European Journal of International Law
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Reading through Rupture: International Law and the Question of Palestine before and after October 7

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Michael Barnett, Nathan J. Brown, Marc Lynch and Shibley Telhami (eds). ***The One State Reality: What Is Israel/Palestine?***. Ithaca, NY: Cornell University Press, 2023. Pp. 372. $42.95. ISBN: 9781501768408.

Omer Bartov. ***Genocide, The Holocaust and Israel-Palestine: First-Person History in Times of Crisis.*** London: Bloomsbury Academic, 2023. Pp. 264. $29.95. ISBN: 9781350332324.

Azmi Bishara. ***Palestine: Matters of Truth and Justice.*** London: Hurst, 2022. Pp. 442. $33. ISBN: 9781787387102.

Ardi Imseis. ***The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity***. Cambridge: Cambridge University Press, 2023. Pp. 310. $74. ISBN: 9781316513897.

> Is it possible to build a new world without uncovering the crimes and misdemeanors of the past, by drafting a future-oriented agenda geared as much to erasing the past as to constructing the future? Repressed pasts rarely go away; eventually they will resurface in an altered form but with no less ferocity. This is why workable futures must be anchored in their origins instead of detaching themselves from them, however difficult the confrontation with events leading to the present may be.
>
> – Omar Bartov, *Genocide, The Holocaust and Israel-Palestine*[1]

* I would like to recognize the invaluable feedback received from the editors, Donald Bloxham, Charlie Peevers and Jessica Whyte.

[1] O. Bartov, *Genocide, The Holocaust and Israel-Palestine: First-Person History in Times of Crisis* (2023), at 178.

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1 Introduction

If we have learned anything as international lawyers witnessing the Gaza genocide, it is that we cannot rely on the law to provide a semblance of solace to the suffering that continues unabated. Jarringly, deafening silences are countered by a roar of often unabashedly partisan reportage that can broadcast liquidation or its denial, leaving us overwhelmed, numb or 'quietly going mad'.[2] While a panoply of poetry,[3] policy prescriptions, open letters,[4] blog posts, podcasts,[5] social media posts,[6] personal memoirs[7] and scholarly special issues[8] have sought to make sense of this moment, at least at this juncture, it seems that international legal scholarship has only offered up faltering fragments of analysis. Divisions within the discipline have deepened.[9] Some of us have doubled down on doctrine, helping to furnish a vast array of responses to the latest violation or the latest pretence at peace. Some of this work has supported an impressive arsenal of legal arguments and advocacy efforts.[10] While practical lawyering is important, it rarely provides a window into making sense of broader trends and perhaps

[2] P. Mishra, 'The Shoah after Gaza', *London Review of Books* (21 March 2024), available at www.lrb.co.uk/the-paper/v46/n06/pankaj-mishra/the-shoah-after-gaza .

[3] Most (in)famously, R. Alareer, *If I Must Die: Poetry and Prose* (2025).

[4] For example, see UK Judges' and Lawyers' Open Letter Concerning the Occupied Palestinian Territory, 26 May 2025, available at https://lawyersletter.uk/; 'Public Statement: Scholars Warn of Potential Genocide in Gaza', 17 October 2023, available at https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/.

[5] Such as Ramzy Baroud, *FloodGate*, available at https://ramzybaroud.net/tag/floodgate-podcast/, the weekly podcast of *Electronic Intifada*, available at https://electronicintifada.net/blog/electronic-intifada-podcast, or the Foundation for Middle East Peace, *Occupied Thoughts*, available at https://fmep.org/resource/index-podcasts-webinars-interviews-2023-present/.

[6] See, e.g., Zaioor, 'Hashtagging Genocide: Popular International Law in the Digital Age', 44 *Australian Yearbook of International Law* (forthcoming).

[7] Such as O. El Akkad, *One Day Everyone Will Always Have Been against This* (2025); M. El-Kurd, *Perfect Victims and the Politics of Appeal* (2025).

[8] There are now many special issues on Gaza from a variety of disciplines. For international law, noteworthy is Tor Krever *et al.*, 'On International Law and Gaza: Critical Reflections', 12 *London Review of International Law* (2024) 217, as well as blog symposia, such as in *Humanity* and *Völkerrechtsblog*; see also the special issue for 47(10) *Third World Quarterly* (2026).

[9] Tzouvala, 'International Law as a Discipline in Crisis', 79 *Australian Journal of International Affairs* (2025) 71.

[10] Notable examples here include the work of UN special rapporteur Francesca Albanese and her creative legal reports, innovative approaches to report writing by UN special rapporteur Michael Fakhri, extensive legal documentation efforts such as by Law 4 Palestine (https://law4palestine.org/), the creation of new civil society organizations to pursue legal accountability, such as www.hindrajabfoundation.org/, and an array of peoples' tribunals, including the Gaza People's Tribunal, available at https://gazatribunal.com/. See M. Burgis-Kasthala, 'The Gaza Tribunal in Sarajevo: Globalising Genocide Accountability and Activism', *EJIL: Talk!* (27 June 2025), available at www.ejiltalk.org/the-gaza-tribunal-in-sarajevo-globalising-genocide-accountability-and-activism/.

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it consoles us into thinking that such labour is enough; we have fulfilled our scholarly duty.[11] But this is not enough, and it is unclear what would be enough.

We could throw up our collective hands and proclaim the death of international law.[12] Some of us have already done so.[13] Yet, as a professional lexicon finely tuned to speaking a particular vernacular of politics and as a discipline that organizes an array of governance projects, international law has survived, even if in a weakened form.[14] This is also the case for the majority of Palestinians in Gaza, including those who continue to invoke international law as a language that can speak to at least some of their aspirations.

Currently, the fates of international law and of Palestine are inextricably and intimately linked perhaps as they never have been before. Although Palestine's modern history[15] closely tracks key international legal trends writ large, it is only now amid such existential reckoning that we can fully appreciate the interdependency between the tiny territory of Palestine/Israel and the broader fortunes of international law.[16] In a world that had experienced widespread decolonization during the 1950s and 1960s,[17] Palestine tended to figure as an awkward exception to the norm of post-colonial independence.[18] Yet its centrality in embodying international law's paradoxical promise and denial for colonized peoples means that it is the litmus test and the laboratory for our age.[19] The events of 7 October 2023

[11] Dader *et al.*, 'When Resilience Becomes a Burden: Reflections from Gazan Palestinian Scholars', 54 *Journal of Palestine Studies* (2025) 51.

[12] L. Kinstler, 'Are We Witnessing the Death of International Law?', *The Guardian* (26 June 2025), available at www.theguardian.com/law/2025/jun/26/are-we-witnessing-the-death-of-international-law.

[13] A.R. Hindi, 'International Law Is Dead', *TWAILR* (20 November 2023), available at https://twailr.com/international-law-is-dead/#:~:text=For%20certain%20people%2C%20there%20really,here%20for%20the%20dearly%20departed.

[14] Schwoebel-Patel, 'Rubble', in R. Vos *et al.* (eds), *International Law and Architecture* (2025) 63.

[15] R. Khalidi, *The One Hundred Years' War on Palestine: A History of Settler Colonial Conquest and Resistance* (2020).

[16] Nesiah, 'After Gaza', 19 *International Journal of Transitional Justice* (2025) 199.

[17] S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (2011).

[18] Noteworthy here too is Western Sahara. It is no coincidence that Moroccan and Israeli foreign relations are fortified by their respective efforts to absorb foreign territory under their permanent control. Imseis, 'State of Exception: Critical Reflections on the Amici Curiae Observations and Other Communications of States Parties to the Rome Statute in the Palestine Situation', 18 *Journal of International Criminal Justice* (2020) 905; see also Makdissi, 'Beyond the Palestine Exception', 8 *Critical Times* (2025) 1.

[19] J. Collins, *Global Palestine* (2011); A. Loewenstein, *The Palestine Laboratory: How Israel Exports the Technology of Occupation Around the World* (2023); Nesiah, *supra* note 16, at 206; Sirleaf, 'Palestine as a Litmus Test for Transitional Justice', 18 *International Journal of Transitional Justice* (2024) 162; Sultany, 'The Question of Palestine as a Litmus Test: On Human Rights and Root Causes', 23 *Palestine Yearbook of International Law* (2022) 3. Specifically, as a laboratory

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and their ongoing aftermath simply brought such trends into sharper relief. While undoubtedly constituting a rupture of sorts, the last couple of years also mark an intensification of pre-existing trends that are playing out across the Middle East[20] as well as within the field of international law itself. Thus, pausing to read together and to review these four books, which were all written only shortly before 7 October, is a particularly productive exercise. It can transport us back to a time that was not filled with near-instantaneous updates on body counts, condemnations and yet another legal report. Removing ourselves from the cacophony of death and its dissection forces a reappraisal of how international law might still be a useful frame through which to understand Palestine/Israel both before and after 7 October.

This review essay also self-consciously reads across the 'conceit of [the] temporal novelty'[21] of positing October 2023 as 'zero hour'[22] by placing Ardi Imseis' international law text alongside these other three important contributions from the fields of international relations (IR) and politics, foreign policy as well as history and genocide studies. Such an extra-disciplinary dialogue reveals the parochialisms, blind spots and biases of international law approaches to Palestine/Israel,[23] but it also reminds us about the possibilities of legal research and writing at this moment.

Thus, this review is as much concerned about what Palestine means for international law as it is about what international law has meant and could mean for Palestine. It builds on the singular insight of Edward Said, who noted in 1986 that 'Palestine is a topic, a subject, a "matter" about which interests and knowledges have evolved, but, like other such knowledges,

of artificial intelligence (AI) warfare, see this groundbreaking report by Y. Abraham, 'Lavender: The AI Machine Directing Israel's Bombing Spree in Gaza', *972 Mag* (April 2024), available at www.972mag.com/lavender-ai-israeli-army-gaza/. Note that the 'laboratory' thesis significantly predates October 2023 and has also been critiqued for reinscribing many features that it tries to challenge. Machold, 'Reconsidering the Laboratory Thesis: Palestine/Israel and the Geopolitics of Representation', 65 *Political Geography* (2018) 88. Dirk Moses also questions the 'litmus test' claim about Gaza, as there have been many examples of such violence. Moses, 'An Earlier Genocide Debate: Vietnam, International Law, and the Question of Gaza', 36 *Law and Critique* (2025) 295, at 309.

[20] Notably, an intensification of Israel's annexation policies in the West Bank and East Jerusalem, strengthening public and private partnerships between Israel and the Gulf and a realignment of the 'axis of resistance', especially after Israel's killing of Hizbollah's leader, Hassan Nasrallah, in September 2024 and the fall of Syria's Assad regime in December 2024.

[21] Moses, 'The Diplomacy of Genocide', in M. Bukovansky *et al.* (eds), *The Oxford Handbook of History and International Relations* (2023) 277, at 278.

[22] Donald Bloxham, 'The 7th October Atrocities and the Annihilation of Gaza: Causes and Responsibilities', 28 *Journal of Genocide Research* (2026) 294.

[23] Kennedy, 'When Renewal Repeats: Thinking against the Box', in W. Brown and J. Halley (eds), *Left Legalism/Left Critique* (2002) 373.

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they are implicated in the contest over and about Palestine'.[24] This is acutely so for international legal knowledges now.

The review begins by sketching out a series of dominant – even hegemonic – scholarly approaches that tend to inform how the Palestine question is approached within the fields of international law, IR and history. First, I revisit international legal proclivities for crisis and the pull towards isolating law from politics. Second, I examine Ian Lustick's attempts to dislodge the 'two-state solution' paradigm in favour of the 'one-state reality' within mainstream IR scholarship. I end the section by juxtaposing the approaches of Bartov and Said in exploring the relationship between narrative and nationalism. The point here is to use alternative vocabularies, categories and presumptions from adjacent disciplines to disrupt international legal conventions. The second section on 'temporality' explores why all the authors under review seek to replace 1967 with 1948 as the 'zero hour' for any serious analysis that can inform solutions today. Many of these temporal framings have also shaped how international law has been applied and understood within the context of Palestine/Israel. Thus, in the final section, I highlight how decades of regime-specific advocacy efforts have often precluded reckoning with the core issue, which remains self-determination for Palestinians and Israeli Jews in relation to the entirety of historic Palestine. Ultimately, I show that a thoughtful engagement with Palestine/Israel as grounded in 1948 invites a reappraisal of the liberatory project of international law *per se*.

2 Palestine and Paradigms: Pushing Past Scholarly Presumptions, Lexicons and Methods

A *International Law Presumptions*

As Hilary Charlesworth pointed out over two decades ago, crisis syncopates the profession of international law.[25] Extraordinary events provide international lawyers with a renewed sense of purpose in demonstrating their singular ability to 'solve' the latest seemingly political failure of governance. Often, such crisis work entails the critique of international law – that it was ineptly applied, that a better interpretation is required or that a new round of norm creation is needed – but such appraisals tend to accept extant power structures and background scholarly assumptions. Thus,

[24] Said, 'The Burdens of Interpretation and the Question of Palestine', 16 *Journal of Palestine Studies* (1986) 29, at 30.

[25] Charlesworth, 'International Law: A Discipline of Crisis', 65 *Modern Law Review* (2002) 377.

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crisis work in this reformist mode[26] tends to be about 'doubling down' on international law to prove its continuing currency in a world of flux.

In response to the 'Gaza crisis', for example, Vasuki Nesiah has broadly identified two camps within the field of human rights: those who cleave to the continued purchase of human rights discourse versus those who regard this moment as one warranting sustained reflection and resistance.[27] Whether as reformist or not, David Kennedy cautions that 'disciplinary renewal and consolidation … can … reinforce the field's long-standing biases and blind spots and miss the opportunity presented by … period[s] of anxiety and contestation to probe more deeply into the politics of the profession' and its unspoken assumptions.[28] Here, he is suggesting that international lawyers are expert in critique but that this need not result in sustained reflexivity about the field itself. Perhaps the more pressing challenge is to explore whether more radical critiques push us past disciplinary blind spots and biases. Whether before or after October 2023, have international law scholars devised new frames and new lexicons to speak about Palestine and 'the rules-based international order'? While recent events have been catastrophic, has this been reflected in the sustained examination of international legal presumptions writ large? What are some of the shared baseline assumptions of the discipline and beyond? Can we do this outside of what Arnulf Becker Lorca identifies as the 'crisis-renewal-reconstruction narrative' reflex?[29]

One way to answer these questions is to read Imseis' avowedly international law text alongside the other three books for the way in which he sets up key international legal assumptions and approaches. While Imseis strives to paint the United Nations (UN) – as the main site of international law – in less than glowing hues, his aim is not to destroy it but, rather, to redeem its promise for Palestine and other subaltern peoples. He recognizes that this has been an enduring concern of Third World Approaches to International Law (TWAIL) scholars, but he suggests that his book makes a unique contribution by taking the UN itself seriously for the first time. He does this by examining the work of the 1947 UN Special Committee on Palestine and the UN Relief and Works Agency (UNRWA) along with the UN General Assembly (UNGA) and the UN Security Council (UNSC). While he provides impressive detail about the UN, his depiction tends to suggest a largely monolithic body. It would have been useful to think through the role

[26] Eslava and Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law', 3 *Trade, Law and Development* (2011) 103.

[27] Nesiah, *supra* note 16.

[28] Kennedy, *supra* note 23, at 376.

[29] A. Becker Lorca, 'Five Reasons to Stay Away from the "Crisis and Renewal" Narrative in International Law', *EJIL: Talk!* (28 November 2025), available at www.ejiltalk.org/five-reasons-to-stay-away-from-the-crisis-and-renewal-narrative-in-international-law/.

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of the International Court of Justice (ICJ) as a UN body *vis-à-vis* the UNSC, the UNRWA or the Human Rights Council as fora for Palestinian claim making. While the book is not one of anthropology, it sets up an ambitious aim of representing the Palestinian people.[30] Methodologically, however, it is unclear how this might be achieved. Once Imseis has gestured to TWAIL scholars early on, they are largely shelved for the remainder of the book,[31] alongside a rich tradition of critical historical revisionism and methodology as well.

Instead, Imseis engages in detailed readings of key UN debates centred on partition, refugees, occupation and statehood to demonstrate how international legal principles as enforceable rights were foreclosed for Palestinians because of their ineradicable subaltern status. His detailed excursus of UN sessions over partition in 1947 is very engaging and important. It is perhaps the best part of the book as it engages extensively with contemporaneous materials. It provides a compelling account of how Eurocentrism informed some of the UN's earliest work, whose effects have been enduring. His basic argument here is a doctrinal one. As a Mandate territory, Palestine should have been treated by the UN as a trust territory with all of the built-in guarantees for the population until a choice of governance could be realized. Yet there is also some anachronism here and perhaps too much faith in law over politics, for instance, when he suggests that this episode was one that sidestepped an 'objective application of international law'.[32] Imseis places great store in self-determination as a right for Palestinians in the late 1940s when its robustness was far from assured.[33] It would take the wave of decolonization later to solidify the norm that is now *erga omnes*.[34] Here, it might have been useful instead to draw on recent TWAIL scholarship on international legal personality and the ever-elastic dimensions of sovereignty to problematize and contextualize Palestinian subalternity since the UN's inception.[35]

[30] A. Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (2023), at 4.

[31] But he does return to Third World Approaches to International Law (TWAIL) in the conclusion.

[32] Imseis, *supra* note 30, at 52.

[33] Azmi Bishara also evokes a strong claim to Palestinian self-determination by 1948. A. Bishara, *Palestine: Matters of Truth and Justice* (2022), at 62.

[34] While self-determination is included in the UN Charter, later United Nations (UNGA) resolutions were crucial in further solidifying the norm, especially GA Res. 1514 (XV), 14 December 1960. See especially A. Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (2019), ch. 3. Compare James Crawford who argues that by 1948 Palestine had a specific right to self-determination due to the League Covenant and the Mandate. J. Crawford, *The Creation of States in International Law* (2nd edn, 2006).

[35] For example, Imseis argues that there is no TWAIL categorization of subalternity. While TWAIL scholars might not use this same terminology, much of their work has been centred on this very concern – to uncover and make sense of how non-European peoples (whether as

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As TWAIL scholars have shown, racialized civilizational logics at play during the Mandate continued into the UN era and were not particular to Palestine. This is why reading both the Sykes-Picot agreement and the partition episode as international law is useful. It is also vital to read the history of Mandate Palestine more closely within its regional setting, on which there is available rich scholarship.[36] In his chapter on the Mandate era, Imseis describes the (never-implemented) Sykes-Picot agreement as emblematic of rule by law – that is, the cynical manipulation of legal forms to dominate the powerless. There is a suggestion here that international law in the early 20th century – or even now – can rein in great power politics. Thus, Sykes-Picot or the UN Partition Plan are aberrations from this better version of international law. Yet, legally speaking, Sykes-Picot was perfectly legal even if unpalatable. Great power interests shaped the League and then the UN itself. Does this mean that we should understand partition for Palestine as an instance of 'rule by law' in opposition to the 'rule of law'? Surely, law here is power all the way down. Rule of law and rule by law are two sides of the promise of liberal legalism that Gaza's genocide has undermined. Perhaps a better TWAIL-inflected examination of the Partition Plan would have been to trace the continuities and ruptures between the various plans for Palestine initiated during the Mandate era and read these alongside the UN's own failed blueprint.[37]

As per Sykes-Picot, the UN Partition Plan (through UNGA Resolution 181) was never implemented; instead, it was the civil, and then regional, war of 1947–1949 that ushered in the territorial and legal dynamics of the Israel/Palestine question. Imseis details how the UN would come to endorse this *fait accompli* through its refugee regime that sidelined the Palestinian right of return with a focus on quotidian welfare provision for stateless subjects. Imseis counters such policies with available legal doctrine that rejected the mass displacement witnessed in 1948. He suggests here that the international law regime of state responsibility as a resource of accountability can assist us in articulating the ongoing wrongs of the Palestinian people.

B *International Relations Scholarship and the One-State Reality*

What is absent here though is an honest reckoning with international law's relationship to foundational violence. The year 1948 was and remains the most important year for any Palestinian. So too for Jewish Israelis who celebrate Independence Day each year in April.[38] For international lawyers,

peoples or as states) have been structurally excluded from the promise of 'full' international legal membership. See, e.g., R. Parfitt, *The Process of International Legal Reproduction* (2019).

[36] This remains a singular contribution. T. Mitchell, *Carbon Democracy* (2013).

[37] Namely, the Haycraft Commission (1921), the Shaw Commission (1929–1930), the Peel Commission (1936–1937), the Woodhead Commission (1938).

[38] Bishara, *supra* note 33, at 22.

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the year marked the creation not only of a new state (Israel) through and upon Palestine's Nakba (Catastrophe) but also of the Universal Declaration of Human Rights, the Genocide Convention and the Geneva Conventions, which were all forged within this crucible.[39] While these texts explicitly reference the violence of World War II as a launch site, international law emerges here as a corrective to the violence that had come before. Yet what Israel's creation, and the UN's endorsement of it, shows us is that no legal system can avoid its founding violence. Law is not separate from violence; the two are intimately intertwined.[40]

Ian Lustick, who is one of the contributors to the *One State Reality* edited volume, wrote a seminal article on the relationship between violence and state making across the Middle East in 1997.[41] Writing for an IR audience in the field's pre-eminent journal, but firmly grounded in historical sociology, he argues in his article for the constitutive role of violence, either through external intervention or endemic forces, in the consolidation of states and, in particular, great powers. The slow and bloody emergence of strong nation states in Europe by the 19th century was not available in the same way to Arab regimes emerging from colonialism's shadow with its attendant international legal architecture:

> To the extent that one accepts the argument that political violence on a grand scale is how all developing great powers have welded large populations and extensive valuable territories within a single administrative domain and a single market, one must expect that international norms and great power policies have been responsible for blocking the emergence of a great power in the Middle East by deterring or preventing state-building wars from being fought to successful conclusions across existing Middle Eastern boundaries.[42]

As Arab states gained their formal independence after European and North American dominance, and in a context of the increasing regulation of force, the scope for sustained war making as state making was hindered.[43] Instead, what has plagued the region is a series of interrupted and unfinished

[39] Universal Declaration of Human Rights, GA Res. 217A (III), 10 December 1948; Convention on the Prevention and Punishment of the Crime of Genocide 1948, 78 UNTS 277; Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949, 75 UNTS 31; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949, 75 UNTS 85; Geneva Convention III relative to the Treatment of Prisoners of War 1949, 75 UNTS 135; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 1949, 75 UNTS 287.

[40] Cover, 'Violence and the Word', 95 *Yale Law Journal* (1985–1986) 1601.

[41] Lustick, 'The Absence of Middle Eastern Great Powers: Political "Backwardness" in Historical Perspective', 51 *International Organization* (1997) 653.

[42] *Ibid*., at 662.

[43] Tilly, 'War Making and State Making as Organized Crime', in P. Evans *et al.* (eds), *Bringing the State Back In* (2010) 169.

attempts to prosecute state making through war.[44] For example, since its creation in 1948, Israel has not officially declared its borders in the wake of the first Arab-Israeli war and its resulting armistice agreements.[45] Armed conflicts across the region over the last 75 years can also be seen partly through this lens of stunted state building through war within an era of Article 2(4). Perhaps the 2026 Iran conflict represents an attempt by Iranian or Israeli pretentions towards regional hegemony given that the norm against conquest has been degraded.[46] Regardless, Lustick's basic point 30 years on reminds us to factor in longer-term dynamics of political violence that continue to shape regional interstate relations.

Lustick's contribution under review here is just as illuminating as his earlier essay. His chapter opens a volume calling for scholars and policy makers to reorientate their thinking away from the 'two-state solution' (2SS) to the 'one-state reality' (OSR). In many ways, the events since 7 October have paradoxically only reinforced this premise further. While the divisions between Palestinians and Israelis, and, in addition, between different types of Palestinians, are more pronounced than ever, it does not contradict Israel's control over the entirety of the territory from the river to the sea. Where once talk of 'Greater Israel' could be relegated to the extremist fringes of Israeli politics, it is now being realized in two crucial ways. First, Israel is consolidating its domination over Palestinians within Israel and the occupied territories in ever more brutal ways.[47] Second, Israel is expanding its presence in Syria and Lebanon along with a series of opportunistic regional confrontations, such as the Twelve-Day War against Iran in 2025 or the Israeli-US 'military operation' against Iran, which began with the launching of strikes across the country on 28 February 2026, including the killing of Iran's Supreme Leader, Ali Khamenei, and an attack on a girls' school.[48] The Irgun's map representing Israel as spanning the entirety of Mandate Palestine and Jordan is starting to become reality on the ground.[49]

[44] Bishara also underscores this in relation to the Palestinian national movement, especially after the defeat of 1967, with its focus on armed struggle. Bishara, *supra* note 33, at 55–56.

[45] For example, see this vague statement on a government website. State of Israel, Survey of Israel, last accessed 20 July 2026, available at www.gov.il/en/departments/topics/international-borders/govil-landing-page.

[46] Brunk and Hakimi, 'The Prohibition of Annexations and the Foundations of Modern International Law', 118 *American Journal of International Law* (*AJIL*) (2024) 417; Peter Hallward, 'From a Right of Self-Defence to the Fact of Conquest', *Humanity Journal Blog* (7 June 2025), available at https://humanityjournal.org/blog/from-a-right-of-self-defence-to-the-fact-of-conquest/.

[47] N. Gordon and N. Perugini, *The Human Right to Dominate* (2015).

[48] Tom Dannenbaum *et al.*, 'Over 100 International Law Experts Warn: U.S. Strikes on Iran Violate UN Charter and May Be War Crimes', *Just Security* (13 April 2026), available at www.justsecurity.org/135423/professors-letter-international-law-iran-war/.

[49] The Irgun was a Revisionist Zionist paramilitary group established during the British Mandate. The Irgun fought during the 1948 conflict and was involved in the Deir Yassin

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While expansive renderings of 'Greater Israel' envisage territorial control extending from the Nile to the Euphrates, it can also be understood more metaphorically as Israeli predominance across the region.[50]

Recognizing these trends is uncomfortable for IR scholars who have taken the far more conservative and confined 2SS framework as the conceptual basis through which to analyse the Arab-Israeli conflict.[51] Equally, for international lawyers, it is difficult to escape the seductive strictures of the state form – that Israel's full-blown status might one day be realized too by Palestinians through a rigorous realization of their *ius cogens* right to self-determination as embodied by an (emaciated) state. Lustick's chapter and the volume *One State Reality* try to shock us out of the conceptual solace provided by the 2SS solution. Lustick begins his account by noting the contrast between the 2SS and daily life in Israel/Palestine. For example, he reminds us of how Palestinians living in the West Bank and under the control of Israeli soldiers or settlers do not experience Israel as an entity that ends at the Green Line (resulting from the 1949 Armistice Agreements). These day-to-day realities are so stark that it is forcing social scientists to re-evaluate their assumptions, which might entail redoubled efforts to strengthen 'a paradigm that is on the rocks'.[52]

Lustick points to Thomas Kuhn's work on paradigms to account for the duration and durability of the 2SS in the face of such contrary evidence. In a context of increasing scholarly lethargy, 'the project's theories become doctrines, orthodoxies that rely less on empirical results and more on political clout to fend off competition'.[53] Within this 'degenerative' phase of the 2SS paradigm, it does not have 'within it the means to quickly recognize when its time has passed or to establish procedures for discarding its assumptions when they become the obstacle, not the route, to progress'.[54] Part of this results from the social habitus of academia and diplomacy itself where '[e]ntire careers, projects, institutes, and subspecialities were built', for example, around now-discarded paradigms, such as modernization theory.[55] According to Lustick, the 2SS became an irrelevant fantasy after

massacre. Once Israel was established, it was incorporated into the army. M. Burgis-Kasthala, 'Palestine, Israeli and the (Dis)ordering of International Law', *Völkerrechtsblog* (31 July 2024), available at https://voelkerrechtsblog.org/palestine-israel-and-the-disordering-of-international-law/.

50 D. Levy, 'What Benjamin Netanyahu and the Israeli Right Mean When They Invoke "Greater Israel"', *The Guardian* (13 April 2026), available at www.theguardian.com/commentisfree/2026/apr/13/benjamin-netanyahu-middle-east-greater-israel.

51 I. Lustick, *Paradigm Lost: From Two-State Solution to One-State Reality* (2019).

52 Lustick, 'What and Where Is Israel? Time for a Gestalt Shift', in M. Barnett *et al.* (eds), *The One State Reality: What Is Israel/Palestine?* (2023) 33, at 45.

53 *Ibid.*, at 10; see also Lustick, *supra* note 51, at 43.

54 Lustick, *supra* note 52, at 40.

55 *Ibid.*, at 41.

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1967.[56] Ironically, of course, this is exactly when it could have become legalized through the imprimatur of UNSC Resolution 242, which is the central normative pillar informing all subsequent 2SS initiatives.

Such dissonance between the entrenchment of both IR and international law 2SS 'fetishisation'[57] sitting alongside the palpable impossibility of arresting Israel's post-1967 settlement expansion has required huge intellectual effort at sustaining the 2SS paradigm. It has 'been like using a funhouse mirror to assess and navigate reality',[58] and, clearly here, Lustick is calling on us to abandon the 2SS paradigm altogether. We can do this by starting 'with the assumption that the State of Israel already rules the entire area between the river and the sea'.[59] It does so through a racialized logic that produces a 'political caste system'.[60] This then entails that we see the Palestinian Authority (PA) not as a state authority in waiting but, rather, as the local enforcer of Israel's domination,[61] as some of the other chapters in the edited book also suggest.[62]

If we follow Lustick and the edited book *tout court* in replacing the 2SS with the OSR, this potentially frees up how we approach a solution that need not end in a 'fantasy' of statehood.[63] While it might provide far less importance to international law and to international lawyers, Lustick suggests that it is within the realm of (Israeli) domestic law and politics where the real struggles need to take place:

> All inhabitants of Israel, including noncitizen Arabs living in the West Bank, have rights under *Israeli* law enforceable in *Israeli* courts. The fight over this law foreshadows countless struggles that will ensue as the reality of apartheid in territories holding masses of noncitizens collides with global human rights norms and the

[56] *Ibid.*, at 42. This also seems to be the argument proposed in the introduction. M. Barnett *et al.*, 'What Is Israel/Palestine?', in Barnett, *supra* note 52, 1, at 10; see also Lustick, *supra* note 51, ch. 5.

[57] Boulos, 'New Legal Avenues for a Decolonising Agenda: The International Court of Justice and the Israeli Occupation of Palestinian Territories', 24 *Journal of Holy Land and Palestine Studies* (2025) 133, at 149.

[58] Lustick, *supra* note 52, at 45.

[59] *Ibid.*

[60] *Ibid.*, at 40.

[61] Now with the increasingly unbridled sway of far-right agendas in Israel that include calls for the destruction of the Palestinian Authority (PA) and the UN Relief and Works Agency (UNRWA) along with the expulsion of the Palestinian population, this model of contracting out the occupation appears dated and even quaint by comparison.

[62] Berda, 'Citizenship as a Mobility Regime', in Barnett, *supra* note 52, 89; Greenwald, 'Delegating Domination: Indirect Rule in the West Bank', in Barnett, *supra* note 52, 103.

[63] Note that some one-state-reality variants have fostered their own state-based fantasies. We might also consider Palestine's path to UN membership as a form of fantasy. I consider this move to the UN here. Burgis-Kasthala, 'Over-Stating Palestine's UN Membership Bid? An Ethnographic Study on the Narratives of Statehood', 25 *European Journal of International Law* (*EJIL*) (2014) 677.

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> legal and moral commitments of Israeli democracy, however limited that democracy may be.[64]

The crucial point for Lustick here is to challenge the (Israeli) domestic legal order[65] – as informed by international human rights law – for radical rethinking of Israel and Palestinian politics.[66] It is telling that Lustick's formula mentions neither Palestinians in Gaza nor those in the diaspora. He does acknowledge that current Israeli political trajectories are extremely limited in realizing any semblance of Palestinian dignity, and, therefore, as it stands, his call to domestic activism is insufficient in bringing about Palestinian liberation.

Thus, international law remains important even within Lustick's schema. A turn to the OSR is an opportunity to take seriously the affordances – and limits – of an apartheid-like struggle as it is informed by robust human rights principles.[67] Such a stance aims to bring about significant domestic change often in spite of internal resistance, which we see is only building within Israel. This would entail significant external pressure as informed by international law to bolster and inform domestic legal initiatives. There is a danger that such approaches – at least in the short term – could further radicalize Israeli rejectionist positions.[68] Indeed, Lustick's vision seems politically near impossible to fathom in a context where the Israeli Jewish polity has largely supported its army's conduct in Gaza,[69] but it nevertheless starts from the recognition of the reality of Israeli dominance over Palestinians and the Levant more broadly.

This example of the 2SS paradigm and its limitations points to a general theme of the books under review: political intransigence need not stifle intellectual analysis; instead, all authors regard moments of political deadlock as an opportunity to embrace creative alternatives. This first entails interrogating 'conventional wisdom' in our respective fields,[70] playing with

[64] Lustick, *supra* note 52, at 49.

[65] Perhaps most infamous here is the Israeli Jewish Nation-State Basic Law (2018), which enshrines Jewish supremacy. See The Jewish Nation State Law (unofficial translation), 25 July 2018, available at www.adalah.org/en/content/view/9569.

[66] Especially see N. Erakat, *Justice for Some: Law and the Question of Palestine* (2019), at 237.

[67] Especially see Nesiah, *supra* note 16, at 205.

[68] For example, in May 2026, immediately after unconfirmed rumours emerged about an arrest warrant from the International Criminal Court issued for finance minister Bezalel Smotrich, he ordered the demolition of the Bedouin village Khan al-Ahmar. Y. Knell and D. Gritten, 'Israeli Minister Smotrich Says ICC Prosecutor Seeking Warrant for His Arrest', BBC News, 20 May 2026, available at www.bbc.com/news/articles/c5y9jq2r907o.

[69] J. Ofir, 'Poll: Overwhelming Majority of Jewish Israelis Share Genocidal Belief That There Are No Innocent People in Gaza', *Mondoweiss* (3 July 2025), available at https://mondoweiss.net/2025/07/poll-overwhelming-majority-of-jewish-israelis-share-genocidal-belief-there-are-no-innocent-people-in-gaza/.

[70] This is a term frequently invoked by Imseis in his book without definition. See, e.g., Imseis, *supra* note 30, at 216.

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dominant assumptions and approaches from adjacent fields and perhaps creating new frameworks altogether. Typically, scholarly fields do not, or even cannot, speak to each other, and so making such an effort is arduous and might simply not work. For this reason, Azmi Bishara rejects any scholarly allegiance or specific methodology in his book about justice and Palestine, which makes eminent sense for a Palestinian scholar and activist who 'has lived with' the Arab-Israeli conflict 'on a daily basis for years'.[71] Instead, he gestures to 'justice' with its 'chief components [of] … equality and freedom'[72] as his fulcrum through which to make sense of current political horizons for Israel/Palestine and the region. Centring on justice also drives the work of Imseis and Bartov, while, perhaps for IR authors of the OSR edited book, a shared commitment to realism aspires to reveal policy and scholarly based injustices that preclude the realization of the 2SS or other futurities.

C *The Political Implications of Narrative Methodologies*

It is not surprising that of the four books it is the one authored by a historian – Omer Bartov – that devotes most effort to explaining a methodology. Yet, in doing so, Bartov is not simply gesturing to established conventions in his discipline; he is at pains to present his approach as a departure from standard historical accounts of the Holocaust in two ways: its commitment to personal testimony and the way in which it explicitly connects the Holocaust, Israel's creation and the Palestinian Nakba.[73] Much of the book builds on his extensive earlier work that considered how the Holocaust was experienced by Jews in Eastern Europe, especially in Galicia. In contrast to the vast literature available on life (and death) in the Nazi camps, Bartov characterizes the lands of eastern Poland and western Ukraine as largely uncharted territory and as 'sites of forgetting'.[74] Yet it is here in the intimate, personal spaces of small towns that had rarely experienced heightened inter-communal tensions before the war that the full force of brutal violence erupted: '[L]arge numbers of Jewish victims were murdered in full view of their neighbors, in public sites where Jews and Gentiles had lived side-by-side for centuries.'[75] He suggests that in such localities of

[71] Bishara, *supra* note 33, at 1.

[72] *Ibid.*, at 3.

[73] Here, though, there is a great discrepancy between Bartov's use of rich source material on the Holocaust as compared with his rather flattened account of the Nakba. Elhalaby, 'Nakba Denial: On the Politics of History and Genocide', *Parapraxis* 17 February 2025, available at www.parapraxismagazine.com/articles/nakba-denial. On Bartov's denial of Nakba empathy in his earlier work, see Bloxham, 'Response – Discussing Genocide: Two Moralities and Some Obstacles', in J. Matthäus *et al.*, 'Review Forum: Donald Bloxham: *The Final Solution: A Genocide*', 13 *Journal of Genocide Research* (2011) 107, at 147.

[74] Bartov, *supra* note 1, at 21–22.

[75] *Ibid.*, at 66.

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'communal' genocide the seemingly neat social scientific – or legal – category of bystander is 'basically meaningless … just as such attitudes as indifference and passivity do not actually exist under these circumstances'.[76] Yet he does not suggest that individual responsibility evaporated; he insists that 'even in the midst of horror there was always a measure of choice, and that such choices could and did save lives and redeem souls'.[77]

Bartov's methods of 'double perspective' – individual testimony contextualized within a 'larger, interconnected matrix'[78] and 'collective biography' from these erased communities – offer a corrective to accounts that have centred on German political histories or studies of Jewish death camps.[79] In trying to recover the everyday reality of the people who had once lived together, his driving concern is to make sense of how neighbours could resort to murder. The account that he builds about the 'intimacy of genocide' emerges from 'the complex interaction between Jewish victims, Gentile neighbours, and German perpetrators, and the links between the violence of the German occupation and that of the preceding and subsequent Soviet rule, [such that] violence and brutality became so commonplace and ubiquitous that they constituted a part of people's daily routine'.[80] While he refuses to generalize about the motivations of the perpetrators, he suggests that they tended to kill out of fear,[81] which emerged within a context of growing nationalist sentiments. Here, 'the Jews clearly did not fit into the Polish or Ukrainian visions of a new nation-state',[82] which became increasingly exclusivist. In such a setting, nationalism and narrative were coeval:

> [O]nce nationalism gave birth to the idea that the place belonged exclusively to one's own group, it became no longer possible to live with the stories of others: such competing narratives had to be eradicated along with their carriers. … Crucially, too, especially since the rise of nationalism, each group saw itself as the victim of others, particularly of its neighbours, whose successes it often viewed as the cause of its own misfortunes. Thus the interwoven fabric of narratives that had made up the social whole frayed and disintegrated.[83]

One national narrative could only thrive while another was denied. For Said, writing in 1979, this was also true for the Palestinians whose 'central problem is the official Israeli refusal to recognize or deal with the fact of

[76] *Ibid.*, at 29.
[77] *Ibid.*, at 66.
[78] *Ibid.*, at 2.
[79] *Ibid.*, at 13.
[80] *Ibid.*, at 170.
[81] *Ibid.*, at 196.
[82] *Ibid.*, at 52.
[83] *Ibid.*, at 197–198.

Palestinian nationalism'.[84] After countless 'peace' plans interspersed by ever more destructive wars, it is difficult not to notice the extent to which some things have not changed at all.[85]

Bartov explores the dynamic of remembering and forgetting locales within the fabric of competing national claims both in Galicia (including his mother's town of Buczacz) and in one of his own childhood towns of Ramat Aviv, close to the hill of Shayk Muwannis, where a Palestinian village had stood until 1948. He does so to remind us of the personal stakes in his own journey as a scholar, which he has gone on to explore in his popular writing after October 2023.[86] Bartov recognizes that relying so heavily on personal testimony, often arising from deep trauma, presents challenges to the historian. Most viscerally, such accounts are traumatizing, and he concedes that 'historians want to protect their own psyche from the damage they fear might be caused by it'.[87] Denying such trauma sustains trust in 'rationalist and Enlightenment values', which guide the work of history in identifying 'humanity's progress and improvement'.[88]

Such sentiments resonate with the reactions of many international lawyers who have witnessed the Gaza genocide in real time – can we rely on the 'rationality' of legal rules and their redress? Are our interpretative frames of any use in making sense of a people's annihilation?[89] While the subfields of international humanitarian law (IHL), international criminal law and international human rights law (IHRL) are no strangers to forensic reporting of criminality, it has been the profoundly personal confrontations of videos and photos that belie international law's own progressive protections. It is unclear how to respond to such suffering and the extent to which international law is the right register to invoke at all. Intellectually, of course, it is hard to fault Thomas Skouteris when he demonstrates the seductive deception of international law's improvement,[90] but it is another to accept this instinctively when witnessing the agony of loss on our phones.

[84] E. Said, *The Question of Palestine* (1979), at 242.

[85] This was written in 2024 in the 2024 foreword to Said's 1979 text. Makdisi, 'Foreword (2024)', in *ibid*., xi, at xiii.

[86] Such as O. Bartov, 'As a Former IDF Soldier and Historian of Genocide, I Was Deeply Disturbed by My Recent Visit to Israel', *The Guardian* (13 August 2024), available at www.theguardian.com/world/article/2024/aug/13/israel-gaza-historian-omer-bartov; Bartov, 'Infinite License', *New York Review of Books* (24 April 2025), available at www.nybooks.com/articles/2025/04/24/infinite-license-the-world-after-gaza/; O. Bartov, 'A State of Denial', *Prospect* (8 October 2025), available at www.prospectmagazine.co.uk/world/israel/71213/a-state-of-denial-israel-gaza. He has also published a book. O. Bartov, *Israel: What Went Wrong?* (2026).

[87] Bartov, *supra* note 1, at 64.

[88] *Ibid*.

[89] Especially see J. Butler, *Frames of War: When Is Life Grievable?* (2009).

[90] T. Skouteris, *The Notion of Progress in International Law* (2009).

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Perhaps the challenge for international lawyers at this moment is to sit with such discomfort,[91] to dwell with disillusionment and not expect either affective or intellectual resolution. As Rachelle Chadwick reminds us, a 'substantial body of feminist scholarship … attempts to disrupt linear, transparent and unproblematised articulations of "reflexivity", "representation" and "voice", focusing instead on the ethical and epistemic implications of acknowledgements and hesitancies, messy spots'.[92] This need not mean a rejection of political commitments, but it does mean recognizing our own 'interpretive hesitancy and analytic unfinalisability' in our international law work today.[93]

Bartov's core insight about the relationship between narrative and nationalism resonates with those of Said in his 1984 article 'Permission to Narrate'.[94] In this review of various sources evaluating Israeli conduct in the Lebanese civil war (as well as its engagement with Palestinian fighters and civilians), Said also values the recovery of facts, such as those cataloguing brutal violence. Yet he is at pains to demonstrate that documentation will not suffice, as 'the facts do not speak for themselves'. Instead, 'they require a socially acceptable narrative to absorb, sustain and circulate them. Such a narrative must have a beginning and an end', such as the Nakba, then Palestinian self-determination, the Shoah, followed by the creation of Israel, or 7 October leading to Israel's right to 'self-defence'. While Bartov was suggesting that the nationalisms of Eastern Europe resulted in profound injustices, Said invokes the promise of a Palestinian national narrative to 'restore justice to the dispossessed'.[95] He suggests that it is only through the linking of facts into a collectively articulated national narrative that the past can robustly inform a future.

Thus, while the OSR edited volume sidesteps Palestinian political aspiration and Bartov cautions against nationalist excess, Said underscores the central constitutive role of the nation in being the author of its history. Such concern to determine one's own story and one's own future has been, and continues to be, the animating motivation of the Palestinian struggle, whether as framed legally, through the notion of self-determination (or genocide as perhaps its antithesis), or politically, through the end of Israeli settler colonialism. As I show below, it is only through confronting the legacies of 1948 – as the simultaneous endorsement of (Israeli) nationalism and its (Palestinian) denial – that we can move beyond the current intellectual and political impasse. Since the British Mandate, international law has

[91] Dader *et al.*, *supra* note 11.

[92] Chadwick, 'On the Politics of Discomfort', 22 *Feminist Theory* (2021) 556, at 564.

[93] *Ibid.*, at 565.

[94] E. Said, 'Permission to Narrate', *London Review of Books* (16 February 1984), available at www.lrb.co.uk/the-paper/v06/n03/edward-said/permission-to-narrate.

[95] *Ibid.*

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enabled the infantilization of Palestinian national claims through endless conditionalities placed along the road to independence. Thus, while Bartov's palpable discomfort with nationalism is compelling, it cannot result in the continued denial of Palestinian national self-determination, whose contours – whether nationalistic or not – can only be shaped by the Palestinians themselves.

3 Temporalities

Such methodological sensitivity to the construction of narrative can inform how we read the four texts in their engagement with temporality. Given both the legal and political stakes of how beginnings are crafted in relation to Palestine/Israel, it is not surprising that the temporal choices informing each book profoundly shape their argumentative arc. This entails attention not only to broad narrative trajectories and continuities but also to the role of rupture. What are the key turning points pertaining to Palestine/Israel and international law over the last century for the respective authors? To what extent can their approaches also help us in assessing the extent to which October 2023 might constitute a new temporal rupture? Rather than rehearse each book's implicit or explicit chronology of the Palestinian Israeli predicament and its inter-relationship with international law, I highlight certain key moments and how they can be used to reinforce or dislodge the paradigmatic temporal framework of international law and its relationship with Palestine/Israel.

As we saw in relation to some of Lustick's earlier scholarship on Middle East state formation, war (or its absence) has been central to the (re)configuration of boundaries across the region. International law has shaped this reality, of course, so that, doctrinally since 1945, conquest could no longer result in valid legal title or sovereignty. Such a blanket prohibition has not repressed the resort to the use of force, however. Instead, it has resulted in a more complex legal tapestry of rights and obligations, which nevertheless have favoured the interests of established states over peoples and states in waiting. Thus, while some of the UN's most important early work (as surveyed by Imseis) concerned the partition of Palestine, it has been in fact the reality of brute force that has birthed the legal *status quo* of radical inequality between Israelis and Palestinians up until today: Israel as a state (with 20 per cent of its population as Palestinian) and the remaining Palestinian population as stateless (largely based in the occupied territories or neighbouring Arab states). In his chapter on the UNRWA and Palestinian refugee rights, Imseis argues that the agency's mandate was 'beset with an inherent contradiction'.[96] It focused on the humanitarian needs of a displaced

[96] Imseis, *supra* note 30, at 163.

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population as paramount while denying 'any consideration of their constituent political rights'.[97]

It would take another war – the June war of 1967 – to provide the framework for UN action that could form the basis for a legal approach to Palestinian national rights. Israel's military victory of 1967, which saw it occupy the (Egyptian-occupied) Gaza Strip, the Syrian Golan Heights, the (Jordanian-occupied) West Bank and Egypt's Sinai Peninsula, could not result in a sovereign claim to these territories.[98] Instead, they would fall under the IHL regime of occupation as a seemingly temporary[99] measure until such time as Israel handed back the territories, as required by the UNSC in Resolution 242.[100] Here, then, was a seemingly 'bright line'[101] of international legality for Israel/Palestine – Israeli sovereignty, on the one hand, and non-sovereignty, on the other, at a time when the norm of self-determination had crystallized. Israel's defeat of its Arab neighbours and, concomitantly, Arab nationalism[102] precipitated a radical turning inwards of the Palestinian national struggle that became centred increasingly on the newly occupied territories now under Israeli control.[103] While wider aspirations towards the liberation of Palestine in its entirety have never been abandoned, it was this confluence of events around 1967 (the *Naksa*/النكسة or setback) – regional weakness and fracturing, the forced displacement of around 300,000 Palestinians, Palestinian national politics as henceforth shaped under occupation and the concomitant international legal framework of occupation – that would result in the hegemonic international legal frame of a future Palestinian state as at best based within the confines of 22 per cent of Mandate Palestine.

Yet, while 1967 is the clear legal baseline for informing later international law-inflected approaches to Palestine/Israel, all of the books in different ways seek to centre the narrative on 1948 for its enduring effects up until the present. In centring on 1948, some authors are more concerned with explaining key sociological and political trends before 1948 than others. Imseis, for example, stresses the fundamentally biased structure of the Mandate regime from its inception to account for persisting failures within

[97] *Ibid.*, at 142.
[98] *Ibid.*, at 197.
[99] Adam Roberts, 'Prolonged Military Occupation: The Israeli-Occupied Territories since 1967', 84 *AJIL* (1990) 44.
[100] SC Res. 242 (1967).
[101] Koskenniemi, 'Occupied Zone: A Zone of Reasonableness?', 41 *Israel Law Review* (2012) 13.
[102] A. Dawisha, *Arab Nationalism in the Twentieth Century: From Triumph to Despair* (2003), ch. 10.
[103] Also note though that some of the most profoundly destabilizing effects of the 1967 defeat for Arab states comprised radical Palestinian elements in neighbouring Arab states, such as Black September in Jordan in 1970 and the Lebanese civil war (1975–1990). Bishara provides an extended examination of the various domestic, regional and international dimensions of the post-1967 war. Bishara, *supra* note 33, ch. 4.

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international law and politics to take Palestinian national claims seriously. Such a finding resonates with a broad array of international legal and historical findings, but it does so without sustained engagement with this wider scholarship.

For example, the Arab Revolt of 1936–1939 is only mentioned in passing in spite of the fact that at the time it 'was the longest anticolonial strike of its time until that point in history' and a massive challenge to British imperial rule.[104] It was a key driver of Britain's exit from the territory a decade later. For example, in her contribution to the edited book, Yael Berda posits that Israel after 1948 'was deeply affected by legacies of the broader British imperial context … [including Britain's] imperial toolkit of emergency'.[105] During the Arab Revolt, which saw widespread coordination between British Mandate authorities and the Yishuv (the Jewish community in Palestine before Israel was established), classifications of 'friend' and 'foe' informed counter-insurgency activities and the implementation of emergency laws.[106] These highly flexible categories of rule were deployed by Britain in surveilling and controlling colonized people in Palestine and beyond. They went on to inform 'the administrative toolkit of suspicion for the military government's relations with the Palestinians who remained' after Israel was established along with its 1949 permit regime.[107] Such governance as suspicion would extend further after 1967 once Israel occupied the remainder of Palestine. It did so not based on sovereignty over territory but, rather, as 'jurisdiction over the Palestinian population' wherever it was located – within Israel, in East Jerusalem as 'incorporated' into Israel or within the West Bank and Gaza Strip.[108] Key moments of seeming 'progress' towards Palestinian self-rule,[109] such as the Oslo Accords, which began in 1993, have instead provided opportunities for Israel to entrench further this ever-elastic logic of the administrative toolkit's governance as suspicion.[110] Thus, while moments such as 1948, 1967 and even 1993 (the first Oslo signing) are treated by Berda as significant, she simultaneously seeks to trace enduring colonial patterns of domination by law that largely operate at the domestic, rather than the international, level.

While Bishara is fervently committed to the centrality of 1948, as he is himself a Palestinian born in Israel but living in the Gulf, he also resorts to

[104] R. Khalidi, *The Iron Cage: The Story of the Palestinian Struggle for Statehood* (2007), at 106.
[105] Berda, *supra* note 62, at 92.
[106] *Ibid.*, at 93.
[107] *Ibid.*
[108] *Ibid.*, at 101.
[109] As devastatingly rebuked in E. Said, 'The Morning After', *London Review of Books* (21 October 2023), available at www.lrb.co.uk/the-paper/v15/n20/edward-said/the-morning-after.
[110] See Burgis-Kasthala, 'States of Failure? Ungovernance and the Project of State-Building in Palestine under the Oslo Regime', 11 *Transnational Legal Theory* (2020) 382; more expansively, L. Bhungalia, *Elastic Empire: Refashioning War through Aid in Palestine* (2024).

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sociological analysis of the Mandate period, as it was only then that Palestinian national identity 'crystalised'.[111] Perhaps paradoxically, widespread social, economic and demographic changes forced upon Palestinians under British rule have helped to entrench this sense of identity, which was tested to its limits first during the Revolt and then during the Nakba. Bishara surveys a range of historical work that establishes deep-rooted Palestinian lineages, but he distinguishes these from the nascent state-centred project that coalesced only after World War I:

> [B]efore the British Mandate there was no political, social and cultural structures that could produce and reproduce single collective identity, one that united Palestinians and fused their local identities into a people distinct from those of neighbouring countries. That is, Palestinian identities before the Mandate era were not 'nationalised' … towards political expression in a sovereign state.[112]

This phenomenon of emerging national political consciousness was also the product of complex new time/space configurations. The urban middle-class Palestinian elite who were already pursuing 'modernity' inhabited a temporality distinct from their rural counterparts. Under the Mandate's 'governing institutions and administrative instruments', these temporally distinct lives were coalescing.[113]

Before 1948, 'nakba' /نكبة tended to express a localized occurrence such as a period of drought in a particular district or a family tragedy. For Bishara, it was only with the events of 1948 that it took on a fundamentally national meaning, embodying an 'actual collective calamity of an unimaginable magnitude: the loss of their homes, their villages and their country'.[114] Bishara again returns to temporality here in rendering the scale of the loss: the Palestinians were not just dispossessed. They were yanked out of 'Place' and thrown into an aspirational future 'Time' that only their middle classes and traditional elites had been politically involved in before the Nakba.[115] The regional effects of this loss of Palestine resulting from Arab defeat cannot be overstated either. For Bishara, no 'major political ideological development in the region can be understood in isolation from the gaping wound of Palestine'.[116] This trauma would first inform Arab nationalism and then, as well, its demise after 1967 when all parties in the Arab Israeli conflict – including Palestine itself – would increasingly adopt individuated approaches towards Israel in various (abortive) efforts to 'solve' the question of Palestine.

[111] Bishara, *supra* note 33, at 60.
[112] *Ibid.*, at 67.
[113] *Ibid.*, at 49.
[114] *Ibid.*, at 48.
[115] *Ibid.*, at 49.
[116] *Ibid.*, at 90.

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As a Palestinian who has experienced and continues to experience the Nakba (he was elected four times to the Israeli Knesset before choosing exile in the face of treason and espionage charges), Bishara suggests that modern-day Israel has not tried to forget or suppress the events of 1948. Instead, he argues that there appears to be no need to 'conceal the truths about ethnic cleansing because it does not consider it, or the plundering and pillaging of Palestinian properties as crimes and moral offenses'.[117] This is corroborated by the wholesale official embrace of West Bank annexation and a culture of impunity in confronting historic and contemporaneous crimes.[118] Forced displacement has been and continues to be an official state policy in the face of Israel's perhaps greatest threat – demography.[119]

While Bishara suggests a sense of 'brazen shamelessness' regarding Israel's founding, Bartov takes a very different approach. He too palpably wrestles with how he is implicated in the simultaneous founding of Israel and the perpetration of the Nakba. At a domestic legal level, he points to various repressive efforts to suppress Nakba recognition, as exemplified by the 2011 'Nakba Law', which outlaws various activities, including the characterization of Israel's Independence Day as one of mourning.[120] For Bartov, a 'nation built on a cult of resurrection and memory could not possibly allow the summoning of the memory of its own birth in sin'.[121] Further, he points to the inability of the Israeli national psyche to confront its interdependent denial of the (Jewish) diaspora and the (Palestinian) Nakba. For his generation that would grow up in newly established Israel, the creation of the 'new Jew' meant sustaining a narrative of strength and independence – the Sabra.[122] Jews from the diaspora who had been murdered seemingly

[117] *Ibid.*, at 37.

[118] Most recently, see Graham-Harrison, 'Israeli Former PM calls on ICC to Halt West Bank "Jewish Terrorists" after Prosecutions Stop', *The Guardian* (25 March 2026), available at www.theguardian.com/world/2026/mar/25/no-israel-prosecutions-for-killing-palestinian-civilians-in-occupied-west-bank-since-start-of-decade; see also reports of the Special Rapporteur on the Occupied Palestinian Territory, such as her latest relating to torture on 19 February 2026. F. Albanese, 'Torture and genocide', Human Rights Council, 23 March 2026, available at www.ohchr.org/en/documents/country-reports/ahrc6171-torture-and-genocide-report-special-rapporteur-situation-human.

[119] Lustick, 'The Red Thread of Israel's "Demographic Problem"', 26 *Middle East Policy* (2019) 141.

[120] Bartov, *supra* note 1, at 117–118. For an overview of the provision, see "Nakba Law" – Amendment No. 40 to the Budgets Foundation Law, 2011, available at www.adalah.org/en/law/view/496; see also Y. Kapshuk and L. Strömbom, 'Israeli Pre-Transitional Justice and the Nakba Law', 54 *Israel Law Review* (2021) 305.

[121] Bartov, *supra* note 1, at 119.

[122] Bishara, *supra* note 33, at 241. Sabra means cactus in Hebrew (or sabaar/صبار in Arabic). The plant suggests strength and resilience in a harsh environment. Cactus plants were/are often used by Palestinian farmers to demarcate plots of agricultural land. They remain a striking remnant of the Nakba in villages now devoid of people. The etymological root in Arabic also informs the words for patience (الصبر). Bishara briefly develops his notion of '*Sabra* culture' in chapter 8. See also the documentary film *Memory of the Cactus* (2008), available at

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without a fight were harder to integrate into the new national mythology.[123] They were to be remembered but not to be emulated. It was only the Warsaw Ghetto uprising of 1943, as linked with the 1948 War of Independence, that could be held up as the model of Jewish resilience and agency to inculcate into the new state. Accordingly, to not only venerate the victims of the Shoah but also to break from this past, Israel was 'built around the notion of never again' and 'we shall never forget'. Yet, paradoxically (or not),

> the constitutive events of 1948 were based on … the mirror reflection … of these slogans: the process of expulsion, the Palestinian Nakba, was not merely an event that would never happen again, but became an ever-recurring, never-ending event, whereby an entire people remains either exiled or under various forms of oppression. The 'never again' in this case became 'again and again', an interminable effort to 'complete the job' in the face of stubborn insistence to hold out, either as '*sumud*' [steadfastness, الصمود] … or as never giving up the aspiration to return to it.[124]

While these words were written only shortly before Israel's genocidal campaign against Gaza began in late 2023, they point to persisting Israeli challenges of nationalism, statehood, demography and memory.

Thus, in their myriad, different ways, all four texts centre on 1948 as the most important moment through which to understand both Israel/Palestine and its relationship with international law. This need not mean denying colonial continuities from the Mandate period or understating normative and political developments that came afterwards. While the post-World War II period gave rise to seminal IHL and IHRL developments for international law, it was the rupture precipitated by the 1967 war that would come to inform dominant international legal, including UN, efforts at 'solving' the Palestinian question especially through the 2SS. Yet, in taking this approach, Bishara reminds us that the 'two-state solution, in imagining the end of the 1967 occupation makes it necessary to normalise, or nativise, the pre-1967 Israeli state'.[125] Perhaps the question to ask now is the extent to which the Gaza genocide forces a re-evaluation of this 1967 framework in favour of 1948. Many authors, especially those in the OSR edited volume,

www.tpff.ca/program-guide-2008/2008/10/25-bx66k. On the Israeli Sabra, see Zerubavel, 'The "Mythological Sabra" and Jewish Past: Trauma, Memory, and Contested Identities', 7 *Israel Studies* (2002) 115.

123 Especially see T. Segev, *The Seventh Million: The Israelis and the Holocaust* (1991).

124 Bartov, *supra* note 1, at 117. This point of 'again and again' is related of course to the Palestinian perspective of the Nakba as an ongoing (النكبة المستمرة) and uncompleted project. This is articulated in the language of international law in Eghbariah, 'Towards Nakba as a Legal Concept', 124 *Columbia Law Review* (2024) 887.

125 Bishara, *supra* note 33, at 241.

suggest that it is only in returning to 1948 that contemporary dynamics can be understood, especially through the lens of settler colonialism.[126]

4 (Il)legalities

The normative implications of starting with 1967 are significant. First, as Israel's presence in the remaining parts of Mandate Palestine could not generate title, this has meant that, over time, a presumptive future Palestinian state would be confined to these remnants.[127] Second, without requiring any determination on the (il)legality of the use of force by Israel in 1967, the law of belligerent occupation became the key legal regime of governance for Palestinians under Israeli control in the West Bank and the Gaza Strip. Third, while earlier UN resolutions relating to the refugee flight precipitated by the Nakba had recognized Palestinians claims to return to their homes wherever they were located,[128] the linkage between Palestinians and the limited confines of shrinking parts of the West Bank and Gaza Strip resulted in a weakening of such expansive return rights that would include Israel proper. Increasingly, there has been an elision between Palestinians and Palestine, where the latter is a synecdoche for the West Bank and the Gaza Strip. This was also reflected in the Palestinian national movement itself, which slowly shifted from its focus on refugees and armed struggle to managerial (quasi) statehood.[129] Fourth, even the most robust articulation of self-determination rights for the Palestinian people could not overcome the accelerating demographic reality of fragmentation and separation.[130] Most simply, we can distinguish Palestinians who are (second-class) citizens of Israel,[131] those who reside in the occupied territories and those

[126] For example, Bishara and Yousef Munayyer both argue that this is the most productive way of understanding the past and the present. Munayyer, 'Israel/Palestine: Toward Decolonization', in Barnett, *supra* note 52, 68, at 79. On the absence of settler colonialism as a concern of international law, see Schwoebel-Patel *et al*., 'International Law's Deafening Silence on Settler Colonialism', 12 *London Review of International Law* (2024) 235.

[127] For some considerations on the different territorial dimensions of a putative Palestinian state, see Crawford, *supra* note 34, at 421–448.

[128] GA Res. 194 (III), 11 December 1948. Compare Israel's various practices to deny land tenure to Palestinians remaining after the Nakba, especially through the category of 'present absentees'. Foreman and Kedar, 'From Arab Lands to "Israel Lands": The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948', 22 *Environment and Planning D: Society and Space* (2004) 809.

[129] Bishara, *supra* note 33, at 141. On this earlier phase, see especially R. Sayigh, *The Palestinians: From Peasants to Revolutionaries* (1979).

[130] Imseis suggests that it was in 1974 with GA Res. 3236 (XXIX) that the high-water mark was reached in relation to the UN's support for Palestinian liberation through the right to self-determination. Imseis, *supra* note 30, at 179.

[131] For example, see the following non-governmental organization reports. 'Israeli Apartheid: Tool of Zionist Settler Colonialism', *Al Haq* (2022), available at www.alhaq.org/cached_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf; 'A

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beyond in the diaspora proper either as permanent refugees in neighbouring Arab states or as citizens in the global North. Claims to self-determination tend to be tethered to the land – in this case, the occupied territories – without sufficient recognition of how to accommodate diaspora and 1948 Palestinians.

The implications of this narrowing of normative horizons for Palestinians have been many, but, in this section, I briefly note two. The first is the channelling of immense amounts of energy into legal battles that could only offer relatively modest gains in support of Palestinian liberation.[132] I illustrate this point in relation to IHL, which has also resulted in 'most action and energy … [being] devoted to managing and mitigating the effects of the occupation'.[133] The second is both related to, and yet the opposite of, the first implication, the gradual erosion and breakdown of legal certainties and categories to guide any pretence of a solution. I develop this point through a brief analysis of how the endless deferral of 'final status issues' (namely, borders, refugees, Jerusalem, water and security) has further eroded even the most apparently robust of legal rights for the Palestinian people.

The core of the Palestinian struggle in its legal and political dimensions has centred on a claim to liberation widely understood to mean the end of Israeli occupation, the right to self-determination and the recognition of the Nakba through the realization of the right to return. As noted above, however, while international law has continued to support this broad claim to self-determination as a *ius cogens* right, over time this has come to apply only to the occupied territories, and it has been interpreted *vis-à-vis* specialized regimes, especially IHL and IHRL. Classically, *ius ad bellum* and *ius in bello* are distinct and cannot affect the legality of the other.[134] Irrespective of the right to wage war, IHL applies as the default governance regime during hostilities and occupations (in which IHRL takes on an increasingly expan-

Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid', *B'Tselem* (12 January 2021), available at www.btselem.org/publications/fulltext/202101_this_is_apartheid; and 'A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution', *Human Rights Watch* (27 April 2021), available at www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution; see also Dugard and Reynolds, 'Apartheid, International Law, and the Occupied Palestinian Territory', 24 *EJIL* (2013) 867.

[132] For a personal reflection on the costs and benefits of engaging with the Israeli occupation regime through litigation, see M. Sfard, *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights* (2018).

[133] Brown and Elbanna, 'The Thorough Insinuation of the One State Reality in Palestinian Political Life', in Barnett, *supra* note 52, 117, at 125.

[134] Imseis, *supra* note 30, at 195–197; see also Berman, 'Privileging Combat? Contemporary Conflict and the Legal Construction of War', 43 *Columbia Journal of Transnational Law* (2004) 1; Burgis-Kasthala, 'The Law of Armed Conflict', in A. Anghie *et al.* (eds), *Research Handbook on Third World Approaches to International Law (TWAIL)* (2025) 347.

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sive role as the occupation focuses on day-to-day law enforcement). This has meant that, while Israel is blocked from claiming title to the remaining lands of historic Palestine, it can extend its de facto rule over them. It must do so through a delicate balance between its 'military necessity' and a duty to ensure the 'public order and safety' of the population.[135] In some of his earlier work, Imseis has explored how Israel as an occupying power systemically breached key IHL strictures.[136]

While this type of scholarly and advocacy work has been vital in documenting the Israeli occupation, in his book, Imseis stresses that such deference to IHL frameworks has tended to result in the legitimization and legalization of the occupation itself.[137] Imseis was writing these words before the ICJ had delivered its 2024 advisory opinion on the legality of Israel's occupation. Its seminal finding was that not only were various IHL and IHRL breaches clearly established but they had also reached such a pattern of systematicity as to threaten the underlying right to Palestinian self-determination. That is, practices such as land requisitions, settlement construction and racial discrimination had begun to take on the trappings of sovereign control over the territory, therefore constituting a breach of prohibition against conquest and the Palestinian right to self-determination *per se*. We can view Imseis' '1948 and After' chapter partly as a piece of advocacy to inform this case, and it makes eminent sense that the author will be updating his monograph to incorporate a range of post-October 2023 developments, including significant ICJ settled and pending cases.

Given that Imseis' book is focused on the UN, his critique centres on how a sustained 'humanitarian/managerial approach' has slowly eroded more expansive and creative options for Palestinian liberation. He details how the huge efforts of UN IHL/IHRL work have 'unduly raised expectations' about the possible normative scope of these regimes in realizing the aim of liberation.[138] In addition, he notes that, while UN efforts have sustained a predilection for discreet legal analyses of IHL/IHRL violations, broader aims of self-rule have been pursued through the prism of negotiations.[139] *Prima facie*, negotiations assume that parties will adopt flexible stances to reach an agreed position. Yet, as an international lawyer, Imseis is at pains

[135] Hague Regulations Concerning the Laws and Customs of War on Land 1899, 187 CTS 227, Art. 43.

[136] See, e.g., Imseis, 'On the Fourth Geneva Convention and the Occupied Palestinian Territory', 44 *Harvard International Law Journal* (2003) 65.

[137] Imseis, *supra* note 30, ch. 5. For an earlier critique of the Israeli occupation *per se*, see Ben-Naftali *et al.*, 'Illegal Occupation: Framing the Occupied Palestinian Territory', 23 *Berkeley Journal of International Law* (2005) 551.

[138] *Ibid.*, at 184.

[139] In fact, this path was pursued early on as well at the UN in relation to the 1948 refugees. *Ibid.*, at 146, 157.

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to remind us that the *ius cogens* right to self-determination cannot be relativized or watered down:

> [F]rom … May 1948 to the present day, the UN has remained stuck on the fanciful notion that the only way to resolve the Palestinian refugee problem is through negotiation. This, despite the clear requirements of international law, including the law of state responsibility, and the knowledge that the only thing standing in the way is a recalcitrant state that continues to enjoy the benefits of its wrongful conduct. The upshot is that since at least 1963 … the UN has not mandated any of its organs to seek durable solutions for the Palestinian refugees as a group in line with international law, thereby consolidating the protection gap.[140]

Outside the UN framework, negotiations are even more problematic within a context of radical power asymmetries that have belied all the direct negotiations between Palestinians and Israelis since the Oslo process of the 1990s. This has been further exacerbated by the biased role of the USA,[141] which has been able to shape the trajectory of (deliberate) failure through aid (to Israel through massive military largesse or to the tied and weaponized assistance provided to Palestinians), military coordination (with Israel), diplomatic cover (especially at the UNSC) and its general economic, military and political links with key regional allies (such as Jordan, Egypt and the Gulf monarchies) to offset any 'threat' of resurgent Arab nationalism or Islamism, both of which have rallied around Palestinian liberation.

Paradoxically then, by 2023 when these books were published on the eve of 7 October, each in turn provided an account of the Israeli-Palestinian question as one that has been increasingly legalized in its framing, while, simultaneously, the prospect for its resolution has receded further from view. Although the expansive promise of international law was not lost on any of the authors, none seemed convinced that it could provide a robust framework for a just and durable settlement. Instead, in their various iterations, each contribution mapped how a variety of legal idioms had often been successfully incorporated into structures of domination. A decolonial reimagining centred on 1948 would be one radical way to dislodge such conclusions, but such a stance has been firmly rejected by the key players, including those possible allies of Palestinian liberation – the UN, the Palestinian Authority and regional Arab regimes.

Bishara highlights the importance of the Peace to Prosperity Trump-Netanyahu plan during Donald Trump's first presidency as the most

[140] *Ibid.*, at 157–158.

[141] See Huggard and Cofman Wittes, 'Palestinian Statehood in American Policy: The Changing Roles of Values, Interests, and Domestic Politics', in Barnett, *supra* note 52, 239.

noteworthy rupture of this century.[142] The plan centred on (i) the termination of US aid to the UNRWA in 2018 (perhaps laying the ground for the organization's outlawing by Israel in 2025); (ii) the US relocation of its embassy from Tel Aviv to Jerusalem in 2017; (iii) the US closing of the Palestinian Liberation Organization office in Washington in 2018; and (iv) the declaration by Secretary of State Mike Pompeo on 18 November 2019 that the USA no longer regarded Israeli West Bank settlements as illegal under international law. With this shift, any commitment to final status issues (regarding borders, refugees, Jerusalem and statehood) – the framework informing negotiations since the Oslo Accords of the 1990s – was abandoned.[143]

Since October 2023, such a trajectory of radical asymmetry and the denial of robust self-determination principles has only accelerated through global North accommodation and active support for Israeli impunity alongside its domination of the region,[144] as endorsed officially by the UNSC in Resolution 2803.[145] At the same time and by contrast, the period has seen an unprecedented turn to international law – most notably, the high-profile cases recently concluded and ongoing before the International Criminal Court and the ICJ. While these cases are concerned with matters of great import for both the Palestinian people and international law, like earlier efforts, they will not address the foundational rupture of 1948.[146] Jurisdictional parameters of the International Criminal Court entail that, at most, it can consider crimes that have occurred since 2014.[147] While the ICJ took a relatively expansive view of Israeli laws and policies across the occupied territories in its 2024 advisory opinion, the very question asked of it by the UNGA precluded direct engagement with 1948. This was also the case in its 2025 opinion on the UNRWA, as the

[142] *Cf.* Whyte, 'Sanctioning Settlers and Settlers' Sanctions: Financial Warfare and Economic Peace in Occupied Palestine', *Middle East Critique* (2025) https://doi.org/10.1080/19436149.2025.2589483, at 4.

[143] Bishara, *supra* note 30, at 201–202.

[144] As exemplified by the USA's sanctioning of UN Special Rapporteur, Francesca Albanese, as well as individuals within the International Criminal Court and the draconian actions adopted by the UK government to crush support for Palestine Action, which has been listed as a terrorist organization.

[145] SC Res. 2803, 17 November 2025, available at https://docs.un.org/en/S/RES/2803(2025). As I consider in M. Burgis-Kasthala, 'UNSC Resolution 2803', *EJIL:Talk!* (28 November 2025), available at www.ejiltalk.org/unsc-resolution-2803/.

[146] Note that, in February 2026, Human Rights Watch decided at the last minute to revoke publication of a report trying to do just this – centre 1948 and the Nakba by framing it as a crime against humanity that must be addressed. A. Kane, 'Human Rights Watch Researchers Resign after Report on Palestinian Right of Return Blocked', 4 February 2026, *The Guardian*, available at www.theguardian.com/world/2026/feb/03/human-rights-watch-researchers-resign-palestine.

[147] Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine, *Situation in the State of Palestine* (ICC-01/18 (PTC I), Pre-Trial Chamber I, 5 February 2021.

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UNGA question concerned Israeli obligations as an occupying power.[148] In the pending contentious case against Israel, South Africa has alluded to the Nakba, but, ultimately, its core legal argument of genocide is concerned with events since October 2023. Thus, these various adjudicatory avenues can provide only partial redress for Palestinians through an intricate interplay between legality and temporality.

5 Concluding Thoughts

Each day seems to bring a new emergency and more uncertainty about the purchase of an international order that has been built up since 1945. Palestine has always been baked into this normative edifice 'as the foundational repressed memory of the post-war human rights regime',[149] which had promised liberation while simultaneously supporting ongoing forms of domination. This paradox of international legal domination and liberation informs the four books under review, each of which considers the discursive and material limitations that shape Jewish Israeli and Palestinian visions of political community on the territory of historic Palestine. Reading these texts during Gaza's annihilation and the West Bank's strangulation is both painful and refreshing. They read as naïve and sobering at the same time, reminding us of persisting practices of colonialism and imperialism that now reveal themselves in ever starker ways.[150] Each book makes an important contribution to reading through rupture as well as continuity. Engaging with these four contributions straddling international law, politics and history underscores that, at this time of profound fragility, international lawyers trying to understand the relationship between Palestine/Israel and the international legal order – whatever that now means – must contemplate vistas beyond the narrow legal limits while not abandoning normativity altogether. It is now time for international lawyers to grapple with 1948 in conversation with a variety of disciplines and through the example of Israel/Palestine as its quintessential decolonial challenge.[151]

[148] International Court of Justice, *Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory*, Advisory Opinion, 22 October 2025.

[149] Nesiah, *supra* note 16, at 207.

[150] 'Israel's war on Gaza has thus become the great exposer, the great mask-stripper.' Saleh Agha *et al*., 'The Uncritical Mind: On Academic Complicity and Genocide', 54 *Journal of Palestine Studies* (2025) 79, at 81.

[151] A non-international law exemplar of this is A. Azoulay, *Potential History: Unlearning Imperialism* (2019).

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European Journal of International Law 2026 00 (00) 1–29
https://doi.org/10.1093/ejil/chag035
Review Essay

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