75] Goff P (2019) Inside China's detention centres: War on terror or cultural genocide? The Irish Times.

I. FRENCH RESISTANCE AGAINST NAZI OCCUPATION AND COLLABORATION

78. The Vichy regime was inaugurated after the Third French Republic at the end of the 'Phoney War' in favour of the Germans. Refusing to sign the armistice Paul Reynaud's government dissolved and on 22 June 1940 France finally signed their capitulation. However, this role was delegated by Marechal Petain head of the newly formed far-right French government. These negotiations between the Germans and Petain took place in the same carriage as the one in which the Germans had to sign the treaty – or what they call the *'Diktat'* – at the end of the First World War. It is in that context of humiliation that the foundations of the Vichy Regime were established. From that moment onwards the Vichy Regime became an extension of the Nazi regime itself, expanding the antisemitic agenda to France, entrenching it into the domestic politics.

79. Initially, from June 1940 this crystalised into the use of judicial means to inaugurate the antisemitic agenda[76]:

> *"during the first few months of the occupation, judicial repression of everything considered dangerous for the security of the occupying power, or harmful to the Wehrmacht's image, became stricter step by step."*[77]

80. Beginning with the repression of any opposition party, the Vichy regime targeted communists as they were deemed to be hostile to the government. They proceeded to pass anti-Jewish legislation. German penal law was applicable in the occupied French territory according to Gaël Eismann as stated in article 161 of the German Military Code:

> *"Article 161 of the German Military Code [specified] that any act harmful to the security of the occupying troops, as well as any violation of a decree from the Führer or his representative, [was] a reprehensible act which [had to] be punished just as though it had been committed on the territory of the Reich."*[78]

81. Such laws enabled an effective occupation and legal colonisation of France, effectively permitting the atrocities perpetuated in Germany to happen in all the occupied territories, encouraging violence against Jews, Communists and all those who engaged in resistance. The violence carried out under the Vichy Regime, however, was predominantly targeted against the Jews of France. A cogent example would be the *Vel' d'Hiv Roundup* orchestrated by the French police on 16-17 July 1942. It was the most consequential French deportation of Jews during the

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[76] *Chronology of Repression and Persecution in Occupied France, 1940-44*, Fontaine Thomas, Science Po https://www.sciencespo.fr/mass-violence-war-massacre-resistance/fr/document/chronologie-ra-pression-et-persa-cution-en-france-occupa-e-1940-1944.html#title0

[77] Eismann G & Martens S (eds.) (2007) *Occupation et répression militaire allemandes, 1939-1945. La Politique de "maintien de l'ordre" en Europe occupée*, Autrement

[78] Eismann G (2006) *Dictionnaire historique de la Résistance*, pp. 782-784

Holocaust.[79] They were transported to and detained in an indoor sports arena called the 'Velodrome D'Hiver' – as the name of this atrocity suggests – and were left to survive in atrocious conditions, deprived of their basic rights and needs such as food, water and hygiene. 6,000 of these people were sent to the Drancy Camp that was the point of transit, meaning it was only temporary; worse awaited them once they were sent to a concentration camp. Such roundups, murders and general conditions of oppression created the conditions for resistance.

82. Those who did not comply with the Vichy Regime, by extension Nazi Germany, became a target. Those who conspired to protect the lives of Jews who were persecuted based on a mere conspiracy on the "impurity" of their "race" were punished. Even something as banal as standing by the principle of fundamental human rights, made a person a 'legitimate' target.

83. Under the Nazi German occupation of France, the lives of the French were not lives of thriving human beings. They lived with lack of heat, electricity and the food they would eat would be rationed. A climate of fear and uncertainty roamed in the country as a constant reminder of the state of war as the sound of war planes weighed heavily on civilians. In Josette Maddison's memoir, a survivor of this period, she recalls the day of liberation where she had candy for the first time since French children had been deprived, living off the bare minimum. They lived in a climate of pure and utter scarcity. Josette Maddison recalled "Rationing is fine and dandy, but often… you would get to the places you were supposed to pick up the rations and there was nothing. Because they (the Germans) fed themselves first."[80]. German occupying forces considered themselves as having the legitimacy to undermine the humanity of any person who they did not see as their equal, any person who did not comply with their ideology. In this case, as the French were under German occupation the hierarchy was already settled. These conditions bread resistance.

84. The French Resistance during the Second World War engaged in a wide array of activities to undermine the Nazi occupation and the collaborationist Vichy regime. While their primary focus was on military sabotage, intelligence gathering, and aiding Allied forces, there were instances where civilian targets were attacked. These targets were typically individuals or entities perceived as collaborators or direct supporters of the occupiers. One of the most prominent instances was the assassination of Philippe Henriot on 28 June 1944. Henriot was the Vichy regime's Secretary of State for Information and Propaganda and was infamous for his daily radio broadcasts that vehemently supported German policies and denigrated the Resistance. Members of the Resistance infiltrated his residence in the Ministry of

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[79] Holocaust Encyclopedia, *The Vélodrome d'Hiver (Vél d'Hiv) Roundup*, https://encyclopedia.ushmm.org/content/en/article/the-velodrome-dhiver-vel-dhiv-roundup

[80] Maddison J (2021) *Child Memories from the Occupation and Liberation of Paris*, The WWII Museum New Orelans, https://www.nationalww2museum.org/war/articles/child-memories-occupation-and-liberation-paris

Information in Paris and assassinated him in his bedroom.[81] This operation was a strategic move to silence a key propagandist and to send a clear message to other collaborators.

85. Members of the *Milice Française*, a paramilitary force established by the Vichy regime to combat the Resistance and suppress dissent, were also common targets. On 24 April 1944, Resistance fighters ambushed and killed Venant Courcier, a notorious *Milice* officer responsible for brutal crackdowns in the Rhône-Alpes region.[82] This attack aimed to weaken the operational capacity of the Milice and to deter others from participating in oppressive actions against French citizens.

86. Sabotage efforts sometimes extended to economic targets that, while civilian in nature, contributed to the German war effort. Factories producing goods for the Nazis were sabotaged to disrupt supply chains. A notable example is the attack on the Peugeot factory in Sochaux on 5 November 1943. The Resistance orchestrated an explosion that halted production, impacting both the German military supply and the local workforce.[83] While the primary intent was to damage the occupiers' resources, such actions inevitably affected civilian employees.

87. Collaborationist media outlets disseminating Nazi propaganda were not exempt from Resistance actions. In August 1943, the offices of the newspaper *Je Suis Partout* in Paris were bombed by Resistance members. The publication was notorious for its anti-Semitic content and support of Nazi ideology. The attack intended to stifle propaganda and diminish the influence of pro-German sentiments among the French populace.[84]

88. Madeleine Riffaud's role in resistance efforts was catalysed by a relatively minor event. In 1941 the young French daughter of teachers was kicked up her bottom by a Nazi soldier as she was going to her parent's house in Amiens. She recalls feeling absolutely humiliated. Living under German Nazi occupation in that instant forced her decision that she would not let this go on any further. That one moment fuelled her fight as a resistance fighter to the occupation:

> *"He kicked me in the butt. He sent me flying two meters. I fell on my nose. And, lying on the ground, I thought to myself, 'That's it, enough.'"*[85]

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[81] Kedward HR (1993) *In Search of the Maquis: Rural Resistance in Southern France 1942–1944*, Clarendon Press

[82] Jackson J (2001) *France: The Dark Years, 1940–1944*, Oxford University Press

[83] Foot MRD (1976) *Resistance: An Analysis of European Resistance to Nazism, 1940–1945*, Methuen

[84] Sweets JF (1986) *Choices in Vichy France: The French Under Nazi Occupation*, Oxford University Press

[85] Riffaud M (2024) *Resistant, war reporter, writer: a life of struggles, created by the "formidable kick up the bottom" of a german officer France info*, France 3.https://france3-regions.francetvinfo.fr/hauts-de-france/somme/madeleine-riffaud-resistante-reporter-de-guerre-ecrivaine-une-vie-de-luttes-faconnee-par-le-formidable-coup-de-pied-au-cul-d-un-officier-allemand-3024278.html

89. In 1944 she witnessed the massacre of Oradour-sur-Glane a village where she had spent a part of her childhood – causing her to turn to violence. Madeleine consequently decided to lead a unit of the *Francs-Tireurs et Partisans* (FTP), a group of young communists resisting German occupation and the "military arm of the communist party".[86] She was an agent enabling the flow of weaponry, messages, and transportation. For Riffaud, this group's goal was to liberate Paris from the German occupation – the order was systematic: "everyone get a German". As a result, at 19 years of age she shot a German soldier in broad daylight on the bridge of Solferino.

> *"I had taken up the weapons of pain, as Paul Éluard might have said. I was hurting deeply inside, I shot him almost point-blank, and he fell like a sack of wheat."*

90. She was chased, apprehended and tortured at the Nazi secret police headquarters. The torture she was subject to was motivated by the need to gain her contact list, evidently to stop any other communists or members of resistance carrying out similar attacks. Riffaud did not crack under the pressure; resulting in the Nazis proceeding to torture people in front of her eyes in atrocious ways. The Germans broke a woman's legs and arms with an iron bar. They also made a young teenage boy bleed from his face in front of her. All this was done to maintain the "upper hand" the occupying forces needed to maintain the visage of control. Later, Riffaud was to be executed but the Germans changed their minds at the last moment. She had also been thrown on a train to the concentration camp in Ravensbrück famously known to be the "death camp for women". She survived once again because she managed to escape thanks to other women that wanted to save her as she was the "young one".

91. After liberation finally came, Riffaud continued to fight against injustice as she started to write for the journal *l'Humanité* as she was covering the atrocities in Algeria and in Vietnam.[87] Writing four years prior to the beginning of the Battle of Algiers, she wrote for *La Vie ouvriére* in 1952 on the torture of Algerians inside France, in the very place she had been tortured by the Nazis:

> *"The Algerians were being tortured on the Rue des Saussaies, in the very place that I had been! For me it was unbearable to find that my own country was doing that."*[88]

92. Later she entered Algeria clandestinely and was one of the first people to denounce the torture that was being perpetrated by the French government on the Algerians under the *nom-de-guerre* 'Rainer'. The name was inspired by the German poet Rainer Maria Rikle to signify that she was "not at war against the German population but against the nazis". Ten years later, in Algeria, the French far-right organisation *Armée*

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[86] Francs-Tireurs et Partisans – EHRI Corporate Bodies https://portal.ehri-project.eu/authorities/ehri_cb-368

[87] Charrier L (2024) *Death of Madeleine Riffaud, a life spent fighting against injustices*, TV5 MONDE, https://information.tv5monde.com/terriennes/deces-de-madeleine-riffaud-une-vie-lutter-contre-les-injustices-2747548

[88] Anizon E (2018) *A Life on the Front Line*, Jacobin, https://jacobin.com/2018/07/madeleine-riffaud-resistance-fascism-nazism

Secrète (a group of paramilitary settlers) unmasked Rainer, leading to her being attacked by a truck smashing directly into her car. Riffaud suffered multiple fractures and a crushed hand, leading to her being snuck into a hospital and eventually snuck out of Algeria to safety.[89] The attack on her was only a single moment in a much longer history of settler colonial violence by France in Algeria.

J. THE FLN RESISTANCE AGAINST FRANCE'S SETTLER COLONISATION OF ALGERIA

93. The French colonisation of Algeria, initiated in 1830, was marked by a series of brutal strategies aimed at subjugating the local population and installing French control. These methods included scorched-earth policies, mass killings, forced displacements, and systematic use of torture, all of which had devastating effects on Algerian society. By 1834, under direction of Louis-Phillipe, Algeria was formally colonised and came under the jurisdiction of the governor-general Betrand Clauzel who created a new category of the 'European Algerian' – dispossessing three million native Algerians and placing them under the *régime du sabre* (the regime of the sword).[90] Citing Alexis de Toqueville, Verena Erlenbusch-Anderson shows how even the most liberal elements of French society were entirely committed to the subsequent horrors perpetrated against the Algerians as part the violent regime:

> *"Tocqueville explained that this view, held by "men in France whom I respect, but with whom I do not agree," proposed that it was "wrong that we burn harvests, that we empty silos, and finally that we seize unarmed men, women, and children." For Tocqueville, such categorical opposition to these measures was naively humanitarian because it failed to realize that they were "unfortunate necessities…to which any people that wants to wage war on the Arabs is obliged to submit.""*[91]

94. One of the primary tactics employed by the French military was the scorched-earth policy. This involved the deliberate destruction of crops, villages, and food supplies to starve the local population and undermine resistance. Governor General Thomas-Robert Bugeaud, who led the French forces in the 1840s, was a key proponent of this strategy. He believed that "war in Africa is a science" and advocated for the burning of harvests and the destruction of villages to force submission.[92] Mass killings were another grim aspect of the French conquest. Notably, the massacre of the El Oufia tribe, where approximately 500 men, women, and children were killed in a single

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[89] Ibid

[90] Hussey A (2015) *The French Intifada: The Long War Between France and its Arabs,* Granta, p.93

[91] Erlenbusch-Anderson V (2018) *Genealogies of Terrorism: Revolution, State Violence, Empire*, Columbia University Press, pp.101-102

[92] Le Cour Grandmaison O (2001) *Coloniser, Exterminer: Sur la guerre et l'État colonial*, Fayard, p.704

night, exemplifies the extreme measures taken to quell resistance.[93] These excesses were largely encouraged due to the first 'European Algerians' committing crimes from robbery to murder as the "Christians that they galleys and prisons of Europe have vomited up upon this country since its conquest by the French."[94]

95. Similarly, during the siege of Laghouat in 1852, French forces employed chemical agents, leading to the deaths of a significant portion of the town's population. This event is referred to by locals as the *Year of the Khalya*, meaning emptiness, due to the massive loss of life and the emptying of the town in an extreme act of dispossession by the French.[95] Forced displacement and deportation were also integral to French colonial policy. Entire tribes deemed troublesome were expelled from their lands. Many sought refuge in neighbouring countries such as Tunisia and Morocco, while others were deported to distant French territories like New Caledonia and Guyana.[96] These actions aimed to disrupt the social fabric of Algerian society and facilitate French settlement.

96. It was Bugeaud who created a new tactic that the native Algerians had never experienced before, what Andrew Hussey describes as "a new genocidal tactic" – *les enfumades* (smoking-out):

> *"The first enfumade was ordered by General Cavaignac, whose men had pursued a group of Arab fighters, as well as women and children, into mountain caves. Cavaignac ordered his men to wall up the caves and set fire to the entrances. After a day or so, as people died of asphyxiation and bodies began to pile up, the fighters emerged to ask for pardon. Cavaignac refused and continued with his plan to turn the area into 'a vast cemetery'."*[97]

97. The cumulative effect of these brutal methods was catastrophic for the Algerian population. Historians estimate that between 500,000 to 1 million Algerians died as a result of war, famine, and disease during the first three decades of French rule, out of an estimated population of 3 million. Over the course of the next 100 years, the French carried out the colonisation of Algeria – resulting in the region becoming a French possession – legally an extension of France itself. Except, the period of the Third Republic, Algerians were systemically denied social and political equality as well as basic civil rights – a form of class and racial apartheid having been established by the French.

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[93] Kiernan B (2007) *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*. New Haven: Yale University Press, p.365

[94] Hussey A (2015) *The French Intifada: The Long War Between France and its Arabs,* Granta, p.95

[95] Kiernan B (2007) *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*. New Haven: Yale University Press, p.365

[96] Ibid, p.365

[97] Hussey A (2015) *The French Intifada: The Long War Between France and its Arabs,* Granta, p.100

98. From the mid-1800s through the 1945 there was a series of legislative violence carried out against Algerian natives, most famously in Napolean's introduction of the *sénatus-consulte* of 1865, which permitted to Algerians to be governed by Islamic law, but if they wanted full rights as French citizens, they would be required to renounce any claim to be governed by Islamic law – in effect giving them a choice between legal rights and apostasy – something the Algerians could not countenance.[98] This dispossession of rights within their land resulted in the native population organising a protest in the eastern city of Sétif on 8 May 1945. French police fired on the protestors, leading to riots that resulted in the killing of 103 French settlers. The French attacked the towns of Setif, Guelma and Kherrata in the aftermath of the riots – leading to tens of thousands of Algerian families being left bereaved after bodies were dumped into mass graves.[99] The events of the day led to an escalation of violence by the French authorities, bringing about the *Front de Libération Nationale* (FLN), as they sought Algerian independence "by any means necessary."[100]

99. The suppression of the non-violent attempts to create the conditions for independence resulted in the first major attack by the FLN to announce their existence on 1 November 1954, killing eight people after attacking military and civilian settler targets – what the French government referred to as *les événements d'Algérie* (the Algerian situation). Acts of systematic political violence by the FLN against French military colonial targets resulted in General Jacques Massu bringing his counter-insurgency tactics from French-Indochina to Algeria – where they were deployed with increasingly brutal effect. The entirety of Algeria's native population was turned into a suspect community as French occupation forces detained and tortured thousands of men, women and children. The escalating violence resulted in the apogee of the Algerian Revolution, known as the Battle of Algiers 1956 – 1957.

100. What the French effectively set up was a large open air concentration camp according to the FLN leader Saâdi Yacef. The French presented their counter-insurgency tactics as being a response to the FLN's act of political violence, however as Verena Erlenbusch-Anderson explains, the opposite is closer to the truth, that the acts of the Algerian resistance were a consequence of 'peacetime' occupation:

> "*the discourses and practices of Algerian combatants suggest that rather than understanding colonial violence as a mimesis of frontist violence, we should reach the opposite conclusion. The methods of armed resistance were responsive to and determined by the techniques of peace enforcement implemented by the colonial army. However, these tactics were integrated into an understanding of the conflict not in terms of internal order but as an episode of war, which the French had begun in 1830. Hence, the frontists understood terrorism as both polemic and strategic. It was polemic insofar as terrorism was not a historically new kind of war but the classic*

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[98] Ibid, p.109

[99] Drif Z (2017) *Inside the Battle of Algiers*, Just World Books, p.44

[100] Erlenbusch-Anderson V (2018) *Genealogies of Terrorism: Revolution, State Violence, Empire*, Columbia University Press, pp.101-106

form of insurrectional war. It was strategic to the extent that terrorism was a particular tactic that characterized this type of warfare. This alternative mode of understanding the conflict resulted in practices of resistance that subverted the French deployment of terrorism as a nexus of knowledge, power, and subjugation by opposing it with a modified set of rules of veridiction, norms of behavior, and modes of being a subject."[101]

101. Among those who eventually join the ranks of the FLN as a fighter, was Zohra Drif, born in 1934 in Tissemsilt. She was born to an upper-class traditional Algerian family. Her father, a well-established lawyer, attained the status of qadi (judge), and her grandfather served as an imam. This familial background provided her with a unique perspective on both Islamic jurisprudence and colonial legal structures. She spent her formative years in Vialar, a town in the Tiaret province, where she was raised in the countryside. In her memoir *Inside the Battle of Algiers*, Drif recounts how the dispossession of the Algerian people was something that was not simply forgotten, but transmitted to her in the everyday happenings of life:

> *"I also knew early on that my land was occupied, seized for no purpose other than rape and theft, and that the roumi — the Roman, that foreigner from the north — was both the rapist and the thief. I lived every moment with such an acute awareness of this fact that it became like my skin, my blood, or the beating of my heart, and was frequently revived by events around me. As a child, when I accompanied my mother and my aunts, traipsing together across vast fields to visit the tomb of a wali salah — a local patron saint — the women explained to me that in truth these lands belonged to such-and-such tribe, which had been dispossessed in favor of such-and-such colonist. In doing so, they transmitted to us the history, sociology, and true map of our country."*[102]

102. Demonstrating academic prowess, Drif attended the elite Lycée Fromentin in Algiers, one of the few Algerian students in a predominantly European institution. In 1954, she commenced her law studies at the University of Algiers. It was during her time at Lycée Fromentin that she met her close friend and future FLN member, Samia Lakhdari. Drif's educational journey exposed her to the stark disparities between colonial rhetoric and the lived realities of Algerians. The French colonial system, while espousing principles of liberty and equality, systematically marginalised the indigenous population. This contradiction deeply influenced Drif, leading her to develop anti-colonial ideals, resulting in her and Lakhdari joining the ranks of the FLN. When questioned by a fellow classmate about her 'extremist' views on abolishing the system of French control in Algeria, Drif and Lakhdar responded with call for armed struggle:

> *"Ask your friend Camus how his country, France, was freed from Nazi occupation. It was 'extremists,' the resistance and the Americans, who liberated France, not any*

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[101] Ibid, p.122

[102] Drif Z (2017) *Inside the Battle of Algiers*, Just World Books, p.4

calls for a civil truce. Why didn't Camus and his friends propose a civil truce to the Germans to resolve their country's occupation? And as for Camus's reports in Alger Republican, we have read them. In his eyes, our problem is poverty due to unemployment and illiteracy, while for us, the misery is only a consequence of our true problem, which is called French colonization. For him, systemic reforms are sufficient, while for us, the solution lies in the death of the system that he is part of."[103]

103. The outbreak of the Algerian War of Independence in 1954 marked a turning point for Drif. Alongside Lakhdari, she sought avenues to contribute to the liberation struggle. Initially, their involvement was limited to delivering packages and supporting the movement from a distance. However, the arrest and torture of key FLN figures in 1956 galvanised Drif's commitment, prompting her to take on more active roles within the movement. Drif's participation in the FLN was multifaceted. She collaborated closely with prominent figures such as Ali La Pointe, Hassiba Ben Bouali, and Yacef Saâdi, the head of the Autonomous Zone of Algiers. Her fluency in French and familiarity with European customs enabled her to navigate colonial spaces with relative ease, a strategic advantage she utilised in covert operations.

104. This ability was particularly evident during the Milk Bar Café bombing on 30 September 1956, where Drif, along with two other female revolutionaries, planted bombs in European establishments in Algiers. These actions were in retaliation for French aggression against the local population after the French military and settler paramilitary *ultras* who carried out a series of bombings against Algerian civilian targets. Drif explained her reasons for choosing the Milk Bar:

> *"After meticulous observation, I chose the Milk Bar on Rue d'Isly and Samia opted for the Cafeteria on Rue Michelet, across from the university. The Milk Bar symbolized colonial modernity in the service of the Europeans, their offensive carefree attitudes, their shameful indifference to our woes, and the arrogance of the colonial regime—especially since the cafe-bar abutted Place Bugeaud, named for the sinister exterminator of our people. As for the Cafeteria, it was the trendiest meeting spot for the European jeunesse doree, especially the ultras students."*[104]

105. Zohra Drif walked away from her bombing, not raising any suspicion due to her European looks, but on her walk she could hear the racist invective of the French settlers who called out for the exterminations of the Algerian people – promising revenge. Later, a victim of the bombings Danielle Michel-Chich accused Drif of being a war criminal responsible for the deaths of her children. Drif replied:

> *The French army waged total war against the Algerian people. The clear objective was to terrorize the Algerian people to make it lose confidence in the capacity of the FLN to fight and protect them. It is not me you have to hold responsible for this*

[103] Ibid, p.72

[104] Ibid, p.110

bomb, but the French powers who have enslaved the Algerian people since 1830 by using the most barbarous methods. Of what were the millions of Algerians guilty who have died since 1830? Of what were the "napalmed" villagers [les villageois "napalmes"] guilty? Of what were the victims of total war guilty, which had been waged in the small villages with the means of the fourth largest army in the world and the support of NATO? I was not born to kill, I got no personal pleasure from throwing that bomb, but we were in a state of war, a war that had been imposed on us since 1830.[105]

106. According to Erlenbusch-Anderson, what Drif does is to reset the timeline of violence to one that begins in 1830 with the French colonisation and occupation of Algeria. The occupiers attempted to translate their violence as self defence, but as the FLN leader Saâdi Yacef said of the "ultracolonial terrorism" of the French – the FLN's violence was the counter-terrorism of the violence of their colonisers. She quotes the Martiniquais psychiatrist and revolutionary Frantz Fanon who, writing on the Algerian Revolution, recognised the conditions that made 'terrorist' tactics necessary as part of the tools against their colonisers:

> *I conclude by briefly returning to Fanon's conceptualization of terrorism as a last resort of the colonized against the French colonial state…for Fanon, frontist terrorism could not be understood unless it was properly situated within a context of French colonialism. On Fanon's view, terrorism was a legitimate form of counterattack against colonial war governed by the very norms that regulated French military action rather than an illegitimate use of force that was outside all norms. It was, in short, a response in kind to the actions of the colonial state. Fanon further criticized the disingenuousness of France's demonization of frontist violence by arguing that strategies of terrorism were taken straight from the playbook of the French resistance against Nazi Germany. It was clear to him that the intentions driving these violent actions were the same in both cases, namely, resistance against an illegitimate occupation.*[106]

K. CONCLUSION

107. Over the course of this report, six case studies were presented from a variety of historical and geographic contexts to assess the nature of settler colonial violence and occupation, and the inevitable resistance that emerges from such violence. States often classify anti-colonial violence as 'terrorism' for the specific purpose of delegitimising any attempt to claim moral authority over unlawful settler colonies or alien occupation. As evidenced by the work of Professors Marc Sageman and Verena Erlenbusch-Anderson, the classification of 'terrorism' provides little help to adequately understand the root causes of anti-colonial violence – on the contrary – it

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[105] Erlenbusch-Anderson V (2018) *Genealogies of Terrorism: Revolution, State Violence, Empire*, Columbia University Press, p.123

[106] Ibid, p.183

acts as a form of violence to mask those very root causes. If we refer to Fanon again, we must acknowledge that decolonisation is always a violent phenomenon – that in the exercise of ending the such colonial violence, there is a certain inevitability to anti-colonial violence due to the system of repression and oppression.

108. What emerges from the above six case studies is that resistance to dispossession in the context of colonial occupation will always resort to unconventional and asymmetric tactics to gain restitution, particularly where forced displacement and settlement have become features of ethnic cleansing and genocide. The cause of the Palestinians bears similar hallmarks to the motivating causes behind the dispossession resistance of the Caucasians to Russian domination, or the French to German and Vichy occupation, or the over 100 years of settler colonisation of Algeria by France. One could point to the violence of the US in the Philippines during the early 1900s, or the settler colonisation of East Turkestan by the Chinese government, as populations are replaced too, as examples of how anti-colonial violence forms a normal response to the presence of foreign occupiers and settlers.

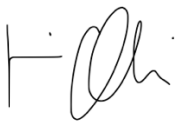
109. By choosing to classify Hamas as a 'terrorist' organisation, the British government are wilfully choosing to remove the context of the Zionist state's settler colonial project, and one hundred years of dispossessing Palestinians of their land. The violence of Palestinian groups is rooted in the right to reclaim what they have lost, in the vein of other anti-colonial movements. The British government should recognise the moral right of the Palestinians to exercise their right to self-determination by deproscribing Hamas and recognising its right to resist the Zionist settler colonial regime.

L. EXPERT OBLIGATIONS

110. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

111. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

112. I confirm that I have not received any remuneration for preparing this report.



Dr Asim Qureshi
London

United Kingdom
28 November 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة االسالمية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE LAWFUL USE OF VIOLENCE BY THE AFRICAN NATIONAL CONGRESS (ANC) AGAINST THE APARTHEID REGIME UNDER INTERNATIONAL LAW
BY
DR ISMAIL VADI

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah **("Hamas")**.

2. The British government has proscribed the organisation Hamas as part of its counter-terrorism policy. Such proscription of legitimate resistance movements serves to inhibit the path to peace, especially while parties aim to end the system of Apartheid in the Occupied Palestinian Territories. South Africa's apartheid regime (1948 - 1994) enforced racial segregation and White minority dominance over the Black majority through laws restricting land ownership, movement, political participation, and education. These oppressive policies, upheld by state violence, devastated Black communities and sparked widespread resistance to and global condemnation of apartheid. This Report provides a perspective on the lawful use of violence by the African National Congress **("ANC")** against the apartheid regime under international law.

B. QUALIFICATIONS

3. I give this Report in my personal capacity.

4. I hold the following qualifications: an MA in History from the University of the Witwatersrand, an MA in Security Studies from the University of Pretoria, and a PhD in Political Science from the University of Pretoria.

5. I am a founder member of the Progressive Teachers' League in Lenasia, Johannesburg (South Africa). I also served as the National Vice-President of the South African Democratic Teachers' Union. In addition, I served in the Gauteng provincial leadership structure of the ANC from 2000 to 2018.

6. I served as a Member of Parliament for the African National Congress (ANC) from 1994 until 2010. Subsequently, I was appointed a Member of the Executive Council ("MEC") for Roads and Transport in the Gauteng Provincial Government, South Africa, and served in this position until 2019.

7. I have lectured at the University of the Witwatersrand: Faculty of Education.

8. I have retired from formal politics but continue to be active in South African civil society.

9. I have multiple publications on education, South African liberation history, security studies and Muslims in South Africa.

THE LAWFUL USE OF VIOLENCE BY THE AFRICAN NATIONAL CONGRESS (ANC) AGAINST THE APARTHEID REGIME UNDER INTERNATIONAL LAW

C. INTRODUCTION

10. Apartheid in South Africa endured from **1948** to **1994**. This was after the National Party **("NP")** narrowly won the all-White election in 1948 and thereafter implemented policies deeply rooted in a racist ideology and a discriminatory political system of White domination.[1] This was a brutal system of institutionalised racial segregation and discrimination that denied fundamental human rights to the majority Black population (African, Coloured and Indian).[2] Its antecedents however can be traced first to the period of Dutch and later British colonial rule in South Africa.

11. Black South Africans were forced to live in separate areas from White South Africans and used separate public facilities and amenities, with limited contact permitted between the different racial groups. Each racial group was physically segregated by designated residential areas and

[1] John Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (Jacana Media, 2018), pp. 39 – 47; Shola Lawal, "South Africa: 30 years after apartheid, what has changed?" (Aljazeera.com, 27 April 2024) https://aje.io/958y5x, accessed on 11 November 2024.

[2] African Union Human Rights Memorial, "AUHRM Project Focus Area: The Apartheid", (African Union Human Rights Memorial, n/d), https://au.int/en/auhrm-project-focus-area-apartheid, accessed on 6 November 2024.

separate public amenities and faced severe restrictions on social interactions, including mixed or inter-racial marriages.[3]

12. Since the late 19th century, Africans had formed several regional political and civil society organisations in different parts of South Africa and established independent newspapers and churches to give expression to their hopes and aspirations, articulate their grievances and to champion their struggles for socio-political changes. After the Union of South Africa in **1910** under the auspices of the British government, the ANC – established in **January 1912** – emerged as the premier national organisation representing Africans in South Africa. From the time of its formation until its banning in **April 1960** by the apartheid state**,** the ANC resisted White minority rule and oppressive laws through non-violent means. However, its mode of peaceful resistance was met with increasing levels of state violence and repression. Mass mobilisation campaigns against apartheid, particularly in the **1950s**, led to widespread arrests, political trials, and bans on activists, leaders and political organisations such as the Communist Party of South Africa **("CPSA")**.[4]

13. In March **1960**, the South African Police of the apartheid state killed **67** (Sixty-Seven) peaceful protesters and injured **186** (One Hundred and Eighty-Six) others in Sharpeville in Transvaal, South Africa (**"Sharpeville Massacre"**), which triggered widespread protests and strikes across the country. Consequently, the apartheid government declared a State of Emergency, detained over 1 200 activists and leaders of the liberation movement, and banned the ANC and the Pan Africanist Congress (**"PAC"**) in **April 1960**.[5]

14. In response, the ANC formed in **December 1961** its armed wing, Umkhonto we Sizwe **("MK")**, with Nelson Mandela, Joe Slovo and Walter Sisulu playing key roles in its establishment.[6]

15. On **5 August 1962**, Mandela was arrested for leaving the country without a passport and inciting a strike and was sentenced to a five-year term of imprisonment. However, in **1964**, he, together with other leading figures in the ANC and MK such as Walter Sisulu, Ahmed Kathrada, Govan Mbeki and others, was sentenced to life imprisonment in the Rivonia Trial for sabotage and other charges. The formation of MK and its various acts of sabotage marked a significant shift in its approach to resisting apartheid.[7]

16. By the **mid-1980s**, amid growing internal resistance under the banner of the United Democratic Front **("UDF")**, an intensification of the armed struggle by MK and international pressure to end apartheid and establish a democratic, non-racial South Africa, the apartheid regime responded even more brutally to the broad liberation movement by declaring a State of

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[3] Dugard, *supra note 1,* pp. 89 – 97.

[4] For a detailed analysis of the formation of African groups in the late 19th and early 20th centuries, see Andre Odendaal, *The Founders: The Origins of the ANC and the Struggle for Democracy in South Africa* (Jacana Media, 2012). Also see Arianna Lissoni et al, *One Hundred Years of the ANC: Debating Liberation Histories Today* (Wits University Press – South African History Online, 2012) for both an historical and contemporary analysis of the ANC.

[5] Sylvia Neame, *The Congress Movement: The Unfolding of the Congress Alliance 1912 – 1961 Volume 3* (HSRC Press, 2015), pp. 516 – 517; "Origins: Formation, Sharpeville and banning, 1959-1960", (South African History Online, 30 March 2011, last updated 16 November 2016), https://www.sahistory.org.za/article/origins-formation-sharpeville-and-banning-1959-1960, accessed on 11 December 2024.

[6] Nelson Mandela, *Long Walk to Freedom* (Abacus, 1995), pp. 325 – 340; Helena Dolny, *Slovo: The Unfinished Autobiography of ANC Leader Joe* Slovo (Ravan Press, 1997), pp. 170 – 186; Elinor Sisulu, *Walter & Albertina Sisulu: In Our Lifetime* (David Philip, 2002), pp. 146 – 147.

[7] Ahmed Kathrada, *Memoirs* (Zebra Press, 2004), pp. 141 – 194; Thula Simpson, "Date with history: the arrest of Nelson Mandela", (chathamhouse.org, August and September 2022 last updated 27 October 2022), https://www.chathamhouse.org/publications/the-world-today/2022-08/date-history-arrest-nelson-mandela, accessed on 11 December 2024.

Emergency and detaining **30 000** (thirty thousand) activists and leaders of the internal resistance movement in South Africa. The prolonged global isolation of the apartheid regime eventually forced it to yield and enter a negotiated political settlement with the ANC and other opposition groups.[8]

17. This Report will provide a historical overview highlighting the oppression suffered by Black South Africans under the apartheid regime. In addition, it will examine the lawful use of violence by the ANC against the apartheid regime under international law. It asserts that armed resistance constituted a lawful response to the grave oppression suffered by Black South Africans under apartheid and that such resistance was integral to the pursuit of liberating the oppressed in South Africa.

D. AN OVERVIEW OF APARTHEID IN SOUTH AFRICA

18. Apartheid was the official policy of racial segregation and discrimination enforced by the South Africa government under the National Party from **1948** to **1994**. It introduced in the body politic of the country a "period of racial legislation more thoroughgoing, more grotesque perhaps, than anything the country or the world had yet seen".[9] It deceptively claimed to promote "separate but equal development" and cultural expression of different racial groups. However, apartheid's implementation was a brutal exercise in systemic oppression.[10] The system stemmed from South Africa's history of colonisation and slavery under Dutch and British colonial rule.[11]

19. Despite becoming a self-governing dominion in **1910** under the British Empire, South Africa retained these racially discriminatory practices. Following the Anglo–Boer War (**1899** – **1902**), which the Afrikaners lost, Afrikaner nationalists, driven by anti–British sentiment and a White supremacist ideology, won power in **1948** under the banner of the National Party and further institutionalised racially oppressive laws under a system of apartheid.[12]

20. In short, "apartheid" refers to the comprehensive system of racial segregation and discrimination that permeated all aspects of life in South Africa between 1948 and 1994. "Petty apartheid" refers to the specific measures and laws aimed at preventing socialisation between different racial groups at a more localised and everyday level.

21. This abhorrent system mandated the physical and social separation of racial groups, entrenching gross inequality between Whites and Blacks (African, Coloured and Indian). Additionally, it criminalised inter-racial marriage and social integration, fostering an

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8 See Sylvia Neame, *Drama of the Peace Process in South Africa: I Look Back 30 Years* (BestRed/HSRC, 2021) for a detailed analysis of the processes leading up to the negotiations between the ANC and the apartheid regime. Also see AUHRM, *AUHRM Focus Area: The Apartheid*, *supra* note 2.

9 Edward Roux, *Time Longer Than Rope: The Black Man's Struggle for Freedom in South Africa* (The University of Wisconsin Press, 1964), pp. 366 – 378; "Apartheid" (*The Martin Luther King, Jr. Research and Education Institute, n/d*) https://kinginstitute.stanford.edu/apartheid#:~:text=Apartheid%20(meaning%20%E2%80%9Capartness%E2%80%9D%20in,mixed%20race)%2C%20and%20white, accessed on 5 November 2024.

10 "A History of Apartheid in South Africa", (South African History Online, 6 May 2016, last updated 5 April 2022), https://www.sahistory.org.za/article/history-apartheid-south-africa, accessed on 5 November 2024.

11 "Apartheid: A Short History", (*Anti-Apartheid Legacy UK*, n/d), https://antiapartheidlegacy.org.uk/heritage-arts-culture/history/apartheid-a-short- history/#:~:text=It%20was%20the%20law%20of,these%20early%20settlers%20were%20farmers, accessed on 12 December 2024.

12 Robert C. Cottrell, *South Africa: A State of Apartheid* (Chelsea House Publishers, 2005), pp. 2 – 6 and 59 – 94.

atmosphere of suspicion and fear. Apartheid deliberately disadvantaged the Black majority, relegating them to a life of inequality, poverty and disenfranchisement simply due to their skin colour.[13]

22. While building upon pre-existing segregationist policies, apartheid distinguished itself through its legally codified and ruthlessly enforced nature; it employed a fearsome state apparatus to punish dissenters and maintain its grip on power.[14]

23. Ironically, apartheid's emergence coincided with a global shift away from racist ideologies in the post-World War II era, making its implementation even more reprehensible in the eyes of the international community.[15]

24. The roots of apartheid policy lay in a toxic blend of racial superiority and fear. It is grounded in the belief of the inherent racial superiority of White South Africans and a pervasive and insidious ideology of Christian nationalism, which fuelled discriminatory policies and statutes enacted by the apartheid regime. Fear, particularly among the White minority, of losing their political, socio-economic, linguistic and cultural dominance further motivated the entrenchment of apartheid.[16]

25. The creation of the apartheid state resulted in numerous laws being passed, resulting in the codification of law and a legal system built on institutionalised racial discrimination, segregation and inequality, coupled with ruthless and inhumane enforcement.[17]

26. This explanation, however, does not justify the profound injustices and human rights violations perpetrated under apartheid. It merely provides a glimpse into the warped mindset underpinning this dark chapter in South African history.

27. The following discussion briefly outlines the historical evolution of the ANC's struggle against the apartheid state utilising peaceful means and later armed resistance.

E. HISTORICAL EVOLUTION OF ANC RESISTANCE TO SEGREGATION AND APARTHEID

28. The struggle against apartheid in South Africa was a protracted and multifaceted conflict, marked by decades of peaceful resistance, primarily by the African National Congress, and followed by a turn to armed resistance since **1961** in the face of escalating state violence, intensified repression and systemic oppression of the Black majority.

29. The ANC, founded in **1912**, focused on peaceful resistance against racially discriminatory laws and practices. Initial methods included petitions, representations and delegations to the White government, and later it organised mass-based civil disobedience campaigns like the Defiance

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[13] For a detailed examination of apartheid policy see Leo Marquard, *The Peoples & Policies of South Africa* (Oxford University Press, 1969).

[14] Cottrell, *supra* note 12.

[15] *Ibid*.

[16] For an historical analysis of the philosophy underpinning Afrikaner nationalism and its attendant policy of apartheid, see Hermann Giliomee, *The Rise & Demise of the Afrikaners*, (Tafelberg, 2019).

[17] Robert M. Price, *The Apartheid State in Crisis: Political Transformation in South Africa 1975 – 1990* (Oxford University

Press, 1991), pp. 13 – 26.

Campaign of **1952 ("Defiance Campaign").**[18] The Defiance Campaign was a significant moment in the struggle against apartheid as it marked the first time that people of all races came together to resist the government's discriminatory policies.[19]

30. The ANC and its allies organised the Defiance Campaign. It involved thousands of volunteers across the country defying selected discriminatory laws and regulations, for which over **8 000** (Eight Thousand) people were arrested and imprisoned. The campaign was a powerful demonstration of the people's peaceful opposition to apartheid, and it helped to galvanise mass- based resistance to apartheid.[20]

31. On **25-26 June 1955,** the ANC, the South African Indian Congress, the South African Coloured People's Congress and the South African Congress of Democrats, commonly known as the **'Congress movement'**, organised a national gathering in Kliptown (Johannesburg) labelled as the **Congress of the People**, which adopted the **Freedom Charter.** The Freedom Charter called for a non-racial, democratic South Africa based on broadly liberal principles and fundamental human rights. The apartheid state responded to this creative and peaceful initiative by arresting in **December 1955**, **156** (one hundred and fifty-six) leaders of the Congress movement on a charge of treason. The **Treason Trial** lasted until 1961, when all the defendants were acquitted.[21]

32. Despite the display of unwavering solidarity and united action, the apartheid regime responded with increasing brutality, culminating in the Sharpeville Massacre of **1960**, where police opened fire on peaceful protestors, killing **67** (Sixty-Seven) Africans and wounding **186** (One Hundred and Eighty-Six) others.[22] This watershed moment marked a turning point in the struggle, with many concluding that peaceful resistance was futile against a regime determined to maintain its power through violence. The Sharpeville Massacre also had wider impact on the international community, as it led to condemnation of the apartheid regime and increased support for the anti-apartheid movement.[23]

33. On its part, the apartheid state took the extraordinary step of banning the ANC and the Pan Africanist Congress **("PAC")** in **April 1960** under the **Unlawful Organisations Act, No. 34 of 1960 ("Unlawful Organisations Act"),** thereby forcefully restricting all forms of peaceful resistance to apartheid.[24]

34. This proscription criminalised peaceful opposition to apartheid, forcing activists into hiding, exile, or covert operations. The government's intent was clear – it was attempting to eradicate

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[18] "ANC History: A Brief History of the African National Congress", (African National Congress, n/d), https://www.anc1912.org.za/history/, accessed on 7 November 2024.

[19] Anthony Sampson, *Mandela: The Authorised Biography* (HarperCollinsPublishers, 2000), pp. 66 – 76; "Defiance Campaign 1952", (South African History Online, 21 March 2011 last updated 27 August 2019), https://www.sahistory.org.za/article/defiance-campaign-1952, accessed on 7 November 2024.

[20] Sampson, *ibid.;* Ismail Vadi, *The Congress of the People and Freedom Charter: A People's History* (Jacana Media, 2015), pp. 55 – 56.

[21] For a detailed study of this campaign, see Ismail Vadi, *The Congress of the People and Freedom Charter: A People's History* (Jacana Media, 2015).

[22] South African Democracy Education Trust (SADET), *The Road to Democracy in South Africa Volume 1 (1960 – 1970),* (Zebra Press, 2002), pp. 68 – 69.

[23] SADET, *ibid,* pp. 68 – 125.

[24] "Unlawful Organizations Act, No. 34 of 1960", (22 February 2016, last updated 27 August 2019), *https://*

www.sahistory.org.za/archive/unlawful-organizations-act-act-no-34-1960, accessed on 7 November 2024; "Sharpeville Massacre, 21 March 1960", *(*South African History Online 31 March 2011, last updated 22 March 2024), https://www.sahistory.org.za/article/sharpeville-massacre-21-march-1960, accessed on 11 December 2024.

any organised political resistance and maintain White minority rule by fear and force.[25] Weighed holistically, considering the ban and repression, it became apparent to Black citizens that armed resistance was a necessity.[26]

35. The Act outlawed any organisation that the government deemed to be promoting communism. This stemmed from the Suppression of Communism Act, which was defined broadly to include any opposition to the government. The banning of the ANC and the PAC forced their structures and leaders underground and made it difficult for them to operate openly. This further limited the avenues for peaceful resistance and made armed resistance seem like the only viable option for many.[27]

36. With key leaders arrested or in hiding and lawful avenues for protest blocked, the morale of the anti-apartheid movement suffered. Ordinary activists and sympathisers faced intimidation, detentions without trial, and state surveillance, fostering a climate of uncertainty, terror and fear.[28]

37. Henceforth, grassroots ANC organisers and activists and leaders operated clandestinely, distributing underground literature and maintaining secret communication networks. Once open and mass-based, the liberation struggle had to navigate the clandestine world of underground networks and secret meetings.[29]

38. As a result of a variety of oppressive laws implemented from the inception of the apartheid state, the Sharpeville massacre, and the banning of the ANC, the failure of passive resistance became undeniable.[30] These factors made it clear to leaders of the ANC and the broader Congress movement that armed resistance was the only viable course of action, as passive resistance had failed since **1912** in the face of relentless state violence and oppression.[31]

39. These political changes significantly influenced South Africa's liberation movements. The ANC and the clandestine South African Communist Party **("SACP")** intensified efforts to combat apartheid, moving beyond non-violence as government brutality convinced them of the need for armed resistance. On **16 December 1961**, a new military formation, Umkhonto we Sizwe **("MK")**, was launched as the armed wing of the ANC.[32]

40. The armed struggle was a central feature of MK's operational strategy, with the sabotage campaign intended as a transitional phase towards the development of guerilla warfare against the apartheid system. The ANC's decision to create a separate and independent organ, MK, marked the beginning of a thirty-year armed struggle against the apartheid state. This decision was driven by the need to respond to the state's violent repression and the belief that non- violent methods had become ineffective. MK's formation allowed the ANC to pursue a revolutionary approach, while maintaining its principled commitment to non-violence.[33]

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25 Stephen R. Davis, *The ANC's War against Apartheid: Umkhonto we Sizwe and the Liberation of South Africa,* (Indiana University Press, 2018), p. 20.

26 Tom Lodge, *Black Politics in South Africa since 1945* (Rava Press, 1983), pp. 231 – 240.

27 John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015), p. 120.

28 Magdeleine Fullard, "State Repression in the 1960s" in SADET, *The Road to Democracy in South Africa Volume 1 (1960–1970),*
(Zebra Press, 2002), pp. 341 – 349.

29 Tom Lodge, *Black Politics in South Africa since 1945* (Rava Press, 1983), pp. 231 – 234.

30 Davis, *supra* note 25, pp. 1 – 5.

31 Susan H. Farbstein, "*Reflections on the Question of When, if Ever, Violence Is Justified in Struggles for Political or Social Change*", *Harvard Human Rights Journal*, 27 (2014), pp.1 – 5.

32 Helena Dolny, *Slovo: The Unfinished Autobiography of ANC Leader Joe Slovo*, (Ocean Press, 1997), pp. 170 – 186.

[33] Paul S. Landau, "The ANC, MK, and 'The Turn to Violence' (1960–1962)", *South African Historical Journal*, Vol. 64 No. 3, September 2012, pp. 540 – 560.

41. In the early years, MK's collaboration with the SACP was significant, with White communists, having served in the South African armed forces during the Second World War, training recruits in clandestine operations and sabotage techniques.[34]

42. The rise of independent African states in the **1960s**, driven by Pan-Africanism, provided crucial support to the liberation movement. Many African states backed the liberation struggle through the Organisation of African Unity **("OAU")**, and some offered refuge to ANC leaders, with others such as Algeria allowing military training camps for ANC combatants. MK also extended its reach, securing military training and material support from some former East European socialist states and the former Soviet Union, which enabled it to co-ordinate and sustain its operations domestically and internationally.[35]

43. In essence, the early years of armed resistance by MK and the ANC were marked by a transition from passive resistance to armed struggle, influenced by the repressive acts of the apartheid state and the lack of political rights for Blacks. Subsequent shifts in strategy involved changes in its military policies and operational structure, intensified armed activities, negotiations, and the demobilisation of MK as part of the transition to a multiparty democracy in the 1990s.

F. SYNOPSIS OF THE DEVELOPMENT OF MK's ARMED RESISTANCE TO APARTHEID

44. The ANC announced the adoption of a policy of armed struggle against the apartheid state on **16 December 1961**.[36]

45. The decision to resort to violence was carefully considered and justified within the framework of the "*just war*" principle, as evidenced by Mandela's famous "*I am prepared to die*" speech during his trial in **1964**. The recourse to violence was seen as a means of self-defence against a repressive regime following the failure and criminalisation of non-violent resistance.[37]

46. The culture of violence that emerged during the anti-apartheid struggle provided an outlet for those who experienced deprivation and served to inspire, motivate and spur the anti-apartheid movement. In addition, armed struggle was perceived as a means of reclaiming personal dignity and demonstrating worth in pursuing a morally exemplary cause.[38]

47. The use of armed resistance against the apartheid regime was justified as a form of self-defence and a response to the state's violent suppression of peaceful efforts. The decision to adopt violent methods was made carefully considering the principles of the just war tradition.[39]

48. The formation of MK was a carefully considered decision. It was intended as an armed wing capable of sabotage against government installations, designed to make the regime's continuation of apartheid costly without inflicting widespread harm on civilians.[40] Leaders stressed that armed struggle would be pursued as a last resort, necessitated by the closure of peaceful political space.[41]

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34 Davis, *supra* note 25, pp. 4 – 5.
35 SADET, *supra* note 22, pp. 125 – 132.
36 Kenneth Christie, *The South African Truth Commission* (Palgrave Macmillan, 2000), pp. 15 – 19.
37 Rob Watts (ed), *Criminalizing Dissent*, (Routledge, 2019), pp. 195 – 220.

[38] Pierre du Toit, *South Africa's Brittle Peace*, (Palgrave Macmillan, 2001), pp. 82 – 90.
[39] Davis Supra Note 25, p. 102.
[40] Davis, supra note 25, pp. 4, 14, 30, 48, 102 132, 215.
[41] Nelson Mandela, *Long Walk to Freedom* (Abacus, 1995), pp. 276 – 278.

48. The overriding intention behind forming MK was never to unleash indiscriminate violence but rather to make the apartheid state understand that it could no longer maintain oppressive policies without consequence.[42] The use of force was positioned as a necessary tool in the pursuit of liberation, bounded by moral constraints and ultimately aimed at restoring peace under a democratic constitutional order.

49. MK played a crucial role in the struggle against apartheid in South Africa.[43] Its history can be divided into several phases, each marked by different strategies and challenges. These phases include the initial sabotage campaigns, attempts at guerrilla warfare, reorganisation and political- military co-ordination, which resulted in increased military operations, elements of people's war and insurrection, negotiation, and finally, integration into the South African National Defence Force **("SANDF")**.[44]

50. Initially, MK adopted a strategy of sabotage rather than direct attacks on individuals. In his opening statement on **20 April 1964** to the Pretoria Supreme Court during the **Rivonia Trial**, Nelson Mandela clearly spelt out that the aim of armed resistance was to limit the loss of civilian lives, by asserting:

> *Four forms of violence were possible. There is sabotage, there is guerilla warfare, there is terrorism, and there is open revolution. We chose to adopt the first method and to exhaust it before taking any other decision. In the light of our political background the choice was a logical one. Sabotage did not involve the loss of civilian life, and it offered the best hope for future race relations. Bitterness would be kept to a minimum and, if the policy bore fruit, democratic government could become a reality. This is what we felt at the time, and this is what we said in our manifesto. "We, of Umkhonto we Sizwe have always sought to achieve liberation without bloodshed and civil clash. We hope, even at this late hour, that our first actions will awaken everyone to a realisation of the disastrous situation to which the Nationalist policy is leading. We hope it will bring the government and its supporters to their senses before it is too late, so that both the government and its policies can be changed before matters reach the desperate stage of civil war*".[45]

51. The aim of MK was to strike infrastructure targets such as railway lines, power stations, and government offices, thereby undermining the apartheid state's functioning without causing loss of life.[46] MK operatives were instructed to avoid civilian casualties and to inflict damage that would symbolically demonstrate the regime's vulnerability.[47] This approach was consistent with the emerging "just war" standard of proportionality and demonstrated a conscious effort to limit harm.[48]

52. Between **1961** and **1963**, MK carried out over a hundred acts of sabotage, carefully selected to reduce the risk to civilians. Reports indicate that no civilians were killed in these early

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42 Landau, *supra* note 33, p. 552.

43 "Umkhonto we Sizwe - Structure, Training and Force Levels (1984 to 1994)", (*The Nelson Mandela Foundation*, n/d), https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv02918/06lv02961.htm, accessed on 13 December 2024.

44 *Ibid*.

45 Nelson Mandela, "Statement from the dock in Pretoria Supreme Court, 20 April 1964, at the opening of the defence case", cited in Nelson Mandela, *The Struggle is My Life* (IDAF Publications, 1978), p. 167.

46 Davis, supra note 25, pp. 102 and 215.

[47] Tsepe Motumi, "Umkhonto we Sizwe - Structure, Training and Force Levels (1984 to 1994)", *African Defence Review* (1994) 18, https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv02918/06lv02961.htm, accessed on 13 December 2024.

[48] Michael Walzer, *Just and Unjust Wars,* (Basic Books, 2006), pp. 90 – 108.

operations.[49] The emphasis on sabotage rather than terrorism distinguished MK's activities from indiscriminate violence and positioned it as a legitimate armed response within a liberation struggle recognised by evolving international standards.[50]

53. Despite the setbacks of the early **1960s** because of the arrest and life imprisonment of the MK High Command during the Rivonia Trial of **1963 – 1964**, MK sought to continue the armed struggle. Drawing on alliances with the SACP and sympathetic states in neighbouring countries, MK established training camps in some neighbouring African states and attempted to launch guerrilla campaigns.[51]

54. The Wankie Campaign in **1967**, a joint operation with the Zimbabwe People's Revolutionary Army **("ZIPRA"),** marked a significant effort to infiltrate guerrilla fighters into South Africa through Rhodesia **("Zimbabwe")**.[52] The campaign aimed to establish bases within Rhodesia and conduct raids into South Africa. However, the Wankie Campaign, like other early attempts at guerrilla warfare, proved largely ineffective. With their superior resources and intelligence, the South African security forces could suppress MK's incursions.[53]

55. One of the key challenges faced by MK during this period was the relationship between the political and military leadership. Tensions and disagreements over strategy and tactics hampered MK's effectiveness. The Wankie Campaign, for example, exposed weaknesses in co- ordination and communication between the political and military wings of the ANC.[54]

56. This period highlighted MK's challenges in conducting sustained guerrilla warfare within South Africa's borders. The lack of suitable terrain, the strength of the South African security forces, and the difficulties of operating in a hostile environment all contributed to MK's operational challenges and weaknesses.

57. The Soweto students' uprising began on **16 June 1976**, when thousands of Black students protested the mandatory use of Afrikaans as the medium of instruction in schools. The peaceful protest turned violent when police opened fire on the students, leading to widespread unrest and a brutal crackdown by the apartheid regime. The uprising resulted in hundreds of deaths and injuries, drawing international attention to the oppressive nature of the apartheid system and galvanising further resistance within South Africa and abroad. It demonstrated the regime's willingness to use lethal force against unarmed civilians and again highlighted the limitations of peaceful resistance. A consequence of state brutality was that several thousand students fled the country; most of whom joined the ANC and MK, thereby giving new momentum to the armed struggle in subsequent years.[55]

58. Following the Soweto students' uprising, MK underwent a period of internal reorganisation and reassessment. The "Green Book", a strategic document produced during this period, outlined a new approach to the armed struggle, emphasising the "people's war" concept. This

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[49] Davis, supra note 25, p. 18

[50] Watts, supra note 37, pp. 211 – 220.

[51] Rebecca M. Kulik, "Umkhonto we Sizwe", (*Encyclopaedia Britannica*, 4 September 2024), https://www.britannica.com/topic/Umkhonto-we-Sizwe, accessed on 14 December 2024.

[52] "Armed Struggle and the Advancement of the Student and Labour Movements, 1967-1976", (South African History Online, 21 March 2011, updated 24 March 2016), accessed on 12 December 2024.

[53] Leopold Scholtz, "Lessons from the Southern African Wars: A Counterinsurgency Analysis", *Southern Journal for Contemporary History* (2011) 36(2), pp. 203 – 204.

[54] James Ngculu, *The Role of Umkhonto we Sizwe in the Creation of a Democratic Civil-Military Relations Tradition* (University of the Western Cape, 1999), pp. 241 – 243.

[55] Tom Lodge, *Black Politics in South Africa since 1945* (Rava Press, 1983), pp. 321 – 343.

involved closer co-ordination between political and military activities, focusing on mobilising the masses and building underground structures within South Africa.[56]

59. Archival materials such as internal MK documents and training manuals provide valuable insights into the organisation's structure, training methods, and evolving strategies during this period. These sources reveal MK's challenges in maintaining secrecy, co-ordinating activities across borders, and adapting to the changing political landscape.[57]

60. However, ANC structures inside South Africa remained weak during this period and could not supply reliable support for MK units, which operated mainly in isolation from mass combat groups. The ANC faced organisational shortcomings that prevented it from exploiting pockets of revolutionary preparedness among the oppressed inside the country. The average survival period for guerrillas was six months, and the South African police successfully infiltrated several MK command structures.[58]

61. Notwithstanding the above, the **1980s** witnessed a significant escalation in MK operations inside the country. Attacks on police stations, government buildings, and economic targets became more sophisticated and frequent. MK also increasingly targeted the homes of apartheid officials and carried out physical attacks and assassinations of persons collaborating with the apartheid regime, marking a shift away from the earlier emphasis on avoiding civilian casualties.[59]

62. This period saw MK adopt a more aggressive approach, reflecting the growing intensity of the anti-apartheid struggle. The "people's war" strategy aimed to create a climate of instability and make apartheid ungovernable. While MK's actions contributed to the pressure on the apartheid regime, its conduct also raised ethical questions about the use of violence and its impact on civilians.[60]

63. In **1985**, the ANC declared the advent of people's war, but the organisation's internal weaknesses and South African police actions made it increasingly difficult for MK to maintain supplies and reinforcements. The ANC received a new flow of military aid from the Soviet Union, including AK-47s, land mines, explosives, and uniforms, which it hoped to use in furthering the struggle.[61]

64. MK's actions in the **mid-1980s** significantly impacted the anti-apartheid struggle. They helped to raise international awareness of the situation in South Africa, inspired internal resistance, and contributed to the growing pressure on the government to negotiate an end to apartheid.[62]

65. By the late **1980s**, South Africa was in deep crisis.[63] Sustained internal unrest and mass mobilisation, international sanctions, and the escalating costs of maintaining apartheid were taking their toll on the apartheid state. MK continued its armed activities, carrying out high-

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[56] Ronnie Kasrils, "Umkhonto We Sizwe (MK): How the Armed Struggle Succeeded", (Black Agenda Report, 7 December 2016), https://www.blackagendareport.com/how_south_africa_armed_struggle_succeeded, accessed on 13 December 2024.

[57] Motumi, *supra note 47*.

[58] Robert Ross, Anne Kelk Mager and Bill Nasson, *The Cambridge History of South Africa: Volume 2, 1885–1994* (Cambridge University Press, 2011), pp. 460 – 480.

[59] Davis, *supra* note 25, pp. 22, 201 and 218.

[60] Kulik, *supra* note 51.

[61] Kasrils, *supra note 56*.

[62] Motumi, *supra note 47*.

[63] "Umkhonto we Sizwe (MK) Timeline 1961-1990", (South African History Online, published 20 March 2011, last updated

25 April 2024), https://www.sahistory.org.za/article/umkhonto-wesizwe-mk-timeline-1961-1990, accessed on 13 December
2024.

profile attacks such as the bombing of the **SADF's Witwatersrand Command** complex in Johannesburg.[64]

66. The bombing of the **Sasol and Natref Refineries in Secunda and Sasolburg** in **1980** targeted the synthetic fuel plants owned by the apartheid government, strategically intended to cripple fuel supplies without harming civilians. MK operatives executed the bombings at night, ensuring no civilian workers were on-site, though one person was left injured.[65]

67. The attack in **1982** on the **Koeberg Nuclear Power Station** in Cape Town was a highly strategic operation. MK successfully sabotaged the Koeberg Nuclear Power Station, causing extensive damage without any injuries. The attack aimed to counter claims that the ANC and MK operated solely outside South Africa. MK also paid tribute to its fallen heroes and imprisoned comrades, particularly those killed in the "Maseru massacre" following a South African Defence Force raid into Lesotho. Additionally, MK reiterated its warning to foreign investors about supporting apartheid South Africa.[66]

68. In the early **1960s**, it is estimated that the MK conducted over **190** acts of sabotage between **1961** and **1963** without any death or injury.[67] In addition, the operations list of MK refers to **1 500** attacks between **1977** and **1989**.[68]

69. Whatever its limitations, MK played an essential role in the struggle against apartheid, employing armed resistance to challenge an oppressive regime. While its actions reflected both the desperation and determination of the liberation movement, it also sparked ethical debates about the use of violence for political ends. As explained above, MK aimed to limit civilian casualties by focusing its armed actions on symbols of the apartheid regime, and military and police targets, recognising their role as the frontline defenders of apartheid. This approach underscored MK's attempt to balance armed struggle with principles of minimising harm to non-combatants. However, there were instances, particularly in the 1980s, when MK actions resulted in the loss of civilian lives and injury to innocent bystanders.

70. Notwithstanding the above, there were instances in its history, particularly in the 1980s, when some high-visibility MK operations resulted in civilian casualties. This was the case despite the ANC consistently seeking to position its armed struggle within the framework of international law. Its leaders emphasised their commitment to the principles of international humanitarian law, particularly those concerning the conduct of hostilities.[69] The few instances where MK's armed actions resulted in a worrying number of civilian casualties are described briefly hereunder.

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[64] O'Malley Archives, "History of Umkhonto we Sizwe", (Nelson Mandela Foundation: The Heart of Hope, n/d), https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv02918/06lv02942.htm, accessed on 12 December 2024.

[65] "SASOL plant under attack", (South African History Online, 16 March 2011, last updated 22 August 2019), https://www.sahistory.org.za/dated-event/sasol-plant-under-attack, accessed on 11 November 2024.

[66] "ANC attacks Koeberg nuclear power station", (South African History Online, 16 March 2011, last updated 30 September 2019), https://www.sahistory.org.za/dated-event/anc-attacks-koeberg-nuclear-power-station, accessed on 11 November 2024.

[67] "List of Umkhonto we Sizwe Operations", (South African History Online, 8 December 2014, last updated 12 April 2024), https://www.sahistory.org.za/article/list-umkhonto-wesizwe-operations, accessed on 11 November 2024.

[68] Peter Dickens, "The Not So Spectacular MK Attack on Voortrekkerhoogte", (The Observation Post, 2017), https://samilhistory.com/tag/voortrekkerhoogte/, accessed on 11 December 2024.

[69] "Civilian Casualties of the Armed Struggle", (Nelson Mandela Foundation, n/d),

https://omalley.nelsonmandela.org/index.php/site/q/03lv03445/04lv04015/05lv04016/06lv04030/07lv04031.htm, accessed on 11 December 2024.

71. **Church Street Bombing (Pretoria, 1983):** This was one of MK's most notable attacks aimed at the South African Air Force (SAAF) headquarters. The explosion killed **19** people and injured over **200**, including civilians. This incident is often cited in discussions of the complexities of guerrilla warfare, as MK targeted a military institution in an urban area with civilians nearby.[70]

72. Johannesburg Magistrates Court Bombing (1987): Two bombs were detonated during this attack. The first was a small explosion which served as a decoy. The second explosion was more destructive, claiming the lives of three apartheid police officers and injuring ten others, including six bystanders.[71]

73. **Magoo's Bar Bombing (Durban, 1986)**: In this attack, MK operatives targeted a popular bar frequented by off-duty police officers, resulting in the deaths of three civilians and injuries to 69 others. The intended target was the police, but due to the nature of guerrilla operations, nearby civilians were also affected.[72]

74. **Ellis Park Stadium Bombing (Johannesburg, 1988)**: An MK bombing targeting military personnel resulted in the injury of two civilians. Guerrilla warfare tactics sometimes led to risks for civilians, as high-traffic areas were often shared by military and civilians alike. However, of importance in this attack is that at the Truth and Reconciliation Commission **("TRC"),** the individual tried for the attack testified that he assumed that both deceased were members of the security team at the stadium.[73]

75. While MK's operations did not lead to a full-scale insurrection, they contributed to the pressure on the government to negotiate an end to apartheid. The ANC's decision to suspend armed actions in **1990** signalled a shift towards a negotiated settlement.

76. In **1990**, the ANC was unbanned, Nelson Mandela and other political prisoners were released, and members of the liberation movement in exile returned home. South Africa embarked on a negotiated transition to democracy. MK played a crucial role in this process, suspending its armed activities and participating in negotiations with the South African Defence Force and the apartheid government with a view to integrating combatants of the liberation armies into a restructured South African National Defence Force.[74]

77. Integrating MK combatants into the newly formed SANDF was a complex and challenging undertaking. It involved merging former enemies into a unified force, addressing issues of rank, training, and discipline, and overcoming the legacy of mistrust and animosity. The process also required addressing the psychological and social impact on former combatants, the difficulties of adapting to a conventional military structure, and the potential for tensions within the integrated force.[75]

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[70] African National Congress, *Further Submissions and Responses by the African National Congress to Questions Raised by the Commission for Truth and Reconciliation*, (ANC, 12 May 1997), pp. 74 – 101 provide a comprehensive list of ANC-MK armed attacks in South Africa for which it claimed responsibility; "List of MK Operations", (Nelson Mandela Foundation, n/d), https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv02918/06lv02949.htm, accessed on 12 December 2024].

[71] "Johannesburg Magistrate Court Bombed", (South African History Online, n/d), https://www.sahistory.org.za/dated-event/johannesburg-magistrate-court-bombed, accessed on 13 December 2024.

[72] "Magoo's Bar is bombed", (South African History Online, 16 March 2011, last updated 22 August 2019), https://www.sahistory.org.za/dated-event/magoos-bar-bombed, accessed on 11 November 2024.

[73] "A car bomb explodes at Ellis Park Rugby Stadium", (South African History Online, 16 March 2011, last updated 23 August 2019), https://www.sahistory.org.za/dated-event/car-bomb-explodes-ellis-park-rugby-stadium, accessed on 11 November 2024.

[74] Kulik, *supra note 51.*

[75] Kulik, *Ibid*.

78. While the integration process was not without difficulties, it ultimately contributed to creating a non-racial national defence force. The integration of MK into the SANDF symbolised the end of apartheid and the beginning of a new era for the military in South Africa.

79. MK's transition from a guerrilla force to an integral part of the SANDF marked a significant transformation, symbolising the end of apartheid and the birth of a new democracy. Its history underscores the complexities of liberation struggles, the challenges of political transitions, and the ongoing debates about reconciling the past with the demands of a unified future in South Africa.

G. INTERNATIONAL LAW CONSIDERATIONS: BALANCING VICTIMS OF ARMED RESISTANCE AGAINST THE STRUGGLE FOR LIBERATION

80. Balancing the physical harm inflicted by guerrilla warfare on individuals against the moral imperative of liberation struggles against oppressive regimes, particularly one as entrenched and violent as apartheid, is a complex ethical and legal exercise. The ANC's armed struggle must be situated in a broader framework encompassing just war theory, international humanitarian law, and the evolving international consensus on the right to self-determination.

81. What should be considered is that in asymmetric warfare, armed resistance movements like MK should consider the strategic value of civilians, as it may need to augment its ranks by enlisting or conscripting civilians to wage war. The strategic value of civilians in asymmetric war is different from that in conventional war, as state armies cannot prevail without disabling at least those civilians who provide war-sustaining services to its enemies. Therefore, the laws and ethics of war offer some general directions for armed and military attacks on associated targets, emphasising that strikes must be necessary, cost-effective, and the least harmful means available to accomplish a justifiable military aim.[76]

H. JUST WAR THEORY AND MORAL IMPERATIVES

82. Just war theory provides an ethical vocabulary for evaluating the moral status of armed conflict, requiring that force be used only for a just cause, as a last resort, with right intention, proportionality, and a reasonable prospect of success.[77] In the case of apartheid South Africa, the ANC's cause of overthrowing a systemically racist regime practising a crime against humanity was beyond dispute.[78] The Sharpeville Massacre, the banning of the ANC and PAC, and decades of non-violent resistance met by state brutality demonstrated that all peaceful avenues had been foreclosed.[79] The armed struggle thus emerged as a last resort, taken reluctantly after attempts at petitions, boycotts, and peaceful protests had been met with lethal force.

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[76] Daniel Rothbart, Karina Korostelina and Mohammed Cherkaoui (eds), *Civilians and Modern War* (Routledge, 2012), pp. 156 – 162.

[77] Walzer, supra note 48.

[78] *International Convention on the Suppression and Punishment of the Crime of Apartheid (1973),* 1015 UNTS 243, Art. II;

Rome Statute of the International Criminal Court (1998), 2187 UNTS 90, Art. 7(1)(j).

[79] Thomas G. Karis and Gwendolen M. Carter, *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1964*, Vol.3 (Stanford University Press, 1977), pp. 200 – 205.

I. RIGHT TO SELF-DETERMINATION

83. The principle of self-determination, enshrined in the UN Charter and elaborated in General Assembly resolutions, recognises that peoples under colonial or racist domination are entitled to free themselves from oppression.[80] This right, supported by the International Covenant on Civil and Political Rights and reiterated in Additional Protocol I to the Geneva Conventions, legitimises the use of force in extreme cases where fundamental rights cannot be realised.[81] Therefore, while any armed conflict risks harm, international law acknowledges that oppressed peoples may justifiably employ violence as a remedial measure to secure fundamental human rights and autonomy.[82]

J. APARTHEID AS A CRIME AGAINST HUMANITY AND LEGITIMACY OF RESISTANCE

84. Apartheid was internationally condemned as a crime against humanity, codified in the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the International Criminal Court.[83] The criminality of apartheid delegitimised the South African state's claim to obedience and moral authority. By engaging in systematic, racially motivated human rights abuses, the apartheid regime forfeited its right to be considered a lawful government. Under these circumstances, the ANC's armed struggle was not a mere rebellion but a legitimate insurrection against a criminal state structure.

K. PROPORTIONALITY, DISTINCTION, AND EFFORTS TO MINIMISE HARM

85. The ANC's attempt to confine violence primarily to strategic and infrastructural targets rather than the civilian population reflected an application of proportionality and distinction. Under just war theory and international humanitarian law, these principles require that combatants discriminate between combatants and non-combatants and use only the force necessary to achieve legitimate military objectives.[84] By targeting infrastructure, security forces, and symbols of the apartheid state, MK sought to apply force proportionately, limiting unnecessary suffering. While inevitably, some civilian harm did occur - an almost unavoidable tragedy in prolonged conflicts - the record suggests that MK leadership and operatives made conscious efforts to minimise civilian casualties, thus demonstrating respect for these core ethical and legal norms.[85]

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[80] *Charter of the United Nations, 24 October 1945*, 1 UNTS XVI, Art.1(2); *Declaration on the Granting of Independence to Colonial Countries and Peoples*, GA Res 1514 (XV) (1960).

[81] *International Covenant on Civil and Political Rights* (ICCPR), 1966, 999 UNTS 171, Art1; Taylor, Paul, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge University Press, 2020), pp, 141 – 143.

[82] Marco Longobardo, *The Use of Armed Force in Occupied Territory* (Cambridge University Press, 2018), pp, 149 – 159; Christopher Finlay, *Terrorism and the Right to Resist* (Cambridge University Press, 2015), pp. 136 – 140.

[83] *Rome Statute of the International Criminal Court (1998),* 2187 UNTS 90, Art. 7(2)(h)

[84] International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Article 48; International Committee of the Red Cross, *Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the*

Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 51(5)(b); Walzer, *Just and Unjust Wars*, supra note 48, pp. 105 – 110.

85 Ibid.

L. COMPARATIVE PERSPECTIVE AND HISTORICAL PRECEDENTS

86. The ANC's struggle is not unique. National liberation movements in Algeria, Namibia, Zimbabwe (Rhodesia), and elsewhere similarly resorted to guerrilla warfare when denied peaceful paths to self-determination.[86] The United Nations and the Organisation of African Unity recognised these movements as legitimate representatives of oppressed peoples, granting them international standing and moral credibility.[87] Historical scholarship acknowledges that while guerrilla warfare involves ethical dilemmas in that civilians might be caught in the crossfire or suffer collateral harm, it can be justified where the oppressive regime systematically uses state terror, murder, and torture to prevent non-violent political change.[88]

M. MORAL PHILOSOPHERS AND POLITICAL THINKERS ON RESISTANCE

87. Political philosophers and ethicists have long argued that where a state engages in gross injustice, citizens or subjects have a moral right, if not a duty, to resist.[89] Hannah Arendt stressed that violent resistance sometimes emerges from the unbearable suppression of political freedom.[90] John Rawls recognised that in cases of "outlaw states" or severe injustice, oppressed groups may be justified in rebellion to restore a well-ordered society founded on justice.[91] Michael Walzer, a leading just war theorist, observes that when a regime systematically tramples fundamental human rights, the oppressed may justifiably resort to violence as a last-ditch mechanism of self-defence and liberation.[92]

N. INTERNATIONAL SUPPORT AND *OPINIO JURIS*

88. The ANC's struggle garnered broad international support, from states imposing sanctions on South Africa to the UN General Assembly and Security Council passing resolutions condemning apartheid and supporting liberation movements.[93] This global endorsement reflects an *opinio juris* that recognises armed resistance in situations of racist oppression as a legally and morally defensible response. Such support further undercuts the notion that the ANC's violence was merely criminal, placing it instead within a recognised category of lawful resistance authorised, at least implicitly, by the international community's moral and legal stance on apartheid.

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86 Davis, supra note 25, pp. 102 – 105; Farbstein, *supra* note 31.

87 John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015), pp. 200 – 210; Ruth First, *Selected Writings* (International Union of Left Publishers 2022) Introduction by Vashna Jagarnath, pp 41 – 44.

88 Organisation of African Unity Liberation Committee Documents, (1960s–1980s); UN GA Res 3070 (XXVIII) (1973).

89 Malcolm N Shaw, *International Law,* (CUP, 2014), pp. 8, 91, 434, 943 and 1144.

90 Hannah Arendt, *On Violence* (Harcourt Brace & World, 1970), p. 20.

91 Cécile Fabre, *Cosmopolitan War,* (Oxford University Press, 2012), pp. 83 – 90.

92 John Rawls, *The Law of Peoples* (Harvard University Press, 1999), pp. 89 – 95.

[93] Michael Walzer, *Just and Unjust Wars*, supra note 48, p. 108.

O. BALANCING THE SCALES OF HARM AND NECESSITY

89. The fundamental question is whether the harm caused by guerrilla warfare can be justified by the liberation achieved. Under apartheid, millions were systematically disenfranchised, brutalised, and denied fundamental human rights. The harm inflicted by the liberation struggle, while accurate, was relatively limited in scope when weighed against the long-term moral good of dismantling institutionalised racism and achieving democratic governance.[94] The disproportion between the regime's violence, oppression, and the restricted, principled use of force by MK underscores that the cost of armed resistance was outweighed by the emancipation it ultimately secured.

P. POST– CONFLICT RECONCILIATION

90. The Truth and Reconciliation Commission acknowledged the complexity of violence committed by all sides but also recognised the moral legitimacy of the anti-apartheid cause. The relative restraint exercised by MK, the focus on legitimate targets, and the overarching quest for a just peace helped pave the way for reconciliation. This outcome reaffirms that even within the tragic necessities of guerrilla warfare, the pursuit of liberation guided by ethical and legal principles can achieve a morally justifiable end. In addition, given the systematic violence and oppression inflicted upon the Black population by the apartheid regime, MK's actions can be interpreted as self-defence, both individually and collectively. The denial of fundamental human rights, the use of brutal force to maintain control, and the absence of legal avenues for redress could be seen as creating a situation where armed resistance was a necessary form of self- preservation.[95]

91. With peaceful means of resistance consistently suppressed and avenues for political participation blocked, armed struggle may have been the only viable option for achieving liberation.[96] The Sharpeville massacre, where peaceful protesters were shot by police, and the banning of the ANC and other anti-apartheid organisations illustrate the limitations of non- violent resistance in the face of a repressive regime.

92. In respect of the instances set out in paragraphs 71 to 74, it is imperative that it be viewed in totality with the factual matrix present. The ANC started as a nonviolent group. Its aim was not to resort to violent measures to achieve freedom. However, as the apartheid government increasingly suppressed nonviolent forms of protest, the ANC's leadership, particularly after 1960, resorted to armed struggle as a last resort.[97] This decision was grounded in both ethical and practical considerations as peaceful resistance was met with state brutality; the Sharpeville massacre being a stark example where police opened fire on unarmed protesters. The ANC's leadership, including Nelson Mandela and others, realised that the political space for non- violent protest effectively had been closed by the regime's repressive laws and violence.[98]

93. The Truth and Reconciliation Commission determined that political violence in South Africa led to a total of **21 000** deaths, with **7 000** occurring from **1948 to 1989** and **14 000** deaths in

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94 UN Security Council Resolution 418 (1977); UN GA Res 3117 (XXVIII) (1973); Shaw, supra note 88, pp. 255 – 260.

95 Truth and Reconciliation Commission of South Africa, *Final Report* (1998), Vol.2, pp. 300 – 330.

96 *Ibid*.

97 Farbstein, supra note 31, at 1 – 5.

[98] "Umkhonto we Sizwe (MK)", (South African History Online), https://www.sahistory.org.za/article/umkhonto-wesizwe-mk, accessed on 13 December 2024.

subsequent years until **1994**.[99] Also, **22 000** injuries occurred during the transition period from **1990 to 1994**.[100] In most instances, these deaths and injuries emanated from state action.

94. In comparison, MK operations killed an estimated number of **130** (One Hundred and Thirty) people in its quest for liberation.[101] The stated objective of MK was never to engage in operations that deliberately targeted civilians or White people. Targets were not selected based on race, and most attacks were aimed at the apartheid state, its organs and persons who collaborated with the apartheid regime. According to Aboobaker Ismail, a senior MK operative, who gave evidence at the TRC hearing on the Church Street bombing in Pretoria on 4 May 1998:

> *This was never a target, an attack against Whites. We never fought a racist war. We fought to undo racism… We never set out deliberately to attack civilian targets. We followed the political objectives of the African National Congress in the course of a just struggle. However, in the course of a war, life is lost, and the injury to and the loss of life of innocent civilians sometimes becomes inevitable. The challenge before us was to avoid indiscriminate killing and to focus on enemy security forces... Whilst Umkhonto we Sizwe had the means to attack civilians, it would have been very easy to come to various houses and shoot people, Umkhonto never did that sort of a thing. It did not take the easy route. Instead, it concentrated on military targets, on state infrastructure, often at the cost of the lives of its own cadres. Despite these noble intentions, the majority of casualties of MK operations were civilians. These civilians included those, that members of the ANC apparently regarded as legitimate targets: 'collaborators' in the form of councillors, state witnesses at the trials of ANC members, suspected informers and the like. In other words, they were 'deliberately targeted civilians'. For example, in the period 1976 to 1984, of some seventy-one deaths as a result of MK actions, nineteen were members of the security forces and fifty-two were civilians. The ANC Kabwe Conference held in Zambia in June 1985 showed a hardening in the ANC's attitude towards civilian casualties. Two days before the Conference, South African security forces launched a cross-border raid on residences in Gaborone in Botswana, killing twelve people. According to the ANC, none of the casualties were MK operatives. This attack on what the ANC described as 'very, very soft targets' formed the background to the Conference. The ANC submission to the Commission states that the Conference: "reaffirmed ANC policy with regard to targets considered legitimate: SADF and SAP personnel and installations, selected economic installations and administrative infrastructure. But the risk of civilians being caught in the crossfire when such operations took place could no longer be allowed to prevent the urgently needed, all-round intensification of the armed struggle. The focus of armed operations had to shift towards striking directly at enemy personnel, and the struggle had to move out of the townships to the White areas".*[102]

95. Whether this was justified must be weighed against the test of proportionality. In this case, were the measures taken to achieve liberation excessive? It is unlikely that a reasonable person, upon the assessment of the complete factual matrix of apartheid, would answer in the negative as those oppressed endured far more suffering, death and humiliation during the apartheid era.

[99] "Truth and Reconciliation Commission - Special Hearing: 27 May 1997", (Department of Justice, 1997), https://www.justice.gov.za/trc/media/1997/9705/s970527b.htm, accessed on 11 November 2024.

[100] Ugorji, Basil. *From Cultural Justice to Inter-Ethnic Mediation: A Reflection on the Possibility of Ethno-Religious Mediation in Africa*
(Outskirts Press, 2012), pp. 65 – 66.

[101] Truth and Reconciliation Commission of South Africa, *Truth and Reconciliation Commission of South Africa Report*, Vol. 2 (Government Printer, 1998), pp. 326 – 327.

[102] Truth and Reconciliation Commission (TRC), *TRC Final Report Volume 6*, "ANC Targets", p. 227, https://sabctrc.saha.org.za/reports/volume6/section3/chapter2/subsection7.htm, accessed on 28 December 2024.

96. Even weighed against the death toll of 7 000 (Seven Thousand) people mentioned in paragraph 933, a death toll of 130 (One Hundred and Thirty) is, in all senses of the word, proportionate when one weighs up oppression suffered by those oppressed during the apartheid era and under British and Dutch colonial rule.

Q. THE RIVONIA TRIAL AND NELSON MANDELA'S QUOTE

97. The Rivonia Trial held in **1963** and **1964** was pivotal in the anti-apartheid struggle. Nelson Mandela and other key leaders were charged with sabotage and conspiracy to overthrow the government.[103] During the trial, Mandela delivered his famous "Speech from the Dock" in which he articulated the justifications for armed struggle, stating "I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die".[104]

98. Mandela's powerful words resonated globally, drawing attention to the injustices of apartheid and the legitimacy of the ANC's cause. Although Mandela and his co-accused were sentenced to life imprisonment, the trial served to galvanise international opposition to apartheid.[105]

R. INTERNATIONAL LAW AND THE RIGHT TO SELF-DETERMINATION

99. The legality of armed struggle against colonial and racist regimes is grounded in the right to self- determination, a fundamental principle of international law enshrined in the United Nations Charter and subsequent resolutions.[106]

100. This right allows people under colonial or racist domination to freely determine their political status and pursue their economic, social, and cultural development.

101. The ANC also sought to gain international legitimacy by securing support from the United Nations, the Organisation of African Unity, and other international bodies.

102. Under international law, the ANC's armed struggle can be justified as a lawful response to apartheid – a system of institutionalised racial discrimination condemned by the global community. The right to self-determination is outlined in Article 1 of the UN Charter.[107]

103. As established in the International Covenant on Civil and Political Rights (ICCPR), Article 1 affirms that oppressed peoples are entitled to resist colonial and racist regimes in pursuit of independence and self-governance. This principle, recognised as a norm of customary

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[103] "Rivonia Trial 1963–1964", (South African History Online, 31 March 2011, last updated 27 August 2019), http://www.sahistory.org.za/article/poqo, accessed on 7 November 2024.

[104] "On Freedom, 'I am prepared to Die'", (United Nations, n/d), https://www.un.org/en/events/mandeladay/court_statement_1964.shtml, accessed on 7 November 2024.

[105] "Rivonia Trial 1963 – 1964", (South African History Online, 31 March 2011, last updated 27 August 2019), http://www.sahistory.org.za/article/poqo, accessed on 7 November 2024.

[106] Héctor Gros Espiell, "The Right to Self-Determination: Implementation of United Nations Resolutions", (Study prepared

by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations, 1980) at pp. 200 – 201.

[107] *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 1.

international law, was frequently invoked by African liberation movements to legitimise their struggle against colonial powers.[108] In exploring this, it is important to note the following:

a. The right to self-determination, as established in ICCPR Article 1, affirms the entitlement of oppressed peoples to resist colonial and racist regimes in pursuit of independence and self-governance.[109]

b. While ICCPR Article 1 affirms the right to self-determination, it does not explicitly address the use of force, leading to debates about the legality and legitimacy of armed struggle.[110]

c. Several factors must be considered when evaluating the use of arms in the context of self- determination, including necessity and proportionality, discrimination, human rights law, freedom of expression, and the right to resist.[111]

d. The United Nations has urged governments to exercise vigilance against the activities of mercenaries and ensure that their territories and nationals are not used to destabilise or overthrow another state, especially one fighting against colonial domination or foreign occupation. This underscores the need to minimise human suffering and protect civilians, aligning with human rights law and ensuring fundamental rights are respected even during armed conflict.[112]

e. The right to self-determination should be distinguished from any general right of peoples to declare secession unilaterally.[113] Provisions of the UN Charter were used to clarify state commitments in drafting Article 1 of the ICCPR, emphasising the principle of equal rights and self-determination of peoples.[114] This right enables people to freely determine their political status and pursue economic, social, and cultural development.

f. The ICCPR also provides that every citizen shall have the right to vote in genuine periodic elections by universal and equal suffrage without unreasonable restrictions.[115] This underscores the importance of political rights and participation in the context of self-determination.

104. The Geneva Convention and Additional Protocols further reinforce the ANC's stance. While these protocols primarily apply to conflicts between states, they also extend protection to individuals resisting colonial domination and racist regimes, particularly under Article 1(4) of Protocol I. This provision demonstrates an international recognition of the legitimacy of armed resistance in cases of extreme oppression.[116] The ANC's tactics, designed to avoid civilian casualties and focus on state infrastructure, align with the principles of proportionality

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[108] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, and entered into force 23 March 1976), 999 UNTS 171, Article 1.

[109] Espiell, *supra* note 105, pp. 56 – 60.

[110] Shaw, *supra* note 88, pp. 255 – 257, 291, 1086 and 1142 – 1143.

[111] Walzer, supra note 48, pp. 90 – 108; ICRC, *Customary International Humanitarian Law Study* (2005), Rules 1 – 24.

[112] GA Res 44/34 (4 December 1989), *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*.

[113] Centre for Civil and Political Rights, *Simple Guide on the International Covenant on Civil and Political Rights (ICCPR): An Overview of Articles 1–27* (CCPR Centre, 2023).

[114] *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3, Article 1(4).

[115] Centre for Civil and Political Rights, *Simple Guide on the International Covenant on Civil and Political Rights (ICCPR): An Overview of Articles 1–27* (CCPR Centre, 2023).

[116] *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3, Article 1(4).

and necessity under international humanitarian law, setting their actions apart from indiscriminate violence.[117] Article 1(4) of Protocol I demonstrates an international recognition of the legitimacy of armed resistance in cases of extreme oppression and states by explicitly stating:

> (4) The situations referred to in the preceding paragraphs include armed conflicts in which peoples are fighting against colonial domination, alien occupation and racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States under the Charter of the United Nations.[118]

105. The ANC's unwavering commitment to the principles of international humanitarian law was evident in its military tactics. These tactics were meticulously designed to minimize civilian casualties and focus on disrupting the apparatus of the apartheid state.[119]

106. Article 48 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) states:

> To ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.[120]

107. Article 51(5)(b) of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) provides:

> An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive about the concrete and direct military advantage anticipated.[121]

108. The realities of guerrilla warfare and the brutal counter-insurgency tactics employed by the apartheid regime created immense challenges in always adhering strictly to the Articles cited above. However, the ANC's overall strategy and stated intent demonstrate a commitment to minimising harm to civilians and upholding the principles of international humanitarian law.[122] This commitment, coupled with the just cause of fighting against a system of institutionalised

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[117] Davis, supra note 25, pp. 22, 201, 218.

[118] *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3, Article 1(4).

[119] Nelson Mandela Foundation, "List of MK Operations", O'Malley Archives. https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv02918/06lv02949.htm, accessed on 12 December 2024.

[120] International Committee of the Red Cross, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Article 48.

[121] International Committee of the Red Cross, *Additional Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Article 51(5)(b).

[122] Landau, supra note 33; Watts supra note 37; Davis, supra note 25, pp. 4, 14, 18, 30, 48, 102 132, 215; Mandela supra note

45.

racial oppression that denied fundamental human rights and foreclosed all peaceful avenues for change, strengthened the argument for the legitimacy of the ANC's armed struggle.[123]

109. Critics of the legality of armed resistance generally highlight the risks to civilians and the disruption of public order. Such critiques overlook the systemic violence and repression of the apartheid regime, which left South African resistance groups with few viable alternatives. The ANC exercised considerable restraint, directing its actions at symbols of state power rather than civilian targets, thereby adhering closely to international standards for lawful resistance.[124]

S. APARTHEID AS A CRIME AGAINST HUMANITY

110. Article II of The International Convention on the Suppression and Punishment of the Crime of Apartheid **("Apartheid Convention"),[125] w**hich was adopted by the United Nations General Assembly on **30 November 1973** and came into effect on **18 July 1976,** defines the term "crime of apartheid" as follows:

> ...shall include similar policies and practices of racial segregation and discrimination as practised in Southern Africa, shall apply to the following inhuman acts committed to establish and maintain domination by one racial group of persons over any other racial group of persons and systematically oppressing them:
>
> (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
> (i) By murder of members of a racial group or groups;
> (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
>
> (iii)By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
>
> (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause it or their physical destruction in whole or in part;
>
> (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups fundamental human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

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[123] Christopher Finlay, *Terrorism and the Right to Resist* (Cambridge University Press, 2015), pp. 136 – 140; John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015), p. 120.

[124] Davis, *supra* note 25, pp. 5 and 102

[125] *International Convention on the Suppression and Punishment of the Crime of Apartheid*, *supra* note 78.

(d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.[126]

111. In amplification of the above definition of the "crime of apartheid", Article 7 of the Rome Statute of the International Criminal Court **("Rome Statute")** deals with crimes against humanity,[127] More specifically, it codifies under Article 7 paragraph 1(j) the crime of apartheid, which is defined in Article 7 paragraph 2(h) as follows:

> …inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.[128]

112. For purposes of comprehensive overview, the crimes listed in Article 7 paragraph 1 of the Rome Statute are:
    a. Murder;
    b. Extermination;
    c. Enslavement;
    d. Deportation or forcible transfer of population;
    e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
    f. Torture;
    g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
    h. Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
    i. Enforced disappearance of persons;
    j. The crime of apartheid; and
    k. Other inhumane acts of a similar character that intentionally cause great suffering or serious injury to the body or to mental or physical health.[129]

113. The relevance of the Apartheid Convention and the Rome Statute cited in paragraphs 110, 1111 and 112 above provide important context to the actions of the ANC and other groups against an apartheid regime.

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[126] *International Convention on the Suppression and Punishment of the Crime of Apartheid (1973),* 1015 UNTS 243, art II, (a) – (f).

[127] *Rome Statute of the International Criminal Court* (1998), 2187 UNTS 90, art. 7.

[128] *Rome Statute of the International Criminal Court* (1998), 2187 UNTS 90, art. 7 paragraph 2(h).

[129] *Rome Statute of the International Criminal Court* (1998), 2187 UNTS 90, art. 7 paragraph 1 (a – k).

114. From the above, by international standards, even at the time when South Africa was under apartheid rule, international law and standards deemed "apartheid" as a crime.

115. At this juncture, it is imperative to note that only **4** (four) states, namely South Africa, Portugal, the United Kingdom, and the United States of America, voted against the adoption of the Apartheid Convention.[130]

116. The Apartheid Convention marked a powerful international denunciation of apartheid, going beyond a mere violation of United Nations principles. It criminalised apartheid itself, directly challenging the core ideology and values of South Africa's apartheid regime. Though directed primarily at Southern Africa, the Convention served as a global warning, asserting that racial discrimination would not be tolerated and condemning any state practising such policies. It stood as a stark rebuke of the apartheid government's immoral stance on racial segregation and injustice, positioning apartheid as a crime against humanity.[131]

T. APARTHEID AND ARMED RESISTANCE WITHIN THE PARADIGM OF INTERNATIONAL LAW AND ITS APPLICATION

117. The ANC's armed struggle can also be understood through collective self-defence. While classical notions of self-defence in international law primarily address inter-state conflicts, the underlying logic - that it may be lawful to use force to resist unlawful violence - applies analogously to people systematically oppressed by a regime committing grave human rights violations.[132] The apartheid government's extensive use of police brutality, arbitrary arrests, torture, and even lethal force against peaceful protesters amounted to an ongoing attack on the fundamental rights and security of Black South Africans.[133] Resorting to armed struggle thus functioned as a form of collective self-defence against a state apparatus that offered no meaningful, peaceful recourse.

118. The moral right to resist oppressive rule is also reflected in just war theory, whose principles have influenced and intersected with modern international legal standards.[134] Just war theory requires a just cause (fighting against manifest injustice), right intention (aiming to restore rights and achieve justice), last resort (exhaustion of all peaceful avenues), and proportionality (using no more force than necessary).[135] The ANC's cause - ending institutionalised racial subjugation
- was undeniably just. It intended to establish a democratic, non-racial society, and it turned to violence only after decades of peaceful protests were met with brutal state repression.[136]

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130 Gerhard Kemp and Victor Kattan, T*he Significance of South Africa's Accession to the 1973 Convention and Suggestions for Improving the Treaty* Text, (*Opinio Juris*, 31 May 2024), https://opiniojuris.org/2024/05/31/the-significance-of-south-africas-accession- to-the-1973-apartheid-convention-and-suggestions-for-improving-the-treaty-text/, accessed on 6 November 2024.

131 *Ibid*.

132 Luís Cordeiro-Rodrigues and Danny Singh (eds), *Comparative Just War Theory: An Introduction to International Perspectives* (Rowman & Littlefield, 2023), pp. 140 – 150; Farbstein, supra note 31, pp 1 – 3 and Fritz Allhoff, Nicholas G. Evans and Adam Henschke (eds), *Routledge Handbook of Ethics and War: Just War Theory in the Twenty-First Century* (Routledge, 2015), p. 164.

133 John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 1978), p. 120; Davis, supra note 25, pp. 1 – 5.

134 Walzer, *supra note 48*, pp. 90 – 108.

[135] *Ibid*.
[136] Landau, supra note 32, p. 540; Farbstein, supra note 31.

119. The Sharpeville Massacre of **1960**, where police killed **67** unarmed demonstrators, epitomised the futility of non-violent resistance against apartheid.[137] In its aftermath, including the banning of the ANC and the PAC, every peaceful political channel was closed. Armed resistance emerged as the last resort, a stance consistent with just war criteria and the broader moral right to liberate oneself from tyranny.[138]

120. Both just war theory and international humanitarian law emphasise that the use of force must be necessary and proportionate. The ANC's armed wing, MK, deliberately focused on sabotage and symbolic targets - power stations, government installations, and state infrastructure - rather than aiming for mass casualties.[139] This strategy aligns with Additional Protocol I to the Geneva Conventions (1977), which extends legal recognition to struggles "in which peoples are fighting against colonial domination and alien occupation and against racist regimes in exercising their right of self-determination".[140]

121. Articles 48 and 51 of Protocol I enshrine the principles of distinction and proportionality, requiring parties to distinguish between combatants and civilians and prohibiting attacks expected to cause excessive civilian harm relative to anticipated military advantage.[141] The ANC's stated objective was to avoid civilian casualties, directing its operations at the symbols and instruments of state repression.[142] Although perfect adherence was challenging in an asymmetrical conflict, the ANC's efforts demonstrate a commitment to minimising harm while pursuing liberation.

122. This measured approach was crucial to the ANC's national and international standing. It bolstered the ANC's moral authority and strengthened its legal position. The restraint shown, particularly in the initial sabotage campaigns, distinguished the ANC's struggle from acts of indiscriminate terrorism. Instead, it reflected compliance, insofar as possible, with the principles underlying international humanitarian law and just war theory, reinforcing the lawful character of the ANC's resistance under international law.[143]

123. International support for the ANC's position further legitimised its armed struggle. The OAU recognised and supported liberation movements throughout the continent, allowing member states to offer sanctuary, training, and diplomatic assistance to the ANC.[144] The United Nations General Assembly and Security Council adopted numerous resolutions condemning apartheid and calling for its eradication, acknowledging that South Africa's oppressed majority was entitled to fight for freedom.[145] Sanctions imposed on South Africa, combined with widespread diplomatic isolation, reinforced the notion that the apartheid government operated outside lawful governance and that armed resistance was not only understandable but justifiable.

124. State practice and *opinio juris* - the two pillars of customary international law - reflect a global consensus that liberation movements against racist and colonial regimes have a legitimate claim

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137 "Sharpeville Massacre, 21 March 1960", South African History Online, https://www.sahistory.org.za, accessed on 12 December 2024.

138 Farbstein supra note 31, pp. 1 – 5.

139 Davis supra note 25, pp. 201, 218.

140 *Protocol Additional to the Geneva Conventions* of 12 August 1949 (Protocol I), 1125 UNTS 3, art 1(4).

141 *Protocol Additional to the Geneva Conventions* of 12 August 1949, relating to the *Protection of Victims of International Armed Conflicts* (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978,) 1125 UNTS 3, arts 48, 51.

142 "Umkhonto we Sizwe Manifesto" quoted in Nelson Mandela Foundation, "List of MK Operations", O'Malley Archives https://omalley.nelsonmandela.org, accessed on 12 December 2024.

143 Luís Cordeiro-Rodrigues and Danny Singh (eds), *Comparative Just War Theory: An Introduction to International Perspectives*

(Rowman & Littlefield, 2023), pp. 140 – 141; Farbstein, supra note 31, pp. 3 – 4.

144 UN Security Council Resolution 418 (4 November 1977); subsequent SC and GA resolutions condemning apartheid.

145 UN Security Council Resolution 418 (4 November 1977); subsequent SC and GA resolutions condemning apartheid.

to use force when peaceful means are unavailable.[146] Thus, the ANC's struggle was situated within a broad legal and political framework that validated its cause and methods.

125. Taken together, the principles of self-determination, the characterisation of apartheid as a crime against humanity, the logic of self-defence, and the criteria of just war theory converge to validate the ANC's resort to armed struggle under international law. The ANC did not hastily embrace violence; it was compelled to do so by relentless state repression, the closure of peaceful political avenues, and the urgent moral imperative to end institutionalised racial subjugation.

126. By emphasising proportionality, necessity, and the avoidance of civilian casualties, the ANC acted in accordance with evolving international humanitarian law standards and the international legal recognition of legitimate liberation movements. International instruments, UN resolutions, and broad international support reinforce the notion that people under racist regimes can lawfully resort to force to secure their fundamental rights.

127. In the final analysis, the ANC's armed resistance contributed decisively to dismantling apartheid and establishing a non-racial democracy in South Africa. Its struggle exemplifies how international law - when viewed holistically - supports the lawful use of force by oppressed peoples as a last resort to achieve self-determination, restore fundamental human rights, and overcome a criminal regime that rendered peaceful change impossible.

U. CONCLUSION

128. In conclusion, the ANC's resort to armed struggle against the apartheid regime in South Africa can be characterised as both a morally defensible and legally recognisable response under the framework of international law. Faced with an entrenched system of racial subjugation, it declared apartheid a crime against humanity. After decades of peaceful protest that had been met with brutal state repression, it found all non-violent avenues to political reform effectively foreclosed.

129. International law, mainly as it crystallised in the era of decolonisation and human rights codification, upholds the right of oppressed peoples to self-determination. When a state persists in racist domination and denies fundamental political rights, lawfully constituted recourse to armed resistance may arise as a last resort. Instruments such as the UN Charter, the International Covenant on Civil and Political Rights, and the Declaration on Friendly Relations, combined with the international recognition of apartheid as a crime against humanity, collectively endorse the legality of armed struggle against a manifestly unjust and unlawful regime.

130. Throughout its campaign, the ANC and allied movements aimed to confine violence to legitimate state and military targets, consciously endeavouring to minimise harm to civilians. By observing principles akin to proportionality and distinction - concepts later encapsulated in Additional Protocol I to the Geneva Conventions - the ANC reinforced its claim to moral and legal legitimacy. Although inevitably, some civilians suffered harm, such outcomes were exceptions, not objectives, and stand in stark contrast to the systemic and deliberate violence of the apartheid state itself.

[146] Shaw, supra note 88, pp.74 – 88, 116 –117 and 1295 – 1296.

131. The eventual dismantling of apartheid and South Africa's transition to a non-racial, constitutional democracy bears witness to the essential justice and legality underpinning the armed resistance. The liberation struggle, firmly rooted in an international legal order that rejects racial oppression and sanctions resistance to it, thus exemplifies how force, when meticulously directed and morally justified, may serve as a lawful instrument of liberation against a regime perpetrating grave violation of international human rights standards.

V. PALESTINIAN ARMED RESISTANCE

132. In examining the moral and legal frameworks governing the right to resist oppressive domination, the situation of the Palestinians under Israeli occupation parallels key conditions that justified armed resistance in other historical contexts, including the ANC's struggle against apartheid South Africa.[147] Central to this argument is the principle of self-determination, recognised as a foundational tenet of international law, and the illegality of Israel's prolonged occupation, repeatedly affirmed by authoritative legal instruments and bodies, including the International Court of Justice **("ICJ")**.[148]

133. A fundamental starting point is the Palestinians' internationally acknowledged right to self-determination,[149] enshrined in the Charter of the United Nations,[150] the International Covenant on Civil and Political Rights,[151] and reaffirmed in multiple UN General Assembly and Security Council resolutions.[152]

134. Self-determination is a right belonging to all peoples, including those living under foreign occupation. The ICJ's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory **("Wall Advisory Opinion")** confirmed that Israel's policies in the Occupied Palestinian Territory **("OPT")** violate international law and impede the Palestinians' right to self-determination.[153] This opinion aligns with a broader international consensus, reflected in UN Security Council resolutions and international human rights reports, that Israel's continued settlement enterprise and annexationist policies are unlawful.[154] The occupation, initially established in 1967 and rooted in displacement dating back to 1948, is widely regarded as illegal under international law.[155]

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147 Davis, *supra* note 25, pp. 1 – 51.

148 International Court of Justice, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (Advisory Opinion), [2004], ICJ Rep 136, paras 115 – 122.

149 Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV), 14 December 1960.

150 Charter of the United Nations, 24 October 1945, 1 UNTS XVI, art 1(2).

151 *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, art 1.

152 United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UNGA Res 2625 (XXV) (24 October 1970); United Nations General Assembly, *Importance of the Universal Realisation of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples*, UNGA Res 3236 (XXIX) (22 November 1974).

153 *Wall Advisory Opinion*, supra note 148, para 122.

154 UN Security Council Resolution 2334 (23 December 2016); "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution", (Human Rights Watch, 2021), https://www.hrw.org/report/2021/04/27/threshold- crossed/israeli-authorities-and-crimes-apartheid-and-persecution, accessed on 12 December 2024.

155 Walid Khalidi (ed), *From Haven to Conquest: Readings in Zionism and the Palestine Problem Until 1948* (Institute for Palestine Studies, 1971), pp. 600, 650 – 658 and 682; International Court of Justice, *Summary of the Advisory Opinion of 19 July 2024* https://www.icj-cij.org/index.php/node/103742, accessed on 24 December 2024; United Nations, *Study on the Legality of the Israeli Occupation of the Occupied Palestinian Territory, Including East Jerusalem* (2023),

135. The illegality of the occupation underpins the Palestinians' moral and legal claims to resistance. Like the ANC, which turned to armed struggle after decades of non-violent efforts were met with state repression, Palestinians facing enduring dispossession and exclusion have long pursued political and diplomatic channels. The Palestine Liberation Organization **("PLO")**, broadly representing the Palestinian people, has accepted the principle of a two-state solution based on the **1967** borders.[156] Indeed, the international community has supported a negotiated settlement through the Oslo Accords and repeated UN resolutions.[157] Yet, Israel's ongoing settlement expansion, confiscation of land, systematic demolition of Palestinian homes, and refusal to establish internationally recognised borders erode the viability of a two-state solution.[158] These acts contravene the Fourth Geneva Convention,[159] violate the prohibition on the transfer of the occupier's civilian population into occupied territory,[160] and amount to *de facto* annexation contrary to international law.[161]

136. Against this backdrop, groups like Hamas frame their armed resistance as a necessary response to what they perceive as a settler-colonial project sustained by military force and legal impunity.[162] International law acknowledges that peoples under colonial or racist domination may, as a last resort, resort to armed struggle to achieve self-determination when peaceful means are foreclosed.[163] Israel's conduct is marked by recurring military operations causing disproportionate harm to Palestinian civilians and collective punishment such as the siege of Gaza[164] In addition, Israel claims the ICCPR does not apply to the occupied territories while also asserting that it does.[165] This contradiction, along with extrajudicial killings, highlights the lack of legal remedies for Palestinians, and extrajudicial killings further underscores the absence of meaningful legal remedies for Palestinians.[166] As with the ANC, which targeted infrastructure and state security forces rather than civilians as a matter of policy, Hamas claims to direct its actions primarily against Israel's occupying apparatus. While in practice, Hamas' record includes attacks on civilians, which are impermissible under international humanitarian law

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https://www.un.org/unispal/document/ceirpp-legal-study2023/, accessed on 24 December 2024; Amnesty International, "Israeli Settlements and International Law", (30 January 2019), https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/, accessed on 24 December 2024.

156 Rashid Khalidi, *Brokers of Deceit: How the US Has Undermined Peace in the Middle East* (Beacon Press, 2013), pp. 67–75, 114 – 115 and 146 – 147.

157 Dan Diker and others, *The Oslo Accords at 30: Lessons Learned – Israel's Accession to Palestinian Authority Support for Terror, Subversion and Radicalization* (Jerusalem Centre for Public Affairs, 2023), pp. 33 – 89.

158 Yehezkel Lein (in collaboration with Eyal Weizman), *Land Grab: Israel's Settlement Policy in the West Bank* (B'Tselem, May 2002), pp. 11 – 37, 41 – 45, 91 and 133, https://www.btselem.org, accessed on 24 December 2024.

159 *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (Fourth Geneva Convention) (adopted 12 August 1949), 75 UNTS 287, arts 49, 53

160 *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Fourth Geneva Convention).

161 *Wall Advisory Opinion* supra note 148, paras 133 – 134.

162 Richard Falk and Virginia Tilley, *Israeli Practices towards the Palestinian People and the Question of Apartheid* (UN ESCWA/ECRI/2017/1 Report, 2017), pp. 1 – 9 and 37.

163 Marco Longobardo, *The Use of Armed Force in Occupied Territory* (Cambridge University Press, 2018), pp. 158 – 159.

164 UN Human Rights Council, *Report of the Commission of Inquiry on the 2014 Gaza Conflict*, A/HRC/29/52 (24 June 2015), 17 – 160.

165 Markus Gunneflo, *Targeted Killing* (Cambridge University Press, 2016), pp. 216 – 218; Emily Schaeffer Omer-Man, "Extrajudicial Killing with Near Impunity: Excessive Force by Israeli Law Enforcement Against Palestinians", *Boston University International Law Journal,* (2017) 35(1), pp. 115 – 156.

166 Amnesty International, "Gaza: Looming Humanitarian Catastrophe Highlights Need to Lift Israel's 10-Year Illegal Blockade", (Press Release, 14 June 2017), https://www.amnesty.org/en/latest/press-release/2017/06/gaza-looming-

humanitarian-catastrophe-highlights-need-to-lift-israels-10-year-illegal-blockade/, accessed on 25 December 2024.

("IHL"), the broader narrative posits that such violence occurs within a context of systemic oppression and a lack of conventional avenues for redress.[167]

137. International legal standards, including Additional Protocol I to the Geneva Conventions, emphasise the principles of distinction and proportionality. These principles prohibit direct attacks on civilians and require that harm to civilians not be excessive relative to the anticipated military advantage.[168] Israel's policies, however, have frequently been criticised by the United Nations and human rights organisations for failing to adhere to these standards.[169] The consistent use of overwhelming force in heavily populated areas and the destruction of civilian infrastructure suggest a lack of proportionality and discrimination. This dynamic reinforces the Palestinian argument that if the occupier persistently flouts the rules of just war, the oppressed party's resort to armed resistance takes on the character of a liberation struggle akin to those historically recognised in anti-colonial contexts.

138. It must be acknowledged that many states classify Hamas as a "terrorist organisation" and that targeting civilians by any party violates IHL.[170] Yet the legal and moral argument rests on the premise that Palestinians, as an oppressed people facing systematic denial of their fundamental rights and entrenched illegal occupation, possess a claim to resist. This claim does not exonerate unlawful acts committed by Hamas; instead, it situates them within a matrix of sustained injustice and lawlessness.[171] The ANC's example reveals how the international community over time saw the armed struggle as legitimate when directed against a regime committing gross human rights violations and foreclosing legal remedies.[172]

139. Moreover, Palestinian authorities, including the PLO, have repeatedly indicated their willingness to accept a two-state solution - an outcome that would align with international legal norms and restore Palestinian self-determination within recognised borders.[173] Israel's persistent refusal to end settlement activity or engage genuinely with the two-state framework demonstrates a lack of good faith on the part of Israel, in that it undermines trust or creates facts on the ground which impede peace talks.[174] This intransigence, combined with the absence of enforceable international sanctions that might compel Israel's compliance, perpetuates the conditions under which armed resistance can be deemed a last resort under international law.

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167 Oxfam, "Timeline: The Humanitarian Impact of the Gaza Blockade", https://www.oxfam.org/en/timeline-humanitarian-impact-gaza-blockade accessed 25 December 2024; UNRWA, "Gaza: 15 Years of Blockade", https://www.unrwa.org/gaza15- years-blockade, accessed on 24 December 2024; UNICEF, "The Gaza Strip: The Humanitarian Impact of 15 Years of Blockade - June 2022, Fast Facts", https://www.unicef.org/mena/documents/gaza-strip-humanitarian-impact-15-years- blockade-june-2022, accessed on 24 December 2024.

168 *Protocol Additional to the Geneva Conventions* of 12 August 1949 (Protocol I), (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, arts 48, 51.

169 *Ibid*.; Walzer supra note 48, pp. 90 – 108.

170 US Department of State, *Foreign Terrorist Organizations* (Bureau of Counterterrorism, 2024), https://www.state.gov/foreign- terrorist-organizations/, accessed on 25 December 2024.

171 John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory", EJIL (2013) 24(3), pp. 867 – 913.

172 Davis, supra note 25, pp. 102 – 105.

173 United Nations Human Rights Council, "Report of the United Nations Fact Finding Mission on the Gaza Conflict (Goldstone Report)", (12th Session, 25 September 2009), UN Doc A/HRC/12/48)., pp 50 and 396; Jeffrey Sachs and Sybil Fares, "A Comprehensive Peace Based on the Two-State Solution Is Still Achievable", (Al Jazeera, 2 August 2024), https://www.aljazeera.com/opinions/2024/8/2/a-comprehensive-peace-based-on-the-two-state-solution-is-still-achievable, accessed on 25 December 2024.

174 Shlomo Ben-Ami, *Scars of War, Wounds of Peace: The Israeli - Arab Tragedy,* (Oxford University Press, 2006), pp. 205 – 215, 229 – 232, 245 – 250, 278 – 282 and 288 – 290; B'Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid* (12 January 2021), https://www.btselem.org/publications/fulltext/202101_this_is_apartheid, accessed on 24 December 2024.

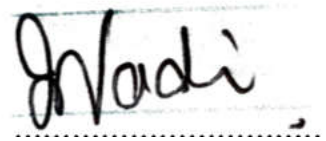
140. Ultimately, the argument that Hamas's armed struggle can be viewed as a form of lawful resistance draws on the same moral and legal principles that supported anti-colonial movements elsewhere. If Israel were to abide by international law - dismantling illegal settlements, ceasing collective punishment, and recognising Palestinian sovereignty - the necessity for such resistance might evaporate. Until then, the Palestinian claim to lawful armed struggle, while controversial and subject to important ethical and legal caveats, remains intelligible within the broader context of liberation struggles and international norms governing the use of force against oppressive regimes.

W. EXPERT OBLIGATIONS

141. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

142. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

143. I confirm that I have not received any remuneration for preparing this report.



Electronic
signature Dr Ismail
Vadi
[Place of Profession: Johannesburg]
[Johannesburg]
[South Africa]
29 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

REPORT ON THE POLITICS AND EFFECTS OF PROSCRIPTION
BY
PROFESSOR JEROEN GUNNING

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide an expert report in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. This expert report focuses on the historical use and effects of the term "terrorism" and in particular how it has been used by states to proscribe nonstate groups, including anti-colonial resistance groups, both historically and in the contemporary, and legitimise state violence against such groups and how it inhibits the possibility of a political solution and hinders humanitarian aid. In sections C-D, it will discuss the political dynamics of proscription and how these make proscription problematic, both in general and as applied to Hamas. It will then go on to discuss the effects of proscription, and how these play out with regards to Hamas, Israel and the settler colonial conflict in Israel-Palestine, including how proscription of Hamas contributes to preventing reaching a just and lasting peace in the region. It will finally discuss arguments for deproscription and address a number of common objections to deproscription, both generally and as applied to Hamas. The arguments presented are drawn from a Critical Terrorism Studies perspective and the report will focus on setting out those arguments.

B. QUALIFICATIONS

3. I give this Report in my personal capacity.

4. I have been a Professor of Middle East Politics and Conflict Studies in the Department of Political Economy, King's College London, since 2015. Prior to that, I was Reader at the

School of Government and International Affairs, Durham University (2010-2015), Lecturer at the Department of International Politics, Aberystwyth University (2002-2010), and British Academy Post-Doctoral Research Fellow at St Anthony's College, University of Oxford (2000-2002). I received my PhD from the Institute of Middle Eastern and Islamic Studies at Durham University in 2000.

5. I am Visiting Professor at the Middle East Centre at the London School of Economics and at the Department of Political Science at Aarhus University.

6. I am one of the co-founders of the academic field of Critical Terrorism Studies, launched in 2006 as a more self-consciously critical approach to the study of terrorism and counter-terrorism and the social, political and security effects of the application of the terrorism label. My publications in this field have been widely cited, with over 3,200 citations listed on Google Scholar.

7. I was Founding Director of the Durham Global Security Institute (2011-2014) and Co-Founder & Deputy Director of the Centre for the Study of 'Radicalisation' and Contemporary Political Violence, Aberystwyth University, 2005-2010.

8. I was Head of the Department of Middle Eastern Studies, King's College London, 2017-2018, and member of the British Society for Middle Eastern Studies (BRISMES) Council, 2011-2018.

9. I am one of the world's leading experts on Hamas and, since 2000, I have advised, been consulted by, or invited to address the House of Commons; the Foreign, Commonwealth & Development Office (and the Foreign and Commonwealth Office and the Department for International Development separately before they were merged); members of the EU External Action Service; the EU Commission; the Dutch Ministry of Foreign Affairs; the Dutch Ministry of Justice and Security; the Belgian Ministry of Foreign Affairs; the US House Committee on Foreign Affairs; and the US National Intelligence Council.

10. I was a standing member of the DFID-FCO North Africa Advisory Group, 2017-2019 and of the FCO Egypt Forum, 2017-2019 and have been asked to brief various UK ambassadors before they were posted to the Middle East.

11. I was the Director of King's College London's professional development course "MENA [Middle East and North Africa] – History, Politics and Societies' for the FCO Diplomatic Academy for two years 2018-2019.

12. In writing this Report, besides drawing on the broader literatures on Israel/Palestine, Hamas, terrorism, and peace and conflict, I have drawn on nearly 30 years of studying

Hamas and over 20 years of teaching and writing critically on the use and effects of the terrorism label. Key works are listed in this footnote.[1]

C. THE POLITICS OF PROSCRIPTION

13. **Proscription is political**: The definition of the term "terrorism" and decisions regarding to whom it should be applied have been historically deeply political, rendering the concept analytically and legally unstable.[2] This can be seen from the way proscription decisions have been made for clearly political reasons, the absence of a universally agreed upon definition of terrorism, the imbrication of the terrorism label in colonial and post-colonial regimes of delegitimisation and violence against nonstate challengers, the ambiguity of many legal definitions, the exemption of state terrorism, and the proscription of entire movements rather than just acts of violence. I will go through each of these arguments in turn.

14. **Political reasons driving definitions and proscription**: There are numerous instances of definitions of terrorism being changed for political reasons or groups being labelled terrorist or having the terrorism label removed without changes to the groups' behaviour, suggesting that the decision to (de-)label them was political rather than substantially related to their goals and tactics (which most definitions of terrorism focus on). To give a few examples, the number of terrorist incidents recorded by the CIA purportedly doubled within a year when William Casey, its then Director, reportedly decided in 1981 – despite protests from the State Department and independent advisors – to expand the definition of terrorism to include "every kind of national liberation

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[1] Jeroen Gunning, "Peace with Hamas? The Transforming Potential of Political Participation," *International Affairs* 80, no. 2 (2004): 233–55; Jeroen Gunning, *Hamas in Politics: Democracy, Religion, Violence* (London: Hurst, 2007); Jeroen Gunning, "Hamas: Socialization and the Logic of Compromise," in *Terror, Insurgency, and the State: Ending Protracted Conflicts*, ed. Marianne Heiberg, Brendan O'Leary, and John Tirman (Philadelphia: University of Pennsylvania Press, 2007), 123–54; Jeroen Gunning, "The Conflict and the Question of Engaging with Hamas," in *Examining European Involvement in the Arab-Israeli Conflict*, ed. Esra Bulut Aymat, Chaillot Papers 124 (Paris: European Union Institute for Security Studies, 2010); Jeroen Gunning, "Like Two Peas in a Pod or Two Roads Diverging? Comparing Hamas and Hizballah," *Mediterranean Politics* 26, no. 4 (2021): 484–90; Jeroen Gunning, "A Case for Critical Terrorism Studies?," *Government and Opposition* 42, no. 3 (2007): 363–93; Jeroen Gunning, "Babies and Bathwaters: Reflecting on the Pitfalls of Critical Terrorism Studies," *European Political Science* 6, no. 3 (2007): 236–43; ibid.; Jeroen Gunning, "Social Movement Theory and the Study of Terrorism," in *Critical Terrorism Studies: A New Research Agenda*, ed. Richard Jackson, Marie Breen Smyth, and Jeroen Gunning (London: Routledge, 2009), 156–77; Richard Jackson, Marie Breen Smyth, and Jeroen Gunning, eds., *Critical Terrorism Studies: A New Research Agenda* (London: Routledge, 2009); Harmonie Toros and Jeroen Gunning, "Exploring a Critical Theory Approach to Studying Terrorism," in *Critical Terrorism Studies: A New Research Agenda*, ed. Richard Jackson, Marie Breen Smyth, and Jeroen Gunning (London: Routledge, 2009), 87–108; Jeroen Gunning and Richard Jackson, "What's so 'Religious' about 'Religious Terrorism'?," *Critical Studies on Terrorism* 4, no. 3 (2011): 369–88; Richard Jackson et al., eds., *Terrorism: A Critical Introduction* (Houndmills: Palgrave Macmillan, 2011).

[2] Jackson et al., *Terrorism*, 30–31; Richard Jackson, "Knowledge, Power and Politics in the Study of Political Terrorism," in *Critical Terrorism Studies: A New Research Agenda*, ed. Richard Jackson, Marie Breen Smyth, and Jeroen Gunning (London: Routledge, 2009), 66–83.

movement, every left-wing movement that used violence, and called them terrorists".[3] In 1970s Italy, according to Professor Donatella della Porta, "the term "terrorism" started to be used… only in the second half of the 1970s. The political violence of the first half of the decade was instead called by different names: extremism, subversivism, *squadrismo*, and *stragismo*". [4] In 1988, the Pentagon listed the African National Congress as a terrorist organisation but labelled RENAMO an "indigenous resurgent group", even though it acknowledged that the latter had killed over 100,000 civilians (a core feature of many terrorism definitions; see section 19) – a decision Professors Edward Herman and Gerry O'Sullivan link to the US's then support for South Africa, RENAMO's main sponsor.[5] In 2003, the United States Government designated three Chechen and three Basque organisations as terrorist, apparently in return for respectively Russia acquiescing in and Spain supporting the US-led invasion of Iraq.[6] There is also significant variance on which groups are proscribed, even amongst closely allied states. As Professor Lee Jarvis and Associate Professor Tim Legrand noted in 2018, the total numbers of formally proscribed groups in the US, Canada, Australia and the UK were respectively 61, 53, 24 and 71 (plus a further 14 Northern Irish groups designated under older UK legislation) while "only 16 groups [were] proscribed across all four of these countries".[7] As for the proscription of (parts of) Hamas, the UK government's decision to proscribe Hamas's military wing, the Qassam Brigades, in 2001 appeared to have been driven by the government's response to the 9/11 attacks, rather than any fundamental changes in the Qassam Brigades' tactics (e.g., they had been targeting civilians in suicide bombing operations since 1994); and its decision to proscribe Hamas's political wing in 2021 in addition to its military wing, the Qassam Brigades, similarly appears to have been driven by political considerations, rather than any substantive changes to the relationship between Hamas's political and military wings, which have been organisationally distinct for political and security reasons since the 1990s, or in Hamas's actions.[8] The fact that the UK's decision to proscribe Hamas occurred 18 years after the EU had decided to do so and 24 years after

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[3] Former Ambassador Lincoln Gordon quoted in Joseba Zulaika and William Douglass, *Terror and Taboo: The Follies, Fables, and Faces of Terrorism* (New York: Routledge, 1996), 12–13; see also Edward Herman and Gerry O'Sullivan, *The "Terrorism" Industry: The Experts and Institutions That Shape Our View of Terror* (New York: Pantheon Books, 1989), 62–63; incidents recorded by the Global Terrorism Database show a steady pattern over the period 1980-1983; GTD, "Search the Database," Global Terrorism Database, N.D., https://www.start.umd.edu/gtd/search/.

[4] Donatella della Porta, "Left-Wing Terrorism in Italy," in *Terrorism in Context*, ed. Martha Crenshaw (University Park, PA: Pennsylvania State University Press, 1995), 106.

[5] xii-xiii Herman and O'Sullivan, *The "Terrorism" Industry*.

[6] Joanne Mariner, "Legal Commentary: Trivializing Terrorism," Findlaw, 13 May 2003, https://supreme.findlaw.com/legal-commentary/trivializing-terrorism.html.

[7] Lee Jarvis and Tim Legrand, "The Proscription or Listing of Terrorist Organisations: Understanding, Assessment, and International Comparisons," *Terrorism and Political Violence* 30, no. 2 (2018): 201.

[8] "Hamas to Be Declared a Terrorist Group by UK," *BBC News*, 19 November 2021; Jeroen Gunning et al., "Written Evidence Submitted by Professor Jeroen Gunning, Dr Tristan Dunning, Dr Anas Iqtait, Dr Tareq Baconi, Dr Martin Kear, Prof Hamish Maxwell-Stewart, Dr Shannon Brincat and Dr Adel Yousif (MENA0070)" (The UK's engagement with the Middle East and North Africa, UK Parliament, 7 November 2023), 32–35.

the US (2021 vs. 2003 vs. 1997) further underlines the political nature of the proscription process.[9]

15. **No agreed upon definition**: Legal and academic definitions of terrorism vary greatly and there has been no universal agreement on a definition to date. Leading terrorism studies Professor Alex Schmid listed 250 definitions in the 2011 *Routledge Handbook of Terrorism Research*.[10] The UN has attempted to arrive at a universal definition for decades but has so far failed to do so.[11] Significantly, two of the reasons why international agreement has been elusive stem from the insistence of many states (usually former colonies in the Global South) that a "universally accepted definition" should "differentiate [terrorism] from the legitimate struggle of peoples in the exercise of their right to self-determination from foreign occupation or colonial domination" and "address the issue of State terrorism and include in its scope activities of military forces that may not be regulated by international humanitarian law".[12] These objections are particularly pertinent for this case, as Hamas, as a self-proclaimed resistance organisation, is fighting for self-determination from foreign occupation and colonial domination while the Israeli government (henceforth "Israel") has been repeatedly accused of carrying out acts that can be described as state terrorism (see section 21.d).

16. **Colonial history of proscription**: Use of the terrorism label by Western states, including Great Britain, which was at the forefront of this practice, to delegitimise nonstate challengers to the status quo and legitimise the state's violent response has roots in colonial history. The British government used the label, for instance, in India, Egypt and Kenya to delegitimise anti-colonial movements and legitimise its harsh responses to them.[13] At the League of Nations' 1937 Convention for the Prevention and Punishment of Terrorism, where Britain played a key role, terrorism was defined specifically as "criminal acts directed against a State" and framed as "barbarism", a "world crime" by

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[9] "Foreign Terrorist Organizations," *United States Department of State* (blog), accessed 19 December 2024, https://www.state.gov/foreign-terrorist-organizations/; Matthew Levitt notes that Hamas was first designated "terrorist" in 1995 but this was before the creation of the FTO list: Linda Gradstein, "Explainer: How Hamas Ended Up on US List of Terrorist Groups," Voice of America, 7 February 2024, https://www.voanews.com/a/explainer-how-hamas-ended-up-on-us-list-of-terrorist-groups/7478227.html.

[10] Alex Schmid, ed., "The Definition of Terrorism," in *The Routledge Handbook of Terrorism Research* (Abingdon: Routledge, 2011), 39–157.

[11] UNODC, "Manual on Prevention of and Responses to Terrorist Attacks on the Basis of Xenophobia, Racism and Other Forms of Intolerance, or in the Name of Religion or Belief" (Vienna: United Nations Office on Drugs and Crime, 2022), 88, footnote 442.

[12] UN General Assembly, "Sixth Committee (Legal) - 63rd Session: Measures to Eliminate International Terrorism (Agenda Item 99)" (New York: United Nations, 11 December 2008); UN General Assembly, "Sixth Committee (Legal) - 69th Session: Measures to Eliminate International Terrorism (Agenda Item 99)" (New York: United Nations, 10 December 2014).

[13] Caroline Elkins, *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya* (New York: Henry Holt, 2005); Joseph McQuade, *A Genealogy of Terrorism: Colonial Law and the Origins of an Idea* (Cambridge: Cambridge University Press, 2021); Ahmed Abozaid, *Counterterrorism Strategies in Egypt: Permanent Exceptions in the War on Terror* (London: Routledge, 2022); Alice Finden and Sagnik Dutta, "Counterterrorism, Political Anxiety and Legitimacy in Postcolonial India and Egypt," *Critical Studies on Terrorism* 17, no. 2 (2024): 176–200.

"enemies of the human race" against "the whole civilised world"[14] – thus supposedly justifying (and papering over) the brutality of counter-terrorism/counter-insurgency violence meted out by colonial powers.[15] The colonial legacy of the term is illustrated by the fact that opposition to UN definitions that do not differentiate national liberation movements from terrorism has come predominantly from states in the Global South.[16] After decolonisation, the term continued to be used to delegitimise nonstate challengers to the status quo and legitimise state violence against them, its use having been broadened to also cover left-wing, anti-racist, and Islamist movements more broadly – but the dynamics of proscription have been shown to indicate a continuation with colonial practices (including its racist and Orientalist logics) in the labelling of, for instance, Black Liberation Movements in the US and well-known anti-racist abolitionist activists such as Angela Davis (in the 1970s) as well as the dominant focus on Islamist groups in proscription regimes over the past few decades.[17] None of this is to deny the violence used by most of the organisations designated as terrorist or the fact that acts of violence were committed that violated international humanitarian law. However, the violence used by those designated as terrorist was typically significantly smaller in volume and effect than the violence of the colonial powers, which likewise engaged in acts of violence that violated international humanitarian law and often to a far greater degree – the terrorist designation obscures this, erasing the political context of the violence. I will return to this in section C, especially section 21.

17. **Ambiguity of legal definitions**: Definitions are furthermore often so broad and ambiguous that most acts of violence would fall under them, thus further underlining the political quality of decisions regarding who falls under this definition. The UK definition of terrorism in the Terrorism Act 2000, Section 1, Subsection (1), for instance, is: "(b) the use or threat [of a list of violent or threatening actions, listed under (a)]… designed to influence the government [F1or an international governmental organisation] or to intimidate the public or a section of the public, and (c) the use or threat is made for the purpose of advancing a political, religious [F2, racial] or ideological cause". An action in pursuit of the above counts as terrorism if (Subsection 2) it "(a) involves serious violence against a person, (b) involves serious damage to property, (c) endangers a

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[14] McQuade, *A Genealogy of Terrorism*, 234–38.

[15] Paul MacDonald, "Civilized Barbarism: What We Miss When We Ignore Colonial Violence," *International Organization* 77, no. 4 (2023): 721–53; for more references, see footnote 36 in section 21.a.

[16] Narinder Singh, "The United Nations' Efforts at Combatting International Terrorism," FICHL Policy Brief Series (Florence: Torkel Opsahl Academic EPublisher, 2017); "Fight against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins," UN Meetings Coverage and Press Releases, 3 October 2018, https://press.un.org/en/2018/gal3566.doc.htm; Elizabeth Chadwick, "Differentiating International Terrorism and 'Peoples': Struggles for Self-Determination," *GlobaLex | Foreign and International Law Research | NYU Law* (blog), October 2019, https://www.nyulawglobal.org/globalex.

[17] Rabea Khan, "Race, Coloniality and the Post 9/11 Counter-Discourse: Critical Terrorism Studies and the Reproduction of the Islam-Terrorism Discourse," *Critical Studies on Terrorism* 14, no. 4 (2021): 498–501; Zoltán Búzás and Anna Meier, "Racism by Designation: Making Sense of Western States' Nondesignation of White Supremacists as Terrorists," *Security Studies* 32, no. 4–5 (2023): 680–713; Abozaid, *Counterterrorism Strategies in Egypt*; Kodili Chukwuma, "Proscribing Time? Proscription and Temporality in Terrorism Trials," *International Political Sociology* 18, no. 1 (2024): olad027.

person's life, other than that of the person committing the action, (d) creates a serious risk to the health or safety of the public or a section of the public, or (e) is designed seriously to interfere with or seriously to disrupt an electronic system." Moreover, "the use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied".[18] If this definition were applied just on the basis of what it says, rather than for political reasons, then any use of firearms or explosives to intimidate a government, IGO or a (section of the) public for a political, religious, racial or ideological cause could be classed as terrorism – including, arguably, acts conducted by the UK's armed forces in armed conflicts in, for instance, Kosovo, Iraq and Afghanistan. Yet state armies are typically not labelled terrorist, unless they belong to states considered "rogue" by their enemies. To further underline the political quality of the law, given the politics of proscription described above, Subsection (5) of Section 1 defines any "action taken for the benefit of a proscribed organisation" as terrorism, thereby both introducing a circular logic and removing any direct link between a person perpetrating particular acts of violence and their designation as a terrorist.[19]

18. **Exemption of state terrorism**: Despite the term originating at the time of the French Revolution to describe a state regime of terror, the dominant practice in both law and mainstream academic work has come to be to apply the terrorist label to nonstate actors, not to state actors – and in particular not to Western state actors and their allies. Yet, most state actors have carried out similar acts of violence as described by common terrorism definitions and typically on a far larger scale.[20] If political assassinations are considered terrorism (the assassination of King Alexander I of Yugoslavia was a key driver behind the League of Nations' Convention for the Prevention and Punishment of Terrorism),[21] then MI6, the CIA and Mossad, among many other intelligence agencies, should arguably be labelled terrorist for the assassinations (whether direct or sponsored)

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[18] The US Code similarly defines terrorism broadly as a violent act "appear[ing] to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping"; "U.S.C. Title 18 - CRIMES AND CRIMINAL PROCEDURE – PART I - CRIMES CHAPTER 113B - TERRORISM Sec. 2331," United States Code, 2009 Edition, 2009, https://www.govinfo.gov/content/pkg/USCODE-2009-title18/html/USCODE-2009-title18-partI-chap113B-sec2331.htm; the EU likewise defines terrorist aims broadly as "(a) seriously intimidating a population; (b) unduly compelling a government or an international organisation to perform or abstain from performing any act; (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation"; "Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA," 088 OJ L § (2017).

[19] The FBI gives a similar circular definition on its website: "Violent, criminal acts committed by individuals and/or groups who are inspired by, or associated with, designated foreign terrorist organizations or nations (state-sponsored)"; "What We Investigate: Terrorism," Federal Bureau of Investigation, n.d., https://www.fbi.gov/investigate/terrorism.

[20] Michael Stohl, "The Global War on Terror and State Terrorism," *Perspectives on Terrorism*, Special Issue: UNDER-INVESTIGATED TOPICS IN TERRORISM RESEARCH, 2, no. 9 (2008): 4–10; Ruth Blakeley, *State Terrorism and Neoliberalism* (London: Routledge, 2009); Richard Jackson, Eamon Murphy, and Scott Poynting, eds., *Contemporary State Terrorism: Theory and Practice* (London: Routledge, 2010).

[21] Mary Barton, *Counterterrorism Between the Wars: An International History, 1919-1937* (Oxford: Oxford University Press, 2020), 152–78.

of political leaders, especially in the Global South.[22] If terrorism is defined as "the peacetime equivalent of war crimes" (as suggested by Schmid to the UN Crime Commission in 1992 on the ground that there was already a consensus on what constituted war crimes), then many state armed forces have carried out acts that would fall under this definition, particularly in the Global South where the war/peace binary often does not apply. As Professor Tarak Barkawi, a renowned scholar of war and armed force in world politics, has powerfully argued, this binary – developed in a European context – does not travel well to the Global South where the war/peace binary is usually replaced by "a battle/repression schema in which the use of force is an ordinary, not extraordinary, dimension of politics".[23] If we focus specifically on attacks against civilians not taking part in hostilities and against non-military objects (which constitute the bulk of examples provided by Schmid as universally accepted war crimes – this is also a core feature of many definitions and suggestions for differentiating terrorism from national liberation movements),[24] whether in a context of declared war or along Barkawi's "battle/repression" continuum, then most state forces have reportedly been involved in terrorist acts: from British counter-insurgency operations in, e.g., Malaysia, Kenya and, more recently, Afghanistan,[25] to the allied bombing of German cities in World War II, to – more relevant for this case – the Israeli military's conduct in the 1948 war (leading to the ethnic cleansing of Palestinians from what became Israel, known as the Nakba in Arabic),[26] the 2006 war in Lebanon (when it implemented the Dahiyeh Doctrine, which explicitly targeted civilians and civilian infrastructure in order to turn the population against Hizbullah; this doctrine also guided the 2008-2009 and subsequent wars on Hamas and Gaza)[27] and the current war on Gaza (see section 21.d).

19. **Designation of groups rather than acts**: The designation of entire organisations as terrorist is furthermore deeply problematic in that it designates all actions of the

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[22] "Alleged Assassination Plots Involving Foreign Leaders," CIA FOIA, 20 November 1975, https://www.cia.gov/readingroom/document/cia-rdp83-01042r000200090002-0; Richard Jackson, "The Ghosts of State Terror: Knowledge, Politics and Terrorism Studies," *Critical Studies on Terrorism* 1, no. 3 (2008): 377–92; Blakeley, *State Terrorism and Neoliberalism*.

[23] Tarak Barkawi, "Decolonising War," *European Journal of International Security* 1, no. 2 (2016): 200.

[24] Talal Asad, "Thinking about Terrorism and Just War," *Cambridge Review of International Affairs* 23, no. 1 (2010): 3–24; Schmid, "The Definition of Terrorism"; Chadwick, "Differentiating International Terrorism and 'Peoples.'"

[25] David French, *The British Way in Counter-Insurgency, 1945-1967* (Oxford: Oxford University Press, 2011); Iain Overton, "Killed in Their Beds: UK Special Forces Accused of Unlawful Killings in Night Raids in Afghanistan," *AOAV* (blog), 9 October 2023, https://aoav.org.uk/2023/killed-in-their-beds-uk-special-forces-accused-of-unlawful-killings-in-night-raids-in-afghanistan/; Dan Sabbagh, Dan Sabbagh Defence, and security editor, "Eighty Afghan Civilians May Have Been Summarily Killed by SAS, Inquiry Told," *The Guardian*, 2 July 2023, sec. UK news; Unredacted, "Project: Special Forces War Crimes," n.d., https://unredacted.uk/projects/special-forces-war-crimes/.

[26] See footnote 42.

[27] Richard Falk, "Dahiya Doctrine: Justifying Disproportionate Warfare—A Prelude to Genocide," *Global Justice in the 21st Century* (blog), 1 April 2024, https://richardfalk.org/2024/04/01/dahiya-doctrine-justifying-disproportionate-warfare-a-prelude-to-genocide/; Somdeep Sen, "'Dahiyeh Doctrine' Returns to Dahiyeh," Aljazeera, 3 October 2024, https://www.aljazeera.com/opinions/2024/10/3/dahiyeh-doctrine-returns-to-dahiyeh.

organisation and all who are part of it or could be considered to have any connection with it as terrorist.[28] Commenting on the difficulty of labelling an individual actor – let alone a group – on the basis of acts described as terrorism, Professor Alex Schmid, one of the foremost scholars concerned with defining terrorism, pertinently asks, if "a laws-of-war-abiding soldier can become a war criminal", then "if members of an armed group use legitimate conventional and guerrilla tactics most of the time, but occasionally also engage in criminal acts of terrorism, should they no longer be called soldiers or insurgents but terrorists? Where should one draw the line?"[29] Scaled up to the level of group this is even more challenging as group members and organisations linked to the group are likely to be engaged in many different activities that do not involve violence, let alone the type of violence defined as terrorism (e.g., defined with reference to targeting unarmed non-combatant civilians; see section 19). This is particularly problematic when political parties with armed wings are designated as terrorist – as is the case with Hamas, and previously with groups like Fatah, Sinn Fein, the ANC, the People's Front of Liberation Tigers– as this designation is then used to justify targeting any member of the organisation, whether or not they have been involved in acts of violence, let alone acts of terrorist violence.

20. **In summary**: the term terrorism is deeply political, legally and analytically unstable, and part of upholding an unequal international order that has been profoundly shaped by violence. It is also arguably superfluous as existing international agreements on what constitute war crimes and crimes against humanity can be used to prosecute individuals purportedly involved in such crimes – whether state or nonstate, during war, peace or a battle/repression continuum. One could retain the notion of terror as an additional quality to those war crimes that have been carried out with the intent to terrorise populations or governments in order to pressure them into concessions. Using the war crime frame restores the focus on specific acts of violence, rather than criminalising entire movements, which, particularly if they have legitimate cause, undermines the international rights-based order and rule of law. The term is furthermore seldom used to describe state violence, even when the latter clearly and intentionally targets civilians in order to put pressure on nonstate groups or carries out genocide against civilian populations. Conversely, it is used widely to delegitimise entire movements opposed to the status quo, even those with legitimate cause, branding everything they do and all their members as "terrorist", including violent acts against armed forces that fall within international humanitarian law and members who have not been involved in violence against civilians, as well as acts or members involved in politics and social welfare. The term has devastating effects not just on those to which it is applied but also on the credibility of a rights-based international order. The next section will elaborate on these effects.

D. THE EFFECTS OF PROSCRIPTION

[28] Jackson et al., *Terrorism*, 15.

[29] Alex Schmid, "Defining Terrorism" (Den Haag: International Centre for Counter-Terrorism, 13 March 2023), 13.

21. **Erasing historical and political context**: Application of the term terrorism has the effect of erasing the history and political context of violence.[30] Violence becomes "just evil", coming out of nowhere, rather than being historically situated and, often, a product of preceding structural violence and oppression. Without a history, the state using the term can then claim to be simply acting in self-defence, erasing its culpability in contributing to creating conditions that make such violence more likely. In Israel's case, this means sidestepping its history of settler-colonial expansion and continued occupation, including its obligations towards Gaza as an occupying power.[31] The altercation between Israel's Ambassador to the UN and the UN's Secretary-General in October 2023 illustrates this dynamic poignantly. In response to Guterres telling the UN security council that "it is important to also recognise the attacks by Hamas did not happen in a vacuum. The Palestinian people have been subjected to 56 years of suffocating occupation", Erdan said: "It is a disgrace to the UN that the secretary general does not retract his words and is not even able to apologise for what he said yesterday. He must resign. The secretary general once again distorts and twists reality. He clearly said yesterday that the massacre by Hamas did not happen in a vacuum. Every person understands well that the meaning of the words is Israel has guilt for the actions of Hamas or at the very least it shows his understanding of the 'background' leading up to the massacre that Hamas perpetrated." Hamas's 7 October attacks did not happen in a vacuum. They occurred against a background of a century of settler colonialism (21.a), in which Israel played a part in contributing to creating the conditions that made the violence of 7 October possible (21.b), with especially its continuing occupation and expansion of settlements constituting an existential threat to Palestinians (21.c), and which displayed a similar extreme disproportion between the violence of the colonial power and the violence of the anti-colonial resistance found in other historical colonial contexts (21.d).

    21.a. The ongoing conflict in Israel/Palestine plays out within a context of settler colonialism and anti-colonial armed struggle against occupation and for self-determination. There are many different lenses one could use to understand the conflict, each highlighting specific aspects and downplaying others. But the settler colonial paradigm is particularly important for situating and understanding the actions of Israel and Hamas within a broader settler colonial and anti-colonial history, rather than as two ethnic groups fighting over the same territory, a paradigm which elides the starkly uneven power dynamics of settler colonialism. It roots the current practices of proscription and counter-terrorism/counter-insurgency within this longer colonial history. And it highlights the central logics of expulsion, segregation and erasure typically found in settler colonial contexts,

[30] Gunning, "A Case for Critical Terrorism Studies?," 366, 371, 373–74; Jeffrey Sluka, "Terrorism and Taboo: An Anthropological Perspective on Political Violence against Civilians," *Critical Studies on Terrorism* 1, no. 2 (2008): 174; Harmonie Toros, "Critical Theory and Terrorism Studies: Ethics and Emancipation," in *Routledge Handbook of Critical Terrorism Studies*, ed. Richard Jackson (London: Routledge, 2016), 70–79.

[31] Although Israel claimed that it ceased being the occupying power in Gaza when it withdrew in 2005, the ICJ has found that it continues to be the occupying power because it controls all entry points by land, sea and air: "Summary of the Advisory Opinion of 19 July 2024 - Case 186: Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem" (Den Haag: International Court of Justice, 19 July 2024), 186.

which shape both Israel's and Hamas's actions.[32] Conceptualising the conflict through the lens of settler colonialism has become widespread within both academia and among human rights practitioners. Its use dates back to the 1960s and 1970s but the paradigm has become adopted more widely over the past two decades, spearheaded by Palestinian scholars, but also including key Israeli scholars, and scholars and practitioners globally.[33] Numerous ICJ judges who issued Advisory Notes in addition to the Summary that described the court's finding Israel's occupation to be illegal in July 2024, while not explicitly using the term "settler colonialism", drew a straight link between occupation, the racial segregation policies they found amounted to Apartheid, and Israel's "policy of settlement expansion and annexation" (Judge Salam); Judge Xue underlined that "the effects of Israel's occupation… have little difference from those under colonial rule" while Judge Yusuf noted that "any belligerent occupation which substitutes an indefinite occupation for the legally sanctioned temporariness of belligerent occupation takes on the characteristics of colonial occupation".[34] Francesca Albanese, UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, explicitly argued that the genocide she concluded had been taking place in Gaza (see also section 20.d, footnote 63) was

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[32] E.g., David Lloyd, "Settler Colonialism and the State of Exception: The Example of Palestine/Israel," *Settler Colonial Studies* 2, no. 1 (2012): 59–80; Neve Gordon and Moriel Ram, "Ethnic Cleansing and the Formation of Settler Colonial Geographies," *Political Geography* 53 (2016): 20–29; Lorenzo Veracini, "Colonialism and Genocides: Notes for the Analysis of a Settler Archive," in *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*, ed. A. Dirk Moses (New York: Berghahn Books, 2008), 148–61.

[33] For historiography of the term as applied to Israel-Palestine, see Areej Sabbagh-Khoury, "Tracing Settler Colonialism: A Genealogy of a Paradigm in the Sociology of Knowledge Production in Israel," *Politics & Society* 50, no. 1 (2022): 44–83; examples of key scholarship in chronological order include Ilan Pappé, "Zionism as Colonialism: A Comparative View of Diluted Colonialism in Asia and Africa," *South Atlantic Quarterly* 107, no. 4 (2008): 611–33; Lloyd, "Settler Colonialism and the State of Exception"; Lorenzo Veracini, "The Other Shift: Settler Colonialism, Israel, and the Occupation," *Journal of Palestine Studies* 42, no. 2 (2013): 26–42; Nadera Shalhoub-Kevorkian, "Human Suffering in Colonial Contexts: Reflections from Palestine," *Settler Colonial Studies* 4, no. 3 (2014): 277–90; Lorenzo Veracini, "What Can Settler Colonial Studies Offer to an Interpretation of the Conflict in Israel–Palestine?," *Settler Colonial Studies* 5, no. 3 (2015): 268–71; Gordon and Ram, "Ethnic Cleansing and the Formation of Settler Colonial Geographies"; Adam Hanieh, "Development as Struggle: Confronting the Reality of Power in Palestine," *Journal of Palestine Studies* 45, no. 4 (2016): 32–47; Omar Jabary Salamanca, "Assembling the Fabric of Life: When Settler Colonialism Becomes Development," *Journal of Palestine Studies* 45, no. 4 (2016): 64–80; Raef Zreik, "When Does a Settler Become a Native? (With Apologies to Mamdani)," *Constellations* 23, no. 3 (2016): 351–64; Mazen Masri, "Colonial Imprints: Settler-Colonialism as a Fundamental Feature of Israeli Constitutional Law," *International Journal of Law in Context* 13, no. 3 (2017): 388–407; Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (Stanford, CA: Stanford University Press, 2018); Ronit Lentin, *Traces of Racial Exception: Racializing Israeli Settler Colonialism*, Suspensions: Contemporary Middle Eastern and Islamicate Thought (London: Bloomsbury Academic, 2018); Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford, CA: Stanford University Press, 2019); Lana Tatour, "The Culturalisation of Indigeneity: The Palestinian-Bedouin of the Naqab and Indigenous Rights," *The International Journal of Human Rights* 23, no. 10 (2019): 1569–93; Lila Abu-Lughod, "Imagining Palestine's Alter-Natives: Settler Colonialism and Museum Politics," *Critical Inquiry* 47, no. 1 (2020): 1–27; Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917-2017* (New York: Henry Hold, 2022); Oren Yiftachel, "Deepening Apartheid: The Political Geography of Colonizing Israel/Palestine," *Frontiers in Political Science* 4 (2022): 1–15; Melissa Weiner, "Palestinian Erasure and Dehumanization in Introductory Sociology Texts," *Critical Sociology* 49, no. 6 (2023): 991–1008.

[34] See especially Advisory Notes by Judges Salam, Tladi, Xue and Yusuf: "Advisory Opinion of 19 July 2024 - Case 186: Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem" (Den Haag: International Court of Justice, 19 July 2024).

inherent to settler colonial logic: "Genocidal intent and practices are integral to the ideology and processes of settler-colonialism, as the experience of Native Americans in the U.S., First Nations in Australia or Herero in Namibia illustrates. As settler-colonialism aims to acquire Indigenous land and resources, the mere existence of Indigenous peoples poses an existential threat to the settler society. Destruction and replacement of Indigenous people become therefore 'unavoidable' and take place through different methods depending on the perceived threat to the settler group. These include removal (forcible transfer, ethnic cleansing), movement restrictions (segregation, largescale carceralization), mass killings (murder, disease, starvation), assimilation (cultural erasure, child removal) and birth prevention. Settler-colonialism is a dynamic, structural process and a confluence of acts aimed at displacing and eliminating Indigenous groups, of which *genocidal extermination/ annihilation* represents the peak."[35] Note that the methods listed by Albanese were commonplace among historical colonial powers.[36] Michael Mann famously characterised colonialism as a "reign of terror for the subjugated population" while Fabian Klose underscored that "war crimes were nothing less than an essential characteristic of… colonial warfare. […] Grave breaches of the Geneva Conventions were an essential element of colonial warfare and had a strategic function in the military's calculation. By conducting a war that violated all principles of international humanitarian law, Great Britain and France [the focus of Klose's research] wanted to deliver a "demonstration of strength" meant to… secure their colonial domination. The indigenous population was to be intimidated by a "climate of counterterror" and deterred from offering the rebels any means of support."[37] State terror thus has been a core feature of colonial rule historically and the settler colonial lens highlights this comparatively. Conversely, Hamas – just like Fatah and the PLO before it – has situated its own actions within this longer global history of anti-colonial resistance. In the document Hamas issued explaining 7 October, they urged readers that "the events of Oct. 7 must be put in its broader context, and that all cases of struggle against colonialism and occupation in our contemporary time be evoked. These experiences of struggle show that in the same

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[35] Francesca Albanese, "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 - Advance Unedited Version (A/HRC/55/73)," Human Rights Situation in Palestine and Other Occupied Arab Territories (UN Human Rights Council, 25 March 2024), 3; see also Lorenzo Veracini, "Settler Collective, Founding Violence and Disavowal: The Settler Colonial Situation," *Journal of Intercultural Studies* 29, no. 4 (2008): 363–79; Veracini, "Colonialism and Genocides: Notes for the Analysis of a Settler Archive"; Ronit Lentin, "Palestine/Israel and State Criminality: Exception, Settler Colonialism and Racialization," *State Crime Journal* 5, no. 1 (2016): 32–50; Mohamed Adhikari, "'We Will Utterly Destroy Them… and We Will Go in and Possess the Land': Reflections on the Role of Civilian-Driven Violence in the Making of Settler Genocides," *Acta Academica* 52, no. 1 (2020): 142–64.

[36] Frantz Fanon, *The Wretched of the Earth [1961]*, trans. Richard Philcox, Revised 60th anniversary edition (New York: Grove Press, 2021); A. Dirk Moses, ed., *Genocide and Settler Society: Frontier Violence and Stolen Indigenous Children in Australian History* (New York: Berghahn Books, 2004); A. Dirk Moses, ed., *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History* (New York: Berghahn Books, 2008); Philip Dwyer and Amanda Nettelbeck, eds., *Violence, Colonialism and Empire in the Modern World* (Cham: Springer International Publishing, 2018); MacDonald, "Civilized Barbarism"; McQuade, *A Genealogy of Terrorism*; Somdeep Sen, "The Colonial Roots of Counter-Insurgencies in International Politics," *International Affairs* 98, no. 1 (2022): 209–23; Finden and Dutta, "Counterterrorism, Political Anxiety and Legitimacy in Postcolonial India and Egypt."

[37] Mann quoted in Fabian Klose, *Human Rights in the Shadow of Colonial Violence: The Wars of Independence in Kenya and Algeria*, trans. Dona Geyer (Philadelphia, PA: University of Pennsylvania Press, 2013), 92; ibid., 139.

level of oppression committed by the occupier; there would be an equivalent response by the people under occupation." Knowingly or not, these words seemed to echo the words of decolonial political philosopher Frantz Fanon written in the context of the Algerian war of independence 60 years earlier: ""The violence which governed the ordering of the colonial world, …this same violence will be… appropriated when, taking history into their own hands, the colonized swarm into the forbidden cities".[38] Abu Obaida, spokesperson for the Qassam Brigades, similarly "harness[ed] anti-colonial and anti-imperial narratives that have shaped resistance and independence movements for decades" and "invoke[d] Algeria and South Africa as examples of how freedom needs to be retaken with blood, bodies, and fighting".[39] And Hamas's head in Sidon (Lebanon) invoked the millions killed in Algeria's and Vietnam's liberation struggles: "How many did they sacrifice? Millions of martyrs. Therefore, I am saying that there is a high price to pay on the path of resistance, and we will bear this price."[40] Wherever one stands politically, the settler colonial lens brings these dynamics to the fore and situates them within a long history of brutal colonial rule and violent anti-colonial resistance. In this context, it is telling that the majority of states supporting cases lodged at the ICC and ICJ accusing Israel of war crimes and genocide in Gaza as of January 2024 were former colonies based in the Global South, while many of those not supporting or opposing these cases were former colonial powers in the Global North (see map below).[41]

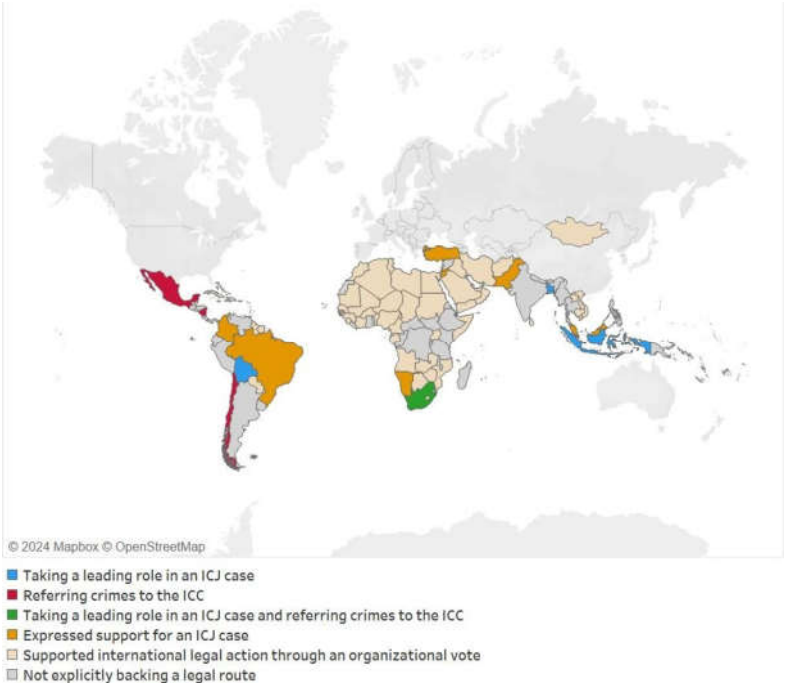
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[38] Fanon, *The Wretched of the Earth [1961]*, 30.

[39] Sophia Agathocleous and Erwin van Veen, "Hamas 'From the Heart of Battle': Analyzing Abu Obaida's Discourse," The Cairo Review of Global Affairs, 17 October 2024, https://www.thecairoreview.com/essays/hamas-from-the-heart-of-battle-analyzing-abu-obaidas-discourse/.

[40] "Hamas Official Ayman Shanaa: The Zionists Are Carrying Out A 'Blatant Attack On Civilians' – They Must Be Stopped; On October 7 We Exercised Our 'Legitimate Right' To Liberate Our Land And We Are Willing To Pay The Price," MEMRI, 2 November 2023, https://www.memri.org/tv/zionists-attack-civilians-stopped-october-seven-legitimate-right-liberate-pay-price.

[41] Map source: Sarang Shidore and Dan Ford, "Mapping It: Global South States Charging War Crimes in Gaza War," Responsible Statecraft, 24 January 2024, https://responsiblestatecraft.org/global-south-israel-criminal-court/.



21.b. Without downplaying Hamas's own agency or the contribution of other (f)actors, Israel, supported by among others the US and the UK, has contributed to creating conditions that made attacks such as those of 7 October possible. Israel created the settler colonial context that has shaped the central dynamics of the conflict by forcefully evicting over 700,000 Palestinians from their land and homes in what became Israel in 1948 in what has been widely recognised as a process of forced transfer or ethnic cleansing, resulting in the tripling of Gaza's population almost overnight (with two thirds of Gazans continuing to be refugees or descendants thereof before 7 October 2023).[42] Hamas's demands for the liberation of all of Palestine and the return of Palestinian refugees must be understood within that context. Israel has similarly been responsible for occupying Gaza in 1967 and maintaining an occupation since then, de-developing its economy, imposing what has been widely agreed to be an Apartheid regime, and, after 2007, ostensibly using the siege to starve both the population and the economy just short of causing a

[42] Nur Masalha, *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought, 1882 - 1948*, 4th ed. (Washington, DC: Inst. for Palestine Studies, 2001); Ilan Pappé, *The Ethnic Cleansing of Palestine*, 2nd ed. (Oxford: Oneworld, 2007); Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, 2nd ed (Cambridge: Cambridge University Press, 2012); Khalidi, *The Hundred Years' War on Palestine*; "Gaza Strip," UNRWA, accessed 19 December 2024, https://www.unrwa.org/where-we-work/gaza-strip; "H.E. Dr. Awad, Highlights the Conditions of the Palestinian People through Statistical Figures and Findings, on the Eve of World Refugee Day," Palestinian Central Bureau of Statistics, 20 June 2024, https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=5773.

humanitarian crisis.[43] More immediately, it refused to lift its then 16-year old siege of Gaza despite numerous attempts (both violent and political) by Hamas to end it; it rebuffed Hamas's various political overtures over the years (see section 24.b); and it refused to accept the establishment of a Palestinian state, while pursuing regional normalisation and an aggressive expansion of settlements in the West Bank, which Hamas interpreted as eliminating the very possibility of Palestinian statehood.[44] These conditions form the context within which the Qassam Brigades decided to carry out the shocking 7 October attacks, purportedly to end the occupation (including Gaza's siege), to stop annexation and normalisation that would have prevented the prospect of a Palestinian state, and to force Israel and the international community to take the demand for Palestinian statehood seriously.[45] Acknowledging this context does not equate with justifying the war crimes and crimes against humanity that the ICJ has found were plausibly committed during the 7 October attacks, for which the perpetrators should be held accountable. [46] Rather, it provides us with a better understanding of why they happened in the way that they did, putting policy-makers on a better footing for anticipating such acts and responding constructively to them when they occur in a way that deals with underlying causes, rather than just the symptoms thereof. Conversely, the terrorism label erases this historical context, enabling Israel to depict the Qassam Brigades (and Hamas and Gazans more broadly) as unhuman barbarians acting without cause (see section 22) and obscuring the underlying causes of the violence.

21.c. The application of the terrorism label further serves to downplay the fact that Israel's occupation of the West Bank and Gaza and its ongoing settler colonial project constitute an existential threat to the Palestinians. The occupation of Gaza and the West Bank has been judged illegal by numerous UN Security Council and General Assembly Resolutions and, most recently, in a landmark Advisory Opinion

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[43] Sara Roy, *The Gaza Strip: The Political Economy of de-Development* (Washington, DC: Institute for Palestine Studies, 1995); Sara Roy, "De-Development Revisited: Palestinian Economy and Society Since Oslo," *Journal of Palestine Studies* 28, no. 3 (1999): 64–82; Khalidi, *The Hundred Years' War on Palestine*; Jean-Pierre Filiu, *Gaza: A History* (London: Hurst, 2023); Sara Roy, "The Long War on Gaza," *The New York Review of Books*, 19 December 2023; Omar Shakir, "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution" (New York: Human Rights Watch, 27 April 2021); "A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid," B'Tselem, 12 January 2021, http://www.btselem.org/publications/fulltext/202101_this_is_apartheid; "Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity," Amnesty International, 1 February 2022, https://www.amnesty.org/en/documents/mde15/5141/2022/en/; Michael Fakhri, "Starvation and the Right to Food, with an Emphasis on the Palestinian People's Food Sovereignty - Report of the Special Rapporteur on the Right to Food, Michael Fakhri (A/79/171)," *United Nations General Assembly* (blog), 17 July 2024, https://www.un.org/unispal/document/right-to-food-report-17jul24/.

[44] Gunning et al., "Written Evidence."

[45] "Our Narrative… Operation Al-Aqsa Flood," Hamas Media Office, 21 January 2024, https://www.palestinechronicle.com/wp-content/uploads/2024/01/PDF.pdf; *In Context: Hamas After 7 October with Jeroen Gunning*, 2023; Helena Cobban and Rami Khouri, *Understanding Hamas: And Why That Matters* (La Vergne: OR Books, 2024).

[46] Karim Khan, "Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine" (The Hague: International Criminal Court, 20 May 2024).

by the International Court of Justice in July 2024.[47] Expansion of settlements and settler violence has increased markedly over the last years. A September 2024 Crisis Group report warned that "Israeli settler violence… is at an all-time high" and noted that "over the past few years – since Prime Minister Benjamin Netanyahu's current government, which includes far-right parties, assumed power and especially since the Hamas-led attacks on 7 October 2023 – the tempo of both settlement activity and acts of settler violence against Palestinians has increased dramatically".[48] Peace Now reported already in July 2023 that "2023 has emerged as the highest year on record in terms of [new settlement] units approved" and in July 2024 that "the year 2024 [already] marks a peak in the extent of declarations of state land".[49] Israel's far-right Minister in charge of the administration of the West Bank has even gone so far as to "[order] preparations for the annexation of the occupied West Bank ahead of US President-elect Donald Trump".[50] By focusing on those labelled terrorist, without recognising the historical context of the violence or the culpability of the state doing the labelling in contributing to creating conditions that make such violence more likely, the occupying state seeks to obscure its own preceding violence (structural as well as direct) and portray any violent response as "self-defence" against an existential, even civilisational threat. Israel has used this strategy with great success with regards to Western states, most of whose governments have uncritically adopted Israel's claim that it is acting purely in self-defence – a self-defence, moreover, that has no limits – and continue to support Israel in its war on Gaza, regardless of the fact that it is the occupying power which has obligations to the occupied population yet has both actively prevented the establishment of a Palestinian state and has committed purported war crimes and crimes against humanity, including plausibly genocide.[51]

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[47] Richard Falk, "International Law and the Al-Aqsa Intifada," *Middle East Report*, no. 217 (2000): 16–18; Yaël Ronen, "Illegal Occupation and Its Consequences," *Israel Law Review* 41, no. 1–2 (2008): 201–45; "Summary of the Advisory Opinion of 19 July 2024 - Case 186: Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem."

[48] "Stemming Israeli Settler Violence at Its Root," International Crisis Group, 6 September 2024, https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena-israelpalestine/246-stemming-israeli-settler-violence.

[49] "A Record Number of Housing Units Were Promoted in the West Bank in Only Six Months," Peace Now, 13 July 2023, https://peacenow.org.il/en/a-record-number-of-housing-units-were-promoted-in-the-west-bank-in-only-six-months; "The Government Declares 12,000 Dunams in the Jordan Valley as State Lands," Peace Now, 3 July 2024, https://peacenow.org.il/en/state-land-declaration-12000-dunams.

[50] "Far-Right Israeli Minister Orders Preparations for West Bank Annexation," Aljazeera, 11 November 2024, https://www.aljazeera.com/news/2024/11/11/far-right-israeli-minister-orders-preparations-for-west-bank-annexation.

[51] "Amid Continuing Rights Violations in Gaza, Security Council Must Do More to Enforce International Law, Its Own Resolutions, Speakers Stress as Open Debate Concludes – 9534th Meeting (Resumed) (PM) SC/15570," UN Meetings Coverage and Press Releases, 24 January 2024, https://press.un.org/en/2024/sc15570.doc.htm; Niamh Ní Bhriain, "States Must Act Now to Stop Israel's Genocidal War on Gaza | Transnational Institute," 13 December 2024, https://www.tni.org/en/article/states-must-act-now-to-stop-israels-genocidal-war-on-gaza; Geir Ulfstein, "Does Israel Have the Right to Self-Defence – and What Are the Restrictions?," *EJIL: Talk!* (blog), 8 May 2024, https://www.ejiltalk.org/does-israel-have-the-right-to-self-defence-and-what-are-the-restrictions/; see also Noura Erakat, "No, Israel Does Not Have the Right to Self-Defense In International Law Against Occupied Palestinian Territory," جدلية/Jadaliyya, 11 July 2014, https://www.jadaliyya.com/Details/27551.

21.d. The conflict in Israel-Palestine shows a similar disproportion between the volume and effect of the violence perpetrated by the colonial power and anti-colonial resistance organisations as in other colonial contexts, which underlines the colonial character of the conflict, including its terrorist features (if understood as targeting civilians to change their behaviour through terror; see section 19), and provides further context for 7 October and Israel's response (see also section 16). From September 2000 until October 2023, the respected Israeli human rights NGO B'Tselem recorded 11,201 Palestinians killed by Israelis versus 1,352 Israelis killed by Palestinians – thus, for every Israeli killed, over 8 Palestinians were killed. Focusing on the number of civilians killed, B'Tselem recorded 4,918 Palestinians who did not participate in hostilities killed by Israeli forces, and a further 777 where it is unknown whether they participated in hostilities. The figure for Israeli civilians killed by Palestinians was 893 – thus, for every Israeli civilian killed, 6 Palestinian civilians were killed. In the period 2008-2023 (prior to 7 October), the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) recorded 21 Palestinian civilians killed for every Israeli civilian killed.[52] Since 7 October 2023, which happened within this context of disproportionate violence, the discrepancy in volume and effect of violence has increased dramatically. According to a detailed Human Rights Watch report, 1,195 Israelis were killed on 7 October, of which 815 were civilians and at least 282 women and 36 children, and 251 people, including 39 children, were taken hostage. The International Criminal Court has found that there is plausible evidence to conclude that the Qassam Brigades have committed war crimes and crimes against humanity on that day.[53] Estimates of Palestinians killed in Gaza since 7 October 2023 range from 45,338 (OCHA, 8 January 2025) to a projection of 186,000 in an article in *The Lancet* (Khatib et al., 14 July 2024). [54] American medical personnel who have served in Gaza since 7 October estimated in a public letter to President Biden that, as of May 2024, at least a further 10,000 Gazans were buried under rubble and that, as of 30 September 2024, an additional 62,413 Gazans could die of starvation, based on how many Gazans were living in

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[52] "Data on Casualties," United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory, n.d., http://www.ochaopt.org/data/casualties; for calculation of ratio before 7 October, see Gunning et al., "Written Evidence," 12.

[53] Human Rights Watch, *"I Can't Erase All the Blood from My Mind": Palestinian Armed Group's October 7 Assault on Israel* (New York, NY: Human Rights Watch, 2024); Khan, "Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine."

[54] "Occupied Palestinian Territory," United Nations Office for the Coordination of Humanitarian Affairs, n.d., http://www.ochaopt.org/node/10572; "Humanitarian Situation Update #247 | Gaza Strip," United Nations Office for the Coordination of Humanitarian Affairs, 17 December 2024, http://www.ochaopt.org/content/humanitarian-situation-update-247-gaza-strip; Rasha Khatib, Martin McKee, and Salim Yusuf, "Counting the Dead in Gaza: Difficult but Essential," *The Lancet* 404, no. 10449 (2024): 237–38.

famine-like conditions. [55] Professor Devi Sridhar, chair of global public health at the University of Edinburgh, estimated in September 2024 that, following the method used in *The Lancet* article, the total number of deaths "attributable to the current conflict" (including from war-related disease and starvation) could be as high as 335,500.[56] Although these figures do not differentiate between combatants and noncombatants, the UN's Office of the High Commissioner for Human Rights (OHCHR) estimates on the basis of an analysis of the 8,119 Palestinians killed in Gaza that had been verified by OHCHR by 2 September 2024 that 70% of those killed were women (26%) and children (44%), while 94% had been killed "in residential buildings or similar housing".[57] Oxfam reported in September 2024 that "6,000 women and 11,000 children were killed in Gaza by the Israeli military over the last 12 months", concluding that "more women and children have been killed in Gaza by the Israeli military over the past year than the equivalent period of any other conflict over the past two decades".[58] Although Israel has called the credibility of the numbers provided by the Hamas-run Health Ministry into question, the UN and other major humanitarian organisations have all said that they find the numbers credible, based on both their own observations of deaths and past conflicts.[59] While Israel claims that it takes every precaution to limit civilian deaths, there is mounting evidence that Israeli officers explicitly permitted the targeting of civilians and civilian infrastructure.[60] Intelligence sources claim that officers permitted the "collateral" killing of civilians when targeting members of the Qassam Brigades, from 20 for low-level to 100 for high-level targets; this practice was supported by two AI-supported systems ("Lavender", "The Gospel"), with

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[55] Feroze Sidhwa et al., "Open Letter From American Medical Professionals Who Served In Gaza - Appendix," Gaza Healthcare Letters, 2 October 2024, https://www.gazahealthcareletters.org/usa-letter-oct-2-2024; on likely famine-related deaths and difficulty of predicting these, see also Jeremy Konyndyk and Jesse Marks, "Untangling the Reality of Famine in Gaza," Refugees International, 12 September 2024, https://www.refugeesinternational.org/reports-briefs/untangling-the-reality-of-famine-in-gaza/; Alex De Waal, "How Many People Have Died of Starvation in Gaza?," *World Peace Foundation* (blog), 17 December 2024, https://worldpeacefoundation.org/blog/how-many-people-have-died-of-starvation-in-gaza/.

[56] Devi Sridhar, "Scientists Are Closing in on the True, Horrifying Scale of Death and Disease in Gaza," *The Guardian*, 5 September 2024.

[57] "Six-Month Update Report on the Human Rights Situation in Gaza: 1 November 2023 to 30 April 2024," OHCHR, 8 November 2024, https://www.ohchr.org/en/documents/reports/six-month-update-report-human-rights-situation-gaza-1-november-2023-30-april-2024.

[58] "More Women and Children Killed in Gaza by Israeli Military than Any Other Recent Conflict in a Single Year – Oxfam," Oxfam International, 30 September 2024, https://www.oxfam.org/en/press-releases/more-women-and-children-killed-gaza-israeli-military-any-other-recent-conflict.

[59] Benjamin Huynh, Elizabeth Chin, and Paul Spiegel, "No Evidence of Inflated Mortality Reporting from the Gaza Ministry of Health," *The Lancet* 403, no. 10421 (2024): 23–24; Peter Beaumont and Julian Borger, "UN Denies Gaza Death Toll of Women and Children Has Been Revised Down," *The Guardian*, 14 May 2024, sec. World news; Assma Maad, "Why the Gaza Health Ministry's Death Count Is Considered Reliable," *Le Monde*, 13 October 2024.

[60] Ben Reiff, "'A Mass Assassination Factory': Inside Israel's Calculated Bombing of Gaza," +972 Magazine, 30 November 2023, https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/; Yuval Abraham, "'Lavender': The AI Machine Directing Israel's Bombing Spree in Gaza," +972 Magazine, 3 April 2024, https://www.972mag.com/lavender-ai-israeli-army-gaza/; "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, Including East Jerusalem, and Israel – Human Rights Council Fifty-Sixth Session (A/HRC/56/26)" (New York: UN General Assembly), accessed 14 June 2024.

reportedly limited human oversight, and a tracking system, "Where's Daddy?", which was said to specifically target the homes of suspected members, thus increasing the likelihood of civilian casualties. Some intelligence sources with first-hand experience go further, saying that high-rise buildings or "power targets" were bombed with the specific intention "to harm Palestinian civil society: to "create a shock" that, among other things, will reverberate powerfully and "lead civilians to put pressure on Hamas".[61] The use of 2000lb bombs in densely populated areas and near hospitals, the limited time given to people to evacuate their homes, the attacks on evacuation routes and areas designated as safe spaces, among other evidence, strongly suggest that, at a minimum, Israel is permitting the killing of civilians on a vast scale.[62] However, taken together with statements made by top Israeli officials that they intended to punish all Gazans, with no distinction between unarmed civilians and combatants (see section 22), and a long history of Israel intentionally targeting civilians as part of military doctrine (most explicitly expressed in the Dahiyeh Doctrine – see section 19), it is reasonable to conclude that Israel has committed acts of terrorism in Gaza on a far greater scale than Hamas, if terrorism is understood as targeting non-combatant civilians with the purpose of changing the behaviour of larger populations through instigating terror (common elements of terrorism definitions). The International Court of Justice, 15 UN Special Rapporteurs and numerous UN officials and experts, and a large body of legal and genocide scholars, including the Lemkin Institute for Genocide Prevention, the University Network for Human Rights, Euromed Human Rights Monitor, as well as high-profile genocide scholars and the Middle East Studies Association have all furthermore concluded that Israel's violence in Gaza plausibly amounts to

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[61] PCATI, "No Second Thoughts: The Changes in the Israeli Defense Forces' Combat Doctrine in Light of 'Operation Cast Lead'" (Jerusalem: The Public Committee Against Torture in Israel, November 2009); Abraham, "'Lavender'"; Bethan McKernan and Harry Davies, "'The Machine Did It Coldly': Israel Used AI to Identify 37,000 Hamas Targets," *The Guardian*, 3 April 2024, sec. World news.

[62] "UN Report: Israeli Use of Heavy Bombs in Gaza Raises Serious Concerns under the Laws of War," OHCHR, 19 June 2024, https://www.ohchr.org/en/press-releases/2024/06/un-report-israeli-use-heavy-bombs-gaza-raises-serious-concerns-under-laws; Dennis Kunichoff et al., "Are Hospitals Collateral Damage? Assessing Geospatial Proximity of 2000 Lb Bomb Detonations to Hospital Facilities in the Gaza Strip from October 7 to November 17, 2023," ed. Hani Mowafi, *PLOS Global Public Health* 4, no. 10 (2024): e0003178; Larry Lewis, "Israeli Civilian Harm Mitigation in Gaza: Gold Standard or Fool's Gold?," Just Security, 12 March 2024, https://www.justsecurity.org/93105/israeli-civilian-harm-mitigation-in-gaza-gold-standard-or-fools-gold/; Zeynep Tufekci Gulay, "So-Called 'safe Zones' in Gaza Turned into 'Death Corridors,'" Anadolu Ajansı, 10 2024, https://www.aa.com.tr/en/1-year-of-gaza-genocide/so-called-safe-zones-in-gaza-turned-into-death-corridors-/3351721; "'Pawns in a Board Game': How Israel Is Shrinking Gaza's 'Safe Zones,'" Aljazeera, 25 July 2024, https://www.aljazeera.com/news/2024/7/25/how-israel-is-shrinking-gazas-safe-zones.

genocide.[63] The terrorism label applied solely to Hamas, however horrifying the violence of 7 October was, including mass atrocities, obscures this extreme asymmetry in the level and effect of violence carried out and Israel's complicity in violence that can be described not just as terrorist but as genocidal.

22. **Dehumanisation to justify violent response**: The terrorism label also serves to dehumanise, denying those labelled their right to human rights, to freedom, justice and self-government. This in turn enables the state wielding the term to seek to justify extreme and often illegal violence – from collective punishment and targeting civilians to ethnic cleansing and genocidal violence. Here, the construction of what has been termed "suspect communities" plays a central role. Originally coined to describe how the UK government turned the Irish in Britain into a "suspect community" under the 1989 Prevention of Terrorism Act, the term has been used to show how Muslim communities in their entirety have been rendered "suspect" during the War on Terror.[64] The terrorism label, particularly if it is conceptually linked to Muslims as, e.g., "Islamic terrorism", allows the state doing the labelling to paint the attackers and their community as not only "irrational" and "demonic" but as an "existential threat", a threat to civilisation itself – and thus those killed in the violent response are blamed for their own deaths.[65] In Israel's war on Gaza, a similar dynamic can be seen at work, with Israeli officials labelling all Gazans as culpable of the 7 October attacks and unhuman, and through this

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[63] International Court of Justice, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)" (26 January, 26 January 2024); "Gaza: UN Experts Call on International Community to Prevent Genocide against the Palestinian People," OHCHR, 16 November 2023, https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against; Albanese, "Anatomy of a Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 - Advance Unedited Version (A/HRC/55/73)"; Ed Pilkington, "Top UN Official in New York Steps down Citing 'Genocide' of Palestinian Civilians," *The Guardian*, 31 October 2023, sec. World news; Nina Lakhani, "Israel Is Deliberately Starving Palestinians, UN Rights Expert Says," *The Guardian*, 27 February 2024, sec. World news; "Statement on Why We Call the Israeli Attack on Gaza Genocide," Lemkin Institute, 29 December 2023, https://www.lemkininstitute.com/statements-new-page/statement-on-why-we-call-the-israeli-attack-on-gaza-genocide; "Genocide in Gaza: Analysis of International Law and Its Application to Israel's Military Actions since October 7, 2023," University Network for Human Rights, 15 May 2024, https://www.humanrightsnetwork.org/publications/genocide-in-gaza; "Euro-Med Monitor to UN: Recognise Israel's Actions in Gaza as Genocide," Euro-Med Human Rights Monitor, accessed 3 January 2025, https://euromedmonitor.org/en/article/5970/Euro-Med-Monitor-to-UN:-Recognise-Israel; "MESA Board Joint Statement with CAF Regarding the Ongoing Genocidal Violence against the Palestinian People and Their Cultural Heritage in Gaza," Middle East Studies Association, 11 March 2024, https://mesana.org/advocacy/letters-from-the-board/2024/03/11/mesa-board-joint-statement-with-caf-regarding-the-ongoing-genocidal-violence-against-the-palestinian-people-and-their-cultural-heritage-in-gaza; Omer Bartov, "As a Former IDF Soldier and Historian of Genocide, I Was Deeply Disturbed by My Recent Visit to Israel," *The Guardian*, 13 August 2024; Amos Goldberg, "Yes, It Is Genocide," *The Palestine Project via Medium* (blog), 18 April 2024, https://thepalestineproject.medium.com/yes-it-is-genocide-634a07ea27d4; Raz Segal, "A Textbook Case of Genocide," Jewish Currents, 13 October 2023, https://jewishcurrents.org/a-textbook-case-of-genocide; Martin Shaw, "Inescapably Genocidal," *Journal of Genocide Research*, 2024, 1–5; Aryeh Neier, "Is Israel Committing Genocide?," *The New York Review of Books*, 6 June 2024.

[64] Marie Breen-Smyth, "Theorising the 'Suspect Community': Counterterrorism, Security Practices and the Public Imagination," *Critical Studies on Terrorism* 7, no. 2 (2014): 223–40; Mary Hickman et al., "Social Cohesion and the Notion of 'Suspect Communities': A Study of the Experiences and Impacts of Being 'Suspect' for Irish Communities and Muslim Communities in Britain," *Critical Studies on Terrorism* 5, no. 1 (2012): 89–106.

[65] Richard Jackson, "Constructing Enemies: 'Islamic Terrorism' in Political and Academic Discourse," *Government and Opposition* 42, no. 3 (2007): 394–426; Gunning and Jackson, "What's so 'Religious' about 'Religious Terrorism'?"; Khan, "Race, Coloniality and the Post 9/11 Counter-Discourse."

discursive strategy seeking, in its extreme form, to legitimise the erasure of Gaza. Already on 18 October 2023, an open letter signed by nearly 800 lawyers warned that Israel's rhetoric and how this was translated into action had raised "the possibility of the crime of genocide being perpetrated by Israeli forces against Palestinians in the Gaza Strip".[66] Israel's President, Isaac Herzog, reportedly explicitly held all Gazans responsible for the 7 October attacks, erasing the distinction between civilians and armed fighters to justify collective punishment: "*It is an entire nation out there that is responsible. It is not true this rhetoric about civilians not being aware, not involved. It's absolutely not true. They could've risen up, they could have fought against that evil regime.*"[67] Then Israeli Defense Minister Yoav Gallant was reported to have "*ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel*," adding "*we are fighting human animals and we act accordingly*" and "*Gaza won't return to what it was before. We will eliminate everything.*"[68] Prime Minister Benjamin Netanyahu linked dehumanisation of the Palestinians to the notion of an existential threat, telling the Knesset that Israel's war on Gaza was a "*struggle against those who have risen up against us to destroy us. Our goal is victory – a crushing victory over Hamas, toppling its regime and removing its threat to the State of Israel once and for all. … Hamas is part of the axis of evil of Iran, Hezbollah and their minions. They seek to destroy the State of Israel and murder us all. They want to return the Middle East to the abyss of the barbaric fanaticism of the Middle Ages, whereas we want to take the Middle East forward to the heights of progress of the 21st century. This is a struggle between the children of light and the children of darkness, between humanity and the law of the jungle*."[69] These words echo Netanyahu's foreword to his 1984 book *Terrorism: How the West Can Win* which stated that "*the battle against terrorism was part of a much larger struggle, one between the forces of civilization and the forces of barbarism*",[70] itself echoing the wording of the 1937 League of Nations' Convention described above (section 16). Israel's Minister of Energy and Infrastructure Israel Katz not only blamed all Gazans but appeared to publicly propose a combination of ethnic cleansing and genocide: "*All the civilian population in Gaza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world*." Member of Knesset Ariel Kallner explicitly invoked the Nakba of 1948, reportedly saying: "*Right now, one goal: Nakba! A Nakba that will overshadow the Nakba of 1948*". This message was also spread on public banners in cities calling for "*zero population in Gaza*" and the "*annihilation of Gaza*". Head of the IDF's Coordinator of Government Activities in the Territories, Major General Ghassan Alian, told Gazans: "*Human animals must be treated as such. There will be no electricity and no*

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[66] "Public Statement: Scholars Warn of Potential Genocide in Gaza," *Opinio Juris* (blog), 18 October 2023, https://opiniojuris.org/2023/10/18/public-statement-scholars-warn-of-potential-genocide-in-gaza/.

[67] Chris McGreal, "The Language Being Used to Describe Palestinians Is Genocidal," *The Guardian*, 16 October 2023, sec. Opinion.

[68] Ibid.; "Public Statement."

[69] "Excerpt from PM Netanyahu's Remarks at the Opening of the Winter Assembly of the 25th Knesset's Second Session," Ministry of Foreign Affairs, 10 2023, https://www.gov.il/en/pages/excerpt-from-pm-netanyahu-s-remarks-at-the-opening-of-the-knesset-s-winter-assembly-16-oct-2023.

[70] Quoted in Lisa Stampnitzky, *Disciplining Terror: How Experts Invented "Terrorism"* (Cambridge: Cambridge University Press, 2013), 114.

water, there will only be destruction. You wanted hell, you will get hell".[71] Palestinian civilians who were killed were thus supposedly to blame for their own deaths – whether because they had elected Hamas, not risen up against it, accepted its "culture of martyrdom", continued to live and move in declared war zones, or supposedly allowed the Qassam Brigades to use them as human shields (the human shields narrative is both contested evidentially and deeply problematic in that it does not absolve Israel from observing the fundamental principles of distinction and proportionality).[72] This logic was on clear display in testimony from IDF officers and soldiers in a recent *Ha'aretz* article, with the commander purportedly having said: "Anyone crossing the line is a terrorist, no exceptions, no civilians" and "declaring anyone entering the kill zone a terrorist conducting reconnaissance", so that soldiers apparently understood that "the kill zone extends as far as a sniper can see", ending up "killing civilians there who are then counted as terrorists".[73] The terrorism framework is not the sole cause of this process of dehumanisation. The collective dehumanisation of the Palestinian people has a long history and is steeped in racism and Orientalist tropes, as Israeli officials over the decades have likened Palestinians to "cockroaches", "cancer", "vermin", etc. It goes hand in hand with settler colonialism, which has a historical record globally of seeking to erase indigenous peoples. Within this racialised, colonial context, Palestinian attacks on Israelis over the years have further served to reinforce dehumanising racist stereotypes.[74] Proscription is thus only a contributory factor. However, the terrorism label, with its connotations of "moral disgust", "taboo", and treating those labelled as "pathologically anti-social" and against human civilisation itself, facilitates such dehumanisation.[75] It facilitates Israel's apparent strategy of systematically destroying Gaza's health sector, with Israel claiming – on the basis of usually limited and contested evidence – that these sites were used extensively by Hamas, thus supposedly exculpating it from having to observe the fundamental principles of proportion and

[71] All quotes after footnote 27 from "Public Statement."

[72] Neve Gordon and Nicola Perugini, *Human Shields: A History of People in the Line of Fire* (Oakland, CA: University of California Press, 2020); Buttu makes these general points with regards to Israel's 2014 war on Gaza: Diana Buttu, "Blaming the Victims," *Journal of Palestine Studies* 44, no. 1: Operation Protective Edge (2014): 91–96.

[73] Yaniv Kubovich, "'No Civilians. Everyone's a Terrorist': IDF Soldiers Expose Arbitrary Killings and Rampant Lawlessness in Gaz," *Haaretz*, 18 December 2024.

[74] McGreal, "The Language Being Used to Describe Palestinians Is Genocidal"; Weiner, "Palestinian Erasure and Dehumanization in Introductory Sociology Texts"; Lentin, "Palestine/Israel and State Criminality: Exception, Settler Colonialism and Racialization"; Somdeep Sen, "Violent Infrastructure, Nationalist Stigmatisation and Spatial Erasure," *Politics* 44, no. 1 (2024): 102–18.

[75] Sluka, "Terrorism and Taboo"; see also Zulaika and Douglass, *Terror and Taboo*.

distinction in international humanitarian law.[76] It also contributes to enabling Israel to steer attention away from the inhumane brutality of its own killing in Gaza.

23. **Denial of right to resist occupation**: The practice of labelling national liberation and anti-colonial resistance movements terrorist further has the effect of denying them their right to resist occupation and fight for self-determination by any means, including violence (within the boundaries of international humanitarian law), as enshrined in numerous UN Resolutions. It also has the effect of perpetuating colonialism and settler colonial occupation, which are considered crimes by the UN. UN General Assembly Resolution (UNGA) 2621 (XXV) (1970), for instance, both "declares the further continuation of colonialism in all its forms and manifestations a crime which constitutes a violation of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the principles of international law" and "reaffirms the inherent right of colonial peoples to struggle by all necessary means at their disposal against colonial Powers which suppress their aspiration for freedom and independence". Dr Shahd Hammouri, a lecturer in law, lists nine UNGA Resolutions which reaffirm in broadly similar wordings that the struggle for self-determination against occupation can be conducted "by all legitimate means available at their disposal".[77] UNGA Resolution 2787 (XXVI) (1971) specifically confirms this right with regards to the Palestinian struggle. UNGA Resolutions 35/35 (1980), 38/17 (1983), 43/21 (1988) and 44/235 (1989) further reaffirm this right with regards to the Palestinian struggle, either expressly or by expressing solidarity with the Palestinian Intifada which began in 1987.[78] As for who is entitled to take up this right, Hammouri notes that "there is no established legal test to determine who is to practice the rights of a people on their behalf in the context of an illegal occupation. Such practice may be taken up collectively by those who have associated themselves with resistance in the exercise of their right to self-determination." These UN Resolutions thus appear to grant any self-proclaimed resistance organisation the right to use violence against occupation, including attacks on soldiers that actively take part in hostilities. Yet, because Hamas is designated as terrorist, even acts that are explicitly permitted by UN Resolutions become labelled terrorist, thus denying Palestinians their fundamental right to resist occupation and fight for self-determination.

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[76] "Gaza: 'Systematic Dismantling of Healthcare Must End' Says WHO | UN News," World Health Organization, 6 April 2024, https://news.un.org/en/story/2024/04/1148316; "The Destruction of Shifa Hospital Is Latest Evidence of Israel's Systematic Dismantling of Gaza's Health System - Latest News & Developments - Medical Aid for Palestinians," Medical Aid for Palestinians, 2 April 2024, https://www.map.org.uk/news/archive/post/1576-the-destruction-of-shifa-hospital-is-latest-evidence-of-israelas-systematic-dismantling-of-gazaas-health-system; "Thematic Report - Attacks on Hospitals during the Escalation of Hostilities in Gaza (7 October 2023 - 30 June 2024)," OHCHR, 31 December 2024, https://www.ohchr.org/en/documents/reports/thematic-report-attacks-hospitals-during-escalation-hostilities-gaza-7-october; "Security Council Debates Israeli Attacks on Hospitals Allegedly Misused by Hamas, as UN Rights Chief Urges Independent Probes," UN Meetings Coverage and Press Releases, 3 January 2025, https://press.un.org/en/2025/sc15959.doc.htm.

[77] Shahd Hammouri, "The Palestinian People Have the Right of Resistance by All Means Consistent with the Principles of the UN Charter," non-profit, *International Law and Palestine Blog* (blog), 8 October 2023, 14, https://law4palestine.org/the-palestinian-people-have-the-right-to-resistance-by-all-means-available-at-their-disposal-dr-shahd-hammouri/.

[78] Ibid., 15–18.

24. **Preventing a political solution**: Application of the terrorism label further creates obstacles for pursuing a political solution, favouring military "solutions" or indefinite suppression and surveillance. In particular, it denies the possibility of political transformation as "terrorists" – and the sub-category of "religious terrorists" in particular – are typically cast as inherently intransigent and incapable of change.[79] Peace studies scholars, who have long argued for engagement with armed groups, have critiqued the terrorism approach for preventing engagement. "In the name of security policy and the 'war on terror'", Professor Robert Ricigliano, a globally leading peace studies and conflict resolution scholar and practitioner, noted, "the preferred course of action for dealing with many armed groups is to proscribe and shun them in the hopes that they will somehow wither away or be eradicated by military force".[80] Yet, as Professors Seth Jones and Martin Libicki, leading defence and security studies scholars and practitioners, found in their survey of 648 "terrorist groups" between 1968-2006, only 7% ended through military force. The most common way in which they ended was "a transition to the political process" (43%).[81] Such a transition is hindered by the terrorism label. Liz Philipson, former director of Conciliation Resources and a conflict analyst, concluded from her study of engagement under conditions of power asymmetry that "listing an organization as 'terrorist' potentially lengthens the path to non-violent politics for that group as negative perceptions of the group are encouraged, and the group's own perceptions about whether they can or should have a place in non-violent politics may also be negatively affected".[82] Labelling a group as "terrorist" makes political negotiations more difficult as talking with terrorists is considered taboo (whether because it is believed to reward nonstate violence, to legitimise the violent nonstate actor or to be an admission of weakness). The government of the Philippines resisted pressure to label the Moro Islamic Liberation Front terrorist precisely because it did not want to scupper a political solution.[83] Dr Sophie Haspeslagh, a scholar combining critical terrorism and security studies with conflict and peace studies, similarly concluded from her analysis of the effects of proscription that the "consequences of proscription regimes appear to be making the achievement of successful peace processes that much harder", including by limiting the involvement of third parties that have historically played an important role in getting the conflict parties to the negotiation table through "affect[ing] their strategic calculations and train[ing] them in conflict resolution".

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[79] Gunning, "Peace with Hamas?"; Gunning and Jackson, "What's so 'Religious' about 'Religious Terrorism'?"

[80] Robert Ricigliano, "Introduction: Engaging Armed Groups in Peace Processes," ed. Robert Ricigliano, *Accord*, no. 16 (2005): 6.

[81] Seth Jones and Martin Libicki, *How Terrorist Groups End: Lessons for Countering al Qa'ida* (Santa Monica, CA: RAND Corporation, 2008), xiii–xiv; see also Audrey Kurth Cronin, *How Terrorism Ends: Understanding the Decline and Demise of Terrorist Campaigns* (Princeton, NJ: Princeton University Press, 2009).

[82] Liz Philipson, "Engaging Armed Groups the Challenge of Asymmetries," *Accord*, no. 16 (2005): 70.

[83] Harmonie Toros, "'We Don't Negotiate with Terrorists!': Legitimacy and Complexity in Terrorist Conflicts," *Security Dialogue* 39, no. 4 (2008): 407–26.

24.a. Alvaro de Soto, former UN Special Coordinator for the Middle East Peace Process, notes the effects of proscription for the settler colonial conflict in Israel/Palestine specifically, underlining that "the global war on terror has dealt a set-back to conflict resolution as a whole. It has brought about issues that mediators never had to deal with before. (. . .) There is no agreed definition of what constitutes terrorism or terrorist acts, they use pre-existing lists. As a result, groups on those lists, which may have resorted to terrorist acts tactically or out of desperation, find themselves amalgamated with nihilist groups like Al Qaeda (. . .). A sort of stigma has been attached to dealing with the likes of Hamas, without which peace is difficult to imagine. With Hamas's election under George W Bush nobody even dared mention the possibility of engagement. Until that time it had been unquestioned UN practice since Dag Hammarskjold to talk to whomever you need to talk to for peace. That could be people from Hamas just like from the other side. … Excluding such important interlocutors can result in prolonging conflict."[84] Leading peace studies scholars Professor Oliver Richmond and Dr Jason Franks have similarly argued that an "orthodox terrorism approach has allowed successive Israeli governments to maintain the conflict rather than make difficult concessions (for example, over territory and settlements), reaffirm their national security discourse, allow the pursuit of terrorist actors in both a military context (as enemies) and legal context (as criminals), and legitimise extra-judicial, pre-emptive assassinations".[85] Israel has used the terrorism label to depict Hamas as an absolute spoiler, incapable of compromise and thus not a serious negotiating partner, despite Hamas having been elected in a landslide victory in the 2006 legislative elections and having made significant political overtures over the years in terms of moving towards accepting a Palestinian state on the 1967 borders, especially in 2006-2007 (before the violent ousting of Fatah from Gaza, following intelligence of an impending coup),[86] the first half of 2014 and the second half 2017.[87]

24.b. Under the influence of its pragmatic leaders who had more leverage within the movement when the external political opportunity and threat structure made a pragmatic response more compelling, Hamas showed an increasing willingness to accept a Palestinian state on the 1967 borders, culminating in the publication of its 2017 Manifesto, and was involved in negotiations towards – and (briefly) participation in – national unity governments with Fatah based on a *de facto*

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[84] Quoted in Sophie Haspeslagh, "The Mediation Dilemma of (Not) Talking to Terrorists," *Swiss Political Science Review* 26, no. 4 (2020): 506.

[85] Oliver Richmond and Jason Franks, "The Impact of Orthodox Terrorism Discourses on the Liberal Peace: Internalisation, Resistance, or Hybridisation?," *Critical Studies on Terrorism* 2, no. 2 (2009): 207; see also Gunning, "Peace with Hamas?"

[86] "Hamas Coup in Gaza," *Strategic Comments* 13, no. 5 (2007): 1–2; Jonathan Steele, "Hamas Acted on a Very Real Fear of a US-Sponsored Coup," *The Guardian*, 21 June 2007, sec. Opinion; David Rose, "The Gaza Bombshell," Vanity Fair, 3 March 2008, https://www.vanityfair.com/news/2008/04/gaza200804.

[87] Gunning, "Peace with Hamas?"; Gunning, *Hamas in Politics*; Tristan Dunning, *Hamas, Jihad and Popular Legitimacy: Reinterpreting Resistance in Palestine* (London: Routledge, 2016); Tareq Baconi, *Hamas Contained: The Rise and Pacification of Palestinian Resistance* (Stanford, CA: Stanford University Press, 2018); Martin Kear, *Hamas and Palestine: The Contested Road to Statehood* (Milton Park: Routledge, 2019); Gunning et al., "Written Evidence."

acceptance of a two-state solution. In each case, there were tensions within Hamas and between Hamas and the Qassam Brigades, and escalating tensions with Fatah (2006-2007, 2017) and Israel (2006, 2014) contributed to these overtures being undermined or overturned.[88] In the evidence I submitted with colleagues to the UK Parliament in November 2023, we argued that it was in part Israel's refusal to take Hamas's political overtures seriously, combined with its aggressive pursuit of regional normalisation and increasing annexation of the West Bank threatening the very possibility of a Palestinian state on the 1967 borders, that created the conditions for the hardliners within Hamas and the Qassam Brigades to gain power and plan the violence of 7 October.[89] The terrorism label arguably facilitated Israel's refusal to engage with these earlier political overtures.

25. **Obstructing a two-state solution**: Proscribing the entirety of Hamas has directly affected the possibility of a two-state solution and a Palestinian state being achieved. Other factors, including, significantly, Israel's refusal to agree to the establishment of a Palestinian state on the 1967 borders and its continued settlement, annexation and normalisation policies, but also deep divisions between Hamas and Fatah, and continued, apparently unconditional, international support for Israel, inspite of its continued occupation, have played key roles. However, proscription has further served to obstruct a political solution. It has arguably emboldened Israel in its refusal to engage Hamas and its pursuit of a military rather than a political solution. It has made engagement and negotiations with Hamas more difficult. Because it is one of the two key parties in Palestine and the main armed force on the Palestinian side, from a pragmatic perspective, Hamas has to be included in any political settlement to make it work. Obstructing political engagement with Hamas is thus deeply detrimental to achieving a political solution – a point retrospectively acknowledged by former UK Prime Minister Tony Blair who was instrumental in instigating the international boycott against Hamas following its 2006 election victory.[90] Proscription has further served to undermine the pragmatists amongst its leadership, and to make it difficult if not impossible for third parties (whether governments or INGOs) to influence Hamas's decision-making through engagement.[91] Proscription has also contributed to thwarting the creation of national unity governments and reconciliation attempts between Hamas and Fatah, which both parties see as "a necessary step toward the realization of a two-state resolution to the Israeli-Palestinian conflict".[92] Responding to the UK's proscription of Hamas in 2021, the Palestinian Authority's Mission in London to the UK warned that, "with this move, the British government has complicated Palestinian unity efforts and undermined

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[88] See footnote 87.

[89] Gunning et al., "Written Evidence."

[90] Donald Macintyre, "Tony Blair: 'We Were Wrong to Boycott Hamas after Its Election Win,'" *The Observer*, 14 October 2017, sec. World news.

[91] Gunning, "The Conflict and the Question of Engaging with Hamas"; Haspeslagh, "The Mediation Dilemma of (Not) Talking to Terrorists."

[92] "UK to Label Entirety of Hamas a Terrorist Organization," The Jerusalem Post, 19 November 2021, https://www.jpost.com/breaking-news/uk-to-label-entirety-of-hamas-as-a-terrorist-organization-685468.

Palestinian democracy… It is a retrograde and one-sided step that will do nothing for efforts to secure a peaceful two-state outcome…".[93]

26. **Impeding humanitarian aid**: Proscription further impedes humanitarian aid by labelling anything that can be seen, broadly interpreted, as supporting a group that has been labelled terrorist as terrorism. As we wrote in the evidence submitted to the UK Parliament in November 2023, "Under UK law, the proscription of Hamas in its entirety "[creates] a series of criminal offences under UK law punishable by imprisonment and fines", including "arranging a private meeting with members of the groups" and providing any material benefit, even indirectly (which could include paying local taxes and utilities or carrying out humanitarian work if this is seen as indirectly benefiting Hamas). According to Dr Ben Saul, an advisor to the United Nations and the Challis Professor of International Law at the University of Sydney, commenting on the Australian proscription of all of Hamas, which is similar to the UK's, "The Australian law is saying that anyone who provides support, funding, training or assistance to the Hamas public administration, even… to help civilians in Gaza, is breaking Australian counterterrorism laws." Similarly, Alyn Smyth (SNP MP) noted in the UK parliamentary debate [on Hamas's proscription] that "You cannot get anything done—you cannot get aid delivered, you cannot have a medical project, you cannot have a civil society dialogue—without Hamas's active involvement one way or another". […] This is especially worrying, as approximately 80% of Gazans are dependent on humanitarian aid [this figure represents the situation prior to 7 October], much of which stems from UN bodies, such as the United Nations Relief Works Association for Palestinians in the Near East (UNRWA). The proscription unnecessarily complicates the UK's relations with international organisations operating in Gaza such as UNRWA, but also the World Bank, UNOPS, and OCHA. Hamas's affiliation with highly regarded NGOs, employment of Hamas members in UNRWA and other humanitarian organisations, and contributions of aid organisations such as the UNDP, the World Food Programme, USAID, Save the Children, Médecins sans Frontières, Medical Aid for Palestine, to Hamas-affiliated charities or zakat committees makes the blanket terrorist designation of Hamas potentially deeply destructive for Gazan civil society and their dependents."[94]

    26.a. Illustrating the legal implication of proscription for charities, in April 2023 the UK Treasury's Office of Financial Sanctions Implementation sent a letter to Muslim charities, asking "to supply details of all payments made in Gaza since 31 December 2020", including "any payments such as local authority charges, taxes, utilities, and services including water supply, waste services, telephone or broadband payments". Because of Hamas's proscription, the letter explained, the law prohibits anyone "from making available funds to or for the benefit of an organisation designated under the 2019 Regulations… This can include any payments to a designated organisation or entities owned or controlled by it, or to entities independent of that organisation but where payments will be for its benefit… As a charity with operations in the OPT, potentially in Gaza, it is your

[93] Ibid.

[94] Gunning et al., "Written Evidence," 25–26.

responsibility to ensure you are compliant with financial sanctions obligations". Charities were thus already facing the prospect of increased costs for carrying out humanitarian work in Gaza as they had to seek "legal advice to ensure they properly fulfil their responsibilities" or risk "face sanctions under counter-terrorism regulations".[95] Proscription has rendered humanitarian aid to Gaza potentially open to criminal charges because all humanitarian organisations had to go through Hamas as the de facto government of Gaza – and if Hamas continues to play a role in Gaza post-ceasefire, it will potentially criminalise humanitarian aid and reconstruction in the future.

26.b. The cost of proscription-related charges to humanitarian NGOs working in Gaza can be enormous. Norwegian People's Aid was ordered to pay $2 million for not disclosing its "support for a democratisation project for youth in Gaza from 2012-2016", as this was ruled to constitute a "relation… to countries, organisations or persons under embargo by U.S. government designations". Oxfam was asked to pay $160 million in a New York court because the court had ruled that "an agriculture policy project in Gaza constituted "material support" to Hamas". These cases are examples of what has been termed "lawfare" against entities supporting Palestinians, including not just charities but also financial service providers, to deter them from continuing their support.[96] The proscription of Hamas is central to these cases as it allows prosecutors to argue that charities or financial services providers are materially supporting terrorism, even if their money or their services were exclusively concerned with humanitarian aid.

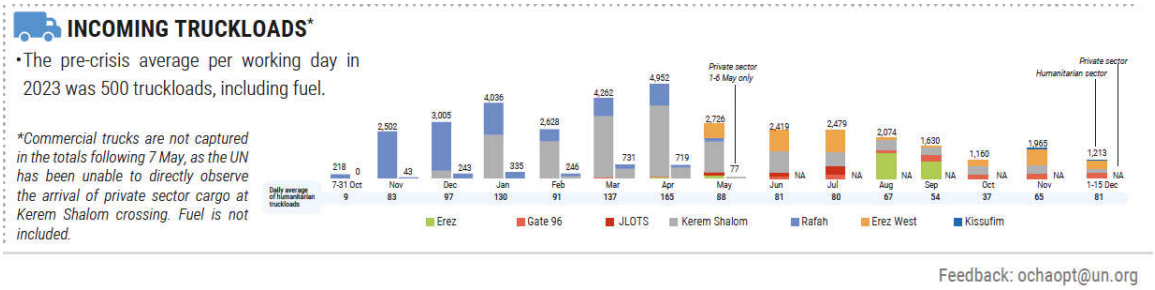
26.c. Since 7 October 2023, Israel has used the accusation of supporting terrorism to criminalise and shutdown UNRWA, the main UN agency supporting Palestinian refugees, on the basis that some of its staff had been involved in the 7 October attacks (the UN found evidence for nine of the 19 accused – out of a total staff of

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[95] Léa Legraien, "UK Aid Charities Told to Provide Details of Payments Made in Gaza," Civil Society Media, 11 April 2023, https://www.civilsociety.co.uk/news/uk-aid-charities-told-to-provide-details-of-payments-made-in-gaza.html.

[96] "Norwegian People's Aid Reaches a Settlement with the U.S. Government," Norwegian People's Aid, 3 April 2018, https://www.npaid.org/news/norwegian-peoples-aid-reaches-a-settlement-with-the-u-s-government; Ben Parker, "NGO Accused of Supporting Terrorism in Gaza," The New Humanitarian, 12 September 2019, https://www.thenewhumanitarian.org/news/2019/09/12/NGO-counter-terrorism-Gaza-Palestine-oxfam-lawsuit; "Medical Aid for Palestinians' Statement on Complaint by UK Lawyers for Israel and the Lawfare Project," Medical Aid for Palestinians, 20 October 2018, https://www.map.org.uk/news/archive/post/928-medical-aid-for-palestinians-statement-on-complaint-by-uk-lawyers-for-israel-and-the-lawfare-project; "The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel," *Charity & Security Network* (blog), 28 September 2021, https://charityandsecurity.org/csn-reports/the-alarming-rise-of-lawfare-to-suppress-civil-society-the-case-of-palestine-and-israel/; "OECD Dismisses Lawfare Group UKLFI's Complaint Against Auditors for Two Palestinian NGOs," *Charity & Security Network* (blog), 14 October 2021, https://charityandsecurity.org/news/oecd-dismisses-lawfare-group-uklfis-complaint-against-auditors-for-two-palestinian-ngos/; Shapiro Dmitriy and JNS, "Jewish Groups Pushing US Supreme Court to Review Terrorist Financing Case," *Israel Hayom* (blog), 19 October 2021, https://www.israelhayom.com/2021/10/19/jewish-groups-pushing-us-supreme-court-to-review-terrorist-financing-case/.

30,000 – and dismissed them).[97] Aid groups have accused Israel of ""systematic" attacks on civilians and NGOs working [in Gaza]" and Jan Egeland, head of the Norwegian Refugee Council, has noted that "Israel has now killed more aid workers in Gaza than all other armies, militias, and terrorists in all other wars combined".[98] Combined with Israel's policy of effectively starving Gaza's population by only allowing in a fraction of the truckloads of humanitarian aid required to keep the population alive (between July-November, the daily average was 37-80, against 500 before 7 October; see graph) and reportedly deliberately depriving Gazans of water,[99] the continued proscription of Hamas by key international players such as the UK and the US is likely to hinder not only the humanitarian effort to keep Gaza's population alive but the enormous task of reconstruction that will be needed for Gaza to become inhabitable again.



E. DEPROSCRIPTION, LEGITIMACY AND VIOLENCE

27. **Case for deproscription**: For the reasons set out in section D, a reasonable case can be made that the UK government's proscription of Hamas has made it complicit – as a contributory actor supporting and legitimising the international proscription regime around Hamas – in contributing to effacing the historical and political context of Hamas's violence, dehumanising not just Hamas but Gazans more broadly, creating further obstacles to a political solution, and making humanitarian aid more difficult. By continuing to label Hamas terrorist, it can be argued that the UK government has indirectly facilitated and legitimised Israel's collective punishment of Gaza, including plausible genocide, as well as facilitated Israel's continued occupation of Gaza and refusal to deal with Hamas politically. The ICJ found in July 2024 not only that Israel's occupation of Gaza and the West Bank is illegal but that "all States… are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory. It is for all States, while respecting

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[97] Itamar Eichner, "Israeli Campaign Accusing UNRWA of Terrorism Appears in Times Square," *Ynetnews*, 7 December 2024; "UNRWA: Claims Versus Facts," UNRWA, December 2024, https://www.unrwa.org/unrwa-claims-versus-facts-february-2024.

[98] AFP and TOI STAFF, "Groups Accuse Israel of 'Systematic' Attacks on Aid Workers, but Won't Leave Gaza," The Times of Israel, 3 April 2024, https://www.timesofisrael.com/groups-accuse-israel-of-systematic-attacks-on-aid-workers-but-wont-leave-gaza/.

[99] Graph source: "Reported Impact Snapshot | Gaza Strip," *OCHA OPT* (blog), 17 December 2024; "Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water" (New York: Human Rights Watch, 19 December 2024).

the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end." For the reasons set out above, continued proscription of Hamas, in conjunction with the UK government's continued support for Israel and its failure to impose sanctions, appears to go against the UK's stated support for a two-state solution. It could also be argued that it goes against the legal obligations the ICJ's finding imposes on states in that it facilitates Israel's continued occupation and hinders a political solution – and in doing so, violates international law and undermines the international legal order.[100]

28. **Deproscription, engagement and legitimacy**: One of the reasons for deproscription is the possibility of engagement. A key argument against engagement and negotiations with armed nonstate groups is that it grants them legitimacy.[101] However, this argument discounts the complexity of both legitimacy and the effects of engagement. As Professor Harmonie Toros, a leading critical terrorism and peace studies scholar, notes, because legitimacy is socially constructed, "the state can only confer legitimacy upon an entity for itself (thus accept for itself the legitimacy claim being made); it cannot do this for society as a whole or any broader social grouping".[102] Armed nonstate groups usually derive most of their legitimacy from their reputation among the population they seek to represent, while states often lack legitimacy in the eyes of those who have been oppressed or occupied. In El Salvador, for instance, as Joaquín Villalobos observed, "it was the insurgency that held greater legitimacy, not the authoritarian regime, which reacted disproportionately to resistance to its political model in a way that only escalated the violence".[103] Hamas has enjoyed public support for decades, in part because of its status as a resistance movement. It won student and professional union elections in the 1990s through its opposition to the Oslo Accords; it won the 2006 legislative elections in part because of its role in the Al-Aqsa Intifada; and after each subsequent war on Gaza its public support has typically increased.[104] After 7 October, its popularity in opinion polls increased significantly and in the most recent poll by the widely respected Palestinian Center for Policy and Survey Research (PSR 92, June 2024), it enjoyed the highest percentage of support of all Palestinian political parties (40% vs 20% for Fatah and 8% for third parties; see figure 17 in graphs below – numbering taken from PSR

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[100] For arguments and parliamentary support for sanctions, see "Impose Sanctions on Israel – 60+ MPs and Lords Demand End to UK Complicity," Labour Outlook, 28 November 2024, https://labouroutlook.org/2024/11/28/impose-sanctions-on-israel-60-mps-and-lords-demand-end-to-uk-complicity/.

[101] Toros, "`We Don't Negotiate with Terrorists!'"; Sophie Haspeslagh, "'Listing Terrorists': The Impact of Proscription on Third-Party Efforts to Engage Armed Groups in Peace Processes – a Practitioner's Perspective," *Critical Studies on Terrorism* 6, no. 1 (2013): 190; Clem McCartney, "From Armed Struggle to Political Negotiations: Why? When? How?," ed. Robert Ricigliano, *Accord*, no. 16 (2005): 30–35; David Petrasek, "Vive La Différence? Humanitarian and Political Approaches to Engaging Armed Groups," ed. Robert Ricigliano, *Accord*, no. 16 (2005): 44–47.

[102] Toros, "`We Don't Negotiate with Terrorists!'," 413.

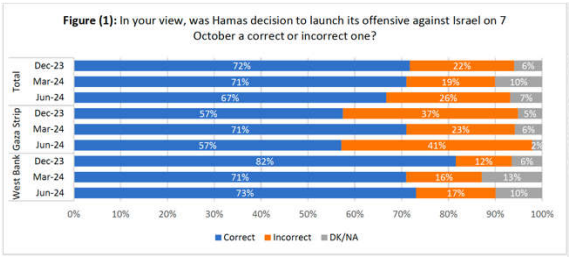
[103] Joaquín Villalobos, "The Salvadorean Insurgency: Why Choose Peace?," ed. Robert Ricigliano, *Accord*, no. 16 (2005): 38.

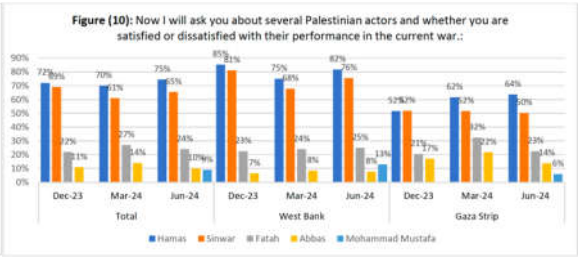
[104] See PSR polls (http://pcpsr.org/en/node/154).

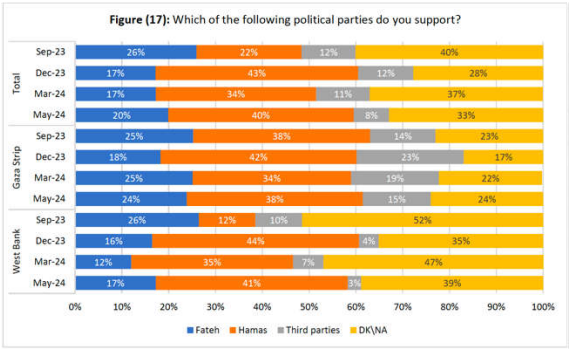
report). Support for the 7 October attacks, meanwhile, remained high (57% in Gaza, 73% in the West Bank; see figure 1 below).[105] Being deproscribed and engaged by powerful states would likely increase Hamas's legitimacy and its room for manoeuvre. But proscription has conversely also arguably increased its legitimacy in the eyes of its supporters by being seen as confirmation that Hamas has stood up to an international order that many hold to be deeply flawed and illegitimate, even more so since 7 October. Calls by Western states for a Palestinian state based on the Fatah-led Palestinian Authority, which has lost much of its support after 7 October, to the exclusion of Hamas are therefore deeply unrealistic and counter-productive, besides carrying colonial overtones. The June PSR poll shows that, after 7 October, 70-75% of respondents say that they are satisfied with Hamas's "performance in the current war", against 22-27% for Fatah, while 61% prefer Hamas to be "in control of the Gaza Strip" against 6% preferring the "Current PA under [President] Abbas" and 6% preferring the "Current PA under someone other than Abbas" (see figures 10 and 7 below). Even in the year leading up to 7 October, Hamas polled broadly equal to Fatah when those surveyed were asked who they would vote for in parliamentary elections (see graph of "Voting Intention" below), a pattern roughly observed over the past decade.[106] Whether Western governments like it or not, Hamas is one of the two dominant political parties in the Palestinian occupied territories. Engagement with it in pursuit of a political solution is thus not a question of legitimacy but a question of respecting the will of the Palestinian people and of seeking a locally credible way forward.

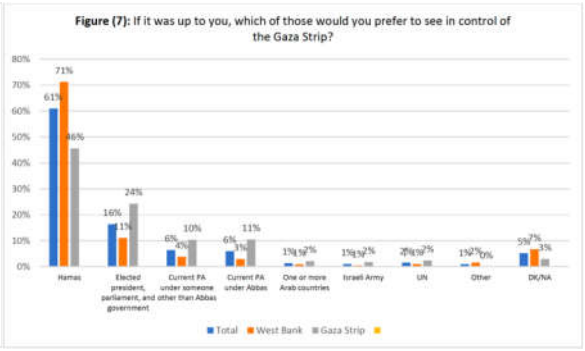
[105] "Public Opinion Poll No (92)" (Ramallah, Palestine: Palestinian Center for POLICY and SURVEY RESEARCH, 12 June 2024).

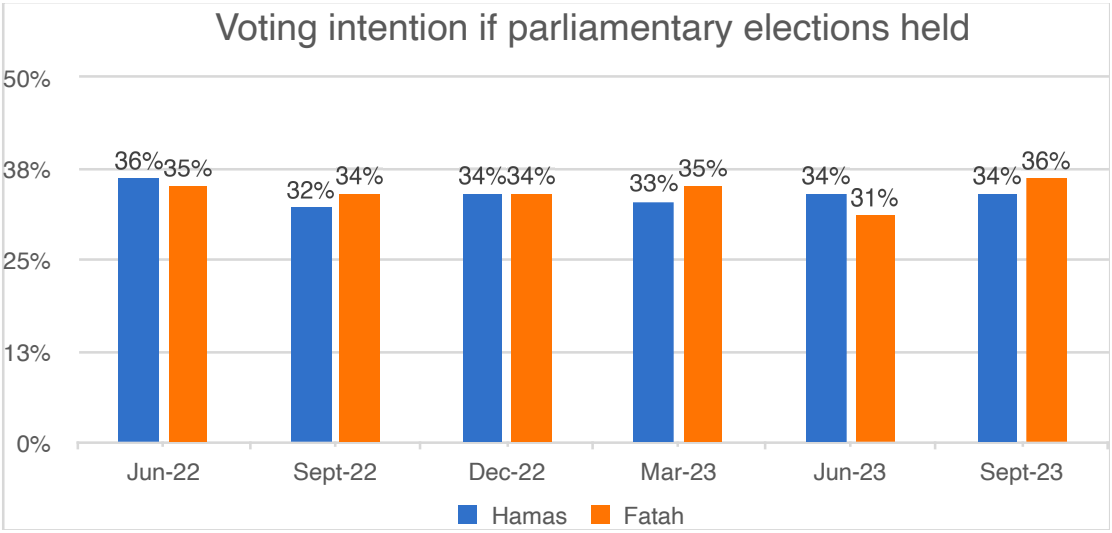
[106] See PSR polls (http://pcpsr.org/en/node/154).











29. **Deproscription, engagement and violence**: A second concern often raised is that deproscription and engagement reward violence and undermine the rights-based international order.[107] Negotiations, however, often involve demands around ceasing violence – thus, they can also be used to strengthen the norm of non-violence[108] (although this norm has already been severely weakened by the continued support of key Western allies for Israel's war on Gaza and ongoing occupation). Negotiations can further serve to "eliminate one of the reasons why the insurgents may have engaged in violence in the first place (lack of a legal outlet to voice their grievances)", strengthen the more pragmatic leadership and potentially create "a path of change or transformation towards nonviolence" (though only if the reasons for violence, in this case occupation

[107] Toros, "`We Don't Negotiate with Terrorists!'"; Peter Neumann, "Negotiating with Terrorists," *Foreign Affairs* 86, no. 1 (2007): 128–38.

[108] Toros, "`We Don't Negotiate with Terrorists!'," 412.

and denial of self-determination, are resolved).[109] In an important precedent for the UK, the UK's government dropped its demand that the Provisional Irish Republican Army disarm prior to the negotiations leading up to the Good Friday agreement in Northern Ireland, making it instead part of the negotiations. According to Jonathan Powell, chief negotiator for the British government in Northern Ireland, Sinn Fein's chief negotiator Martin McGuinness had said in private that "there would never have been a ceasefire if decommissioning had been made an issue in advance" while "Sinn Fein made it clear that the IRA would not surrender weapons before a political settlement, demanding the issue be dealt with in talks".[110]

29.a. In Hamas's case, the prospect of free and fair legislative elections in 2006, which were no longer tied to the Oslo Peace Process (as the 1996 elections had been), strengthened the pragmatists within the movement and it agreed to cease violence in 2005-2006 in the run-up to the legislative elections (which constituted a domestic form of political engagement).[111] Swiss engagement with Hamas post-2006 only had a marginal effect on the position of the pragmatists but this engagement was low-key and did not have the clout that engagement with the Quartet (the four entities overseeing the peace process: the UN, the USA, the EU and Russia) would have had.[112] The 2011 Cairo Agreement between Hamas and Fatah created some space for the pragmatists but the lack of international engagement and continued tensions with Fatah weakened its effect. Nevertheless, Hamas's response to the demand of the Quartet that it reject violence was that it would cease violence when occupation ends – and, significantly, it only focused on the occupation of the West Bank and Gaza, not of all of British Mandate Palestine, thus foreshadowing its formal acceptance of a Palestinian state on the 1967 borders in its 2017 Manifesto.[113] Moreover, temporary escalations of violence notwithstanding, for most of the period between 2007-2023, Hamas has observed de facto or agreed ceasefires with Israel, even going so far as at times imprisoning other resistance factions for launching rockets.[114]

29.b. In April 2024, a high-ranking Hamas leader involved in the Qatar-led negotiations with Israel went on record to say that Hamas would dissolve the Qassam Brigades and "lay down its weapons and convert into a political party if an independent

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[109] Ibid., 413–14.

[110] Jonathan Powell, *Great Hatred, Little Room: Making Peace in Northern Ireland* (London: Vintage Books, 2009), 82; see also Peter Neumann, "Bringing in the Rogues: Political Violence, the British Government and Sinn Fein," *Terrorism and Political Violence* 15, no. 3 (2003): 154–71.

[111] Gunning, *Hamas in Politics*.

[112] Gunning, "The Conflict and the Question of Engaging with Hamas."

[113] Ben Smith, "Hamas, Fatah and the Middle East Quartet Principles - Standard Note," International Affairs and Defence Section (London: House of Commons Library, 17 May 2011).

[114] Baconi, *Hamas Contained*; Kear, *Hamas and Palestine*.

Palestinian state is established along pre-1967 borders".[115] This followed a statement in November 2023 by then Hamas leader Ismail Haniyeh (who was assassinated in Iran in July 2024, purportedly by Israel) that "we are ready for political negotiations for a two-state solution with Jerusalem as the capital of Palestine", though "only if the ongoing fighting ceases, humanitarian corridors are opened, and aid is allowed to enter Gaza".[116] Following the failure of the Oslo Accords, which Hamas blames on Fatah having given up arms *before* the establishment of a Palestinian state, Hamas is unlikely to lay down its weapons without an end to the occupation and Palestinians achieving self-determination. But if its past behaviour is anything to go by, it is possible that it will consider laying down its arms if it is engaged in meaningful negotiations that actually lead towards a meaningful Palestinian state. Without deproscription, this process will be much harder, if not impossible; deproscription, conversely, would send a signal of intent and can serve to reinforce the norm of non-violence by linking a demand for a ceasefire to a clear and credible process for achieving a Palestinian state and ending Israeli occupation – and, as part of that process, the question of disarmament and demobilisation can then be addressed, rather than as a precondition for entering into negotiations.

29.c. A further objection could be that Hamas has so far refused to recognise the state of Israel and continued to insist on the right of return of Palestinian refugees to historic Palestine.[117] Regarding the recognition of the state of Israel, other significant anti-colonial movements have not recognised the sovereignty of their coloniser over part of their historic homeland – not while the conflict was ongoing but also not necessarily immediately afterwards. Ireland did not recognise the Union of Northern Ireland and Great Britain (or rather, that this was "the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate") until 1998, when it agreed to "drop its territorial claim on Northern Ireland and instead define the Irish nation in terms of people rather than land". Notably, it only recognised British sovereignty over Northern Ireland conditionally, "for as long as that has the consent of a majority of its population".[118] In the case of Aotearoa/New Zealand, the Maori version of the Treaty of Waitangi – te Tiriti o Waitangi – did not grant sovereignty over tribal lands to the British Crown, only "kawanatanga" (the

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[115] Abby Sewell, "Hamas Official Says Faction Would Disarm under Two-State Solution, Denies Leaders' Move to Turkey," The Arab Weekly, 25 April 2024, https://thearabweekly.com/hamas-official-says-faction-would-disarm-under-two-state-solution-denies-leaders-move-turkey.

[116] "Haniyeh Says Hamas Ready for Negotiations on a Two-State Solution If Israel Stops War on Gaza," Ahram Online, 1 November 2023, https://english.ahram.org.eg/NewsParis/511435.aspx; "Hamas Political Chief Ismail Haniyeh Assassinated in Iran," Aljazeera, 31 July 2024, https://www.aljazeera.com/news/2024/7/31/hamass-political-chief-ismail-haniyeh-assassinated-in-iran-state-media.

[117] See for example Hamas's 2017 Manifesto: "Hamas in 2017: The Document in Full," Middle East Eye, 2 May 2017, https://www.middleeasteye.net/news/hamas-2017-document-full.

[118] "The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland" (Belfast: The Stationery Office, 1998), 2, 27; John Darby, "Northern Ireland: The Background to the Peace Process," CAIN, 2003, "The Good Friday Agreement, April 1998," https://cain.ulster.ac.uk/events/peace/darby03.htm; Andrew McCormick, "The Constitutional Status of Northern Ireland: Consent, Acquiescence, Subjugation, Indifference" (London: The Constitution Society, 2024), 22.

right of governance), and the Waitangi Tribunal, set up in 1975, found that the Māori had not ceded sovereignty and was set up specifically to deal with claims of restitution regarding lands and resources taken by the Crown. For some, the Tribunal was discussed in terms of (re)granting Māori sovereignty and placing them on an equal footing with the Crown.[119] Thus, recognition of a state's sovereignty should be treated separately from the question of whether violence is used – a distinction the terrorism label tends to blur. The key question for policy-makers should be whether Hamas is willing to cease fire if a meaningful and sovereign Palestinian state were established rather than whether Hamas will recognise Israel at this stage. Regarding the question of Palestinian refugees, this question has remained unresolved in numerous Israeli-Palestinian negotiations and continues to constitute a major issue. However, insistence on the right of return should not be equated with an intention to destroy Israel. As Dahlia Scheindlin, an international political and strategic consultant, put it in a Century Foundation report, "the notion that Palestinians demanding return automatically signal an intention to destroy Israel should be laid to rest. International law and convention have evolved, if unevenly, to support refugee rights, including the right of return, and thus contradict Israel's argument that Palestinians cannot claim the legal right. Further, refugee return has been incorporated into conflict resolution in practice. The cases examined in this report show that the Palestinian demand for return is not unique. Refugees elsewhere make similar claims in similar circumstances, and other conflict resolution processes have sought solutions, if imperfectly, rather than dismissing the claims."[120] Thus, here too, the focus should be on finding a resolution, not on inherently equating insistence on this right with continued violence, which the terrorism label facilitates.

F. EXPERT OBLIGATIONS

30. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete opinions on the matters to which they refer.

31. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

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[119] "Meaning of the Treaty | Waitangi Tribunal," Waitangi Tribunal - justice.govt.nz, 8 July 2016, https://web.archive.org/web/20160708084042/http://www.waitangitribunal.govt.nz/treaty-of-waitangi/meaning-of-the-treaty/; "Waitangi Tribunal Finds Treaty of Waitangi Signatories Did Not Cede Sovereignty in February 1840," *Māori Law Review* November (2014); Richard Boast, "The Waitangi Tribunal: 'Conscience of the Nation', or Just Another Court?," *UNSW Law Journal* 16, no. 1 (1993): 223–44.

[120] Dahlia Scheindlin, "Neither Intractable nor Unique: A Practical Solution for Palestinian Right of Return," The Century Foundation, 28 April 2020, https://tcf.org/content/report/neither-intractable-unique-practical-solution-palestinian-right-return/.

32. I confirm that I have not received any remuneration for preparing this report.



Jeroen Gunning
London
United Kingdom
8 January 2025

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة االسالمية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
THE PROSCRIPTION OF THE AFRICAN NATIONAL CONGRESS AND ITS IMPACT ON THE RIGHT TO SELF-DETERMINATION IN SOUTH AFRICA
BY
DR ISMAIL VADI

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah **("Hamas")**.

2. The British government has proscribed the organisation Hamas as part of its counter-terrorism policy. Such proscription of legitimate resistance movements serves to inhibit the path to peace, especially while parties aim to end the system of Apartheid in the Occupied Palestinian Territories. The African National Congress **("ANC")**, a liberation movement in South Africa, provides a relevant historical precedent. It transitioned to armed resistance following its proscription in **1960**, and later, it resumed its role as a liberation movement-cum-political party upon its unbanning in **1990.** Using the South African experience, this Report aims to demonstrate the counter-productive nature of proscribing political organisations. By restricting and proscribing groups from political participation, such bans fuel violent resistance. Conversely, the unbanning of the ANC facilitated negotiations and a peaceful transition to democratic governance in South Africa.

B. QUALIFICATIONS

3. I give this Report in my personal capacity.

4. I hold the following qualifications: an MA in History from the University of the Witwatersrand, an MA in Security Studies from the University of Pretoria, and a PhD in Political Science from the University of Pretoria.

5. I am a founder member of the Progressive Teachers' League in Lenasia, Johannesburg (South Africa). I also served as the National Vice-President of the South African Democratic Teachers' Union. In addition, I served in the Gauteng provincial leadership structure of the ANC from 2000 to 2018.

6. I served as a Member of Parliament for the African National Congress (ANC) from 1994 until 2010. Subsequently, I was appointed a Member of the Executive Council ("MEC") for Roads and Transport in the Gauteng Provincial Government, South Africa, and served in this position until 2019.

7. I have lectured at the University of the Witwatersrand: Faculty of Education.

8. I have retired from formal politics but continue to be active in South African civil society.

9. I have multiple publications on education, South African liberation history, security studies and Muslims in South Africa.

C. INTRODUCTION

10. The struggle against apartheid in South Africa represents a pivotal chapter in the history of human rights and the struggle for national self-determination. At the heart of this struggle was the African National Congress **("ANC")**, a liberation-cum-political movement that endured decades of oppression, including proscription, to ultimately achieve its goal of a non-racial, democratic South Africa.

11. This Report delves into the implications of the ANC's proscription in **1960** by the apartheid government in South Africa, analysing its impact on the organisation's right to self-determination and its counter-productive effects on negotiation efforts. By examining the legal framework, historical context, and strategic consequences, the Report aims to provide a comprehensive understanding of the complexities surrounding the proscription of the ANC and its eventual role in shaping the negotiated settlement that ended the system of apartheid.

D. HISTORICAL BACKGROUND OF THE ANC AND ITS ROLE IN THE ANTI-APARTHEID STRUGGLE

12. Formed in **1912** as the **South African Native National Congress**, later renamed the ANC, it emerged as a national response of the African majority in South Africa to colonialism, their total exclusion from processes leading to the **Union of South Africa** in **1910** under the auspices of the British government and to the growing injustices they faced under White minority rule.

The ANC's mission was to unite the African people and to secure their fundamental rights, including franchise, land ownership, and equal access to education and socio–economic opportunities.[1]

13. In its early years, the ANC adopted a moderate strategy of peaceful protest, petitions, and legal challenges to discriminatory laws. Figures like John Dube, Pixley ka Isaka Seme, and Sol Plaatje led the organisation in pursuing civil rights through constitutional means. This commitment to non-violence and adherence to the rule of law established the ANC's moral high ground in the struggle against apartheid.[2]

14. However, the South African government's response to the ANC's peaceful advocacy was one of increasing repression. The rise of Afrikaner nationalism and the formal implementation of apartheid policies after **1948** under the National Party **("NP")** led to a series of legislative measures designed to suppress any opposition to the segregationist and racist regime. The NP government perceived the ANC as a growing threat to the established social order, mainly as the organisation gained widespread support among Africans and, to some extent at least, some of its leaders had aligned themselves with socialist ideologies as espoused by the banned Communist Party of South Africa (**"CPSA"**).[3] The **Suppression of Communism Act No. 44 of 1950** (**"Suppression of Communism Act"**), despite its name, was a broadly worded piece of legislation used to target any organisation deemed to be promoting communism or disrupting public order. This Act laid the groundwork for the later, more targeted suppression of the ANC.[4]

15. The Defiance Campaign of **1952**, where the ANC and its allies engaged in acts of civil disobedience such as boycotts, strikes, and the wilful breaking of selected discriminatory laws, further heightened tensions between the organisation and the government. The apartheid government responded with mass arrests and increased restrictions on political activity.[5] The adoption of the Freedom Charter in **1955 ("Freedom Charter")**, which called for a non-racial democratic South Africa, further solidified the ANC's position as the leading voice of opposition to apartheid. The ANC's significance in the anti-apartheid struggle cannot be overstated.[6] However, it also increased the government's determination to suppress the organisation through banning some of its leaders and arresting **156** leaders of the liberation movement and charging them for treason in the Treason Trial of **1956 - 1961**.[7]

16. The Sharpeville Massacre of **1960 ("Sharpeville Massacre")**, where police opened fire on peaceful protesters, killing **67** (Sixty-Seven) people and injuring **186** (One Hundred and Eighty- Six) others, marked a turning point in the relationship between the ANC and the South African

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1 Andre Odendaal, *The Founders: The Origins of the ANC and the Struggle for Democracy in South Africa* (Jacana Media, 2012), pp. 466 – 473; David Welsh, *The Rise and Fall of Apartheid* (Jonathan Ball Publishers, 2009), pp. 37 – 40.

2 Welsh, i*bid,* pp. *37 – 45*.

3 "Umkhonto we Sizwe (MK) in Exile", (South African History Online, 7 November 2011, last updated 4 December 2019) https://www.sahistory.org.za/article/umkhonto-wesizwe-mk-exile, accessed on 21 December 2024.

4 Nigel Worden, *The Making of Modern South Africa: Conquest, Segregation and Apartheid* (Blackwell Publishing, 2007), pp. 106 – 117.

5 "Defiance Campaign 1952", (South African History Online, 21 March 2011, last updated 14 November 2018) https://www.sahistory.org.za/article/defiance-campaign-1952, accessed on 21 December 2024.

6 Ismail Vadi, *The Congress of the People and Freedom Charter* (Jacana Media, 2015), pp. 133 – 162; The Editors of Encyclopaedia Britannica, "Freedom Charter South Africa [1955]", (*Encyclopaedia Britannica*, 26 April 2023) https://www.britannica.com/topic/African-National-Congress, accessed on 21 December 2024.

7 Luli Callinicos, *Oliver Tambo: Beyond the Engeli Mountains* (David Philip, 2004), pp. 209 – 249; "Treason Trial 1956 – 1961", (South African History Online, 31 March 2011, last updated 5 July 2021) https://www.sahistory.org.za/article/treason-trial-

1956-1961, accessed on 21 December 2024.

government.[8] The government used this event as a pretext to intensify its crackdown on dissent. It declared a State of Emergency and detained over 1 200 political activists. The intense repression culminated in the proscription in **April 1960** of the ANC and the Pan Africanist Congress **("PAC")** under the **Unlawful Organisations Act No.34 of 1960** (**"Unlawful Organisations Act"**).[9] This effectively criminalised the ANC, driving it underground and forcing a dramatic shift in its strategy. It opted for armed struggle as a legitimate form of resistance to apartheid and White minority rule, and formed a new military structure, Umkhonto we Sizwe.[10]

E. LEGAL FRAMEWORK FOR PROSCRIPTION AND THE RIGHT TO SELF-DETERMINATION

17. Proscription in the South African context entailed the legal prohibition of an organisation, rendering its existence and activities unlawful. This meant membership, support, or any association with the proscribed organisation was deemed criminal. The legal basis for proscribing organisations like the ANC stemmed from the Suppression of Communism Act and the Unlawful Organisations Act. Despite its name, the former was broadly worded and used to target organisations deemed to be promoting communism or disrupting public order. At the same time, the latter was explicitly enacted to ban the ANC and the PAC. These Acts were further bolstered by security legislation such as the **Public Safety Act No.3 of 1953 ("Public Safety Act")** and the **Criminal Law Amendment Act No.8 of 1953 ("Criminal Law Amendment Act"),** which provided the government with sweeping powers to detain individuals without trial, restrict freedom of movement, and suppress political activity.[11]

18. Under international law, the right to self-determination is a cardinal principle enshrined in the United Nations Charter and the International Covenant on Civil and Political Rights. This grants all peoples the freedom to "freely determine their political status and freely pursue their economic, social and cultural development".[12]

19. By proscribing the ANC, the apartheid state violated the fundamental right to self-determination of the majority Black population (African, Coloured and Indian) in South Africa. This act denied them the ability to participate in the political process and shape their future, effectively entrenching White minority rule. Apartheid itself compounded this violation through systemic discrimination and the denial of fundamental human rights, relegating Black South Africans to second-class citizenship. The ANC's struggle against apartheid was intrinsically linked to the fight for self-determination, a right enshrined in international law

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[8] Sylvia Neame, *The Congress Movement: The Unfolding of the Congress Alliance 1912 – 1961 Volume 3* (HSRC Press, 2015), pp. 516 – 517; "Origins: Formation, Sharpeville and Banning, 1959-1960*",* South African History Online, 30 March 2011, last updated 16 November 2016), https://www.sahistory.org.za/article/origins-formation-sharpeville-and-banning-1959-1960, accessed on 11 December 2024.

[9] Ismail Vadi, *Thambi Naidoo and Family: Struggle for a Non-Racial South Africa* (Ahmed Kathrada Foundation, 2021), pp. 131 – 140; "Unlawful Organizations Act, Act No. 34 of 1960", (22 February 2016, last updated 27 August 2019) *https://www.sahistory.org.za/archive/unlawful-organizations-act-act-no-34-1960,* accessed on 7 November 2024; Neame, *ibid,* p. 516.

[10] Stephen R. Davis, *The ANC's War against Apartheid: Umkhonto we Sizwe and the Liberation of South Africa* (Indiana University Press, 2018), pp. 20 and 48; Elinor Sisulu, *Walter & Albertina Sisulu: In Our Lifetime* (David Philip, 2002), pp. 146 – 147.

[11] John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015), pp. 101–106; David S.K. Culhane, "No Easy Talk: South Africa and the Suppression of Political Speech", *Fordham International Law Journal*, 17.4 (1993), pp. 905 – 929.

[12] Office of the United Nations High Commissioner for Human Rights, *International Covenant on Economic, Social and Cultural Rights* (United Nations, 1976), *https://www.ohchr.org/sites/default/files/cescr.pdf,* accessed on 8 November

2024.

and denied to the majority by a regime that segregated and subjugated them based on race. This denial contravened the United Nations Charter and exhibited a profound disregard for human rights and human dignity.[13]

20. The South African government justified the proscription of the ANC on the grounds of 'anti-communism', 'national security' and the preservation of public order. It argued that the ANC's activities incited violence and posed a threat to the stability of the state. In contrast, critics argued that this justification was a mere pretext for suppressing legitimate dissent and maintaining the apartheid system. They argued that proscription was a disproportionate response that infringed upon fundamental human rights and undermined the possibility of a peaceful resolution to the conflict. By silencing the ANC and other anti-apartheid organisations, the government effectively closed off avenues for peaceful negotiation and dialogue, thereby contributing to the escalation of the conflict.[14]

F. IMPACT OF PROSCRIPTION ON THE ANC'S OPERATIONS AND STRATEGY

21. The proscription profoundly impacted the ANC's operations and strategy. Forced to operate underground, the organisation's leadership went into exile, establishing bases and structures in neighbouring countries such as Zambia, Angola, Tanzania, and Mozambique and further afield in London and other East European and Western capitals.[15] Public political activities within South Africa were severely curtailed, with members facing arrest and detention for any association with the banned organisation.[16] Communication and co-ordination became significantly more challenging, hindering the ANC's ability to mobilise and organise effectively. The organisation relied on clandestine networks and underground structures to maintain contact with its members and supporters within South Africa.[17]

22. Proscription of the ANC resulted in the movement significantly shifting its strategy, with the organisation embracing armed struggle to challenge the apartheid regime. In **December 1961**, Umkhonto we Sizwe **("MK")**, the armed wing of the ANC, was to carry out acts of sabotage against government installations and infrastructure. This marked a departure from the ANC's previous commitment to non-violent resistance, reflecting the growing frustration with the government's intransigence and the belief that peaceful means had been exhausted. Despite the shift to armed resistance, MK intended to avoid the loss of civilian lives during its armed actions.[18]

23. The decision to engage in armed struggle was not taken lightly. It was a response to the state's violence, the banning of peaceful protest, and the failure of non-violent resistance to achieve meaningful change. The ANC argued that armed struggle, combined with internal mass mobilisation of the oppressed and international solidarity campaigns against apartheid, was a

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[13] South African Human Rights Commission, *Reflections on Democracy and Human Rights: A Decade of the South African Constitution*, *Act No.108 of 1996* (South African Human Rights Commission, 2006), pp. 2 – 4.

[14] Sandra Liebenberg, *Human Development and Human Rights: South African Country Study, Human Development Report 2000, Human Development Report Office, United Nations Development Programme* (UNDP), (South African Human Rights Commission, 2000), pp.5 – 8.

[15] McKinley T. Dale, "Umkhonto We Sizwe: A Critical Analysis of the Armed Struggle of the African National Congress", *South African Historical Journal*, (2018) 70(1), p. 5.

[16] Tsepe Motumi, "Umkhonto we Sizwe - Structure, Training and Force Levels (1984 to 1994)", *African Defence Review* (1994)18, https://omalley.nelsonmandela.org/index.php/site/q/03lv02424/04lv02730/05lv02918/06lv02961.htm, accessed on 13 December 2024.

[17] Mckinley, *supra* note 15, pp.10 – 12.

[18] Davis, *supra* note 10, pp. 5 and 102.

legitimate means of self-defence against an oppressive regime that denied fundamental human rights to the majority. It was seen as a means of exerting pressure on the government, disrupting the apartheid economy, and demonstrating the regime's vulnerability. The ANC also emphasised that MK's operations were targeted at symbols of apartheid and aimed to avoid civilian casualties.[19]

24. In its submission to the **Truth and Reconciliation Commission ("TRC"),** the ANC emphasized the following:

> In its strategy and tactics, the ANC put politics at the fore, and it defined itself and its army, Umkhonto we Sizwe, as an instrument of a people in political motion; the barrel of the gun as one of the means – and not the means, least of all, an end in itself. It mobilised the people to revolt in an organised fashion; it mobilised the international community to act decisively against apartheid... The legitimacy and legality of this struggle were written in numerous covenants of the international community... In its conduct of armed struggle, the ANC sought to avoid civilian injury and loss of life. It ensured that its combatants understood the reasons behind the armed struggle as well as the tactics required to win to our side the overwhelming majority of South Africans. In its treatment of captured agents and combatants of the apartheid regime, it emphasised the need for their rehabilitation. It committed itself to international norms in this regard.[20]

G. ARMED STRUGGLE: NECESSARY OR COUNTER-PRODUCTIVE?

25. The ANC's adoption of armed struggle remains a contentious issue. Critics argue that it alienated potential allies, provided the government with a justification for further repression, and ultimately hindered the prospects for a negotiated settlement. They contend that the violence associated with armed struggle tarnished the ANC's image and undermined its moral authority. Some argue that the armed struggle played into the government's narrative of the ANC as a 'terrorist organisation', thereby justifying its repressive measures.[21]

26. Proponents of the armed struggle argue that it was a necessary response to the state's violence and criminalisation of peaceful means of protest and resistance through laws passed by the apartheid regime.[22] In addition, it is widely recognised that armed resistance by MK played a crucial role in pressuring the government to negotiate.[23] However, some arguments suggest that negotiations were considered because of South Africa's internal struggle and economic decline, while others highlight the impact of international pressure and sanctions.[24]

27. Further, proponents of the armed struggle maintain that the ANC's policy of targeting government installations and avoiding civilian casualties demonstrated a commitment to

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[19] "Umkhonto we Sizwe", (South African History Online, 20 March 2011, last updated 8 January 2024), https://www.sahistory.org.za/article/umkhonto-wesizwe-mk, accessed on 16 November 2024.

[20] African National Congress, *Further Submissions and Responses by the African National Congress to Questions Raised by the Commission for Truth and Reconciliation* (ANC, 12 May 1997), http://www.anc.org.za/ancdocs/misc/trc2.html, accessed on 23 December 2024.

[21] Susan H. Farbstein, "Reflections on the Question of When, if Ever, Violence Is Justified in Struggles for Political or Social Change", *Harvard Human Rights Journal*, 27 (2014), pp.1 – 5.

[22] Gwinyayi Albert Dzinesa, *Disarmament, Demobilisation and Reintegration in Southern Africa* (Palgrave Macmillan, 2017), pp. 133 – 136.

[23] Liebenberg, *supra* note 14, pp. 9 – 10.

[24] Hakan Thörn, *Anti-Apartheid and the Emergence of a Global Civil Society* (Palgrave Macmillan, 2006), pp. 1 – 6.

minimising harm and loss of life whilst gaining maximum publicity for its struggle.[25] MK's founding manifesto also contained the position on minimising civilian lives.[26] The turn to armed struggle was justified as a response to the exhaustion of all legal means available and as a strategy to bring about negotiations with the White government.[27]

28. The armed struggle was also aimed at galvanising internal resistance and raise international awareness of apartheid's injustices.[28] The international community took note of the injustices being committed by the apartheid regime and responded through various anti-apartheid movements exerting pressure on their governments to impose sanctions on the apartheid regime, which contributed to internal pressure being placed on the South African government.[29] The ANC supported these sanctions, and its leaders lobbied to keep them in place until meaningful change was achieved. This thereby reinforced the ANC's domestic standing and maintained home support.[30] The anti-apartheid movement, including the ANC, considered sanctions essential and dedicated resources to co-ordinating and promoting them against South Africa.[31]

29. The struggle against apartheid garnered worldwide support from individuals not directly affected by the system. This support was defined through "solidarity" and manifested in collective actions like protests, boycotts, and other forms of activism. The international backing for the ANC and Black South Africans was evident in the global campaign to abolish apartheid, which involved millions of people from numerous countries.[32] The ANC's global lobbying and international solidarity were pivotal in sustaining pressure on the South African regime and bolstering domestic support.[33]

30. Transnational social movements and global civil society facilitated international support for the ANC and Black South Africans by disseminating information about South African events and maintaining public attention for over **30** years. The anti-apartheid movement, including the ANC, engaged in conventional politics and direct interactions with state and business, labour and civil society representatives worldwide, enhancing transnational activism and global civil society.[34]

31. The preceding paragraphs demonstrate that the broader international community, through the commitment of its citizens, stood in solidarity with the South African cause for the liberation and freedom of Black South Africans.[35]

32. By demonstrating its willingness to fight back, the ANC inspired many Black South Africans, including democratic minded Whites, to join the struggle and challenged the notion that the apartheid regime was invincible. The armed struggle also attracted support from some democratic minded White activists.[36]

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25 Clifton Crais et al., *The South Africa Reader* (Duke University Press Books, 2013), pp. 345 – 355.
26 *Ibid*.
27 *Ibid*.
28 Davis, *supra* note 10, pp 4 – 5.
29 Christian Lahusen (ed), *The Rhetoric of Moral Protest* (De Gruyter, 2013), pp. 351 – 362.
30 Andrea K. Grove, *Political Leadership in Foreign Policy* (Palgrave Macmillan, 2007), pp. 115 – 120.
31 Neta Crawford et al, *How Sanctions Work* (Palgrave Macmillan, 1999), pp. 15 – 19.
32 Thörn, *supra* note 24, pp.1 – 6.
33 Grove, *supra* note 30, pp. 101 – 120.
34 Nick Crowson and others, *NGOs in Contemporary Britain* (Palgrave Macmillan, 2009), pp. 140 – 143.
35 Thörn, *supra* note 24, pp.1 – 27.
36 Khanyi Mlaba, Aaron Rakhetsi and Nomthandazo Xaba, "10 South African Freedom Fighters (Who Aren't Nelson Mandela) That Everyone Should Know", (Global Citizen, 27 April 2021), https://www.globalcitizen.org/en/content/south-africa- freedom-fighters-to-know-apartheid/, accessed on 22 December 2024.

33. International reactions to the ANC's armed struggle were initially mixed. Countries in Africa, the Nordic countries, and the 'Socialist bloc' expressed support for the ANC's struggle against apartheid.[37] The Organisation of African Unity **("OAU")** and the United Nations provided moral and material support to the ANC, recognising its legitimacy as the representative of the South African people.[38] The ANC's alliance with the South African Communist Party **("SACP")** was supported by various international organisations connected with Moscow, such as the World Federation of Women, the World Federation of Democratic Youth, and the World Peace Council, which provided practical, material and political support, including organising campaigns in support of the boycott of, or sanctions against South Africa.[39]

34. Some Western governments, influenced by 'Cold War politics', classified the ANC as a 'terrorist organisation' and supported the South African government. This was particularly true of the United States of America and the United Kingdom in the 1960s and 1970s, which viewed the ANC's alliance with the SACP with suspicion.[40] They benignly accepted the claim of the apartheid government that the ANC/SACP alliance was an integral part of the 'Communist bloc' positioned against the Western capitalist world.[41]

35. As the brutality of the apartheid regime became increasingly apparent and international condemnation grew, the ANC's armed struggle gained greater legitimacy. The Soweto students' uprising of **1976 ("Soweto Uprising")**, where African students protested the imposition of Afrikaans as a medium of instruction was met with police violence, sparked international outrage and further galvanised the anti-apartheid movement. The imposition of economic sanctions by the United Nations **("UN")** and selected countries, coupled with cultural boycotts and divestment campaigns, put increasing pressure on the South African government.[42]

36. Faced with growing internal mass-based resistance to apartheid in the **1980s** under the banner of the United Democratic Front **("UDF"),** the intensification of the armed struggle by MK and the growing international campaign to isolate apartheid South Africa, the apartheid state detained approximately **30 000** (thirty-thousand) community, labour and civic leaders, banned several organisations operating in South Africa and eventually imposed a State of Emergency to curb resistance to its rule. This however failed in subduing resistance to apartheid; rather it resulted in an intensification of the internal and international struggle against the apartheid regime, thereby forcing the apartheid state to enter negotiations with the ANC and other political movements.[43]

37. The release of Nelson Mandela in **1990** after **27** years of imprisonment and the unbanning of the ANC and other political organisations was a watershed moment. It signalled the government's willingness to negotiate a political settlement to the conflict in the country. This shift in the government's stance was driven by a confluence of factors such as growing internal unrest, international pressure, and the realisation that apartheid was unsustainable in the long term. The armed struggle waged by the ANC and other liberation movements had taken its toll, and the South African economy was reeling under the weight of international sanctions.[44]

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37 Jessica Piombo, *Institutions, Ethnicity, and Political Mobilization in South Africa* (Palgrave Macmillan, 2009), pp. 80 – 101.

38 *Ibid*.

39 Irina Filatova, *The Hidden Thread* (Jonathan Ball, 2013), pp. 305 – 314.

40 Piombo, supra note 37.

41 Richard Bissell (ed), *Apartheid and International Organization* (Taylor & Francis, 2020), pp. 17 – 20.

[42] Mats Ove Lundahl, *Apartheid in Theory and Practice: An Economic Analysis* (Routledge, 2019), pp. 191–195.

[43] Anthea Jeffrey, *People's War* (Jonathan Ball, 2019), p. 193; Sylvia Neame, *Drama of the Peace Process in South Africa: I Look Back 30 Years* (BestRed/HSRC, 2021).

[44] South African Human Rights Commission, *supra* note 13; Neame, *ibid*.

38. The re-legalisation of the ANC was a crucial step in the transition to a democratic South Africa. It allowed the ANC to participate openly and legitimately in the political process, culminating in political negotiations under the Convention for a Democratic South Africa **("CODESA").** CODESA brought together the government, the ANC, and other political parties to negotiate a new constitutional order for the country. The ANC's participation in CODESA as a legitimate political actor was essential in ensuring the inclusivity and legitimacy of the negotiation process.[45]

39. The unbanning of the ANC by the apartheid regime, and the subsequent negotiations with the ANC, demonstrated the futility of attempting to suppress popular movements through proscription. It highlighted the importance of recognising the legitimacy of popular organisations and engaging in dialogue to resolve political disputes. The South African experience is a valuable lesson for other countries grappling with internal conflict, underscoring the need for inclusive negotiations and recognising all parties' right to self-expression and self- determination.[46]

H. THE 1994 DEMOCRATIC ELECTION AND THE TRUTH AND RECONCILIATION COMMISSION

40. **The 1994 Democratic Elections in South Africa:** The 1994 democratic elections **("1994 Elections")** marked a profound turning point in South Africa's history, culminating years of anti-apartheid struggle and four years of intense political negotiations. The groundwork for these pivotal elections was laid by CODESA, which despite significant challenges such as on- going political violence and disagreements over the power-sharing model, managed to set the stage for a peaceful transition. Nelson Mandela's election as President symbolised the triumph of democracy over apartheid and heralded a new era of hope and inclusivity for a nation marred by long-standing racial divisions and conflict.[47]

41. **Build-up and Lead to the 1994 Elections:** The democratic electoral process resulted from painstaking negotiations involving various political parties and movements. The Boipatong massacre in **1992** almost derailed these negotiations, highlighting the fragile nature of the peace process. Despite these tensions, the eventual agreement to hold all-inclusive elections demonstrated the commitment of all parties to a peaceful transition. The international community supported the process with the UN, the European Union and the OAU deploying election monitors to ensure fairness and transparency.[48]

42. **1994 Election Outcomes:** The elections witnessed an unprecedented and peaceful turnout, with long queues of voters eager to exercise their newfound electoral rights. The ANC won **62.6 percent** of the vote, securing **252** of the **400** seats in the National Assembly. This overwhelming

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45 Nelson Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela (Abacus, 2003),* pp. 666 – 727.

46 Kenneth Christie, *The South African Truth Commission* (Palgrave Macmillan, 2000), pp. 68 – 73.

47 "CODESA II Talks end in Deadlock", (South African History Online, 16 March 2011, last updated 30 September 2019), https://www.sahistory.org.za/dated-event/codesa-ii-talks-end-deadlock, accessed on 17 November 2024.

48 "Violence in the time of negotiations: The Boipatong Massacre", (South African History Archive, 17 June 2014), https://www.saha.org.za/news/2014/May/violence_in_the_time_of_negotiations_the_boipatong_massacre.htm, accessed on 17 November 2024.

victory enabled Mandela to become the first Black President of South Africa, embodying the aspirations of millions of South Africans.[49]

43. **The Truth and Reconciliation Commission ("TRC"):** Established in **1996** under the leadership of Archbishop Desmond Tutu, the TRC was pivotal in South Africa's transition. Tasked with recording and, in selected cases, granting amnesty to perpetrators of human rights violations, the TRC played a crucial role in promoting transparency and healing. By providing a platform for victims and perpetrators to share their stories, the TRC contributed significantly to a process of national reconciliation.[50] Despite criticisms of allowing some perpetrators to evade full accountability, its impact on fostering dialogue and understanding among conflicting parties was undeniable.[51]

44. **Promoting Reconciliation and Healing:** The TRC's efforts were instrumental in fostering a culture of forgiveness and understanding aimed at transcending the divisions of apartheid. Community-based reconciliation forums and educational programmes about the nation's history were integral to building a cohesive society dedicated to democracy, equality, and human rights, which continue to influence South Africa's policies and societal norms today.[52]

I. THE COUNTERPRODUCTIVITY OF PROSCRIPTION: A DEEPER DIVE

45. While the eventual electoral outcome in South Africa demonstrated the failure of proscription to quell the ANC, it is crucial to examine precisely why this strategy proved counterproductive. Several key factors contributed to this outcome:

    a. **Fuelling Radicalisation:** By driving the ANC underground and criminalising its activities, the government inadvertently fostered an environment conducive to radicalisation. The banning of peaceful protest and the suppression of moderate voices within the ANC created a vacuum that was filled by those advocating for more militant forms of resistance. This, in turn, strengthened the argument for armed struggle and made it more difficult to find common ground for negotiations. The government's actions validated the view that peaceful means were ineffective and that only armed struggle could bring about meaningful change.[53]

    b. **The Psychological Impact of Repression:** Beyond the strategic implications, the proscription had a profound psychological impact on both the ANC and the broader Black population in South Africa. By being labelled as "criminals" and "terrorists", ANC members were forced to confront their identity and their place in society. This experience often led to hardening attitudes and a greater willingness to embrace more radical tactics. For many Black South Africans, the proscription of the ANC reinforced their sense of social exclusion and political marginalisation, further fuelling resentment against the apartheid regime.[54] In addition, the use of 'vigilante activities' by the

[49] O' Malley Archives, "The 1994 Elections", (Nelson Mandela Foundation: The Heart of Hope, n/d), https://omalley.nelsonmandela.org/index.php/site/q/03lv02039/04lv02128/05lv02130.htm, accessed on 16 November 2024.

[50] Desmond Tutu, *No Future Without Forgiveness*, (Image Books, 1999), pp. 74 – 80.

[51] Christie, *supra* note 46, at p. 151.

[52] Christie, *supra* note 46, at 94 – 95.

[53] Farbstein, *supra* note 21.

[54] Daniel Kirkpatrick, *Political Expression and Conflict Transformation in Divided Societies: Criminalising Politics and Politicising Crime* (Routledge, 2020), pp. 37 – 45.

apartheid police, the military and the security agencies against Black communities and the broader liberation movement, which were gradually exposed by the independent media over time, completely discredited the apartheid regime in the eyes of the majority of South Africans and highlighted counter-productive nature of repression and unlawful state action.[55]

c. **Strengthening Internal Solidarity:** Paradoxically, the ANC's proscription strengthened its internal solidarity and resolve to defeat apartheid. Facing a common enemy and enduring shared hardship often fosters a sense of unity and purpose. The ANC's banning forced its members to rely on one another, deepening their commitment to the cause and making them less likely to succumb to government pressure. The shared experience of operating underground, evading capture, and enduring imprisonment forged stronger bonds among ANC members, creating a resilient and cohesive organisation.[56] In addition, banning the ANC led to the reorganisation of the Black opposition such as the formation of the United Democratic Front **("UDF")** and the militant Congress of South African Trade Unions **("COSATU")**, which galvanised workers against apartheid.[57] This internal solidarity and reorganisation of opposition groups undermined the effectiveness of the proscription of the ANC.

d. **Boosting International Legitimacy:** The South African government's heavy-handed approach to suppressing dissent, including the proscription of the ANC, drew international condemnation and galvanised support for the anti-apartheid movement. The ANC's portrayal as a victim of unjust persecution resonated with many people around the world, enhancing its legitimacy and increasing pressure on the South African government to change its policies. The proscription effectively turned the ANC into a symbol of resistance against oppression, garnering support from governments, international organisations, and individuals across the globe.[58]

e. **Obstructing Channels for Dialogue:** By banning the ANC and refusing to engage with it, the apartheid government closed off potential channels for dialogue and negotiation. This made it more difficult to find a peaceful resolution to the conflict and created a climate of mistrust that hindered future attempts at the resolution of the conflict. The proscription effectively forced the ANC to resort to violence as the only means of being heard, thereby prolonging the conflict and increasing the human cost. The government's refusal to acknowledge the ANC as a legitimate political actor further entrenched the divide between the two sides and made it more difficult to bridge the gap.[59]

f. **Undermining the Rule of Law:** The use of proscription and other repressive measures to silence dissent undermined the rule of law and eroded the legitimacy of the South African government. By resorting to arbitrary arrests, detention without trial, and censorship, the government created a climate of fear and insecurity. This alienated a significant portion of the population and damaged South Africa's international reputation, further isolating the country. The government's disregard for due process and human rights undermined its moral authority and strengthened the case for

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55 David Matas, *No More* (Dundurn Press, 1996). pp. 101 – 104.

56 Lee Jarvis and Tim Legrand (eds), *Banning Them, Securing Us?* (Manchester University Press, 2020), pp. 111 – 131.

57 Heather Thuynsma, *Political Parties in South Africa* (Africa Institute of South Africa, 2017), pp. 162 –168.

58 Willem P. Esterhuyse, "The International Political Status of the African National Congress", *Africa Insight*, 19.1 (1989), pp. 34 – 45.

59 Jarvis and Legrand supra note 56.

international intervention.[60] Furthermore, the use of proscription for political purposes raises concerns about the instrumentalisation of proscription decisions beyond counterterrorism. This highlights the risk of decisions being influenced by more expansive geopolitical interests and diplomatic considerations. This instrumentalisation undermines the impartial application of the rule of law, as wider political agendas rather than strict legal considerations may influence proscription decisions.[61]

J. THE EVOLUTION OF THE ANC IN EXILE

46. The proscription forced the ANC to adapt and evolve in exile.[62] While operating underground and engaging in armed struggle, the organisation continued its political and diplomatic efforts to garner international support and to isolate the apartheid regime. The ANC established offices in various countries, lobbying governments and international organisations to impose sanctions on South Africa and to recognise the ANC as the legitimate representative of the South African people.[63]

47. The period of exile also saw the ANC grapple with internal challenges, including ideological debates, leadership struggles, and the difficulties of maintaining unity and cohesion across dispersed networks. The organisation had to navigate the complexities of 'Cold War politics', balancing its alliances with Western governments and former socialist states. Despite these challenges, the ANC emerged from exile as a more sophisticated and resilient organisation with a clear vision for a democratic South Africa.[64]

48. The imposition of sanctions and international pressure were critical elements in the struggle against apartheid. The Commonwealth of Nations' **("Commonwealth")** decision to send an Eminent Persons Group to South Africa, alongside the imposition of sanctions by Commonwealth states - with the notable exception of Britain - proved pivotal in exerting pressure on the apartheid regime.[65]

K. THE ROLE OF INTERNATIONAL PRESSURE AND INTERNAL UNREST

49. While the ANC's armed struggle and diplomatic efforts played a significant role in pressuring the South African government to negotiate, the combination of international pressure and internal unrest ultimately forced the apartheid regime to the negotiating table. The imposition of economic sanctions by the United Nations and individual countries, coupled with cultural boycotts and divestment campaigns, had a crippling effect on the South African economy. The growing internal resistance, manifested in mass protests, strikes, and civil disobedience campaigns, further weakened the government's grip on power.[66]

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60 *Ibid*, pp. 111 – 132.

61 *Ibid*.

62 Piombo, supra note 37.

63 *Ibid*.

64 Bert Klandermans and Cornelis van Stralen, *Movements in Times of Democratic Transition* (Temple University Press, 2015), pp. 209 – 210.

65 Grove, supra note 30.

66 UN General Assembly, "Resolutions on South Africa" (20 November 1987), UN Docs A/RES/42/23 A–H and A/RES/42/23 (without a letter), http://www.worldlii.org/int/other/UNGA/1987/; and UN General Assembly,

50. The 1976 Soweto students' uprising marked a turning point in the anti-apartheid struggle. The brutality of the government's response sparked international outrage and strengthened the internal resistance movement. The subsequent years saw an escalation of violence and unrest as several thousand students fled the country and joined the ANC-in-exile, making it increasingly clear that the apartheid system was unsustainable.[67]

51. The Soweto students' uprising had profound and far-reaching implications for the anti-apartheid struggle on multiple levels. Nationally, it inspired a generation of protestors and student leaders, who would lead the internal insurrection of the 1980s,[68] while regionally, it bolstered the armed struggle by providing thousands of recruits to the ANC in particular.[69] Internationally, the uprising captured global attention, epitomised by the iconic photograph of the lifeless body of the young student, Hector Pieterson, which reignited international engagement with the plight of oppressed South Africans.[70] It unified resistance across society, reflecting the growing discontent and defiance of the historically oppressed and economically exploited Black population under apartheid.[71] At the same time, it served as a wake-up call, redefining the spirit of resistance and sowing fear, confusion, and insecurity among supporters of the apartheid government.[72]

L. THE ROAD TO NEGOTIATION AND THE UNBANNING OF THE ANC

52. By the late **1980s**, the South African government was facing a deep crisis of legitimacy. The combination of international pressure, internal unrest, an intensification of the armed struggle and economic decline forced the apartheid regime to reconsider its policies. Nelson Mandela's release in **1990**, after **27** years of imprisonment, signalled its willingness to engage in dialogue and paved the way for the unbanning of the ANC and other political organisations.[73]

53. The unbanning of the ANC was a momentous occasion, marking the culmination of decades of struggle against apartheid. It allowed the ANC to return to South Africa as a legitimate political actor and participate in the negotiations that would shape the country's future. The subsequent CODESA negotiations, while fraught with challenges and setbacks, ultimately led to the adoption of an Interim Constitution and the establishment in **1994** of a democratic South Africa.[74]

M. IMPACT OF THE DEPROSCRIPTION OF THE ANC ON THE SOUTH AFRICAN POLITICAL LANDSCAPE

54. The lifting of the ban on the ANC by the apartheid government significantly impacted both the ANC and the nature of South African politics.

"Resolution on South Africa", (7 December 1987), UN Doc A/RES/42/124, http://www.worldlii.org/int/other/UNGA/1987/, accessed on 22 December 2024.

67 Thörn, supra note 24, pp. 159 – 161.

68 *Ibid*.

69 *Ibid*.

70 Thörn, supra note 24.

71 Ashok Swain, *Education as Social Action* (Palgrave Macmillan, 2005), pp. 184 – 188.

72 Mary Kleinenberg and Christopher Merrett, *Standing on Street Corners* (Natal Society Foundation, 2015), pp. 71 – 92.

73 Mandela, *supra* note 45, pp. 671 – 737.

74 David Welsh, "Hamlet without the Prince: The Codesa Impasse", *Indicator South Africa*, 9.4 (1992), pp. 15 – 22.

55. Prior to its unbanning, the ANC was engaged in a "peoples war" against the apartheid regime, with combative rhetoric and military-style activities, as evidenced by broadcasts from Freedom Radio, the ANC's official radio station in exile.[75] This militant history influenced perceptions of the ANC, shaping its image as a revolutionary force fighting against apartheid through armed struggle.[76]

56. The ANC's trajectory and political posture evolved following Nelson Mandela's release and the changed political circumstances. Mandela emphasised that the ANC was a broad coalition of political forces, united by its determination to oppose racial oppression.[77] The ANC's shift from a revolutionary movement to a liberation-cum-political movement embodied by Mandela and other leaders from different races gave it a broad non-racial character that would unite the Black majority and ensure its political dominance.[78]

57. In addition, the ANC's strategic goals also evolved. While the organisation initially maintained a strategic objective of seizing power to establish a national democratic state, by **1989**, more qualified expectations about a post-apartheid political order were beginning to prevail within the liberation movement.

58. This in part was the result of the developing crises within the former Soviet Union and East European socialist states, as manifested in the collapse of the Berlin Wall in the fall of **1989**. This event profoundly influenced ANC activists and leaders, resulting in a shift in the ANC's strategic stance and a move towards negotiations as the most realistic option.[79]

59. The ANC's engagement in internal debates after its unbanning and its reorganisation as a mass- based liberation movement inside the country raised new questions about the character of its membership and leadership, the role of women in politics and the demand for its democratisation.[80]

60. In summary, lifting the ban on the ANC by the apartheid government in South Africa brought about significant changes in the organisation's trajectory, political stance, and internal dynamics, ultimately shaping the broader nature of South African politics. The ANC's shift from a militant revolutionary force to a dominant political entity with a broad non-racial character ensured that it enjoyed significant support within the electorate, at least over the next three decades.

N. LESSONS LEARNED AND RECOMMENDATIONS

61. The South African experience with the proscription of the ANC offers valuable lessons for other countries dealing with internal conflict and political dissent. Key takeaways include:

    a. **The Impact of Repression:** Proscription and other forms of repression rarely effectively silence popular movements or resolve underlying grievances. They often have the

[75] Deonandan K and others, *From Revolutionary Movements to Political Parties* (Palgrave Macmillan, 2007), pp. 138 – 148.
[76] Gwinyayi Albert Dzinesa, *Disarmament, Demobilisation and Reintegration in Southern Africa* (Palgrave Macmillan, 2017), pp. 134 – 144.
[77] Deonandan et al., *supra* note 75.
[78] *Ibid*.
[79] *Ibid*.
[80] Shireen Hassim, *Women's Organisations and Democracy in South Africa* (University of Wisconsin Press, 2006), pp. 85 – 100.

opposite effect, fuelling radicalisation, strengthening internal solidarity, and increasing international support for the oppressed group.[81]

b. **The Importance of Dialogue:** Open and inclusive dialogue is essential for resolving political conflict and achieving lasting peace. By recognising the legitimacy of opposing groups and engaging in good faith negotiations, governments can create an environment conducive to compromise and reconciliation.[82]

c. **Respect for Human Rights:** Respect for human rights, including freedom of expression, association, and assembly, is crucial for building a just and democratic society. Suppressing these rights violates fundamental principles of international law, undermines the legitimacy of the government, and creates fertile ground for conflict.[83]

d. **The Role of International Pressure:** International pressure, including sanctions, boycotts, and diplomatic isolation, can significantly influence governments to change their policies and engage in meaningful dialogue with opposition groups. The South African experience demonstrates the power of international solidarity in the fight against injustice and apartheid.[84]

62. Based on these lessons, the following recommendations can be made for handling proscription of popular organisations or resistance movements in similar contexts:

a. **Prioritise Dialogue and Negotiation:** Governments should prioritise dialogue and negotiation with popular organisations, even those that espouse dissenting views. This requires listening to opposing perspectives, acknowledging legitimate grievances, and seeking common ground for compromise.[85]

b. **Exhaust Peaceful Means:** Governments should exhaust all peaceful means of resolving disputes before resorting to proscription or other forms of repression. This includes engaging in mediation, arbitration, and other forms of conflict resolution.[86]

c. **Conflicts of the Past to be Assessed:** The proscription of the ANC and the eventual liberation of Black South Africans showcase a powerful message and demonstrate that banning political organisations fuels violence, while lifting such bans transforms conflicts into peaceful political engagement. Far from protecting people, these bans provoke unrest, whereas open political activity paves the way for rule-bound, constructive disputes.

i. The banning of the ANC and other political organisations by the apartheid government led to increased unrest and resistance. The government's use of banning orders and harassment of opponents of apartheid such as Chief Albert Luthuli resulted in legal battles and the declaration of banning orders as invalid due to legal technicalities.[87] The escalation of protest action and activists'

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81 Jane Duncan, *Protest Nation* (University of KwaZulu-Natal Press, 2016), pp. 24 – 35.

82 Peter Harris and Ben Reilly (eds), *Democracy and Deep-Rooted Conflict: Options for Negotiators* (International IDEA, 1998), pp. 2 – 108.

83 *Ibid*, at 51–242.

84 Worden, *supra* note 3, at 131–133.

85 Harris and Reilly, *supra* note 83, at 2–113.

86 John Packer and Sally Holt, "Self-Determination and Peace Processes: Pathways and Stumbling Blocks for Conflict Resolution" in *Pioneering Peace Pathways - Making Connections to End Violent Conflict* (Conciliation Resources, 2020), pp. 53 - 59.

[87] Denis Goldberg, *A Life for Freedom* (The University Press of Kentucky, 2016), pp. 43 – 52.

scepticism about the effectiveness of non-violent resistance further fuelled the conflict, leading to a shift in approach towards transgressive contention.[88]

ii. The eventual liberation of Black people in South Africa, marked by the unbanning of the ANC and other resistance organisations, signified a shift towards peaceful political engagement and negotiations with the government.[89] The lifting of the ban on the ANC in **1990** and the subsequent release of Nelson Mandela and other leaders from prison paved the way for the country's first fully democratic election in **1994**, which overwhelmingly selected Nelson Mandela as President.[90]

d. **Promote Reconciliation and Healing:** Once a conflict has been resolved, it is vital to promote reconciliation and healing. This may involve truth and reconciliation commissions, reparations for victims, and other measures to address past injustices and build a more socially cohesive and inclusive society.[91]

O. THE INTERNATIONALISATION OF THE ANTI-APARTHEID STRUGGLE

63. While the ANC's proscription was intended to isolate the organisation domestically, it inadvertently contributed to the internationalisation of the anti-apartheid struggle. Forced into exile, the ANC leadership actively engaged with international organisations, governments, and civil society groups to garner support for its cause. The UN, and particularly the **UN Special Committee Against Apartheid** established in **1962**, played a crucial role in this process, passing numerous resolutions condemning apartheid and calling for sanctions against South Africa. The OAU also provided unwavering support to the ANC, recognising it as the legitimate representative of the South African people.[92]

64. The ANC's international campaign gained momentum in the **1980s**, with growing calls for divestment from South Africa and cultural and sporting boycotts of the apartheid regime. With many countries imposing sanctions on South Africa, international pressure mounted, isolating it from the global community of nations. This international isolation, coupled with internal unrest, the armed struggle and economic decline, played a crucial role in forcing the South African government to negotiate an end to apartheid.[93]

P. CHALLENGES TO APARTHEID LAWS AND THE PROSCRIPTION OF THE ANC AND OTHER POLITICAL ORGANISATIONS

65. The Suppression of Communism Act was one of the primary legislative tools used to ban organisations and individuals. Under the guise of fighting communism, the Act labelled almost any form of anti-apartheid activism as "communist" and, therefore, illegal. This broad definition

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88 Marcelle Dawson and Luke Sinwell (eds), *Contesting Transformation* (Pluto Press, 2014), pp. 50 – 60.

89 *Ibid*.

90 Marc Howard Ross, *Culture and Belonging in Divided Societies* (University of Pennsylvania Press, 2012), pp. 194 – 200.

91 Christie, *supra* note 46, at 94 –172.

92 UN General Assembly, "United Nations Special Committee Against Apartheid", Resolution 1761 (XVII), 6 November 1962; Thuynsma, *supra note 57,* pp. 192 – 193.

93 Frederik Willem de Klerk, *The Last Trek: A New Beginning* (Macmillan, 1999), p. 214.

allowed the government to proscribe theCPSA and other key liberation movements, including the ANC.

66. The Rivonia Trial of **1964** was a pivotal moment in the struggle against apartheid. Leading figures of the ANC, including Nelson Mandela, Walter Sisulu, Ahmed Kathrada and Govan Mbeki, were tried for their roles in the armed struggle. Mandela's statement during the trial, famously declaring that he was prepared to die for the ideal of a democratic and free society, provided a powerful moral justification for the ANC's actions.[94]

67. The Rivonia Trial highlighted the apartheid government's use of legal proceedings to delegitimise the anti-apartheid struggle while simultaneously offering the accused a platform to articulate their cause. Other notable trials, such as those involving PAC leaders like Robert Sobukwe, further demonstrated the legal repression faced by anti-apartheid activists.[95]

68. The ANC's proscription was not without its challenges. Lawyers and activists within South Africa and abroad challenged the ban's legality, arguing that it violated fundamental human rights and international law, the right to freedom of association, expression, assembly, and self- determination.[96]

69. These challenges to the proscription of the ANC and the apartheid regime were important in highlighting the oppressive nature of apartheid laws. These challenges took various forms, both domestically and internationally, including efforts by national governments, civil society, and international organisations such as the United Nations.

Q. INTERNATIONAL CHALLENGES AND THE UNITED NATIONS

70. Internationally, apartheid in South Africa generated interest with far greater intensity after the ANC and PAC were banned and forced underground. The Rivonia Trial of **1963** - **1964**, from which Nelson Mandela and others were imprisoned for life, gained immense international coverage, with the United Nations General Assembly passing a resolution requesting the release of the prisoners by 106 to 1 (South Africa being the only dissenter).[97]

71. Additionally, in **1964,** South Africa was excluded from the **Tokyo Olympics.** It was officially expelled from the **International Olympic Committee in 1970** and did not participate in this premier world sporting event until the Olympic Games in 1992.[98] This was due to the campaigns of the South African Non-Racial Olympic Committee **("SANROC"),** which called for an end to racism in sport and the international isolation of racially based sporting bodies in South Africa.[99]

72. Though unrelated to the proscription of the ANC, the cultural and academic boycott of South Africa, initiated by the ANC in **1958,** became a central tool in the global anti-apartheid movement. Supported by the UN through Resolutions such as **35/206** in **1980**, the boycott gained international momentum, urging artists, academics, and sporting and cultural

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94 Awol Allo (ed), *The Courtroom as a Space of Resistance* (Routledge, 2016), pp. 111 – 116.

95 John Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015), p. 233.

96 *Ibid*, at 165–202.

97 John Nauright and others (ed), *Sport in the African World* (Routledge, 2018), pp. 77 – 79.

98 *Ibid,* at 80–85; International Olympic Committee, "Why Was South Africa Barred from the Olympics During Apartheid?" (Olympics.com, 2024), https://olympics.com/en/news/why-south-africa-barred-from-the-olympics-apartheid, accessed on 18 November 2024.

[99] James Ciment and Kenneth Hill (eds), *Encyclopaedia of Conflicts since World War II* (Routledge, 2012), pp. 1161 – 1166.

institutions to sever ties with apartheid South Africa. High-profile figures like Jean-Paul Sartre and ANC's Oliver Tambo significantly promoted the boycott. At the same time, organisations like *Artists Against Apartheid* and *Artists United Against Apartheid* raised awareness through impactful concerts and protest songs such as *Sun City*. These efforts symbolised global solidarity and applied moral and cultural pressure on the apartheid regime.[100]

73. The boycott's success lay in its ability to isolate South Africa culturally and academically, amplifying the stigma of apartheid on the world stage. High-profile anti-apartheid events like the **1986** concert at Clapham Common attended by 250 000 people, and sporting boycotts, which saw South Africa excluded from international competitions, underscored the global community's commitment to ending apartheid. These actions, coupled with sustained grassroots activism, significantly contributed to the eventual dismantling of the apartheid system.[101]

74. The United Nations played a significant role in addressing apartheid in South Africa. From its inception in 1945, the international community closely followed developments in South Africa. Between 1952 and the early 1990s, the UN General Assembly discussed apartheid policies at every session except one. During this period, the UN General Assembly adopted resolutions condemning the racist policies of apartheid South Africa.[102]

75. The resolutions passed by the United Nations illustrate the international community's commitment to eradicating apartheid and questioned the legitimacy of the South African regime. The resolutions also contributed to the formation of the customary crime of apartheid, demonstrating the *opinio juris* of the UN Member States.[103]

76. The United Nations has issued numerous resolutions condemning apartheid, underscoring the severity with which it is regarded. Between **1946** and **1994**, at least **14** (Fourteen) General Assembly resolutions explicitly recognised apartheid as a crime against humanity, alongside numerous other resolutions and declarations addressing the apartheid regime in South Africa. Additionally, the Security Council on one occasion affirmed that apartheid constituted a crime against humanity and described it as a "crime against the conscience and dignity of mankind".[104]

77. While these challenges were often unsuccessful in relieving the oppressed in South Africa immediately, they served to highlight the injustices of apartheid and keep the issue in the public eye. International legal scholars and human rights organisations also weighed in, condemning the proscription and apartheid generally and calling for its repeal. These challenges contributed to growing international pressure on the South African government to reform its policies.[105]

R. PROSCRIPTION: OBSOLETE AND UNINTELLIGIBLE OR A GENUINE SAFETY MEASURE?

[100] South African History Online, "South Africa's Academic and Cultural Boycott", (SA History, undated), https://www.sahistory.org.za/article/south-africas-academic-and-cultural-boycott, accessed on 18 November 2024.
[101] *Ibid*.
[102] Carola Lingaas (ed), *The Concept of Race in International Criminal Law* (Routledge, 2019), p. 146.
[103] *Ibid*.
[104] *Ibid*, at 181.
[105] Enuga S. Reddy (ed), *Struggle for Liberation in South Africa and International Solidarity: A Selection of Papers*

Published by the United Nations Centre against Apartheid (Sterling Publishers Private Limited, 1992), pp. 57, 60, 201, 208, 253, 260 and 261.

78. The concept of proscription, particularly in combating terrorism, has been a subject of debate and scrutiny.[106] Proscription refers to the legal banning or sanctioning specific groups or organisations, often to prevent, deter, and disrupt terrorist activities.[107] However, growing concerns about the unintended consequences and limitations of proscription are leading to calls for its obsolescence.[108] The following discussion will explore the criticisms and limitations of proscription, its impact on civil society and peace processes, and the historical ineffectiveness of this approach, as supported by the sources provided.

79. **Criticisms and Limitations of Proscription:** Proscription has been criticised for potentially infringing on fundamental rights, including freedom of association, expression, and speech.[109] This raises concerns about balancing liberty and security, particularly in liberal democratic societies. Additionally, there are doubts about the effectiveness of proscription in attenuating terrorist violence, with suggestions that it may have symbolic rather than directly instrumental outcomes.[110] Critics have also highlighted the abuse of power and political suppression associated with proscription, as it can be used to silence dissent and opposition, undermining political pluralism.[111]

80. **Impact on Civil Society and Peace Processes:** Proscription's impact on civil society and peace processes has been a subject of concern. It has been observed to have a chilling effect on civil society, discouraging participation in public life.[112] Furthermore, it has led to restrictions on non-governmental organisations **("NGOs")** engaging with listed groups, making it increasingly difficult for them to organise meetings or training sessions with these groups.[113] This has implications for achieving successful peace processes, as proscription reduces the pool of people that armed groups can engage with and makes the work of third-party actors more dangerous and politically delicate.[114]

81. **Historical Ineffectiveness:** Historical examples have demonstrated the ineffectiveness of proscription in achieving its intended goals. There are concerns that proscription fails to fulfil its preventive purpose and that its relevance and effectiveness in the struggle against terrorism have yet to be demonstrated.[115] Additionally, the case of the European Union proscription regime listing groups in the middle of peace talks in countries such as the Philippines, Colombia, and Sri Lanka has been cited as evidence of the limited ability of proscription to engender behavioural changes.[116]

82. In addition to the above, it also has been argued:

    a. **Creation of 'Suspect Communities':** Proscription can stigmatise and criminalise entire communities associated with proscribed groups, fostering alienation and mistrust. This

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106 Lee Jarvis and Tim Legrand, "Legislating for Otherness: Proscription Powers and Parliamentary Discourse", *Review of International Studies*, 42 (2016), pp. 2 and 26.

107 Lee Jarvis and Tim Legrand (ed), *The Proscription of Terrorist Organisations* (Routledge, 2020), p. 3.

108 Jarvis and Legrand, *supra* note 108, p. 4.

109 Lee Jarvis and Tim Legrand, "'I am somewhat puzzled': Questions, Audiences and Securitisation in the Proscription of Terrorist Organisations", *Security Dialogue*, (2017) 48(2), 149 at 1 - 8.

110 Jarvis and Legrand, *supra* note 108, at 1–8.

111 *Ibid*, p. 2 – 4.

112 *Ibid*, p. 2 – 6.

113 Ioannis Tellidis and Harmonie Toros (eds), *Terrorism: Bridging the Gap with Peace and Conflict Studies* (Routledge, 2016), pp. 204 – 206.

114 *Ibid*, at 193 – 195.

115 Jarvis and Legrand, *supra* note 108, pp. 1 – 3.

116 Tellidis and Toros, *supra* note 114, pp. 204 – 206.

dynamic deepens social divides and perpetuates a 'guilt by association' mentality, undermining social cohesion.[117]

b. Counterproductive to Security: Rather than enhancing security, proscription can have the opposite effect. By delegitimising certain groups, it risks breeding resentment within marginalised or oppressed communities, which may fuel ongoing conflicts and drive further radicalisation.[118]

c. Ineffectiveness Against Fluid Organisations: Many contemporary terrorist groups are highly fragmented and lack organisational stability. Proscription does not effectively account for this dynamic, limiting its long-term utility in addressing such adaptive threats.[119]

d. Threat to Democratic Processes: Proscription decisions are often dominated by the executive authority, with minimal parliamentary oversight. This imbalance raises serious concerns about the erosion of democratic accountability and the undermining of legislative scrutiny.[120]

e. Symbolic Rather than Substantive: Proscription frequently functions as a symbolic act, signalling a tough stance on terrorism. However, its practical utility in addressing and resolving the underlying issues of violence and terrorism is often limited.[121]

83. In conclusion, the criticisms and limitations of proscription as evidenced by the sources provided, raise significant concerns about its effectiveness and impact on civil society and peace processes. These considerations support the argument that proscription is an archaic concept that should be rendered obsolete, as it fails to achieve its stated purpose.

S. THE ANC AND THE EVOLUTION OF DOMESTIC AND INTERNATIONAL LAW

84. The ANC's struggle against apartheid played a significant role in the evolution of international law, particularly in human rights and self-determination.[122] The ANC's advocacy for the recognition of the right to self-determination as a fundamental human right contributed to the development of international norms and standards in this area. The ANC's experience also highlighted the importance of international co-operation and solidarity in the fight against oppression.[123]

85. The ANC's struggle against the apartheid regime was a catalyst in international law, particularly regarding the global recognition of apartheid as a crime against humanity. Through its diplomatic engagements and advocacy at international forums, the ANC was instrumental in

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117 Jarvis and Legrand, *supra* note 107, pp. 7 – 8.
118 Jarvis and Legrand, *supra* note 107, p. 8.
119 *Ibid*.
120 Jarvis and Legrand, *supra* note 107, p. 23.
121 Jarvis and Legrand, *supra* note 107, p. 22.
122 Enuga S. Reddy (ed), *Apartheid, South Africa and International Law: Selected Documents and Papers* (New York, 1985), pp. 4, 9, 14 – 17, 34, 74 – 78 and 148 – 149; Reddy, supra note 105 pp. 4 – 5, 250 – 253 and 260 – 262; John Dugard, *International Law: A South African Perspective* (Juta, 2018), pp. 784 – 792.
123 Thuynsma, *supra note 57,* pp. 187 – 190; International Convention on the Suppression and Punishment of the Crime of

Apartheid (adopted 30 November 1973, entered into force 18 July 1976), 1015 UNTS 243; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), 2187 UNTS 3, art 7(1)(j).

raising awareness about the injustices of apartheid. This advocacy influenced the UN to adopt resolutions that defined apartheid as a crime against humanity.[124]

86. The intellectual and moral resistance against apartheid profoundly influenced the evolution of South African domestic law and international human rights standards. Through his seminal work, "Soft Vengeance of a Freedom Fighter", Justice Albie Sachs provides a compelling reflection on the interplay between personal suffering and the broader struggle for justice. His advocacy for a legal system grounded in human dignity and equality laid the groundwork for South Africa's transformative constitutional development.[125]

87. Justice Albie Sachs, now a retired Judge of South Africa's Constitutional Court, is a renowned South African activist, judge, and writer, who played a key role in shaping the country's post- apartheid legal landscape. He fought bravely against apartheid, paying a high price for his courage. In addition, his jurisprudence reflects themes of storytelling, *ubuntu* (compassion and humanity), an ethic of care, reconciliation, and restoration.[126]

88. He also believes in the importance of human rights and the need for the government to respect and protect them. He emphasises the role of rights in alleviating suffering and advancing principles of social justice.[127]

89. His contributions to the evolution of the Constitution of the Republic of South Africa are significant, as he recognises the absence of legal certitudes and embraces the messiness and uncertainty of humanity. He believes that the law should show compassion towards the people it serves, unlike the oppressive role it played during apartheid.[128]

90. Judge Sachs' jurisprudence and life story portray him as a sensitive and caring freedom fighter and a poetic judge who infuses the Constitution with an ethic of care.[129]

91. Judge Albie Sach's morality and democratic views have filtered through various Judgments which he contributed to in South Africa's apex Court, being the Constitutional Court of South Africa, some of which include:

a. S v Makwanyane and Another 1995 (3) SA 391 (CC):

Contribution: Justice Albie Sachs was instrumental in this landmark Constitutional Court decision that abolished the death penalty in South Africa. The Court held that the death penalty was incompatible with the Constitution's guarantees of human dignity, equality, and the right to life.[130]

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124 Lingaas, *supra* note 103, at 181.

125 Drucilla Cornell, Karin van Marle and Albie Sachs (ed), *Albie Sachs and Transformation in South Africa* (Birkbeck Law Press, 2014), pp. 75 – 113.

126 Narnia Bohler-Muller and Thobekile Zikhali, "Infusing the Constitution with an Ethic of Care: The Humane Jurisprudence of Justice Albie Sachs" in Charles M Fombad (ed), *Making the Road by Walking: The Evolution of the South African Constitution* (Pretoria University Law Press, 2020), https://www.pulp.up.ac.za/images/edocman/legal- dialogues/making_the_road_by_walking/Chapter%207%20Making%20the%20Road.pdf, accessed on 18 November 2024,
at 155 – 158.

127 *Ibid*, at 162.

128 *Ibid*, at 163.

129 *Ibid*, at 155–157.

130 S v Makwanyane and Another 1995 (3) SA 391 (CC) para 262.

b. Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC):

Contribution: Justice Sachs highlighted that ubuntu serves as a central theme within the Bill of Rights, representing a structured and operational expression of the values of human interdependence, mutual respect, and compassion in South Africa's evolving society.[131]

c. S v M (CCT 53/06) [2007] ZACC 18:

The Court was presented with a case involving a woman, referred to as M, who was facing imprisonment for repeated credit fraud offenses. Initially, Sachs intended to dismiss the case; however, after discussions with his colleagues, he discovered that M was a single mother of three teenagers residing in an area plagued by high levels of gang activity, drug- related issues, and violence. Additionally, M owned and operated two small businesses and served on the school governing board. Motivated by the children's right to parental care, Justice Sach's, in his judgment, prioritized their best interests, emphasising that "the foundation of the right to childhood lies in promoting the right to live, as much as possible, in a secure and nurturing environment free from violence, fear, deprivation, and avoidable trauma".[132]

92. Justice Albie Sachs played a transformative role in shaping South Africa's constitutional jurisprudence, emphasizing the values of human dignity, equality, and ubuntu. His judgments reflect a profound commitment to balancing individual rights with broader societal needs, fostering a compassionate and inclusive legal framework. Through his work, Sachs contributed significantly to embedding the Constitution's vision of justice and humanity in South African society.

93. Similarly, Steve Biko's writings, particularly in "*I Write What I Like*," articulated the philosophy of Black Consciousness, which played a pivotal role in mobilising Black South Africans to reclaim their identity and resist apartheid's dehumanising effects. His ideas fuelled the resistance movement and influenced the global civil rights movement and self-emancipation dialogues.

94. Adding to these intellectual legacies, Archbishop Desmond Tutu through his book, "*No Future Without Forgiveness*", and his leadership of the TRC, advocated for a unique model of restorative justice, which sought to heal the nation by reconciling with its oppressive past. Tutu's approach has been studied worldwide as a benchmark in addressing historical injustices through the lens of forgiveness and reconciliation.[133]

95. The apartheid government's criminalisation of political activities resulted in a surge of prison autobiographies, reflecting the experiences of political prisoners and their resistance to apartheid.[134]

96. The establishment of the TRC in **1996** rejected the "Nuremberg model" of retributive justice. Instead, it advocated for a restorative justice model, acknowledging the need for practical measures to enable the two warring sides to find common ground. This approach was driven

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131 Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) para 37.

132 S v M (CCT 53/06) [2007] ZACC 18 paras 17 – 20 and 101; Jackie Kemp, "Life Sentences", (*The Guardian* 1 July 2009), https://www.theguardian.com/society/2009/jul/01/albie-sachs-interview-childrens-rights, accessed on 26 December 2024.

133 Joan Wallach Scott, *In the Name of History* (Central European University Press, 2019), pp. 31– 69.

134 David Attwell and Derek Attridge, *The Cambridge History of South African Literature* (Cambridge University Press, 2012), pp. 552 – 561.

by the understanding that neither side could impose victor's justice due to the absence of a decisive victory. This led to a negotiated settlement between the enforcers of apartheid and the resistance movements.[135]

97. Separately, international solidarity movements supported the ANC's efforts and further influenced international perspectives on apartheid. These movements, comprising activists and governments from around the world, organised boycotts, sanctions and protests that highlighted the plight of South Africans under apartheid. Their actions kept international attention focused on apartheid and supported the implementation of sanctions against the South African government. This global pressure was vital in legitimising the ANC's struggle and hastening the downfall of the apartheid regime.[136]

98. The **Rome Statute**, adopted in **1998**, marked a significant milestone for international law by establishing the International Criminal Court **("ICC")** and codifying crimes against humanity, including apartheid. It affirmed apartheid as a grave violation under customary international law and international treaties, expanding its recognition beyond South Africa to encompass institutionalised racial discrimination worldwide. The Statute provides a framework for prosecuting individuals responsible for such crimes, reinforcing the principles of accountability and universal jurisdiction in addressing gross human rights violations. Through this, the Rome Statute strengthens international justice mechanisms and underscores the global commitment to combatting systemic oppression and inequality.[137]

99. As a culmination of the ANC's struggle, the ANC-led government signed the **Rome Statute** on **17 July 1998** and confirmed its ratification on **27 November 2000**.[138]

T. LEGACY OF THE STRUGGLE ENDURED BY THE ANC AND CONCLUDING REMARKS

100. The proscription of the ANC is a critical juncture in South Africa's history of resistance against apartheid. Whilst intended to marginalise and dismantle the organisation, this repressive measure inadvertently bolstered the ANC's determination, catalysing a shift towards armed resistance and cultivating domestic and international solidarity. The relentless denial of political participation to the majority population and the criminalisation of their aspirations for self- determination exposed the apartheid regime's moral and legal deficiencies.

101. Principles of international law, particularly the right to self-determination, exposed the fundamental illegitimacy of proscribing a liberation movement like the ANC. The apartheid government's reliance on legislation such as the Suppression of Communism Act and the Unlawful Organisations Act only deepened global condemnation, amplifying calls for sanctions and isolation. These measures underscored the ANC's struggle as a just cause and galvanised international efforts to dismantle apartheid.

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[135] Scot*t, supra note 133,* p. 130.

[136] South African History Online, "South Africa's Academic and Cultural Boycott", (SA History, undated) https://www.sahistory.org.za/article/south-africas-academic-and-cultural-boycott, accessed on 18 November 2024.

[137] John Dugard, "The Convention on the Suppression and Punishment of the Crime of Apartheid", (United Nations Audiovisual Library of International Law, 2008), pp. 2 – 3.

[138] Parliamentarians for Global Action, "South Africa and the Rome Statute", (pgaction.org, n/d), https://www.pgaction.org/ilhr/rome-statute/south-africa.html, accessed on 18 November 2024.

102. As the apartheid regime faltered under escalating domestic resistance, economic decline, armed resistance, and diplomatic pressure, the unbanning of the ANC in **1990** represented a momentous shift from resistance to a process of reconciliation. This underscored the failure of repression to maintain an unjust system and emphasised the necessity of inclusive dialogue in achieving peace and justice. This transition marked the beginning of a negotiated settlement that culminated in the **1994** democratic elections and the establishment of a constitutional democracy committed to equality, human dignity and fundamental human rights.

103. The historical context of the ANC's struggle against apartheid and the eventual liberation of Black people in South Africa highlights the impact of banning political organisations on fuelling violence and the transformation of conflicts into peaceful political engagement upon lifting such bans. The shift from passive resistance to active mobilisation and armed conflict after the banning of political organisations and the subsequent liberation of Black people demonstrates the complex interplay between political repression, resistance, and the eventual transition to peaceful political engagement and the establishment of a constitutional democracy.

U. SUBMISSION ON THE PROSCRIPTION OF HAMAS BY THE UK GOVERNMENT AND REASONS WHY DEPROSCIPTION IS THE MOST BENEFICIAL OUTCOME FOR ALL PARTIES

104. The historical experience of the ANC as a liberation movement during the apartheid era from **1948** to**1994** provides a critical lens through which to view the proscription in **2021** of Hamas by the United Kingdom **("UK")**.[139]

105. Similar to the ANC between **1960** and **1990**, Hamas finds itself proscribed as a "terrorist" organisation in the UK, essentially delegitimising its identity and blocking its participation in any meaningful political process.[140] This approach has been shown to be counterproductive as evidenced by the eventual unbanning of the ANC, which opened the door to actual negotiations and the dismantling of apartheid.[141] The UK ban on Hamas mirrors the failures of the past, as proscription tends to fuel violence as opposed to fostering peace; it does so by shutting down dialogue and entrenching hard-line stances.[142]

106. In the South African context, the banning of the ANC did not quell opposition to apartheid.[143] Instead, it intensified resistance, forced the movement underground, and strengthened more radical elements, as the regime's refusal to negotiate left no peaceful avenue for change.[144] The labelling of the ANC and its armed wing, MK, as "terrorists" simply validated the view that non- violent means had little effect on a regime that denied fundamental human rights and operated under a system of racial supremacy.[145] In a similar vein, the proscription of Hamas reinforces the view that peaceful negotiations are not possible. By refusing to engage or even acknowledge

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[139] UK Home Office, "Proscribed Terrorist Groups or Organisations", (Policy Paper, updated 26 April 2024), https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version#contents, accessed on 14 December 2024.

[140] Daniel Kirkpatrick, *Political Expression and Conflict Transformation in Divided Societies: Criminalising Politics and Politicising Crime* (Routledge, 2020), pp. 37 – 45.

[141] Marc Howard Ross, *Culture and Belonging in Divided Societies* (University of Pennsylvania Press, 2012), pp. 194 – 200.

[142] Hugh Lovatt, "Why the UK's Blacklisting of Hamas Hurts Its Own Peace Policy", (ECFR, 6 December 2021), https://ecfr.eu/article/why-the-uks-blacklisting-of-hamas-hurts-its-own-peace-policy/, accessed on 14 December

2024.

143 Leonard Thompson, *A History of South Africa* (Yale University Press, 1990), pp. 230 – 282.

144 Kirkpatrick, supra note 140.

145 Peter Harris and Ben Reilly (eds), *Democracy and Deep-Rooted Conflict: Options for Negotiators* (International IDEA, 1998), pp. 2 – 108.

Hamas' evolving stance since at least **2006 -** Hamas indicated a willingness to consider a two- state solution - Israel and its allies foreclose the possibility of meaningful discussions that could lead to a viable resolution to the Palestinian – Israeli conflict.[146]

V. THE PROBLEM WITH PROSCRIPTION AND THE LESSONS FROM THE ANC EXPERIENCE

107. Proscription, whether against the ANC in the past or Hamas today, generates multiple negative consequences. First, it tends to fuel radicalisation. When a group is banned, moderate or potentially moderate voices within it lose credibility, as engagement with them is not possible.[147] This intensifies militancy within the movement as the door to negotiations is slammed shut. The ANC's experience proved that outlawing peaceful protest and criminalising political organisations only confirmed that armed struggle was the last resort.[148] The psychological impact of being labelled "terrorists" hardened attitudes and undermined the possibility of political compromise, reinforcing an "us versus them" mentality.[149]

108. Proscription also undermines the rule of law and damages the legitimacy of the banning government in the eyes of both domestic and international audiences. In the South African case, global solidarity and external pressure grew stronger as the ANC was portrayed as a victim of unjust persecution and as an organisation legitimately fighting for freedom against a racist regime.[150] By banning the ANC, the apartheid government ironically enhanced the movement's international standing and credibility.[151] Once the ban was lifted, the ANC could operate openly and freely, and engage in structured negotiations, proving that dialogue and legitimate political participation are much more effective in achieving lasting peace than marginalisation and criminalisation.[152]

W. HAMAS, APARTHEID ALLEGATIONS, AND THE RIGHT TO RESIST UNDER INTERNATIONAL LAW

109. In the case of Hamas, it is essential to recognise the broader legal and moral environment. The International Court of Justice **("ICJ")** has recently declared Israel's ongoing occupation of Palestinian territory as unlawful.[153] UN experts, as well as credible human rights organisations, have condemned Israel's policies as amounting to apartheid, acknowledging systematic discrimination and oppression against Palestinians.[154] International law grants peoples under

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146 Lovatt, supra note 142.

147 Ioannis Tellidis and Harmonie Toros (eds), *Terrorism: Bridging the Gap with Peace and Conflict Studie*, (Routledge, 2016), pp. 204 – 206.

148 Harris and Reilly, supra note 145.

149 Shireen Hassim, *Women's Organisations and Democracy in South Africa* (University of Wisconsin Press, 2006), pp. 85 – 100.

150 Willem P. Esterhuyse, "The International Political Status of the African National Congress", *Africa Insight*, 19.1 (1989), pp. 34 – 45.

151 Ross, supra note 141.

152 UK Home Office, supra note 139.

153 Office of the High Commissioner for Human Rights (OHCHR), "Experts Hail ICJ Declaration on Illegality of Israel's Presence in Occupied Territories", (OHCHR, 30 July 2024), https://www.ohchr.org/en/press-releases/2024/07/experts-hail-icj-declaration-illegality-israels-presence-occupied, accessed on 14 December 2024.

154 Amnesty International, "ICJ Opinion Declaring Israel's Occupation of Palestinian Territories Unlawful Is Historic

Vindication of Palestinians Rights", (Amnesty International, 19 July 2024),

colonial or alien domination a right to self-determination and, at times, the right to resist such domination.[155] Just as the Black majority in South Africa rightfully resisted apartheid — a system of White supremacy — so too do Palestinians have a moral and legal claim against what has been described as a Zionist ideology rooted in Jewish supremacy over the indigenous population, echoing the oppressive structures of apartheid South Africa.

110. Deproscribing Hamas would recognise that conflicts like these are inherently political and require political solutions. It would not be an endorsement of all of Hamas' tactics, just as unbanning the ANC was not an endorsement of violence. Instead, it would acknowledge Hamas' centrality to the political landscape in Gaza and its significant support base.[156] By permitting Hamas to operate openly, potential pathways emerge for diplomatic engagement. This would compel Israel, which has been shielded by a narrative that it does not negotiate with "terrorists", to confront the genuine political grievances of the Palestinian people. Failure to do so perpetuates violence, as seen by the repeated cycles of violent conflict where proportionality and civilian protection have been disregarded.[157]

111. Scholars have noted that proscription decisions may often reflect a state's foreign policy interests and economic alliances rather than objective criteria.[158] In this view, the decision of the UK to ban Hamas may be seen as an attempt to avoid pressuring Israel into negotiations and undermining the two-state solution framework that Hamas has expressed willingness to explore.[159] By remaining resolutely on one side, the UK tacitly colludes in the ongoing occupation, much like those who once supported the apartheid regime and ignored the legitimate grievances of the oppressed.[160] Various academics have criticised such bans, noting that they undermine the potential for conflict resolution and ignore lessons learned from comparable struggles.[161]

112. As in the South African experience, external pressure and international solidarity eventually forced the apartheid regime to engage with the ANC and thus end the cycle of state violence and banned opposition.[162] Lifting the ban on the ANC enabled a platform for genuine dialogue. Similarly, removing Hamas from the proscribed list would open space for negotiations and moderating influences to take hold.[163] In the long run, ensuring that all political forces — especially those representing a significant portion of the Palestinian population — can engage in the political arena is more conducive to stability and lasting peace.

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https://www.amnesty.org/en/latest/news/2024/07/icj-opinion-declaring-israels-occupation-of-palestinian-territories-unlawful-is-historic-vindication-of-palestinians-rights/, accessed on 14 December 2024.

155 United Nations General Assembly Resolution 2649 (XXV) (29 November 1970), UN Doc A/RES/2649 (XXV).

156 Robertson K, "What Is Hamas?" (Council on Foreign Relations, 17 October 2024), https://www.cfr.org/backgrounder/what-hamas, accessed on 14 December 2024.

157 Human Rights Watch, "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution", (27 April 2021), https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution, accessed on 14 December 2024.

158 Lee Jarvis and Tim Legrand (ed), *The Proscription of Terrorist Organisations* (Routledge, 2020), p. 3.

159 Ahmed Abu Artema, "The UK Government Is on the Wrong Side of History Again", (Al Jazeera Opinion, 25 November 2021) https://aje.io/brd9mg, accessed on 14 December 2024.

160 Frederick Deknatel, "The Global Impact of the ICJ Ruling on Israel: A Democracy in Exile Roundtable", (DAWN, 9 February 2024), https://dawnmena.org/the-global-impact-of-the-icj-ruling-on-israel-a-democracy-in-exile-roundtable/, accessed on 14 December 2024.

161 Lee Jarvis and Tim Legrand, "Legislating for Otherness: Proscription Powers and Parliamentary Discourse", *Review of International Studies*, 42 (2016), pp. 2 and 26.

162 Thompson, supra note 143.

[163] Tellidis & Toros, supra note 147.

X. CONCLUSION: DIALOGUE AS THE PATH TO RESOLUTION

113. The historical record is unambiguous: proscription failed to bring peace to South Africa. Instead, it hardened conflict lines and convinced liberation movements that violence was the only avenue left. Only the unbanning of the ANC allowed for constructive dialogue that dismantled apartheid and brought about democratic governance.[164] In the present context, the proscription of Hamas mirrors the same failed strategy, making it easier for Israel to refuse dialogue and perpetuate the unlawful occupation of Palestinian lands.

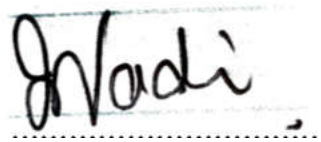
114. Deproscribing Hamas would be a vital step towards acknowledging the need for meaningful negotiation, respecting the Palestinian right to self-determination, and encouraging a political challenge to the status quo.[165] This shift could lead to a similar outcome as in South Africa - transforming a previously banned movement into a legitimate actor in shaping a just and durable solution to the Palestinian – Israeli conflict. As with the ANC, lifting the ban on Hamas has the potential to help transform the conflict from violent confrontation into a rule-bound and constructive political engagement.[166] History, common sense, and legal principles suggest that dialogue — not proscription — is the pathway to ending the cycle of violence and paving the way for peace.

Y. EXPERT OBLIGATIONS

115. I confirm that I have made clear which facts and matters referred to in this Report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

116. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

117. I confirm that I have not received any remuneration for preparing this Report.



Electronic signature
Dr Ismail Vadi
[Place of Profession: Johannesburg]
[Johannesburg]
[South Africa]
28 December 2024

[164] Harris & Reilly, supra note 145.

[165] John Packer and Sally Holt, "Self-Determination and Peace Processes: Pathways and Stumbling Blocks for Conflict Resolution" in *Pioneering Peace Pathways - Making Connections to End Violent Conflict* (Conciliation Resources, 2020) pp. 53 - 59.

[166] Thompson, supra note 143; Ross, supra note 141.

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON
CHILLING EFFECT OF COUNTER-TERRORISM POWERS ON JOURNALISM
BY
JONATHAN COOK

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. This expert report examines the ways that counter-terrorism legislation has been instrumentalised by British police and the Crown Prosecution Service to stifle journalism that seeks to cover the continuing genocide in Palestine. These powers inhibit a truthful accounting of events taking place in the Middle East and create a chilling effect on the freedom of the press.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. My name is Jonathan Cook. I am 59 years old and have been a journalist since 1989 when I gained a postgraduate diploma in journalism from the School of Journalism at Cardiff University.

5. After working in local newspapers for several years, I served as a staff journalist at the Guardian and then the Observer newspapers for seven years, starting in 1994. Among the countries I travelled to, and wrote about, were Yemen, Turkey, Jordan, Egypt and Uzbekistan. In 2001, I resigned from the Observer to move to Israel to report on the Israel-Palestine conflict as an independent journalist. I stayed there for 20 years.

6. During that time, I wrote for a number of major publications, including The Guardian, The Observer, The Times, The International Herald Tribune (now the international edition of The New York Times), The New Statesman, Le Monde diplomatique, The Irish Times, Al Jazeera and Middle East Eye, as well as for a number of academic journals.

7. I was the lead researcher on two reports on Israel-Palestine for the International Crisis Group, a leading think-tank based in Washington and Brussels dealing with conflict resolution.

8. I have published three books on the Israel-Palestine conflict, and was awarded the Martha Gellhorn Special Prize for Journalism in 2011. The judges described me as "one of the reliable truth-tellers in the Middle East".

9. Since my return to the UK in 2021, I have written regular analyses and commentaries, mainly on issues relating to the Middle East, for two major websites, Middle East Eye and Declassified UK, as well as publishing similar material on my own page on a newsletter platform called Substack.

C. CHILLING EFFECT ON JOURNALISM

10. Over the past several months, I have been watching with growing professional alarm – and personal trepidation – what I can only describe as a campaign of political intimidation and persecution of a number of journalists in the UK. The journalists who have been targeted share one thing in common: they report and comment on Israel's actions in Gaza from a critical perspective that judges those actions to be genocidal – in line with the suspicions of the International Court of Justice. They also criticise the British government as being complicit in that genocide.

11. The investigation by the police of these journalists has been justified under an expansive interpretation of both Section 12 of the 2000 Terrorism Act and Sections 1 and 2 of the 2006 Terrorism Act. These laws tightly restrict commentary about Hamas and other Palestinian organisations the UK government has proscribed. That proscription applies not only to Hamas' military wing, which is committed to armed resistance against Israeli colonisation, but against Hamas' political wing, which is the elected government of Gaza.

12. I now find myself in a situation where, for the first time in my 36-year professional career, I am no longer sure what by law I can write or say in my capacity as a journalist on an issue of major international importance. I now live with the fear that, by writing critically about events in Gaza, I risk a dawn raid by counter-terrorism police on my home in front of my children, the confiscation of the electronic devices I rely on for my work, and my possible arrest, leading potentially to terrorism charges being laid against me.

13. I reported for two decades from Israel, where highly restrictive military censorship laws apply to journalists, especially during times of military conflict. But I never felt as worried about being targeted for my journalism in Israel – even when I was reporting critically on its 2006 war with Lebanon – as I do now in the UK.

14. This is an unprecedented and shocking situation – and one that can only have a dangerous, chilling effect on journalism relating to the Israel-Palestine conflict, my area of expertise. Until recently I would have considered these developments simply impossible in Britain, given a long and cherished tradition of press freedom. We appear to be entering a very dark time for journalists, especially those who do not have the institutional backing of a major news organisation.

D. POLICE REPRESSION

15. There have been a number of journalists targeted by the police, as part of a counter-terrorism operation we have subsequently learnt is called "Operation Incessantness". This police operation is not restricted to journalists, and has also targeted academics, lawyers, peace activists, and others.

16. But here I will focus chiefly on the effect of the legislation, and the police's interpretation of it, on journalists as they seek to document and comment on Israel's actions in Gaza since the Hamas attack of October 7, 2023.

17. It is impossible to critique the police's arrests and investigations of journalists except in broad outline because they have offered all but the barest details of how they believe these journalists have violated terrorism laws. That in itself is a major cause for concern. How can the police's restrictions on press freedoms be scrutinised when the police are operating against journalists from the shadows? And what message is being

communicated about media freedoms when the police frame their actions against journalists as a "counter-terrorism" operation?

18. The following journalists have been targeted so far by the police, in reverse chronological order:

19. Asa Winstanley: Winstanley's London home was raided in the early hours of 17 October 2024 by a team of about 10 Metropolitan Police officers from "Counter-Terror Command". They had search warrants for his home and car, and confiscated all of the electronic devices he uses for his work as an investigative journalist. The operation cited potential offences under Section 1 (Encouragement of Terrorism) and Section 2 (Dissemination of Terrorist Publications) of the 2006 Terrorism Act, which carry a maximum sentence of 15 years' imprisonment. He was told this referred to his social media posts and that he had been under investigation for a year.

20. He was not arrested or charged. But he was told he is under a continuing investigation. Aside from the intimidatory goal in seizing his electronic devices, it seems the police are on a fishing expedition, hoping they can find material with which to charge him.

21. Winstanley is an associate editor of the Electronic Intifada website, which has specialised for more than two decades in coverage of news from Israel and Palestine. It challenges the orthodoxies of institutional media, taking as its premise that the Palestinian people have suffered a long colonial occupation by Israel, actively aided by western powers.

22. I have written in a freelance capacity for the site myself in the past. In my view, it employs the very highest professional standards, both in its reporting and commentary. It subjected my own submissions to some of the most rigorous fact-checking and questioning I have ever experienced. From what I understand, it takes these extra precautions because pro-Israel lobby groups constantly seek to delegitmise its journalism.

23. Winstanley, a member of the National Union of Journalists, is an impressive investigative journalist whose specialist subject – the role of the pro-Israel lobby in shaping British politics – has made him enemies, including in both the main political parties.

24. Sarah Wilkinson: More than a dozen plainclothes and uniformed officers raided Wilkinson's home in Shropshire in the early hours of August 29 under Section 12. They claimed to have a search warrant but reportedly refused to show it. They handcuffed her, refusing to let her get dressed or take a medicine she needs to treat her Crohn's disease. She was then taken out of the house and driven to a police station in Shrewsbury. She says she was denied a lawyer until she reminded officers that she had a right to legal representation under Section 12.

25. Wilkinson, an accredited journalist, runs a news feed about Gaza, posting videos and eye-witness accounts. Under interrogation, she was questioned about hundreds of tweets. She says she was also asked for details of Palestinians there she is in contact with and for their locations.

26. Her son reports that, after she was taken away, a group of masked officers entered the house and ransacked it, presumably as part of their search for electronic devices. All were confiscated. It appears they will not be returned to her. When Wilkinson was released, she found the contents of some rooms had been turned upside down. She reports that her mother's ashes had been emptied from an urn and been trampled over.

27. As part of her initial draconian bail conditions, she was told she was banned from using any electronic device, including a phone or TV, or use any form of transport. After her lawyers appealed these conditions as inhumane and likely to put her life in danger, six of the seven were lifted.

28. Richard Medhurst: Medhurst was arrested on August 15 at London's Heathrow airport, on his return from a trip abroad, under Section 12 of the Terrorism Act of 2000. Medhurst was escorted off the plane by five waiting plainclothes officers and one dressed in what Medhurst describes as "tactical gear". He was told he had been arrested for "expressing an opinion or belief that is supportive of a proscribed organisation". He was given no further details.

29. Medhurst was held for a total of 24 hours. During that time he was taken to a room at the airport, where he was handcuffed and searched. He was denied the right to call a family member or friends. His electronic devices were taken from him and have not been returned. He was transferred to a police station, where he was kept in a cell for 13 hours under constant surveillance. He was finally questioned by two counter-terrorism officers for some 60 minutes.

30. He is under continuing investigation, and faces a jail sentence of up to 14 years if charged and convicted.

31. Medhurst's father, as he points out, served in the Metropolitan police before writing a counter-terrorism training course for the United Nations. Both his parents were awarded a Nobel peace prize for their peacekeeping work for the UN. Medhurst observes that his parents had an abiding influence on his worldview and that he regards his anti-war journalism as a continuation of their own work.

32. He is a member of the National Union of Journalists.

33. Craig Murray: Murray, a former British ambassador, whistleblower and writer, who has in recent years built up a large following for his journalism and commentary on his own website, was detained at Glasgow airport on October 16, 2023, after a meeting in Iceland. He was detailed under Schedule 7 of the 2000 Terrorism Act by Police Scotland's Border Policing Command unit.

34. He was interrogated at the airport by three counter-terrorism officers who did not identify themselves. His phone and laptop were confiscated. He was told he would be charged with a criminal offence if he refused to answer questions, answered untruthfully, deliberately withheld information, or refused to provide passcodes for his electronic devices. He was denied the right to consult a lawyer. His interrogation included questions about his political views, his decision to attend a Palestinian solidarity protest in Reykjavik, and his involvement with the then-campaign to free journalist and publisher Julian Assange.

35. Other journalists: All these efforts to persecute journalists have taken place in the context of Israel's destructive assault on Gaza since the Hamas attack of October 7, 2023. However, it is worth mentioning that they appear to fit with what were already signs of a repressive climate against oppositional journalism being cultivated by the police and British state.

36. Journalists who have recently endured abusive police treatment include Kit Klarenberg, Vanessa Beeley, David Miranda and Julian Assange, as well as the French publisher Ernest Moret. In addition to the 2000 Terrorism Act and the 2006 Terrorism Act, the

police have been using the 2019 Counter-Terrorism and Border Act to detain and investigate journalists.

37. Non-journalists: It should be noted too that many non-journalists have been targeted by the police under counter-terrorism laws. I wish to highlight in particular the police arrests of Haim Bresheeth, an academic and child of Holocaust survivors, and Tony Greenstein, a Holocaust researcher, author and Palestinian solidarity activist.

38. Notably, both are Jews – Prof Bresheeth is also an Israeli – who take strongly critical positions towards Israel and reject Israel's claim to represent the Jewish people. Mr Greenstein was charged with one offence under Section 12 on November 25, 2024. Prof Bresheeth is still under investigation. These arrests reflect an emerging pattern of wider police repression that has been compounding the pressures on journalists to self-censor about Israel's actions in Gaza.

39. For many months, the pro-Israel lobby has been characterising as antisemitic any strongly critical position of Israel's policies in Gaza. Accusations of antisemitism have been thrown about wantonly, and often for political and rhetorical advantage. One piece of evidence for this has been the significant number of British Jews who have found themselves being smeared as antisemites, "self-hating Jews" and the "wrong sort of Jews".

40. Disturbingly, the police now appear to be aiding this campaign of vilification by using Section 12 to suggest that anti-Zionist Jews such as Prof Bresheeth and Mr Greenstein are also "supporters of terror".

41. The fact that the police are targeting prominent anti-Zionist Jews for their critical views of Israel's actions in Gaza sends a loud, chilling message to journalists, among others. It tells them that police are ready to arrest and charge even experts on the Israel-Palestine conflict, should they dissent too strongly to British foreign policy. If even Prof Bresheeth and Mr Greenstein are vulnerable to arrest, if even they fall foul of terrorism laws, then most journalists who are less knowledgeable on the issues will conclude that it is better either to avoid the topic entirely, or adhere only to the government's official line.

E. CONCLUSIONS

42. I note the following:

43. The British state's decision to conflate the political, diplomatic and welfare arms of Hamas, the elected government in Gaza, and its armed military wing, proscribing both, has left journalists and press freedoms vulnerable to an expansive interpretation of what is meant by "expressing an opinion or belief that is supportive" under terrorism legislation. As a result, journalists face a double obstacle to doing their work: they have to navigate the most expansive proscription possible of Hamas by the UK state as well as the most expansive interpretation possible of what constitutes "expressing an opinion or belief that is supportive" by the UK police.

44. There has so far been a lack of specifics or clarity from the police about why they are arresting journalists or raiding their homes, and confiscating the tools needed for them to do their journalism. That, in itself, is deeply concerning. But from what we do know – mainly from the targeting of activists and academics under Section 12 – the police are indeed taking the loosest definition possible of "encouraging support" under the Act. The police's interpretation of the law, if not the law itself, fails to take account of the duty of journalists, in a healthy democracy, to keep the public informed, and present them with countervailing, contentious and heterodox views.

45. The lack of transparency from the police about their investigations of journalists aggravates this attack on democratic freedoms. Because I and other journalists have little information to understand how the police have arrived at their decisions, or on what basis they will seek to justify them before the courts, we have no way of assessing how we can avoid a similar fate ourselves. Whether by design or not, the police's approach leaves journalists uncertain of what is considered lawful commentary. That is intimidatory and bound to maximise the chilling effect on free speech and press freedoms.

46. Reporting by journalists typically draws on the expertise of authoritative sources, including academics, researchers, lawyers, human rights groups, among others. But the British state's proscription of Hamas, and other armed Palestinian groups, and the expansive definition of Section 12 being imposed by the police, greatly undermines the ability of journalists to tap into this kind of expertise when it comes to covering events in Gaza, for example.

47. This is for a number of reasons. Experts are likely to be put off engaging in research in this field for fear of potential legal jeopardy, and they are likely to avoid drawing attention to their research, if they do carry it out, for fear of police action. This reticence

means journalists lose access to sources of expertise they would otherwise be able to draw on.

48. And further, these same experts are likely to be far more reluctant to share, even as background, any of their research or informed opinion with journalists for fear that, if the journalist's electronic devices are seized, as has repeatedly happened, their own role as a source will be exposed.

49. The climate of fear being cultivated by the legislation doesn't just make journalists fearful of giving voice to heterodox points of view. It also drives discussions and informed opinions from experts underground, where journalists are less likely to become aware of them and factor them into their own coverage.

50. Israel has active lobbying groups in both major British political parties – Labour Friends of Israel and Conservative Friends of Israel being two well-known examples – that wish to see the curtailment of criticism of Israel's actions towards the Palestinians, especially what is taking place in Gaza. These groups have a great deal of bipartisan influence with senior British politicians. Indeed, they are likely to have played a significant part in getting Hamas proscribed in its entirety..

51. Although we all desire a society where the police are immune to political pressure campaigns, it would be naive in the extreme to imagine that such campaigns have no impact on policing decisions. The police need to show that they have met the very highest standards of evidence before targeting journalists or limiting press freedoms. I see nothing to suggest that this has been the case. These look like a political attack on press freedoms because that is exactly what they are.

52. Under international law, Palestinians have the right to armed resistance to their occupation, so long as such resistance is directed at military objectives, not civilian targets. That means some resistance operations by Hamas are legal under international law. However, any analysis or commentary that could "encourage support" among readers, viewers or followers for an action by Hamas, even a lawful one, is liable to a prison sentence of up to 14 years under the legislation.

53. Given the expansive interpretation of these laws by the police, journalists find themselves in a particularly invidious, and dangerous, position should they try to draw attention to lawful actions by Hamas or discuss the legality of the group's actions. This

poses a major limitation on the ability of journalists to freely report on and discuss some of the most urgent and consequential developments in international affairs, or to reflect on Britain's involvement in those developments.

54. The police have announced lengthy investigations with no clear completion date against journalists, academics, and Palestinian solidarity activists. The protracted nature of these investigations – and the lack of clarity about how the targeted individuals have violated Section 12 or other legislation – are not only having a chilling effect on press freedoms right now. They will continue to have such a chilling effect for the foreseeable future, so long as these investigations drag on.

55. That is an even graver assault against press freedom, because a fundamental duty of journalists is to address major matters of public interest in a timely manner.

56. Israel's prime minister is currently facing an arrest warrant from the International Criminal Court for perpetrating crimes against humanity in Gaza, while its sister court, the International Court of Justice, is investigating Israel for the crime of genocide. Britain is aiding Israel's actions in Gaza. At a time like this, the British media needs to be hosting a full and vigorous discussion about these developments, which are of the most pressing significance imaginable, both internationally and domestically. The current chilling effect of Section 12, and the police's expansive interpretation of it, therefore become a form of complicity in any crimes Israel may be found guilty of.

57. The police have so far targeted only independent journalists, presumably because such journalists do not have institutional backing from a large media organisation and are seen as being in a weaker position to defend themselves from police abuses of the Terrorism Act. They are "easy pickings".

58. Nonetheless, journalists working in large media organisations will be taking note. That means the chilling effect is being felt across the media, not just among independent journalists. That has doubtless been reflected in the almost complete failure by British media outlets to engage with Hamas spokespeople and clarify the group's political and diplomatic positions through interrogating them – an important role for journalism.

59. Institutional media organisations have given the police investigations of independent journalists almost no coverage or scrutiny. This contrasts strongly with the National Union of Journalists, which has called the police actions "abuse and mis-use of counter-

terror legislation" and warned that they risk "threatening the safety of journalists", as well as their sources.

60. The International Federation of Journalists, representing journalists in 146 countries, has stated: "The recent practices of the police clash with the UK government's defence of freedom of expression and its commitment to journalism, which is one of the pillars of democracy. All use of terrorism legislation must be proportionate or risk grave harm to media freedom." Similarly, the Committee to Protect Journalists, an international NGO headed by 40 expert journalists, has called what is happening a "disturbing pattern of weaponizing counter-terrorism laws against reporters".

61. The failure of the institutional media in the UK to report on these repressive measures by the police against independent journalists – let alone condemn them – reflects a number of factors.

62. Institutional media organisations are often reluctant to acknowledge independent journalists. In part, for commercial reasons: because independent journalists have in recent years had a great deal of success competing with and weakening the stranglehold of traditional media outlets on public discourse. And also because many independent journalists are highly critical of the coverage provided by institutional media. They often highlight failings resulting from the institutional media's ownership, its dependency on corporate advertisers, and its deference to other forms of institutional power.

63. Whether these critiques are correct or not, the fact is institutional media often sees itself as in an antagonistic relationship with independent journalists, even those who have gone through the same training as their own journalists, have similar or greater experience, and hold professional accreditation and NUJ membership.

64. The institutional media's turning a blind eye to these abuses of terrorism legislation by the police only serves to make those abuses more dangerous. The police curbs on press freedoms are not being publicly scrutinised, brought to wider public attention, or challenged by the institutional media. We are quickly arriving at an Orwellian moment in which the British police investigate "thought crimes" or "wrongthink".

65. "Democracy dies in darkness", as the Washington Post's slogan memorably warns. We are currently in precisely such a moment of darkness.

F. EXPERT OBLIGATIONS

66. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

67. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

68. I confirm that I have not received any remuneration for preparing this report.



Jonathan Cook
Bristol
5 December 2024

IN THE MATTER OF AN APPLICATION FOR DEPROSCRIPTION

BETWEEN:

حركة المقاومة الاسلامية

HARAKAT AL-MUQAWAMAH AL-ISLAMIYYAH — **Applicant**

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Respondent**

REPORT ON PALESTINE AND ITS RELATIONSHIP WITH THE ARAB WORLD
BY
DR USAAMA AL-AZAMI

A. INSTRUCTIONS

1. I have been instructed by Riverway Law to provide a report on matters within my expertise in support of the application to the British Home Secretary to deproscribe Harakat al-Muqawamah al-Islamiyyah ('Hamas').

2. This report examines the designation of Hamas as a terrorist organization within the context of the Israel-Palestine conflict and international law. It critiques the Abraham Accords for sidelining Palestinian self-determination, emboldening Israel's illegal behaviour, and normalizing occupation, while isolating Palestinians from meaningful diplomacy. The report highlights the complicity of regional Arab states in perpetuating Palestinian suffering and argues that Hamas's proscription requires reevaluation in light of its grassroots popularity and pragmatic approach. Drawing on historical precedents like those of the African National Congress (ANC) and the Irish Republican Army (IRA), it advocates for policies prioritizing justice and dialogue, recognizing Hamas's role in resisting illegal occupation, and its historical pragmatism.

B. QUALIFICATIONS

3. I give this report in my personal capacity.

4. I am a tenured assistant professor at Vrije Universiteit Amsterdam. Prior to this, I was a departmental lecturer at the University of Oxford from 2019-2023. I completed my

PhD in Near Eastern Studies at Princeton University in 2018. I specialize in religio-political actors and discourses in the Middle East and North Africa (MENA) region.

5. I am the author of a number of book chapters and articles on religion and politics in the MENA region with a special interest in Islamic political movements and intellectuals affiliated with the Muslim Brotherhood (MB). I am the author of a monograph entitled *Islam and the Arab Revolutions: The Ulama Between Democracy and Autocracy* (Oxford University Press, 2022). I have previously provided a submission to the House of Commons Foreign Affairs Committee for its November 2016 *Political Islam', and the Muslim Brotherhood Review*.

C. BACKGROUND AND CONTEXT

6. The Israeli-Palestinian conflict, rooted in the early 20th century, was set in motion by the Balfour Declaration of 1917 and the Nakba of 1948, which displaced hundreds of thousands of Palestinians as part of a process scholars refer to as "settler-colonialism."[1] This historical trauma informs Palestinian struggles for self-determination and provides the context for the emergence of Hamas during the 1987 intifada against Israel's occupation of territories seized in 1967—an occupation deemed illegal under international law. Resisting such occupation, whether violently or non-violently, is considered legitimate under international law when carried out in observance of IHL and the Geneva Conventions.[2]

7. The actions of Hamas must be understood within the broader framework of Israel's settler-colonial project, widely recognized in scholarship as analogous to other historical settler-colonial enterprises such as those in the United States, Canada, and Australia—projects often described as genocidal.[3] Unlike earlier colonial ventures, Israel's settler-colonialism occurs in a modern context where such practices are deemed illegal under international law. Despite international condemnation, Israel has continued to pursue settler colonial practices—notably characterized by ethnic cleansing—with the support of powerful Western states, making its occupation a uniquely contentious issue in contemporary geopolitics.[4]

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[1] Maxime Rodinson, *Israel: A Colonial Settler-State?* (Monad Press, 1973); Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 387–409; Lorenzo Veracini, *Israel and Settler Society* (Pluto Press, 2006); Edward Cavanagh and Lorenzo Veracini (Eds.), *The Routledge Handbook of the History of Settler Colonialism* (Routledge, 2016); Jane Carey and Ben Silverstein, "Thinking with and beyond Settler Colonial Studies: New Histories after the Postcolonial," *Postcolonial Studies* 23, no. 1 (2020): 1–20.

[2] Sara Roy, *Unsilencing Gaza: Reflections on Resistance* (Pluto Press, 2021); Jean-Pierre Filiu, *Gaza: A History* (Hurst Publishers, 2023).

[3] Experts on genocide, including Raphael Lemkin--the Polish Jewish lawyer who coined the term genocide and campaigned to establish the Genocide Convention--colonization is intrinsically genocidal.

[4] Ilan Pappe, *The Ethnic Cleansing of Palestine* (Oneworld, 2006).

8. After the era of independence movements that saw the emergence of post-colonial states, the world largely came to recognize the illegitimacy of colonialism and the colonization of territory. Israel's long-term occupation of Palestinian lands has been particularly strongly opposed by not just the Palestinians but most of the world. Western support for Israel is viewed as deeply one-sided by the vast majority of the globe. The vast majority of the world's states recognize the state of Palestine and have done so for decades. As of 2024, more than three-quarters of the world's 193 UN-recognized states view Palestine as a state. Indeed, since 1947 the UN General Assembly has overwhelmingly supported resolutions recognizing Palestinian statehood and related rights. Full UN recognition is held back by the United States' veto on the Security Council.

9. This is the context in which the Palestinian issue has become a bone of contention for the Global South in particular. Western states remain the only states, with several important exceptions in the West, that do not recognize the state of Palestine. The lack of recognition of a Palestinian state has been a significant limiting factor for legitimizing Palestinian rights and is at the heart of the so-called Palestinian issue. Hamas is one of several Palestinian actors concerned with upholding the plight of the Palestinians. Put differently, the raison d'être of Hamas is championing the Palestinian issue. The Palestinian issue may be defined for present purposes as: the cause of Palestinian self-determination in the face of the settler-colonial dispossession of Palestinians of their rights over many decades and their unjust treatment at the hands of their colonizers. This has occasionally resulted in violence perpetrated against their colonizing state, namely Israel.

10. The Palestinian issue may be viewed as concerned with the establishment of genuine equality between all occupants of the land between the Jordan River and the Mediterranean Sea. According to the ICJ Advisory Opinion from 19 July 2024, the state of Israel has been engaged in apartheid and systematic oppression of the Palestinians under its control and authority as an occupying power.[5] Its occupation of Palestinian lands is recognized as illegal under international law. Supporting this occupation and these apartheid practices are also illegal under international law. The Israeli state is also currently charged by the ICJ with being engaged in a plausible genocide. While this case will take many years to come to a formal conclusion, there are already many leading scholars of genocide, including a number of Israeli scholars, who believe that what has been taking place in Gaza for the past year constitutes the crime of genocide.[6]

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[5] International Court of Justice, *Legal Consequences of the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem: Advisory Opinion*, 19 July 2024, accessed December 19, 2024, https://www.icj-cij.org/node/204176. See also: Ralph Wilde, *Illegality of Israel's Presence in the Palestinian Gaza Strip and West Bank, including East Jerusalem, in Light of the 2024 Occupied Palestinian Territory Advisory Opinion of the International Court of Justice, and Consequences for Third States and the European Union: Legal Opinion* (Al-Haq Europe, December 1, 2024), accessed December 19, 2024, https://alhaqeurope.org/wp-content/uploads/2024/12/Wilde-ICJ-OPT-AO-opinion.pdf.

[6] These scholars include: Raz Segal, Barry Trachtenberg, Omer Bertov, Robert McNeil, Damien Short, Taner Akçam, Victoria Sanford, Adam Jones, Ernesto Verdeja, Martin Shaw and Michael Becker.

D. GLOBAL POLITICS, GAZA, AND HAMAS

11. In this context, it is also important to highlight that Arab states have historically had a mixed reputation when it comes to supporting Palestinians concerning their rightful claims to freedom within their land and freedom from occupation. While the West has either not supported the Palestinians or actively supported the colonizing Israeli state, Arab states have historically expressed at least verbal support for Palestinian rights. This continues to this day. However, in recent years, the Palestinian issue, which was seen as viable as long as it was being supported by a significant number of states around the world, has started to be sidelined as a concern by increasing numbers of Arab states. The most dramatic change has taken place over the last six or so years.

12. Post-colonial Arab states were often weak institutionally and were not in a position to assert themselves in the face of strong Western support for Israel. Nonetheless, some Arab states had even gone to war against the Israeli state in the middle of the 20th century, in an effort to, as they saw it, liberate Palestine from colonization. By the 2000s, all of these military efforts were viewed as non-viable, and most Arab states were de facto, if not de jure, allies of the United States, which is the main backer of the state of Israel. Alongside this, the rise of illegal settlements as a major force in the occupied territories had rendered the possibility of ending occupation even more remote. Settlements had brought about de facto annexation of much of the occupied territories, with close to 800,000 Israeli settlers living in the West Bank at present.

13. With respect to Gaza, this small territory had been physically occupied by Israel until its unilateral withdrawal in 2005. However, as stated in the July 2024 ICJ ruling, the fact that Gaza's entry and exit points are controlled by Israel, that they control the airspace above it, and that they have control of everything that enters or exits Gaza, including basic necessities of human life, means that according to international law, Gaza has continued to be occupied despite Israel’s ostensible withdrawal nearly 20 years ago.

14. Gaza had elections in 2006, in which Hamas won the popular vote in what international observers recognized as a free and fair election. However, this decision on the part of the Palestinian populace resulted in sanctions from the West. This was widely perceived throughout the region and in the Global South as contradicting the West’s declared support for democracy. After the West placed sanctions on Gaza because they elected Hamas, Hamas then formed a unity government with all other Palestinian factions, but this too was rebuffed, and the sanctions were not lifted by the West. These sanctions led to a degradation of life in Gaza so severe that it started

being referred to as an open-air prison and an open-air concentration camp, including by the Prime Minister of Great Britain in 2010.[7]

15. In 2018, the people of Gaza engaged in a movement known as the Great March of Return, in an attempt to bring attention to their plight of living under siege and illegal occupation by the Israelis to the rest of the world. During this peaceful uprising, Palestinians marched towards the separation wall with Israel. Hundreds of people were killed by Israeli snipers, and thousands more were injured, often shot in their ankles and knees. The world paid little heed to this peaceful uprising. In an interview with Vice News, Yahya Sinwar, the Hamas leader who would go on to become the architect of the 7 October attacks, expressed his disappointment at the failure of the international community to support this peaceful movement for Palestinian rights in the face of Israeli occupation. He argued that this demonstrated the futility of peaceful means in fighting the occupation.[8] He made clear that had peaceful means worked, they would have been preferred to resorting to violence.

16. The foregoing illustrates that Hamas is best recognized as an anti-colonial liberation movement that channels the popular sentiments of the Palestinian people. While its tactics on 7 October have been the target of legitimate criticism, its proscription as a terrorist organization is of questionable justification. It is its grassroots popularity--which climbed considerably in the wake of the Gaza War--and its desire to respond to the Palestinian demand for basic human dignity in the face of decades of occupation that requires any government that wishes to address the Israeli-Palestinian conflict in good faith to take Hamas seriously as an interlocutor with a significant constituency that may even make up a majority of the Palestinians at present.[9] Despite the actions of Hamas on 7 October, it is conceivable that such a group may become a recognized dialogue partner in a successful peace initiative in the not too distant future, as was the case with the IRA in the Northern Ireland peace process.

17. Its grassroots popularity should not be viewed as a consequence of antisemitism. It is a consequence of the apartheid reality that the Palestinians have been living for many years at this point. This fact, recognized for years by human rights organizations, including Israeli ones, has finally been granted recognition by the International Court of Justice and forms binding international law for all the world's states, including the UK.[10] The legal fact of apartheid offers the clearest context in which to understand the behaviour of a group like Hamas on 7 October 2023. The statements of the recently assassinated former heads of Hamas, Ismail Haniyeh and

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[7] Ilana Feldman "Gaza as an Open-Air Prison," *Middle East Report* 275 (Summer 2015).

[8] VICE News. "How Hamas' Leader in Gaza Reacted to the Ceasefire," 2 June 2021. https://www.youtube.com/watch?v=1Px6AyVjw2A.

[9] Itay Stern, "A Pollster Sheds Light on Palestinian Attitudes Toward the U.S., Israel and Hamas," *NPR*, 26 July 2024, https://www.npr.org/2024/07/26/g-s1-12949/khalil-shikaki-palestinian-polling-israel-gaza-hamas.

[10] This includes the organizations: Yesh Din, B'Tselem, Human Rights Watch, and Amnesty International among other groups, such as South Africa's largest political party, the African National Congress (ANC).

Yahya Sinwar, make clear that 7 October attacks were ultimately concerned with the cause of Palestinian liberation. Western peace initiatives have been viewed as in no way mitigating the harsh realities of apartheid in the occupied Palestinian territories.

18. Hamas differs from other groups designated as terrorist by the UK government, such as ISIS and Al-Qaeda, due to the latters' widespread rejection by Muslims both in their locales and in the wider Muslim world. While the latter groups may claim a right based on their fight against colonial occupation, they do not have the grassroots popularity, nor the long-suffering grassroots social welfare contributions that have helped a group like Hamas develop a keen sense of the demands of the Gazans whom they have governed for so long. Hamas has never been accused of attacking any state aside from the state that is recognized under international law as illegally occupying the Palestinian territories.

19. In the Palestinian context of abandonment and systemic oppression, Hamas must be understood as a rational actor operating within the constraints of an inequitable system. Its governance in Gaza, despite being shaped by the extreme pressures of blockade and war, reflects a commitment to addressing the basic needs of its constituency. Hamas's provision of social services and resistance to Israeli occupation distinguish it from transnational terrorist groups such as ISIS or Al-Qaeda. Unlike these entities, Hamas's focus is rooted in the specific goal of ending Israel's illegal occupation, a struggle recognized under international law as legitimate.

20. The historical parallels with other liberation movements, such as the ANC in South Africa or the IRA in Northern Ireland, further underscore the potential for Hamas to transition into a recognized political actor. In both cases, engagement with groups initially labelled as terrorist organizations paved the way for peace processes that addressed the grievances driving conflict. Hamas's willingness to negotiate, as demonstrated in its acceptance, in its revised 2017 Charter, of a Palestinian state within the 1967 borders, highlights its pragmatic approach and capacity for dialogue.

E. WESTERN AND ARAB STATES

21. A major driver for the 7 October attacks was the so-called Abraham Accords, a series of normalization treaties between several Arab states and Israel.[11] The Accords, signed in 2020, marked a significant shift in the regional dynamics of the Middle East. These agreements, brokered by the first Trump administration, normalized relations between Israel and several Arab states, including the UAE and Bahrain. While presented as a step toward regional peace, the Accords have had unintended and deleterious consequences, contributing to the escalation of violence and the deepening of existing political divides. By prioritizing normalization with Israel over the resolution of the Palestinian question, the Abraham Accords effectively sidelined the Palestinian Authority and further undermined its legitimacy in the eyes of many

[11] I draw in this section on the most detailed scholarly analysis of the Accords to date: Elham Fakhro, *The Abraham Accords: Normalization and the Reshaping of the Middle East* (Columbia University Press, 2024).

Palestinians. The Accords were perceived as a betrayal by the Arab states. They served to further marginalize the Palestinians, who had already been living under occupation for over fifty years, and diminishing their leverage in any future negotiations at no cost to their illegal Israeli occupiers.

22. Historically, Arab states deliberately maintained no relations with Israel as long as it did not recognize a Palestinian state. However, in recent years, with the emergence of a new generation of Arab monarchs, particularly in the Gulf states, attitudes began to change dramatically.[12] The 2011 Arab revolutions brought Israeli security institutions into close alignment with several Arab monarchies and dictatorships. These Arab states were very concerned about the threat their populations posed to their autocratic grip on power and consequently drew on Israeli intelligence and spyware tools sold to them as a means of policing their disenfranchised populations.[13]

23. The most notable player in this regard was the United Arab Emirates (UAE). Under the Trump presidency, the UAE was the first to accept normalization with Israel, formalizing its relationship publicly in the Abraham Accords. Though these have been dubbed as peace treaties, the states with which they have been signed have never been at war with Israel. Aside from the UAE, Bahrain, Sudan, and Morocco have all normalized relations with Israel. The greatest prize in Israeli normalization is viewed as Saudi Arabia, one of the largest states in the Arab world in terms of population and economic output. Saudi Arabia's unrealized yet still possible normalization was perceived as potentially threatening the very existence of the Palestinian issue. Supporters of Palestine have vehemently critiqued the Abraham Accords in public fora, seeing them as the last nail in the coffin of the Palestinian cause.

24. The Abraham Accords also emboldened the Israeli government, signaling that notwithstanding countless infractions against international law, Israel could secure normalization without making any concessions to the Palestinians. The Accords, in effect, legitimized the status quo of occupation and weakened the international pressure on Israel to engage in meaningful peace talks. This, in turn, fueled a sense of despair and hopelessness among Palestinians, particularly in the besieged Gaza Strip, where they already faced dire humanitarian conditions.

25. The events of 7 October 2023, cannot be viewed in isolation from this broader context of shifts in policy and attitudes among the region's (undemocratic) rulers. The Abraham Accords, while ostensibly intended to promote peace, in fact contributed to the escalation of violence by further undermining the powerless Palestinian political class, emboldening the Israeli government, and deepening the sense of despair among millions of Palestinians.

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[12] On the new generation of Arab leaders, see: Elham Fakhro, *The Abraham Accords: Normalization and the Reshaping of the Middle East* (Columbia University Press, 2024), esp. Chapter 2.

[13] For an example of this, see: Rori Donaghy, "Falcon Eye: The Israeli-installed Mass Civil Surveillance System of Abu Dhabi," Middle East Eye, 15 July 2015, https://www.middleeasteye.net/news/falcon-eye-israeli-installed-mass-civil-surveillance-system-abu-dhabi.

26. The Abraham Accords thus represent a fundamental mistake if they are to be understood as an effort to resolve the Israeli-Palestinian conflict, given that they circumvent the core issue of Palestinian self-determination and implicitly legitimate Israel's victimization of the Palestinian people. These agreements normalize Israel's relationships with several Arab states while tacitly accepting the continuation of its occupation and annexation policies. By excluding the Palestinians from negotiations, the Accords render their plight invisible on the global stage, undermining the principles of equity and justice that underpin any sustainable peace. Such exclusion not only ignores the right to self-determination but also violates the collective commitment enshrined in the UN Charter and international legal instruments.

27. In effect, the Accords have emboldened Israel to deepen its apartheid practices, further entrenching an illegal occupation condemned by the ICJ in its 19 July 2024 Advisory Opinion. Rather than promoting peace, these agreements have exacerbated tensions, alienating the Palestinians while stoking resentment across the Arab world. The complicity of neighbouring Arab states in perpetuating Palestinian suffering bears serious reflection. Their rhetoric of solidarity with the Palestinian cause rings hollow when contrasted with their actions.

28. Wealthy Gulf states, for example, have demonstrated their reluctance to use their economic leverage to challenge Israel's apartheid policies. Indeed, their support for the Abraham Accords shows their active disinterest in upholding international law as it applies to the Palestinians. Egypt, meanwhile, plays a pivotal role in enforcing the blockade of Gaza despite the ongoing genocide, restricting access to the Rafah border crossing and contributing to the humanitarian crisis in the territory. By aligning their policies with Israeli security objectives, these Arab states prioritize their geopolitical interests over the fundamental rights of Palestinians. These failures highlight a broader trend of regional disengagement from the Palestinian struggle, further isolating the Palestinians and undermining collective resistance to occupation.

F. UNDERSTANDING 7 OCTOBER

29. It is in this context that we must understand the 7 October attacks. The Palestinian issue was at the heart of this attack. Despite the likely war crimes perpetrated during the attack and the exponentially greater number of war crimes perpetrated against the Palestinians in response by the Israeli state over the last 15 months, there is no question that the Palestinian issue has been definitively put back on the map. The Israeli occupation of Palestinian territories has never been more severely delegitimized in the international arena as it has been by the genocide of the past year. The attacks of 7 October were calculated, according to the testimony of Hamas' own leaders, to revive the dying embers of the Palestinian cause.

30. The late head of the Hamas' political wing, Ismail Haniyeh, articulated this in January 2024 in a lengthy speech in Doha.[14] Haniyeh argued that three key developments led to the 7 October offensive:

a. **The global marginalization of the Palestinian cause:** The international community, including those involved in creating international policy, had largely stopped prioritizing the Palestinian issue. This is evidenced by the lack of international conferences and resolutions, and a decline in discussion about the two-state solution. Haniyeh suggested that the world was beginning to view the Palestinian issue as an internal Israeli matter.
b. **The rise of an extremist Israeli government:** Haniyeh characterized the incumbent Israeli government as religiously and nationally extremist, prioritizing control over Jerusalem and Al-Aqsa Mosque, the expansion of settlements in the West Bank, and maintaining the blockade of Gaza. He asserted that this government reflected a broader trend of religious and national extremism within Israeli society.
c. **Regional betrayal via normalization:** Haniyeh criticized the normalization of relations between Israel and several Arab states, viewing it as a betrayal of the Palestinian cause. He argued that this normalization accepts Israel as a legitimate state at the expense of Palestinian rights and aspirations. He called this a move towards "regional peace" built upon the denial of Palestinian rights.

31. In his extensive piece on the 7 October attack and Israel's deadly response, American investigative journalist, Jeremy Scahill, argues emphatically that the Palestinian cause has been turned into a global cause célèbres. Scahill states:

Israel's genocidal war in Gaza [has] spurred an unprecedented global awakening to the plight of the Palestinian people. At no point in the 76 years since the formation of the state of Israel and the unleashing of the Nakba has there been such sustained and open anger at Israel and such widespread solidarity with the Palestinians. The massive demonstrations in cities across the globe, the severing of diplomatic relations with Tel Aviv, the recalling of ambassadors, rulings from world courts against Israel, and mounting demands for the establishment of an independent Palestinian state – none of this would have taken place without the impetus of Hamas's armed insurrection on October 7 and Israel's subsequent war of annihilation in Gaza.[15]

32. While the strategy and tactics employed by Hamas in perpetrating the 7 October attacks have been condemned even by supporters of Hamas, it is difficult to question the efficacy of these attacks in bringing the Palestinian issue to light after its death knell could be heard. The Palestinian issue has been brought back to newscasts on a regular basis. Israel's genocidal war against the Palestinians has also significantly undermined Israel's claims to moral authority on the international stage. In addition,

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[14] For the full speech, see: https://www.youtube.com/watch?v=LlmUxKx37c8. For an imperfect translation via Google Translate, see: https://docs.google.com/document/d/1aF1EXkzSW2VXa-D9DlWEwKqTsXdCCYCBJbF6LZwLNGA.

[15] Jeremy Scahill, "On the record with Hamas," *Drop Site News*, 9 July 2024, available at: https://www.dropsitenews.com/p/on-the-record-with-hamas.

it has undermined the moral standing of all vocal supporters of Israel around the globe.

33. This has arguably been a direct consequence of the mediatization of this conflict on social media. The unfiltered live streaming of this genocide, despite the efforts of both tech giants and legacy media institutions, has given rise to regular protests in Western capitals against what is widely seen as the systematic support rendered to Israel in perpetrating a genocide against the Palestinian people. The damage to the international standing of Western institutions has been significant. This loss of moral authority will have very significant ramifications.

G. WESTERN AND ISRAELI POLICY FAILURE

34. Another dimension of the present issue that must seriously be considered by the British government, given its own history, is the necessity of dialogue with those with whom one profoundly disagrees, even to the point that they are declared terrorists by the state. This was the case with the IRA. While the British state considered the IRA illegitimate for many years, peace was not realized until the government started to engage in good faith dialogue with the group, considering among other things, the grievances that had led them to engage in terrorist acts. This has been explicitly argued by Andrew Fitz-Gibbon in a monograph on the subject.[16]

35. Fitz-Gibbon argues that both Hamas and Israel have been engaged in acts that may legitimately be classified as terrorism according to "compelling evidence" provided by the United Nations Human Rights Council and Amnesty International. He argues that resolving entrenched conflicts like the one between Israel and Palestine requires the courage to engage in dialogue, even with those one may have labelled terrorists. The experience from Northern Ireland demonstrates, in his view, that long-term peace is achieved not by exclusion, but by inclusion, negotiation, and the pursuit of justice for all parties.[17]

36. The Israeli blockade, in place since 2007, has turned the Gaza Strip into what many observers refer to as an "open-air concentration camp." This crippling siege has severely restricted the movement of people and goods, leading to widespread poverty, unemployment, and food insecurity. Already in 2018, the United Nations was warning that Gaza is on the verge of becoming uninhabitable due to the deteriorating humanitarian conditions.[18] As Sara Roy, a leading scholar on the Gaza Strip, has argued, the blockade is a deliberate policy of "de-development," designed

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[16] See Andrew Fitz-Gibbon, *Talking to Terrorists, Non-Violence, and Counter-Terrorism: Lessons for Gaza from Northern Ireland*, (Palgrave Macmillan, 2016).

[17] Ibid., 24.

[18] Christopher Heaney, "Gaza 'Unliveable', UN Special Rapporteur for the Situation of Human Rights in the OPT Tells Third Committee - Press Release (Excerpts) - Question of Palestine," Question of Palestine, July 22, 2020, https://www.un.org/unispal/document/gaza-unliveable-un-special-rapporteur-for-the-situation-of-human-rights-in-the-opt-tells-third-committee-press-release-excerpts/.

to render Gaza economically and socially unsustainable.[19] The war of the past two years has undoubtedly realized these fears.

37. Western powers, led by the United States, have for decades publicly expressed support for the two-state solution, while in practice allowing Israel virtually free reign in illegally occupying the Palestinian territories that are meant to form the basis of a Palestinian state. This has contributed to the gradual de facto colonization of Palestinian lands over the course of three quarters of a century. It seems unlikely, however, that forceful annexation of land will be accepted after the "age of decolonization" that characterized the latter half of the twentieth century. British support for such actions on the part of Israel is likely to result in serious damage to Britain's standing around the globe, and especially in the Global South.

38. The legal framework established by the ICJ's 19 July 2024 Advisory Opinion offers a compelling basis for reconsidering Hamas's designation as a terrorist organization. The Court's unequivocal censure of Israeli apartheid and occupation policies reaffirms the legitimacy of Palestinian resistance within the bounds of international law. Under the principle of self-determination, Hamas's actions—though controversial—can be contextualized as a response to decades of systemic oppression and dispossession.

39. Furthermore, the UK's Terrorism Act 2000 requires a proportional assessment of an organization's activities and objectives. In the case of Hamas, its focus on resisting an illegal occupation differentiates it from groups engaged in transnational terrorism. Historical precedents, such as the deproscription of the ANC and the People's Mojahedin Organization of Iran (MEK), illustrate the importance of adapting policy to evolving political realities. Recognizing Hamas as a legitimate actor would align with these precedents and facilitate dialogue critical to resolving the Israeli-Palestinian conflict.

H. EXPERT OBLIGATIONS

40. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

41. I understand that proceedings for contempt of court may be brought by anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

42. I confirm that I have not received any remuneration for preparing this report.

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[19] Sara M Roy, *The Gaza Strip: The Political Economy of De-Development*, Expanded Third Edition, (Institute for Palestine Studies, 2016); Roy, *Unsilencing Gaza.*



Dr Usaama al-Azami
Amsterdam
Netherlands
4 January 2025.

Written evidence submitted by Professor Jeroen Gunning, Dr Tristan Dunning, Dr Anas Iqtait, Dr Tareq Baconi, Dr Martin Kear, Prof Hamish Maxwell-Stewart, Dr Shannon Brincat and Dr Adel Yousif (MENA0070)

7 November 2023

Co-authors: Professor Jeroen Gunning (King's College London), Dr Tristan Dunning (University of Queensland), Dr Anas Iqtait (Australian National University), Dr Tareq Baconi (Al-Shabaka and Institute for Palestine Studies) and Dr Martin Kear (University of Sydney).
Co-signatories: Prof Hamish Maxwell-Stewart (University of New England), Dr Shannon Brincat (University of the Sunshine Coast) and Dr Adel Yousif (University of Tasmania).

Summary

This submission was written by a group of leading academic scholars on the Palestinian Islamist movement Hamas, Palestinian politics and the Israel-Palestine conflict more broadly, and co-signed by scholars writing on decolonisation, settler-colonialism or descended from colonially displaced Palestinians. It presents evidence of the effects of the international boycott, isolation and criminalisation of the entirety of Hamas and the likely damage to the UK's long-term interests in the Middle East and North Africa. It argues that the international community's dismissal of the political overtures of Hamas's political leadership since 2006, coupled to the lack of commitment to ending Gaza's siege and pushing for a political solution to the Israel-Palestine conflict, has helped to create the conditions for the horrific attacks of 7 October 2023. The designation of all of Hamas as terrorist by the UK and other Western governments has furthermore helped to create a permissive environment for Israel to target any building or person in Gaza, as many are connected to Hamas in one way or another as the de facto government, a major social welfare provider, and a social movement with grassroots support. This, coupled with the UK's continued support for the Israeli government, including the licensing of arms components used in the current bombardment, could make the UK complicit in war crimes committed during Israel's punitive war on Gaza, including potentially the charge of genocide.

The attacks and Israel's subsequent punitive war on Gaza, with apparent genocidal intent, highlights the urgency of not just a ceasefire but of resolving the underlying causes of the conflict, working towards ending Gaza's siege and creating a Palestinian state alongside Israel. We argue that, given its unique historic links, the UK can play a far more central and constructive role in these debates and any necessary action than it has hitherto. We argue that, rather than criminalising one side to the conflict, all parties should be subjected to international judicial investigations into whether war crimes and crimes against humanity have been committed. We argue that proscription of the entirety of Hamas has made the goal of establishing a Palestinian state harder by derailing the 2006 elections and weakening the pragmatic political leadership within Hamas; hindering past humanitarian efforts to ameliorate the dire humanitarian situation in Gaza resulting from the 16-year siege; making

reconciliation between Fatah and Hamas, crucial for progress towards a two-state solution, more difficult; and, indirectly, facilitating Israel's ongoing occupation by denying a political solution. We argue that continued proscription of Hamas in its entirety will hinder the urgent work of reconstruction and moving towards a two-state solution, if Hamas continues to exist (as we expect). It will work against the long-term interests of the UK in terms of its ability to constructively engage diplomatically in the Arab and Islamic world, particularly with countries – e.g., Qatar and Turkey – which have provided support to the Hamas-led government in Gaza. We argue that the proscription has little advantage for the UK itself and is unlikely to reduce antisemitism in the UK, which should instead be fought using the legal tools of hate crime and hate speech. We finally argue that the lack of transparency in the way the decision to proscribe all of Hamas was taken, coupled with the known biases of key Ministers towards Israel and the UK's use of the terrorism label to criminalise one party to the conflict while apparently not supporting international efforts at holding the other party to account, undermines the UK's international standing, particularly in the Middle East and North Africa (MENA), where the memory of the Balfour Declaration is still highly salient.

1. Introduction to the authors

1.1 This submission has been co-written by Professor Jeroen Gunning (King's College London), Dr Tristan Dunning (University of Queensland), Dr Anas Iqtait (Australian National University), Dr Tareq Baconi (Al-Shabaka and Institute for Palestine Studies) and Dr Martin Kear (University of Sydney). It has been co-signed by international scholars of decolonisation and settler colonialism and a scholar descended from colonially displaced Palestinians: Prof Hamish Maxwell-Stewart (University of New England), Dr Shannon Brincat (University of the Sunshine Coast) and Dr Adel Yousif (University of Tasmania). The content is based on our combined expertise, the breadth and depth of which is represented by the fact that we include the authors of four peer-reviewed books[1] and four PhDs[2] on Hamas, a PhD[3] and book on Palestinian political economy,[4] a former senior researcher for the International Crisis Group and a former employee of the United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories (OCHA). Four of the undersigned have taught courses on Middle East studies, terrorism studies, conflict resolution, and the Palestinian-Israeli conflict at UK and internationally renowned Universities (King's College London, Durham University, Aberystwyth University, the University of Queensland, the University of Sydney, and the Australian National University,

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[1] Gunning, J. 2006/7. Hamas in Politics: Democracy, Religion, Violence. New York: Columbia University Press/ Hurst; Dunning, T. 2016. Hamas, Jihad and Popular Legitimacy: Reinterpreting Resistance in Palestine. London: Routledge; Baconi, T. 2018. Hamas Contained: The Rise and Pacification of Palestinian Resistance. Stanford, California: Stanford University Press; Kear, M. 2018. Hamas and Palestine: The Contested Road to Statehood. Routledge.

[2] Dunning, Durham University, 2000; Dunning, The University of Queensland, 2013; Baconi, King's College, London 2014; Kear, The University of Sydney 2017.

[3] Iqtait, A. 2020. The Political Economy of Rentierism of the Palestinian Authority. Unpublished PhD Thesis. The Australian National University.

[4] Iqtait, A. 2023. Funding Palestine: Rents and the Quest for Sovereignty. New York: Palgrave Macmillan.

among others). Collectively, we have advised and taught policy makers and public servants from the US, the UK, the EU, Canada, Bangladesh, and Australia in the fields of terrorism, Middle East studies, governance, and the Palestinian-Israeli conflict.

2. Introduction and Context to Escalation in Violence

2.1 In November 2022, the UK government announced its intention to designate the entirety of Hamas, the Islamic Resistance Movement in Palestine, as a terrorist organisation, following a recommendation from the cross-government Proscription Review Group. This is in line with similar moves by the governments of the United States, Australia, Canada and the European Union. Until 2022, the UK had only designated the movement's armed wing, the Izz ad-Din al-Qassam Brigades, as a terrorist organisation, marking a clear separation between the movement's armed and socio-political wings. The Qassam Brigades have been listed as a terrorist organisation in the UK since 2001.[5]

2.2 The international boycott of Gaza has its origins in the economic sanctions imposed on the Palestinian National Authority and members of the Palestinian Legislative Council in the wake of Hamas's internationally recognised election victory in 2006. Following Hamas's victory in the elections, which international observers deemed broadly free and fair,[6] the International Quartet, consisting of the United Nations, the United States, the European Union, and the Russian Federation, imposed a boycott of the new Hamas-led administration unless it recognised Israel, renounced violence, and abided by previous diplomatic agreements between the Palestine Liberation Organisation – of which Hamas is not a part – and the Israeli government.[7] A more permanent siege of Gaza was imposed in response to Hamas's violent ousting of Fatah from Gaza in 2007, in response to intelligence that Fatah was preparing a coup against it.[8] The UK government has long criticised the continuation of the siege and urged successive Israeli governments to ease the siege. But these efforts have not been effective in ending the siege.

2.3 Attempts by Palestinian factions, violent as well as non-violent, have similarly been unable to end the siege. The current horrendous escalation in fighting has been directly linked to continuing Israeli occupation by Hamas leaders – both the occupation of

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[5] Home Office. 2021. Home Secretary to ban Hamas from UK. 19 November.

[6] E.g., Pina, A. 2006. Palestinian Elections. CRS Report for Congress RL33269. 9 February. Washington, DC: Congressional Research Service; The Carter Center. 2006. Preliminary Statement of the NDI/Carter Center International Observer Delegation to the Palestinian Legislative Council Elections. 25 January. January 25.

[7] Morris, H. 2006. Quartet gathers amid mounting pressure on Hamas. Financial Times, 30 January.

[8] See Rose, D. 2008. The Gaza Bombshell. Vanity Fair. April; Steel, J. 2007. Hamas acted on a very real fear of a US- sponsored coup. The Guardian. 22 June.

Palestinian lands more broadly and the siege of Gaza itself.[9] Mohammad Deif, head of the Qassam Brigades, said in an audio message: "This is the day of the greatest battle to end the last occupation on Earth" and, in a statement, he listed the crimes committed by the "Zionist colonial occupation", blaming the escalation on Israeli and world leaders not heeding Palestinian demands over decades.[10] The attack, he said, "was in response to the 16-year siege of Gaza", in addition to "Israeli raids inside West Bank cities over the past year, violence at Al Aqsa... increasing attacks by settlers on Palestinians and the growth of settlements".[11] Ending the siege was also a prime motive during the 2012 and 2014 wars, among others.[12] Other Arab governments, including those of Saudi Arabia, Qatar and Kuwait, have, after condemning the targeting of civilians, similarly linked Hamas's recent attacks to the ongoing occupation, with Saudi Arabia stating that it "had issued repeated warnings of a possible escalation in light of "the ongoing occupation and the deprivation of the Palestinian people of their legitimate rights, as well as the repeated deliberate provocations against their sanctities" and specifically "denounced Israel's siege [of Gaza]".[13]

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[9] The following analysis of what may have motivated the Qassam Brigades to carry out the type of unprecedented violence witnessed on 7 October has to remain speculative at this stage, as much remains unknown and new factors will inevitably come to light. However, we have identified at least three clusters of factors that appear to have played a key role, based on statements by Hamas and Qassam Brigades leaders and on an analysis of the local, regional and international political opportunity structure facing Hamas at this time. For a more in-depth analysis, see Inside Hamas: Between Politics and Violence. Arif Rafiq podcast with Jeroen Gunning. Globely News. https://globelynews.com/middle-east/hamas-israel-war- podcast/.

[10] Israel retaliation kills 230 Palestinians after Hamas Operation. Aljazeera. 7 October 2023; Statement by Hamas's Al- Qassam Brigades top military commander. Middle East Monitor. 7 October 2023.

[11] Franks, J. 2023. Who is Mohammed Deif? The shadowy Hamas commander known as 'The Guest'. Sky News. 10 October. https://news.sky.com/story/who-is-mohammed-deif-the-shadowy-hamas-commander-known-as-the-guest-12981449

[12] Kirkpatrick, D. and Rudoren, J. 2012. Israel and Hamas Agree to a Cease-Fire, After a U.S.-Egypt Push. New York Times. 21 November; Hamas rejects Gaza truce unless blockade ends. Aljazeera. 24 July 2014; Gunning, J. 2014. What drove Hamas to take on Israel? BBC News. 18 July.

[13] How did Arab states react to Hamas operation against Israel? The New Arab. 7 October 2023; Kelly, K. et al. 2023. Saudi Arabia Warns U.S.: Israeli Invasion of Gaza Could Be Catastrophic. The New York Times. 27 October. https://www.nytimes.com/2023/10/27/world/middleeast/saudi-arabia-israel-us-invasion.html

2.4 The reach and brutality of the Qassam Brigades' attacks[14] appear to be linked both to the failure of the past wars to end the siege and to the failure of political initiatives to do so since 2006. Between 2004 and 2007, there was a brief window when Hamas was encouraged by key international actors, including the UK, to participate in the forthcoming Presidential, parliamentary, and municipal elections that were a key demand of the Quartet's 2003 Roadmap to Peace.[15] In response to this demand, in 2005, Hamas and the other Palestinian factions signed the Cairo Declaration in which they signalled their willingness to abide by democratic processes and contest elections to achieve political power.[16] This led to Hamas contesting both municipal and parliamentary elections in 2005/2006, winning the parliamentary elections and securing majorities in many local councils throughout the OPT. In 2007, in response to increasing inter-factional violence, encouraged by the then governments of the US, Israel and other key Western actors, Hamas signed the Mecca Agreement that saw the establishment of a unity government between Hamas and Fatah.[17] It was in this Agreement where Hamas first publicly made key ideological concessions by acknowledging the existence of the state of Israel, respecting the primacy of the two-state solution, and respecting the various agreements signed by the PLO that included the previously reviled Oslo Accords. It was in the aftermath of this agreement that the governments of Israel and the US ramped up their efforts to excise Hamas from Palestinian politics, resulting in increased inter-factional violence that eventually led to the violent expulsion of Fatah from the Gaza Strip and Hamas assuming unilateral control in June 2007.[18] In the opinion of former UN Special Co-ordinator of the Middle East Peace Process,

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[14] There are contending views on what happened and what was intended. Hamas leaders have asserted repeatedly that the Qassam leadership had instructed its fighters not to target women, children and the elderly. However, we are basing our assumption that Qassam fighters were instructed to kill civilians on the video footage from the bodycams of Qassam fighters and security camera or other footage that appears to have been verified, plus reports of what captured fighters reputedly told their Israeli captors. More details may emerge that will contradict this assumption, for instance, that what was reported turns out to have been false information or reports that the Israeli army used what is known as the Hannibal Directive, which originally instructed soldiers to prevent Israeli soldiers from being kidnapped by killing them; in this case, the accusation is that Israeli forces killed Israeli civilians in their attack on Qassam fighters. But for now, we are working on the basis of the information we have. See e.g., Kilani, F. 2023. Hamas leader refuses to acknowledge killing of civilians in Israel. BBC. 7 November. https://www.bbc.co.uk/news/world-middle-east-67321241; Al Ahmad, Y. 2023. Hamas denies it killed children in fight with Israel. Anadolu Ajansı. 11 October. https://www.aa.com.tr/en/middle-east/hamas-denies-it- killed-children-in-fight-with-israel/3015680; Burke, J. 2023. A deadly cascade: how secret Hamas attack orders were passed down at last minute. The Guardian. 7 November. https://www.theguardian.com/world/2023/nov/07/secret-hamas-attack- orders-israel-gaza-7-october; Israel/Palestine: Videos of Hamas-Led Attacks Verified. Human Rights Watch. 18 October 2023. https://www.hrw.org/news/2023/10/18/israel/palestine-videos-hamas-led-attacks-verified; Salvatori, P. 2023. 'Hannibal Directive': Did Israel kill its own? TRT World. 27 October. https://www.trtworld.com/middle-east/hannibal-directive-did-israel-kill-its-own-15574953.

[15] United Nations. 2003. A performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict. 7 May. https://www.un.org/unispal/document/auto-insert-186742/.

[16] Economic Cooperation Foundation. 2005. Cairo Declaration. 17 March. https://ecf.org.il/media_items/1202.

[17] Economic Cooperation Foundation. 2007. Mecca Agreement. 8 February. https://ecf.org.il/media_items/1197.

[18] Goldenberg, S. 2008. US plotted to overthrow Hamas after election victory. The Guardian. 4 March. https://www.theguardian.com/world/2008/mar/04/usa.israelandthepalestinians#:~:text=The%20plan%20called%20for%20Washington%27s,the%20administration%2C%20the%20magazine%20reports; Judis, J. 2013. Clueless in Gaza: New evidence that Bush undermined a two-state solution. The New Republic. 19 February. https://newrepublic.com/article/112456/george-w-bushs-secret-war-against-hamas.

Álvaro de Soto, a Palestinian unity government could have been formed immediately after the January 2006 elections, if the US government (and others) had adopted a more conciliatory approach towards Hamas, preventing a year of debilitating inter-factional violence.[19] This is a clear indication of the benefits that can come from engaging with Hamas politically, instead of isolating it with the blanket label of "terrorist group", which has also served to push the movement further into the orbit of other states opposed to Israel, primarily Iran. To be clear, engaging with Hamas at whatever level should not be equated with approving of Hamas and its political and military objectives. It is simply a statement of the political and diplomatic benefits to be had of retaining the opportunity for dialogue that the proscription of Hamas in its entirety by the UK government would preclude. Such a position would not be without precedence, with previous UK governments negotiating at various times with Sinn Fein while continuing to classify the IRA as a terrorist movement.

2.5 Despite the ongoing siege of Gaza and the several wars fought between Hamas and the Israel Defense Forces (IDF), Hamas's political leadership has continued to see the benefits of seeking political engagement for most of this period, even though the hardliners within the Qassam Brigades at times scuppered these overtures. In the lead-up to the 2014 war, Hamas and Fatah formed a reconciliation government, with a cabinet devoid of Hamas- aligned politicians and accepting the aforementioned provisions, yet the boycott and siege remained. Indeed, there is research to suggest that one of Israel's aims of this war was to prevent any reconciliation between Hamas and Fatah, thereby preventing any hope of the appearance of Palestinians speaking with one political voice.[20] In 2017, Hamas issued a new Manifesto which made important ideological concessions towards accepting a two-state solution and de facto recognised Israel by accepting a Palestinian state along the 1967 borders as a national consensus position. It also agreed to pro-Fatah security forces taking over control of Gaza's border with Egypt, which was a significant concession.[21] Between March 2018 and December 2019, Gazans engaged in "The Great March of Return", which had been planned as non-violent protests by independent activists but was soon endorsed by Hamas and other factions. Although the protests became more violent over time, the bulk of the protesters remained non-violent, despite Israeli soldiers deploying deadly violence from the start.[22] Yet none of these political initiatives led to an end to the siege. Importantly, the international community's refusal to take them seriously and instead support the maintenance of a status quo that sees Palestinians increasingly marginalised and repressed while promoting regional normalisation without insisting on any reciprocal moves towards establishing a Palestinian state have been key factors in weakening Hamas's pragmatist political leadership, allowing the hardliners in the Qassam Brigades to gain the upper hand.

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[19] De Soto, Á. 2007. End of Mission Report – May 2007. The Guardian. http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/12/DeSotoReport.pdf

[20] See Kear. Hamas and Palestine. Pp. 193-198.

[21] Hamas, Fatah sign reconciliation agreement in Cairo. Aljazeera. 12 October 2017.

[22] According to B'Tselem's database, of the 223 killed, 56 "took part in hostilities", 30 of those "torched tires and threw stones"; B'Tselem. n.d. Fatalities: List and Figures: Main Data: Palestinians killed by Israeli forces. https://statistics.btselem.org/en/all-fatalities/by-date-of-incident?section=overall&tab=overview. See also Pace, M., Shehada, M., and Abu Mustafa, Z. 2021. Interpolating Gazans' non-violence: Responsibilities in the academy and the media. Partecipazione e Conflitto, 14(2): 584-603.

2.6 Two further factors, which have been explicitly mentioned in Hamas and Qassam Brigades leaders' statements, concern the increase in violence in the West Bank in the context of increasingly vocal calls by Israeli ministers for annexation of the West Bank, and regional normalisation agreements. Together, these trends made establishing a Palestinian state increasingly less likely, and the Qassam Brigades appear to have concluded that a spectacular attack was needed to derail annexation of the West Bank as well as regional normalisation before it was too late. Between January and early October 2023, over 230 Palestinians had been killed in the West Bank by Israeli forces and settler attacks on Palestinians had doubled to over 1,148 during the first half of the year, roughly equal to the total number of attacks in 2022.[23] Several ministers in Netanyahu's government, the most right-wing in Israel's history, have openly called for annexation of the West Bank,[24] and Israeli settlers have increased their attempts at entering the Al-Aqsa Mosque complex as part of their attempts to reclaim the Temple Mount.[25] Public support for a return to an armed uprising in the West Bank has moreover increased by 19%, from 35% to 54%, in the West Bank over the past year. The Qassam Brigades' attack was directly linked to spurring an uprising in the West Bank, and in doing so, reclaiming undisputed leadership of the Palestinian resistance. Saleh al-Aruri, deputy leader of Hamas's Political Bureau and exiled leader of Hamas in the West Bank, stated specifically: "We must all fight this battle, especially the resistance fighters in the West Bank... The West Bank is the final word in this battle, and it can open a clash with all the settlements in the West Bank. We call on our people to participate in the battle of Al-Aqsa Flood."[26] Without the West Bank, only 1% of historic British Mandate Palestine would be left to Palestinians, namely the Gaza Strip.

2.7 The spread of regional normalisation agreements between Israel and various Arab states over the past few years appear to have been another factor in the Qassam Brigades' reasoning. Egypt and Jordan had already signed peace treaties decades ago. But in 2020-2021, the UAE, Bahrain, Morocco and Sudan all signed normalisation agreements with Israel and Saudi Arabia was openly rumoured to be next. Although the Saudi government's support for a Palestinian state has been mostly rhetorical for over a decade, its signing a normalisation agreement with Israel without there being a Palestinian state would effectively have put an end to the possibility of a Palestine state and consign the Palestinian cause to the dustbin of history. This, combined with the increasing threat of annexation of the West Bank and the ongoing siege of Gaza, with no end in sight, appears to have been interpreted by the Qassam Brigades as requiring a spectacular and shocking attack, both in terms of the number of Israelis killed and in terms of the symbolism of the attack, breaking out of the prison that is Gaza and taking the fight to Israel itself. Ismail Haniyyeh, the head

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[23] Husseini, M. 2023. Why Gaza's attack on Israel was no surprise. Middle East Eye. 8 October. https://www.middleeasteye.net/opinion/why-gaza-attack-israel-was-no-surprise. See also: At HRC: Euro-Med Monitor warns of sharp rise in Israeli settler violence. EuroMed Human Rights Monitor. 5 October 2023. https://euromedmonitor.org/en/article/5836/At-HRC:-Euro-Med-Monitor-warns-of-sharp-rise-in-Israeli-settler-violence; Data on casualties. OCHA. n.d. https://www.ochaopt.org/data/casualties.

[24] 'This place is ours': Israeli minister calls for annexation of West Bank. The New Arab. 3 August 2023.

[25] Israeli settlers storm Al-Aqsa Mosque complex on fifth day of Sukkot. Aljazeera. 4 October 2023.

[26] Hamas Declares Start of Military Operation Against Israel. Fars News Agency. 7 October 2023.

of Hamas's Political Bureau, specifically linked the Qassam Brigades' having attacked Israelis in Israel to the normalisation accords, noting both that Israel "cannot protect itself in the face of resistors, cannot provide you with any protection" and that "all the normalization agreements that you signed with that entity cannot resolve this conflict".[27] The attacks were thus intended to show Israel, the US and the region that Israel could not continue with the status quo without paying a serious price. As Tareq Baconi put it in an interview with The New Yorker, "we're actually in a new paradigm, in which Hamas's attacks are not restricted to renegotiating a new reality in the Gaza Strip, but, rather, are capable of fundamentally undermining Israel's belief that it can maintain a regime of apartheid against Palestinians, interminably, with no cost to its population".[28]

2.8 The latest escalation of severe violence has seen over 10,000 Palestinians, including over 4,000 children, and 1,400 Israelis killed, the majority civilians on both sides.[29] This clearly shows that the status quo is untenable, and that deterrence, sieges, and political isolation do not work. Hamas's attacks on Israeli civilians and kidnapping civilians are clear violations of international humanitarian law and Hamas should be held accountable by international judicial investigations. But labelling it all a terrorist organisation, while not dealing with the underlying causes of the conflict and failing to hold the Israeli government and armed forces to account for equally clear violations of international humanitarian law, only exacerbates the situation. Isolating Hamas without addressing the siege, the humanitarian crisis in the OPT, the ongoing violence in the West Bank, threats to the al-Aqsa Mosque, and Palestinian statehood, have created the conditions for the unprecedented violence that we have seen over the past weeks. Indeed, there is clear evidence to suggest that such blanket classifications only exacerbate the commission of violence. For decades, the Israeli government has classified all of Hamas as a terrorist organisation. This provides Israel with the excuse to target both military and non-military targets in the Gaza Strip, all under the guise of them being legitimate targets. As various reports from the UN and other independent agencies have noted in the five wars that Israel has fought with Hamas, Israel has regularly targeted schools, houses, factories, medical facilities (including hospitals), administrative buildings, water and sanitation infrastructure, as well as government buildings. These Reports concluded that this destruction was part of Israel's policy of collective punishment of Gazans for their continued support for Hamas.[30] Should the UK government continue to recognise all of Hamas as a terrorist organisation it would open the government up to allegations that it condoned and/or even encouraged these clear violations of international law concerning the deliberate targeting of non-military targets by Israel.

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[27] Parasiliti, A. 2023. Israel-Saudi normalization falls casualty of Hamas attack. Al-Monitor. 8 October. https://www.al-monitor.com/originals/2023/10/israel-saudi-normalization-falls-casualty-hamas-attack

[28] Chotiner, I. 2023. Where the Palestinian Political Project Goes from Here. The New Yorker. 11 October. https://www.newyorker.com/news/q-and-a/where-the-palestinian-political-project-goes-from-here.

[29] Israel-Hamas war live news: Israeli attacks kill over 10,000 people in Gaza. Aljazeera. 6 Nov 2023. https://www.aljazeera.com/news/liveblog/2023/11/6/israel-hamas-live-news-communications-blackout-across-gaza.

[30] For example, see: Human Rights in Palestine and Other Arab Occupied Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict. United Nations Human Rights Council. A/HRC/12/48. 25 September 2009. http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf.

2.9 The current escalation has created a diplomatic crisis. To date, the governments of Jordan, Turkey, South Africa, Chad, Honduras, Bahrain, Bolivia, Colombia, and Chile have all withdrawn their ambassadors from Israel in response to the increasing Palestinian death toll. With Israel becoming increasingly isolated diplomatically, it is more important than ever that the UK government plays a key diplomatic role in seeking to resolve the conflict and prevent the deaths of more Palestinians. This would only be enhanced if the government retained open lines of communication with both the Israeli government and Palestinian representative figures that should include those of Hamas – even more so since the President of the PA, Mahmoud Abbas, is increasingly seen by domestic, regional, and international actors as a marginal figure with little public support amongst Palestinians and key regional actors, and, Drs Anas Iqtait and Tristan Dunning argue, the PA itself may be significantly weakened by the current conflict.[31] Indeed, amongst an increasing number of Palestinians Abbas and Fatah are seen as complicit in maintaining Israel's occupation through its ongoing security cooperation, which has been on stark display these past weeks as PA security forces have clamped down harshly on protesters showing solidarity with Gaza.[32] And as former Labour Prime Minister Tony Blair, and later envoy for the Middle East Quartet, retrospectively conceded, he and other world leaders were wrong to boycott Hamas after its election win in 2006.[33]

2.9 The current escalation has also had regional repercussions. The Saudi-Israeli normalisation talks have been put on hold, and Crown Prince Mohammed bin Salman made his first phone call to President Ebrahim Raisi of Iran, following their earlier rapprochement under the aegis of China, to discuss "the need to end war crimes against Palestine".[34] Jordan has seen large demonstrations in front of the US and Israeli embassies, with King Abdullah stating that there will be no regional stability without a Palestinian state. Both the Jordanian and the Egyptian governments are afraid of the possibility of Palestinian refugees entering their countries.[35] The dramatic incursion into Israeli territory also punctures the myth of Israeli military invulnerability on their "home turf", of which other actors in the region, like

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[31] Iqtait, A. and Dunning, T. 2023. The Palestinian Authority Might Not Survive the Israel-Hamas War. World Politics Review. 23 October 2023. https://www.worldpoliticsreview.com/israel-hamas-palestinian-authority/?loggedin=1.

[32] Al Tahhan, Z. 2023. Palestinian Authority cracks down on protests over Israel Gaza attacks. 18 October. https://www.aljazeera.com/news/2023/10/18/palestinian-authority-cracks-down-on-protests-over-israel-gaza-attacks.

[33] Macintyre, D. 2017. Tony Blair: 'We were wrong to boycott Hamas after its election win'. The Guardian. 15 October. https://www.theguardian.com/world/2017/oct/14/tony-blair-hamas-gaza-boycott-wrong.

[34] Saudi Arabia pauses normalisation talks with Israel amid ongoing war with Hamas. France24. 14 October 2023. https://www.france24.com/en/middle-east/20231014-saudi-arabia-pauses-normalisation-talks-with-israel-amid-ongoing-war-with-hamas; Iran's Raisi, Saudi Arabia's MBS discuss Israel-Hamas war. Aljazeera. 12 October 2023. https://www.aljazeera.com/news/2023/10/12/irans-raisi-saudi-arabias-mbs-discuss-israel-hamas-war.

[35] The Gaza War Reverberates Across the Middle East. The International Crisis Group. 4 November 2023. https://www.crisisgroup.org/middle-east-north-africa/east-mediterranean-mena/israelpalestine/gaza-war-reverberates-across; Al-Khalidi, S. 2023. Jordan's king says no stability in region without Palestinian state. Reuters. 11 October. https://www.reuters.com/world/middle-east/jordans-king-says-no-stability-region-without-palestinian-state-2023-10-11/.

Hizbullah, Syria and Iran, will take note – although, for now, Hizbullah has limited its violent exchanges with Israel.[36] Thus, more than ever, the current situation highlights the need for resolving the underlying causes of the conflict and reaching an all-encompassing solution centred on a two-state solution that must include Hamas and an end to the siege of Gaza. As former Conservative Prime Minister David Cameron said, already in 2010, "everybody knows that we are not going to sort out the problem of the Middle East peace process while there is, effectively, a giant open prison in Gaza".[37]

2.10 In this submission, we will address the following six points:

I) Importance of understanding the context of violence and approaching violence even-handedly
II) Potential impact of proscription on a political solution
III) Potential impact of proscription on Gazan population
IV) Potential impact of proscription on Palestinian Diaspora and medical, humanitarian and peacebuilding organisations in the UK
V) Lack of domestic benefits and potential cost to the United Kingdom of proscription
VI) Lack of transparency and fair representation in the process of proscription

3. Importance of understanding the context of violence and approaching violence even-handedly (I)

3.1 The current unprecedented escalation in violence on Hamas's part is horrific and amounts, at least on the available evidence, to war crimes.[38] The Qassam Brigades have committed atrocities throughout much of their history, most notably the explicit targeting of civilians, and the Hamas government in Gaza has committed many human rights violations against civilians. However, this violence must be understood within the context of an illegal fifty-six-year military colonial occupation of the OPT that has been condemned by dozens of legally binding UN Security Council Resolutions. Using the lens of 'terrorism' and proscribing Hamas as a terrorist organisation in its entirety obscures this context and criminalises only one party to the conflict. It obscures the fact that the IDF's violence against Palestinians, including the 1,000s of civilians killed over the years and in the last few weeks, has far outstripped Hamas's violence against Israelis and that the UK definition of terrorism would also apply to much of the IDF's violence against Palestinians, historically and in the

[36] Jalabi, R. 2023. Hizbollah leader says 'all possibilities' still open in hostilities with Israel. Financial Times. 3 November. https://www.ft.com/content/750f8602-3e80-4c02-a156-654e2fb10d08.

[37] Cameron. D. 2010. 28 June. G8 and G20 Summits [Hansard]. Vol. 513, col. 583.

[38] See footnote 14.

current conflict.[39] As Ursula von der Leyen said last year in the European Parliament with regard to Russian attacks on Ukraine: "Targeted attacks on civilian infrastructure with the clear aim to cut off men, women, children of water, electricity and heating with the winter coming, these are acts of pure terror and we have to call it as such". Similarly, regarding "Russia's targeted attacks against civilian infrastructure. ... The international order is very clear. These are war crimes."[40] The same applies to Israel. As the current war continues, numerous human rights organisations and media outlets have detailed the deliberate targeting of Palestinians civilians and civilian infrastructure that would, if proven, amount to incidents of war crimes, crimes against humanity, and ethnic cleansing.

3.2 Israel's settler-colonial activities in the occupied West Bank, with over 700,000 settlers living on land that would form part of the Palestinian state under a two-state solution,[41] are illegal under international law, which prohibits the capture of territory by force[42] and the transfer of civilians into occupied territory. United Nations Security Council 242, the basis for a two-state solution to the Palestine-Israel conflict, for instance, stipulates "the inadmissibility of the acquisition of territory by war" while demanding "Withdrawal of Israeli armed forces from territories occupied in the recent conflict" and "Termination of all claims or states of belligerency." Although this directive was issued in 1967, Israel continues to occupy the West Bank and East Jerusalem expanding its settlements in both territories and carrying out practices of de facto annexation of this territory. Despite withdrawing settlements from the Gaza Strip in 2005, Israel's ongoing siege of the enclave means that the UN still considers Gaza to be under Israeli occupation, with all of the rules and responsibilities attendant on occupying powers.[43] Israel's settler colonial activities are also arguably in breach of Article 49 of the Fourth Geneva Convention and the Rome Statute of

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[39] If action "(a)involves serious violence against a person, (b)involves serious damage to property, (c)endangers a person's life, other than that of the person committing the action, (d)creates a serious risk to the health or safety of the public or a section of the public, or (e)is designed seriously to interfere with or seriously to disrupt an electronic system" it is terrorism if "(a)the action falls within subsection (2) [the list above], (b)the use or threat [of this action] is designed to influence the government [F1or an international governmental organisation] or to intimidate the public or a section of the public, and(c)the use or threat is made for the purpose of advancing a political, religious [F2, racial] or ideological cause." Israeli actions have involved a, b, c and d and many have been carried out for the purposes of b and c. Terrorism Act 2000 (with later amendments from 2006 and 2008).

[40] Russian attacks on Ukraine infrastructure are war crimes - EU's von der Leyen. Reuters. 19 October 2022. https://www.reuters.com/world/europe/russian-attacks-ukraine-infrastructure-are-war-crimes-eus-von-der-leyen-2022-10-19/.

[41] United Nations Human Rights Council. 2022. Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967. 21 March. https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_87_AdvanceUneditedVersion.docx.

[42] See United Nations. 1967. Security Council Resolution 242: The Situation in the Middle East. https://peacemaker.un.org/middle-east-resolution242.

[43] anger, A. 2011. The Contemporary Law of Blockade and the Gaza Freedom Flotilla. In Yearbook of International Humanitarian Law - 2010. Vol. 13, ed. M. Schmitt, L. Arimatsu, T. McCormack. The Hague: T.M.C. Asser Instituut. p. 429; Scobbie, I. 2012. Gaza. In International Law and the Classification of Conflicts, ed. E. Wilmshurst. Oxford: Oxford University Press. p. 295.

the International Criminal Court.[44] Article 49 of the Fourth Geneva Convention states: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." Moreover, the current Israeli government has announced its explicit intention to and in all parts of the land of Israel" including "Judea and Samaria" – the biblical nomenclature for the West Bank.[45] The government has also transferred official responsibility of the West Bank from the military to a civilian ministerial portfolio, which has been described by Michael Sfard, an Israeli lawyer specializing in international human rights and humanitarian law, as the beginning of de jure annexation.[46] The increases in settler attacks, forced displacement of Palestinians and number of Palestinians killed in the West Bank, both leading up to October 7 and after, only underlines the severity of the situation. As of 6 November, at least 152 Palestinians have been killed since 7 October, over half of the number killed in the entire year to 7 October (230), and nearly 1,000 Palestinians, including 13 entire communities, have been forcefully displaced, compared to 1,100 over the previous 18 months.[47]

3.3 Armed resistance against foreign occupation (including the siege of Gaza) is legitimate under international law, granting Palestinians the right to political self-determination and to resist foreign occupation. UN General Assembly Resolution 2708 XXV, Rights of Peoples to Self-Determination, for instance, asserts "the legitimacy of the struggle of colonial people and people under alien domination to exercise their right to self-determination and independence by all the necessary means at their disposal,"[48] thereby legitimising armed resistance in principle – though not the targeting of civilians. To put this in context, Western states, including the United Kingdom, have recently reaffirmed the right to armed resistance

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[44] International Committee of the Red Cross. 1949. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Article 49 – Deportation, Transfers, Evacuations. 12 August. https://ihl-databases.icrc.org/ihl/WebART/380-600056; International Criminal Court. 2020. Situation in the State of Palestine. 14 March. https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2020_01038.PDF.

[45] Netanyahu gov't says West Bank settlement expansion top priority. Aljazeera. 28 December 2022. https://www.aljazeera.com/news/2022/12/28/netanyahu-govt-says-west-bank-settlement-expansion-top-priority.

[46] fard, M. 2023. Israel Is Officially Annexing the West Bank. Foreign Policy. 8 June. https://foreignpolicy.com/2023/06/08/israel-palestine-west-bank-annexation-netanyahu-smotrich-far-right/

[47] Frankel, J. 2023. UN reports: West Bank violence has displaced over 1,100 Palestinians since 2022. ABC News. 21 September. https://abcnews.go.com/International/wireStory/reports-west-bank-settler-violence-displaced-1100-palestinians-103381557#:~:text=UN%20reports%3A%20West%20Bank%20violence%20has%20displaced%20over%201%2C100%20Pale stinians%20since%202022,-A%20U.N.%20report&text=JERUSALEM%20%2D%2D%20Violence%20from%20Israeli,as%20unparalleled%20in%20recent% 20years; Palestinians expelled from W.Bank village as Gaza war rages. France24. 29 October 2023. https://www.france24.com/en/live-news/20231029-palestinians-expelled-from-w-bank-village-as-gaza-war-rages; Public Health Situation Analysis (PHSA) on Hostilities in the occupied Palestinian territory (oPt) - 05 November 2023. *ReliefWeb*. 6 November 2023. https://reliefweb.int/report/occupied-palestinian-territory/public-health-situation-analysis-phsa- hostilities-occupied-palestinian-territory-opt-05-november-2023; Pietromarchi, V. et al. 2023. Israel-Hamas war live news: Israeli attacks kill over 10,000 people in Gaza. *Aljazeera*. 6 Nov 2023. https://www.aljazeera.com/news/liveblog/2023/11/6/israel-hamas-live-news-communications-blackout-across-gaza; McKernan, B. 2023. 'A new Nakba': settler violence forces Palestinians out of West Bank villages. *The Guardian*. 31 October. https://www.theguardian.com/world/2023/oct/31/west-bank-palestinian-villages-israeli-army-settlers.

[48] United Nations General Assembly. 1970. Rights of People to Self-Determination. Resolution 2708, XXV. https://www.un.org/unispal/document/auto-insert-185486/.

and provided extensive material support to Ukrainians exercising their right to take up arms against Russian aggression.

3.4 While the killing of non-combatant Israeli citizens by the Qassam Brigades is both appalling and illegal under international humanitarian law – and in this latest conflict, the number of Israeli citizens killed (1,400 according to the latest reports) has been shocking and unprecedented[49] – to understand why it happens it needs to be viewed within the context of the asymmetric struggle of Palestinians against Israeli occupation and settler colonialism. The Israeli human rights organisation B'Tselem estimates that eight times as many Palestinians have been killed as Israelis during the course of the conflict (not counting the current escalation), including many children,[50] while the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimates that between January 2008 and September 2023 that figure is 21 times as many.[51] Israeli military actions are explicitly based on the doctrine of disproportionate force,[52] including the targeting of civilian infrastructure during military operations, yet only receive cursory condemnation from the UK government, with no concrete consequences.

3.5 In the current war on Gaza, Israeli leaders have gone further, including calls for the annihilation of the Gaza Strip altogether and the forced removal of its citizens, raising the prospect of a second Nakba (the term Palestinians use to describe the ethnic cleansing of over 700,000 Palestinians from historic Palestine in 1948). According to an open letter by nearly 800 lawyers published on 18 October, Israel's rhetoric and actions have raised "the possibility of the crime of genocide being perpetrated by Israeli forces against Palestinians in the Gaza Strip".[53] The rhetoric has been extreme. Israeli Defense Minister Yoav Gallant stated publicly that "we are fighting human animals and we act accordingly" and that "Gaza won't return to what it was before. We will eliminate everything." The head of the IDF's Coordinator of Government Activities in the Territories (COGAT), Major General Ghassan Alian, similarly told Gazans: "Human animals must be treated as such. There will be no electricity and no water, there will only be destruction. You wanted hell, you will get hell". IDF spokesperson Daniel Hagari further acknowledged that Israel's bombing campaign in Gaza was about destruction: "The emphasis is on damage and not on accuracy". Israel's President explicitly stated that he held all Gazans responsible for the Qassam Brigades' actions, thus justifying collective punishment and not distinguishing between civilians and fighters: "It is an entire nation out there that is responsible. It is not

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[49] Israel-Hamas war live news: Israeli attacks kill over 10,000 people in Gaza. Aljazeera. 6 Nov 2023. https://www.aljazeera.com/news/liveblog/2023/11/6/israel-hamas-live-news-communications-blackout-across-gaza.

[50] Depending on whether Palestinians killed in the West Bank since 2009 are included (B'Tselem stopped differentiating between those participating in hostilities and those who did not in the West Bank from 2009); B'Tselem. N.d. https://statistics.btselem.org/en/all-fatalities/by-date-of-incident?tab=overview.

[51] United Nations Office for the Coordination of Humanitarian Affairs. Data on Casualties. 11 May 2022. https://www.ochaopt.org/data/casualties.

[52] Institute for Middle East Understanding. 2012. The Dahiya Doctrine and Israel's Use of Disproportionate Force. December 7. https://imeu.org/article/the-dahiya-doctrine-and-israels-use-of-disproportionate-force.

[53] Public Statement: Scholars Warn of Potential Genocide in Gaza. Opinion Juris. 15 October 2023. https://opiniojuris.org/2023/10/18/public-statement-scholars-warn-of-potential-genocide-in-gaza/.

true this rhetoric about civilians not being aware, not involved. It's absolutely not true". Israel's Minister of Energy and Infrastructure Israel Katz put it even more strongly, invoking both the Nakba and genocide: "All the civilian population in Gaza is ordered to leave immediately. We will win. They will not receive a drop of water or a single battery until they leave the world." Member of Knesset Ariel Kallner called on 7 October for "one goal: Nakba!... A Nakba that will overshadow the Nakba of 1948", while "public banners displayed in Israeli cities [called] for a "victory" signified by "zero population in Gaza" and the "annihilation of Gaza".[54]

3.6 The IDF's actions appear to match the rhetoric. It has already killed more civilians in four weeks than the Russian armed forces killed in twenty months in Ukraine.[55] The vast majority of the 10,002 people killed in Gaza by 6 November are women, children, and the elderly – 73% according to the Palestinian Ministry of Health in Ramallah's statement on 5 November – and nearly half of all killed (4,104) are children, leading some to call it the 'war on children'.[56] Over 24,000 have been injured and 1.4 million have been displaced. Many do not have access to clean and safe water, a basic human right, as a result of Israel's total siege of Gaza and its refusal to allow water, fuel, food and electricity in beyond the far too few trucks allowed in through the Egyptian border. More than half of Gaza's homes have been completely destroyed and roads, hospitals and shelters have been damaged. Fuel is running out, affecting hospitals, sewage systems and food production.[57] The sheer numbers, coupled to the dehumanising language used to describe Gazans and public expressions of support by politicians for eradicating all of Gaza and/or forcibly displacing its entire population, make it likely that this violence will be found to be genocidal.

3.7 Israel, as the occupying power of the West Bank, including East Jerusalem, and the Gaza Strip, where the majority of Palestinian deaths have occurred, possesses an advanced and well-armed military. Contrary to its duties under international law, which holds the occupying power responsible for "enabl[ing] the inhabitants of an occupied territory to pursue as "normal" a way of life as possible" under occupation and specifically prohibits such practices as the destruction of property outside military necessity, extraction of

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[54] All quotes from the source above (Opinion Juris).

[55] 1-month civilian death toll in Gaza outnumbers 20-month toll of Ukraine war. Anadolu Ajansı. 6 November 2023. https://www.aa.com.tr/en/info/infographic/36625.

[56] E.g., the hashtag #waronchildren on X, including internationally renowned peace scholar Roger Mac Ginty (5 November 2023).

[57] 5 Facts About the Humanitarian Situation in Gaza. ReliefWeb. 6 November 2023. https://reliefweb.int/report/occupied-palestinian-territory/5-facts-about-humanitarian-situation-gaza; Bellamy, D. 2023. The UN says more than half of Gaza's population have been uprooted from their homes. EuroNews. 4 November. https://www.euronews.com/2023/11/04/the-un-says-more-than-half-of-gazas-population-have-been-uprooted-from-their-homes.

resources and collective punishment,[58] Israel has constructed an overarching system of control over all aspects of life of its occupied subjects, which B'Tselem, Amnesty International, Human Rights Watch, a plethora of civil society and religious organizations around the world, and numerous former senior Israeli security officials, recently including former head of Mossad, Tamir Pardo, have described as apartheid – a crime against humanity under international law.[59]

3.8 This raises the question why the UK's government's measures are largely only aimed at one side of the conflict – particularly as it continues to support the Israeli government and failed to halt arms sales, despite human rights groups saying that these are against the UK's own rules on not breaking international law,[60] in the midst of what could be ruled a genocidal war in international courts. A more balanced approach would include withdrawing support from the Israeli government, halting arms sales and providing support to the International Criminal Court (ICC) or the International Court of Justice (ICJ) in investigating the extent to which all parties to the conflict have committed war crimes and crimes against humanity. Past preliminary investigations by the ICC and human rights organisations have already suggested that both the IDF and Hamas may have committed war crimes during the periodic conflicts that erupt centred on the Gaza Strip.[61] The ICC announced in 2021 that it will conduct an investigation into alleged war crimes beginning with the 2014 conflict in Gaza during which 2,251 Palestinians, a majority civilian (1,462), were killed, compared to 67 Israeli soldiers and 6 Israeli civilians.[62] Despite being a subject of

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[58] Amnesty International. 2003. Iraq: Responsibilities of the occupying powers. https://www.refworld.org/pdfid/3f1306a57.pdf. See also: ICRC. 2004. Occupation and international humanitarian law: questions and answers. https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm. See also: Permanent Observer Mission of Palestine to the United Nations. 1999. Israel's Belligerent Occupation of the Palestinian Territory, including Jerusalem and International Humanitarian Law. Paper presented to the Conference of the High Contracting Parties to the Fourth Geneva Convention on Measures to Enforce the Convention in the Occupied Palestinian Territory, including Jerusalem. 15th July. Geneva. https://www.un.org/unispal/document/auto-insert-199015/.

[59] B'Tselem. 2021. A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid. 12 January. http://www.btselem.org/publications/fulltext/202101_this_is_apartheid; Amnesty International. 2022. Israel's apartheid against Palestinians: a cruel system of domination and a crime against humanity. 1 February. https://www.amnesty.org/en/latest/news/2022/02/israels-apartheid-against-palestinians-a-cruel-system-of-domination- and-a-crime-against-humanity/; Shakir, O. 2021. Israeli Apartheid: "A Threshold Crossed". Human Rights Watch. 19 July. https://www.hrw.org/news/2021/07/19/israeli-apartheid-threshold-crossed; Al-Jazeera. 2023. Former Mossad chief: Israel enforcing apartheid system against Palestinians. 6 September. https://www.aljazeera.com/news/2023/9/6/former-mossad-chief-israel-enforcing-apartheid-system-against-palestinians.

[60] Bychawski, A. 2023. UK has 'no plans' to stop arms sales to Israel despite civilian deaths. OpenDemocracy. https://www.opendemocracy.net/en/israel-palestine-hamas-war-arms-exports-uk-government/.

[61] Human Rights Council. 2015. Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1. 24 June. http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIGaza/A_HRC_CRP_4.docx; Human Rights Council. 2019. Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory. 18 March. https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_.40.CPR_.2.pdf.

[62] Human Rights Council. 2015. Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1; Beaumont, P. 2021. Why Israel fears the ICC war crimes investigation. The Guardian. 3 March. https://www.theguardian.com/law/2021/mar/03/israeli-officials-start-to-feel-the-impact-of-icc-investigation

investigation itself, Hamas welcomed the decision "without reservation" whereas the Israeli government has vowed not to cooperate.[63] The UN has also documented potential instances of the IDF carrying out war crimes against non-violent resistance, particularly in the Gaza Strip, as well as enabling the expansion and proliferation of violent settler-attacks in the occupied West Bank against Palestinians.[64] The current violence almost certainly will be found to contain war crimes and likely be deemed genocide.

3.9 However, rather than opting for such an approach, the UK government has been accused of actively seeking to block the ICC and the ICJ from addressing war crimes committed in Israel-Palestine.[65] The UK's apparent opposition to these investigations serves to provide tacit support for such disproportionate displays of military force as we have seen so vividly in this recent conflict, giving the impression that the IDF's and the Israeli government's actions are above international law. While no one can deny Israel's right to self-defence, with this right comes responsibility. Under international law, Israel's actions must be proportionate to the threat posed. Indeed, the proportionality of Israel's response to Hamas's attacks is now the central issue, with daily evidence that Israel's response cannot be considered as proportionate with the seemingly deliberate targeting of civilians and the apparent use of munitions like white phosphorus that many countries have outlawed.[66]

Blacklisting only one side to the conflict and blocking investigations into allegations of war crimes perpetrated by the other side casts doubt on the UK's commitment to impartiality and, more broadly, human rights and international law. The continued silence from the UK government to allegations of war crimes and crimes against humanity committed by the IDF in this recent conflict also makes the government susceptible to allegations of complicity in the commission of these crimes.

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[63] Khalil, A. 2021. As Israel decries ICC investigation, Hamas readies its defence. Middle East Eye. 12 February. https://www.middleeasteye.net/news/israel-palestine-icc-hamas-defence-readies.

[64] Human Rights Council. Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory. 18 March 2019. https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_.40.CPR_.2.pdf. For more on settler violence, see: Settler Violence = State Violence. B'Tselem. 25 November 2021. https://www.btselem.org/settler_violence.

[65] Jarrah, B. 2021. The United Kingdom's Brazen Assault on ICC Independence. Human Rights Watch. 16 April. https://www.hrw.org/news/2021/04/16/united-kingdoms-brazen-assault-icc-independence; Holmes, O. 2021. Palestine condemns Boris Johnson for opposing ICC Israel investigation. The Guardian; McKernan, B. 2023. UK 'seeking to block ICJ ruling' on Israeli occupation of Palestine. The Guardian.

[66] Israel/occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence. OHCHR. 12 October 2023. https://www.ohchr.org/en/press- releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians#:~:text=GENEVA%20(12%20October%202023)%20–,devastating%20impacts%20on%20the%20whole; Baldwin, C. 2023. How Does International Humanitarian Law Apply in Israel and Gaza? Human Rights Watch. 27 October. https://www.hrw.org/news/2023/10/27/how-does-international-humanitarian-law-apply-israel-and-gaza; Israel: White Phosphorus Used in Gaza, Lebanon. Human Rights Watch. 12 October 2023. https://www.hrw.org/news/2023/10/12/israel-white-phosphorus-used-gaza-lebanon#:~:text=(Beirut%2C%20October%2012%2C%202023,answer%20document%20on%20white%20phosphorus; Israel denies using white phosphorus munitions in Gaza. The Guardian. 13 October 2023. https://www.theguardian.com/world/2023/oct/13/israel-military-white-phosphorus-gaza-lebanon.

3.10 Moreover, it could be argued that the decision by the UK and other Western governments to designate all of Hamas a terrorist organisation has contributed to creating a permissive environment for Israel to target any building or person in Gaza and regard the entirety of Gaza a legitimate target. Many civilian buildings and civilians are connected to Hamas in one way or another as the de facto government, a major social welfare provider, and a social movement with grassroots support. Israel's current war on Gaza is predicated on the same criminalisation of Hamas in its entirety, which the UK has supported through its proscription of all of Hamas, enabling Israel to use this argument to justify attacking not just the Qassam Brigades, but the government of Gaza, its ministries and its social welfare organisations, and even, as Israel's President stated, all of Gaza's population. This, coupled with the UK's unswerving support for the Israeli government, its past licensing of arms supplies to the Israel's military (15% of the components used in the F-35 stealth fighters that are currently deployed to bomb Gaza are said to have been provided by the UK),[67] and its failure to block arms sales, makes the UK potentially complicit in war crimes committed by Israel.

4. Potential impact of proscription on a political solution (II)

4.1 Blacklisting the entirety of Hamas all but precluded meaningful engagement with the governing authorities in Gaza before 7 October 2023 and constituted a key impediment to resolving the wider Israel-Palestine conflict. The UK government's official position, according to its ambassador to the UN, is that it "firmly believes that a two-state solution, based on 1967 lines, with Jerusalem as a shared capital and a just solution for refugees is the best way to deliver long-term peace".[68] Proscribing Hamas in its entirety runs counter to this goal by making reconciliation between Hamas and Fatah more difficult, which both see as "a necessary step toward the realization of a two-state resolution to the Israeli-Palestinian conflict".[69] It also serves to isolate Hamas, undermining the pragmatists amongst its leadership, and makes it challenging for the UK (and other governments in this position) to influence Hamas.

4.2 Hamas won the 2006 Palestinian election with over 40% of the popular vote in an election deemed free and fair by international observers, and it continues to enjoy between 30-40% of support in Palestinian opinion polls by the internationally respected Palestinian Center for Policy and Survey Research.[70] It is thus a central Palestinian player which cannot be ignored – something which even Hamas's archrival Fatah has acknowledged. The Palestinian Authority's mission to the UK, for instance, notwithstanding deep tensions between the PA and Hamas, considers "the unification of Hamas and Fatah... a necessary

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[67] Askew, J. 2023. Europe 'aiding and assisting' Israel's war in Gaza with vital weapons. Euronews. 3 November. https://www.euronews.com/2023/11/03/europe-aiding-and-assisting-israels-war-in-gaza-with-vital-weapons.

[68] Woodward, B. 2022. Welcoming support for a peaceful two-state solution by Israeli and Palestinian leaders. Statement at the UN Security Council meeting on the Middle East peace process.

[69] UK to label entirety of Hamas a terrorist organization. Jerusalem Post. 19 November 2021.

[70] Cf. PSR Polls 79-83, June, September, December 2021 and March 2022; see https://www.pcpsr.org/.

step toward the realization of a two-state resolution to the Israeli-Palestinian conflict".[71] Even if Israel succeeds in killing many of Hamas's fighters and members and destroying most of its infrastructure, the movement is still likely to survive and remain a significant actor within Palestinian politics. History suggests that eradicating an indigenous, grassroots movement with significant popular support is very difficult. Israel failed to do so with Hizbullah in Lebanon in 2006. It failed to do so with Hamas in its earlier wars on Gaza. More generally, the US has failed to do so in Afghanistan and Iraq (not including transnational groups with limited grassroots support). Thus, it is important to consider how past actions have hindered engagement with and influencing of Hamas and what this may mean for post-war dealings with Hamas.

4.3 In terms of influencing Hamas before October 7, or indeed the de facto government in Gaza, as Crispin Blunt (Conservative MP) noted in the parliamentary debate:

> The nearest parallel is the proscription of both wings of Hezbollah. In terms of practicality, our engagement with Lebanon is very much less than it is with Palestine and Israel. We are unable to talk to the four Ministries that have Hezbollah Ministers and the French are then seen as the lead western European nation in that space. Our relative position in the very troubled country of Lebanon—we have made difficulties for ourselves because of the extent of the popular support for Hezbollah in Lebanon—is significantly reduced from that. Of course, Hezbollah is only part of the Government of Lebanon. The difficulty we are giving ourselves here is that the jurisdiction of Gaza is run by Hamas.[72]

4.4 The "terrorist" label all but precludes any meaningful engagement by the UK – and many other Western governments – in helping to resolve the Palestine-Israel conflict or to work towards resolving the siege of Gaza. The designation further allows the Israeli government to avoid meaningful negotiations with their Palestinian counterparts. As noted above, former PM and later envoy for the Middle East Quartet Tony Blair retrospectively conceded that he and other world leaders were wrong to boycott Hamas after its election win in 2006.[73] The Qassam Brigades' actions clearly violate international law. But removing the terrorist label from Hamas's political wing is about finding a better way forward to reach a political solution.

4.5 The proscription does not help anyone in practical terms, not even the Israeli government. The government of Israel has relied on Hamas to maintain internal order in the Gaza Strip and prevent it from collapsing into anarchy for much of the past decade. It also manages its policies vis-à-vis the Gaza Strip via consistent negotiations and engagement, albeit indirectly, with Hamas. Every war on Gaza since 2006 has ended through indirect negotiations between Israel and Hamas, and it is likely that the current war on Gaza will also eventually have to involve negotiations, regardless of Israel's stated intentions. That

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[71] UK to label entirety of Hamas a terrorist organization. Jerusalem Post. 19 November 2021.

[72] Blunt, C. 2021. 24 November. Prevention and Suppression of Terrorism [Hansard]. Vol. 704.

[73] Macintyre, D. 2017. Tony Blair: 'We were wrong to boycott Hamas after its election win'. The Guardian. 15 October. https://www.theguardian.com/world/2017/oct/14/tony-blair-hamas-gaza-boycott-wrong.

even the Israeli government has needed to coordinate with Hamas to manage its relations with the Gaza Strip calls into question the wisdom of the UK's proscription and highlights the necessity for communication, a facility that is impeded by the proscription of the entirety of Hamas.

4.6 Until very recently, the UK government's position was that the Qassam Brigades were operationally separate from Hamas' wider socio-political and civilian activities. In June 2020, for instance, Minister Brokenshire responded to a written parliamentary question, saying: "The political wing of Hamas is not proscribed as it is considered that there is a clear distinction between Hamas's military and political wings".[74] Further, the Qassam Brigades sometimes openly act against the wishes of the political leadership. Indeed, there are numerous instances where the Political Bureau were unaware of the military considerations the Qassam Brigades were pursuing and blind-sided by their military operations.[75] It is unclear what has changed since 2020. Indeed, the distinction between the wings appears to have been similarly on view during the 7 October attacks, as Hamas's political leadership were said to have been taken by surprise on the day and not to have known any details beforehand. According to Egyptian security officials, the attacks showed that "a shift in the power dynamics in Hamas, where the military wing is now taking the lead ahead of its political leadership".[76]

4.7 The de facto separation between armed and socio-political activities, which has a long history in Hamas,[77] is a deliberate and a pragmatic approach, which echoes approaches adopted by other armed non-state organisations seeking to address socio-political grievances to allow public political engagement. Analogies with Sinn Fein and the Provisional Irish Republican Army (PIRA) or the African National Congress (ANC) in South Africa, among others, are useful here. Nelson Mandela, the leader of the armed wing of the ANC, later became the first post-apartheid President of South Africa and the ANC continues to be the ruling party today. In a similar vein, Sinn Fein received the highest number of first preference votes in the most recent elections in both the Republic of Ireland and Northern Ireland.[78] Sinn Fein leader Martin McGuinness, who was known for his previous activities in the PIRA, was elected both to Westminster and then later served in a number of ministerial positions in the Northern Ireland Assembly election. Former Israeli Prime Ministers Menachem Begin and Yitzhak Shamir were wanted terrorists under the British Mandate of

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[74] Quoted by Smith, A. 2021. 24 November. Prevention and Suppression of Terrorism [Hansard]. Vol. 704.

[75] There are frequent instances of rocket fire from the Gaza Strip that are carried out by rogue officers, or by al-Qassam operatives, without the knowledge of the political wing, which then becomes embroiled in escalations. For more context on some of the recent skirmishes and ensuing ceasefires see: Rebuilding the Gaza Ceasefire. International Crisis Group. Middle East and North Africa Report. 16 November 2018.

[76] Hendawi, H. 2023. Hamas political leaders were unaware of Israel incursion plan, Egypt officials say. The National News. 9 October. https://www.thenationalnews.com/mena/palestine-israel/2023/10/09/hamas-leaders-israel-plan-egypt/.

[77] See, for instance, Hroub, K. 2006. Hamas: A Beginner's Guide. London: Pluto Press. pp.120-123; Pascovich. Social-Civilian Apparatuses of Hamas. pp. 133-134.

[78] Pogatchnik, S. 2023. Sinn Féin scores record win in Northern Ireland as voters rage at DUP blockade of Stormont. Politico. 21 May.

Palestine. All of this underlines the capacity of militant organisations and leaders to evolve over time.

4.8 The argument that Hamas and the Qassam Brigades are one and the same because former Qassam leaders – for instance, the current head of Hamas in the Gaza Strip Yahya Sinwar, one of the founders of Hamas's security apparatus – have become political leaders must be treated with scepticism. Members of the Qassam Brigades who are elected to Hamas's Shura Council or Political Bureau, have to garner votes like any other Hamas leader and once elected, the demands on them and the interests they represent are different from when they were military leaders. For instance, under Sinwar's leadership, notwithstanding him being a hardliner and inciting violence when it suits his or Hamas's interests, Hamas has (indirectly) negotiated ceasefires with the Israeli government, kept the border calm for extended periods, supported popular protests at the border, and focused on state-building (within the limited means available).[79]

4.9 There is substantial research suggesting that the terrorism label impedes conflict resolution. In the Philippines, the government refrained from proscribing the Moro Islamic Liberation Front, despite US pressure, on the ground that it did not want to scupper the peace process. In the Northern Ireland conflict, the legitimation of Sinn Fein and the political grievances it represented was key to a meaningful peace process being made possible. Indeed, as Prof Harmonie Toros argues, "the start of talks with and the legitimation of Sinn Fein... may have contributed to the end of IRA terrorist violence in at least three ways: by opening an alternative way to change for the republicans; by strengthening the factions favouring talks; and by offering the republicans the possibility to transform themselves into a legitimate entity".[80] Conversely, as Prof Jeroen Gunning has shown in the case of the aftermath of Hamas's 2006 victory, the international boycott of Hamas and the refusal of the international community to engage Hamas politically contributed to the weakening of those within the Hamas leadership favouring a political solution.[81]

4.10 In a ground-breaking study of the impact of terrorist labelling on third-party engagement with armed non-state groups, Dr Sophie Haspeslagh similarly concluded, on the basis of workshops and interviews "with high-level mediators, counterterrorism policy-makers and diplomats" as well as "policy actors and non-governmental peace-building organisations", that the designation as terrorist hinders third-party engagement with armed groups by "affect[ing] preconditions of access and trust, thereby narrowing the possibilities

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[79] Hamas keeps its guns silent for a change. Kuwait Times. 12 May 2018; Does anybody know what is really going on with Israel and Hamas? The Jewish Chronicle. 13 May 2021; Hamas losing deterrence against IDF. Al-Monitor. 23 July 2018; Hamas and Israel agree end to cross-border bombing in Gaza. The Guardian. 20 August 2021; Baconi, T. 2019. The Deadly Political Paralysis behind the Gaza Flare-up. International Crisis Group. 7 May.

[80] Toros, H. 2008. 'We Don't Negotiate with Terrorists!': Legitimacy and Complexity in Terrorist Conflicts. Security Dialogue 39(4): 407–26.

[81] Gunning, J. 2010. The Conflict and the Question of Engaging with Hamas. In Examining European Involvement in the Arab-Israeli Conflict, Chaillot Papers, ed. Esra Bulut Aymat. Paris: European Union Institute for Security Studies.

for third parties to effectively understand groups, influence them, affect their strategic calculations and train them in conflict resolution".[82]

4.11 In protracted conflicts, there is typically no military solution. Both Israeli former intelligence chiefs[83] and the UN[84] have asserted that there is no military solution to the Israel-Palestine conflict. As Tareq Baconi further noted, "unless the political drivers of Palestinians are really contended with, this isn't going to go away. If Hamas is decimated, the Palestinian anti-colonial struggle will continue in another guise and with another ideology. What I find frightening is that the Western powers and the Americans who are so bent on supporting Israel despite its apartheid somehow think that they can maintain this project cost-free."[85] Hamas, or a future incarnation of Hamas, is therefore likely to remain a key player if occupation, displacement and settler colonial expansion Hamas remain in place. More broadly, Profs Seth Jones and Martin Libicki found that in 43% of cases involving groups labelled terrorist the violence ended because they had been able to join the political process.[86] This is particularly the case for armed groups that already function as political parties and enjoy grassroots support, such as Hamas.

4.12 Moreover, Hamas has shown that it can be responsive to political engagement. As noted in the introduction, in the lead-up to the 2006 parliamentary election, it moved from categorically condemning the two-state solution to publicly recognising that it had to accept the two-state solution and work on that basis if that was the national consensus. This was in response to encouragement by key regional actors, including the UK, for Hamas to participate in the forthcoming Presidential, parliamentary, and municipal elections, a key demand of the Quartet's 2003 Roadmap to Peace.[87] In 2005, Hamas and other Palestinian factions signed the Cairo Declaration in which they signalled their willingness to abide by democratic processes and contest elections to achieve political power.[88] Even after Hamas's government was boycotted following its 2006 election victory, in response to increasing inter-factional violence encouraged by the governments of the US, Israel and other key Western actors, Hamas signed the Mecca Agreement that was the foundation of a unity government between Hamas and Fatah.[89] It was in this Agreement where Hamas first

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[82] Haspeslagh, S. 2013. 'Listing Terrorists': The Impact of Proscription on Third-Party Efforts to Engage Armed Groups in Peace Processes – a Practitioner's Perspective. Critical Studies on Terrorism 6(1): 189–208.

[83] Myre, G. 2003. 4 Israeli Intelligence Experts Call for Political Solution. New York Times. 14 November

[84] United Nations News. 2021. Israel-Palestine: Political solution only way to end 'senseless' cycles of violence. 27 May.

[85] Chotiner, I. 2023. Where the Palestinian Political Project Goes from Here. The New Yorker. 11 October. https://www.newyorker.com/news/q-and-a/where-the-palestinian-political-project-goes-from-here.

[86] Seth Jones and Martin Libicki, How Terrorist Groups End: Lessons for Countering al Qa'ida (Santa Monica, CA: RAND Corporation, 2008).

[87] United Nations. 2003. A performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict. 7 May. https://www.un.org/unispal/document/auto-insert-186742/.

[88] Economic Cooperation Foundation. 2005. Cairo Declaration. 17 March. https://ecf.org.il/media_items/1202.

[89] Economic Cooperation Foundation. 2007. Mecca Agreement. 8 February. https://ecf.org.il/media_items/1197.

publicly made key ideological concessions by acknowledging the existence of the state of Israel, respecting the primacy of the two-state solution, and respecting the various agreements signed by the PLO that included the previously reviled Oslo Accords. Although by then Hamas had been boycotted, its leaders still appeared to believe that a unity government and political concessions could result in the boycott's lifting. Former UN Special Co-ordinator of the Middle East Peace Process Álvaro de Soto stated in his End of Mission Report that he believed that a more conciliatory approach towards Hamas's political participation by Western governments would have resulted in a unity government immediately after the January 2006 elections, preventing a year of debilitating and rancorous inter-factional violence.[90] The boycott of the Hamas-led government also pushed it further into the strategic orbit of the Islamic Republic of Iran, including increased funding and military assistance.[91]

4.13 Since 2006, Hamas has at various times moved closer to the Quartet's three principles for engagement, which the UK government still deploys. As Damian Hinds, the Minister for Security and Borders, stated in the parliamentary debate: "Hamas must renounce violence. It must recognise Israel and accept previously signed agreements. Credible moves must be made towards those conditions. They remain the benchmark against which intention should be judged."[92] Hamas has not renounced violence, does not recognise the state of Israel under international law and has, most recently in its 2017 Manifesto, denounced previous agreements as going against Palestinian interests. But, as Dr Martin Kear has shown, amongst others, Hamas has for long periods observed ceasefires and clamped down on other groups using violence during those periods. It has implicitly recognised the existence of the state of Israel by agreeing to a Palestinian state along the 1967 borders. And it has both *de facto* operated within previous agreements, for instance, when participating in the elections, and, for certain periods, expressed readiness to "respect" previous agreements if this was the national consensus (for instance, when it formed a government in 2006 and when it agreed to form a unity government with Fatah following the 2007 Mecca Agreement on the basis of respecting previous agreements).[93] Negotiations do not usually start out with demanding that one party concede to all demands before it is allowed to participate. Such concessions should be the goal of negotiations, not the precondition. Yet, the international community has consistently ignored these political overtures.

4.14 Since having been elected, Hamas has *de facto* acted within a two-state framework and policed Gaza's border for long periods between hostilities. In between the Israel-Gaza wars, Hamas has consistently worked to prevent operations from within the Gaza Strip, leading to

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[90] De Soto, Á. 2007. End of Mission Report – May 2007. The Guardian. http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/12/DeSotoReport.pdf.

[91] Macintyre, D. 2017. Tony Blair: 'We were wrong to boycott Hamas after its election win'. *The Guardian*. 15 October. https://www.theguardian.com/world/2017/oct/14/tony-blair-hamas-gaza-boycott-wrong.

[92] Hinds, D. 2021. 24 November. Prevention and Suppression of Terrorism [Hansard]. Vol. 704.

[93] Kear, M. 2019. Hamas and Palestine: The Contested Road to Statehood. Milton Park: Routledge. pp. 124-31, 214-19; Scham, P. and Abu-Irshaid, O. 2009. Hamas: Ideological Rigidity and Political Flexibility. Washington, DC: United States Institute of Peace. 1 June; Tocci, N. 2007. What Went Wrong? The Impact of Western Policies towards Hamas & Hizbollah. Brussels: Centre for European Policy Studies. July 2007.

Israeli officials publicly acknowledging their dependency on Hamas to maintain calm in the Gaza Strip. This has also led to the emergence of militant groups within Gaza that accuse Hamas of pacification and have taken aim against the movement.[94]

4.15 In 2017, it replaced its 1988 founding Charter with a new Manifesto, which, while reiterating that "Hamas rejects any alternative to the full and complete liberation of Palestine, from the river to the sea", added the important caveat that:

> without compromising its rejection of the Zionist entity and without relinquishing any Palestinian rights, Hamas considers the establishment of a fully sovereign and independent Palestinian state, with Jerusalem as its capital along the lines of the 4th of June 1967, with the return of the refugees and the displaced to their homes from which they were expelled, to be a formula of national consensus.

4.16 Though this does not meet the Quarter's conditions, Hamas nevertheless signalled to the international community in this change of wording its willingness to acquiesce to partition along the 1967 lines, and to accept the establishment of a Palestinian state on 22% of historic Palestine – a marked contrast with its efforts in the past to undermine such a political settlement from proceeding. Parties engaged in conflict do not usually recognise the other party's legitimacy or right to exist before a settlement is reached, making this shift significant. This is furthermore also a more developed political stance than many of the political parties in Israel have taken, given their refusal to countenance any Palestinian state. Significant, in this respect, is that even now, in the midst of the current escalation, the head of Hamas's Political Bureau, Ismail Haniyyeh, stated that "We are ready for political negotiations for a two-state solution with Jerusalem as the capital of Palestine".[95] This may run counter to statements from Hamas leaders in Gaza, who have vowed to continue with attacks like 7 October until Israel is defeated. But it is nevertheless important that no less than the head of the Political Bureau is still ready to publicly state this position.

4.17 The civil war in Syria, starting in 2011, was another missed opportunity to turn Hamas away from Iran's "axis of resistance" and reorientate it in line with the parameters of a two-state solution between Palestinians and Israel. Hamas refused to back its long-standing patron, the al-Assad regime in Syria, resulting in a years-long rift with Iran and a seeming realignment with Sunni states that were not part of the "axis of resistance" and allies of the US.[96] Following the coup against the Egyptian Muslim Brotherhood's President Morsi in 2013, Hamas gradually began to return to Iran's sphere of influence, first tentatively, then accelerating after the election of Yahya Sinwar in 2017, and by 2022, relations were close

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[94] For more on this, see: Averting War in Gaza. International Crisis Group. 20 July 2018; Gaza and Israel: New Obstacles, New Solutions. International Crisis Group. 14 July 2014; Radical Islam in Gaza. International Crisis Group. 29 March 2011.

[95] Pacchiani, G. 2023. We are ready for political negotiations for a two-state solution with Jerusalem as the capital of Palestine. Times of Israel. 2 November. https://www.timesofisrael.com/as-idf-advances-in-gaza-hamas-chief-haniyeh- claims-to-seek-political-negotiations/
#:~:text="We%20are%20ready%20for%20political,bring%20more%20aid%20into%20Gaza.

[96] herwood, H. 2014. Hamas and Iran rebuild ties three years after falling out over Syria. The Guardian. 9 January. https://www.theguardian.com/world/2014/jan/09/hamas-iran-rebuild-ties-falling-out-syria.

enough for Iran to broker a rapprochement between Hamas and Syria,[97] once more underscoring that boycotting the movement is inimical to the proclaimed policies of the majority of the international community: a two-state solution. By 2021, when President Abbas cancelled the scheduled Palestinian elections, following an internal report that Fatah would lose, Hamas was again firmly embedded in the axis of resistance, creating the conditions for the hardliners to start preparing for the 7 October attacks (reports suggest that the Qassam leadership began preparing in two years ago in 2021).[98] The elections would have been an opportunity for the pragmatist political leadership to regain momentum; their cancellation weakened them further.

4.18 Direct international engagement has in the past moderated Hamas's position, as the Swiss government's post-2006 engagement with Hamas showcases under extremely adverse circumstances. As Gunning details,

> The Swiss government... has worked with Hamas, and others, to further develop the concept of 'hudna', or long-term ceasefire... to see whether this could constitute a basis for restarting the peace process. It led numerous discussions on Gaza's border management to develop an alternative to the siege policy, to which all parties, Hamas, Fatah and Israel, could agree. It has provided Hamas with copies of previous agreements between Israel and the PLO as well as documents relating to the Geneva Accord. Finally, it has made direct interventions on particular policies, such as Hamas's appropriation of UNRWA goods in the wake of Operation Cast Lead, or the Chief Justice's decree that all female lawyers wear a hijab in court – in both instances contributing to the policy being reversed.[99]

4.19 Switzerland was working under adverse conditions in the context of an international boycott which had strengthened Hamas's hardliners while weakening its pragmatists and as a small state with little political, economic or military leverage in the region. However, the Swiss experience shows that, even under such conditions, Hamas was responsive to political engagement. Conversely, the designation of the entirety of Hamas was counterproductive in terms of isolating Hamas more and strengthening hardliners, thereby weakening more pragmatic voices.

4.20 The UK is in many ways better placed than Switzerland to play a mediating role in the Israel-Palestine conflict. Although the UK's credibility is less on the Palestinian side as a result of both historical actions (e.g. the Balfour Declaration, the British Mandate) and

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[97] Abou Jalal, R. 2022. Hamas normalizes ties with Syria under Iranian reconciliation. al-Monitor. 22 September. https://www.al-monitor.com/originals/2022/09/hamas-normalizes-ties-syria-under-iranian-mediation.

[98] Abu Amer, A. 2021. Postponed Palestinian Elections: Causes and Repercussions. Carnegie Endowment for Peace Sada. 11 May. https://carnegieendowment.org/sada/84509; Nakhoul, S. and L. Bassam. 2023. Who is Mohammed Deif, the Hamas commander behind the attack on Israel? Reuters. 11 October. https://www.reuters.com/world/middle-east/how-secretive-hamas-commander-masterminded-attack-israel-2023-10-10/.

[99] Gunning, J. 2010. The Conflict and the Question of Engaging with Hamas. In Examining European Involvement in the Arab-Israeli Conflict, Chaillot Papers, ed. Esra Bulut Aymat. Paris: European Union Institute for Security Studies.

current actions (such as the proscription of all of Hamas, the celebration of the Balfour centenary without official scrutiny of the Declaration's negative effects on the Palestinians, and its current unwavering support for the Israeli government), the UK nevertheless has a long tradition of UK Consuls, MPs, churches and charitable organisations supporting Palestinian rights and humanitarian and medical needs. While many of these relations are with secular nationalist Palestinian leaders and organisations, they put the UK in a relatively strong position vis-à-vis the Palestinians. Moreover, the UK's historical role in the region gives it, paradoxically and potentially, more leverage, precisely because relations with the UK go back over 100 years. Its close relationship with the US, Israel and the Fatah-led Palestinian Authority, coupled with the longstanding engagement of UK-based medical, humanitarian and peacebuilding organisations in Gaza, and the Palestinian Diaspora in the UK, further strengthen its position.

5. Potential impact of proscription on Gazan population (III)

5.1 In practice, it has been hard, before 7 October 2023, to see how proscription of Hamas in its entirety could be enforceable in any consistent fashion beyond the blanket proscription of some two million Palestinians in the Gaza Strip, who rely on Hamas to provide government and social services – foreshadowing in its logic Israel's collective punishment of Gaza. As such, it only makes life more difficult for the tiny coastal enclave with one of the highest population densities in the world, 75% of whom are refugees, and which has been subject to a crippling siege since the Hamas-backed list won internationally recognised free and fair elections in 2006.[100] Over 44% of Palestinians voted for Hamas in 2006, making them potentially guilty of terrorism-related offences, in a form of collective punishment, which is illegal under international law.[101]

5.2 Since then, Gaza has been subjected to repeated bombardments by the IDF in the context of ongoing hostilities between the Israeli government and Hamas, killing thousands, rendering tens of thousands homeless, and destroying thousands of buildings. Previous IDF operations in the Gaza Strip have been called, by the admission of Israeli officials themselves, "mowing the grass", a practice of bombarding the Gaza Strip either for punitive motivations or to attempt to pacify the population and prevent further resistance to the ongoing siege.[102] Often, the attacks on Gaza were in response to violence by Hamas or other Palestinian factions, typically the launching of rockets towards civilian areas. But, leaving aside that these rockets were in turn usually a response to the ongoing siege and/or events

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[100] United Nations Relief and Works Agency. 2023. Where we Work. https://www.unrwa.org/where-we-work/gaza-strip#:~:text=The%20Gaza%20Strip%20has%20a,some%201.7%20million%20Palestine%20Refugees.

[101] Palestinian Central Election Commission. 2006. The Final Results for the Electoral Lists. January. https://web.archive.org/web/20081029054121/http://www.elections.ps/pdf/Final_Results_PLC_Summary_Lists_Seats_2_ En.pdf.

[102] See Rabbani, M. 2014. Israel mows the lawn. London Review of Books. 31 July. In doing so, Israel has consistently targeted medical institutions, journalistic operations, and other vital infrastructure. In the most recent escalation, Israel targeted the offices of the Associated Press in Gaza. See Federman, J. 2014. 'Shocking and horrifying': Israel destroys AP office in Gaza. Associated Press. 16 May 2021. For an Israeli perspective, see Inbar, E. and Shamir, E. 2014. 'Mowing the Grass': Israel's Strategy for Protracted Intractable Conflict. Journal of Strategic Studies 37(1): 65-90.

in the West Bank, the violence deployed by the IDF in Gaza has been extensive and deeply debilitating to Gaza's infrastructure. The siege has furthermore severely hindered or prevented outright the rebuilding of destroyed buildings, by making it extremely difficult for Gazans to acquire the necessary materials. The unprecedented level of violence deployed by the IDF in the current war on Gaza threatens to destroy much if not most of Gaza's infrastructure, rendering large parts, and especially Gaza City and the north of the Gaza Strip, unlivable. The forced displacement of an estimated 1.4 million Gazans, coupled with the ongoing blockade of food, fuel, water and electricity going into Gaza, make current living conditions dire and will render rebuilding Gaza, if Israel will allow this, even more difficult.

5.3 The 16-year siege has also crippled Gaza's economy, which had already undergone what Dr Sara Roy has termed "de-development" for decades, first under Israeli rule, then as a result of the closures imposed by the Israeli government during the 1990s.[103] By 2021-2022, 50% of the population were unemployed[104] with an estimated 80% of Gazans living in poverty and 80% being dependent on humanitarian aid.[105] Gaza is subject to chronic electricity shortages having access to only four hours of electricity per day – two hours in the morning and two hours in evening, partially caused by the IDF's repeated bombardment of Gaza's only electrical power plant.[106] There is also a lack of clean water, partly caused by the Israeli government's water management.[107] In brief, the current status quo is untenable and proscribing Gaza's government only worsened the situation.

5.4 Since Hamas's violent ouster of Fatah, in response to intelligence of an imminent coup in 2007,[108] Hamas has been the de facto government of Gaza, even if it is not recognised by much of the international community. The designation of the entirety of Hamas ignores the ubiquity of the government's role in the everyday lives of their constituents.

5.5 Hamas runs the public services: the bureaucracy, the schools, the hospitals, the firefighters, the civilian police, even the street sweepers and garbage collectors. The de facto Hamas administration pays their salaries. The public sector – i.e., the Hamas-led government and the Palestinian Authority – account for approximately 37% of Gaza's

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[103] Roy, S. 1995. The Gaza Strip: The Political Economy of de-Development. Washington, DC: Institute for Palestine Studies; Roy, S. 1999. De-Development Revisited: Palestinian Economy and Society Since Oslo. Journal of Palestine Studies 28(3): 64-82.

[104] Gisha – Local Center for Freedom of Movement. 2021. Gaza unemployment rate soars to 50.2% in months following May escalation. 13 December. https://gisha.org/en/gaza-unemployment-rate-soars-to-50-2-in-months-following-may-escalation/.

[105] Gaza_15 Years of Blockade. UNRWA. 2022. https://www.unrwa.org/gaza15-years-blockade.

[106] Human Rights Watch. 2014. Gaza: Widespread Impact of Power Plant Attack. 10 August. https://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack.

[107] Weinthal, E. et al. 2005. The Water Crisis in the Gaza Strip: Prospects for Resolution. Ground Water 43(5): 653-660; Amnesty International. 2017. The Occupation of Water. 29 November 29; https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/.

[108] See Rose, D. 2008. The Gaza Bombshell. Vanity Fair, April; Steel, J. 2007. Hamas acted on a very real fear of a US- sponsored coup. The Guardian. 22 June.

workforce.[109] Given Gaza's high unemployment rate, an exponentially larger percentage of the population is also dependent on these salaries. The proscription of all of Hamas raises key questions about the utility and application of the decision. For instance, are these individuals or anyone who supports members of the public service (for example, a family member in the UK providing financial support through remittances) or is dependent on them potentially guilty of terrorism-related offences? Hamas collects taxes. Does a business paying import/export tariffs to the Hamas government potentially constitute acquiring funds for a terrorist organisation (as the letter from the UK Treasury to UK charities potentially suggests)? Hamas provides social services. Are beneficiaries of these guilty of association? To date the UK's government has not indicated how it would reconcile such inconsistencies.

5.6 The multi-faceted nature of Hamas, including notionally associated charities, such as orphanages, medical clinics, youth associations, and educational institutions, means that the crime of association is extremely problematic. The blanket designation of Hamas would potentially blacklist all of these charities and thereby contribute to the dire humanitarian situation in Gaza by criminalising international support for such charities.

5.7 Research has shown that the charities colloquially considered to be affiliated with Hamas are typically organisationally distinct from the political and resistance wings of the movement, with their "own administration and... answerable to [their] own board of trustees".[110] While some detractors maintain that these charities are a source of recruitment, often on the basis of highly ambiguous evidence,[111] Dr Eyal Pascovich notes that, "examples of military operatives becoming integrated into Hamas's charitable committees are quite rare" and "no clear-cut evidence of money transfers from committees to the military wings can be found".[112]

5.8 The designation of Hamas-supported initiatives as those of a terrorist organisation also belies the complicated and multi-faceted nature of modern public administration with governments routinely outsourcing projects and hiring consultants. Are all those providing outsourced services to the Hamas government guilty of breaking the UK's counter-terrorism laws?

5.9 When Israel's punitive war on Gaza is over, the rebuilding of Gaza and the provision of humanitarian aid will be even more urgent. We do not know how much of Hamas will

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[109] Gisha – Local Center for Freedom of Movement. 2019. Unemployment in Gaza in q2 of 2019 is 46.7%. 4 September. https://gisha.org/en/unemployment-in-gaza-in-q2-of-2019-is-46-7/.

[110] Gunning, J. 2008. Terrorism, Charity and Diasporas: Contrasting the Fundraising Practices of Hamas and al Qaeda among Muslims in Europe. In Countering the Financing of Terrorism, ed. T. Biersteker and S. Eckert. London: Routledge. 2008. p. 100; Roy, S. 2011. Hamas and Civil Society in Gaza: Engaging the Islamist Social Sector. Princeton, NJ: Princeton University Press.

[111] E.g., Levitt, M. 2006. Hamas: Politics, Charity, and Terrorism in the Service of Jihad. New Haven, CT: Yale University Press; For a detailed examination of the dubious nature of such claims, see Dunning. Hamas, Jihad and Popular Legitimacy. pp. 138-144.

[112] Pascovich, E. 2012. Social-Civilian Apparatuses of Hamas, Hizballah and Other Activist Islamic Organizations. Digest of Middle East Studies 21(1): 133.

survive. But if significant parts of Hamas's political and social welfare wings do survive, and Hamas's popularity increases, as it did after every past war on Gaza, the current proscription of Hamas in its entirety will likely hinder rebuilding and humanitarian efforts, thus effectively subjecting Gazans to collective punishment once again.

6. Potential impact of proscription on Palestinian Diaspora and medical, humanitarian and peacebuilding organisations in the UK (IV)

6.1 The terrorist designation may also have dire implications for the Palestinian diaspora and medical, humanitarian and peacebuilding initiatives in the UK in support of Palestinian rights, considering the difficulties of ascertaining who is and is not linked to Hamas. This is especially the case for anyone dealing with Gaza from abroad, as they will need to go through the Hamas-led government. In the following we focus on the situation before 7 October. But if significant parts of Hamas survive the current war on Gaza, it is likely that Hamas will continue to be a powerful actor in Gaza, and many of the issues outline below will continue to be relevant.

6.2 Under UK law, the proscription of Hamas in its entirety "[creates] a series of criminal offences under UK law punishable by imprisonment and fines", including "arranging a private meeting with members of the groups"[113] and providing any material benefit, even indirectly (which could include paying local taxes and utilities or carrying out humanitarian work if this is seen as indirectly benefitting Hamas). According to Dr Ben Saul, an advisor to the United Nations and the Challis Professor of International Law at the University of Sydney, commenting on the Australian proscription of all of Hamas, which is similar to the UK's, "The Australian law is saying that anyone who provides support, funding, training or assistance to the Hamas public administration, even... to help civilians in Gaza, is breaking Australian counterterrorism laws."[114] Similarly, Alyn Smyth (SNP MP) noted in the UK parliamentary debate that "You cannot get anything done—you cannot get aid delivered, you cannot have a medical project, you cannot have a civil society dialogue—without Hamas's active involvement one way or another". The law is also extraterritorial in its scope, meaning that it applies to UK nationals and residents abroad too.

6.3 Remittances from the Palestinian diaspora constitute a key element of the Palestinian economy. According to the World Bank, personal remittances accounted for 17% of GDP in Gaza and the West Bank in 2020.[115] Those who send remittances to their families to help ameliorate the debilitating economic situation in Gaza risk being found guilty of terrorism-related offences because the remittances will have to be sent to a territory controlled by Hamas. Moreover, if anyone in the family is affiliated with Hamas or the civil service,

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[113] Lovatt, H. 2021. Why the UK's blacklisting of Hamas hurts its own peace policy. European Council on Foreign Relations. 6 December. https://ecfr.eu/article/why-the-uks-blacklisting-of-hamas-hurts-its-own-peace-policy/.

[114] Gillespie, E. 2022. Concern Australia's listing all of Hamas as a terrorist organisation will harm ordinary Palestinians. SBS News. 17 February. https://www.sbs.com.au/news/article/concern-australias-listing-all-of-hamas-as-a-terrorist- organisation-will-harm-ordinary-palestinians/xw39px5ri.

[115] World Bank, Personal Remittances, received (% of GDP) – West Bank and Gaza. https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=PS.

however indirectly, a remittance could be interpreted as materially supporting Hamas. With around 30-40% of Palestinians supporting Hamas in popular surveys and the boundaries of membership being deeply blurred, such a scenario is likely.

6.4 This has not only for the in the UK but also for and As the de facto government in Gaza, Hamas coordinates with international humanitarian agencies and charities, raising concerns about the extent to which the terrorism designation complicates their efforts to alleviate the humanitarian crisis in Gaza. This is especially worrying, as approximately 80% of Gazans are dependent on humanitarian aid,[116] much of which stems from UN bodies, such as the United Nations Relief Works Association for Palestinians in the Near East (UNRWA). The proscription unnecessarily complicates the UK's relations with international organisations operating in Gaza such as UNRWA, but also the World Bank, UNOPS, and OCHA. Hamas's affiliation with highly regarded NGOs, employment of Hamas members in UNRWA and other humanitarian organisations, and contributions of aid organisations such as the UNDP, the World Food Programme, USAID, Save the Children, Médecins sans Frontières, Medical Aid for Palestine, to Hamas-affiliated charities or zakat committees makes the blanket terrorist designation of Hamas potentially deeply destructive for Gazan civil society and their dependents.[117]

6.5 To illustrate the potential implications of proscription for charities, in April 2023, a number of Muslim charities in the UK were sent a letter by the Treasury's Office of Financial Sanctions Implementation (OFSI), asking "to supply details of all payments made in Gaza since 31 December 2020", including "any payments such as local authority charges, taxes, utilities, and services including water supply, waste services, telephone or broadband payments". The letter explained that, because Hamas is now a proscribed organisation, the law prohibits anyone "from making available funds to or for the benefit of an organisation designated under the 2019 Regulations…This can include any payments to a designated organisation or entities owned or controlled by it, or to entities independent of that organisation but where payments will be for its benefit…As a charity with operations in the OPT, potentially in Gaza, it is your responsibility to ensure you are compliant with financial sanctions obligations". At a minimum, this increases the costs of carrying out humanitarian work in Gaza as charities are now having to seek "legal advice to ensure they properly fulfil their responsibilities" or risk "face sanctions under counter-terrorism regulations".[118] Any charity with offices in Gaza risks facing sanctions as they will have to pay local taxes and utilities.

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[116] International Labour Organization. 2021. The Situation of workers of the occupied Arab territories. Report of the Director General – Appendix. Geneva: International Labour Office. p. 45. https://www.ilo.org/wcmsp5/groups/public/--- ed_norm/---relconf/documents/meetingdocument/wcms_793285.pdf.

[117] Gunning. Terrorism, Charity and Diasporas. p. 100; Benthal, J. 2008. The Palestinian Zakat Committees 1993-2007 and Their Contested Interpretations. Geneva: Graduate Institute of International and Development Studies. p.11; Lundblad, L. 2008. Islamic Welfare, Discourse and Practice: The Institutionalization of Zakat in Palestine. In Interpreting Welfare and Relief in the Middle East, ed. N. Naguib and I.M Okenhaugh. Leiden: Brill. pp. 206-7.

[118] Legraien, L. 2023. UK aid charities told to provide details of payments made in Gaza. Civil Society Media. 11 Apr 2023.

6.6 Humanitarian work in Gaza also risks falling foul of the law if the government decides that it constitutes "material support" to Hamas. Oxfam faced having to pay $160 million in a New York court on the grounds that "an agriculture policy project in Gaza constituted "material support" to Hamas", which is designated to a terrorist organisation in the US too.[119] Norwegian People's Aid agreed to pay a $2 million settlement for failing to disclose to USAID its "support for a democratisation project for youth in Gaza from 2012-2016", on the ground that this constituted a "relation…to countries, organisations or persons under embargo by U.S. government designations".[120] In the US, pro-Israel organisations have increasingly used what have been called "lawfare" tactics against charities supporting Palestinians, preventing them from operating or severely disrupting their ability to work, illustrating the potentially deeply damaging effect of a blanket designation of Hamas.[121] "Lawfare" practices have also been used to attempt to prevent financial service providers to undertake audits for Palestinian entities (e.g. PwC Palestine in a UK case) or transfer money (e.g. NatWest in a US case, although it was eventually cleared).[122] The proscription of Hamas socio-political activities facilities the use of such tactics in the UK.

6.7 Accusations of funding terrorism do not have to be founded to cause significant costs and disruption, as can be seen from the impact of such accusations levelled at the UK-based charities Islamic Relief Worldwide and Interpal, both of which have been cleared, one by an independent audit, supported by the UK's Disasters Emergency Committee, the other by the UK Charity Commission, but not before considerable resources were spent on audits and court cases, and substantial disruption to aid to Palestinians.[123] Both these clearances occurred before Hamas's proscription in its entirety. Accusations can also lead to banks stopping providing services to charities, as was the case with HSBC and Interpal.[124]

7. Lack of domestic benefits and potential cost to the United Kingdom of proscription (V)

7.1 The proscription has no benefits domestically yet comes with potential costs to the UK. There is no evidence that Hamas or the Qassam Brigades operate in the UK. A Commons

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[119] Parker, B. 2019. Oxfam faces $160 million legal threat over Palestine aid project. The New Humanitarian.

[120] Norwegian People's Aid. 2018. Norwegian People's Aid reaches a settlement with the U.S. government. News Norwegian People's Aid.

[121] The Alarming Rise of Lawfare to Suppress Civil Society: The Case of Palestine and Israel. Charity & Security Network. 28 September 2021. https://charityandsecurity.org/wp-content/uploads/2021/09/The-Alarming-Rise-of-Lawfare-to-Suppress- Civil-Society.pdf. See also: Medical Aid for Palestinians' statement on complaint by UK Lawyers for Israel and the Lawfare Project. MAP. 20 October 2018. https://www.map.org.uk/news/archive/post/928-medical-aid-for-palestinians-statement-on-complaint-by-uk-lawyers-for-israel-and-the-lawfare-project.

[122] UK government dismisses latest attempt by UK Lawyers for Israel to harm Palestinian civil society. European Legal Support Center. 11 October 2021.

[123] Islamic Relief defies Israeli ban and continues operations in Palestine. The Guardian. 11 September 2014; Islamic Relief to contest Israeli 'terrorism' allegations in court. The Guardian. 27 July 2020; UK Charity Commission: Interpal Not Supporting Terror Group. Charity & Security Network. 9 April 2009; Why is the Muslim charity Interpal being blacklisted as a terrorist organisation? The Telegraph. 26 September 2014; Corfe, E. 2014. Islamic Relief Worldwide cleared of terrorist links. Civil Society Media. 12 December.

[124] Oborne, P. and Westad, J.-P. 2020. HSBC to block donations to Palestinian aid charity Interpal. Middle East Eye.

Library Research Briefing prepared at the time of the proscription debate noted that "Hamas IDQ [Izz ed-Din al-Qassam Brigades] has not directly attacked UK or Western interests" and "Hamas IDQ has not operated outside Israel and the Occupied Territories and has no overt representation in the UK".[125] Although it added that "Hamas's political wing is represented by charitable organisations which raise and remit funds for welfare purposes", the charitable organisations in question appear to be independent from Hamas and have been allowed to continue operating by the Charity Commission, which scrutinises such links (see 6.7).[126]

7.2 The Home Secretary argued that proscription of the entirety of Hamas was "an important step" in the fight against extremism, and "especially for the Jewish community":

> Hamas is fundamentally and rabidly antisemitic. Antisemitism is an enduring evil which I will never tolerate. Jewish people routinely feel unsafe – at school, in the streets, when they worship, in their homes, and online. This step will strengthen the case against anyone who waves a Hamas flag in the United Kingdom, an act that is bound to make Jewish people feel unsafe. Anyone who supports or invites support for a proscribed organisation is breaking the law. That now includes Hamas in whatever form it takes.[127]

7.3 The question of whether proscribing all of Hamas will reduce antisemitism in the UK is fundamentally different to the question of whether Hamas meets the criteria for being designated a terrorist organisation. There are other mechanisms available which can and should be used vigorously to tackle the evil of antisemitism. Proscribing Hamas in its entirety is unlikely to lessen antisemitism in the UK, which predates Hamas and indeed the creation of Israel. Antisemites in the UK who have adopted the Hamas flag to express their antisemitism will not stop being antisemites because Hamas is proscribed.[128] They will find other ways to express their abhorrent views. Antisemitism should be combated under the legal framework of hate crime and hate speech, not the blunt instrument of proscription under the Terrorism Act, which focuses on whether a group has committed, participated, prepared, promoted or encouraged acts of terrorism.[129]

7.4 The Home Secretary's focus on antisemitism furthermore continues the government's conflation of opposition to Israeli settler-colonialism with antisemitism, which was also evident in its position on the discussion of the Israel-Palestine conflict at UK universities.

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[125] Dawson, J. 2021. Proscribed Terrorist Organisations. Commons Library Research Briefing 00815. London: House of Commons Library.

[126] UK Charity Commission: Interpal Not Supporting Terror Group. Charity & Security Network. 9 April 2009; Corfe, E. 2014. Islamic Relief Worldwide cleared of terrorist links. Civil Society Media. 12 December.

[127] 'Antisemitism is an enduring evil': Britain to recognize Hamas as terrorist organization. Arutz Sheva, 19 November 2021.

[128] For a discussion of this dynamic in the Netherlands, see Gans, E. 2013. "Hamas, Hamas, All Jews to the Gas." The History and Significance of an Antisemitic Slogan in the Netherlands, 1945-2010, in Perceptions of the Holocaust in Europe and Muslim Communities: Sources, Comparisons and Educational Challenges, ed. G. Jikeli and J. Allouche-Benayoun. Dordrecht: Springer.

[129] UK Government 2023. Proscribed terrorist groups or organisations. London: Home Office.

Unsubstantiated allegations of antisemitism have been weaponised against students and academics at British universities speaking in support of Palestinians and Palestinian rights. Three quarters of UK universities have adopted the highly controversial definition and illustrative examples of antisemitism of the International Holocaust Remembrance Alliance in 2016, following threats by Gavin Williamson, the then Education Secretary, to cut funding, if they refused. This definition, and particularly the illustrative examples, have shifted the focus from the traditional meaning of hatred of Jews to criticism of Israel, a shift ostensibly actively promoted by the Israeli government, according to Jonathon Cook, "to shield itself from critics, including human rights groups, who were highlighting Israel's apartheid rule over Palestinians".[130] For instance, the IHRA example of equating "claiming that the existence of a State of Israel is a racist endeavor" with antisemitism, has been used to attack or silence scholars who have viewed Israeli government practices through the lenses of Apartheid or racism. Seven of the IHRA's examples refer to the state of Israel specifically and the way they have been used to police speech rather than to aid analysis has been criticised by Kenneth Stern, who led in developing the IHRA definition.[131]

7.5 A September 2023 report prepared by the European Legal Support Center and the British Society for Middle Eastern Studies has documented 40 cases of academic staff and/or students in the UK being accused of antisemitism on the basis of the IHRA definition (38 were eventually cleared and two cases are still ongoing). The report notes the toll of these investigations on those falsely accused and the negative impact on academic debate, with events cancelled and staff and students being deterred from "from speaking about or organising events that discuss Palestinian human rights and Palestinian self-determination out of fear that they will be subject to complaints, or else will face considerable bureaucratic hurdles and even costly legal action in order to allow events to take place".[132] Conflation of antisemitism and anti-Zionism has been used to silence pro-Palestinian activists for years. In the United States, Jared Kushner, the son-in-law and special advisor to former President Donald Trump stated in the New York Times that the definition "makes clear [that] Anti-Zionism is antisemitism."[133] As such, like invocations of terrorism, charges of antisemitism are often part of a broader effort to silence critics of the Israeli government and do not need to be true to irredeemably ruin reputations, careers, and lead to costly legal battles. Moreover, such conflation is dangerous and potentially counterproductive because it may lead others to hold all Jews responsible for the actions of the Israeli government.

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[130] Cook, J. 2023. UK and Israel: Has the fightback against weaponised antisemitism begun? Middle East Eye. 25 September.

[131] Deckers, J. and Coulter, J. 2022. What Is Wrong with the International Holocaust Remembrance Alliance's Definition of Antisemitism? Res Publica 28(4): 733–52. https://doi.org/10.1007/s11158-022-09553-4; Clarke, J. 2021. Jerusalem Declaration: a rebuttal against the weaponising of antisemitism. Counterfire. 18 April. https://www.counterfire.org/article/jerusalem-declaration-a-rebuttal-against-the-weaponising-of-antisemitism/ .

[132] ELSC and BRISMES. 2023. Freedom of Speech and Academic Freedom in UK Higher Education: The Adverse Impact of the IHRA Definition of Antisemitism. https://www.brismes.ac.uk/files/documents/Freedom%20of%20Speech%20and%20Academic%20Freedom%20in%20UK% 20Higher%20Education-BRISMES-ELSC.pdf.

[133] Cited in Stern, K. 2019. I drafted the definition of antisemitism. Right wing Jews are weaponizing it. The Guardian. 13 December. https://www.theguardian.com/commentisfree/2019/dec/13/antisemitism-executive-order-trump-chilling- effect.

7.6 Antisemitism has been a major trope of mainstream commentary on Hamas over the past four weeks. Yet, Hamas's position towards Jews cannot be readily captured by the antisemitism label. Hamas's founding Charter (1988) contained antisemitic tropes and, for decades, its website had a link to the Protocols of the Elders of Zion, a known antisemitic forgery. However, Hamas has not attacked Jews worldwide and the cause of their violence against Israelis is occupation, displacement and settler colonialism, not hatred of all Jews.

7.7 Hamas's leadership has, moreover, been in a process of distancing itself from its earlier use of antisemitic tropes, removing the link to the Protocols of the Elders of Zion,[134] drawing a clearer distinction between Jews and Israelis in its rhetoric, and specifying that its struggle is with Israeli settler-colonialism. This was exemplified in its 2017 Manifesto which emphasises that the conflict is political, not religious; that is to say, it is about Israeli settler colonialism and occupation, not some ancient struggle between Islam and Judaism. Article 16 of the new charter reads:

> Hamas affirms that its conflict is with the Zionist project not with the Jews because of their religion. Hamas does not wage a struggle against the Jews because they are Jewish but wages a struggle against the Zionists who occupy Palestine. Yet, it is the Zionists who constantly identify Judaism and the Jews with their own colonial project and illegal entity.[135]

7.7 Hamas has also publicly accepted a Palestinian state on 1967 borders in line with most other actors (see 4.13, 4.15-16). Although it reiterated that it does not recognise Israel from an international law perspective nor relinquish the right of Palestinians to all of Palestine, this is nevertheless a significant shift from its founding Charter in 1988; and its refusal to recognise Israel is rooted in its claim to all of historic Palestine, not in hatred of Jewry. To put this in context, the Republic of Ireland maintained a constitutional claim on Northern Ireland until 1998.[136]

7.8 The Qassam Brigades have confined their attacks to Israel-Palestine and not targeted Jews elsewhere. Where British Jews have been killed by the Brigades, this has been in Israel-Palestine, as part of its broader war against Israeli occupation. Hamas-affiliated media and individual Hamas leaders, when delivering sermons, may still be prone to using antisemitic tropes[137] and this should be vigorously condemned. But the fact that Hamas's formal Manifesto has staked out a clear position regarding the cause of the conflict – occupation –

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[134] As a result of the Swiss government's engagement with Hamas; see Gunning, J. 2010. The Conflict and the Question of Engaging with Hamas. In Examining European Involvement in the Arab-Israeli Conflict, Chaillot Papers, ed. Esra Bulut Aymat. Paris: European Union Institute for Security Studies.

[135] Hamas in 2017: the document in full. Middle East Eye. 2 May 2017. https://www.middleeasteye.net/news/hamas-2017-document-full.

[136] We are indebted to Professor Conor Gearty for making this point at the event "Except Palestine: Law, Humanity and Politics". LSE. 7 November 2023.

[137] See e.g., Spoerl, J. 2020. Parallels between Nazi and Islamist Anti-Semitism. Jewish Political Studies Review 31(1/2): 210- 44.

and clarified that its struggle is with the Israeli state, not Jews, is nevertheless significant. The failure of the UK and other governments to acknowledge this shift in Hamas rhetoric, however partial, and its position on the two-state solution only serves to weaken the pragmatists within the movement who recognise the importance of this, while strengthening its hardliners.

7.9 We have so far argued that proscription of Hamas in its entirety does not benefit the UK domestically. Conversely, if applied consistently, the proscription of Hamas in its entirety may negatively impact the UK's foreign relations. Qatar, for instance, periodically injects large amounts of cash to enable the Hamas government in Gaza to function. Hamas has also received support from Iran and Turkey, amongst others.[138] Hamas leaders are regularly hosted at various Arab and international capitals for political discussions. The movement further has representatives and political bureaus inter alia in Qatar, Turkey, Iran, Lebanon, and Egypt, raising the question of how the terrorist designation will affect the UK's relations with these states. The brutality of the 7 October attacks may have made governments in the region distance themselves from Hamas for now – although there is already ambiguity over the extent of this, as in the reported case of Turkey.[139] But the attacks have also put the Palestinian question and the importance of establishing a Palestinian state back on the table and, if Hamas survives, it is likely to play a role in this. Governments may thus repair their relations with Hamas, putting the UK in a diplomatically awkward position, and limiting its ability to influence discussions. More broadly, it is likely to have a detrimental effect on the UK's influence in the Middle East and relations with Muslim majority countries in general. The UK's relations with Palestinians overall will be further compromised if Hamas and the internationally backed Fatah-led Palestinian Authority eventually reconcile.

7.10 The designation is also likely to negatively affect academic and journalistic freedom, which will both hurt the UK's international standing and its ability to gain a deeper understanding of Hamas and Gaza. The UK's designation of Hamas as terrorist is extraterritorial and prohibits individuals from even arranging private meetings with Hamas members.[140] Most of us, through our research and work experiences, have interacted at length with Hamas officials or other individuals who could reasonably be assumed to be associated or supportive of Hamas, within the context of our academic research. Proscribing the entirety of the organisation, including its civilian aspects, could impede research on the movement, render outside actors ignorant of ongoing changes within the organisation, thereby leaving outside actors poorly informed and without leverage. Academic, journalist, and charitable endeavours are important informal backchannels of policy information and other messaging to and from proscribed organisations to blacklisting governments.

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[138] See e.g., Pecquet, J. 2014. Key panels urge sanctions on Qatar, Turkey over Hamas. Al-Monitor. 9 December; Palestinian Authority withdraws from Qatar funding scheme for Gaza - Qatari envoy. Reuters. 10 September 2021; Srivastava, M. et al. 2023. What links Hamas to the Axis of Resistance and its patron Iran?

[139] Tastekin, F. 2023. Eying Gaza mediator role, Turkey cools Hamas ties, Erdogan restrains rhetoric. Al-Monitor. 22 October. https://www.al-monitor.com/originals/2023/10/eying-gaza-mediator-role-turkey-cools-hamas-ties-erdogan- restrains-rhetoric. https://www.al-monitor.com/originals/2023/10/eying-gaza-mediator-role-turkey-cools-hamas-ties- erdogan-restrains-rhetoric#ixzz8IKJsZI82.

[140] Lovatt, H. 2021. Why the UK's blacklisting of Hamas hurts its own peace policy. +972 Magazine. 25 November. https://www.972mag.com/hamas-uk-terrorism-peace/.

7.11 The government has issued explanatory notes to clarify when meeting with designated groups is permitted under the Terrorism Act:

> the explanatory notes to TACT 2000 explain that the defence in section 12(4) is intended to permit the arrangement of 'genuinely benign' meetings. While the explanatory notes do not have direct legal effect, they are helpful in clarifying the intended effect of legislation and can be taken into account by the prosecuting authorities when considering whether prosecution is in the public interest, and by the courts in interpreting Parliament's intentions. A 'genuinely benign' meeting is described by the notes as a meeting at which the terrorist activities of the group are not promoted or encouraged; for example, a meeting designed to encourage a proscribed organisation to engage in a peace process or facilitate delivery of humanitarian aid where this does not involve knowingly transferring assets to a proscribed organisation.[141]

7.12 However, as Hilary Benn (Labour MP) rightly noted in the parliamentary debate: "it is not a satisfactory answer to leave people in the following position: "Well, there is a defence. Hey, if you are prosecuted, you can go to court and advance the defence. You may win, you may not. You may be found guilty."[142] The proscription could thus still impede academic and journalistic research by increasing the risks to academics and journalists. Recent attempts by the government to criminalise solidarity with Palestinians and Palestine and its intervention in academic processes to silence pro-Palestinian academics are extremely perturbing in this regard.[143]

8. Lack of transparency and fair representation in the process of proscription (VI)

8.1 Finally, we argue that the process followed by the UK government and the Houses of Parliament to arrive at the decision to list the entirety of Hamas as a terrorist organisation was flawed on procedural grounds, with potential implications for the UK's international standing in the MENA region. Procedurally, there was a lack of transparency and, as far as can be surmised from the little information available, a lack of fair representation in the process followed. The government made its recommendation on the basis of advice from the cross-government Proscription Review Group, the exact membership of which does not seem to be publicly available. The details of this advice, and the way it had been arrived at,

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[141] Home Office and Office of Financial Sanctions Implementation HM Treasury. 2023. For information note: operating within counter-terrorism legislation, counter-terrorism sanctions and export control. https://www.gov.uk/government/publications/operating-within-counter-terrorism-legislation/for-information-note-operating-within-counter-terrorism-legislation.

[142] Benn, H. 2021. 24 November. Prevention and Suppression of Terrorism [Hansard]. Vol. 704.

[143] Palestine in School. 2023. Criminalising Palestine Solidarity. Tribune. 13 October. https://tribunemag.co.uk/2023/10/criminalising-palestine-solidarity; Hunter, B. 2023. The UK establishment is using war to attack protest at home. OpenDemocracy. 16 October. https://www.opendemocracy.net/en/israel-palestine-hamas-uk- suella-braverman-protest-rights/; Havergal, C. 2023. UKRI faces mounting pushback over equality panel 'capitulation'. Times Higher Education. 1 November. https://www.timeshighereducation.com/news/ukri-faces-mounting-pushback-over- equality-panel-capitulation.

were not disclosed to Parliament and numerous MPs expressed dissatisfaction at the lack of transparency during the parliamentary debate on the proscription. MPs also questioned why no medical, humanitarian or peacebuilding organisations working in Gaza appeared to have been consulted. Furthermore, no detailed answers were given to questions regarding whether the government had sought advice on the consequences of this proscription vis-à-vis humanitarian and medical aid, future engagement with the Palestinian Legislative Council and Palestinian Authority – especially when Hamas and Fatah eventually reconcile – or the prospects for a two-state solution. Further, in spite of the importance of the topic and the potential severity of the consequences of proscription for the two million people living in Gaza and millions of Palestinians in the diaspora who have ties with them, the time allotted to parliamentary debate was one and a half hour in the House of Commons and half an hour in the House of Lords. The motion was approved without a formal vote.[144]

8.2 Although it is unclear which parties were consulted, the parliamentary debate referenced recent high-level meetings with the Israeli President and Israel's Ministry of Foreign Affairs, as well as the work of pro-Israel advocacy groups such as the Israel Britain Alliance. No such references were made to high-level meetings with Palestinian politicians or Palestinian advocacy groups. Given the positions of key Cabinet ministers at the time on Israel – the Home Secretary proposing the proscription, Priti Patel, was sacked in 2017 from Theresa May's government for failing to disclose unofficial meetings with Israeli ministers, including then Prime Minister Benjamin Netanyahu, while then Prime Minister Boris Johnson was praised for strengthening UK-Israel relations in Israel[145] – this is not surprising. Johnson had reportedly been urged by then Israeli Prime Minister Naftali Bennett, a leading figure in the settlement movement who supports annexation of 60% of the West Bank, to proscribe Hamas in its entirety at the UN climate conference in Glasgow a month before and Patel's announcement of the government's intention to proscribe all of Hamas followed shortly after the Israeli government's proscription of six Palestinian civil society groups as terrorist organisations, a move decried by human rights organisations and the United Nations Office of the Commissioner of Human Rights as targeting Palestinian civil society.[146]

8.3 Concern with the process of proscribing groups long predates the proscription of Hamas in its entirety. In 2001, MPs and Lords critiqued the lack of transparency surrounding the process and the consequences this had for Parliament's (in)ability to scrutinise government recommendations. In 2014, Drs Tim Legrand and Lee Jarvis noted "the lack of consultation,

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[144] Hansard. 2021. 24 November. Prevention and Suppression of Terrorism [Hansard]. Vol. 704; Hansard. 2021. 25 November. Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2021 [Hansard]. Vol. 816.

[145] E.g., committing the Foreign Office to celebrating the Balfour Declaration centenary; support for Israel when he was in the UN; pushing for royal visits to Israel. Shlaim, A. 2021. Hamas terror listing is yet another UK betrayal of the Palestinians. Middle East Eye. 30 November; Regev, M. 2022. Boris Johnson: UK PM who washed dishes in Israel to exit Downing Street. Jerusalem Post. 1 September.

[146] The groups proscribed were Addameer Prisoner Support and Human Rights Association, Al-Haq, Bisan Center for Research and Development, Defense for Children International – Palestine, the Union of Agricultural Work Committees, and the Union of Palestinian Women Committees. See Shlaim, A. 2021. Hamas terror listing is yet another UK betrayal of the Palestinians. Middle East Eye. 30 November; Israel/Palestine: UN experts call on governments to resume funding for six Palestinian CSOs designated by Israel as 'terrorist organisations'. OHCHR. 25 April 2022. https://www.ohchr.org/en/press- releases/2022/04/israelpalestine-un-experts-call-governments-resume-funding-six-palestinian.

due process and parliamentary oversight in a regime predicated upon a presumption in favour of the Executive's proposals".[147] In the 2018 report of the Independent Reviewer of Terrorism Legislation on the Terrorism Acts, Emeritus Professor Clive Walker similarly noted the lack of transparency and fairness in the process of proscription by not inviting representations from those affected and failing to disclose evidence.[148]

8.4 This stands in contrast to processes elsewhere. Walker discusses Australian procedures approvingly, noting that the low number of proscribed organisations is arguably due to the fact that proscription has to be reviewed by the Parliamentary Joint Committee on Intelligence and Security and that evidence submitted is published.[149] Australia has proscribed 29 organisations, mostly affiliates of al-Qa'ida and the Islamic State Group, compared to the 78 proscribed by the UK. Submissions and evidence on such matters are published and made publicly available in Australia. Following the initial recommendation to proscribe all of Hamas, during which the only non-governmental evidence provided emanated from advocacy groups and experts with known pro-Israeli proclivities, the Australian Parliament reopened submissions to allow for a more balanced array of analyses pointing out the potential for the de facto criminalisation of Gaza. This resulted in several concessions, including ministerial discretion to avoid inadvertently criminalising individuals or organisations with incidental ties to Hamas by nature of their engagement with Gaza.[150]

8.5 The known political biases of key ministers at the time of proscription in the UK, coupled with the absence of information regarding the evidence sought and the way evidence was interpreted, thus cast doubt on whether the process was sufficiently impartial. This has important consequences for the UK's standing in the Middle East and North Africa. Surveys regularly find that popular support for a Palestinian state in MENA remains high, support for normalisation with Israel in the absence of a Palestinian state low.[151] As Hamas is an integral part of Palestinian politics, the proscription of its political wing is seen as creating another obstacle to a two-state solution. As noted above, the Palestinian Authority's mission to the UK, for instance, notwithstanding the political rivalry with Hamas, "warned that the move makes it more difficult for Fatah and Hamas to bury their 14-year-old rift and to unite under a single government". In a statement, it said: "With this move, the British government

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[147] Legrand, T. and Jarvis, L. 2014. Enemies of the State: Proscription Powers and Their Use in the United Kingdom. British Politics 9(4): 462.

[148] Walker, C. 2018. Executive Legal Measures and Terrorism: Proscription and Financial Sanctions. In The Terrorism Acts in 2016: Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006, ed. Max Hill. London: Controller of Her Majesty's Stationery Office. p. 80.

[149] Walker. Executive Legal Measures and Terrorism: Proscription and Financial Sanctions.

[150] Australia Parliament Joint Committee on Intelligence and Security. 2022. Review of the Listing and Re-Listing of Eight Organisations as Terrorist Organisations under the Criminal Code. Canberra: Parliamentary Joint Committee on Intelligence and Security.

[151] See e.g., Arab Barometer. 2022. How Do MENA Citizens View Normalization With Israel? 12 September. https://www.arabbarometer.org/2022/09/how-do-mena-citizens-view-normalization-with-israel/; Arab Opinion Index. 2023; Arab Opinion Index 2022: Executive Summary. 19 January. https://arabcenterdc.org/resource/arab-opinion-index- 2022-executive-summary/.

has complicated Palestinian unity efforts and undermined Palestinian democracy... It is a retrograde and one-sided step that will do nothing for efforts to secure a peaceful two-state outcome...".[152]

8.6 This is particularly costly to the UK as the memory of the Balfour Declaration still resonates strongly in the region. The 1917 Declaration expressed British support for a Jewish homeland in Palestine while stating "that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities" – that is to say, 90% of the population at the time.[153] Clearly, this was not to be the case, as was also noted in the Parliamentary debate by Conservative MP Crispin Blunt: "Obviously half of that declaration is undelivered – the bit that said it would not be done at the cost of the rights of the people already there".[154] Violent protests took place in the Occupied Palestinian Territories on the centenary of the Declaration, while numerous debates were printed in the editorial and op-ed sections of regional daily publications.[155] The Balfour Declaration is still widely regarded in Palestine as an act of British treachery, in Arabic the "calamitous promise", or the original sin that led to the establishment of Israel and the ethnic cleansing of Palestinians from what became the state of Israel in 1948.[156] The PA's foreign ministry, no friend of Hamas, condemned the latter's proscription as "an unjustified attack on the Palestinian people, who are subjected to the most heinous forms of occupation, and historical injustice established by the Balfour Declaration."[157] Hamas similarly explicitly linked the UK's decision to proscribe it to Balfour and the British Mandate: "Unfortunately, Britain continues in its old treachery, so instead of apologizing and correcting its historical sin against the Palestinian people, whether in the ominous Balfour Declaration, or the British Mandate that handed over Palestinian land to the Zionist movement, it supports the aggressors at the expense of the victims."[158] The lack of transparency in the process of proscribing all of Hamas and the known biases of the government towards Israel thus served to reinforce this belief that the UK is betraying the Palestinian people.[159]

9. Concluding remarks

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[152] UK to label entirety of Hamas a terrorist organization. Jerusalem Post. 19 November 2021.

[153] United Kingdom Government. 1917. Balfour Declaration. Letter. British Library.

[154] Blunt, C. 2021. 24 November. Prevention and Suppression of Terrorism [Hansard]. Vol. 704.

[155] Middle East Policy Council. 2017. Debating the Legacy of the Balfour Declaration. 9 November. https://mepc.org/commentary/debating-legacy-balfour-declaration

[156] Black, I. 2017. The contested centenary of Britain's 'calamitous promise'. The Guardian. 17 October. https://www.theguardian.com/news/2017/oct/17/centenary-britains-calamitous-promise-balfour-declaration-israel-palestine.

[157] Cited in Abu Samra, Q. Palestine rejects UK terror label of Hamas. Anadolu Ajansı. 20 November.

[158] UK to label entirety of Hamas a terrorist organization. Jerusalem Post. 19 November 2021.

[159] See also Shlaim, A. 2021. Hamas terror listing is yet another UK betrayal of the Palestinians. Middle East Eye.

9.1 Given the UK's unique long-standing involvement with Palestine-Israel and its ties to both sides of the conflict, it could more proactively insert itself in future negotiations, which have long since stalled under the auspices of the United States and the United Nations. The brutality of the current violence shows the urgency of not just a ceasefire but also dealing with the underlying causes, ending the siege of Gaza and working towards the establishment of a Palestinian state. As the UK is no longer bound by the EU, it can chart a more independent path. Although at present this may be unthinkable and seem counterintuitive, de-listing Hamas's political wing in the future, in return for quantifiable steps towards the Quartet's preconditions, to enable a political solution to the Gaza siege and work towards a two-state solution would be a bold step that a post-EU UK would be able to take. Should the UK be successful in providing an alternative and more fruitful approach to the current deadlock, it would undoubtedly be viewed with much goodwill in the Arab and wider Islamic world. The US government's unwavering support for Israel at this time and its proposal to increase funding to Israel as part of an emergency spending package, including funding for Taiwan and the Ukraine as well,[160] will have made the US an even less credible broker than it already was in the past.

9.2 Proscription of Hamas in its entirety goes against the UK's Government's longstanding support for a negotiated political settlement between Palestinians and Israelis based on the two-state solution, and further encourages the Israeli government to continue with the status quo and not negotiate with the Palestinians. It has served to support the continuation of Israel's occupation of the West Bank, East Jerusalem, and Gaza Strip and impede the possibility of the Israeli government accepting to return to direct and genuine negotiations with the Palestinians it occupies. The decision has undermined internal Palestinian efforts, between the Palestinian Authority and Hamas, at unifying their political leadership for a more assertive role in restoring Palestinian rights. And it has contributed to creating a permissive environment for Israel's current indiscriminate punitive war on Gaza, by erasing distinctions between Hamas's different wings and between Hamas and Gazan citizens more broadly. This, coupled with the UK's continued support for the Israeli government, may make the UK's government complicit in war crimes and potentially genocide. The UK's relations with Palestinians in general will be compromised if Hamas and the internationally backed Palestinian Authority eventually reconcile and continued proscription of Hamas in its entirety will severely hinder Gaza's reconstruction and finding a political solution, if significant parts of Hamas survive. In this regard, the decision to proscribe all of Hamas is inconsistent with the UK's stated commitment to a two-state solution.

9.3 The UK government's concern regarding the indiscriminate targeting of and violence against civilians, particularly urgent in the current escalation of violence, would be more constructively expressed in support for international efforts at upholding international humanitarian law in Israel and Palestine through institutions such as the ICC and the ICJ, proactively working to lift the almost two decades' old siege of Gaza, and putting serious political capital into pushing for a two-state solution.

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[160] US House passes $14.5bn military aid package for Israel. Aljazeera. 3 November 2023. https://www.aljazeera.com/news/2023/11/3/us-house-passes-14-5bn-military-aid-package-for-israel.

9.4 The proscription of Hamas in its entirety further risks putting the UK's government at odds with key international institutions, such as the United Nations, charged with maintaining international peace and security, and key US allies such as Qatar, which periodically injects large amounts of financial aid into Gaza to enable the Hamas government to function.

9.5 Palestinian society is small, tightly knit, and interconnected, and the proscription of all of Hamas will indubitably have knock-on effects for Palestinians in East Jerusalem, the West Bank, Israel, and the diaspora. Connections between Palestinians at home or in the diaspora and individuals or organisations notionally associated with Hamas – whether genuine, apparent, or confected – will be extremely difficult, if not impossible, to disentangle in any clear-cut manner and has the potential to incriminate them vis-à-vis the crime of association. In brief, who will determine if an individual is a member or supporter of Hamas? Will the UK create an independent commission that investigates such claims or depend on Israeli military courts' classifications – which, according to Human Rights Watch, "have a near-100 percent conviction rate" for the hundreds of thousands of Palestinians incarcerated since 1967 and are therefore clearly partisan.[161] This will be as urgent an issue after the current violence ends as it was before 7 October.

9.6 The designation of Hamas as a terrorist organisation in its entirety will be inconsequential to the UK's domestic counterterrorism efforts as Hamas does not operate in the UK, while potentially criminalising the lives of millions of Palestinians who happen to live under its rule. It is unlikely to reduce antisemitism in the UK. Yet it will further stifle efforts at alleviating the politically induced humanitarian suffering in the Gaza Strip by potentially criminalising or severely complicating international and UK humanitarian efforts.

9.7 The lack of transparency in how the decision to proscribe all of Hamas was arrived at, coupled with the known biases of key Ministers, undermines public faith in the impartiality of the process, with potential implications for the UK's reputation in the MENA. The one-sided use of the terrorism label to criminalise one party to the conflict, while apparently opposing international efforts at having both parties investigated by the ICC or the ICJ, raises further questions about the UK's commitment to impartiality and human rights. The conflation of opposition to Israeli settler colonialism and antisemitism serves to deny Palestinians the right to resist and condemn occupation and to silence engagement or advocacy on Palestine within the UK.[162]

10. Author Biographies

10.1 Prof Jeroen Gunning is Professor of Middle East Politics and Conflict Studies at the Department of Political Economy at King's College London. He is Visiting Professor at Aarhus University and the London School of Economics. He has held positions at Durham

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[161] Human Rights Watch. 2017. Israel: 50 Years of Occupation Abuses. 4 June.

[162] See e.g., Timeline: Shrinking Space in Israel-Palestine. Diakonia: International Humanitarian Law Centre. 13 December 2021.

University, Aberystwyth University and the University of Oxford. With Morten Valbjørn, he is co- director of the research project TOI: "Bringing in the Other Islamists - comparing Arab Shia and Sunni Islamism(s) in a sectarianised Middle East". His publications include Hamas in Politics: Democracy, Religion, Violence (Hurst/CUP 2007/2008) and, with Ilan Baron, Why Occupy a Square? People, Protests and Movements in the Egyptian Revolution (Hurst/ OUP 2013/14). He has published numerous book chapters and articles on Hamas.

10.2 Dr Tristan Dunning is an honorary research fellow at the University of Queensland. He has previously been an Associate Professor at the American University of Afghanistan and a lecturer at The University of Queensland and the University of the Sunshine Coast. He has also worked as a Senior Researcher for the Australian Parliamentary Library and the Department of Parliamentary Service House in Canberra, providing impartial briefs on request to all political parties. Tristan is the author of Hamas, Jihad and Popular Legitimacy: Reinterpreting Resistance in Palestine (2016) and the editor of Palestine: Past and Present (2019). Tristan has published in the academic journals Critical Terrorism Studies, Terrorism and Political Violence, and Small Wars and Insurgencies. His work has also been published in numerous other outlets including the Australian Broadcasting Corporation, The Sydney Morning Herald, the Australian Institute of International Affairs, and The Conversation, among others. His research examines armed non-state actors and governance in Middle East.

10.3 Dr Anas Iqtait is a lecturer at Australian National University Centre for Arab and Islamic Studies and a non-resident scholar with Program on Palestine and Palestinian-Israeli Affairs at the Middle East Institute (Washington D.C.). Previously, Anas worked in Palestine with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Oxfam, and the Korean International Cooperation Agency (KOICA) and served as a Research Fellow at Birzeit University in 2017. He is the author of the book Funding and the Quest for Sovereignty in Palestine (London: Palgrave MacMillan). His policy publications and analysis have appeared with leading national and international outlets such as Foreign Policy, BBC, Aljazeera International, ABC, SBS, Channel NewsAsia, and Sky News Australia.

10.4 Dr Tareq Baconi is the president of the board of Al-Shabaka and a Senior Analyst at the Institute for Palestine Studies. Tareq is the former senior analyst for Israel/Palestine and Economics of Conflict at the International Crisis Group, and author of Hamas Contained: The Rise and Pacification of Palestinian Resistance (Stanford University Press, 2018). Tareq's writing has appeared in the London Review of Books, the New York Review of Books, the Washington Post, among others, and he is a frequent commentator in regional and international media.

10.5 Dr Martin Kear is an early career researcher of Middle East politics and international relations, contemporary Islamist movements, contentious politics, and political violence. He is a sessional lecturer and tutor at the University of Sydney. He is the author of the book Hamas and Palestine: The Contested Road to Statehood (2019). He has published articles on Hamas in the Journals Democratization and the Australian Journal of International Affairs, as well as several chapters, most recently in the Routledge Handbook on Political Parties in the Middle East and North Africa.

10.6 Dr Hamish Maxwell-Stewart is a director of the Founders and Survivors project. He is an academic expert on convict life in Australia. Born in Nigeria, raised in England, and schooled at the University of Edinburgh, he migrated to Tasmania in 1996 where he became internationally recognised for his work on the history of convict transportation. After a highly successful 23 years at the University of Tasmania he joined the History and Archaeology team at UNE in April 2021. He has published a number of books on the subject, most notably Chain Letters: Narrating Convict Lives (MUP, 2001) with Lucy Frost for which they won the inaugural Kay Daniels award, and Pack of Thieves? 52 Port Arthur Lives (Port Arthur Historic Site Management Authority, 2001) with Susan Hood.

10.7 Dr Shannon Brincat is a Senior Lecturer in Politics and International Relations at the University of the Sunshine Coast. He works on critical and decolonial approaches to IR theory, especially concerned with questions of how to expand the circle of inclusion in cosmopolitan political community through processes of mutual recognition across borders in world politics. His current major project focuses on dialectics – a unique form of thinking through dialogue with others – and how different civilisations and times have utilised such knowledge across history. Dialectical Dialogues (Palgrave-Macmillan, 2022), engages with dialectics in Buddhist, Hindu, Daoist, Islamic, and Critical Realist thought. His upcoming book, The Spiral World, shows how dialectical thinking can help us mediate the accelerating ecological and political challenges facing humanity today.

10.8 Dr Adel Yousif is a Palestinian and the first in his extended family to have an "Australian" nationality/passport, received in 1995. His father was born in 1938, Haifa, Palestine. His family were farmers growing their olives and tending their land and livestock as they had done for generations. In April and May 1948, Zionist militia attacked his father's village "Ayn Gazal" and members of his father's family were killed and evicted from the area which is now part of Israel. They have been refugees ever since. His father and grandfather both died without a passport or nationality. He is now married, living in Hobart and working as an academic. Dr Yousif is a senior Lecturer at the Tasmanian Institute of Agriculture (TIA) within the Centre for Food Safety and Innovation. He is engaged in teaching and research related to food chemistry, biochemistry, processing and technology.

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