



# War Crimes by Hamas Don't Allow Israel to Disregard the Laws of War

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## Michael Sfard

Michael Sfard, an Israeli human rights lawyer and the author of *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights*, is a DAWN fellow.

At what point in time do you start an article about the catastrophe unfolding now in the Gaza Strip? With the horrendous war crimes committed by Hamas on Saturday, Oct. 7, when its men carried out a mass slaughter of Israeli civilians, killing hundreds, kidnapping

women, children and the elderly, and violating every human moral code? When they seized control of Israeli villages on the Gaza border for hours and went door-to-door, murdering their inhabitants, and massacred partygoers at a music festival?

Or should we start almost 16 years ago when Israel imposed a brutal blockade of Gaza, unprecedented in the modern era, with the backing of the entire Western world, over an area that is home to more than two million people—more than half of them children? Sixteen years in which Israel left Gazans deliberately on the brink of suffocation?

Perhaps we should begin in 1967, when Gaza was conquered by Israel in the Six-Day War and put under a state of permanent occupation by a country that also operates an apartheid regime? Or should we go back to 1948, to the Nakba, to the enormous ethnic cleansing of Palestinians carried out by the newly born Jewish state?

Choosing the starting point of the review is a political choice. It suggests, for some, the division of responsibility and blame. Whenever we choose to start, as I write this article the Israeli army is dropping bombs on an unimaginable scale on one of the most densely populated places in the world. It has destroyed entire areas where hundreds of thousands of Palestinian civilians live. Israeli commanders have ordered more than a million residents of Gaza to leave their homes in the northern part of the strip and move south, presumably in anticipation of an imminent Israeli ground offensive.

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*The fear that the shock and outrage in Israeli society over Hamas's massacre will be exploited for ethnic cleansing in Gaza should not be waved off.*

- MICHAEL SFARD

At the same time, the Israeli minister of defense, Yoav Galant, declared that, "We are imposing a complete siege on Gaza City. There is no electricity. No food. No water. No fuel. Everything is closed." That statement might be understood as an order for the starvation of Gaza City.

Forced transfer combined with the deprivation of the essential means for survival may lead—in fact, is already leading—to a humanitarian disaster in Gaza on a scale we cannot imagine.

It is also impossible to ignore the fact that in the current Israeli government, there are elements who do not hide their fantasy of continuing what began in 1948: forcibly

expelling the Palestinian population. The thought that the refugees of the northern Gaza Strip—some of them serial refugees from 1948—will be pushed over the border into Egypt's Sinai Peninsula, without any real guarantees of their return, understandably triggers in them the memory of that expulsion.



Israeli soldiers in the village of Kfar Aza, in ruins following Hamas's attack, Oct. 15, 2023. (Photo by Mostafa Alkharouf/Anadolu via Getty Images)

After all, Bezalel Smotrich, the Israeli minister of finance who was also given sweeping powers over the West Bank, is the one who said in a Knesset debate two years ago to Palestinian members of parliament: "You are here by mistake because Ben-Gurion did not finish the job in 1948 and did not throw you out." This is the same Smotrich who says there is "no such thing" as the Palestinian people and promotes a political plan for Israeli apartheid in the entire area between the Mediterranean Sea and the Jordan River, premised on complete annexation of the West Bank. Under his plan, Palestinians in the West Bank who are unwilling to give up their own national aspirations and the struggle for Palestinian independence would be deported; those Palestinians in the West Bank who are willing to remain under the rule of the Jewish state would be granted limited resident status but without any political rights, including citizenship or the right to vote.

Then there is Itamar Ben-Gvir, Israel's minister of national security, who is in charge, among other things, of the Israeli police. He is notoriously a student of Rabbi Meir Kahane, the founder of the racist Kach movement, which was declared a terrorist organization in both Israel and the United States. Ben-Gvir has also previously spoken out in favor of deporting "disloyal" Arabs, including members of the Knesset.



Smotrich and Ben-Gvir are certainly not the only ones in power in Israel now with these views. The fear that the profound shock and outrage in Israeli society over Hamas's massacre will be exploited for ethnic cleansing in Gaza should not be waved off.

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*If there is no law, or if the law is seen as a mere recommendation, everything is permitted—everything.*

- MICHAEL SFARD

If there is anything that the history of humanity, scarred by atrocities, should teach us, it is that no crime can justify another. Nor can any crime mitigate the severity of another. This is what international law, and first and foremost the international laws of war, are trying to enforce. But the last few days prove that we have learned nothing. Activists and intellectuals on both sides stick to their tribal tents—some emphasizing the crimes of Israel and disgracefully dwarfing the crimes of Hamas, others denouncing the Palestinians and completely ignoring the inhuman context of the iron boot with which Israel has tread on the necks of Palestinians for 75 years.

Worst of all is that the international community does not insist on adhering to its own rules. Western powers, especially the United States as Israel's closest ally, have a central responsibility for what is happening—for their unreserved support of the never-ending blockade on the Gaza Strip, for allowing Israel to colonize and dispossess the West Bank with absolutely no accountability, for their silence in the face of the methods of war that Israel has adopted repeatedly in Gaza, again and again disregarding the prohibitions and limitations on warfare in civilian territory.

In one of the many judgments of the Israeli Supreme Court on the legality of demolishing the homes of Palestinian families of terrorist suspects—a blatant practice of collective punishment that is absolutely forbidden in international law—the late judge Mishael Cheshin wrote a sentence that is one of the most depressing statements I have ever read in any legal judgment: "Even as the trumpets of war sound, the rule of the law shall make its voice heard, but let us admit a truth: in such places, its sound is like that of the piccolo, clear and pure, but drowned out in the din."

If there is no law, or if the law is seen as a mere recommendation, everything is permitted—everything.

When we crawl out of the deep pit we are in, we will find ourselves again facing the truth written on the wall in bold letters—the same truth that has always been written on the wall and that everyone, it seems, is trying hard to ignore. There is no solution to the conflict in Israel-Palestine that is not based on respecting everyone's human rights; on ending the occupation; ending apartheid; ending the blockade; realizing the right to self-determination of the Palestinian people; and upholding the provisions of international law, by all.

BUILDINGS DESTROYED BY ISRAELI AIR STRIKES IN THE JABALIA REFUGEE CAMP IN GAZA CITY, OCT. 11, 2023. (PHOTO BY YAHYA HASSOUNA/AFP VIA GETTY IMAGES)

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