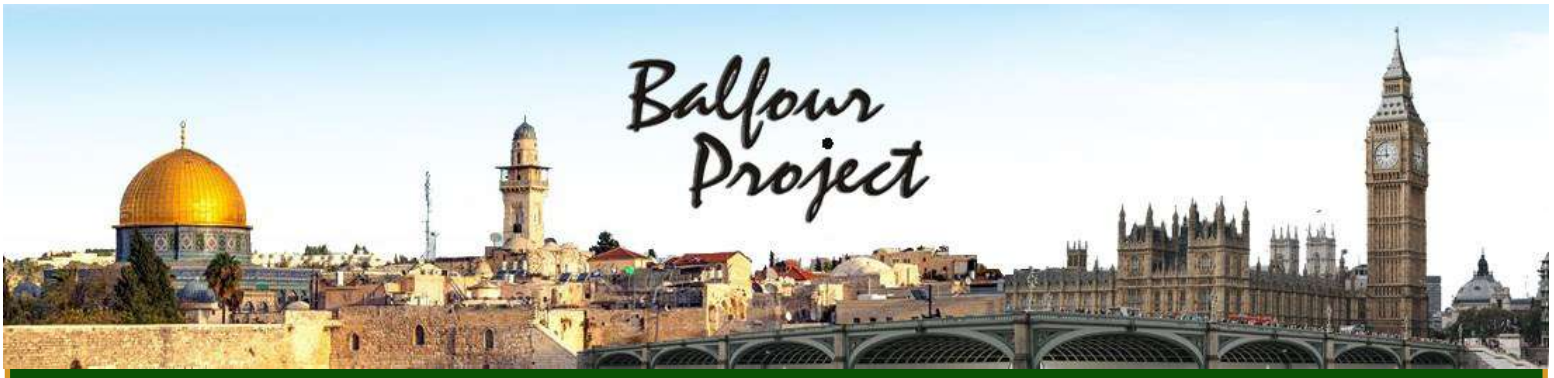


Israel/Palestine:

in search of the rule of law

Conference souvenir booklet

May 2021

Contents

How you can help

Please consider a donation to help us keep going. www.peoplesfundraising.com/donation/balfour-project

We also seek sponsors for our Peace Advocacy Fellowship Programme. The Balfour Project plans to grant up to 20 Balfour Project Peace Advocacy Fellowships for the academic year 2021/22. Successful candidates are mostly postgraduates or final year undergraduates with an interest in advancing equal rights for Palestinians, as well as for Israelis, by peaceful means.

Balfour Project Mission Statement

Peace, justice and equal rights in Israel/Palestine.

Acknowledging Britain's historic and continuing responsibilities, through popular education and advocacy to uphold equal rights for the Israeli and Palestinian peoples. To persuade the British Government to recognise the state of Palestine alongside the state of Israel.

This booklet records the main points made by speakers at the Balfour Project Israel/Palestine: in search of the rule of law conference on 25/26 May 2021.

To watch the videos or read the full transcripts from our conference, please visit

www.balfourproject.org/rule-of-law

Welcome from Sir Vincent Fean, Balfour Project Chair

The Balfour Project charity works for peace, justice, and equal rights in Israel/Palestine through education and advocacy.

Britain governed Mandate Palestine for over 30 years. What was done then, in our name, is still felt today. Aware of those historic responsibilities, we seek to advance equal rights for both peoples, Israeli and Palestinian. The British Government should now recognise the state of Palestine alongside the state of Israel, acknowledging the right to self-determination of both peoples. Britain can promote the cause of peace with justice, for the good of all.

Current policy towards Israel/Palestine is not working. The shared aim of the UK, the United States, and the European Union of two sovereign states is undermined systematically, daily. The occupation is entrenched. We owe the two peoples parity of esteem, but we do not treat them equally. Policy needs reshaping to be effective and rights-based, and to respect the law in deed as well as in word.

This conference compares the rule of law with 'the law in these parts' – in the Palestinian territory occupied militarily by Israel in 1967. UN Security Council Resolution 242 affirms that acquiring territory by war is inadmissible. Britain helped to draft that resolution and the Geneva Conventions, prohibiting the transfer by the occupying power of parts of its own civilian population into the territory it occupies. Israel's state-sponsored settlement project breaches UNSCR 242, those Conventions and the Statute of the International Criminal Court. Are there consequences?

We measure the distance between international law and harsh reality in the Occupied Palestinian Territories; discuss developments at the ICC and on the ground; listen to concerned Palestinian and Israeli voices and ask Parliamentarians how to set about bringing positive change. Lasting peace will only come with equality.

Please find the Balfour Project conference summary/concluding statement on pp 3 and 4.

The charity's statement engages the Balfour Project only. I hope you find our conclusions a useful basis for discussion, eg with your MP.

Israel, Palestine, and the Law
Balfour Project Conference summary/concluding statement

Equal rights under the law are the foundation stone of all democracies.

Israel views itself as a democracy. But many in Israel and around the world, including in Britain, were dismayed by the Knesset's adoption in 2018 of the discriminatory Nation State Law. This declares that the right to self-determination in "Eretz Israel" – that is former British Mandate Palestine – is reserved exclusively for Jews.

Israel is high-handed in its disregard for Palestinian rights in the territories it occupied in 1967. There, in what we in the Balfour Project call Palestine, it imposes military law and systematic inequality.

In 2016, then US Secretary of State John Kerry said he feared that without policy change, Israel would become "separate and unequal". In 2017, then Foreign Secretary Boris Johnson told Benjamin Netanyahu "You either have a two-state solution or some kind of apartheid system". This year, B'Tselem and Human Rights Watch have concluded that the Israeli authorities practise apartheid on a systematic basis.

The separate legal regimes the Israeli government implements through use of arms in territories beyond the pre-1967 Green Line intended to become the State of Palestine are deeply harmful to all concerned. Above all, they injure those living under occupation. But they also damage those tasked with enforcing these discriminatory practices.

Israel may be a friend and ally, as Prime Minister Johnson recently reasserted. But its actions result in injustice in Palestine. In turn, injustice and inequality breed insecurity and radicalisation, increasing the risk of violence – as has been seen in recent days. Israel and Palestine both have legitimate security concerns, which must be addressed mutually.

In the firmly held view of the Balfour Project, the occupation must come to an end, peacefully. Upholding the core principle of equality between peoples is the only way to achieve lasting peace.

The Palestinian leadership has often disappointed its own people. Recently, this was by postponing the first national elections in over 15 years, needed to restore its democratic credentials. The PLO needs to reform itself to overcome Palestinian divisions and reunify the people around a common cause. The reality though is that it has virtually no power – and only Israel can end the occupation.

We commend the Foreign Secretary's insistence on rescheduling early elections across the Occupied Territories, and especially his call upon Israel to enable Palestinians in East Jerusalem to vote. And we now appeal to our Government to heed the following calls. All are based on international law and those basic human rights the United Kingdom has pledged to uphold.

They are:

1. **Uphold** equal rights for all in Israel and Palestine.

2. **Recognise** the State of Palestine now alongside Israel, along pre-June 1967 lines. Both peoples have an equal right to self-determination, as the Balfour Project has consistently argued.

3. **Reaffirm** publicly that the systematic, illegal annexation of Palestinian land is destroying the premise of British policy – two independent, sovereign states – and must be reversed.

4. **Affirm** that international law must apply in deed, not just in word. Specifically, this means:

    - **Declaring** the continued closure of Gaza, now in its fourteenth year, to be collective punishment, with consequences for the Israeli occupying power until it ends the closure;

    - **Sponsoring** an independent fact-finding mission on the treatment of Palestinian children in Israeli military detention, seeking implementation of the findings of a 2011 FCO-funded review;

    - **Pressing** the Palestinian Authority to create an independent judiciary, and to incorporate the category of "crimes against humanity" into Palestinian law;

    - **Ensuring** the International Criminal Court is properly resourced, so as to be able to conduct its work independently and remain immune from interference; and

    - **Supplying** information to the UN database on foreign companies engaging with settlements and those who sustain them, and asking the UN High Commissioner for Human Rights to publish reports regularly.

5. **Put** into UK domestic law the principle that Israel should not benefit economically from its de facto annexation of Palestinian land. In practice, this means ending:

    - access to UK markets for settlement products; and

    - UK business dealings with settlements and those who sustain them, such as banks.

    And strengthening:

    - UK support for legal efforts to keep Palestinians on their land in East Jerusalem and across the West Bank; as well as

    - the international response to systematic land theft, house demolitions, destruction of aid projects and settler violence against Palestinian civilians.

Upholding the rule of law consistently, without fear or favour, should be the hallmark of Global Britain, promoting those universal values shared by our friends and partners in Europe, America and further afield.

The British Government will be judged by its response to this call by the Balfour Project, made in the interest of both peoples in the region, and in our own national interest.

Why the rule of law matters
Rt Hon Baroness Hale of Richmond

In 1917, the British Foreign Secretary wrote to Lord Rothschild to say that the British government viewed with favour the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of the existing non-Jewish communities in Palestine. The first part of that promise was fulfilled. The second part was not. The rights of the non-Jewish communities in Palestine have indeed been prejudiced. And much of this is in breach of international law.

I have been on four British legal delegations visiting the Supreme Court of Israel. Presidents of the Court such as Aharon Barak have become friends and we have learned to respect their commitment to the rule of law and the courage of some of their decisions. Quite apart from the security issues, there is the challenge of what it means to be a Jewish and democratic state.

In 1992, after the enactment of the Basic Law on human dignity and liberty, Barak wrote "The country is Jewish, not in a Halakhic religious sense, but in the sense that Jews have the right to immigrate to it. As Jews, we believe in humanitarianism, the sanctity of life, social justice, following the true and honest path, preservation of the dignity of humankind, the rule of law and all the other values that Judaism has imparted to the whole world. We cannot lose sight of the fact that a large non-Jewish minority lives in Israel as well". For him, Israel could be a Jewish state and still respect the rights of the non-Jewish people.

In my Lionel Cohen Memorial Lecture I noted that equality was deliberately left out of the Basic Law because not all Israeli citizens have the same rights, let alone the residents in the Occupied Palestinian Territories. On my 2019 visit I heard from Israeli Arabs – the Arabs living in East Jerusalem, which Israel has unlawfully annexed – and the Arabs living in the Occupied Palestinian Territories on the West Bank about the inequalities and indignities they faced. Most shocking of all was that the West Bank Palestinians had given up on the Supreme Court because they felt that it was no longer able to protect them.

Rt Hon Baroness Hale of Richmond

Brenda Hale, Baroness Hale of Richmond, retired in January 2020 as President of the Supreme Court of the United Kingdom, the apex court for England, Wales, Scotland and Northern Ireland.

Both Israelis and Palestinians have a very powerful narrative, and it is hard for the international community to reconcile the two. It is surely right for the international community to call upon every state in the region to acknowledge the existence of the State of Israel. But the Palestinians are having to live under an occupation which is in blatant disregard of international law.

Under Article 25 of the UN Charter, all UN members agree to accept and carry out the decisions of the Security Council. The Security Council … has called for Israel to withdraw from the territories occupied since the 1967 war. It has also declared null and void Israel's change in the status of Jerusalem. It has confirmed that the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War applies to the Occupied Territories – and called upon Israel to respect it.

It has condemned the measures aimed at altering the demographic composition, character, and status of the Occupied Territories, which include East Jerusalem, such as the construction and expansion of settlements, the transfer of Israeli settlers, the confiscation of land, the demolition of homes and the displacement of Palestinian civilians, all of which the UN sees as dangerously imperilling the viability of the two-state solution based on the 1967 lines. There is a tendency for the international community to focus on achieving a ceasefire when there are active hostilities … and to forget what it was that led to those hostilities. What is really needed is a durable peace-time solution, which reflects the rule of law and both of the promises in the Balfour Declaration.

Dominic Grieve QC

Dominic Grieve is a barrister and a visiting professor on Law, Politics and Human Rights at Goldsmiths, University of London. From 1997-2019 he was MP for Beaconsfield. He was Shadow Home Secretary from 2008 to 2009 and Shadow Justice Secretary from 2008 to 2010. He was Attorney General of England and Wales from 2010-14. From 2015 to 2019 he was chair of the Intelligence and Security Committee of Parliament.

Dominic chaired Day 1 of the conference.

Question and Answer with Dominic Grieve QC, former Attorney General

In response to **Baroness Hale's** opening remarks, **Dominic Grieve** noted that the UK anchored its understanding of the rule of law on Lord Bingham's Eight Principles. He asked her whether the Israeli Supreme Court shared those principles but saw their implementation in the face of the particular challenges facing Israel as impossible. Alternatively, did they see their principles of the rule of law in a different way?

Baroness Hale replied that her impression was that the Supreme Court saw the principles in the same way that the UK did. They believed in the independence of the judiciary and that everybody was subject to the law. Barak believed that the Basic Law on Human Dignity and Liberty had a constitutional status that enabled the court to strike down inconsistent acts of the Knesset. She was unsure, though, whether his view was universally shared.

In response to a question from the audience on the right of return of Palestinian refugees, she commented that the "great imbalance in the law" was that a Jewish person from anywhere in the world had the right to make *aliyah* (i.e. emigrate to Israel) … and become a citizen; but the same was not true for Palestinians, even if they had been displaced from Israeli territory by the creation of the State of Israel.

Asked about the rule of law in the Occupied Palestinian Territories (OPT) and Israel's use there of military justice, she noted that the Palestinians had both ordinary courts and a separate constitutional court, following the continental European model. In her view, the Occupied Territories had to be governed by the Fourth Geneva Convention and international humanitarian law. She felt that if the OPT were incorporated into the State of Israel, there would be much better protection for Palestinian rights, but this was unlikely to happen, mainly for demographic reasons.

Grieve commented that if Israel could not come up with a solution that recognised the OPT as having sovereign rights and as an area which could be turned into a state, it called into question whether, in fact, Israel was operating what had been described as "an apartheid state" whereby there were differential rules for different people living subject, ultimately, to the same jurisdiction, being the government of Israel.

(c) Antonio Olmos

Philippe Sands QC

Philippe Sands QC is Professor of Law at University College London and a practising barrister at Matrix Chambers. He appears as counsel before international courts and tribunals, and sits as an international arbitrator.

He is the author of *Lawless World* (2005), *Torture Team* (2008), *East West Street* (2016) and numerous books on international law, and has contributed to the New York Review of Books, Vanity Fair, the Financial Times, The Guardian and the New York Times.

Israel/Palestine: recent developments at the ICJ and ICC

Philippe Sands QC

Followed by discussion between Philippe Sands and John McHugo, Balfour Project Trustee

As we all know, law and politics often live in a very uneasy relationship. And there have been significant developments in the last couple of years. As a starting point, it is important to keep in mind the Advisory Opinion of the International Court of Justice of 2004. Advisory Opinions are not binding on states, but they do have legal consequences for the recipient, the body that makes the request. The General Assembly made a request back in 2003, and in 2004 the Court handed down an Advisory Opinion on the legal consequences of the construction of the wall in the OPT. That Advisory Opinion set out a rather clear view. There was only one dissenting opinion. The Opinion was in relation to the following question:

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying power, in the Occupied Palestinian Territory, including in and around East Jerusalem?

The Court began by setting out what the applicable legal principles were in dealing with the issue: customary international law, the United Nations Charter and, in particular, the prohibition in international law of the use of force and the illegality of any territorial acquisition. That is a foundational principle in assessing the legalities of the decision of the three judges of the International Criminal Court earlier this year.

Secondly, the judges affirmed the principle of self-determination as being absolutely central. The Court said the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 are all part of the applicable law. That is international humanitarian law

together with international human rights law, including the Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Covenant on Economic and Social Rights.

In applying the law to the facts, the Court set out some important propositions that remain in effect today.

- First, the settlements have been established in breach of international law.

- Second, the construction of the wall impedes the exercise by the Palestinian people of their right to self-determination and is therefore a breach of the obligations owed by Israel to the Palestinian people.

- Third, the construction of the wall violates international humanitarian law and international human rights law.

- Fourth, it alters the demographic composition of the Palestinian territory and therefore contravenes the Fourth Geneva Convention and numerous Security Council resolutions.

- Fifth, and very significantly, you cannot invoke security objectives or the right of self-defence to trump any of these rights, including the right of self-determination.

- Sixth, Israel is under an obligation to put an immediate end to these breaches.

- Seventh, it must make reparation, and

- Eighth, all states must recognise that obligation.

That Advisory Opinion was in 2004. It has not been complied with by Israel, and the recent acts of recognition by the United States are plainly inconsistent with aspects of the Advisory Opinion. That is extremely problematic.

To put this in context, an earlier Advisory Opinion of 1971 on South West Africa was not, in effect, implemented for nearly 25 years or respected by South Africa. The fact that there has been a passage of a long period of time does not limit ultimately the potential significance for negotiations, for politics and for the legalities of the situation. Lest it be said that these Advisory Opinions are entirely without consequence or relevance, the fact is that they are legally significant. They are also politically significant.

But there has been one recent case that I want to draw your attention to: a judgment of 2019 by the Court of Justice of the European Union in the case of Organisation Juive Européenne and Vignoble Zagot against the French Ministry of Economics and Finance in which the issue came up about labelling of products imported into the European Union, imported into France from the Occupied Territories. The court ruled that foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory, but

also where the foodstuffs come from, a locality or a group of localities constituting an Israeli settlement within that territory, an indication of that provenance.

So, that is a very direct practical consequence across the whole of the European Union. At paragraphs 35 and 48, the European Court of Justice effectively explicitly endorsed the conclusions, or gave effect to the conclusions, of the International Court of Justice. That's the context in which to have a look at legal developments in relation to the International Criminal Court. Just a few weeks ago three judges of the International Criminal Court gave authority to the Prosecutor to proceed to a formal investigation of crimes alleged to have been committed on the Palestinian side and on the Israeli side.

The story begins in 2015 when Palestine joined the Statute of the International Criminal Court. It did so with no countries except one, I think Canada, objecting to its ratification of the Statute. And this becomes a very significant issue later. The United Kingdom did not object. With its joining of the ICC and becoming a party to the Statute, Palestine referred the matter of a number of Israeli attacks and certain practices in the Occupied Territories to the Prosecutor of the International Criminal Court. The Prosecutor engaged in a preliminary investigation. That investigation was completed in 2019. And, in January 2020, the Prosecutor referred a number of jurisdictional issues to a panel of three judges of the court under Article 19 at the Statute. That panel gave its decision on the 5th February 2021. The court was being asked to address three questions.

Is Palestine a state within the meaning of Article 12, paragraph two, of the Statute?

What is the delimitation of the territory of Palestine for the purposes of defining the jurisdiction of the Court?

What is the legal effect, if any, of the Oslo Accords?

Israel is not a party to the Statute of the International Criminal Court. And so the Court faced a jurisdictional matter in relation to the territorial extent of its jurisdiction. Israel says that, because it is not a party, the Court has no jurisdiction at all. Palestine argues that is not correct. As Palestine is a party, any act that Israel takes on the territory of Palestine falls within the jurisdiction of the Court. By majority of two to one, the Court proceeded as follows:

Palestine is a State Party to the Statute. That's a unanimous finding.

By a majority of two to one, as a consequence, Palestine qualifies as the state on the territory of which the conduct in question occurred for the purpose of Article 12 (2a). Here we are talking about Israeli incursions on to Palestinian territory and Palestinian attacks on the territory of Israel. It's very important to note that the Prosecutor has investigated both alleged violations of the Statute which emanate from actions under Palestinian control and felt on the territory of Israel but initiated on the territory of Palestine, as well as Israeli actions felt on the territory of Palestine.

Again by a majority, it agreed that the Court's territorial jurisdiction extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem.

And that is a very significant finding by the International Criminal Court … The judgment is very limited though and its effect is very limited. It only allows the Prosecutor to proceed to investigate. When the Prosecutor, now a British barrister, Karim Khan QC, has completed his investigation, he may decide there are no further steps to be taken and drop the case. Or he may conclude that there is evidence which requires proceeding to the merits. At that point, the Court will begin to address the merits. And at that point, too, the Court has made absolutely clear that it will return to certain jurisdictional objections in relation to different parts of the Occupied Territories; and whether, on the facts of a particular case, there is jurisdiction to address those particular matters. It seemed to me clear that Palestine was to be treated as a State Party. But it's very important that the judges went out of their way to say that the finding that Palestine is a State Party is not the same thing as finding that Palestine is a state under international law. They make it very clear that they have not decided that question.

The issue is significant jurisdictionally in another respect.

The "right of return"… may well feature as part of the case that is coming … because in another case at the International Criminal Court in relation to the allegations of mistreatment by Myanmar, formerly Burma, of the Rohingya community, the Criminal Court has recently determined that the right of return, and the ability to return, is something that falls within its jurisdiction as a possible crime against humanity ….

That opens the door to the issue of the right of return being addressed within the Statute of the International Criminal Court. That's the first time that has happened and plainly has implications also for the Israel/Palestine situation and how the Court will proceed in relation to a right of return, certainly on to the territories of Palestine occupied by Israel. But there will not be jurisdiction in relation to the right of return on to the territory of the State of Israel, because Israel is not party to the Statute ….

The kinds of issues that we are discussing are issues that will continue to trickle through not only in relation to Israel/Palestine, but more broadly and vice versa, the determinations in the Bangladesh Rohingya case, and possibly in the future case involving Chagos and the Chagossians … these will have consequences in relation to how Israel/Palestine is addressed.

West Bank Village

You should be getting a sense that there is a bit of movement in relation to these legal issues, but it is contested movement. Israel has responded very strongly to the opening of a formal investigation by the International Criminal Court. But it is slightly more complex for the Israeli side because the investigator is now investigating, for example, the firing of rockets from Gaza into the territory of Israel. And that is going to pose a difficulty for the Palestinian side as it may cause them to confront the possibility of handing over individuals associated with the firing of rockets or other alleged crimes that might have occurred. So, watch this space as the law wends its slow way through these complex and painful political issues.

Question and Answer with John McHugo, Balfour Project Trustee

John McHugo referred to the 2004 Advisory Opinion on the Wall. He pointed out that the one dissenting voice did so on the grounds of jurisdiction, partly because he felt that the question of self-defence had not been looked into adequately. Judge Buergenthal said that the settlements were illegal under the Fourth Geneva Convention and that the Palestinians had the right of self-determination. He thought it important that on those two crucial issues the entire Court was unanimous. **Philippe Sands** agreed. He observed that Thomas Buergenthal was a remarkable individual, a scrupulous and independent person. He believed that certain matters had not been fully pleaded – the facts – to allow him to reach a firm view that the Court had properly exercised jurisdiction.

McHugo praised Sands for how much he had done to bring international law to the general reader. In the preface to *Lawless World (*2005), Sands had written "under George W. Bush, the British government was often silent or, in certain respects, a willing handmaiden to some of the worst violations of international law."

In response, **Sands** commented that he had grown up in the view that the United Kingdom was a country firmly committed to the rule of law. For much of his life that has been the case. It was something he felt very proud of and committed to. Britain had been a very positive force for the idea of the rule of law. Britain led the world with the United States in 1945 in creating the rules-based order. That began to change with the March 2003 invasion of Iraq. Everything that followed could come to be seen as flowing from what almost everyone now accepted was an illegal use of force against Iraq. This had also broken trust in government. Prime Minister Blair had in effect said, "We've got all this information, and this is what's going on. And there are these weapons and things" but it turned out not to be true. The loss of trust may have catalysed the conditions that led to the referendum and decision on Brexit and, after Brexit, the hubristic approach being taken to international law: e.g. a government willing to put legislation before Parliament that, on its face, would violate a treaty negotiated with the EU on withdrawal in relation to the Northern Ireland Protocol.

John McHugo

In his books, John McHugo (Balfour Project trustee) tries to explain how we in the West have contributed to the catastrophic state of affairs that currently obtains in the Middle East. He is the author of A Concise History of the Arabs, Syria: A Recent History and A Concise History of Sunnis and Shi'is. During his legal career, he worked on international boundary disputes in the Middle East for over ten years.

This was part of a long unfortunate journey Britain had undertaken. The Advisory Opinion from the International Court of Justice said clearly that the United Kingdom had unlawfully purported to detach the Chagos Archipelago from its colony of Mauritius in 1965. That purported detachment was without effect; Chagos was, and always had been, part of Mauritius. He regretted deeply that just as Israel had not given effect to the Advisory Opinion of 2004, the UK had declined to do so over the Advisory Opinion of 2019, joining countries such as South Africa, which had acted likewise in 1971. Lawyers at the FCDO could not accept that this was the case. The current Foreign Secretary (Dominic Raab) was himself an international lawyer who could not think this was the right approach to take as it undermined British policy in relation to China. He suspected that over time this approach would change, but it was not a happy situation to be in today.

McHugo observed that Israel does not accept Palestine as a state but went on to ask Sands whether it could be argued that, because Israel was ruling a non-self-governing territory as defined in Article 73 of the UN Charter, it had an obligation to the people of the territories occupied in 1967 to prepare them for full self-government. **Sands** replied that, while lawyers often had to tease out ideas, in his view the situations were very different. Those provisions in the UN Charter were part of the effort driven by the United States at San Francisco in 1945 to impose decolonisation on the European powers: Britain, France, and Italy. They dealt with the situation of the colonies as they existed at that period. In the next 15 years the General Assembly ultimately adopted a resolution, Resolution 1514 of 1960, on the principle of self-determination. It contained a principle of territorial integrity whereby at the moment a country was granted or achieved independence it was entitled to the entirety of its territory during its colonial period. In this way, the colonial power was precluded from chopping off bits of territory, saying, 'Oh, we like that. We'll have that. We'll keep that'. The one exception was if the people of the territory themselves determined that the colonial power could keep hold of a part of the former colony. He did not think this analysis pertained in the OPT, which were territories occupied pursuant to the use of force.

In his capacity as moderator, **Dominic Grieve** relayed two selected questions from the audience. First **John Hall** asked whether the displacement of Palestinians and their replacement by Jewish settlers could be described as ethnic cleansing.

Sands concurred. The replacement of a population of one ethnicity or nationality by another on the scale that was taking place, or was said to have taken place, could amount to ethnic cleansing; this was a crime against humanity but was not genocide. Genocide and ethnic cleansing were very different. In this regard, he referred to a report recently published by Human Rights Watch which would make painful reading for a lot of people in Israel. It had characterised certain practices by Israel as amounting to apartheid, within the meaning of the Statute of the International Criminal Court. He had been asked to comment on the report. He had not expressed a view as to whether it was right or wrong but concluded that it was a very serious, carefully constructed report, one that had been reviewed by other serious and significant people. It was a wake-up call when Human Rights Watch had reached those conclusions, and it was not a huge leap in relation to the question of ethnic cleansing that had been posed. For the first time, after the terrible events in May, in Israel and the OPT there was a change of consciousness taking place in the United States.

Heba Zaphiriou-Zarifi then posed two questions. She first asked why UK governments did not apply their democratic and human rights values when it came to protecting Palestinians.

McHugo said that, when Boris Johnson was Foreign Secretary, he had made a very tentative remark during a visit to Israel about how the choice was between two states or apartheid. His words were well judged, setting out the position in international law. This was what the British government does, setting out its position in international law, if obliged to do so, and saying what it supports. But this was very different from doing anything about it. He referred to the 2019 case at the European Court of Justice about labelling of settlement goods. The current UK government was very reluctant to go any further down that road than was absolutely necessary.

Grieve felt that the position of UK governments on the issue of the Occupied Palestinian Territories had been consistent and truthful. The reality of international politics, the disturbed conditions that prevailed in the Middle East and the sense that Israel, for all its faults, wished to be a genuine ally and shared many of the UK's democratic principles – even if they were not applied – made the UK reluctant to apply public pressure that could lead to a rupture in relations, whilst remaining willing to apply private pressure. Additionally, Israel enjoyed a substantial lobby interest group in the UK. The fact was that the United States was the one power capable of bringing about change but was unwilling. UK governments questioned the point of going out on a limb on an issue where their position was unlikely to be critical if they were unable to bring along the one country that could bring about change. George Bush Sr. had showed that it was possible for great progress to be made in Israeli/Palestinian relations. It was forgotten how close he had come to bringing about a settlement. The fact that Bush Sr. failed, and the fact that the United States has shown, up to now, a consistent lack of interest, meant that most European countries facing the same pressures broadly follow a similar line, which was that international law requires a solution that has a Palestinian state. But exerting pressure appears largely pointless.

Sands observed that the UK's traditional approach was to limit its engagement with matters of international law by not taking things forward. It would not, for example, characterise past historic wrongs such as the treatment of the Armenians by the Ottoman Empire. It would not call it, as others, including President Biden, had done, a genocide, because it took the view that it was a matter for courts, not governments.

Why a rights-based approach makes a just, lasting political solution more likely, and why now

Zaha Hassan

Zaha Hassan began by saying that, in light of the serious human rights situation, which had evolved into what many consider to be apartheid, how should Palestinian/Israeli peace-making be reimagined? To answer the question, she chose to take a rights-based approach.

Politicians were quick to reaffirm Israel's right to self-defence during the May conflict without mentioning any rights Israel might owe to Palestinians under international law, including the law of occupation and human rights law. She then listed a series of abuses committed in the run-up to the conflict. From the first day of Ramadan, Israeli authorities had ratcheted up tensions gratuitously in Jerusalem. Loudspeakers for the muezzin's call to prayer were cut. The Easter procession was obstructed in the Old City and worshippers assaulted. The plaza of Damascus Gate was barricaded despite it being a centre for youth and worshippers to celebrate during Ramadan. Israeli police had protected a Jewish extremist group as it paraded, chanting "Arabs get out". Forced displacement in the Sheikh Jarrah neighbourhood, where Palestinian refugee families were assaulted by settlers under the protection of the police, was looming. Then came the storming by Israeli police of the Haram al-Sharif esplanade, one of the most sacred spaces to Muslims, on one of the holiest days of Ramadan, which had left hundreds injured. She asked rhetorically where the United States, the EU, and the UK – powers that hold sway with Israel and could have restrained Israel or reaffirmed the international legal order – had been during this period. Statements were made about both sides needing to de-escalate; but one side was a defenceless population under occupation and the other a militarised state that had maintained a brutal occupation for over half a century. In effect, Western statements were a green light to Israel, creating a sense of impunity that led to the bombardment of Gaza.

Zaha Hassan

Zaha Hassan is a human rights lawyer and visiting fellow at the Carnegie Endowment for International Peace. Her research focus is on Palestine-Israel peace, the use of international legal mechanisms by political movements, and U.S. foreign policy in the region. Previously, she was the coordinator and senior legal adviser to the Palestinian negotiating team during Palestine's bid for UN membership, and was a member of the Palestinian delegation to Quartet-sponsored exploratory talks between 2011 and 2012.

International engagement on peace-making between Israelis and Palestinians had been contradictory for the last 30 years. While expressing support for a two-state solution and establishment of a democratic Palestinian state, the international community had refrained from using its levers to stem the tide of Israel's illegal settlement expansion and human rights abuses. In the case of the US, not only had it refused to use its power with Israel, it had constrained Palestinian diplomatic efforts at the UN, with third states and the International Criminal Court. The support given to Israel made the international community complicit in war crimes and crimes against humanity. She questioned the lack of outrage at the fact that, for 14 years, Palestinians in Gaza had been trapped in a tiny strip of land, subjected to repeated bombing by a military whose strategy dictated the use of disproportionate force against civilian populations and infrastructure. A new approach to peace-making that prioritised rights and human security was therefore required. This would help restore respect for the rules-based international order which the Biden administration was championing by eliminating exceptions, particularly that for Israel. It held the most promise for changing current political calculations; these were steering Palestinians and Israelis away from a durable political solution.

A rights-based approach to matters involving international peace and security was not new. Prioritising universal values and norms undergirded the international legal order created in the aftermath of World War II. The Geneva Conventions and other rights were enshrined in the UN Charter and Universal Declaration of Human Rights. The 2004 Advisory Opinion of the International Court of Justice determined that Israel had been violating the rights to self-determination, work, freedom of movement, the protection of families and children, and the right to an adequate standard of living, health, and education. It also determined that all States Party to the Geneva Conventions had an obligation to ensure compliance by Israel and to cease all aid to Israel that helped its violations. A rights-based approach was a legal obligation of the international community. It improved the environment for a political solution by creating costs for maintaining the status quo and was the conduit for creating the necessary conditions for a political solution.

Banksy graffiti in Bethlehem.

It would make international engagement more credible to both Israelis and Palestinians. If human rights were central and there was accountability for violation of rights and international law, Palestinian trust and international engagement would grow; so, too, would support in Israel for negotiations that could lead to agreement.

Accountability would clarify expectations for leaders. Creating costs in the relationship would have ripple effects through the Israeli electorate that could begin to reverse the trajectory toward annexation of the West Bank and further abuses. In Israel, the US approach had failed to create any real costs for right-wing nationalist policies. The message from Washington was that the US–Israel relationship was sacrosanct. In Palestine, political parties committed to negotiations undercut their own legitimacy by repeatedly committing to a failed peace process that demanded much of them, while allowing settlements to expand cost-free. If Israeli policies violating rights and previous commitments came with costs attached, over time it would force a recalculation, promoting policies more amenable to political negotiation. On the Palestinian side, it would allow those parties committed to negotiation to garner the faith of their public.

A rights-based approach would also correct the imbalance of power between Israel and the Palestinians and provide Palestinians with agency to bolster international consensus around their rights. This would encourage Israel to take its obligations more seriously as an occupying power and negotiate consistently based on principles of international legitimacy. The previous US approach effectively allowed Israel to maintain its occupation at no cost. The international community should avoid complicity in grave human rights abuses and work to uphold the legal order, not provide political cover and financial benefits to Israel that facilitated and prolonged its domination over Palestinians.

Michael Sfard

Michael Sfard is an international human rights lawyer with a special emphasis on the law of belligerent occupation. He has served as counsel in numerous important cases on these topics in Israel, including the successful litigations for the removal of settlements built on private Palestinian lands (such as Migron and Amona), petitions concerning the Separation Barrier (among them the “Alfei Menashe" and the Bil’in cases), the challenge to the Israeli policy of targeted killings and the challenge to the constitutionality of the “Regularisation” law which ordered the confiscation of private Palestinian lands and allocated them for the use of Israeli previously unpermitted settlements (so-called “outposts”). He is the legal adviser to several Israeli human rights and humanitarian organisations, as well as peace groups, such as Yesh Din, Peace Now, Breaking the Silence, Comet Middle-East and the Human Rights Defenders Fund.

The dual legal system in the Occupied Palestinian Territory, and the role of the Supreme Court of Israel

Michael Sfard

Israel had fragmented the Palestinian people into several parts, each with a different legal status. Palestinians living in the Occupied Palestinian Territory were divided, including inside the West Bank, governed by a specific set of norms, policies, and practices. Those living in East Jerusalem were subject to a different set of policies and normative framework. Gazans were in a completely different situation. Palestinians who were Israeli nationals enjoyed, and suffered, different normative rules. His focus would be on the law as it was applied to Palestinians in the West Bank and East Jerusalem.

Dominic Grieve had mentioned that the opposite of the rule of law was not necessarily anarchy. But rule by law, the use or abuse of law as a sword, rather than a shield, was different. One of the ways the rule of law became a rule by law was when one group used and exploited its power to divide the law, the norms that governed a certain area, in a way that would apply differently to different groups. This was happening in the West Bank. Israel had engaged in a massive project of colonisation of the West Bank and East Jerusalem and, in the past, in Gaza. Over half a million Israeli nationals live in the West Bank today, among three million Palestinians. International law prohibits, with no exception, the transfer of citizens from the occupying power into the occupied territory. So, when communities of the occupying power colonise the territory, the two new communities created are completely different in terms of rights, and political power. Israelis living there had full political and civil rights as nationals of the state, while the Palestinians were completely dispossessed of political and civil rights. He noted that under international law civil and political rights could only be suspended for the duration of the occupation. With such a huge imbalance in rights, with one community enjoying full civil and political rights and the other none, it followed that all the land’s resources would be diverted to the citizens of the

occupying power. Those settlers who colonised the West Bank had been provided, through policy and practice, with all the resources. In terms of law, they had been showered with modern laws which did not apply to their Palestinian neighbours. Jewish Israelis went there to extend the borders of the State of Israel. They wanted, and still want, to feel they were still in Israel, governed by the same norms, laws, and policies that applied to those inside pre-1949 Israel.

Israel uses three mechanisms to apply its legislation to Israelis living in the West Bank. Many acts of parliament were applied to Israeli nationals extraterritorially and personally when they were in the West Bank. That created two systems of laws: one for Israelis and another for Palestinians. The laws applied to Israelis were legislated by a parliament elected by the people of Israel. But those applied to Palestinians were a combination from the West Bank's previous rulers – Jordanian, Ottoman and British during the Mandate – together with military laws issued by ordinances from the Israeli commander of the West Bank. If an Israeli committed manslaughter in the settlement of Tekoa and a neighbour in the Palestinian village of Tekoa committed the same crime, they would be treated by different authorities, a different court and according to a different penal code and procedure. The procedure and code that applied to the Israeli allow all the rights of the suspect to be preserved, while the Palestinian would be subjected to a draconian military law that allowed gross violations of his rights. The Israeli would be detained by the Israeli civil police. They could be held for up to 24 hours as prescribed by Israeli law. To extend the detention, they had to be put before a magistrate who could extend the detention by up to 30 days. The Palestinian would be detained by the Israeli army, held for up to four days and then brought before a military court judge who could extend the detention by up to three months. Charged with manslaughter, the Israeli would face trial in the Jerusalem district court and face up to 20 years imprisonment, the maximum penalty for manslaughter in Israel. The Palestinian would be tried in a military court and face up to life imprisonment, under military law.

The second mechanism was the application of Israeli administrative laws on to the local governments of the settlements. How did the Israeli Ministry of Education run schools, or the Ministry of Health run hospitals in settlements located in areas where Israeli law did not apply? The military commander, on orders from the Israeli government, could apply administrative law to the territory of the settlements. This was "enclave law." When Israelis moved to the West Bank, they did not feel a change in government. They still had Israeli officials and ministries taking care of them. The third type of discriminative norms were ordinances issued by the military commander which applied explicitly to Palestinians or Israelis. All the territory between the Separation Barrier and the Green Line had been designated a closed military zone; whoever wanted to enter it had to have a permit from the military commander. But the declaration did not apply to Israelis, who were defined for these purposes either as citizens of the State of Israel, permanent residents or anyone who had a right to become a citizen of Israel – according to the "Law of Return", any Jew anywhere in the world. A yeshiva student from Brooklyn had more right to enter the zone than Palestinians who had lived there for generations. All three mechanisms created a system, a legal reality, of two different sets of laws applied to each group: to facilitate the privileges and rapid development of the Jewish community and curb Palestinian development.

In June 2020, Sfard authored a report for the Israeli human rights organisation Yesh Din, as its legal counsel. It concluded that the crime of apartheid was being committed in the West Bank. This was not a risk or threat of apartheid; it existed today. East Jerusalem was also occupied territory. Annexed illegally by Israel, Israeli law and administration had been applied. Its Palestinian community was not granted Israeli citizenship. Instead, it was given permanent residency. Unlike citizenship, this depended on presence. East Jerusalemites who left Jerusalem for several years to study or work and wanted to return could find their residency revoked; they could not go back to where they were born and had lived all their lives.

The discriminating normative framework they suffered was relevant to the eviction campaigns in Sheikh Jarrah and Silwan. In 1950, two years after the establishment of the State of Israel, the Israeli parliament enacted a law that nationalised all the property of the Palestinian refugees: the Absentee Property Act. It was applied to all territory within the 1949 ceasefire lines, i.e. the Green Line territory. In 1967, East Jerusalem was seized and annexed, and the Absentee Property Act automatically applied there. Many Palestinians living in East Jerusalem were refugees from West Jerusalem or other areas in Israel and had lost property because of the Absentee Property Act. In 1970, the Law and Administration Regulation Act was enacted, which said that a property that had belonged to Jews prior to 1948 and had been seized by the Jordanian Custodian of Enemy Property could be retrieved and returned to its original owners. A Palestinian in Sheikh Jarrah who had had a house in West Jerusalem prior to 1948 found it nationalised by the State of Israel. But as Jordan had not nationalised the property of Jewish refugees, any Israeli with property in East Jerusalem would be able to receive his or her property back.

Dialogue between Zaha Hassan and Michael Sfard moderated by Dominic Grieve

Hassan asked **Sfard** about the Jewish Nation State Law. In her view, this law foreclosed Palestinian refugee return, exposed non-Jewish citizens to possible denial of citizenship, and prevented Palestinians living in the Occupied Territories from being citizens of an Israeli State if Israel extended its sovereignty in those parts. Sfard replied that the Nation State Law was despicable. It made it very difficult to refute the charge that it was not only the Occupied Territories that were under a form of apartheid. Jewish supremacy was being advanced in Israel as well. Some Israeli judges had hinted that this law would be interpreted as having declaratory value with no practical implications. Israel was in an internal cultural war, a war of values, a war for the soul of the Israeli society. Competing ideologies were opposing one another. The nationalistic right wanted the Nation State Law to be a source of interpretation for all other laws. Liberals would like it sidelined. In the current climate, it would be very difficult for the Court to strike out this law, although it could limit its importance. He noted that there were two Israeli Supreme Courts. When a chief justice or president of a foreign court like **Baroness Hale** came, he or she would be greeted by the Dr. Jekyll Court. But the Mr. Hyde Court, which governed matters of security and the Occupied Territories was a pillar on which the dual legal system and the discriminative, racialised system was based.

Hassan described the trajectory that had led to the Jewish Nation State Law in 2018. Its origins lay in Israeli Palestinians' efforts to articulate a political platform for Israel's relationship to Palestinians: to develop a permanent constitution that would recognise Palestinian indigenousness, support the two-state solution, allow for refugee return, and freedom and rights for Palestinians in the Occupied Territories in a state of their own. In response, Israeli politicians had begun to speak, for the first time, about the need for Palestinians to recognise Israel as a Jewish state. Sfard said this raised the basic question of whether the Israeli/Palestinian conflict was about 1967 or 1948. In the Oslo years, Israelis were told that once the 1967 occupation was over, the conflict would be over. To say that the Israeli/Palestinian conflict could not be solved without going back to 1948 was scary. He asked Hassan whether, for her, a "rights-based approach" was a euphemism for one democratic state. She replied that while it was not, it could be. For those advocating for one state, a rights-based approach was their conduit to it; but it could apply equally to a two-state outcome. A durable solution would not be possible if the 1948 issues were sublimated.

Sfard said he agreed with the rights-based approach. He was part of a group called A Land For All: One Homeland, Two States – an updated version of the two-state solution with a federal or confederal element. A problematic aspect of Oslo had been the separation involved. Israelis would stand against the wall and look westwards, while Palestinians would look eastwards. Neither would see each other again. For him this was unthinkable.

Grieve asked how the Supreme Court viewed the obligations of Israel under the Fourth Geneva Convention, to which it was a signatory. **Sfard** replied that, in general, the Supreme Court accepted that the laws of occupation and international laws of belligerent occupation applied. But in many cases the interpretation given to those norms of the Hague Convention and regulations annexed to it and the provisions of the Fourth Geneva Convention were at odds with those of most international legal scholars around the world. The Israeli Supreme Court had refused to arbitrate the legality of settlements, claiming that it was non-justiciable and should be left for politicians to resolve. The problem was that only Israeli citizens and not the victims of the settlement project participated in these politics. While the Court accepted the laws of belligerent occupation as the normative framework, it distorted them in every way. Discrimination was enshrined in the system. Most discrimination against Palestinians with Israeli nationality was through policy and practice. Since 1948 successive governments had advanced the interests of the Jewish majority.

Audience Questions and Answers

Grieve posed a question from Chris Greenwood: To what extent did the path to a peaceful solution with equal rights for all lie in the power of the United States? Could the UK or the EU have a lesser role? In Northern Ireland, ultimately the ring was being held by external actors forcing local people who disliked each other to cooperate, which was not satisfactory. Hassan replied that the US had a critical role to play, because it held so much sway with Israel. Shifting to a rights-based approach was going to take time, but it was absolutely critical for the US to be on board for that to happen. It had been arming Israel, providing it with $3.8 billion a year in security assistance that has allowed the military occupation to endure and Israel to prosper. The Jewish-American community has played a role through its support for Israel, but this was now starting to change because of the very heavy-handed ways in which Israel's domination over Palestinians had entered the popular psyche. Through social media people in America were now seeing images of buildings in Gaza pancaked. It could no longer be easily dismissed as part of Israel's effort to defend itself.

Sfard agreed with the crucial role of the US administration but said he did not want to let Europe and the UK off the hook. Israel's neighbourhood was not America, it was Europe. Most of its commerce was with Europe. When Israelis went abroad for a weekend, they did not go to New York; they went to London, Paris, or Rome. Europe had much more leverage than it thought it had, or was ready to use. European and British policies were pathological, handicapped for historical reasons. He hoped though that change may be underway in civil society. International civil society attitudes were very different from several years ago, in Jewish communities in Europe and especially America. Things could be said today in an American synagogue that would have been unsayable a few years ago. But there would be a delay between the change in civil society and its translation into political capital.

Grieve asked whether his views were exceptional in Israel or widespread. Was there a democratic dialogue going on in Israel that could be built on, or were views one-sided? Sfard admitted that his views were in a very small minority in Israel. However, he was referring more to a set of values, those that Israelis wanted their country to be based on. In this regard, there was a real split. Was it going to be a country that went along the path of rule of law in the good sense of the concept, with civil liberties, human rights, separation of powers, freedom of the press, etc? Or would Israel go on the path of a Putinist type of majority? Once the majority exercised its vote, that was it; then there would be a clash. He wondered how to get more Israelis to agree with his ideas, noting that it was not a linear process. Progress was not inevitable or inexorable. While the ground may appear firm, cracks could be appearing underneath that were not visible. One day these cracks could combine, the stars would align and suddenly "Everyone was in the resistance. Everyone was fighting against apartheid. Everyone was against the occupation". He did not know when this would happen, but he felt it had to. **Hassan** said she agreed with almost everything he had said.

Grieve wrapped up the discussion, pleased that they were ending it on a positive note. It left him with a sense of optimism. In politics, change came because people were prepared to articulate it, and to do so in a way which said there was a way through. Much of the problem today was that nobody had faith that there was a way through and thus felt it was much easier to live with a status quo. He had felt this himself when he had served as Attorney General in the UK Government and had visited Israel and Palestine. The lack of belief in a viable solution had always seemed to have been one of the main problems.

Introduction to Day 2 by Andrew Whitley, Balfour Project Trustee

I am very pleased to be able to introduce today's conference ... I spent over half my working life working on this particular issue.

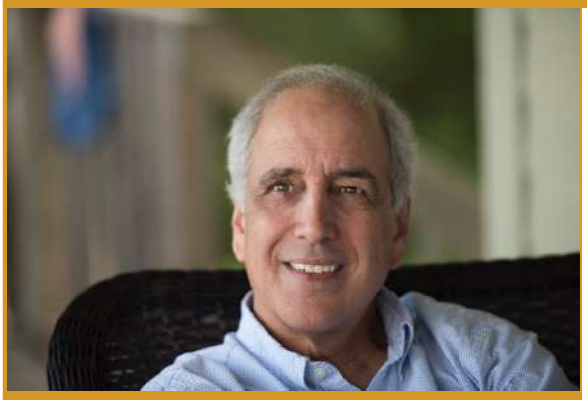
Yesterday … was really a very moving and exciting day. I think we heard a great deal of thought-provoking information from our speakers about the observance, or the lack of it, of the rule of law in Israel and Palestine. Today, we're going to be going down more into the details of what actually is happening on the ground in the region. We're going to be hearing first from the man who is probably the most authoritative and independent source of information on human rights in the area, and that is Professor **Michael Lynk**, the UN Special Rapporteur on Human Rights in the Occupied Territories. He will then introduce a panel of four experts, people living and working on the ground who can tell you what the situation is. And, from there, we will then move on to the second half of the conference, which is going to cover Britain's responsibility.

… The Balfour Project is an organisation that focuses on Britain's role – its historic role, and its role today – and it looks at how we can educate the British public and advocate for the British government to take a stronger, more independent, more forceful position to be able to help try to promote equal rights and an end to occupation. So, that's why in the second session this afternoon, we're going to be having **Lord Alderdice**, appropriately enough a veteran of the Northern Ireland peace process, a member of the Liberal Democratic Party, former Speaker of the Northern Ireland Assembly, and he is going to be leading a discussion, which will begin with **Jack Straw**, the former UK Foreign Secretary and former Home Secretary, and he will then introduce a panel of Members of Parliament who will debate the issues.

I shall come back at the end in order to read a closing declaration from the Balfour Project: a declaration which we're issuing in our own name (see pp 3 and 4).

Andrew Whitley

Andrew Whitley (Balfour Project Trustee) is founder and executive director of Geo-Political Advisory Services (GPAS), a UK-based consultancy that works on the alleviation of armed conflict in the Middle East and Asia. He was previously Policy Director and interim Chief Executive of The Elders, the organisation of global figures founded by Nelson Mandela. Andrew has worked as a journalist with the BBC and Financial Times and with the United Nations. He was the founding director of Human Rights Watch's Middle East and North Africa division.



Prof Michael Lynk

Michael Lynk is Associate Professor at the Faculty of Law, Western University, London, Ontario, Canada. He joined the Faculty in 1999, and has taught courses in labour, human rights, disability, constitutional and administrative law. He served as Associate Dean of the Faculty between 2008-11.

In March 2016, the United Nations Human Rights Council appointed him as Special Rapporteur for the human rights situation in the Palestinian Territory occupied since 1967 for a six -year term. In this capacity, he delivers regular reports to the UN General Assembly and the Human Rights Council on human rights trends in the OPT.

International Law: indispensable in the search for a just Middle East peace
Prof Michael Lynk

My argument today is going to be based on two points. First, this occupation is thick with laws, which Israel, the occupying power, defies. And secondly, I will be talking about what is the key missing aspect of this, very briefly—accountability…

The first of many important things that I want to be able to convey today is how unequal and how asymmetrical this particular struggle is. Militarily, Israel is a nuclear power with the strongest armed forces in the region and it has a very close military alliance with the United States, the world's sole remaining superpower, while the Palestinians have a lightly armed police force in the West Bank and low-grade missiles in Gaza.

Economically, as you see, Israel enjoys a European style standard of living with a gross domestic product per capita that's 12 times higher than the Palestinian standard.

Territorially, Israel is the overwhelmingly dominant political power between the Mediterranean and the Jordan River, with the Palestinians possessing only municipal-like authority in confined and scattered fragments of land that are disconnected from one another.

Diplomatically, Israel has the enduring support of the US, and, to a lesser degree, the European Union, which tends to count for far more in current international relations than the large voting majorities in the UN General Assembly who back the Palestinians.

The one area where there is parity, where there is equity, is demographically. Israeli Jews and Palestinian Arabs each have roughly 6.8 million people living between the Jordan and the Mediterranean, and the Palestinian population is steadily catching up, and at some point, either two years ago or two or three years from now, it's deemed to be that their population numbers will become numerically superior to those of Israeli Jews in this particular area.

This past Christmas, my brother gave me Barack Obama's memoirs as a Christmas present and I immediately went to his section on the Israeli occupation. His rendition of the occupation is a very interesting mixture of a very standard recitation of Israel's founding, together with some very sharp and wry acknowledgments of how the Palestinians have become the political orphans of the modern time … he acknowledges that the occupation by Israel is a violation of international law that is widely accepted among the nations of the world, and he talks about the awkwardness, one might say hypocrisy, that the US often found itself in, that whenever they were willing to raise issues with respect to human rights breaches going on in Russia, or in China, or in Iran, they would frequently be met back with, "Well, what about Israel and the Palestinians?" And he said, as a result, our diplomats found themselves in an awkward position of having to defend Israel for actions that we ourselves were opposing … I wondered if he could not have had a stiffer spine on this issue as President, if he'd actually written his memoirs first and then read them once he became President, to have the benefit of hindsight.

… There are actually three areas of international public law that have a great pertinence to the Israeli/Palestinian conflict and to the Israeli occupation of Palestine … humanitarian law, human rights law, and international criminal law, dealing with the laws of crimes against humanity, and war crimes covered brilliantly yesterday by Professor Philippe Sands.

So, when it comes to international humanitarian law (IHL), these are the laws of war, and more particularly, the laws of occupation. They are codified in several cornerstone international documents, the 1907 Hague Regulations, the 1949 Four Geneva Conventions, and the 1977 additional protocols … much of what's in those documents has now been accepted as constituting part of international customary law, which binds everybody, whether or not you've actually adopted any or all of the key IHL documents.

So, when we talk about occupation, and particularly with respect to Israel and Palestine, the most important single document is the Fourth of the Geneva Conventions from 1949, which offers detailed protection to civilians under occupation. And it is the International Committee of the Red Cross which is the institutional protector and interpreter of IHL.

In 2004, in the advisory opinion given by the International Court of Justice in The Hague, the ICJ stated, among other findings, that both international humanitarian law as well as international human rights law apply to the conduct of the occupation, and Israel is obliged to honour both ... International human rights law obviously has to do with foundational human rights. So, there are areas in which international humanitarian law and international human rights law wind up overlapping, but for our purposes, they're meant to be thought of as two distinct bodies protecting the vulnerable in the most vulnerable of circumstances. And both international humanitarian law and international human rights law confer a range of inalienable rights upon those that they seek to wind up protecting.

So, international human rights law is codified, beginning with the 1948 Universal Declaration of Human Rights, which actually, formally speaking, is not law, it is simply a declaration of the UN General Assembly. But the fact is that virtually every one of the 30 provisions in the Universal Declaration is now regarded, by those who think about this, as forming part of international law.

There are also the two 1966 International Covenants, one on political and civil rights, and the other on economic and social rights. Together, the 1948 Universal Declaration and the two 1966 International Covenants are thought of as being the international Bill of Rights. And building upon that, has been a series of other human rights treaties that have been adopted by the international community over the last 65 years, including international treaties on women, on race, and on persons with disabilities, among other rights.

Israel is required, as stated by the International Court of Justice, to fully respect, protect, and fulfil the human rights of the people who are under occupation. Israel has argued that human rights law does not apply to the occupied territory … they argue that the Fourth Geneva Convention doesn't apply either. This is a pretty lonely position in international law as virtually the entire international community accepts that both branches of law apply in full to Israel's administration of the occupation.

Some of the foundational rights and international human rights law that wind up applying include freedom of expression, assembly, religion, and particularly the fundamental guarantees of equality and non-discrimination. And certainly, when you read recent analyses, whether or not Israel is in compliance with the law, including the very important report released last month by Human Rights Watch, they use the lens of both humanitarian law, but in particular, international human rights law, to be able to say that Israel's actions on the West Bank and in East Jerusalem of maintaining separate rights, separate living conditions for Israeli settlers as opposed to the Palestinians living among them on the basis of race, religion, political opinion, and equality and non-discrimination amount to profound discrimination. Indeed, in the words of Human Rights Watch, it amounts to apartheid.

… What I want to point out is the absolute centrality of ensuring that law is at the very centre of how an occupier conducts its occupation. In particular, I want to point out that there is universal consensus with respect to the centrality of human rights law and humanitarian law in the conduct of the modern world. Virtually every country has signed on to the Four Geneva Conventions . Most countries have signed on to the two 1966 International Covenants on human rights, and they have signed on to many of the subsequent human rights treaties.

Human rights and international law is now our common and universal language. In a world that's divided by class, by race, by religion, by other divisions, the one unifying feature that we all have is the fact that we've created this enormous body of international public law with the values of justice and equality at the very centre of them. Everybody speaks in this common language to one another. Many don't obey what they've signed up to, but that in itself has a value, and because they have signed up, they can be held to being named and shamed by saying, "You're not following what you've agreed to on paper". And this makes a powerful argument, in my mind, perhaps the most powerful argument to be able to challenge human rights abusers, and in this case, an abusive and acquisitive occupying power.

And the large value of wanting to ensure that there's a rights-based approach that's at the very centre of both the administration of the occupation and the international push to bring it to an end is that using international law would create a more level playing field between the very asymmetrical balance of power between Israel and the Palestinians … it's this very asymmetrical distribution of power that has led us to have one failed peace initiative after another, and that's why I call my presentation today "Give Rights a Chance". If there is a rights-based approach that's at the centre of any future international efforts, that would have a far better chance of being able to succeed.

So, when I look back several years ago and examine all of the major declarations, agreements, plans, or proposals that were initiated from the beginning of the Madrid–Oslo process in the early 1990s right up to the Trump Plan, released last year, the one consistent issue that you will see, the one constant theme through all of this is that international law and rights have been consistently sidelined for this entire thirty-year process, beginning with the 1993 Declaration of Principles, right up to the Trump Plan, which was released 16 months ago.

Israel, with the support of the United States, has been vigorous in wanting to ensure that any parameters or any principles or agreements sideline international human rights and international humanitarian law. Why? Because they recognise themselves that their case is so weak with respect to their obeying of both sections of law. And indeed, if the parameters of a final peace settlement were framed entirely within the structure of international law, they would have to give up all of the gains that they think they have made in the 54 years of the occupation by creating all of these facts on the ground.

What sidelining international law has meant and what has been the theme throughout all of these interim agreements and frameworks and proposals is that because international law is not at the centre of these processes it allows Israel to argue from the strength of already having annexed territory, of already having created 250 settlements in the areas. Therefore, they're allowed to negotiate over their illegal gains. If a rights-based approach had been put in place and had been followed, Israel would have to bargain strictly from the 1967 borders, the settlements would have to all be removed, all of the annexations, in particular, the formal annexation of the Golan and East Jerusalem would have to be undone, and all of its *de facto* annexation attempts in the West Bank would have to be undone as well. That would put the parties on a parity to be able to negotiate what a final peace agreement would look like.

… The first issue… has to do with occupation, and this, of course, then has to do with the application and abeyance of the Fourth Geneva Convention of 1949.

Since 1967, the world community, expressed through dozens of Security Council resolutions and hundreds of General Assembly and Human Rights Council resolutions, has almost unanimously accepted that Israel is in occupation of these territories, and therefore the Fourth Geneva Convention winds up applying.

There are four fundamental features that govern an occupation by an occupying power.

First of all, the occupation must be temporary … eight to 10 years was the maximum period of time. The laws of occupation and the drafters of the Fourth Geneva Convention did not anticipate an occupation that would last indefinitely – into its sixth decade as it is right now.

The second point. An occupying power acquires absolutely no rights to annex even a square inch of territory … this is obviously the position of the international community, certainly since 1967. But any attempt to annex territory either by *de facto* means, so called temporary means, or *de jure* means, by formal declaration of annexation, is absolutely prohibited.

Third point. The occupying power must govern, during the time it is in authority, in the best interest of the population under occupation. That means that all of its administrative efforts should be towards ensuring that the occupied population is receiving, obviously, sufficient food, shelter, and education, that it's been put back on to its feet again, and that institutions that either existed or should exist in order for the people under occupation to resume full sovereignty ought to be built for their interests. The only time that the occupying power can look to its own interests is with respect to the military security of its troops on the ground. That's the only exception to the rule.

And fourth, and finally, an occupying power must govern in good faith, i.e. "We're not going to annex, we're not going to stay here very long", and they must follow both international law and the directions of the international community to a tee.

I submit to you … that Israel is in acute violation of all four of these fundamental requirements. Among other issues that govern the behaviour of the occupying power, is that **collective punishment is absolutely forbidden** under Article 33 of the Fourth Geneva Convention. In one of my reports last year, I found that … the fourteen-year blockade on Gaza is a form of collective punishment and therefore is illegal … And of course, the Palestinian people, as the people under occupation, are deemed to be protected people and enjoy all of the rights that are guaranteed in the Fourth Geneva Convention.

So, what's Israel's response to this? Israel's argument, which it has held since almost the very beginning of the occupation, is that the Gaza Strip, East Jerusalem, the West Bank, are disputed territories. Neither Egypt, between 1948 and 1967, nor Jordan, during the same time period, held proper legitimate recognised sovereignty over those particular Palestinian territories. And therefore, if there was no prior legitimate sovereign, therefore there is no occupation now … Israel has as good a title as any other country, in fact, a better title, they would say, than any other country to these lands.

They also argue that the key cornerstone document, UN Security Council Resolution 242 from November 1967, was deliberately meant to be ambiguous and allowed Israel to keep some of the territory it conquered in 1967.

It calls for withdrawal of Israeli armed forces from territories occupied in the recent conflict, and, Israel says, "If we were meant to vacate all of the territory, then they would have put 'the' in front of 'territories'". Now, mind you, that argument is somewhat undermined. If you look at the French, which is equally applicable in interpretation of the UN Security Council resolutions, it says "les territoires occupés", which has a more comprehensive meaning than simply "territories occupied". So, this is, again, a very lonely argument being made by Israel.

In contrast, the international consensus is that the territories are fully occupied, they are not disputed, and therefore the Fourth Geneva Convention winds up applying. Indeed, the Security Council has stated on 22 occasions since 1967 that the Fourth Geneva Convention applies in full to the Palestinian territories, including to Gaza, which Israel says that it vacated in 2005 and has no further responsibility for under international law.

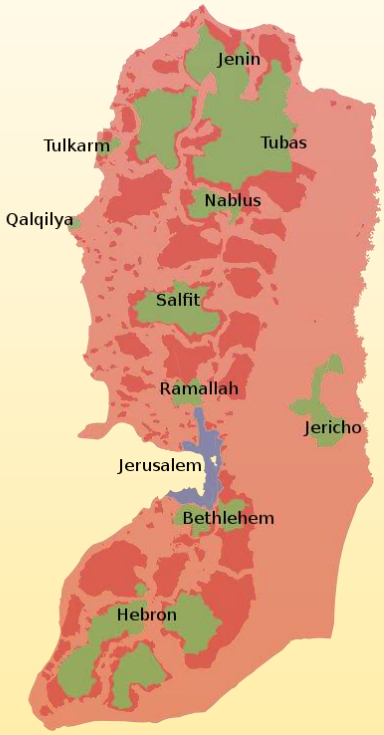
This is one of the most frequently commented upon issues in the world today by the Security Council, so to my sense, it's an impregnable argument that was raised by the international community, and Israel's interpretation has virtually no following among any international scholars, except for those who might be a mouthpiece for the Israeli occupation.

The Security Council, in several of its resolutions on the occupation, has strongly deplored Israel's non-compliance and it demands that it immediately and scrupulously apply the Convention. This has never been followed through by the occupying power. And the endorsements by the Security Council have found further favour by the ruling of the International Court of Justice in 2004 where it said that the court finds that the Fourth Geneva Convention is applicable to the Palestinian territories occupied by Israel.

So, when you think of all of the leading political and judicial bodies in the international system that hold our highest respect, the Human Rights Council, the General Assembly, the Security Council, and then the judicial body, the International Court of Justice as the highest judicial body in the international system, all of them have said without reservation that the Fourth Geneva Convention applies and there is no merit at all to the Israeli position.

So, the next area I want to look at then has to do with the question of annexation. Annexation, under international law, has been strictly prohibited since the very beginning of the modern world in 1945. Article Two of the Charter of the United Nations is generally interpreted as banning the right of countries to annex. And this was drafted specifically into the Charter of the United Nations during the drafting years in 1944 and 1945 because they said one of the leading causes of the Second World War, and indeed the First World War before it, was the non-prohibition on countries who are acquisitive and who sought to expand their borders. They said, "We now have a position that international borders are inviolate, that they cannot be moved, and that the world would not recognise any attempt by any acquisitive power to expand its borders illegitimately and so we have removed a major source of war in the modern world".

And the key resolution with respect to articulating this is, again, this UN Security Council Resolution 242 in November 1967, where it said, and this is at the very beginning, the preamble of the resolution … "We are emphasising the inadmissibility of the acquisition of territory by war". And this is why that Israeli interpretation of 242, with the missing "the", is so at odds with modern international law … if this was in the opening statements of Security Council Resolution 242, then it means that any subsequent wording in Resolution 242 has to be interpreted in light of this fundamental "you cannot annex" principle endorsed at the beginning of the resolution.



And we now see that with the 2010 amendments to the Rome Statute of the International Criminal Court, they've now added annexation as a crime of aggression under the 1998 Rome Statute, and I expect that this will likely become one of the files on the prosecutor's desk at the International Criminal Court as it investigates what files, if any, to forward to the possibility of a trial …

Area A - green
Area B - dark red
Area C - pink
Annexed East Jerusalem - blue

What is Israel's position with respect to this? It says, again, that its ability to annex East Jerusalem was because of its pre-standing position that Israel was illegitimately occupied by Jordan in 1967 and that it has as good a right as any to be able to occupy this territory. In Jerusalem, in 1967 in a cabinet vote, then in 1980 in a Knesset vote, it formally annexed East Jerusalem to Israel. In the process, it created 13 settlements within the expanded borders of East Jerusalem, with about 225,000 Israeli settlers, and it has constructed a wall that separates East Jerusalem from the Palestinian West Bank, and, indeed, where that wall goes through it even separates some East Jerusalem Palestinians from the city.

Interestingly enough, Israel annexed the Syrian Golan Heights in 1981, and that was recognised by the Trump administration in, I believe, 2019, and that recognition is yet to be undone by the Biden administration …

… So, what has been the response of the United Nations with respect to this? Well, that principle I mentioned of the inadmissibility of the acquisition of territory by war or by force in Resolution 242 has been restated by the UN Security Council in 11 subsequent resolutions regarding the Israeli occupation, including Resolution 2334 in December 2016. In 1980, immediately after the Knesset vote to annex East Jerusalem, the UN Security Council passed two resolutions stating that Israel's annexation of East Jerusalem was null and void and was a flagrant violation of the Fourth Geneva Convention. And it has gone on … to strongly deplore Israel's contravention of its anti-annexation resolutions and criticise the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council.

So, my next point has to do with the Israeli settlements. The West Bank and East Jerusalem are thick with the 250-plus Israeli settlements that are throughout the West Bank, both in populated areas such as Jerusalem and Hebron, through the highlands and then a spine of the West Bank and into the Jordan Valley as well. There are very few areas in the West Bank, outside of the densely populated Palestinian centres, not including Jerusalem and Hebron, where you won't find Israeli settlements. There are presently, in East Jerusalem and the West Bank, roughly 685,000 settlers. And the archipelago here is basically areas A and B, which are 167 islands of disconnected land. Palestinians cannot go from one area of their archipelago to another without going through Israeli checkpoints. And … they have no external border to the outside world. Any ability of a Palestinian to be able to travel to the outside world has to go through Israeli-occupied territory.

So, international law and Israeli settlements, this plus the annexation is probably the area that has the widest possible international consensus that these are illegal. The starting point is the Fourth Geneva Convention of 1949, which says that the occupying power could not deport or transfer parts of its own civilian population into the territory it occupies. That very purpose is to ensure that a power that has become an occupying power develops no acquisitive interest in wanting to annex part or all of those lands. And the safest way, historically, to do that is by moving your populations into these areas and creating facts on the ground that if they last long enough and the population builds up to be big enough, cannot be reversed by the international community.

… The most recent UN Security Council resolution on the occupation said that the settlements have no legal validity and they constitute a flagrant violation of international law. This was passed in the waning days of the Obama administration.

And let me just put this out as a side point. When you hear people argue that the UN is obsessed with passing resolutions all the time condemning Israel … the resolutions aren't critical of Israel, they're critical of the Israeli occupation. The resolutions don't address issues with Israel behind its 1948 borders…

The most recent reiteration of this is in the Rome Statute of 1998, where the prohibition against civilian settlements in occupied territory from the Geneva Convention has now been strengthened and redefined as

a war crime. And most countries in Western Europe, and my own country in Canada, have incorporated the Rome Statute into domestic legislation. So, this is both international law as well as domestic law, that the transfer, directly or indirectly, by the occupying power, of parts of its own civilian population into the territory it occupies constitutes a war crime. And that, indeed, is the subject of the UN report that I am delivering in July to the UN Human Rights Council: the status of the Israeli settlements under the Rome Statute.

So, the key facts, which may be familiar to many of you, are that this is the primary Israeli tool to ensure demographic growth and demographic permanency in the Occupied Territories. This gives them the claim for sovereignty, which, as I said, has been implicitly recognised by the United States and by the parties who work on the various peace processes over the last 30 years … that Israel has been permitted to negotiate over the settlements as opposed to being told international law, on a rights-based approach, forbids all settlements, therefore, those are off the bargaining table.

There are 250 plus Jewish-only settlements in the Occupied Palestinian Territories … they now amount to about 685,000 settlers, growing by about 15,000 to 25,000 settlers a year. The UN High Commissioner for Human Rights reports that the Israeli settlements … are among the key areas of discrimination and adverse impact upon the Palestinians living in East Jerusalem and the West Bank … they are the key form of being able to deny Palestinian self-determination … there are many Israeli statements to this effect, that the more settlements we build and the thicker our settlement population not only have we created a large internal settlement lobby on our governments never to give them up, but we've denied any space for another Arab state west of the Jordan River.

… International law has created at least three important rules which virtually all countries have bought into that ensure that there is going to be accountability if international laws are disobeyed by any member states.

The common article number one of all of the four Geneva Conventions of 1949 require that all of the high contracting parties, which includes virtually every country in the world, ensure respect. And the International Committee of the Red Cross says that is not an empty claim, that it is full of legal meaning that confer legal responsibility on all other high contracting parties to bring violations of the Fourth Geneva Convention to an end.

The Articles 40 and 41 of the 2001 articles on state responsibility require the international community to cooperate to bring serious violations of human rights and international law to an end. And Article 25 of the Charter of the United Nations says that members of the United Nations agree to accept and to carry out decisions of the Security Council in accordance with the Charter.

Israel is in violation of at least 30 Security Council resolutions since the late 1960s with respect to annexation, with respect to the settlements, with respect to the occupation, and so on, and the United Nations has never called upon Israel to comply or face consequences under its solemn obligations under Article 25.

And you look at the centrality of accountability, and this is the tension between what international law requires and what *realpolitik* wound up allowing, you can see that former UN Secretary General, Ban Ki-moon, said in 2016, that tackling impunity with respect to Israel must be the highest priority. In 2019, the German ambassador to the UN said, very astutely, that international law, you cannot cherry pick. International law is not a menu *a la carte*, that you can pick and choose from. When you buy in, you buy into everything. And the Special Rapporteur, me, said that the international supervision of the 53-year-old Israeli occupation of Palestine illustrates that between international law and accountability, there is an enormous gap between promise and performance. International law should not be an umbrella that folds up when it rains.

… In June 1980, almost 41 years ago, the UN Security Council passed Resolution 476. This was in the immediate aftermath of the vote by the Israeli Knesset to annex East Jerusalem. And it said two important things. It said … that they reaffirmed the overwhelming necessity – this is in 1980 after only 13 years of occupation – … of ending the prolonged occupation of Arab territories…. Then they went on to the very next paragraph and said "We strongly deplore the continued refusal of the Israeli occupying power to comply with the relevant resolutions of the Security Council and the General Assembly".

So, if the occupation was already prolonged in 1980, and if Israel already had a strong track record of defying the Security Council and the General Assembly by 1980, what is it now? The European Union has called this now a one-state reality of unequal rights, and I must say, if I put that term into Google Translate, it comes out apartheid, which, of course, is what leading human rights organisations have begun to say …

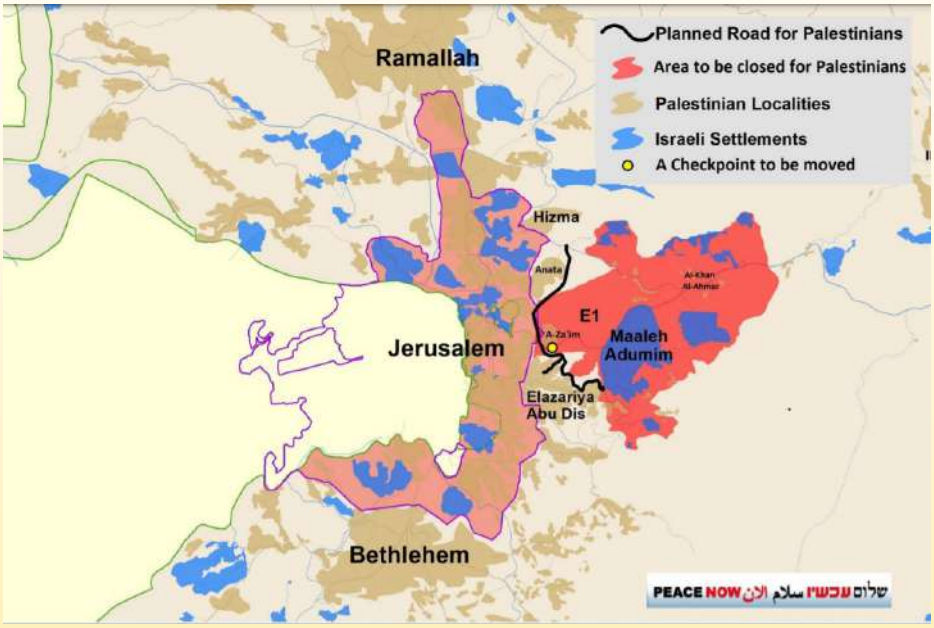
So … what lies ahead? Kofi Annan in his closing statement, in the last few weeks of his mandate as Secretary General said, in 2006 … that the Israeli occupation of Palestine as a core issue had to remain at the top of the international agenda … in 2011, in his memoirs, he said he was disturbed, and I'm going to use his quotes, "by the prolonged and sometimes brutal occupation" - his words—"by Israel", and he lamented the timidity of the Security Council's response. He said "Even when the Council took positions, it did not establish mechanisms to enforce its will". And he went on to identify a leading source of the Council's paralysis. He said "It was the unhealthy possessiveness of the Middle East peace process by the United States of America". And as you may know, the US, since 1973, has cast 31 vetoes at the Security Council against draft resolutions critical of the Israeli occupation. In each case, it has been the only Security Council member casting a negative vote. No other permanent member of the Security Council has vetoed a single Council resolution critical of the Israeli occupation.

And finally, we have the statement by Daniel Levy, who is a former peace process negotiator and if you've come across him, you'll know that his commentary and his policy thinking with respect to the Israeli occupation are absolutely top drawer. And he said "Human rights and international legality should be our guiding star and no longer be subordinated to maintaining a peace process that has probably failed to deliver".

Four case studies

The settlement project - Hagit Ofran

Settlements are one of the biggest violations of international law by Israel. They are also another means of oppression, taking over Palestinian lands and preventing the possibility of resolution of our conflict in any future two-state solution. In addition to a continuous construction of settlements, what we are witnessing today is a revolution in terms of the infrastructure.



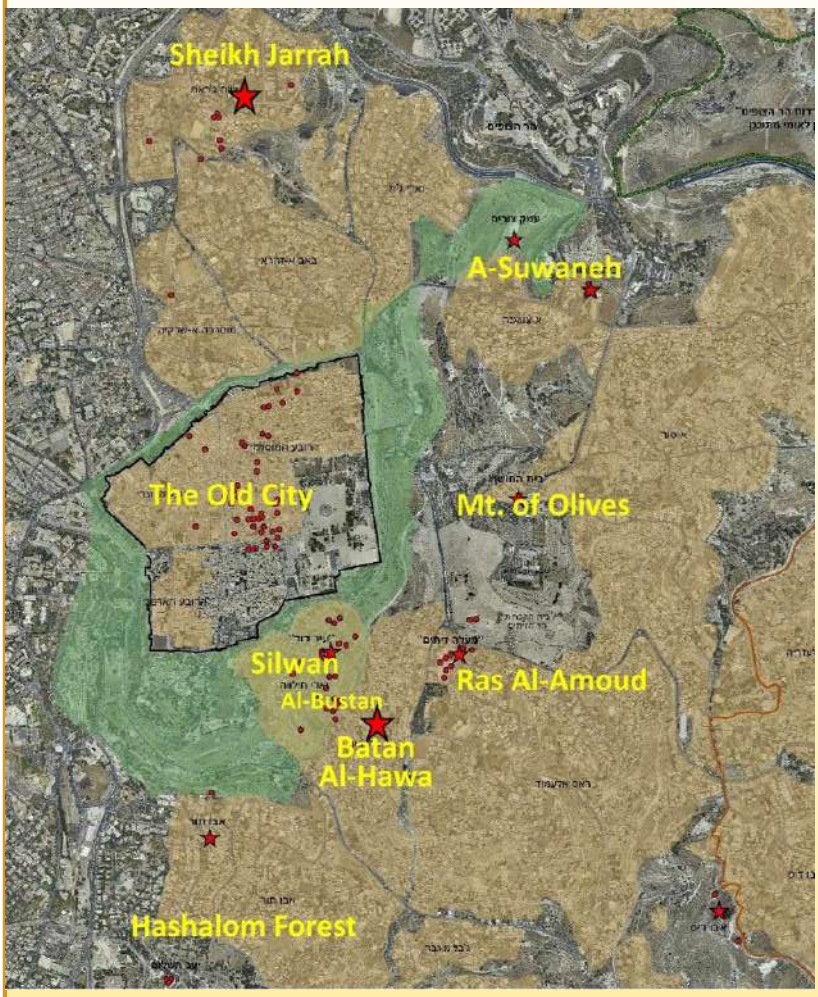
Following the Oslo agreement, Israel was supposed to withdraw from 40 per cent of the West Bank, and thus some roads, also used by settlers, were now within Palestinian Authority territory. However, Israel decided to build roads to enable settlers to bypass Bethlehem, Hebron, Ramallah, and Nablus. Israel has spent billions of shekels on roads, an essential aid to the development of settlements, e.g. the doubling of the Tanis road, bypassing Bethlehem, and the Qalandia bypass, another route for settlers to drive into Israel without having to endure the Jerusalem traffic jams. With that infrastructure, they managed to increase the number of settlers today in the West Bank to almost half a million, in addition to those in East Jerusalem.

Hagit Ofran

Hagit Ofran works at the Settlement Watch project at the Israeli peace movement, Peace Now. Her work includes travelling daily throughout the West Bank, examining aerial photos and studying official Israeli documents. The Settlement Watch project serves as a resource for Israeli politicians, diplomats, international media organisations, and—first and foremost – for the Israeli public.

The Israeli government is currently planning to build a road which will bypass Ma'ale Adumim. The result will be twofold. First, the old road for Palestinians will be blocked. Secondly, all this large area ... area E1 East of East Jerusalem, will be closed to Palestinians. This is around two per cent of the West Bank. The checkpoint today for settlers in Ma'ale Adumim will be removed, and Israel will build another major West Bank settlement in the E1 area.

Another dangerous development is 40 new farm settlements. The settlers are taking over huge amounts of land. If and when Palestinians protest, the settlers either kick them out, threaten them or call the army to do it. It's an extremely problematic development.



Near Jerusalem's Old City … the settlers wish to take over Batan Al-Hawa in Silwan, south of the Old City, knock down the houses as soon as they have evicted all the Palestinians, and build 300 units for settlers. I think it's the first time that Israel is going to force a mass displacement of Palestinians since 1967, when we took a lot of land off Palestinians. In East Jerusalem, one third of the land was confiscated for public use and then settlements were built on it. Now we are talking about 200-300 people in Sheikh Jarrah and 700 people in Silwan.

In 1948 in Jerusalem, about 35,000 Palestinians were kicked out and a very small community of Jews in Sheikh Jarrah and the Old City, around 2,000 Jews, also lost their properties. The latter all got alternative housing in Jerusalem and citizenship in Israel, while the Palestinians had no place to go and became stateless refugees.

In the 1970s Israel passed a law that says that Jews can return to the houses that they lost in 1948. So this is what the settlers are doing; they are suing the Palestinians out based on the ownership before '48, while Palestinians, of course, cannot do that in West Jerusalem or in Israel at large. So, we see the discrimination very, very clearly. The Palestinians' violent protests are understandable.

The government says it is a legal ownership conflict between two sides. In fact, it's a political matter that is done through 'legal' means. The government could stop it if they decided to do so. The whole discourse of rights under international law is extremely relevant to secure the housing rights of those Palestinians in Sheikh Jarrah and other places.

Palestinian children in Israeli military detention - Sahar Francis

How does Israel as a state use international law and all its legal apparatus to oppress and keep control over Palestinians for many decades, imprisoning children, justifying torture and other grave violations? Through the military system, of course, which was immediately implemented after the 1967 occupation.

On 13 April 2021, demonstrations started inside East Jerusalem and Sheikh Jarrah and spread inside Israel to the West Bank; then Gaza was attacked. In this period, Israel arrested more than 2,650 Palestinians (approximately 550 Palestinians, including children, in East Jerusalem).

They are all charged that they were attacking police violently, and that the demonstrations were racist and ideologically motivated. Even at this level of arrests, there is discrimination, as very, very few Israeli Jews are detained and charged.

Most children arrested and brutally attacked were released after a couple of hours or within a couple of days without being charged, usually under conditions of house arrest and payment of heavy fines.

Administrative detention is a British heritage. Currently there are around 160 Palestinian juveniles in Israeli prisons inside Israel, a violation of international law. The only prison located physically in the West Bank is Ofer, but Israel treats it as part of the Jerusalem area, so security permits are obligatory for family visits.

Israel systematically violates international fair trial standards. Juveniles might be interrogated in Arabic but in some cases the confession is written in Hebrew, which the child would not understand. Interrogations are not videoed, which means we don't know what is going on in real time. Yet, according to the Israel criminal code, you cannot interrogate a child overnight or without the presence of a parent, you have to take pictures and record an audio or videotape of the interrogation. None of these rules is followed. A recent law change means a juvenile can be kept in jail for months, until the end of their trial. Covid means family visits are banned.

Sahar Francis

Sahar Francis is the General Director of Ramallah-based Addameer Prisoner Support and Human Rights Association. She joined the association in 1998, first as a human rights lawyer, then as head of the Legal Unit. With over twenty years of human rights experience, Sahar also was on the Board of Defence for Children International – Palestine Section for 4 years, and on the Board of the Union of Agricultural Work Committees.
Sahar gained experience in Human Rights in the Society of Saint Yves in Jerusalem, on issues of land confiscations, house demolitions, labour rights and freedom of movement.

As Palestinian and Israeli human rights NGOs, we had to petition the Israeli High Court to guarantee the Palestinian children permission to call their families (once a month) instead of family visits. Usually, Palestinian prisoners are not allowed to get phone calls while under detention in Israeli prisons. Some prisons are old, insanitary and unsuitable for holding children. There is no special education or rehabilitation offered. For Israeli children, there is psychological and social support, and rarely are custodial sentences handed down. This too is discrimination.

I end by emphasising that the issue of the prisoners and associated practices, including torture, arbitrary detentions, and transfer to the state of Israel amount to war crimes. So besides the legal work that the international organisations or local Palestinian and Israeli human rights organisations are doing, we all have to put more diplomatic and public pressure on the state of Israel to make them respect their responsibilities under international law and stop all these violations.

Issam Younis

Issam Younis is the General Director of Al Mezan Centre for Human Rights in Gaza. He is also General Commissioner of the Palestinian Independent Commission for Human Rights-ICHR (The Palestinian National Human Rights institution). Issam is a member of the board of the Arab Organisation for Human Rights – Cairo, and a member of the Palestinian High Education Council. In 2008, he won the Weimar Human Rights Award, and in 2020 he won the Franco-German Human Rights and Rule of Law Award.

Gaza - Issam Younis

The distance between International Law and the daily, lived reality of Palestinians in Gaza is astronomical. Gaza is a thin sliver of land bordering the Mediterranean Sea, only 360 square kilometres in area, extremely overcrowded with approximately 2.2 million inhabitants, of whom 75 per cent are refugees from previous wars with Israel, and 85 per cent of these families are dependent on humanitarian aid.

The Israeli blockade of Gaza, now in its fifteenth year, is an undoubted example of collective punishment, deliberate de-development economically, and deliberate fragmentation of the Palestinian nation, isolating Gaza from the rest of the Occupied Territories, with intermittent electricity supplies, a broken sewage system, lack of clean water, scarcity of medical supplies and facilities, imposition of illegal taxes and severe restrictions on entry and exit permits, even for emergency medical cases.

Israel perpetrates violence in Gaza on a daily basis. What the international media deprives you from hearing about are the heart and soul-rending stories of the impact of that violence on ordinary people's lives, who they were, and what those who were killed meant to their families.

During Israel's offensive in Gaza in 2014, Israeli Air Force missiles hit my family home, killing my father, my step-mother, and my four-year-old niece. My sisters-in-law and their children were all injured in the attack. The local media reported on the bombing. The international media only reported the increase in the death toll in Gaza. Human rights organisations like my own documented the attack on the densely populated neighbourhood as one potential violation of international humanitarian law.

The key word in any occupied territory is accountability. No Israeli soldier, commander or government leader has been held accountable for this or other potential war crimes. There was no independent investigation, let alone prosecution. Accountability has been intentionally thrown away.

Between 10 and 21 May 2021 in Gaza, the Israeli military killed 253 Palestinians, including 66 children, many of them in their homes while they slept. For 12 days, entire families were huddled in hallways and living on kitchen floors. But nowhere is safe in Gaza. The Israeli military destroyed 1,800 homes and damaged more than 14,000. Twenty-three hospitals and medical centres were completely or partially destroyed. The only sewage plant was made inoperable. The 12-storey tower housing Al-Jazeera and the Associated Press was blown to the ground.

60,000 people were made homeless, many still living in appalling humanitarian conditions in makeshift shelters. Israel's unlawful 14 years of collective punishment was heightened. It has a devastating impact on the socioeconomic culture and environmental rights.

Israel's sense of impunity deepens every time the international community fails to hold it to account. Israeli strategy is colonialist, discriminatory, and will not last. The Palestinians are a nation, they have rights in International Law, and their whole struggle should be a rights-based approach, the right to self-determination, and then by default the state will be established, and then the right of return.

The recent offensive is only one example of Israel's protection by the international community from the rigours of international law. My organisation, Al-Mezan Center for Human Rights, has been documenting these violations since the organisation was established in 1999.

I call on you, citizens of the United Kingdom, please use your voter power, freedom of speech rights, and conscious sense of human dignity and solidarity to help end this decades-long injustice.

Nada Kiswanson

Nada Kiswanson is a Swedish lawyer of Palestinian origin. She serves as counsel for hundreds of Palestinian victims before the International Criminal Court. Nada has worked on the occupation of Palestine for over a decade, for and alongside human rights organisations. During that time she has explored numerous justice and accountability mechanisms for violations committed in Palestine.

Accountability - Nada Kiswanson

It appears from the information available that the bombing of the locked-in population in the Gaza Strip violated cardinal rules of the laws of armed conflict of precaution, proportionality and distinction between civilians and combatants.

Customary international law, binding on both Israel and Palestinian armed groups, prohibits attacks that result in incidental loss of civilian life and damage to civilian objects where it is excessive in relation to the concrete and direct military advantage anticipated. Such direct military advantage has not been offered by Israel for its attacks on multi-storey residential buildings, and the building housing the Associated Press and Al-Jazeera.

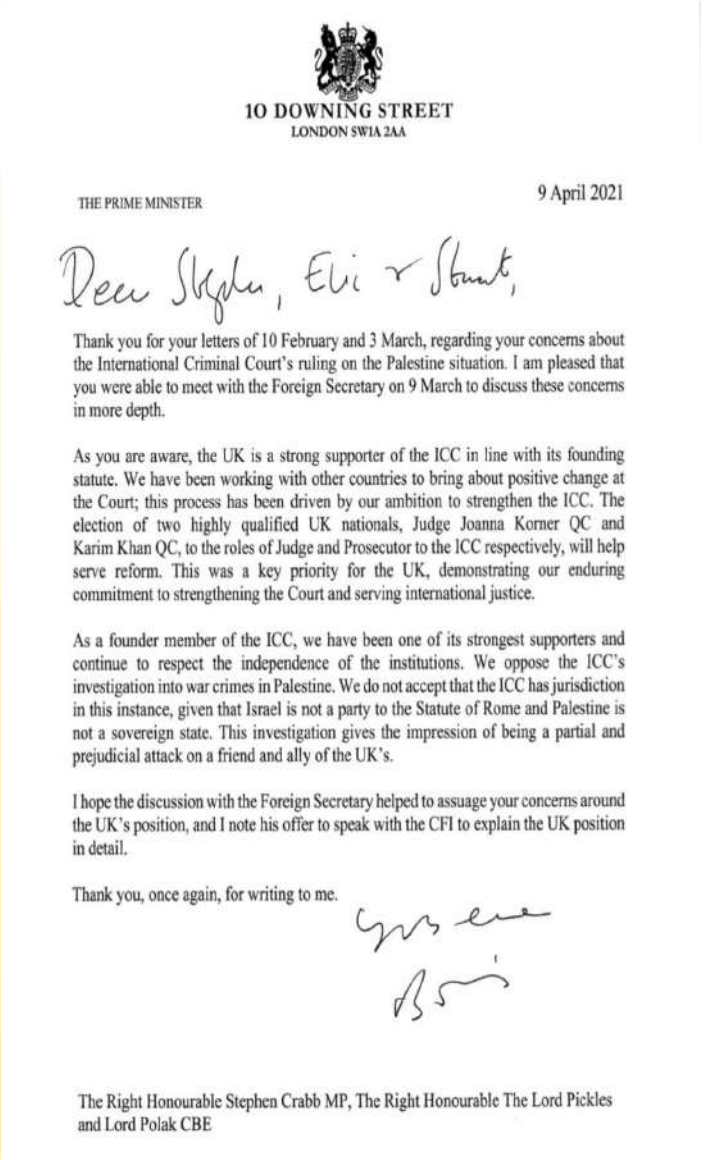
Many have revised the well-known narrative of an even-handed conflict and a dispute over borders and have reinvigorated calls for accountability. UN Special Rapporteur **Michael Lynk's** report to the United Nations recently described accountability as "the institutional check on the exercise of public and private power on behalf of the common good, and an indispensable component of the rule of law".

Accountability encompasses countermeasures, such as financial sanctions and arms embargoes. For the hundreds of Palestinians that I have had the privilege to represent in a recent proceeding before the International Criminal Court (ICC), the term accountability means just retribution, truth telling and reparation. It is a matter of holding perpetrators criminally responsible for war crimes and crimes against humanity, seeking what others take for granted: namely, the non-discriminatory application of the law.

The United Kingdom is a founding member of the ICC. It espouses human rights, justice, and the rule of law. But these commitments ring hollow when applied selectively.

The prosecutor of the ICC is an independent and objective authority, mandated by states including the UK through the Rome Statute to "establish the truth". In February of this year ICC judges confirmed that the court may exercise jurisdiction over crimes committed in the West Bank, including East Jerusalem, and the Gaza Strip.

In response, British Prime Minister Boris Johnson wrote in a letter in April to the Conservative Friends of Israel that the United Kingdom aims to bring positive change to the court. He referred to the appointment of two British nationals to the positions of ICC judge and ICC prosecutor. In the same letter he declared that the UK opposes the ICC investigation into war crimes in Palestine. This suggests that the UK does not respect the principles of prosecutorial and judicial independence. It exposes the UK's discriminatory approach to the law when it comes to Palestine. It reeks of exceptionalism and a selective approach to accountability which, in the context of the occupation of Palestine, bolsters an already existing situation of apartheid along racial and religious lines. Human Rights Watch's new report concludes that the Israel authorities "methodically privilege Jewish Israelis and repress Palestinians". The UN Committee on the Elimination of Racial Discrimination found in a decision in April 2021 that Israel's judicial system is "illegitimate, futile, unavailable, ineffective and insufficient".



10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

9 April 2021

Dear Stephen, Eli & Stuart,

Thank you for your letters of 10 February and 3 March, regarding your concerns about the International Criminal Court's ruling on the Palestine situation. I am pleased that you were able to meet with the Foreign Secretary on 9 March to discuss these concerns in more depth.

As you are aware, the UK is a strong supporter of the ICC in line with its founding statute. We have been working with other countries to bring about positive change at the Court; this process has been driven by our ambition to strengthen the ICC. The election of two highly qualified UK nationals, Judge Joanna Korner QC and Karim Khan QC, to the roles of Judge and Prosecutor to the ICC respectively, will help serve reform. This was a key priority for the UK, demonstrating our enduring commitment to strengthening the Court and serving international justice.

As a founder member of the ICC, we have been one of its strongest supporters and continue to respect the independence of the institutions. We oppose the ICC's investigation into war crimes in Palestine. We do not accept that the ICC has jurisdiction in this instance, given that Israel is not a party to the Statute of Rome and Palestine is not a sovereign state. This investigation gives the impression of being a partial and prejudicial attack on a friend and ally of the UK's.

I hope the discussion with the Foreign Secretary helped to assuage your concerns around the UK's position, and I note his offer to speak with the CFI to explain the UK position in detail.

Thank you, once again, for writing to me.

Yours ever

Boris

The Right Honourable Stephen Crabb MP, The Right Honourable The Lord Pickles and Lord Polak CBE

It is the strict obligation of the United Kingdom to respect the judicial disputes resolution mechanisms of the ICC Rome Statute. In addition, the UK remains under a legal duty to actively pursue perpetrators of grave breaches of the Geneva Convention and ensure that those grave breaches are brought to an end. In making victims, both Palestinians and Israelis, a central concern and by upholding the rule of law, the UK would protect and respect the dignity of victims as well as the dignity of the UK.

Can international law prevail in Israel/Palestine, and if so, how? Rt Hon Jack Straw

All of us are clear about the obligations of international law, which are palpably on the government of Israel and on the state of Israel …

The issue is essentially a political one, which is how do we get from where we are to a situation where the international community starts to insist on Israel meeting its obligations?

How do we break this climate of impunity which Israel enjoys to do essentially, within its own domestic law, whatever it wants in the Occupied Territories …?

And essentially I'd say that the Western world has turned off what's going on day by day …

When there's serious, violent conflict, and particularly, I'm afraid to say, when it's Israelis who are being killed or injured, then this will get into the Western press. And if Hamas is … willing to put its own civilians in harm's way and to fire rockets pretty indiscriminately at civilian targets, of course that will get into Western, particularly US, media.

But the day-to-day humiliations which are meted out to Palestinians don't feature in even our quality press. I've witnessed this. I've seen women queuing up just to pass a crossing point from the West Bank into Israel for work and being held up in pouring rain for three or four hours just to go to a job. I went into a military juvenile court and saw youngsters who were 10 and 11 who were being accused of throwing rocks… these were kids, and they looked like kids. They had shackles around their ankles. And there's no possible security reason for that, it's a way of humiliating them and their parents …

Rt Hon Jack Straw

Jack Straw was Foreign Secretary (2001-6), Home Secretary (1997-2001), Leader of the Commons (2006-7), and Lord Chancellor and Justice Secretary (2007-10).

Before becoming an MP, Straw practised as a Barrister, and then worked as a Special Adviser in the 1974-79 Labour Government.

He is a Trustee of the Royal United Services Institute (RUSI), and a Bencher of the Inner Temple.

.. I took part, when I was Foreign Minister, in interminable discussions inside the EU Foreign Ministers' Council about the situation in the Occupied Territories … the truth was, collectively, the EU held back from really putting it on Israel. That was especially true of Germany … with its utterly appalling war-time record and the … Holocaust. It's also true, to a degree, of France, for its complicity in the Holocaust. And so far as the United Kingdom is concerned … there was a symptom of that ambiguity of seeking to somehow use slightly different language in respect of Israel's actions which were unacceptable as opposed to those of the Palestinians …. So the challenge to all of us essentially is, how do you break down both that ambiguity and complacency in Europe and the prevailing view in Israel that Israel is always to be backed, right or wrong?... First of all by painstakingly making the case about the effect of Israel's failure to observe international obligations. And you've got to make that case … in very, very specific terms.

I'll give you one example … About six years ago, I visited a community of Palestinians who were living in tents and shacks half way down a hill. And there was the usual argument going on about whether they have title to their land. At the top of the hill, surrounded by high fences and barbed wire, there was an Israeli settlement and, of course, their own road – dedicated, separate road. The Israeli settlement had electricity and it had mains water. The poor Palestinian community further down the hill, not only had to put up with repeated and quite gratuitous incursions by the Israeli police and the IDF, but they had no electricity, they had to have a generator, and they had no running water… I wrote a piece about it in The Times.

And it was really interesting that it produced a greater sense of outrage by people who were pro-Netanyahu than anything I could have said, in Parliament or outside, about the generalities of things. But it's this kind of granular detail, what goes on in military juvenile courts, the arbitrary arrests …

… There's a big issue for any British government about how they handle the United States and whether or not they can depart from the United States' position on particular issues … there are some examples … where a UK government can branch out on its own and can actually change the international weather, and including that in the United States, over a period, and that's Iran. This is my last and very important point.

When the international community received evidence that Iran had failed to disclose a number of nuclear facilities … the three then-Foreign Ministers of France, Germany, and the UK … got together, very shortly after we'd had the most powerful arguments in the United Nations Security Council and elsewhere, about the right or wrongs of a war in Iraq, and we said, "Whatever happens, we can't have another military conflict in the Middle East and we have to try and resolve this issue with the Iranians by peaceful means".

That led to the… initiative with France, Germany, and the UK, to which the Iranians responded, and to the early negotiations with the Iranians about what they would give in terms of access to their nuclear facilities and inspections and what could be given back to them in return … There's no reason why we couldn't use that model to further our proposals, with the Americans not least, to try and kick-start a peace process in Israel/Palestine. And above all, make as a basis of those negotiations Israel's obligations under international law.

Panel discussion - Jack Straw, Wayne David MP, Layla Moran MP, Joanna Cherry QC MP, moderated by Lord Alderdice

Wayne David MP

Wayne David is Shadow Minister for the Middle East and North Africa. He previously served as the Shadow Minister for the Armed Forces and Defence Procurement in the Shadow Defence team. He was briefly a member of the Defence Select Committee.
Wayne has been the Labour Member of Parliament for Caerphilly since June 2001.

Wayne David MP

Layla Moran MP

Layla Moran has been the Member of Parliament for Oxford West and Abingdon since 2017. She is the Liberal Democrats' Foreign Affairs and International Development Spokesperson. She was previously, as an ex-teacher, the party's education spokesperson. She has campaigned to tackle climate change, make our education system world-class and protect and promote internationalism, including as a member of the Public Accounts Committee between 2017 and 2019.

Layla Moran MP

Joanna Cherry QC MP

Joanna Cherry QC is the MP for Edinburgh South West and deputy chair of the joint House of Lords and Commons Committee on Human Rights. She was the Shadow Home Secretary for the SNP Group at Westminster from 2015-2021. In 2019 she led the successful 'Cherry Case' against Boris Johnson's unlawful prorogation of Parliament. She was also part of the Article 50 Case against the UK Government at the EU Court of Justice, which established that Article 50 could be unilaterally revoked.

Joanna Cherry QC MP

Lord John Alderdice

John, Lord Alderdice has been a Liberal Democrat peer for twenty-five years and was formerly the Convenor of the Liberal Democrats in the House of Lords. Previously, as Leader of the Alliance Party of Northern Ireland, he played a significant role in the negotiation of the 1998 Good Friday Agreement and was then the first Speaker of the Northern Ireland Assembly. He stepped down in 2004 and was appointed to the Independent Monitoring Commission, put in place to close down the operations of the paramilitary organisations and monitor security normalisation.

Lord Alderdice chaired the Parliamentary session.

Parliamentary session, chaired by Lord Alderdice

Wayne David, Labour
In moving an urgent question in the Commons recently, I called for a focus on the root causes of the recent violence, particularly in East Jerusalem, and concerted action to address the fundamental humanitarian situation in Gaza. The Labour Party's policy is that there should be an end to the blockade of Gaza.

I also called for action to restart a meaningful peace process. I believe that, central to a new peace process must be a commitment to the adherence to international law. The Labour Party supports the International Criminal Court investigation into alleged war crimes in the Occupied Territories and has condemned Boris Johnson's attack upon the International Court and its investigation.

The illegal settlement of the West Bank is a flagrant breach of international law. Such breaches must, in our view, face consequences. Lisa Nandy and I have put our names to a declaration signed by a number of our European Parliamentarians, which has pointed out that, although *de jure* annexation may have come to an end, nevertheless, *de facto* annexation is still taking place. However, we do not support the Boycott, Divestment and Sanctions (BDS) movement.

The question of settlements and new infrastructure are important in themselves, but they're also important because they make a two-state solution extremely difficult to achieve.

A final point I'd make is this: if we believe in a two-state solution, as I strongly do, we need to recognise Palestine as a state. I don't doubt that there are difficulties with the implementation of such a declaration, but I believe it is high time to follow the example of 140 other countries who have decided to recognise the State of Palestine.

Joanna Cherry, Scottish National Party
One of the most important things that Parliamentarians can do is to visit the Occupied Territories. Quite hard to visit Gaza now, but we should visit on proper Parliamentary delegations and then come back and call out what we have seen there, with granular detail of examples of human rights breaches that we have observed.

Such a visit for me was a profoundly affecting experience, because I really had no idea of the size and the scale of the settlements on the ground and how well entrenched they are. It made it plain to me the practical scale of the difficulty we're facing in achieving a two-state solution.

I was profoundly shocked by the human rights abuses I witnessed in the Occupied Territories and, in so far as the Palestinian population is concerned, the absence of the rule of law and proper human rights protections. By that I mean state-sanctioned theft of property, state-sanctioned theft of natural resources and the scandalous treatment of people in military detention, particularly the children.

Just to give one example, I went to observe trials at the military court at Ofer. One of the trials we observed was of a young Palestinian man who'd allegedly thrown stones at a settler car. The man's interrogator, who the defendant had claimed had assaulted him during the interrogation, was standing there in court as a witness, casually dressed, with his gun casually tucked in the back pocket of his jeans. He claimed that the interrogation had been conducted in Arabic and that an audio recording had been made. However, the audio recording was nowhere to be found, and it was quite clear that the level of the interrogator's Arabic was revealed to be such, under cross-examination, as to be insufficient to obtain and record a fair statement. The only transcript of the interview was in Hebrew, which the young Palestinian man didn't speak.

The SNP has called for Palestine to be recognised as an independent state. The Scottish Parliament has passed a motion to that effect, but the Scottish Parliament does not have any foreign competencies at present. So that's more of a symbolic act. However, while the SNP in government in Edinburgh, in line with other governments in Europe, doesn't boycott Israeli goods, we do expect companies that are maintaining public standards to avoid trade with companies active in Israeli settlements. The Scottish Government published some guidance on that for public procurement.

We want the International Criminal Court to carry out its investigations, particularly into the recent evictions of Palestinians from East Jerusalem without hindrance, and we've called upon the Israeli government to reconsider its position of non-cooperation with the ICC. Like the Labour Party, we abhor Johnson's position on this.

Our spokesperson at Westminster has also recently raised the issue of arms exports from the United Kingdom to Israel. UK arms export licences to Israel have increased by over 1000% in the past two years, and to us, this seems unacceptable in a situation where some of these arms are clearly being used to commit illegal acts, war crimes and the targeting and group punishment of the civilian populations.

Palestine is one of the issues that my constituents are most likely to write to me about and ask about if they come to a surgery about a policy issue as opposed to a problem. It's an issue that comes up again and again at public meetings and there's clearly a very strong groundswell of support among ordinary people in Scotland, and indeed across the UK, who really care passionately about this.

Equally, I have constituents who would be very keen to condemn the terrorist activities of Hamas, which of course I do, but I think one of the most important things that we can do as Parliamentarians who aren't in government is to keep reiterating in Parliament and in the press the legal arguments that we've heard over the last couple of days, and to go out there, see for ourselves and to bear witness to what we've seen so that the United Kingdom government can hear that the position on the ground in the Occupied Territories is completely unacceptable.

In the Queens's Speech, the British government made a big song and dance about the importance of upholding human rights and democracy across the world. If that is their position, then where is their commitment to doing that for the Palestinian people? Let's have fewer warm words and more actual action from the British government.

Layla Moran, Liberal Democrats

The Lib Dem position is currently very similar to that of the Labour Party and the SNP. I think the opposition are pretty united about this. It really angers me when members of the Conservative Party seem to conflate all of Palestine and Palestinians with Hamas. It angers me on a personal level because they Hamas do not speak for me. They do not speak for my family. They do not speak for most, in fact all, of the Palestinians I know, when we have these conversations. What the Palestinians that I speak to want is peace and it's peace in a two -state solution where we are recognised. The point about recognition is it is helpful to have two equal partners in any negotiations. It has clearly been one of the failings of past negotiations.

We also need to do something that is just that bit more subtle but even more important and that is to prevent the erosion of Palestinian culture and heritage. I feel that if we let things go on as we are, I will say to my children "Well, I used to be Palestinian", because there is no semblance of what that country actually means anymore, which is a very different point of view from my mother, who grew up in Jericho, and her father, who grew up in Jerusalem.

The idea that we're painted as these extremists who are in any way okay with what happens to ordinary Israeli citizens and children is disgusting to me. I think we absolutely need to keep making that clear to people.

I think we should put pressure on the Israeli government to allow campaigning in Jerusalem as part of Palestinian elections. We have to do everything that we can now to bolster the idea of a Palestinian state with its own cultural identity, with its own heritage, with its own political system, as deeply flawed as that is. Frankly, even in this country we see how rickety democracy can be, occasionally.

The argument that you cannot possibly recognise the State of Palestine ... "Well, who would you recognise?" Well, my answer to that question is: me. What you are recognising is the fact that my family and I are Palestinian, feel Palestinian and the State is where we consider home or at least half of home.

On the question of what can we do to uphold international law, we all have a really important part to play in giving the UN, the International Criminal Court and other international organisations the legitimacy that they deserve and that they need in order to do their work.

I think that's why it's important to put pressure on Boris Johnson to retract his words about not recognising the ICC investigation because we have to get the evidence. And also to write to Conservative MPs, if you've got them, about how Johnson has been undermining not just the cause of Israel/Palestine, but the ICC, the international rule of law and the systems that govern it as a whole.

Lord Alderdice

The Balfour Declaration came in in 1917, and shortly afterwards, we moved to the partition of Ireland. We have had prolonged division, going on for generations, in both countries.

In the case of Ireland, as you know, we ended up having to engage in a process that led to negotiations with the IRA, and others on the Loyalist side who'd been involved in terrorist activities too; and eventually, the Good Friday Agreement and the whole political process that developed from that. When I started to get involved in looking at things in Israel/Palestine, it seemed clear to me that the read-across was that I needed to be prepared to talk to people in Hamas, to Hezbollah, to the settlers, to people on all sides, to try to reach some kind of understanding and accommodation.

So the two questions I would like to put to you:

> Should the United Kingdom government recognise the State of Palestine now? And on the 1967 borders?
>
> Do you support engagement with Hamas? It seems difficult to believe that there can be any negotiated settlement now without the representation of Hamas in a political form.

Jack Straw
On the recognition by the United Kingdom of a State of Palestine, the answer, unequivocally, is yes. On the issue of "What is it you're recognising?", it's the territory.

Should we talk to terrorists? Yes. Just bear in mind that the state of Israel was forged partly from terrorism. One understands the desperation of people who were fleeing from Europe, but the Irgun and the Stern Gang were the people who, for example, murdered Lord Moyne, who was the British Minister in Cairo. They blew up the King David Hotel and killed a lot of innocent Brits, as well as committing atrocities against Palestinians at that time.

Yes, of course, we should talk to Hamas. The Israelis are talking to Hamas every day. They are very realistic about where the power is. Now the crucial thing is in the way we talk to Hamas. We shouldn't big them up to the exclusion of the vast majority of Palestinians, not only in the West Bank but in Gaza, who can't stand Hamas and their methods. However, we should recognise, too, the reality, which Haaretz, the Israeli newspaper, acknowledges: that there is this terrible but powerful Faustian pact between Hamas and Netanyahu to exclude all the moderate groups in Palestine.

Joanna Cherry
Yes, I think the UK should recognise the State of Palestine now on its 1967 borders. That would be a sign of good faith to the Palestinians, to show them how serious the UK is about a two-state solution. If the Vatican can recognise the State of Palestine, then so can the UK.

Moving on to the more difficult question, which is tricky for all politicians in case one's words are taken out of context, I would say that if the British government can sit down at the table with the IRA, then the Israeli government can sit down at a table with Hamas if the conditions are right. It is doable.

As in Ireland, I suspect the Americans will have to be central to the putting in place of the conditions for any such negotiation. That, of course, is problematic. There's possibly a little bit more hope under a Biden administration than we had before. But even the Democrats face their own challenges.

Wayne David
Yes, we have to recognise the State of Palestine. On the second point, I take what Joanna said about the sensitivity of this and this being open to misrepresentation, but I think it's important to recognise that we are obliged to have dialogue with and to negotiate with people who are elected, as Hamas have been in Gaza.

In East Jerusalem, we've had a number of reports about how Netanyahu refused to intervene to prevent escalation taking place. Hamas predictably responded as he thought they would. Their objective is short term. They want to be identified as the leaders of the Palestinian people as a whole. I think it is incumbent upon us, therefore, to basically bring people together, to create a middle ground once again.

Layla Moran
Yes to recognition of Palestine. It wasn't until my mid-20s that I realised that one of the States that I belong to didn't recognise the other one that I belong to. It struck me as utterly bizarre. It should have been done a long time ago, because of our role, our former colonial role in this region, the one that caused my family to become a diaspora family –We've still got some of our extended family there, but most of us have left and have no right of return and can't go back …

I think that the wool has been pulled from people's eyes over the last few months about the reality for Palestinians in the current State of Israel and the segregation that they experience and the feeling that they are second-class citizens. This cannot continue. The tinder box has been ignited but this has been going on for such a long time that we have to find a way through.

You talk to Hamas, you talk to everybody, but it needs to be part of a process. I think this is actually where your work, John in Northern Ireland, and everyone else who was involved in achieving the impossible before, is so important. We actually have the expertise to be able to lead from the front, but unfortunately, the current government don't seem to want to take on that particular role. If they're serious about global Britain, they could be the ones who start to broker peace. I think the Palestinians would see it as just reparations for the mess that, frankly, this country caused in the first place.

Lord Alderdice
A few concluding remarks. The first is that all four of you believe that the British government should be moving as soon as possible to recognise the State of Palestine on the '67 borders. Then you were in agreement that, in certain circumstances … there should be talks, political engagement, with Hamas. Other parts of the whole complicated jigsaw are the Right of Return and the status of Jerusalem, which was key in the recent triggering of the violence. I sensed that you were not keen on the idea of BDS, which is something that many people do press.

The clear and unequivocal outcome of this conference is that Israel's occupation of the Palestinian Territories and how it has been conducted is not only illegal under international law but, since the Rome Statute, it probably constitutes a war crime. The problem is not the question of international law but its enforcement.

Israel may have been able to maintain the occupation of the Palestinian territories, in clear contravention of international law, but, despite the asymmetric distribution of power with regard to military might and economic capacity and political support and diplomatic clout, it has not been able to emerge victorious in its wars against Gaza, the West Bank, and the Palestinian authority as a whole. The failure of the Israeli Defence Force to defeat Hamas in the most recent battle has left Hamas with very substantial popular support in Gaza, on the West Bank, even in Israel proper and amongst people right across the region. There is now no possibility of any negotiations that do not include Hamas as a key partner, and they will insist on the 1967 borders.

Given the size and growth of the settlements, there is little prospect, at the moment, of a two-state solution. So are we looking at a one-state outcome? But that cannot be both Jewish and democratic: it will either be democratic, in which case it will be pluralist, or it will be Jewish, in which case it will effectively be an apartheid state.

The rule of law and human rights are clear, but we also need to look beyond that to our relationships and to suffering humanity. In addition to law we have politics, public opinion, and tragically, we have violence, to which people will resort when all else fails, to address a legitimate cause. We need to be looking into each other's eyes and engaging with each other's souls.

So let us build on what we've heard and learned, inspired to recommit ourselves to resolving this seemingly intractable conflict and bring about a more human set of relationships not just for Palestinians inside and outside Israel, but Jewish Israelis who will be able to be proud of living in a state of justice and stability.

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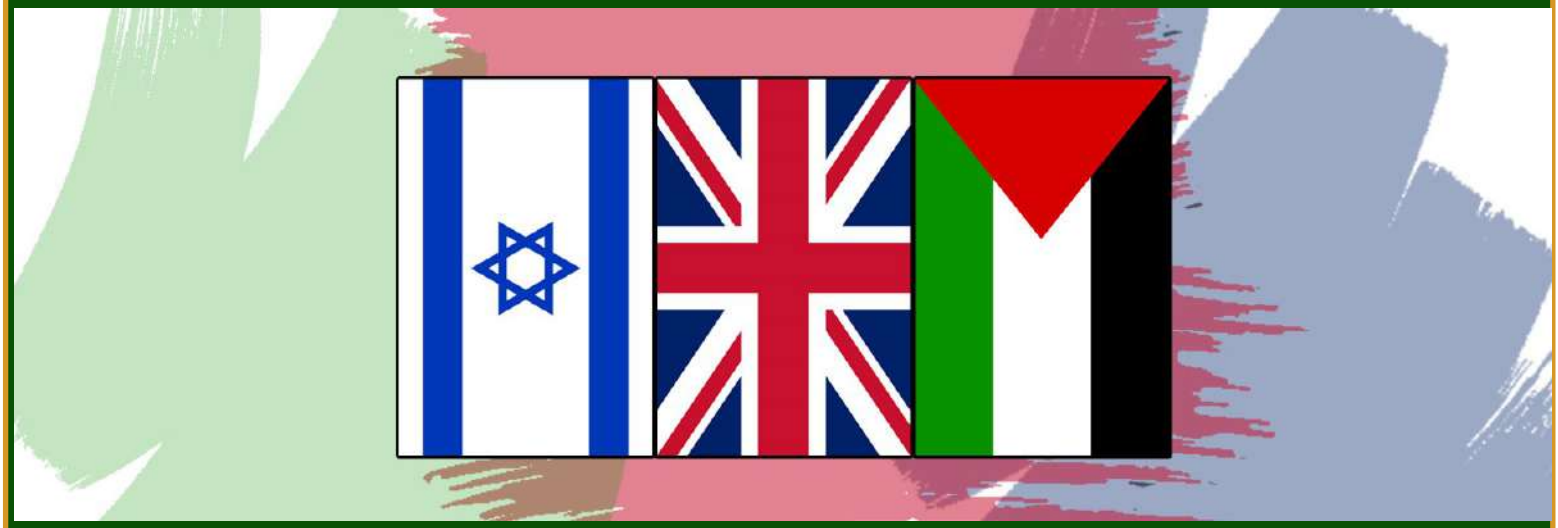

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