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Gaza and the Colonial Right to Self-defence: Legal Absurdities and the Circular Reasoning of Violence

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Abstract

This article critically examines the legal and political framing of the 7 October 2023 attacks and the subsequent Israeli military campaign in Gaza, challenging dominant narratives that present these events as historically isolated. The article is divided into four interrelated sections. First, by situating the 7 October attacks within the broader historical context of settler-colonial occupation, systemic dispossession, and ongoing restrictions on Palestinian lives and land, we argue that framing this moment in isolation obscures the structural violence that preceded and shaped these events. Second, the article examines the invocation of the right to self-defence under Article 51 of the UN Charter, scrutinising its application in contexts involving non-state actors under conditions of belligerent occupation. We argue that claims of self-defence amount to circular reasoning: extensive violence in conditions existing in Gaza especially since 2007 generates armed resistance, which has been reframed as "terrorist attacks" warranting further force under the guise of self-defence; thus creating a paradox of self-defence against self-defence. This dynamic, we argue, exposes a broader disjunction between the formal legal doctrine of the right to self-defence and its use as a means of control and domination in settler-colonial contexts. Third, the article examines how Israel's military actions quickly shifted from what was asserted as self-defence against Hamas attacks to a systematic effort to reinforce territorial control, expand the ongoing government efforts to erase Palestinian culture and history, kill a substantial proportion of the Gaza population, and force displacement. This consolidation of control is reflected in plans for the Strip's redevelopment and the elimination or reduction of Palestinian presence in the aftermath of the war, presenting a compelling case that aligns with the dynamics of both genocide and settler-colonial expansion. Finally, by drawing on legal precedents, human rights reports, and the UN Security Council resolution of 17 November 2025, the article demonstrates how international law and global rights-based structures have operated in ways that enabled, or at least failed to prevent, the scale of killing and destruction in Gaza. We conclude by situating the continuing crisis within a broader framework of settler colonialism and thereby expose the

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flaws in current legal and political systems that permit states of exception and thus fail to either prevent or address mass atrocities.

Keywords Palestine · Right to self-defence · Settler colonialism · Genocide · 2025 UN Gaza Ceasefire Resolution

1 Introduction

The author Arthur Koestler spent several years in Palestine in the period leading up to the establishment of Israel in 1948. Almost three weeks after Israel became a state, he describes the "drab efficiency" through which the vibrant colours of Palestine was replaced [59, 197]. "But the Arabs are gone," he observes. "[t]he shuks in Haifa are deserted, the bazaars looted, the houses closed. The camels and the donkeys, the nargilehs and the shoeblack urchins, that heavy cloud of the odour of oriental spices which enveloped the shuks, all gone." To complete the picture, Koestler tells us that "the mud huts of the slum villages along the coastal road are dynamited, their population gone." Koestler describes this as 'another exodus' brought about by forcing Palestinian Arabs out of their homes in preparation for the formation of the new Jewish state which Koestler supported at the time.

This sombre portrait of absence and loss stands in stark antithesis to the vision offered by Palestinian poet Mahmoud Darwish, who wrote not of what was lost, but of what remains. "We have on this earth what makes life worth living," Darwish writes: "April's hesitation; the aroma of bread at dawn; a woman's opinion of men; the works of Aeschylus; the beginnings of love; grass on a stone [36, 6]." Where Koestler captures a landscape stripped of its spirit, Darwish evokes the soul of a people refusing erasure—offering a poetic resistance to disappearance. Though departing from different points, both portrayals of loss ultimately capture the fading of spirit and soul, whether draining life from a place or imbuing it with vitality.

Koestler's "drab efficiency" is not just a catalyst of loss of buildings and markets, but the obliteration of sources of joy and life, making the losses both materially devastating and profoundly human. This same complex devastation has persisted in Gaza for almost three years, driven by full-scale Israeli military operations following Hamas's October 7, 2023 attack near the Gaza border, known as *Operation Al-Aqsa Flood*, which resulted in the deaths of approximately 1200 people and the abduction of over 237 hostages.[1] In a striking echo of Koestler's depictions 77 years ago, what has reached us recently, through the images that manage to emerge in global media, often at the cost of the lives of Palestinian reporters and Gazans themselves, is a fragmented glimpse of yet another 'exodus,' as Palestinians are once again forced from their demolished homes.

[1] Hamas (*Ḥarakat al-Muqāwamah al-ʾIslāmiyyah*) was founded in 1987 during the First Intifada as an offshoot of the Egyptian Muslim Brotherhood. Hamas describes itself as a 'Palestinian Islamic national liberation and resistance movement' and includes a political party and an armed wing. Hamas is listed as a terrorist organization by Australia, Canada, the European Union, Israel, New Zealand, and the United States of America.

The images are marked by "drab efficiency" of an apocalypse, amplifying Koestler's earlier depictions of systematic erasure. Scenes of death and life at their most vulnerable unfold through film and photographs of displacement, shattered trees, blown-up homes, people clinging to bodily remnants of their loved ones, and mass graves hastily carved into the earth. The heavy pall of dust can almost be smelled. It lingers in the air, its grey hues stretching from the deep black garments of mourning women, grieving mothers who have lost their children, to the pale, light grey of shattered concrete blocks. White cloths, draped over lifeless bodies, punctuate this sombre palette. Mixed with the blood of children shot in the head or chest, the dust forms a murky cloud that hangs over the city like a shroud [71]. The unsettling grey particles shimmer as they catch the light, swirling in the air, drifting on the wind, rising from rubble.

Beneath the ruins lie countless Palestinian children, elders, women—even paramedics and aid workers—bombed, droned, and shot, entombed in the very homes that once offered them refuge after they were expelled during the 1948 Nakba and the war of June 1967 when Israel revived the practice of forcibly removing Palestinians to Gaza [65]. If not killed outright, they are buried under wreckage, stranded between destruction and oblivion. Some are in the few remaining hospitals, carrying limp bodies on boards, pallets, or mattresses, some still alive, some barely, and others already dead, wrapped in towels, cloths, rags, or bedsheets. Others wait in desperation, standing in endless queues, hoping either for food, or for the bullet that might end their suffering.

For what was a population of 2.4 million, of whom 1.6 million are already refugees from what was central and southern Palestine [98], a gruesome re-enactment of Koestler's depictions has been unfolding. This is in the absence of international journalists, writers, or novelists. No external observers are permitted by Israel to be present in Gaza to bear witness, construct layered narratives, or preserve the memory of displacement and killing that is once again being erased. In late summer 2025, about 300 residences in Gaza City and Jabalia were being destroyed daily by the Israeli army 'using around 15 robots carrying nearly 100 tonnes of explosives' [12]. Militarised robots were initially tested out on Gaza to 'avoid harming soldiers and dogs [31].'

To put it in perspective, using available internal evidence, media reports indicate that the death toll in Gaza during the first seven weeks of the war surpassed that of recent major conflicts such as the US campaigns in Iraq and Syria [60]; the number of civilian casualties was greater than the 20-year operation in Afghanistan, and twice as many women and children were killed than under the Russian military invasion of Ukraine since 2022. By late April 2024, Israel reportedly dropped over 70,000 tons of bombs on Gaza [28], exceeding the combined bombing of Dresden, Hamburg, and London during World War II. This amounts to more than 30 kg of explosives per person. For comparison, the U.S. nuclear bombs dropped on Hiroshima and Nagasaki weighed an estimated 15,000 tons of explosives Using a complex statistical modelling, one research report puts the mortality figure in Gaza by the end of 2024 at 78,318 Palestinians since 7 October 2023 [46], with an update of the study estimating between 100,000 and 200,000 deaths in Gaza [68]; UNICEF further reported that by May 2025 more than 50,000 children were killed or injured since October 2023 [90].

Other reports indicate that thousands have been "evaporated" by thermobaric or high-temperature munitions, leaving behind only blood spray or scattered fragments of tissue [6]. In addition, Gaza is now home to the highest number of child amputees per capita worldwide, estimated at up to 4000 children since the war began, according to the International Rescue Committee (IRC) [105]. Approximately 1.9 million people, around 90% of Gaza's population, have been internally displaced, now living in overcrowded shelters or makeshift camps [96]. More than 78% of buildings, including homes, schools, universities, museums, churches, mosques, and hospitals, have been destroyed or severely damaged. An estimated 55,000 children under the age of six are suffering from malnutrition, with at least 74 reported deaths from malnutrition-related causes in 2025 [7]. Alternative estimates, however, continue to circulate, reflecting the severe challenges in verifying casualty figures and assessing the full scale of destruction. In September 2025, retired Israeli General Herzi Halevi estimated that the actual death toll in Gaza may be closer to 200,000—roughly 10% of the territory's entire population [24].

The following sections give an overview of the situation in the Gaza Strip from 2005 to October 7, 2023. They include analysis of how the events of October 7 have been framed as historically separate incidents with narratives built around them accordingly. We also look at the legal framework of self-defence under international law and examine how invocations of the mass killings in Gaza since October 2023 as self-defence have been related to assertions of a right to colonise, highlighting how law can function both as a shield and a weapon.

2 Gaza Strip from 1967–2023: From the Disengagement to the Redevelopment—The Paradox of Gaza's Post-occupation Occupation

The legal status of the Gaza Strip has long been the subject of debate and remains unresolved, a situation likely to persist for years to come, particularly in light of the wholesale destruction of the buildings and infrastructure that comprise Gaza and ongoing plans, discussed below, to transform the area into a profit-oriented resort development. Following the capture of the Gaza strip from Egypt, during the 1967 Six-Day War, the territory remained under formal Israeli occupation until 2005. During this period, Israel established 17 Jewish only settlements, fragmenting the Strip by separating its northern region from the south. These settlements, which occupied approximately 15–20% of Gaza's land, had a significant impact on agricultural land use and further strained the Strip's already limited water resources [109].

After Israel withdrew from Gaza and dismantled its settlements in 2005 as part of its disengagement plan, which also included areas of the northern West Bank, Hamas won a majority of votes in the 2006 Palestinian legislative elections. This legislative victory combined with a brief but intense confrontation with the Palestinian Authority (Fatah) in June 2007, resulted in Hamas taking control of the Gaza Strip and it has governed the territory ever since without permitting further elections. Later in 2007, Israel declared Gaza a 'hostile territory'. This marked the beginning of what has been characterised as a campaign of 'economic warfare', imposing a comprehensive air,

land, and sea blockades on the territory, often described as an 'open-air prison' due to severe restrictions on movement, trade, and access to essential resources [95]'.

Despite the withdrawal, conditions in Gaza continued to be widely viewed as indicative of an ongoing occupation, given Israel's extensive control over nearly all aspects of life in the territory. Numerous human rights organizations and international bodies have argued that Israel retains near-total authority in various critical domains. As Human Rights Watch noted, "Whether the Israeli army is inside Gaza or redeployed around its periphery and restricting entrance and exit, it remains in control [50]." This level of control also entails responsibilities to protect the civilian population under international law.

Nearly every aspect of daily life in Gaza, including the movement of people and goods, access to electricity, water, telecommunications, trade, and the currency used, has remained under full Israeli control [19]. A crate of milk cannot enter Gaza without Israeli approval, and a university cannot host a foreign lecturer unless Israel issues a visitor's permit. A mother cannot register her child in the Palestinian population registry without Israeli consent, and fishermen cannot access Gaza's coastal waters without permission. Local non-profits are unable to receive tax-exempt donations of goods unless authorized by Israel, and teachers may not receive their salaries unless Israel agrees to transfer the necessary tax revenues to the Palestinian Ministry of Education. Farmers cannot export their vegetables unless Israel permits the goods to leave, and students hoping to study abroad must wait for Israel to authorize the opening of the Gaza-Egypt border crossing [72]. Gaza expert Sara Roy argued in 2013 that Israel's indefinite blockade 'treats the economy as totally irrelevant, a disposable luxury [76, 55].' Citing the World Bank in her statement to the UN the following year, Roy pointed out that 'the blockade alone resulted in a 50 percent decrease in Gaza's GDP since 2007' with manufacturing shrinking by 60 percent. Her conclusion was that 'the Gaza Strip has been largely disabled [76, 66].' The UN report on the 2010 Gaza flotilla incident known as the Palmer report observed that:

> Since these restrictions began in 2007, most private businesses have closed. The functioning of hospitals has been severely affected. The provision of electricity has been reduced and is intermittent. There has been a deterioration of water supply and sanitation services. The demand for housing and social services is climbing [88].

This extensive and granular system of control affects every dimension of daily life in Gaza, severely limiting the population's autonomy, mobility, and economic development. Eyal Weizman encapsulates this condition in his concept of *Hollow Land*—an architecture of control rooted in spatial manipulation and systemic domination that extends well beyond the mere physical presence of military forces to include the regulation of the built environment and the population through checkpoints, walls, tunnels, and tightly controlled borders as well as continuous surveillance from the sea and sky [107].

In its advisory opinion issued on 19 July 2024, in paragraph 91, the *International Court of Justice* notes that "for the purpose of determining whether a territory remains occupied under international law, the decisive criterion is not whether the

occupying Power retains its physical military presence in the territory at all times but rather whether its authority has been established and can be exercised" [3]. A physical military presence in the occupied territory is, therefore, according to the International Court of Justice (ICJ) advisory opinion, not indispensable for a State to exercise effective control, provided the State concerned has the capacity to enforce its authority, including by making its physical presence felt within a reasonable time.[2] This status as remote-occupying power was explicitly affirmed in a 2012 report by Richard Falk, former UN Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, who stated:

> While the Israeli settlers were withdrawn in 2005, and the permanently stationed Israeli soldiers were withdrawn to the borders of the Strip, Gaza remains occupied by Israel. The form of occupation changed, but the occupying power remains in full control of the borders and even buffer zones on the Gaza side of the borders; the entry and exit of all people, goods, and services into and out of Gaza and thus the entire economic growth or stagnation of Gaza; and the coastal waters, air space and underground of the territory of Gaza [85].

In 2017, a United Nations report warned that Gaza could become 'unliveable' within a decade, citing a worsening crisis in water, electricity, healthcare, education, and food security caused by the prolonged blockade [92]. That stark projection, made years before the current violence, must be understood alongside the persistent restriction of journalistic freedom and, more broadly, freedom of expression and repeated violations of the right to access information by the Israeli government. Together, these conditions underscore not only the precarious legal status of Gaza but also the deeply constrained lived reality of its population.

Based on the blockade and the conditions of life it has produced, a strong argument can be made that Israel was already engaged, in legal terms, in an armed conflict against both Hamas and the population of Gaza prior to 7 October 2023. An indefinite blockade has been in place since 2007, severely restricting the entry of essential goods and supplies [76]. Although a blockade is generally understood as an act of war, the *Palmer Report* on the 2010 flotilla incident concluded that Israel's actions were lawful under international law, on the grounds that the situation bore the "trappings" of an international armed conflict [88]. This interpretation, however, has been widely contested. Other legal scholars argue that the sustained restrictions on basic supplies imposed on Gaza since 2007 amount to a form of occupation that has systematically denied Gaza's population their most fundamental human rights [27]. Even if Israel's belligerent actions are seen to be international in character and therefore legal, the intentional blockading of multiple types of critical supplies is a serious violation of international humanitarian law. Indeed, these are some of the grounds in the International Criminal Court's (ICC) arrest warrants for Defence Minister Gallant

[2] See, for example, United States Military Tribunal, *USA v. Wilhelm List and others (Hostage case)* (19 February 1948), Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol. XI, p. 1243; International Criminal Tribunal for the former Yugoslavia, Prosecutor v. Mladen Naletilić and Vinko Martinović, IT-98-34-T, Trial Chamber, Judgment, 31 March 2003, para. 217.

and Prime Minister Netanyahu for starvation of civilian populations, war crimes and crimes against humanity [35]. In October 2025, the ICJ ruled that Israel was in breach of international humanitarian standards by restricting aid into Gaza and for banning the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) from performing its humanitarian work there [54].

Thus, to capture the reality of Gaza between 2005 and 2023, it is fair to say that the territory remained a small densely populated area—measuring roughly 360 square kilometres, about 40 kms long and 9 kms wide—under continuous Israeli blockade, governed by an authority lacking international recognition and experiencing deep political and economic isolation. The paradoxical reality of the 'disengaged occupiers' has created a persistent legal and political limbo [19]. Over the years, this reality contributed to repeated military incursions, with casualties disproportionately borne by Palestinians. For example, during the first Gaza war (2008–2009), known as *Operation Cast Lead*, approximately 1400 Palestinians were killed over the course of 22 days [8]. Among the dead were around 300 children and more than 115 women, alongside hundreds of other unarmed civilians [75]. In 2014 the Gaza war known as *Operation Protective Edge* [10], which was waged in part to destroy tunnels used to transport goods into Gaza, more than 2200 Palestinians were killed, including over 500 children and 300 women. The UN committee investigating this raised questions about the Israeli claim that it acted in self-defence against the smuggling of weapons through the tunnels since it did not destroy all the tunnels and must have had the aerial surveillance to do so [99, Para. 394].

3 The Snapshot View of History

These patterns persisted until the Hamas attacks on October 7, 2023, which marked the beginning of a new and devastating chapter, defined not only by a humanitarian catastrophe but also by deepening legal uncertainty and an ongoing struggle over the very meaning of rights, law, accountability and 'war' itself. While Israeli politicians and officials have declared a 'war on Hamas,' in the geographical context, this framing conflates Hamas with the Gazan people, and to some extent the Palestinian population in the Occupied West Bank where Hamas does not rule. Over 1000 Palestinians including 233 children have been killed in the West Bank since 7 October 2023, the vast majority of these from live ammunition fired by the Israeli Defence Force (IDF) and Jewish settlers, recognised to be illegal in international law [102]. In 2025 alone, 56 children in the West Bank were killed by Israeli military forces and Jewish settlers [37].

A mere glance at the figures reveals what Judith Butler describes as a hierarchy of lives and acceptable mourning [26]. At the time of writing, at least 100,000 Palestinians have been killed as a result of Israeli military actions in Gaza, while approximately 1200 people were killed in the 7 October attack [67]. This amounts to a Palestinian death toll approximately 83 times greater than that of Israelis on 7 October or 167 times greater if we accept General Halevi's estimate of 200,000 deaths in Gaza, and it leaves out the deaths over the same period in the West Bank. Even admitting that some proportions of the Palestinian deaths were Hamas fighters,

the fact that so little has been done by any authority to make Israel accountable for these actions speaks to Butler's point that the capacity to mourn is foreclosed by 'the failure to conceive of Muslim and Arab lives as *lives*' [26, 12].

Indeed, thousands of Palestinians, including women and children, were killed in Gaza when the territory was officially regarded as not being under Israeli occupation. Nonetheless, the Hamas attacks of 7 October, often portrayed as the most unprecedented act of aggression since the Holocaust, have been treated by Israel and many Western governments as a standalone event, disconnected from the events that preceded them and used to justify and exculpate the mass destruction and collective punishment that followed.

The snapshot approach to history constituting 7 October, murderous as it was, as a singularly terroristic and anti-Semitic act has often enabled critical portrayals of past and present actions of Israel for violations of the human rights of Palestinians, including mass murder, to be an expression of anti-Semitism. As Neve Gordon has pointed out [47], anti-Semitism is a construct by which all Jews are folded into a collective Jewry making attachment to the state of Israel—and by extension the rectitude of the state's actions against Palestinians—the central defining characteristic of a Jew. This construct ignores the many Jews who do not identify with or support Israel or consider themselves to be part of a separate ethnic group. An additional complication is that twenty percent of Israel's population is Palestinian and another 5 million are under Israeli occupation.

Using this reductionist logic, the charge of anti-Semitism was the rationale for numerous acts of punishment and censure of individuals and institutions in Western countries that were seen to disapprove of Israel's actions in Gaza following 7 October. Universities were specific targets of these charges. Altogether, sixty institutions in the US were investigated by the Department for Education for what were deemed anti-Semitic activities connected with criticism of Israel and/ or support for the human rights of Palestinians [63]. These punitive actions include headline cases such as the abduction, ordinary rendition, detention and attempted deportation of Columbia University student and US Permanent resident Mahmoud Khalil, who was also denied *habeus corpus* [1]. Lesser known, but more serious was the case of Leqaa Kordia, a Palestinian student protester at Columbia who was imprisoned in an immigration detention centre in Texas for a year after sending money to her relatives in Gaza and was wrongly determined to be supporting terrorism [33]. The dismissal of Dr. Rupa Marya at the University of California at San Francisco was for anti-Semitism in part because she posted online that Israel had caused a health crisis in Gaza [106].

The University of California at Berkeley provided the Trump government with the names of 160 students and faculty it suspected of anti-Semitism. Prominent among these was the Jewish scholar Judith Butler and a Professor teaching a course on Palestinian history [64]. The Collège de France cancelled a symposium called "Palestine and Europe: The Weight of the Past and Contemporary Dynamics" [11]. At our university—the University of Essex—a group of six students were investigated for 200 days for sharing a post on their website about the Israeli extrajudicial assassination of Hamas leader Ismail Haniyeh in Iran. The university pursued the students for months even after police dropping the case [84]. These are a fraction of the actions taken against students and faculty members showing support for Palestine or Pales-

tinians and equating it with anti-Semitism. In all cases, the criticism of Israel was for violations of the human rights of Palestinians during the war on Gaza but also on the broader history of Israeli crimes and violations prior to the war.

3.1 The Framing of October 7: Historical Context and the Politics of Narrative Making

What followed October 7 2023, however, was neither unpredictable nor without warning, it proceeded with little legal prevention or intervention to stop it. Yet, it could have been foreseen. Nearly fifteen years earlier, a broad consensus began to emerge among Israeli military elites and many observers that in the next war the IDF would deploy disproportionate force. This view can be traced back to the 2006 assault on southern Beirut's Dahiya quarter,[3] later termed the 'Dahiya Doctrine.' The doctrine was made public by former IDF Chief of General Staff Gadi Eisenkot. After Dahiya was devastated by large-scale aerial bombardment in 2006, Eisenkot spelled out the doctrine in 2008: What happened in Dahiya "will happen in every village from which Israel is fired on…We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases… This is not a recommendation. This is a plan. And it has been approved." [5] Surprisingly, the public articulation and debate over this doctrine drew little attention from the international bodies that are ostensibly charged with preventing mass atrocity and upholding international law [56].

The Dahiya Doctrine, which explicitly promotes disproportionate force against civilian infrastructure and populations violates Israel's obligations under international law. Rather than aligning with the principles of restraint and civilian protection, the doctrine undermines the foundations of international humanitarian law, most notably the protections granted to civilians during times of war and military occupation under Article 33 of the Fourth Geneva Convention [53]. As emphasized by Richard Falk, and in line with widely accepted interpretations within the United Nations and among legal scholars, an occupying power, in this case Israel, cannot lawfully invoke the right of self-defence to justify the use of force or collective punishment against the very population it occupies, especially when understood within its broader historical and legal context [41]. Had these points of law been properly situated within these relevant circumstances, they might have challenged credulous acceptances of the self-defence narrative that followed 7 October and exposed the deeper patterns of violence long preceding that day [40].

However, constructing the October 7 attacks as a standalone event is essential not only for understanding what followed but also for rethinking the status of international law in relation to the preceding conditions that culminated in these attacks. The narrow framing of the events of October 7 as an unprecedented terrorist attack involving a large-scale operation aimed at occupying Israeli settlements and military bases, including classified facilities, inflicting maximum civilian casualties, and

[3] Dahiya is a neighbourhood village in southern Beirut that was believed to be a residential stronghold for Hezbollah, the Islamic Shi'ite movement opposed to Israel's encroachments on Lebanese territorial sovereignty and pro-Palestinian in its wider political agenda.

abducting both soldiers and civilians to Gaza conveniently simplifies the issues [42]. The picture becomes more complex, however, if we admit the possibility that the 7 October attack was not without relevant history. As UN Secretary-General António Guterres noted before the Security Council, the atrocities of October 7 were rooted in a broader context of prolonged military occupation, blockades, periodic bombardments, administrative detention, and severe restrictions on movement and access to essential services.

> It is important to also recognize the attacks by Hamas did not happen in a vacuum. The Palestinian people have been subjected to 56 years of suffocating occupation. They have seen their land steadily devoured by settlements and plagued by violence; their economy stifled, their people displaced, and their homes demolished. Their hopes for a political solution to their plight have been vanishing [100].

Acknowledging that the 7 October attack has such a context is bolstered by the fact that the preceding conditions and cumulative violations have been denied, reframed, or obscured by Israel [48], particularly with respect to the principles of causality, proportionality, and accountability under international law. While the historical background was largely ignored in political discussions of October 7, this oversight cannot in any way be attributed to a lack of awareness or access to information. Despite attempts to distort or obscure the record by state authorities, political actors, and some media narratives, the available documentary record is sufficient to reveal the extent of the violations that took place. Extensive documentation in United Nations reports, independent media investigations, and human rights reports makes clear that the structural and historical factors preceding the attack were both well-known and thoroughly recognised [101]. This oversight, whether intentional or not, helps explain how many Western governments accepted the snapshot view by depicting Israel's subsequent war on Gaza as an act of self-defence against terrorist actors, and thereby erasing and/or decontextualizing the historical and structural realities that preceded 7 October.

The characterization of 7 October as a standalone act of brutality, however, capitalized on the conflation of terrorism, particularly 'Islamic terrorism', with antisemitism. Over time, these two concepts have been intertwined in political discourse, such that opposition to or criticism of violence perpetrated by Israel is sometimes referred to as 'antisemitic terrorism' [25]. This accusation discouraged many critical voices from speaking out, particularly during the first months following Israel's subsequent war on Gaza. Film, media, and public performances associated either with support for Palestine or focusing on Israeli atrocities in Gaza were suppressed. The BBC, for example, censured itself and was then censured by the media regulator for a 'serious breach' over the showing of a documentary on Gaza narrated by children, one of whom was the son of the deputy minister of agriculture for Hamas [111]. It also pulled out of airing a film it commissioned called 'Gaza: Doctors under Attack' about the bombing and raiding of hospitals and the detention and killing of medical personnel and their family members [78], which amounts to over 2000 health and humanitarian workers according to Medicins San Frontieres [69].

Against this background, considering the state of Gaza prior to 7 October, which, as noted by many legal experts, amounts to a state of occupation, characterising the events of that date as an act of self-defence assumes particular significance. If this characterisation is adopted as a starting premise, a central question arises regarding the tension between competing claims of self-defence. Specifically, can self-defence be lawfully invoked in response to an act that is itself a form of resistance? While not necessarily framed as self-defense under international law, it may be presented as an expression of self-defence from a resistance and liberation standpoint [113].

Next, we further problematize the right to self-defence by examining its legal framework and limitations, particularly in regard to Gaza's state of external control, a so-called 'no-occupation occupation,' and critically assess the extent to which such circumstances constitute a form of colonial violence aimed at the removal of Palestinians from Gaza, whether through forced deportation or physical liquidation. What role, if any, does law play in these unfolding events, particularly when access to accurate information, a key pillar of legal judgment, is being systematically suppressed, and those responsible for uncovering, verifying, and interpreting it are being targeted, criminalized and/or killed. We further examine the ongoing mass killings in Gaza since October 2023, which the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory concluded in its September 2025 report, amount to genocide [86].

3.2 Self-defence: A Right to Protect or a Political Weapon?

Self-defence in international law refers to the inherent right of a state to use force in response to an armed attack. Although this right has long been acknowledged under customary international law, it was formally codified with the adoption of the 1945 UN Charter. While the Charter, under *Article 2(4)*, imposes a general prohibition on the use of force in international relations, it explicitly recognizes an exception in *Article 51*: The right of states to defend themselves against armed attacks, provided such measures are necessary, proportionate, and reported without delay to the Security Council.

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security [91].

While there is no consensus on whether an armed attack must originate from a state or can also be carried out by a non-state actor, the principle of the non-use of force, and its exception, the right of self-defence, stipulated in *Article 51* of the Charter, is traditionally understood to apply only to relations between states. Under this interpretation, attacks that are not attributable to a state cannot legally invoke the right of

self-defence. For example, in *Nicaragua v. United States of America* (1986) and the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), the ICJ emphasized that *Article 51* applies to armed attacks by states. The *Wall Opinion* explicitly stated that Israel could not claim self-defence against attacks from non-state actors, as they were not attributable to a foreign state [70]. In light of this, it remains difficult to fully uphold the claims made regarding Israel's legal right to self-defence, particularly as this right is contested in cases involving Hamas, which is internationally recognized as a non-state actor.

If Hamas is treated as a non-state actor, then according to traditional interpretations of *Article 51*, Israel cannot invoke the right of self-defence against it. However, if Hamas is viewed as representing the Palestinian Authority, this invokes another layer of complexity, mainly regarding the legal status of the state of Palestine, which remains contested.Palestine has been recognised as a sovereign state by 157 of the 193 member states of the UN. However, Palestine cannot act as a state because of the multiple restrictions on its governments and continual usurping of its territories by Israel. Despite being granted a non-member observer state status in the UN General Assembly 2012 resolution [94], the two-state solution remains stalled, largely due to the opposition of several countries including the US, Germany, and others. As a result, the question of Palestinian statehood, and its implications for invoking the right of self-defence, remains ambiguous. To argue that Israel has the right to self-defence under the traditional understanding of *Article 51*, it is first necessary to establish the statehood of Palestine and, potentially, to demonstrate that Hamas was acting as the representative or agent of that State—two conditions that are difficult to establish at present because UN General Assembly Resolution 2012 states that the PLO is the representative of the Palestinian people. Another factor that significantly undermines the claim of self-defence, as discussed earlier in this paper, is Gaza's troubled status since 2005 as a territory under siege, which many legal scholars qualify as being under belligerent occupation, even in the aftermath of the Israeli 'Disengagement' in 2005 [13].

The blurring of boundaries around the application of the right to self-defence has made it increasingly difficult to assess this right from a legal standpoint. This complexity has been compounded by the US adoption of an expansionist interpretation of self-defence following the September 11 2001 attacks, arguing that armed attacks triggering the right under *Article 51* of the UN Charter do not need to be carried out by states alone, but may also originate from non-state actors [62]. However, at the outset of the US and British led 'Global War on Terror', Al Qaeda and other groups as 'non-state actors,' unlike Hamas, were all argued to be acting within states.

3.3 Self Defence Against Self-Defence: The Colonial Fallacy and Its Circular Reasoning

Another dimension often overlooked in the legal debate surrounding Israel's invocation of self-defence in response to Hamas's assault of 7 October concerns the question of whether self-defence can legitimately be invoked against an existing act of self-defence. Given the historical conditions amounting to a prolonged occupation, the 7 October attack could, following Judith Butler's argument, be understood as an

act of armed resistance [81], particularly when situated within an ongoing struggle for liberation from occupation and towards statehood. This raises a crucial legal question: *can self-defence exist against self-defence? In other words, can we differentiate between self-defence as a colonial construct and self-defence as a legal right?*

Legal scholar Ralph Wilde offers an instructive analogy from the Second World War. When the United States and the United Kingdom carpet-bombed the German city of Dresden and the US dropped atomic bombs on the Japanese cities of Hiroshima and Nagasaki, these actions clearly exceeded what international law would consider lawful self-defence in terms of necessity and proportionality [108]. Yet these violations did not, for that reason, grant Germany or Japan a legal right to use force in self-defence against the United States or the United Kingdom. These were unlawful acts committed within a broader context in which the Allied powers were, overall, lawfully exercising their right of self-defence in response to aggression by Germany and Japan. Following Wilde's reasoning, the question of whether Israel possesses a right to self-defence under international law in this context fundamentally mischaracterises the situation. Israel's war on Gaza, he argues, represents not a new act of self-defence but a reconfiguration and intensification of an existing use of force, manifested over years through the blockade, periodic bombardments, land incursions, and, before that, direct military occupation and settlement expansion. To claim that Israel may lawfully undertake this renewed and escalated form of force in self-defence against the violent acts of 7 October—acts that themselves arose in resistance to the earlier and ongoing use of force, even when they were unlawful for targeting civilians or being indiscriminate—is, as Wilde suggests, circular reasoning.

Amos Goldberg, an Israeli historian and Holocaust scholar, draws a parallel to the same dilemma of self-defence against self-defence by invoking, among other examples, the first genocide of the twentieth century, that of the Herero and Nama peoples in German South-West Africa [45, 176]. Goldberg notes that the German military and settlers also justified their actions as acts of self-defence. In each of these instances, the perpetrators of genocide perceived themselves to be facing an existential threat—whether that perception was justified or not—and their genocidal actions were, at least in part, driven by this belief. The annihilation of the colonised 'Other' can thus be viewed as an act of self-defence from a historical perspective since settler colonialism involves replacing indigenous peoples and appropriating their lands. However, this notion of self-defence is not recognised under international law. It is a construct of the coloniser, intended to justify the elimination of colonised peoples perceived as an existential threat, which is similar to the repeated narrative used by Israeli officials when referring to Palestinian people [112]. While it may be considered 'self-defence' within a colonial framework, it directly contradicts the legal understanding of self-defence and the right to self-determination of colonised populations. This illustrates a profound disjunction between self-defence as a legal domain and self-defence as a colonial construct, which in turn alters the understanding of genocidal violence and violence related to self-determination.

The framing of the context in a way that grants Israel an absolute right to self-defence while denying the same to Hamas has been described as the fallacy of the colonial right to self-defence [2]. This begins with the construction of the narrative itself and is closely linked to the inversion of truth and the reversal of the roles

of perpetrators and victims, a technique long used in colonial situations, essentially recasting anti-colonial resistance as illegitimate violence threatening 'order', 'security', and/or 'civilisation.' Historical parallels might include *Umkhonto we Sizwe*, the armed wing of the African National Congress (ANC), which resisted apartheid and white minority rule in South Africa [34]. The ANC was branded as a terrorist organisation by the apartheid regime and its Western allies, and its leader, Nelson Mandela imprisoned for 27 years.

The narrative framing of the 7 October attacks and Israel's subsequent assault on Gaza has made discourse itself a key front of the ongoing war, profoundly shaping how the law is interpreted and applied. The depictions of attacks and the naming of perpetrators and/or victims have been done through starkly asymmetrical representations: often Israelis are labelled as 'civilians' and 'hostages,' while Palestinians are collectively labelled 'terrorists,' 'sub-humans,' 'collateral' targets, 'human shields,' or lawfully detained 'prisoners' [39]. Indeed, Israeli President Isaac Herzog depicted 'the entire nation' of Palestinians as responsible for the Hamas attacks of 7 October [20]. The Heritage Minister, Amichai Eliyahu backed this up, saying that "there is no such thing as uninvolved civilians in Gaza [17]." This linguistic asymmetry draws on a long colonial genealogy in which the 'savage' or 'terrorist' is denied the protections of law—a narrative revived and entrenched by the post-9/11 War on Terror discourses [80].

In this context, language is constructed to evade legal obligations, serving to delegitimise certain acts and/or to render otherwise unlawful actions as legitimate. According to the report *'Gaza Genocide: A Collective Crime'* by the UN Special Rapporteur about human rights in the Palestinian territories occupied since 1967 [80], the prolonged political and diplomatic backing provided by influential Western states and leaders has enabled Israel to initiate and sustain its assault on the Palestinian people. 'This entrenched complicity,' reinforced, as the report notes, 'by narrative manipulation and the reproduction of Israeli fabrications,' that blur the distinction between civilians and combatants [104], has muted urgent calls for accountability and obscured the political, financial, and military interests at play. In doing so, it has paved the way for a sustained genocidal enterprise that was initially depicted as an act of self-defence and now, as we will shortly discuss, persists even after ceasefire agreements, functioning as a real-estate development project rooted in long-standing expansionist ambitions.

Finally, we now raise the possibility that the 10 October 2025 UN ceasefire agreement of 2025 makes the ongoing killings of Gazans and destruction of Gaza a legitimation of full colonial occupation, largescale displacement of Palestinians, and a potential zone for private enrichment.

3.4 The Ongoing Assault on Gaza: From Invocations of Self-defence to Assertions of a Right to Colonise

What was initially claimed as a 'right of self-defence' has, since October 2023, evolved into what many observers and human rights organisations, including Israeli groups, describe as an additional claim to a right to eliminate, dominate and dispossess, or, as some scholars characterise it, a 'right to colonise [73].' This has mani-

fested in a massive military onslaught on Gaza, directed not only at vast killing and the widespread destruction of infrastructure, but also at eroding the Palestinian social fabric through the systematic targeting of educational, cultural, and civil society institutions, as well as essential humanitarian, medical, and aid programmes. According to the Israeli human rights organization B'Tselem, the war on Gaza has extended beyond physical destruction and amounts to an assault on Palestinian identity itself. This is evident, on the one hand, in the deliberate devastation of refugee camps and in sustained efforts to undermine UNRWA, a lifeline institution for millions of Palestinians [15].

More broadly, however, this assault on Palestinian society is not new. It has long been embedded in national laws and policies that have increasingly been deployed to weaken, undermine, and eradicate Palestinian Arab cultural life and to suppress expressions of Palestinian autonomy. While tens of thousands of books have been confiscated from Palestinians, artists have been arrested and artworks destroyed, libraries and archives closed, raided and looted, and literature festivals have been stopped, such actions have become harsher since 7 October 2023. The early pattern of military attacks on Gaza in late 2023 and early 2024 show that cultural sites that shape the heritage and history of Gaza and its people were prominent targets, as were the people that were in and around some 200 culturally significant locations. Chahwan documented an extensive list of the 'historic buildings, mosques, churches, cultural institutions, universities, libraries and museums housing historical archives and heritage documents' that have been in whole or part destroyed [29]. The artefacts, objects, manuscripts, photographs, and films within them that provide the records and knowledge of Gazans and their histories, including prominent moments such as meetings with visiting dignitaries, artists, scholars, and scientists, are now largely consigned to oblivion.

Schools, places for the transmission of Palestinian knowledge, culture, and identity, have also been extensively targeted. As of July 2025, 432 school buildings were subject to a direct hit of Israeli bombs or drones. According to data collected by the UN Office of Humanitarian Affairs, these served '469,222 students and 17,564 teachers, representing about 75.8% of the total student population and 75.9% of the total teaching staff [87].' As the war continued, schools became places to shelter civilians. Even if, as is doubted by a Human Rights Watch report [52], the schools were also sheltering Hamas fighters, indiscriminate killings are war crimes.

As well as a means of sustaining the population with fresh food, agricultural land is part of the living culture and heritage of Gazans. This too has been a target of the Israeli military. Using satellite imagery, researchers have documented that over half the greenhouses in the Strip had been damaged less than a year after the onset of the war, and up to 90 percent of the cropland in some places damaged [110]. Causing the destruction of the means of feeding a population is also a human rights violation according to the Statutes of Rome and the Geneva conventions [38]. Making Gaza into a cultural and ecological blank slate while also starving the population enables it to be rendered as *terra nullius*, a variant of techniques used in other colonial operations to create rightless indigenous populations [77].

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), defines genocide as the violent and intentional destruc-

tion of a national, ethnic, racial, or religious group "as such," whether through killing, causing serious bodily or mental harm, deliberately inflicting conditions of life intended to bring about the group's physical destruction, imposing measures to prevent births, or forcibly transferring children [93]. In the words of Raphael Lemkin, the Jewish-Polish jurist who coined the term: Genocide is a 'concentrated and coordinated attack on all aspects of nationhood' which he elaborates as targeting a distinct national, ethnic, religious, or racial group, through various actions whose purpose is to destroy the essential foundations of the group's life, with the goal of destroying the group itself [61, 82]. 'Palestinian Gaza', Goldberg argues 'as a geographical, political, cultural, and human entity no longer exists.' Therefore, '[g]enocide is the deliberate destruction of a collective or part of it, not of all of its individual members—and that is what is happening in Gaza today [45, 177].' Both morally and legally, genocide can never be justified under any circumstances, including as an act of self-defence.

The factors we have mentioned here signify a paradigm shift by which the war on Gaza moves from a legal discussion of the right to self-defence to an analysis of how military and political power, along with law, are deployed to assert territorial domination and advance settler-colonial objectives. This shift situates the discourse within a broader framework of settler colonialism and the elimination of indigenous populations, linking it to the industrial-scale violence of the modern world [73], in which genocide functions as a means of fortifying colonial control rather than being an end in itself. To illustrate: if the dominant definition of anti-Semitism is that of Zionism [47], and the current governmental iteration of it is to occupy the entirety of historic Palestine, any objection to such occupation signals an invalidation of the human rights of Jews because Israel has constituted itself as a state that uniquely protects the rights of Jews. Indeed, Israel's 2018 Basic Law gives primacy of rights and unique rights of self-determination to Jews [82]. If self-determination is restricted to the Jewish people, Palestinians have no parallel rights anywhere that Israel asserts its authority. The right to colonise therefore becomes an exclusive human right enjoyed only by Jews. As Gordon notes [47, 588], this signifies an inversion of the post 1948 understanding of human rights as a set of equal protections for all groups.

Israel's right to confer exclusive rights to a single ethno-religious group is largely indifferent to how these rights are defended and implemented, and to how Palestinians are affected by their exercise. For example, Israel's retorts to accusations against its military for the killing of civilians, targeted assassinations of journalists and health workers, and the destruction of land and civilian buildings have varied [103]: denying the events occurred, shifting responsibility to civilians, or claiming these incidents were in pursuit of Palestinian terrorists, while simultaneously attacking the charges themselves as anti-Semitic, fabrications, or both [32]. The pattern of responses is facilitated by Israel's systematic restriction of independent verification, as the Israeli military has destroyed the means of collecting evidence about its conduct in Gaza by banning journalists and international observers from entering the Strip, even after the 2025 caesefire. Voices from within Gaza's universities have also been silenced by bombing every school and university there and killing hundreds of educators including senior officials and scholars at the Islamic University of Gaza, the largest university in Gaza [74]. Such actions reinforce Israel's well-documented campaign of disinformation or *alethocide*, the destruction of truth [55].

The movement from invoking the right of self-defence to securing colonial control and/or annexation of Gaza is signified in part by the plans for the redevelopment of the Strip and the removal of Palestinians there at the conclusion of the war. As early as July 2025, the US and Israeli led Gaza Humanitarian Foundation (GHF) commissioned the Boston Consulting Group to draw up plans to reconstruct the territory and relocate up to half a million Palestinians [43]. Although GHF was principally responsible for distributing food to starving Gazans from May to November 2025, it played a key role in lubricating annexation and depopulation. While relieving some of the extreme hunger induced by Israel's restricting of food deliveries into Gaza, GHF executed many people seeking aid. According to the United Nations, GHF's heavily armed employees, along with Israeli soldiers, shot and killed about 2100 Palestinians attempting to reach the few distribution centres [79]. At the same time a group of far right Israeli politicians, including some in the Netanyahu government unveiled a plan to annex Gaza arguing that "the right of the people of Israel to settle, develop and preserve this land is not just a historical right—it is a national and security obligation [30]." Echoing previous sentiments by his son in law, the property developer Jared Kushner, Donald Trump has suggested that "…we just clean out that whole thing [58]." This referred to the emptying of Gaza of Gazans, removing all the rubble, and opening opportunities for real estate development.

The *coup de grace* for at least some version of annexation is the UN Security Council Resolution 2803(2025) [89]. This document which has the force of international law, operationalises Donald Trump's 'Comprehensive Plan to End the Gaza Conflict'. It places a leader whose government funds and supports one party to the conflict while vilifying the other, as President over an international Board of Peace (BoP). The Executive of the Board include Ajay Banga of the World Bank, former UK Prime Minister Tony Blair, and Trump's own officials, Marco Rubio, Steve Witkoff, Susie Wiles and Jared Kushner [21].

The BoP sets the terms for the funding and establishment of a post war Gaza and will supervise 'competent Palestinians' in the delivery of public services and the regeneration of an economy. These activities will be funded by unspecified voluntary contributions, and the World Bank is called upon to participate. An International Stabilisation Force (ISF) will demilitarise and coordinate security in the Strip, but there is no detail in the document about where such a force will be recruited from and what its rules of engagement are to be. Although Article 16 of Trump's 'Comprehensive Plan' explicitly states that Israel will not occupy or annex Gaza, the IDF is given a role in coordinating with ISF over security. More importantly, the IDF remains in charge of a 'security perimeter' of land for an unspecified time. Instead of any accountability in international law for the genocide of up to 200,000 Palestinians, the Israeli military is rewarded by placing it in effective military control of Gaza.

Semantic ambiguities, missing details, and unspecified timescales in this resolution open paths for either a direct violation of Trump's Article 16 or a rebuilding of Gaza that permits the territory to being more intensively colonised by Israel, the US and corporate interests, a plan which Trump has already mooted. If Hamas and other groups do not disarm, Israel is at liberty to continue to occupy the 'security perimeter'. Since Israel has already violated the 10 October 2025 ceasefire by killing at least 574 Gazans as of early 2026 [16], it is not unimaginable that annexation and depopu-

lation will be an outcome of a haphazard and opportunistic implementation of the UN ceasefire resolution. Furthermore, Trump's 'Comprehensive Plan' promises a 'Trump economic plan to rebuild and energize Gaza' and a 'special economic zone'. With the Gaza population reduced to penury and the economy virtually destroyed by Israel before 7 October [76, 208], it is unlikely that many Gazans, 1.48 million of whom were in emergency shelters because 81 percent of the buildings in the Strip have been destroyed by late 2025 [97], will have the means to remain. Moreover, the 'security perimeter' over which the IDF will control comprises 53 percent of the territory and this adds to the 17 percent Israel occupied as a 'buffer zone' when it withdrew its settlers from Gaza in 2005. According to satellite imagery in mid-January 2026, over 2500 buildings as well as greenhouses and orchards were demolished and razed in Gaza in the first two months since the ceasefire. These were justified by the IDF as targeting Hamas tunnels, mostly in the IDF controlled area of eastern Gaza where whole residential blocks have been reduced to rubble [49]. Two million Gazans have been living (mostly in tents) in 47 percent of Gaza since the ceasefire [18].

Beyond a brief mention of a 'pathway' to Palestinian self-determination and statehood, there is no commitment to addressing the causes of the conflict. There is no mention of the Occupied West Bank and East Jerusalem, parts of which have been annexed since 2023 through a joint process of establishing Jewish-only Israeli settlements on the one hand and demolishing the physical means of Palestinian connectedness—such as eliminating old roads and intersections, building, commercial centres and replacing Arabic with Hebrew signs—on the other [76, 51]. An important part of the process of erasing Palestine is the intensifying of forced displacements. In 2025, 32,000 people were physically removed from the refugee camps of Jenin, Tulkarem, and Nur Shams by the IDF and refused return. Eight hundred and fifty homes and other buildings were demolished in the process [51]. If such actions continue as seems likely, the majority of the West Bank would be ethnically cleansed for Jewish-only occupation, a direct violation of the Fourth Geneva Convention.

By omitting discussion of the West Bank from even the cursory mention of Palestinian self-determination and statehood, the UN Resolution assumes that Palestinian rights can be understood by reference to Gaza alone. This is despite the same processes of killings, occupation and annexation occurring in both territories. Video evidence of a summary execution of two unarmed men by the IDF on 28 November 2025 is part of a larger pattern of impunity for violating Palestinians right to life by Israel in the West Bank [23]. The Israeli government not only defends such actions but applauds them as the correct actions to take against 'terrorists'. This all accords with Azoulay's notion that what are being exercised here are 'imperial rights', and that 'declarations of human rights are the materialization of imperial rights [14, 453].' This would appear to be the case with UN Security Council Resolution 2803(2025).

The right of Palestinian self-determination in the Resolution is shaped not by Palestinians but by a foreign power that has armed Israel and a President who has boasted about turning Gaza into an ethnically cleansed Riviera that would be 'taken' by the US. Instead of a pathway to Palestinian self-determination, the text of the Resolution opens a more likely segue to theannexation and ethnic cleansing of Gaza. The huge reliance on Trump as President of the BoP and the intention to activate the 'Trump economic plan' also has the potential to make the Strip a personal colony of

a convicted felon who already has numerous conflicts of interest between his Presidency and his family businesses [44]. As Arab Studies scholar Joseph Massad has pointed out [66], this recalls one of the most murderous episodes in colonial history when Belgian King Leopold II assumed personal control of the 'Congo Free State' of which he was also the owner from 1885 to 1908. Whether these new legal and political forces make Gaza some twenty-first century analogy to King Leopold's kingdom or an annexed part of Israel in which surviving Palestinians are either treated as subsidiary rights holders in a Jewish state or completely removed, as is the wish of many in the Netanyahu government, remains to be seen.

4 Conclusion

In a context where Palestinians have been systematically alienated from their history and geography, the very notion of a Palestinian right to self-defence becomes contested, while the dispossession of Palestinian land and rights is reframed as legitimate self-defence and presented as a matter of justice. This inversion, though seemingly simplistic, has over the years transformed what Koestler termed in 1948 as "drab efficiency" into capricious functionalism; a haphazardly bureaucratised violence in which those responsible for the destruction of Gaza and the killing of hundreds of thousands are shielded from accountability through the patchy application of international law and human rights standards. The moral ambiguity surrounding this is deepened when we consider that the man leading this, Prime Minister Benjamin Netanyahu, has been on trial since 2020 for bribery, fraud and breach of trust including soliciting favours from wealthy donors and favourable media coverage [22].

The killings and violence reported in and around Gaza over the past two years, continuing even after post-ceasefire agreements and extending to the West Bank, exhibit the characteristics of a pogrom, targeting both the physical destruction and social fragmentation of the Palestinian people, Muslim and Christian alike. Legislative measures, such as draft laws imposing the death penalty in a discriminatory manner on individuals convicted of killing an Israeli (whether intentionally or recklessly), or of attacking Christians during Christmas celebrations [9], further reinforce this pogrom-like dynamic, embedding violence and terror into legal and administrative frameworks, but also into the mundane, everyday life of the population.

This dynamic, however, cannot be fully understood, nor can its execution in full impunity be properly grasped, without reference to Giorgio Agamben's concept of the *state of exception*, [4, 2] which he identifies as the dominant paradigm of modern government. Under such a state, governments authorize themselves to operate beyond the constraints of national and international law, deliberately violating treaties, agreements, and legal obligations with impunity. Israel's war on Gaza provides a striking example of Agamben's *state of exception* in practice.

The war on Gaza has generated extensive debate around multiple forms of exception, revealing what might be termed a "paradox of the exception." The attacks of October 7 have been framed as unprecedented, a standalone event warranting exceptional punishment, detached from a longer history of settler colonialism, occupation, blockade, and highly structured systems of domination and control. Similarly, the

subsequent Israeli violence, justified as an act of self-defence, has been presented as an exceptional response to an exceptional attack. Gaza's status prior to 2023 as a territory that is formally "disengaged" yet subjected to almost complete external control, has created another condition of continuous exception in which Israel exercises authority without accountability. In this context, claims to self-defence appear fundamentally distorted: A power that occupies or effectively controls a population invokes the right to self-defence against violence arising from the conditions of its own domination.

Not only did the Gaza war bring debates over the paradox of exception to the forefront, it also exposed deep structural flaws and weaknesses within international law. These weaknesses continue to privilege imperial prerogatives over codified rights, state sovereignty over self-determination, foreign capitalism over Palestinian economic development, security over survival, and state violence over the rights and lives of indigenous populations. In doing so, the 2025 UN Resolution potentially perpetuates the very conditions it claims to regulate. Another key weakness revealed by the war is the structural delay within international law and legal institutions, which often take extensive time to determine whether killings constitute war crimes, while atrocities, including acts that may amount to genocide, continue unabated, exposing the chasm between legal theory and the realities on the ground.

In his book *Obliteration Doctrine*, Steinbock argues that genocides must be prevented, not merely streamed in real time [83, 224]. He warns that as long as the implementation of the Genocide Convention relies on *ex post facto* assessments—identifying the crime only after the bodies can no longer be revived and the perpetrators have fled—genocide will remain a recurring reality. By that point, remedies can neither restore the status quo nor address the underlying political and economic conditions that gave rise to the violations—as seen in cases like the Rwanda genocide. Once atrocities have occurred, legal responses often come too late to make meaningful change. This is partly because even rights designated as 'binding' under international law often lack effective enforcement mechanisms to ensure compliance by states. In practice, there is little functional difference between binding and non-binding norms, except that the latter may, at times, be more persuasive to governments [57, 351, 369]. This reality underscores the urgent need to move beyond reactive legal debates and towards preventative measures. What is needed, Steinbock contends, is minute and proactive attention to institutional changes within military systems that signal the mobilization for genocide, so that preventive action can be taken in time.

In the end, the only exception that has proven enduring is the resilience of the Palestinian people, the extraordinary dignity and humanity they have shown even in the darkest of circumstances, embodying Darwish's vision of "a life worth living," even amid situations of radically "drab efficiency."

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