

International Law and Questions of Palestine

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Course Description, Objective, and Relevance:

The question of Palestine, now a hundred years old, remains one of the most pressing issues of the international legal order. This course will trace and discuss the development of the question of Palestine from an international law perspective. The aim is to provide a broad introduction to the subject, informed by its historical context and the overlapping domestic and international legal orders. We will explore and examine legal positions, employed by different national and international actors, on various past and present legal issues. By engaging with the questions of Palestine, students will also study and gain in-depth knowledge of key areas of international law, including the law of occupation, the crimes of genocide and apartheid, refugee law, and more.

Pre-requisites & Target Students:

Prior knowledge of public international law is helpful but not necessary. No prior knowledge of Palestine is required.

Pedagogical Method:

This course includes lectures, experiential learning, and visual learning. Students will be assigned to present a topic in class or engage in articulating a legal position on behalf of a stakeholder (e.g. state party, international organization, international tribunal). Students will also engage in group discussions and submit one film evaluation based on a list of suggested films.

Evaluation Criteria:

Final paper (%70), class presentation (%15), film evaluation (%15).

Tentative Structure of Classes:

1. Introduction to the Question of Palestine
2. The British Mandate of Palestine and the United Nations Partition Plan
3. The 1948 Nakba and the Creation of Israel in International Law
4. The Legal Status of Palestinian Refugees
5. The Legal Status of Palestinian Citizens of Israel
6. The 1967 Occupied Palestinian Territories: Introduction and Legal Anatomy
7. The 1967 Occupied Palestinian Territories: Illegal Occupation and Apartheid?
8. The Legality of Resistance in International Law: The First and Second Intifada Examined
9. The 2023-2024 Gaza Genocide: International Courts and National Responses

Tentative Syllabus & Selected Bibliography:

Note: This is a tentative breakdown of potential readings and materials for each class. Not all materials will necessarily be assigned or required.

Class 1: Introduction to the Question of Palestine

Description: This class is intended to introduce the students to the question of Palestine, familiarize the students with the timeline over the past century, and provide an overview of key concepts that will accompany us throughout the course.

Background Readings

- The United Nations, History of the Question of Palestine (online and visual materials).
- Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917 – 2017* (New York, Metropolitan: 2020) (excerpts).
- Edward Said, *The Question of Palestine* (optional reading).

Class 2: The British Mandate of Palestine and the United Nations Partition Plan

Description: This class examines the legal infrastructure that preceded the 1948 Nakba and the creation of the state of Israel. It discusses the League of Nations Mandate System which placed Palestine under a British Mandate (1917-1948) and ultimately led to the United Nations Partition Plan (1947).

Background Materials

- The Balfour Declaration.
- League of Nations Mandate for Palestine (skim).
- United Nations Special Committee on Palestine Report (1947) (excerpts).
- United Nations Resolution 181(II).
- United Nations, *Origins and Evolution of the Palestine Problem: Part I (1917-1947)*.

Legal Analysis

- Antony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations* 34 N.Y.U. J. Int'l L. & Pol. 513, 515-516 (2001-2002) (excerpts).
- Ralph Wilde, *Tears of the Olive Trees: Mandatory Palestine, the UK, and Reparations for Colonialism in International Law*, 25 J. Hist. Int'l L. 387, 422 (2023) (excerpts).
- Ardi Imseis, *The United Nations Plan of Partition for Palestine Revisited: On the Origins of Palestine's International Legal Subalternity*, 57 Stan. J. Int'l L. 1 (2021) (excerpts).

Class 3: The 1948 Nakba and the Creation of the States in International Law

Description: This class will cover the events of the 1948 Nakba and the key legal issues. The class will examine the legality of the creation of states in international law by focusing on the case study of the creation of Israel.

Background Materials

- Declaration of Independence of the State of Israel (May 14, 1948).
- Statement of the U.S. representative Philip Jessup to the U.N. Security Council regarding the admission of Israel to the United Nations, U.N. Doc. S/PV.383, p. 11.

Legal analysis

- Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab–Israeli Conflict, 1891–1949* (2009) (excerpts 232 –247).
- James Crawford, *The Creation of States in International Law* (2006) (excerpts examining the creation of Israel, 421 – 444).

Optional Materials

- United Nations Resolution 303 (Status of Jerusalem).
- Antonio Cassese, *Legal Considerations on the International Status of Jerusalem*, in *The Human Dimension of International Law: Selected Papers of Antonio Cassese* Ch. 12 (Antonio Cassese et al. eds., 2008).
- Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance, 1917 –2017* (New York, Metropolitan: 2020) (excerpts).
- United Nations, *Origins and Evolution of the Palestine Problem: Part II (1947-1977)*.

Suggested Films

- 1948 Creation & Catastrophe
- Al-Nakba: The Palestinian Catastrophe
- Bye Bye Tiberias

Class 4: The Legal Status of Palestinian Refugees

Description: Following the 1948 Nakba, almost two thirds of the entire Palestinian society became refugees, forming the largest refugee crisis after World War II. This class will discuss the legal status of Palestinian refugees, who continue to be denied their right of return, exceptionalized from the 1951 Refugee Convention, and managed under a special UN agency established specifically for Palestinian refugees (UNRWA).

Background Materials

- United Nations General Assembly Resolution 194 (establishing the Palestinian refugees right of return).
- United Nations General Assembly Resolution 302 (establishing UNRWA).
- The 1951 Refugee Convention.
- Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (2004) (conclusion). Legal Analysis
- Francesca P. Albanese & Lex Takkenberg, *Palestinian Refugees in International Law* (2d ed. 2020).
- Susan M. Akram, *Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution*, *J. Palestine Stud.*, Spring 2002, at 36, 38–40.

Suggested Film

- *A World Not Ours*

Class 5: The Legal Status of Palestinian Citizens of Israel

Description: The minority of Palestinians who managed to remain in the territories upon which Israel was established ultimately became citizens of the nascent state of Israel but subjected to nineteen years of military rule. Today, Palestinian citizens of Israel comprise twenty percent of the population holding Israeli citizenship but remain institutionally and legally treated distinctively and inferiorly to Jewish Israeli citizens. This class examines the legal status of Palestinian citizens of Israel and its development since 1948.

Background Materials

- *The Jewish Nation-State Law*
- *The National Committee for the Heads of the Arab Local Authorities in Israel, The Future Vision of the Palestinian Arabs in Israel* (2006)

Legal Analysis

- Hassan Jabareen, *Hobbesian Citizenship: How the Palestinians Became a Minority in Israel*, in *Multiculturalism and Minority Rights in the Arab World* 189, 193 (Will Kymlicka & Eva Pförtl eds., 2014).
- Yair Bäuml, *Israel's Military Rule Over Its Palestinian Citizens (1948–1968)*, in *Israel and Its Palestinian Citizens* (Nadim M. Rouhana ed., 2017).
- Nimer Sultany, *The Legal Structure of Subordination: The Palestinian Minority and Israeli Law*, in *Israel and Its Palestinian Citizens* (Nadim M. Rouhana ed., 2017).
- Mazen Masri, *The Dynamics of Exclusionary Constitutionalism* (2017).

Suggested Film

- Foragers
- The Time That Remains

Class 6: The 1967 Occupied Palestinian Territories: Introduction and Legal Anatomy

Description: In 1967, Israel extended an occupation regime to cover the remaining territories of Mandate Palestine (the West Bank, the Gaza Strip, East Jerusalem) as well as the Syrian Golan Heights and the Egyptian Sinai Peninsula. The regime of military occupation is ongoing and spans over half a century, making Palestine the longest military occupation in modern history. This class provides an overview of the Israeli occupation regime and highlights key legal issues.

Tentative Readings

- Neve Gordon, *Israel's Occupation*, University of California Press, 2008.
- ICJ Advisory Opinion (2004): *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.
- Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (Berkeley: Univ. of Cal. Press, 2005).
- Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel 9 May 2022 (Issued on 7 June 2022)
- David Kretzmer and Yael Ronen, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2021).

Suggested Films

- Broken: A Palestinian Journey Through International Law
- The Law in These Parts
- Five Broken Cameras
- Hebron: H1/H2

Class 7: The 1967 Occupied Palestinian Territories: The Questions of Legality and Apartheid

Description: In 2024, the International Court of Justice ruled that due to its prolonged nature, the Israeli regime of occupation has become illegal as such. The ICJ also concluded that Israel's legislation and measures constitute a breach of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) which establishes a prohibition on "racial segregation and apartheid." This conclusion follows a wave of international human rights organizations reports concluding that Israel is committing the crime of apartheid. This class examines the fundamental legal questions pertaining to the (il)legality of the Israeli occupation and the crime of apartheid.

Tentative Readings

- ICJ Advisory Opinion (2024): Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.
- Amnesty International, Israel's Apartheid Against the Palestinians: A Cruel System of Domination and a Crime Against Humanity (2022) (excerpts).
- Human Rights Watch, A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution (2021) (excerpts).

Suggested Film

- No Other Land
- The Law and the Prophets
- Advocate
- Roadmap to Apartheid

Class 8: The Legality of Resistance in International Law: The First and Second Intifada Examined

Description: Over the past century, Palestinians have resisted their subjugation by resorting to both non-violent and violent methods. This class examines two major episodes of such resistance to the Israeli occupation known as the First and Second Intifadas and explores the legalities and illegalities of resistance under international law.

Background Materials

- Additional Protocol I to the Geneva Conventions (1977)
- UN General Assembly Resolutions 2105.
- UN General Assembly Resolution 37/43

Legal Analysis (General)

- Richard Baxter, The Duty of Obedience to the Belligerent Occupant 1950 Brit. Y.B. Int'l L. 235- 253-59.
- Antonio Cassese, "Terrorism and human rights", American University Law Review, vol. 31, No. 4 (1982), pp. 945–958.
- Karma Nabulsi, Traditions of War: Occupation, Resistance and the Law (Oxford: Oxford Univ. Press, 1999).

Legal Analysis (Palestine)

- Richard Falk and Burns H. Weston, The Relevance of International Law to Palestinian Rights in the West Bank and Gaza: In Legal Defense of the Intifada, 32 Harv. Int. L. J. 1 (1991)
- Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese (September 2022)

Optional Materials

- Shahd Hammouri, The Palestinian People Have a Right to Armed Struggle by Virtue of their Inalienable Right to Self-Determination (2023)
- Michael Curtis, International Law and the Territories, 32 Harv. Int. J. J. 457 (1991).
- Richard Falk and Burns Weston, The Israeli-Occupied Territories, International Law and the Boundaries of Scholarly Discourse: A Reply to Michael Curtis, 33 Harv. Int. L. J. 191 (1992).

Suggested Films

- Jenin, Jenin
- Naila and the Uprising
- The Wanted 18

Class 9: The 2023-2025 Gaza Genocide: International Courts and National Responses

Description: Since the Hamas attack of October 7, 2023, Israel has launched a genocidal war on Gaza for which it now faces trial before the International Court of Justice. This class will examine the national responses to the Gaza genocide, the case before the ICJ, and the cases brought by the prosecutor before the International Criminal Court (ICC).

Tentative Readings (TBD)

- ICJ Proceedings on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.)
- Francesca Albanese (Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied Since 1967), Anatomy of a Genocide, A/HRC/55/73.
- ICC Pre-Trial Chamber I Proceedings and Arrest Warrants Decision.

Suggested Films

- From Ground Zero
- Gaza, explained (Vox)
- Gaza in Context

Class 10: Summary & Conclusion

Description: This class will summarize the course and reflect on the themes we explored by asking: how do we name the Palestinian condition in law?

Reading Materials

- Rabea Eghbariah, Toward Nakba as a Legal Concept, 124 Columbia Law Review 887 (2024).