



The Occupation of the West Bank and the Crime of Apartheid

Common Questions & Answers



Many of Israel's actions in the West Bank are security motivated. Thousands of Israelis have been hurt by Palestinian terrorism, and that is the reason for the restrictions imposed on Palestinian movement, the use of force against Palestinian organizations and their outlawing, administrative detention, the separation fence and many other practices described in the opinion.

Apartheid was a regime based on racist ideology, and that was the reason it discriminated between people. The actions described here are designed to ensure the security of the State of Israel and Israelis, which means this is not an apartheid regime.

While some of Israel's actions in the West Bank are designed to ensure the security of Israel and Israelis, both those living in the West Bank and those living in Israel, most of the major policies mentioned in the opinion have nothing to do with the security situation. As a matter of fact, security is entirely irrelevant to the main practices mentioned in the opinion, and which form the basis of imposing inferiority on Palestinians in the West Bank:

- Applying a dual legal system with one law for Palestinians and another for Israelis has nothing to do with security;
- The mass expropriation and dispossession of land from individuals and communities has nothing to do with security;
- Preventing Palestinian development and allocating public land exclusively to Israelis has nothing to do with security;
- The forcible transfer and the threat of forcible transfer of Palestinians and Palestinian communities have nothing to do with security;
- Preventing non-violent political action, defining incitement offenses in a manner that effectively outlaws any and all criticism of the Israeli regime, and using administrative detention against political leaders who are not connected to the violent struggle on a wholesale basis have nothing to do with security;

As a matter of fact, the only policies Israel could claim to be motivated by security are the separation between Israelis and Palestinians and some of the measures against Palestinians who resort to violence in order to end Israeli control. Some land uses are also designed for security purposes. The opinion does not deny that in these cases, security may be the motivation.

However, it has to be kept in mind, for instance in the context of the separation policy that paints all Palestinians with one brush and all Israelis with another, forbidding all members of each national group access to areas designated for the other, that separation on a collective basis – even if the objective is acceptable – is illegitimate. The fact that some Palestinians carry out terrorist attacks gives no license to deny all Palestinians access to parts of the **West Bank** and force separation on the basis of nationality. Security challenges must be addressed by an **individual** rather than a collective analysis of the threat.

Finally, it is worth noting that the Government of Israel cites security considerations as an excuse for every injurious measure against Palestinians. There is no denying, however, that aside from security, Israel is pursuing Israeli development in the West Bank with a view to making it permanent. This is the key interest that shapes the nature of Israel's regime in the West Bank, and it has nothing to do with security. This is the reason Israel maintains its gargantuan settlement enterprise, which has been the most significant factor in changing reality in the West Bank for decades. This is the reason Israel takes over land resources and denies Palestinian development, and it is why it divides people along national lines when it comes to the granting of rights and privileges. While some of Israel's actions are motivated by security (although, in some cases, the security need was produced by the establishment of settlements, all of which are illegal), security is not the major instigator of the reality described in the opinion.



Palestinians have self-rule in the form of the Palestinian Authority, which has its own legislative body and court system. It is, therefore, inaccurate to say Palestinians have no civil rights. They can vote and run for office within the Palestinian Authority, participate in the political process there and influence legislation.

The Palestinian Authority is a political entity which draws its powers from the Oslo Accords. These powers are extremely limited powers and do not extend to the vast majority of the issues that are prerequisites for the liberty and independence of its subjects. For instance, the Palestinian Authority has no power to decide who enters or leaves its territory. Palestinians are barred exit abroad unless Israel allows them exit. Thousands of Palestinians cannot go on vacation or visit friends and relatives abroad. Thousands of others are barred from entering the West Bank to visit relatives, friends and colleagues. To illustrate, this situation is akin to a hypothetical situation in which the Jordanian government has the power to decide whether an Israeli citizen may travel to Greece or an American citizen would be able to visit Tel Aviv. The Palestinian Authority is a political entity operating under occupation, while the occupying power, Israel, effectively has veto power over its

decisions (in many cases sanctioned by the Oslo Accords) and continues to have security control over the entire territory, including where the Palestinian Authority has control over internal security (Area A). According to the accords, the Palestinian Authority cannot independently engage in foreign relations or trade, its security powers are limited to Area A only, and its legislative powers are also extremely limited and do not apply in most of the West Bank. In practice, even the powers it does theoretically have are extremely precarious as Israel has overriding powers. As a matter of fact, the Palestinian Authority functions more like a weakened local authority. For this reason, whatever rights West Bank Palestinians have for political participation within the Palestinian Authority do not fulfill the purpose of civil rights. The institutions of the Palestinian Authority are not where the major decisions governing Palestinians' lives are made. These decisions are made by the Israeli military and the Israeli government, where Palestinians have absolutely no influence or representation. And so, Palestinians have extremely limited self-rule and lack civil rights in the sense of participation in the political process where the most significant decisions about their lives are made.



The settlers are Israeli citizens under the control of their own country in the West Bank, and therefore should not have the same status as Palestinians, who are not Israeli citizens, just as no one expects foreign nationals in Israel to have the same rights as Israelis. Apartheid is different treatment and different laws for different people who are all presumably citizens of the same country. In the case of settlers and Palestinians in the West Bank, it is not apartheid, but different treatment for different people – those who are Israeli citizens and those who are not.

Modern law is territorial. In other words, the guiding principle of modern law is that law applies to people according to where they are, not who they are. Legal systems from ancient times and into the modern era have included different legal norms for different “types” of people (based on sex, religion, nationality, ethnicity, social status and others). Ever since the French Revolution, the concept of “personal law” has been replaced with the principle of territoriality, meaning the same legal norms apply to all individuals in the territory where the legislator has authority. The 14th Amendment to the American Constitution, made in 1868, expresses this principle succinctly - “No State shall... deny to any person within its jurisdiction the equal protection of the laws.” Therefore, the same laws should apply to all people within the same political area. The fact that the settlers are Israeli citizens cannot justify applying a different law than that which applies to Palestinians in the West Bank.

The fact that settlers are Israeli citizens explains why they have political rights such as voting and running for office, but it offers no justification as to why they benefit from laws and policies that discriminate in their favor compared to Palestinians and gives them access to resources and privileges beyond the political rights they have as Israelis.

Drawing a parallel to tourists or foreign nationals is particularly tenuous as Palestinians are residents of the West Bank. They are neither foreigners nor tourists. They are the indigenous people of the land and live there permanently. As a matter of fact, it is the settlers who migrated into this territory in violation of international law. Having highlighted this difference, we note that unlike the different law applicable to settlers and Palestinians, tourists in Israel are subject to the laws of the country just as Israeli citizens are, and other than the rights connected directly to citizenship status, they have the same fundamental rights as Israelis: the same rights to due process, to freedom of expression, freedom of movement inside the country, etc.



According to the Trump plan, which has been adopted by the prime minister of Israel and his alternate, the Palestinians will eventually have their own state, and so the situation described in the report (even if parts of the West Bank are annexed) is temporary, and Israel has no intention of controlling the Palestinians permanently. Therefore, the element of the crime of apartheid relating to intent to maintain control over the group that is subjected to discrimination is absent.

The Trump plan does not offer the Palestinians statehood. According to the plan, if the Palestinians meet certain conditions (which have been stipulated by the Americans, who also decide, along with Israel, if they have been met), some sort of Palestinian entity that would be called a state would be established. However, a review of the plan clarifies some attributes of this proposed Palestinian “state”:

1. The Palestinian “state” will have no control over movement of goods or people in and out. Israel will maintain control over travel and commercial transport;
2. The Palestinian “state” will have no control over its air space. Israel will maintain control;
3. The Palestinian “state” will not be able to sign certain types of international treaties and conventions;
4. The Palestinian “state: will not be able to join certain types of international institutions;
5. Israel will maintain veto powers over building decisions the Palestinian “state” makes even within its own territory in locations near the Israeli border (which is nearly everywhere);

An entity with these attributes is not a state by any standard of international law. It has extremely limited powers and no sovereignty in the common sense of the term under international law.

As a matter of fact, Prime Minister Binyamin Netanyahu [admitted as much in an interview](#) he gave Israeli newspaper Yisrael Hayom: “Some will say, and it’s been said to me, an American politician said it to me: ‘But, Bibi, it won’t be a state.’ I told him: ‘Call it whatever you like.’”

Therefore, the Trump plan does not mean Israel's current control of the West Bank and its Palestinian residents is temporary. In fact, it proposes a path to making this control permanent.



Palestinians are governed by military rule and military law because that is what is mandated by international law so long as there is no peace agreement, not because this is apartheid.

The Palestinians are under military occupation, and unlike apartheid, military occupation is not a crime. It is a temporary situation in which a military force governs a territory it took over during an international armed conflict. International law allows that military force to employ governmental powers within certain limits stipulated in international law and suspends sovereignty, and with it, the political civil rights of the occupied population so long as the occupation continues. However, as the opinion shows, Israel is not acting the way an occupying power is expected to act. Meaning, Israel does not refrain from making long-term changes in the area, or putting facts on the grounds that entrench its control and would be very difficult to reverse, and, most importantly, Israel is not working toward ending the occupation, but on the contrary, toward perpetuating it. In this state of affairs, and particularly when Israel has stopped declaring, as it had in the past, that the final status of the territories will be determined in negotiations, but the opposite – is working toward forcible, unilateral annexation – occupation may very well also be an apartheid regime if it possesses the elements of the crime as defined in international law.