

Legal Studies Association of NSW Inc



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# **International Law & Human Rights in Palestine**

Presenter

**Kylie Belov**

**former Legal Studies Teacher**

**& Humanitarian Worker**

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## Challenges and sensitivities in teaching Israel-Palestine

- The longest-standing intractable conflict in the world today
  - The issues are sensitive, and involve inter-generational trauma within each community
    - Israelis carry ongoing trauma from the holocaust, and a genuine fear of anti-Semitism
    - Half of the world's Palestinians are refugees, many stateless, have very limited rights
  - The conflict is contentious, and has very strong opposing narratives that do not meet
    - al-Nakba ('catastrophe') vs Israeli independence
    - Palestinian displacement vs Jewish ancestry
    - Restrictions on Palestinian movement vs Israeli security
- Do not debate the conflict on either side.
- Remain impartial and do not engage in, or endorse advocacy for either side
- Do not tolerate any form of racism or anti-Semitism within the classroom.
- Use official and primary sources for content. Media will present different perspectives and bias.

## 1. HISTORICAL BACKGROUND AND CONTEXT

### *Ancient inhabitation of the land*

- 10000-5000 BC – small agricultural communities
- 6000-4000 BC – Neolithic/stone age cultures established in Jericho and the Jordan Valley
- 3000 BC – The Levant was inhabited by the Canaanites, who were ancient Semitic indigenous communities; later referred to as the Phoenicians
- 1250 BC – Israelites conquest of/return from Egypt to Canaan. Significant to biblical prophecy, and the foundation of Jewish 'Passover'.  
(in Jewish mythology, this is referred to as an escape from slavery in Egypt and return to the ancestral lands of Abraham. Jacob/Yaakov/Israel, the grandson of Abraham had previously left Canaan to Egypt, where his descendants, the Israelites, lived as slaves).
- 1200 BC – arrival of the Philistines, possibly from Crete
- 1000 BC – Reign of King David and his son King Solomon, who constructs the 1<sup>st</sup> Jewish temple in Jerusalem
- 586 BC - Babylonian conquest, led to mass Jewish exile and destruction of 1<sup>st</sup> temple
- 539 BC - Persian conquest.
- 521 BC – Return of some Jews and building of a 2<sup>nd</sup> temple
- 70 AD - the Roman Conquest again resulted in the expulsion of Jews and destruction of the 2nd temple and most of Jerusalem
- 390 AD - the Byzantine empire, and large conversion to Christianity
- 634 AD - Islamic Conquest and large conversion to Islam. Jews and Christians were considered inferior, but were both accorded protections as 'believers', or 'people of the book', and enabled social integration.
- 1099 AD – The invasion of the Crusaders by an appeal of the Pope. Non-Christians were killed or expelled and the 2<sup>nd</sup> temple was destroyed.
- 1187 AD – Salah ad-Din defeated the Crusaders and ended the Siege over Jerusalem. Jews were again afforded the right to live in Jerusalem under Muslim rule.  
<https://www.jewishvirtuallibrary.org/the-crusades>
- 1516 AD - The Ottoman empire
- 1914 – World War 1
- 1922 – Commencement of the British Mandate of Palestine

### ***1791-1917 The Pale of Settlement – former Russian Empire***

Prior to the fall of the Russian Empire during WW1, Jews were only permitted to live in the Western region around modern-day Ukraine, Eastern Poland and Lithuania. Jews were generally forbidden to live outside of this area. The Pale was poverty ridden and racism and persecution against Jews was centuries old.



### ***1881 Russian Pogroms***

- 1881-1884 Anti-Jewish riots followed the assassination of the Russian Emperor, Tsar Alexander II, which the Jews were falsely rumoured as conspirers. Approximately 40 Jews were killed during the riots. They were then partly blamed for the riots and Russia imposed more restrictions on Jews through the introduction of the *1882 May Laws*.
- 1903-1906 A much bloodier wave of anti-Jewish violence, leaving more than 2,000 Jews killed by the pogroms.

### ***1881 Hovevei Zion***

Established in response to anti-Jewish Pogroms. Aimed to promote Jewish migration to Palestine and facilitate settlement through legally purchasing agricultural land. They developed ‘cash crops’ and employed the *fellaheen* (local Arab peasants) as cheap labour.

### ***1897 World Zionist Organisation***

- Established with a goal to create an asylum for Jews in Palestine.
- In 1898 the WZO formalised the goal to migrate to Palestine for State formation

### ***1901 Jewish National Fund***

- Established for the purpose of purchasing land for Jewish settlement.
- The Charter outlines that land purchased should be held in trust for a Jewish state and cannot be resold or leased back to non-Jews.
- Today JNF owns about 13% of the land in Israel.

### 1904 'Our Program'

by Menachem Ussishkin - head of JNF and member of Hovevei Zion in Moscow.

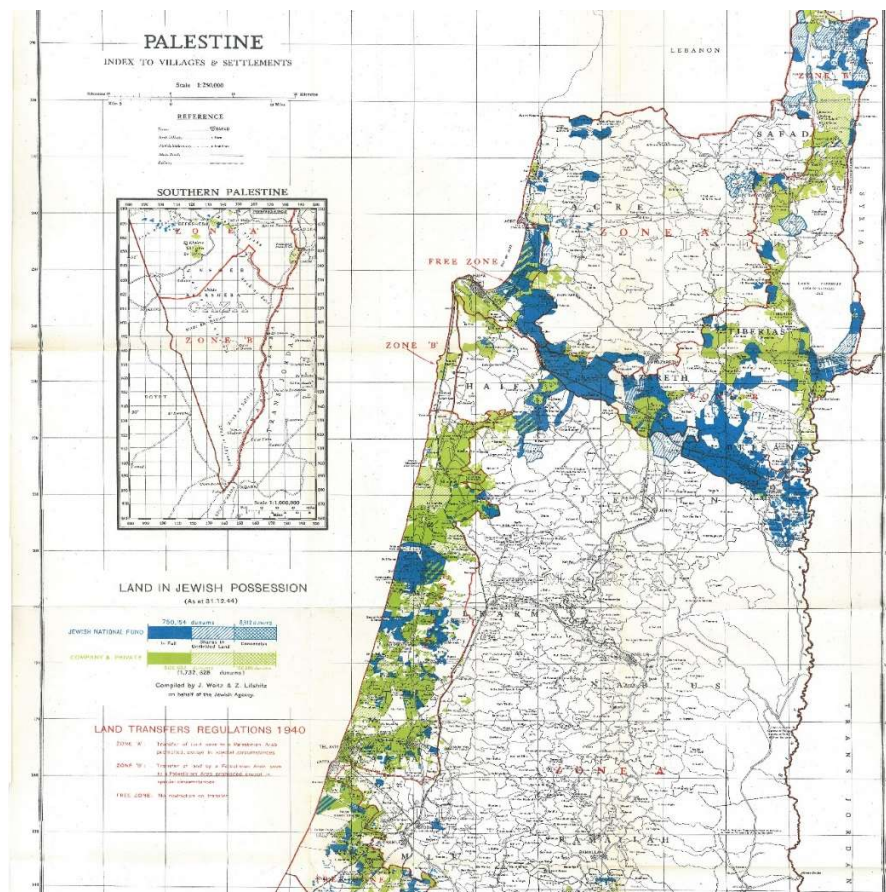
*"In order to establish autonomous Jewish community life – or to be more precise, a Jewish state in Eretz Israeli, it is necessary, first of all, that all, or at least most, of Eretz Israel's lands will be the property of the Jewish people. Without ownership of the land, Eretz Israel will never become Jewish, be the number of Jews whatever it may be in the towns and even in the villages, and Jews will remain in the very same abnormal situation which characterizes them in the diaspora. They will be without a recognised status. But, as the ways of the world go, how does one acquire land and property? By one of the following three methods;*

- a. by force – that is by conquest and war, or in other words by robbing land of its owners*
- b. by forceful acquisition, that is, by expropriation via governmental authority*
- c. Or, by purchase with the owners' consent"*

### 1907 – 'N-Shape' Strategy for legal land acquisition

by Arthur Ruppin – head of the Palestine Office (the institution for the Yishuv/Jewish Community)

- submitted a memorandum for a strategy of gradual colonisation of sparsely inhabited zones through the 'N-shape'.
- Purchased legally in the open market, then prevented from resale
- Purchased from absentee owners who had been assigned the land following the Ottoman *Land Laws 1858*



***Rashid Khalidi, Palestinian scholar***

*'The fellaheen naturally considered the land to be theirs, and often discovered that they had ceased to be the legal owners only when the land was sold to Jewish settlers by an absentee landlord who had acquired it in the decades following the implementation of the 1858 land law.'*

- The Ottoman Empire had implemented laws for the registration of land, in order to increase tax revenue and increase their control of the empire
- The fellaheen were not willing to register their land because they would become subject to military service. They also opposed Empire control, and didn't want to pay taxes
- The solution was that rich landowners and merchants would register the land. The landowners would become more powerful and the fellaheen would become tenants on former collectively owned land, and continue to maintain little responsibility to the Ottoman Empire

***1908/9 The Conquest of Labour***

- *'Tozeret Haaretz'* – Economic separatism, through Hebrew labour and Hebrew produce. Consistent with 'The Program', there was the initiative to monopolise the labour market with Jewish workers.
- *The Yavnielli Mission* – the increased of Yemeni Jews to take the place of cheap Arab labour. Except, the Yemeni Jews refused to work for low wages. This created a racist sentiment between the Ashkenazi (European) Jews and the Yemeni Jews who had been viewed as peasants and uncivilised, like the Arabs.
- *The Kibbutz* – the concept of cooperative agricultural settlement on JNF owned land. Comprised mostly of Ashkenazi Jews. The communal agricultural living alleviated the issue of competition in the labour market.

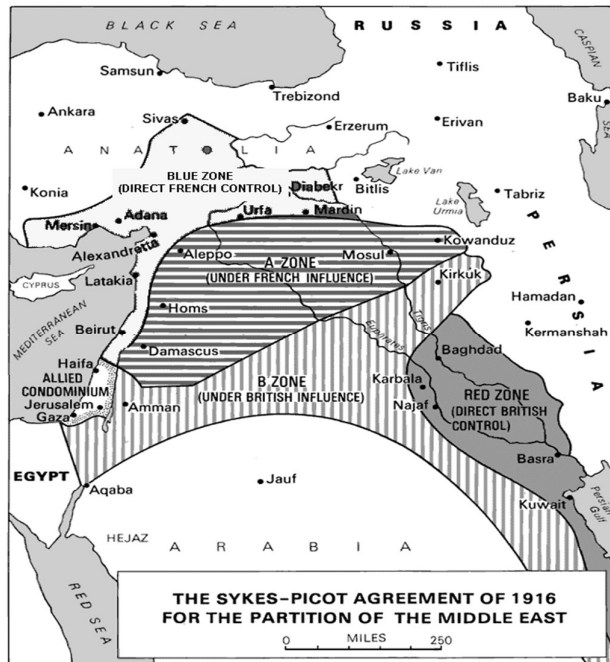
Division between the communities increased. The Jews saw themselves as pioneers building a homeland, with the establishment of Hebrew based schools, culture and economic separatism. The Arabs were systematically excluded from Jewish institutions, community life and were increasingly losing their farms and communal land.

***1914 - World War 1***

- Palestine became a battlefield
- Forced military recruitment by the Ottomans
- The war leads to famine and unemployment throughout areas of the Levant
- T.E. Lawrence, a British army officer (*aka Lawrence of Arabia*) contacted Sharif Hussein of Mecca to offer an anti-Ottoman alliance and promised Hussein a Caliphate-like state after the war was won.
- King Hussein was of the Hashemite tribe, descendants of the Prophet Mohammed and guardians of Mecca and the Arab lands, and he wanted independence from Ottoman control.
- Hussein agreed to join forces with the British allied forces in hope to gain independence.

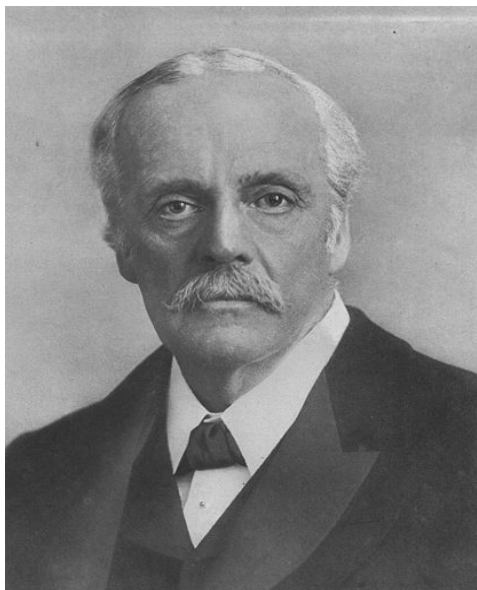
### 1916 Sykes-Picot Partition Agreement

- Contrary to the agreement with King Hussein for an independent Arab State, Britain and France had collaborated on another deal which divided most of the Middle East between themselves
- Hussein was betrayed and was denied control of the Arab lands, including Jerusalem
- Hussein made himself King of the Hejaz (modern-day Saudi Arabia) but was later defeated by the Saud's (Abdul-Aziz) in 1924.
- Hussein's sons became Kings of Iraq (Faisal) and of Jordan (King Abdullah)



### Balfour Declaration

1917 – Prior to the capture of Jerusalem, Lord Balfour of the British Foreign office, wrote to Lord Rothschild of the Zionist Federation to advise that Britain agreed to facilitate a national homeland for the Jewish people in Palestine.



Foreign Office,  
November 2nd, 1917.

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet

"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country"

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

*Arthur Balfour*

### **1922 The British Mandate**

The Mandate was obliged to promote the wellbeing of the local inhabitants for the purpose of creating an independent state.

It was established under *Article 22 of the Covenant of the League of Nations*, which deemed that the former Ottoman controlled regions of Palestine, Syria, Lebanon and Iraq;

*“...have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they can stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.”*

### **1929 Riots 133 Jews killed, 116 Palestinians killed**

Hillel Cohen; *“In 1929 these Jews [Oriental Jews] received a resounding message from their Arab neighbours; if you do not take sides against Zionism, you are its allies. If you identify on the national level with the European Jews, you have no place in Arab society. Even if the Palestinian Arab spokesman continued to stress they distinguished between Jews and Zionists... for both Arabs and Jews the similarities among the Jews, of whatever community and origin, increasingly overshadowed their differences. This process had begun before 1929, but the riots were a turning point.”*

### **1929 Shaw Commission**

- Recommended that policies regarding Jewish immigration and land purchases be re-evaluated

*“The fundamental cause, without which in our opinion disturbances either would not occurred or would not have been little more than a local riot, is the Arab feeling of animosity and hostility towards the Jews consequent upon the disappointment of their political and national aspirations and fear for their economic future. ... The feeling as it exists today is based on the twofold fear of the Arabs that by Jewish immigration and land purchases they may be deprived of their livelihood and in time pass under the political domination of the Jews.”*

### **The Hope-Simpson Commission of Enquiry – 1930**

- The Commission recommended to limit Jewish immigration, and to develop rural areas to help Arab peasants.

*“Actually the result of the purchase of land in Palestine by the Jewish National Fund has been that land became extra territorial. It ceases to be land from which the Arab can gain any advantage either now or at any time in the future. Not only can he never hope to lease or cultivate it, but, by the stringent provisions of the lease of the Jewish National Fund, he is deprived forever from employment on the land...*

*It is impossible to view with equanimity the extension of an enclave in Palestine from which the Arabs are excluded. The Arab population already regards the transfer of lands to Zionist hands with dismay and alarm. These cannot be dismissed as baseless in light of the Zionist policy described above. There can be no doubt that there is at present time serious unemployment among Arab craftsmen and among Arab laborers. The policy of the Jewish Labour Federation is successful in impeding the employment of Arabs in Jewish colonies and in Jewish enterprises of every kind.”*



### ***The Passfield (Second) White Paper – 1930***

- On behalf of his Majesty's Government.
- Proposed the establishment of a Legislative Council that would include representation from all communities, giving them all a say in the governance of Palestine.
- It recommended that Jewish immigration be greatly reduced because there was not sufficient arable land, and because of increasing unemployment among the Arab community
- None of the recommendations were implemented

### ***The MacDonald 'Black Letter' - 1931***

- Under massive pressure of politicians from both major parties in Britain, Prime Minister Ramsay MacDonald wrote a letter to Haim Weizmann (WZO President) providing an "authoritative interpretation" of the White Paper. This letter cancelled the Passfield White Paper;
  - *"There is an obligation to facilitate Jewish immigration and to encourage close settlement by Jews on the land, and it can be fulfilled without prejudice to the rights and position of other sections of the population of Palestine."*
- This is a huge contradiction. The British were promising a Jewish State on Palestinian inhabited land. This was impossible to execute without impeding the rights and position of the local Palestinians.

### ***Sheikh Izz ad-Din al-Qassam (1882-1935)***

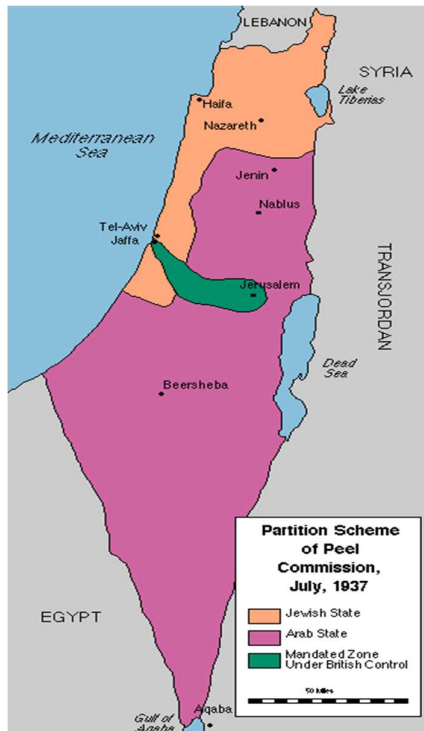
- participated in the 1921 Syrian revolt against the French, demanding the Mandate realise their promise of an independent Syrian state.
  - Qassam coordinated local militias to fight the French
  - The revolt failed and Qassam was sentenced to death, so he fled to Haifa, Palestine
  - He preached radical Islam and built the foundation of a revolt within the village communities, encouraging guerrilla cells to attack the Jews and British.
  - By 1935 he had recruited around 200-800 men.
  - He became the target of a manhunt after killing a British police officer and he was executed in 1935.
  - His death motivated the Arab uprising of 1936
- nb. Izz ad-Din al-Qassam Brigades***
- The military wing of HAMAS, is named after the Syrian 'revolutionary'
  - HAMAS was formed in 1987 during the first intifada as an 'armed resistance'
  - Qassam Brigades were distinguished from the HAMAS political structure in 1991
  - Listed as a terrorist organisation by Aust., US, NZ, UK, EU

### ***The Arab Revolt 1936-1939***

- 21 April 1936 - Arab political leaders called for a general strike of all Arabs engaged in labour, transport and shopkeeping for the following day.
- The demands of the Arab Higher Committee:
  - prohibition of Jewish immigration;
  - prohibition of the transfer of Arab land to Jews;
  - the establishment of a National Govt. responsible to a representative council.
- By 1937 the revolt had become a peasant-led resistance, mainly against the British.
- Use of guerrilla warfare in hope to expel British forces and reverse Jewish immigration
- Thousands of Palestinians were killed and imprisoned
- Jewish populations became contained within fortresses of their settlements
- The British increased military power and dismantled all Palestinian military units, leaving them defenceless and without leadership.
- The defeat of the Arab forces strengthened the standing of the Yishuv and empowered Zionist military units

### **Peel Commission** – November 1936

- Royal Commission appointed to investigate the Arab unrest.
- The Commission made the very **first** recommendation for a **partition** of Palestine.



### **Third White Paper 1939**

- In response to the Arab Revolt.
- It rejected the idea of the Jewish State but supported a Jewish National Home within an independent and un-partitioned Palestinian State.
- Suggested limiting Jewish immigration to 75,000 over 5 years, and making immigration conditional on Arab approval
- Recommended the restriction of land purchases by Jews.
- Gradual introduction of Arabs and Jews in senior administrative roles in government
- After a period of 10 years an independent Palestinian State would be set up, in which '*Arabs and Jews would share government in such a way as to ensure that the essential interests of each community are safeguarded.*'
- Both sides rejected the White Paper
- The Jewish leadership feared that this policy would freeze the Jewish community in Palestine to a permanent minority status
- Violence accelerated with riots, protests, and Jewish attacks on the British and Arabs.

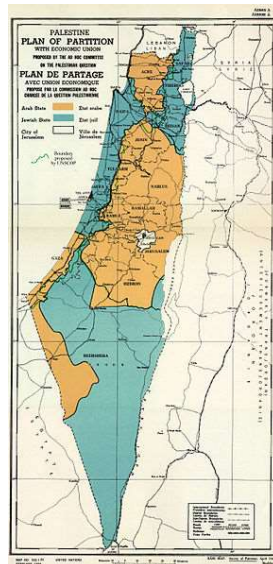
### **1947 United Nations Special Committee on Palestine ("UNSCOP")**

- Appointed to make recommendations regarding the future governance of Palestine.
- The Committee repeatedly opposed a partition and calling for an independent single binational Palestinian State with autonomous Jewish and Palestinian areas.
- Called for an end to the Mandate, in line with its creation under Article 22 of the Covenant of the League of Nations.
  - *As an advisory administration towards the realisation of independence*
  - *The wishes of the local community should be the primary consideration*

## 2. THE PARTITION OF PALESTINE AND FORMATION OF ISRAEL

### *UNGA Resolution 181 – November 1947*

- UNSCOP recommendations were ignored
- The UN General Assembly passed Resolution 181 on 29 November 1947, partitioning Palestine into a Jewish and an Arab State.
- 56% of the land was allocated to Israel, leaving the majority population of Palestinians with 44% of the original territory
- Jerusalem was prescribed a '*corpus separatum*', a separate entity to be governed by a special international regime, with each person within the city entitled to religious freedoms and equal protection under the law.
- The partition was declared unlawful by UNSCOP, as it resulted in an injustice to Palestinians and violated their human rights to self-determination under Article 1 of the Universal Declaration of Human Rights (1948).
- The Arab Higher Committee called the partition a 'monstrous perversion of the principle of self-determination in Palestine'. Yet the partition proceeded.
- The Palestinians rejected the partition



### *Plan D – (Plan Dalet) – adopted on 10 March 1948*

- Called for the systematic and total expulsion of Palestinians from their homeland.
- Ben-Gurion (1<sup>st</sup> Israeli PM) considered that since the Palestinian and the Arab League rejected UNGA 181, the Resolution was a 'dead letter' and the final borders were an open question.
- Plan Dalet emerged as a continuation of how events had unfolded for the past half century, and it was grounded in the Zionist objective of a purely Jewish State.
- The objective surrounded the de-Arabisation of Palestine.

*'These operations can be carried out in the following manner: either by destroying villages (by setting fire to them, by blowing them up, and by planting mines in their debris) and especially of those population centres which are difficult to control continuously; or by mounting combing and control operations according to the following guidelines: encirclement of the villages, conducting a search inside them. In case of resistance, the armed forces must be wiped out and the population expelled outside the borders of the state.'*

## Deir Yassin - 9 April 1948

- Execution of Plan Dalet
- Zionist paramilitary groups attacked the village near Jerusalem due to its strategic vantage point in maintaining the highway towards Tel Aviv
- Up to 250 men, women and children were massacred following their refusal to evacuate the village. They were stripped, photographed and executed with automatic weapons. Their bodies were dumped in a heap and later buried in a mass grave.
- This was a significant event which instilled fear into the Palestinian community.

### Consider competing narratives

- UN Report, 20 April 1948 <https://www.un.org/unispal/document/un-palestine-commission-attack-on-deir-yassin-9-april-1948-letter-from-united-kingdom/>
- Jewish Virtual Library <https://www.jewishvirtuallibrary.org/the-capture-of-deir-yassin>
- Red Cross first-hand account <http://cosmos.ucc.ie/cs1064/jabowen/IPSC/php/art.php?aid=9127>

## al-Nakba/Israeli Independence – Competing Narratives

### 14 May 1948 – Israeli Independence

- Israel declared an independent state
- Armies from Transjordan, Egypt, Syria and Iraq entered Palestine to fight on the side of the Arabs
- The Israeli's saw the counter-attack as an existential threat to their existence as a people
- The Israeli's were well organised and resourced and consider their victory as winning the war
- As UNGA Res 181 was refuted by the Palestinians, and considered by Israel as a 'dead letter'
- Israel considered the land was open for question beyond what was detailed in Resolution 181.
- Independence was seen a redemption for the Jewish people
- Seen as a biblical prophecy of Psalms 126:1 "It seemed like a dream when the lord brought us back to the city of Zion" (*source: Bible; Contemporary English Version*)

### 15 May 1948 – al-Nakba, The Catastrophe

- The British Mandate ended
- Approximately 750,000 Palestinians were displaced from their homes
- 13,000 Palestinians were reported to be killed
- More than 500 villages and 10 cities were either captured or destroyed
- As war erupted the Palestinians fled to the safety of neighbouring countries, and had intended to return home once the violence had ended.



### Changing Jewish and Arab populations within historic Palestine

| Year  | 1800    | 1880    | 1915    | 1931    | 1947      | 1949      |
|-------|---------|---------|---------|---------|-----------|-----------|
| Arabs | 268,000 | 525,000 | 590,000 | 837,000 | 1,310,000 | 156,000   |
| Jews  | 6,700   | 24,000  | 88,000  | 175,000 | 630,000   | 1,100,000 |

#### Competing Narratives

Israeli News <http://www.israelnationalnews.com/News/News.aspx/244624>

Al Jazeera <https://www.youtube.com/watch?v=megzzpTWajg>

#### Israel's anti-Repatriation Policy

- *The Emergency Regulations (Absentees' Property) Law (1948)*, legalised the confiscation of land belonging to Palestinians who had fled the violence of 1948.
- Israel implemented the *Israeli Law of Return (1950)* enacting the right for foreign Jews to migrate to Israeli and receive Israeli citizenship.
- By 1950, approximately 900,000 Palestinian refugees were registered with the UN and were effectively denationalised by Israel.
- This process enabled the replacement of Palestinians with foreign Jewish settlers, which furthered the Zionist ambitions of establishing a Jewish majority state in Palestine.
- In 1967, a second conflict erupted, *al-Naksa*, and resulted in the permanent displacement of another 300,000 Palestinians.

### 3. PALESTINIAN REFUGEES

#### Resolution UNGA 194; 1948, Article 11

*“Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible; Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations”*



|                           | <b>West Bank</b> | <b>Gaza</b> | <b>Jordan</b> | <b>Lebanon</b> | <b>Syria</b> | <b>Total</b>     |
|---------------------------|------------------|-------------|---------------|----------------|--------------|------------------|
| <b>Registered at 2015</b> | 942,184          | 1,349,473   | 2,212,917     | 493,134        | 591,780      | <b>5,589,488</b> |
| <b>Living in Camps</b>    | 228,560          | 560,964     | 385,418       | 249,410        | 178,666      | <b>1,603,018</b> |

Source: PASSIA, Palestinian Academic Society <http://www.passia.org/>

- Today, the Palestinian refugee population is estimated at approximately 7.5 million people, which is more than 60% of the entire population.
- They constitute the world's longest suffering refugee population.
- In 2016 approximately 5.6 million Palestinian refugees were registered with the UN
- Some refugees either did not register in time, or did not need assistance
- Half of the registered refugees remain stateless
- 1,600,000 Palestinians are still living in refugee camps

#### Resources

UNRWA Interactive Map of Refugee Camps <https://www.unrwa.org/where-we-work>

This is the Camp, trailer; <https://vimeo.com/160900618>

#### ***Fourth Geneva Convention - Convention relative to Protection of Civilian Persons in Time of War 1949***

Article 49 - prohibits mass forced transfer and deportations by an occupying power.

Article 147 – unlawful deportations or transfer is considered a grave breach subject to penal sanctions

#### ***International Covenant on Civil and Political Rights 1966***

Article 12 – specifies the right to freedom of movement. Prohibits forced displacement and specifies that no one should be deprived of their right to return to their country

#### ***Universal Declaration of Human Rights 1948***

Article 13 – specifies the right to freedom of movement and states that no one should be denied their right to return to their country.

#### ***The 1951 Refugee Convention and UNRWA (United Nations Relief and Works Agency)***

- **UNRWA** – the official UN agency that supports and administers Palestinian refugees
- **Convention in relation to the Status of Refugees 1951**  
under Article 1D, anyone receiving protection or assistance from a UN Agency, (such as UNRWA), is automatically excluded from the Convention.
  - Prevents the 'right' to seek asylum under **Article 14 of UNDHR**
  - Has been detrimental to Palestinian refugees fleeing Syria
  - Signatory States have discretion on how they choose to treat Palestinians
  - Extends to the *Protocol Relating to the Status of Refugees 1967*
  - There are no provisions for resettlement under UNRWA
  - UNRWA's role is to provide 'direct relief and works programs'
  - Palestinians become the only refugees without assistance for resettlement, or repatriation
- **UNHCR** on the other hand, provides comprehensive protection for refugees, including voluntary repatriation, host-country integration and resettlement.
  - However, Palestinians are excluded from this assistance.
  - International law fails Palestinian refugees



### ***Bourj al-Barajneh Refugee Camp, Beirut.***

- Established in 1948.
- People fled violence, hoping to return in a few weeks or months
- Approximately 50,000 refugees living in this particular camp.
- People are stateless, no passports, not officially Palestinian and not Lebanese
- UN took registrations for 1 year after al-Nakba and the Lebanese govt registered some people
- Unregistered refugees cannot receive support, healthcare, or education
- The camp area is leased from the Lebanese govt by the UN for 99 years. Tents became tin shacks, became concrete structures. No engineering and salty water causes homes to rust and collapse
- Lebanese govt won't allow permanent settlement, so prohibits water or electricity infrastructure
- Electricity has been diverted from the street through live wires which causes electrocutions
- There is no political support for the rights of Palestinian refugees.
- Not permitted to own property or work in Lebanon, and exclusion from Lebanese community
- People generally can't leave the camp, especially if not registered
- Palestinian refugees from Syria face the threat of indefinite imprisonment
- People have no hope for the future



### Resources:

Effects of US aid cuts to refugees in Lebanon

<https://www.reuters.com/article/us-lebanon-palestinians-trump-aid/in-lebanese-camp-for-palestinian-refugees-fears-after-aid-cut-idUSKBN1FJ1UI>

Limited support for Palestinian refugees

<https://www.pri.org/stories/2018-11-01/we-were-born-refugees-lebanon-s-forgotten-refugee-camp>

Amnesty International report 2007

<https://www.amnesty.org/en/documents/MDE18/010/2007/en/>

Video by Medical Aid Palestine regarding limitations on health care

<https://www.youtube.com/watch?v=sF-6UoznHvw>

Challenges of life in Bourj al-Barajneh

<https://en.qantara.de/content/palestinian-refugees-in-lebanon-ive-never-forgotten-palestine>

<https://www.irishtimes.com/news/the-forgotten-people-1.999770>

### *Jabaliya Refugee Camp, Gaza Strip*

- Home to 240,000 refugees
- Limited electricity, on average 6-8 hours a day



- Water is contaminated with salt and sewage throughout Gaza.
  - Groundwater aquifer is depleted, and so sea water runs into drinking water
  - Limited electricity cannot run sewage treatment, so raw sewage runs into the sea water
- Some parents can't afford transport, uniforms and books, so many children are not attending school
- Parents can't get work as the unemployment rate is around 50%, so some children are working for small amounts of money to buy food for their family





- Refugees camps are vulnerable to Israeli airstrikes as fighters often originate from camps, and refugees are more inclined to protest for their 'right of return'.
- The militant government, Hamas, evolved from the refugee camps in Gaza in 1987 during the first intifada. One of the primary focuses of Hamas is the right of return for refugees and the 'liberation' of the homeland.

### ***The Great March of Return***

- Since 30 March Palestinians in Gaza have been protesting on the border for their right to return. They have assembled tents and at times tens of thousands of protesters.
  - They have attended as a community with their families
  - Some have reached and dismantled the boundary fences, some have thrown stones and molotovs at the Israeli military.
  - Youth have attached molotovs to kites to fly over the boundary and set fire to Israeli fields. Generally, people protest peacefully holding flags and burn tyres to block the view of snipers
  - More than 200 protestors have been killed by Israeli snipers and tear gas, including dozens of children, 2 journalists and 3 paramedics
  - On 14 May more than 60 protesters were killed coinciding the US embassy move to Jerusalem
  - The protests have led to a number of escalations where people have been killed, often women or children, that has triggered a retaliation of rocket fire in to Israel, and then days of airstrikes and rocket return.
  - Amnesty International call out excessive force and extrajudicial killing on protesters including children <https://www.amnesty.org/en/latest/news/2018/04/israelopt-israeli-forces-must-end-the-use-of-excessive-force-in-response-to-great-march-of-return-protests/>
  - Human Rights Watch Report 2019 on Israel and Palestine (p304) [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2019.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf)
  - UN calls for end to violence, and the risk to regional stability <https://www.un.org/press/en/2018/sc13338.doc.htm>



(image: Mahmoud Bassam, Gaza; 14 May 2018)

#### 4. SELF DETERMINATION

*A collective right of a group of people of a territory or nation, to determine their own political status and how it will be governed, without external interference.*

- 1922 The British Mandate was established under Article 22 of the Covenant of the League of Nations 1919, deemed that Palestine, Syria, Lebanon and Iraq

*‘communities formerly belonging to the Turkish empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they can stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.’*
- The ICJ has described that the Mandate was *‘created, in the interests of the inhabitants of the Territory.’*
- The Balfour agreement also stated that in establishing a national home for the Jewish people

*“it being clearly understood that nothing shall be done that may prejudice the civil and religious rights of existing non-Jewish communities in Palestine”*
- Britain’s legal obligation under the Mandate and international law, was to facilitate the realisation of the right to self-determination as an *‘independent nation’*. As stated in Article 2

*‘safeguarding the civil and religious rights of all inhabitants of Palestine, irrespective of race and religion’*
- In November 1947, the UNGA passed an advisory resolution 181 for the partition of Palestine, after the British determined they could not maintain stability.
- The partition was opposed by UNSCOP as it violated Palestinian human rights for self-determination
  - Under the UN Charter 1945 – Article 1: (2) *‘to develop friendly relations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace’*
  - Under the Universal Declaration of Human Rights (10 December 1948).
    - Article 1: *‘all human beings are born free and equal in dignity and rights’*
    - Article 2: *‘....no distinction shall be made on the basis of the political, jurisdictional or international status of a country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.’*
  - Under International Covenant on Social, Economic and Cultural Rights,
    - Article 1: *‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’*
- Advice of UNSCOP was ignored and 56% of the land was allocated to Israel, leaving the majority population of Palestinians with only 44% of its original territory.
- Jerusalem was to be considered an international city that would be governed externally
- Resolution 181 didn’t necessarily create the state of Israel, as the General Assembly has only an advisory role.
- The Zionist movement relied on Res 181 to claim their own self-determination, yet the same rights were not extended to the Palestinians.
- UN General Assembly Resolution 3236 and 3246, 1974 expressed *‘grave concern that the Palestinian people has been prevented from enjoying their inalienable rights, in particular the right to self-determination’*

## STATE SOVEREIGNTY

**Res 67/19, UNGA 2012** - appoints Palestine as a non-member observer state. (*Australia abstained*)

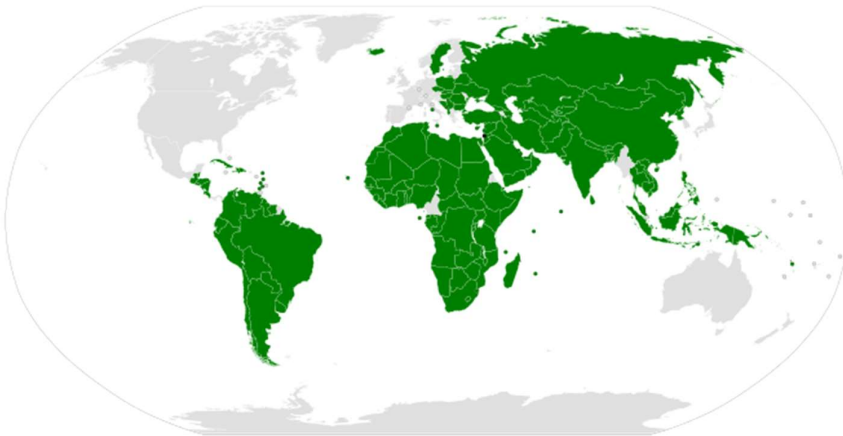
*“accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired, privileges and role of the PLO in the United Nations as the representative of the Palestinian people..”*

*“hope that the Security Council will consider favourably..... full membership in the United Nations.”*

- Amnesty International discussion on the implications of the resolution  
<https://www.amnesty.org/download/Documents/24000/mde210052012en.pdf>

As of August 2018, 137 out of 193 UN member states formally recognise Palestine as a State

- In December 2018, the Australian Labor Party resolved that a future ALP Government will recognise Palestine as a State.



*(Countries that formally recognise Palestine as a State)*

### ***The viability of a Palestinian State***

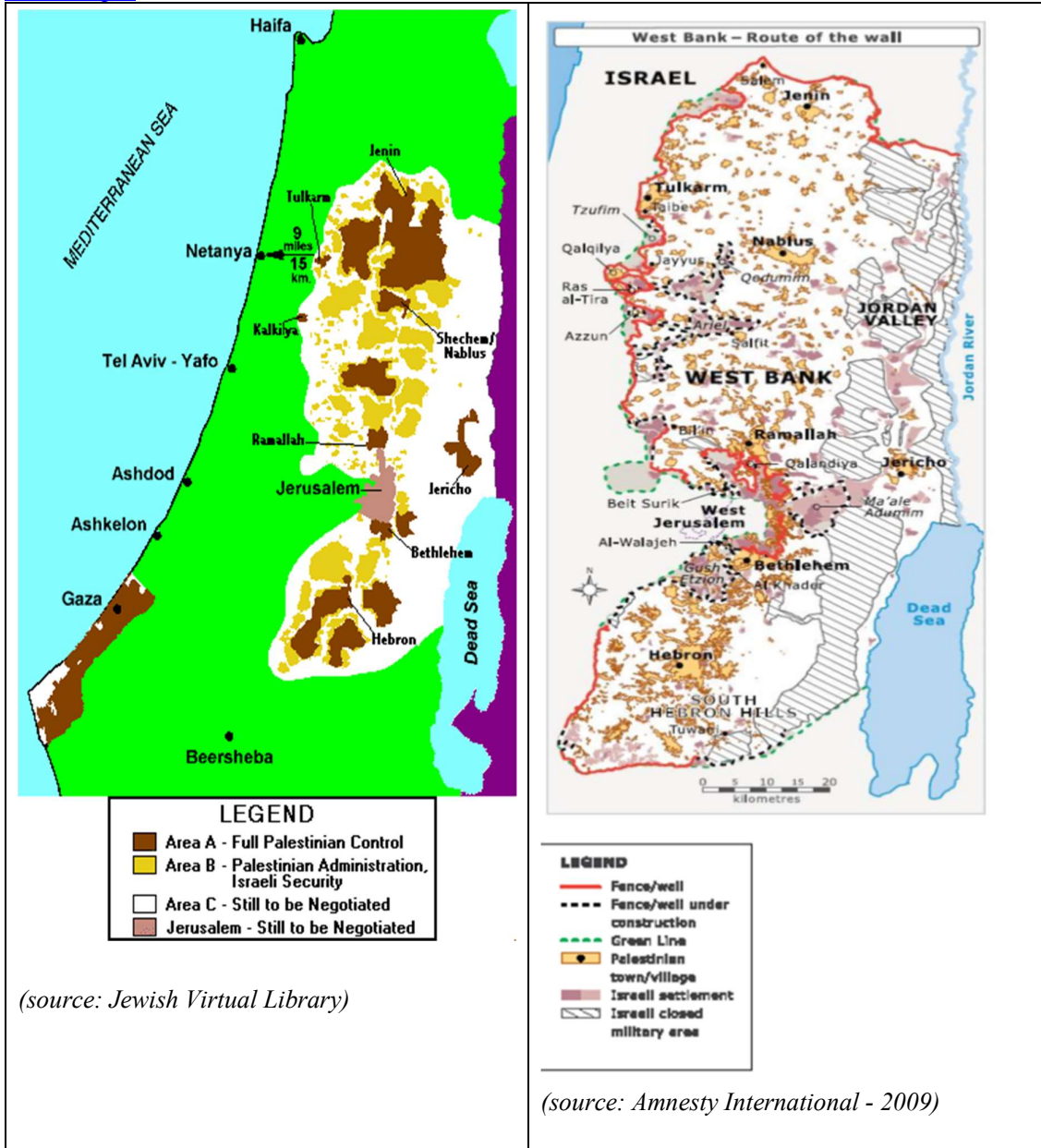
- The biggest question is about where the borders would be???
- The general consensus for the recognition of Palestine is on the 1967 borders



### Settlement Expansion in the West Bank

- Within 1967 borders of the West Bank, the Palestinian Authority has very limited control
- The Oslo Peace Accords were signed in 1993 and 1995 by Israel and Palestine, as a road map to peace and a Palestinian State.
  - Established a system of zones in the West Bank, which established a Palestinian Authority and legitimised Israeli control
    - Area A – Exclusive administration by the Palestinian Authority (18%)
    - Area B – PA administration, but with Israeli military control (21%)
    - Area C – Full Israeli administration control and security (61%)

Oxfam Fact sheet on Oslo <https://www.oxfam.org/sites/www.oxfam.org/files/oxfam-oslo-20-factsheet.pdf>



Upon the signing of Oslo I in 1993 there were approximately 250,000 Israeli settlers in the West Bank. Today there are over 600,000.

### ***Home Demolitions***

- Israeli committee against home demolitions ICAHD – Report for January 2019  
<https://icahd.org/2019/02/06/demolitions-and-displacement-report-january-2019/>
  - 39 Palestinian structures were demolished
  - 44 people, including 18 children, were displaced without compensation
  - as-Simiya School, Hebron was demolished, affecting education for 44 children
  - A family of 5 were ordered to self-demolish their own home in East Jerusalem, else pay the demolition costs.  
(Palestinians in East Jerusalem are rarely allowed a building permit, so they build without one and receive a demolition order.)

### ***Security Council Resolutions regarding Settlements and the Occupation of the West Bank***

**Res 242, 1967** Withdrawal of Israeli armed forces from territories occupied in the recent conflict

**Res 1397, 2002**

- call for a two-state solution to the conflict.
- called on Palestinians to end "morally repugnant" acts of terror and suicide bombings
- Israelis to end their *illegal occupation of Palestinian territory* and use of excessive force.

**Res 2334, 2016**

- Israel's settlement activity constitutes a "flagrant violation" of international law and has "no legal validity".
- Demands that Israel stop such activity and fulfil its obligations as an occupying power under the *Fourth Geneva Convention (Article 49)*;
  - *"Occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies"*

### ***Alternate opinions on achieving a single democratic state***

Which kind of binational State?, by Meron Benvenisti, Israeli Political Scientist

<https://www.haaretz.com/1.4765955>

Israel-Palestine: Time for a bi-national state, by Leila Farsakh, Prof. Political Science, Boston

<https://electronicintifada.net/content/israel-palestine-time-bi-national-state/6821>

The end of the two-state solution, by Avi Issacharoff, Israeli historian

<https://www.timesofisrael.com/the-end-of-the-two-state-solution/>

### ***Israel's Nation-State Law***

An unofficial translation of the law from the Knesset website

<https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>

*"the exercise of the right to national self-determination in the State of Israel is unique to the Jewish People."*

*"Hebrew is the State language"*

*"The Arabic language has a special status"*

*"The State views the development of Jewish settlement as a national value and shall act to encourage and promote its establishment and strengthening."*

*"The State shall act to preserve the cultural, historical and religious heritage of the Jewish People."*



***Israel's current demographic*** (source: Jewish virtual library)

Jews 74%

Non-Jews 26% ~ Muslim 18%, Christian 2%, Druze 2%, Others 4%

- Ethnic-religious status of Israel provides exclusive and privileged rights for Jews
- It is considered a 'law of laws' and may override other ordinary laws
- Defines sovereignty as belonging exclusively to Jewish Israelis
- Institutionalises inequality and promotes discrimination
- Preserves only the heritage of the Jewish people and denies the connection of Palestinians to their homeland.

***Position Paper: by the Adalah Legal Centre, Israel; regarding the nation-state law***

<https://www.adalah.org/uploads/uploads/Adalah%20Position%20Paper%20-%20Basic%20Law%20Jewish%20Nation%20State%20-%20ENGLISH%20-%2015072018%20-%20FINAL.pdf>

***Adalah Legal Centre – List of 65 Discriminatory Laws;***

Regarding discrimination of Palestinians in all areas of life, including; citizenship, political participation, land and housing, education, cultural, religious, language and due legal process.

<https://www.adalah.org/en/content/view/7771>

## **5. WATER**

***International Covenant on Economic, Social and Cultural Rights***

*Article 12* recognises the right of everyone to "the enjoyment of the highest attainable standard of physical and mental health". States must protect this right by ensuring that everyone within their jurisdiction has access to the underlying determinants of health, such as clean water, sanitation, food, nutrition and housing

*Article 12.2* the right to health is inclusive to the underlying determinants of health, such as access to safe and potable water and adequate sanitation

### **Gaza**

***Amnesty International Report, 2009 - 'Troubled waters; Palestinians denied fair access to water'***

<https://www.amnesty.org/download/Documents/48000/mdel50272009en.pdf>

- (p.14) Gaza ground water supplies rely on the Coastal Aquifer.
- The extraction of water by Israel effects the availability of water in Gaza.
- The use of water in Gaza doesn't effect the availability of water in Israel.
- The other water source is the Gaza Wadi (valley). However, the natural run-off from the Hebron hills is diverted by Israel into a dam before it reaches Gaza.

***Report by the UN Countries Team July 2017, 'Gaza ten years later'***

[https://unsco.unmissions.org/sites/default/files/gaza\\_10\\_years\\_later\\_-\\_11\\_july\\_2017.pdf](https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf)

- The UN Countries team reported in 2012, that Gaza will become unliveable by 2020.
- Their 2017 report (p.2) feared that the threshold of liveability had already been passed.
- The report (p.20) identifies that 96.2% of the available groundwater in Gaza is undrinkable. This is a direct result of seawater pouring into the depleted aquifer. The lack of electricity has shut down the sewage treatment plant, resulting in raw sewage pouring into the sea. This seawater then runs into the aquifer polluting household water sources.



(photo: Gaza Wadi (valley) and passage of raw sewage flowing into the Mediterranean Sea)

### **Water in West Bank**

*Amnesty International, 2017 – ‘The Occupation of Water’*

<https://www.amnesty.org/en/latest/campaigns/2017/11/the-occupation-of-water/>

- Under Oslo, the PA acquired the responsibility of managing and administering water resources, and repairs and maintenance of water infrastructure, in Areas A and B.
- Israel has control of extracting and distributing the ground water from the shared aquifer
- The PA pays Israel for a percentage of the domestic water sources consumed
- Under Oslo, the PA has no authority to drill new wells or upgrade existing wells

### ***The Israeli Water Law 1959***

- all sources of water in Israel are public property. A person’s land rights do not confer rights to any water sources running through or under their land
- provides penalties of up to 2 years in prison or US\$ 6,500 for drilling wells without permission.
- The Israeli national water company *Mekorot* manages most of the water supplies in Israel and the Palestinian Territories
- Palestinian water is managed by the West Bank Water Department (WBWD), which monitors the extraction levels of Palestinian wells on behalf of Israel. The WBWD manages the sale of most of the water supplied to Palestinians from about 13 local wells, together with the water supplied by *Mekorot*.

### ***Water Allocation in West Bank***

- The World Health Organisation stipulates and recommends that people need access to 100 litres of water per person per day
- On average, Palestinians have access to around 70 litres per person per day, and in some instances only 20 litres.
- Israeli consumption averages about 300 litres per person per day.
- Approximately 180 rural Palestinian communities do not have access to running water.
- If Palestinians extract ground water without permission, the water will be confiscated, and they will be penalised.
- Water restrictions make life very difficult for farmers and families living in overcrowded refugee camps.

## 6. THE RIGHTS OF THE CHILD

### **The UN Convention on the Rights of the Child,**

**Article 37;** states that parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) A child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, the right to challenge the legality of the deprivation of his or her liberty before a court, and a prompt decision on any such action.*

**Defence for Children International – Palestine** <https://www.dci-palestine.org/>

### **Palestinian Children in Military Detention (age 12-17)**

- Every year approximately between 500-700 Palestinian children are detained and prosecuted through Israeli military courts.
- Children in Area B and Area C fall under the jurisdiction of Israeli military law
- Israeli children in the West Bank are dealt with separately under Israeli law
- The most common charge against Palestinian children is stone throwing which carries a sentence of up to 20 years in prison.
- Palestinian children are sentenced in Israeli military courts which administer a 99% conviction rate
- 3 out of 4 children experience physical violence during arrest, transfer and interrogation
- The majority of children are arrested in the middle of the night and blindfolded
- Children are permitted only limited, or no contact with their parents during their arrest
- Children do not have the right to have a lawyer present during interrogation
- Courts can extend a child's remand custody for three months, an unlimited number of times, resulting in many children being held without charge for long periods of time.
- Children are regularly detained in solitary confinement
- Proceedings and legal documentation, including legal statements are provided in Hebrew

**DCI 2018 Report on violence against Palestinian children** [https://www.dci-palestine.org/year\\_in\\_review\\_2018\\_reigned\\_deadly\\_force\\_on\\_palestinian\\_children](https://www.dci-palestine.org/year_in_review_2018_reigned_deadly_force_on_palestinian_children)

### ***Abuse of Children in military detention***

[https://www.dci-palestine.org/without\\_enshrined\\_protections\\_children\\_under\\_israeli\\_military\\_arrest\\_face\\_rampant\\_abuses](https://www.dci-palestine.org/without_enshrined_protections_children_under_israeli_military_arrest_face_rampant_abuses)



**Palestinian Child fatalities since 2000 (an average of 2 children per week)**

| Year        | Clashes | Air and Ground Attacks | During Assassination Attempts | Gun Fire Opened Randomly | Closures | Unexploded Ordnance | Other | Total |
|-------------|---------|------------------------|-------------------------------|--------------------------|----------|---------------------|-------|-------|
| 2000        | 80      | 4                      | 0                             | 9                        | 1        | 0                   | 0     | 94    |
| 2001        | 42      | 17                     | 12                            | 17                       | 3        | 7                   | 0     | 98    |
| 2002        | 30      | 67                     | 19                            | 50                       | 9        | 12                  | 5     | 192   |
| 2003        | 36      | 37                     | 14                            | 38                       | 3        | 2                   | 0     | 130   |
| 2004        | 36      | 76                     | 9                             | 39                       | 0        | 2                   | 0     | 162   |
| 2005        | 6       | 10                     | 7                             | 23                       | 0        | 6                   | 0     | 52    |
| 2006        | 10      | 66                     | 22                            | 23                       | 0        | 3                   | 0     | 124   |
| 2007        | 6       | 19                     | 4                             | 15                       | 1        | 5                   | 0     | 50    |
| 2008        | 9       | 86                     | 1                             | 13                       | 1        | 2                   | 0     | 112   |
| 2009        | 2       | 270                    | 21                            | 15                       | 1        | 5                   | 1     | 315   |
| 2010        | 3       | 3                      | 0                             | 0                        | 0        | 2                   | 0     | 8     |
| 2011        | 0       | 12                     | 0                             | 2                        | 0        | 1                   | 0     | 15    |
| 2012        | 0       | 39                     | 0                             | 2                        | 0        | 2                   | 0     | 43    |
| 2013        | 3       | 1                      | 0                             | 1                        | 0        | 0                   | 0     | 5     |
| 2014        | 9       | 380                    | 150                           | 5                        | 0        | 1                   | 1     | 546   |
| 2015        | 8       | 1                      | 0                             | 9                        | 0        | 0                   | 13    | 31    |
| 2016        | 6       | 2                      | 0                             | 3                        | 0        | 0                   | 24    | 35    |
| 2017        | 7       | 2                      | 0                             | 0                        | 0        | 1                   | 5     | 15    |
| 2018        | 43      | 10                     | 0                             | 2                        | 0        | 0                   | 2     | 57    |
| 2019        | 4       | -                      | -                             | 1                        | -        | -                   | 1     | 6     |
| Total: 2090 |         |                        |                               |                          |          |                     |       |       |

- UN and UNICEF joint call for Israel and Hamas to prioritise the safety of children  
<https://news.un.org/en/story/2018/08/1016082>

## 7. THE UNITED NATIONS

### *The United Nations and the effectiveness of International law*

- The United States veto in the Security Council has limited the passing of resolutions on Palestinian human rights and self-determination
- Israel has not complied with multiple UN resolutions calling to end settlement expansion and the transfer of citizens to occupied lands
- The UN has continuously condemned the breaches of international law but has not enforced actions towards compliance  
<https://www.un.org/sg/en/content/sg/statement/2016-09-15/secretary-generals-remarks-security-council-situation-middle-east>
- Lack of compliance has made the ideal of the two-state solution very difficult to achieve.
- The rights of Palestinian refugees are not addressed and are restricted through UN agencies
- Israel has criticised the UN and Human Rights Council for bias against Israel
- General Assembly resolutions are advisory, yet UN Resolution 181 proposing the partition of Palestine was very influential towards the formation of the Israeli State
- An increasing number of countries recognise Palestine as a state, yet it cannot be formalised by the Security Council without the approval of the US.
- The denial of a Palestinian state has left millions of people stateless and has resulted in generations of refugees who are not able to access basic human rights
- The Security Council has ignored specific requests from GA Resolutions, particularly Res 2535 regarding the reasons for violence and Res 67/19 to recognise Palestine as a non-member State

### ***Failed UNSC Resolutions due to the US veto power***

- There are approximately 50 proposed UN resolution on Palestine and Israel that have failed as a result of the US veto power
- There is an increasing shift internationally towards recognising the rights of Palestinians, yet the US veto is preventing changes to international law
  - 1976 – to protect the Holy Places under occupation
  - 1976 – calling for Israel to withdraw from occupied Palestinian Territory and respect the internationally recognised boundary on 1967
  - 1980 – to recognise the inalienable rights of Palestinians
  - 1982 – calling on Israel to observe provisions of the Geneva Conventions
  - 2011, 1997, 1983 – to condemn Israeli settlements
  - 2002 - condemning Israel for killing UN employees of World Food Program
  - December 2014 – demanding Israel to end the occupation of Palestine within 2 years. (Only US and Australia voted against)
  - December 2017 – rejecting Trump’s recognition of Jerusalem as the capital of Israel
  - June 2018 - for the protection of Palestinians, and to condemn Israel
    - A counter resolution by the US to condemn Hamas violence failed to receive a second vote.

### ***Actions by the Australian Government***

Australia has a long-standing alliance with Israel and tends not to vote in support of Palestinian rights.

- December 2014 – demanding Israel end the occupation of Palestine within 2 years. Only US and Australia voted against
- 2012 - Abstained for the SC vote to recognise Palestine as a member state
- May 2018 Voted against the UNHRC investigation into the Gaza protests
- June 2018 - Voted against protection measures for Palestinians during the Gaza protests.

### ***Australian position on Jerusalem***

Recent Jerusalem debacle when PM Morrison decided, during the Wentworth bi-election, that he may move the Australian embassy from Tel Aviv to Jerusalem.

Morrison followed through with a watered-down version of the proposal, recognising West Jerusalem as the Israeli capital and suggesting East Jerusalem may become the capital of a future Palestinian state. He decided not to move the embassy at this stage but would open Australia’s Trade and Defence office in West Jerusalem.

This didn’t only antagonise Palestinians, but the Israeli government was not happy as they consider all of Jerusalem to be the undivided capital of Israel.

ABC – Status of Jerusalem <https://www.abc.net.au/news/2018-12-16/why-does-the-status-of-jerusalem-matter/10624528>

### ***UN Security Council Resolutions (Limited listing)***

#### **Res 237, 1967**

- called upon Israel to ensure the safety and welfare of the inhabitants of the areas where military operations had taken place and to facilitate the return of those inhabitants who had fled.
- calls on governments concerned to respect humanitarian principles of the Geneva Conventions

#### **Res 242, 1967**

- refers to the "inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in the Middle East in which every State in the area can live in security".
- calls for the withdrawal of Israeli armed forces from territories occupied in the recent conflict;

**Res 252, 1968**

- Council reaffirmed that the acquisition of territory by military conquest is inadmissible and deplored the failure of Israel to comply with the General Assembly resolutions.
- Council considered all legislative and administrative measure and action which tend to change the legal status of Jerusalem are invalid

**Res 298, 1971**

- Council deplored Israel's failure to respect the previous resolutions concerning measures and actions by Israel to affect the status of Jerusalem.
- Council confirmed that all legislative and administrative actions taken by Israel to change the status of Jerusalem are totally invalid and cannot change that status.

**Res 446, 1979**

- "that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East"

**Res 465, 1980 – calls on Israel to “dismantle the existing settlements”****Res 476, 1980**

- declared that actions taken by Israel, the occupying Power, to alter the character and status of Jerusalem constitute a flagrant violation of the Fourth Geneva Convention".

**Res 478 1980**

- notes Israel's non-compliance with UNSC res 476 and condemned Israel's 1980 Jerusalem Law which declared Jerusalem to be Israel's "complete and united" capital. This resolution also calls upon member states to withdraw their diplomatic missions from the city.

**Res 605, 1987**

- Council condemned Israel for violating the human rights of the Palestinian people and in particular the opening of fire and killing of students in the first few weeks of the First Intifada.
- called upon Israel to respect the Fourth Geneva Convention.

**Res 799, 1992**

- Reaffirming resolutions 607, 608, 636, 641, 681, 694, 726, and referring to the deportation of hundreds of Palestinians by Israel on 17 December 1992.
- The council condemns the deportations in violation of the Fourth Geneva Conventions and calls for the safe and immediate return of those deported.

**Res 1397, 2002**

- the first Security Council resolution to call for a two-state solution to the conflict.
- Council called on Palestinians to end acts of terror and suicide bombings and for Israelis to end their illegal occupation of Palestinian territory and use of excessive force.<sup>[3]</sup>

**Res 2334, 2016**

- The resolution states that Israel's settlement activity constitutes a "flagrant violation" of international law and has "no legal validity". It demands that Israel stop such activity and fulfil its obligations as an occupying power under the Fourth Geneva Convention

***UN General Assembly Resolutions on Israel and Palestine (Limited Listing)*****Res 181, 1947 – recommended the partition of Palestine****Res 194, 1948 – preserves the Right of Return, or compensation for Palestinian refugees****Res 2253, 1967 – condemned Israel's measures in attempting to change the status of Jerusalem****Res 2254, 1967 – calls for Israel to rescind measures taken to alter the status of Jerusalem**

**Res 2535, 1969**

- 'recognising that the problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the Charter of the UN and the UNDHR.'
- 'Gravely concerned that the denial of rights has been aggravated by the reported acts of collective punishments, arbitrary detention, curfews, destruction of homes and property, deportation and other repressive acts against the refugees and other inhabitants of the occupied territories'
- 'requests the UNSC to take effective measures in accordance with the relevant provisions of the UN Charter to ensure the implementation of these resolutions'

**Res 2546, 1969** – condemns Israel's violations of human rights and fundamental freedoms' in the occupied territories

**Res 2628, UNGA 1970** – 'respect for the rights of the Palestinians is an indisputable element in the establishment of a just and lasting peace in the Middle East.'

**Res 3092, UNGA 1973**

- 'deplores the continued refusal of the government of Israel to allow the Special Committee access to the occupied territories.'
- 'expresses grave concern at the violation by Israel of the Geneva Convention, in particular the following violations;
  - the annexation of certain parts of the OT;
  - establishment of Israeli settlements and the transfer of an alien population thereto;
  - destruction and demolition of Arab houses, quarters, villages and towns;
  - administrative detention and ill-treatment inflicted on Arab inhabitants;
  - the illegal exploitation of the natural wealth resources and population of the OT
- calls on Israel to desist from the annexation and colonisation of Arab territories
- 'urges all States to refrain from any action which Israel will exploit in carrying out its policy of colonizing the OT.'

**Res 3236, 1974**

- 'grave concern that the Palestinian people has been prevented from enjoying its inalienable rights, in particular its right to self-determination'
- 'reaffirms also the inalienable right of the Palestinians to return to their homes... and calls for their return.'

**Res 3246, 1974**

- 'reaffirms the legitimacy of the people's struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle'
- 'strongly condemns all Governments which do not recognise the right of self-determination and independence of peoples under colonial and foreign domination and alienable subjugation, notably the people's of Africa and the Palestinian people.'

**Res 32/91, 1977** – Calls on Israel to respect the Geneva Conventions

**Res 33/29, 1978** – Calls on Israel to fully withdraw from the Occupied Territories

**Res 26/226, 1981** – calls for Israel to withdraw from OT and the establishment of a Palestinian state.

**Res 37/123, 1982**

- Condemns Israel's alleged responsibility for the Sabra and Shatila massacre in Beirut.
- Condemns the occupation of the West Bank and Gaza, and the annexation of Jerusalem.
- Israel must rescind the proclamation of Jerusalem as their capital.
- deplores the transfer by some states of their diplomatic missions to Jerusalem in violation of UNSC Resolution 478 (1980).' Calls upon those states to withdraw such missions

**Res 67/19, UNGA 2012** - appoints Palestine as a non-member observer *state*. (*Australia abstained*)

**Res ES-10/L.23, 14 June, 2018** – deplores Israel's use of "excessive, disproportionate and indiscriminate force" against Palestinian civilians and calls for protection measures for Palestinians in Gaza and the occupied West Bank

(*Australia was 1 of 8 countries to vote against*)

## 8. INTERNATIONAL CRIME

### *Crimes Against the International Community*

**War Crimes** - under the Rome Statute 2002, relate to “grave breaches of the Geneva Conventions of 1949, namely against persons or property”

#### *Fourth Geneva Convention – relative to the Protection of Civilian Persons in Time of War*

*Article 6* - In the case of occupied territory, the Occupying Power shall be bound (by the Convention) for the duration of the occupation.

##### *Article 49*

- Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited.
  - ‘Palestinian family evicted from Jerusalem home to make room for settlers’  
<https://972mag.com/police-evict-palestinian-family-home-jerusalems-old-city/140195/>
  - ‘Israel: Illegal demolition and forcible transfer of Palestinian Bedouin village amounts to War Crime’  
<https://www.amnesty.org/en/latest/news/2018/06/israel-illegal-demolition-and-forcible-transfer-of-palestinian-bedouin-village-amounts-to-war-crime/>
- The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.
  - Refer to Security Council Resolution 2334, which deems settlements illegal and in violation of the Fourth Geneva Convention  
<https://www.un.org/press/en/2016/sc12657.doc.htm>
  - Amnesty International; ‘Chapter 3: Israeli Settlements and International Law’  
<https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>

*Article 33* - No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

#### *International Committee of the Red Cross – 2010 Report on the Gaza Closure*

<https://www.icrc.org/en/doc/resources/documents/update/palestine-update-140610.htm>

#### *United Nations Independent Commission of Inquiry – Gaza 2014*

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16119>

- Identified possible war crimes by both Israel and Palestinian armed groups
- Israel was responsible for approximately 6,000 airstrikes 50,000 tank and artillery shells, whereby 1,462 Palestinian civilians were killed, a third of them children.
- Hundreds of Palestinian civilians were killed in their own homes, especially women and children.
- Israel’s extensive use of weapons with a wide kill and injury radius; though not illegal, their use in densely populated areas is highly likely to kill combatants and civilians indiscriminately.
- Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel, killing 6 civilians.

### ***UN Human Rights Council – Gaza May 2018***

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23107&LangID=E>

adopts a resolution to dispatch another independent commission of inquiry to investigate large-scale assaults on civilian protests in Gaza on 14 May, in which more than 60 Palestinian protestors were killed.

Australia and the US were the only countries to vote against sending a team of international war crimes investigators to probe the deadly shootings of Gaza protesters by Israeli forces.

<https://www.sbs.com.au/news/australia-us-vote-against-gaza-war-crimes-probe>

### ***Crimes Against Humanity***

Under the Rome Statute, relates to listed acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack

*The two main referrals to the ICC by the State of Palestine relate to;*

***Deportation or forcible transfer of population*** – “means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;”

***The crime of apartheid*** – “means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;”

- John Dugard – former UN Special Rapporteur on Human Rights in the Palestinian Territories, has written a lot on this topic.
- ***nb:** the recommendation is to avoid discussing the crime of apartheid as it is very sensitive and vigorously contested by the Israeli public.*

### **International measures**

#### ***International Criminal Court***

- Palestine was recognised as an ‘Observer State’ by the UN in 2012
- The State of Palestine signed the Rome Statute in 2015.
- Israel is not a signatory; however, under Article 12, the Court has jurisdiction if the State in which the conduct occurred, has accepted jurisdiction.
- Under Articles 13 and 14, a State party can refer a crime to the prosecutor for investigation.
- Palestinian factions, including Hamas, will also be investigated and liable for crimes committed on Palestinian land, against both Israelis and Palestinians
- The ICC is a court of last resort. It should only be involved to complement the existing domestic criminal justice systems. However, jurisdiction can be applied regardless of Israel’s resources to conduct criminal proceedings through their judiciary, as it has become obvious that they are not willing to do so.

Most recent ICC submission by the State of Palestine on 15 May 2018

[https://www.icc-cpi.int/itemsDocuments/2018-05-22\\_ref-palestine.pdf](https://www.icc-cpi.int/itemsDocuments/2018-05-22_ref-palestine.pdf)

ICC Preliminary Report on Palestine, November 2016

<https://unispal.un.org/UNISPAL.NSF/3822b5e39951876a85256b6e0058a478/f0e483d9b3a89a558525806e0070b4da?OpenDocument>

- “In September 2005, Israel completed its unilateral withdrawal from Gaza, including dismantling its settlements and withdrawing its forces. Israel has maintained that following the 2005 disengagement, it is no longer an occupying power in Gaza. By contrast, it may be argued that Israel nonetheless remains an occupying power as a result of the scope and degree of control that Israel has retained over the territory of Gaza — a position that the Office has previously taken in the context of the preliminary examination of the situation.”

Most recent ICC Preliminary Report on Investigations 2018

<https://www.un.org/unispal/document/icc-prosecutors-annual-report-on-preliminary-examination-activities-2018-situation-in-palestine/>

### ***Limitations of the ICC***

- The ICC is supposed to send a message that leaders cannot commit appalling acts with impunity
- It should demonstrate prosecution as a deterrent
- Prosecution is very slow, as seen in Darfur Sudan, where President al-Bashir was charged in 2008, and issued with an ICC arrest warrant, but still remain in office.
- Limited enforcement powers if proceedings are not conducted in an offender’s home state

### ***United Nations Human Rights Council***

*UN Human Rights Council against investigation for War Crimes at the Gaza border – May 2018*

<https://www.sbs.com.au/news/australia-us-vote-against-gaza-war-crimes-probe>

Australia and the US were the only countries to vote against sending a team of international war crimes investigators to probe the deadly shootings of Gaza protesters by Israeli forces.

*UN Independent Commission of Inquiry on the 2018 Gaza Protests*

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24226&LangID=E>

“reasonable grounds to believe... Israeli soldiers committed violations of international human rights and humanitarian law.... May constitute war crimes or crimes against humanity and must be immediately investigated by Israel.”

*Appointed UN Independent Commission of Inquiry on Gaza 2014*

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16119>

*Israel refuses entry to the UN Special Rapporteur*

<https://www.jpost.com/Israel-News/Politics-And-Diplomacy/UN-human-rights-investigator-resigns-after-Israel-refuses-visa-request-439386>

*Israel refuses to cooperate with UNHRC due to anti-Israel bias*

<https://www.timesofisrael.com/record-number-of-reports-criticizing-israel-said-to-be-released-by-un-next-month/>

*UN Human Rights Council – Fact finding mission 2009; The Goldstone Report*

<https://www.jewishvirtuallibrary.org/jsource/UN/goldstonereport.pdf>