

Israel, Amnesty, and the Apartheid Accusation: A Wake-Up Call

By [Dov Waxman](#)



For many people, the term “apartheid” immediately brings to mind the segregation, discrimination, and repression of black South Africans during the decades of white minority rule there. In fact, the word itself means “apartness” in Afrikaans, and it was first used by the ruling party in South Africa in 1948 to describe the racial laws and regulations it imposed, purportedly to preserve the purity and primacy of the country’s white population. As the long struggle of black South Africans for equality and democracy gradually gained support around the world, the anti-apartheid movement emerged, and with its incessant calls to boycott, divest from, and sanction South Africa, it gradually turned the country into an international pariah, eventually helping to end apartheid in South Africa and establish a multiracial democracy there. It is this history that the term “apartheid” evokes, and it is what gives the word its emotional power.

But although the term “apartheid” originated in South Africa and is inextricably associated with its racist history, the term has been given a broader meaning in international law.¹ Under the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, and the 1998 Rome Statute of the International Criminal Court, “apartheid” is defined in universal terms as a crime against humanity.² In the language of the Rome Statute, the crime of apartheid involves “inhumane acts” committed “in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” According to this international legal definition of apartheid, therefore, the crime consists of three key elements: (1) inhumane acts; (2) institutionalized and systematic racial discrimination; and (3) an intention to perpetuate racial domination. International law has also expanded the meaning of apartheid in another respect; it can refer to the oppression and domination not only of racial groups but also ethnic and national groups.³ Thus, if members of a particular nation or ethnic group face severe, pervasive, persistent, and institutionalized discrimination and repression by another group that seeks to preserve its power and privileges, then—under international law—the crime of apartheid is being committed.

Apartheid Enters Mainstream Political Debate

Is Israel guilty of this crime in its treatment of Palestinians? Merely asking this question was once taboo in many circles, but no longer. The question has moved from the margins to the mainstream of political debate. Indeed, in just the past two years, the question of whether Israel is committing the crime of apartheid has become the most hotly debated and contentious question in discussions, both public and private, about Israel and the Palestinians. What has prompted this often-acrimonious debate is a series of recent reports issued by human rights groups alleging that Israel is guilty of apartheid. Although several Palestinian human rights organizations (such as Al-Haq, Al Mezan, Adameer, and the Badil Center) have accused Israel of practicing apartheid for years (and Palestinian writers have

By



Dov Waxman

*Dov Waxman is a professor at the University of California Los Angeles (UCLA). He is the Rosalinde and Arthur Gilbert Foundation Chair in Israel Studies and Director of the UCLA Y&S Nazarian Center for Israel Studies. Waxman is the author of *The Israeli-Palestinian Conflict: What Everyone Needs to Know* (2019).*

leveled this charge since the 1960s), it was not until two Israeli human rights organizations and then the two largest and most respected international human rights organizations made this accusation that it really gained public and political attention.

The first such report came from Yesh Din in June 2020, in a legal opinion written by Michael Sfard, an Israeli human rights lawyer. In a report titled “The Israeli Occupation of the West Bank and the Crime of Apartheid,” Sfard specifically accused Israel of committing the crime of apartheid against Palestinians in the West Bank.⁴ Six months later, in January 2021, B’Tselem, Israel’s leading human rights organization, went further than Yesh Din, releasing a report titled “A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid” that accused Israel of practicing apartheid not only in the West Bank, but also inside Israel proper (in the words of its report: “[...] the entire area between the Mediterranean Sea and the Jordan River is organized under a single principle: advancing and cementing the supremacy of one group – Jews – over another – Palestinians”).⁵ A few months later, in April 2021, Human Rights Watch, one of the world’s leading international human rights groups, cited a number of developments such as the end of the peace process, Israel’s continuing de facto annexation of Palestinian territory, and the 2018 Jewish Nation-State Basic Law enshrining Jewish supremacy, to argue that a “threshold” had been crossed and that Israel was now guilty of apartheid.⁶

While Human Rights Watch criticized Israel for discriminating against Palestinians in all areas under its control, its report accused Israel of practicing apartheid only in the West Bank. But in February 2022, Amnesty International, the world’s largest human rights organization, issued its own exhaustive report, which not only accused Israel of practicing apartheid across the entire area of Israel, the West Bank, and Gaza Strip, but also argued that the origins of Israel’s apartheid regime date all the way back to the Jewish state’s founding in 1948.⁷ In its scathing 278-page report (titled “Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity”), Amnesty claimed that all Palestinians under Israeli rule, including those who are citizens of Israel, “are treated by the Israeli state differently based on its consideration of them as having a racialized non-Jewish, Arab status.” The report identified Israel’s “explicit policy of establishing and maintaining a Jewish demographic hegemony and maximizing its control over land to benefit Jewish Israelis while minimizing the number of Palestinians” as evidence of its deliberate intention to “oppress and dominate Palestinians,” and it also pointed to Israel’s denial of the right of return for Palestinian refugees as another aspect of its apartheid regime.

Of all these apartheid accusations, Amnesty’s received by far the most attention, in Israel and globally, and was met with the most ferocious response. Even before the report was made public, the Israeli Government dismissed it as “false, biased, and anti-Semitic” and accused Amnesty of endangering the safety of Jews around the world, in what was an alltoo predictable attempt to preemptively discredit Amnesty.⁸ The charge that Amnesty’s report was anti-Semitic, that it would provoke more anti-Semitism and could lead to anti-Semitic attacks against Jews, was immediately repeated and amplified by pro-Israel groups in the United States and elsewhere.⁹ Thus, instead of addressing the substance of the report, most critics, or at least the most vocal, simply denounced it as anti-Semitic or the work of anti-Semites—an accusation that was summarily rejected by Amnesty’s Secretary General, Agnès Callamard as “nothing more than a desperate attempt to evade scrutiny and divert attentions from our findings [...]”¹⁰

Substantive Criticisms of Amnesty Report

There are, however, more substantive criticisms that can be made against Amnesty’s report. Its presentation of Israeli history is tendentious, to say the least. It highlights certain Israeli policies and actions toward Palestinians while ignoring others. It attributes malign motives to Israeli behavior without even considering alternative motives. It fails to provide historical context for Israel’s actions toward Palestinians, often omitting to mention the Arab-Israeli wars and Israeli-Palestinian violence that have impacted how Israel has treated the Palestinians under its control. It completely glosses over the significant variations in how different Israeli Governments led by different political

parties in different time periods have treated Palestinians, including Palestinian citizens of Israel. It effectively erases the Green Line that separates sovereign Israel from the Palestinian territories under its control since 1967. And it lumps together Israel's treatment of Palestinians in the Occupied Territories, who are not Israeli citizens, with its treatment of Palestinians inside the Green Line, who are citizens of Israel and enjoy far greater rights and opportunities (which is not to say that Palestinian citizens of Israel have not suffered, and still do, from discrimination and marginalization¹¹).¹² In short, by making sweeping claims about the persistence and pervasiveness of Israeli apartheid, Amnesty's report is historically and analytically inaccurate.

As a scholar, I cannot overlook the flaws in Amnesty's report, but they should not distract us from acknowledging the truths it contains. Its indictment of Israel's treatment of Palestinians since the state's founding in 1948 until today is based on an extensive, detailed, and well-documented catalogue of charges, including seizure of land, appropriation of property, denial of civil rights and freedoms, restrictions on movement, and other human rights violations. These specific charges are incontestable. Israel has appropriated Palestinian land and properties (and is still doing so), it does restrict Palestinian freedom of movement, it has imprisoned tens of thousands of Palestinians (sometimes without trial), it has tortured Palestinian detainees, and it has kept millions of Palestinians as stateless subjects without civil rights under a military occupation that has continued for more than five decades. Whether or not all this amounts to the crime of apartheid, as Amnesty and other human rights groups claim, the facts themselves are bad enough and should be indisputable.

Staying Focused on Ending the Occupation

It might be tempting, therefore, to focus our attention and concern only on what Amnesty gets right in its report and to say, as some do, that what matters most is stopping Israel's discriminatory treatment of Palestinians under its rule, not what label we should use to characterize this discrimination. Rather than debating the applicability of the term "apartheid," we should avoid this divisive debate and concentrate instead on finding and reaching a solution to the Israeli-Palestinian conflict or at least ending Israel's ongoing occupation of the West Bank and blockade of Gaza. This has been the argument made by dovish Jewish-American groups like J Street, who studiously refrain from using the A-word and contend that it only distracts attention from addressing Israel's policies and actions in the occupied territories.¹³

It is certainly true that the apartheid accusation against Israel is incendiary. It provokes outrage and indignation among Israel's supporters and, all too often, it leads to a bitter argument over whether Israel today is like South Africa decades ago (despite the fact that "apartheid" has taken on a wider meaning in international law). As Hussein Ibish writes: "[...] the accusation of apartheid is deeply fraught. It invites an argument about the word itself, or the validity of analogies to the old South Africa, rather than about the conditions under which Palestinians live."¹⁴ Does this mean, then, that the apartheid accusation is unhelpful or worse, politically counterproductive? Not necessarily.

It is precisely the power of the term "apartheid" that captures public attention. At a time when the Palestinian issue has fallen far down the international agenda (and largely off Israel's national agenda), accusing Israel of apartheid can generate news headlines around the world and attract much-needed public and political attention. It stirs up a debate about Israel's treatment of Palestinians, which might otherwise not happen at all.¹⁵ And, by raising awareness of the plight of the Palestinians in the West Bank and Gaza, it could conceivably create more public pressure on Israel to change its current policies and practices toward them.

Limiting the Breadth of the Charge

The political utility of the apartheid accusation, however, depends upon the breadth of the charge. If it is applied specifically to Israeli rule in the West Bank (as Yesh Din and Human Rights Watch do in their reports)—a charge that, at least today, is hard to deny given the fact that Palestinians living there lack civil and political rights and are treated

very differently than Israeli Jewish settlers¹⁶ —then it might help galvanize people, including Israelis, to protest against Israel’s discriminatory and undemocratic rule in the West Bank. If, on the other hand, it is applied wholesale to the State of Israel, so as to effectively label it an apartheid state (as B’Tselem and Amnesty have done in their reports), then it is less likely to motivate political pressure, let alone policy changes, and more likely to alienate people, particularly Jews, who might otherwise want Israel to withdraw from the West Bank. After all, if Israel is an apartheid state, or if Israeli apartheid is the inevitable byproduct of the state’s Jewish identity, as Amnesty’s report seems to suggest, then nothing short of a fundamental reconstitution of the Israeli state is necessary. While that may well be what Amnesty would like to see, and certainly what many Palestinian and pro-Palestinian activists long for, it is, at the very least, a distant prospect.

Supporters of a democratic one-state solution to the Israeli-Palestinian conflict will probably welcome the accusation that Israel is guilty of apartheid because it strengthens their belief that the best, and perhaps only, means of resolving the conflict is for Israel to enfranchise all Palestinians living under Israeli rule and grant them equal rights. By contrast, supporters of a two-state solution to the conflict may well worry that the apartheid charge will only make it harder to achieve their desired outcome, especially if it reinforces Israeli intransigence and bolsters the already dominant rightwing forces in Israeli society and politics.

It is, of course, impossible to predict the political repercussions of the apartheid accusation, whether in Israel or elsewhere. We should be skeptical of assertions that it will be either politically helpful or unhelpful for the struggle to resolve the conflict. What is already clear, however, is that such accusations, whether helpful or not, will only become more frequent and more widespread in the years to come, if the Israeli occupation continues and the conflict remains unresolved.¹⁷ If nothing else, Amnesty’s report, like those before it, should be a wake-up call to Israel and to anyone who cares about the country or the lives of Palestinians and Israelis.

Endnotes

¹ See, Julia Gebhard, Julia, “Apartheid,” *Oxford Public International Law*, January 2018, <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e752>.

² International Convention on the Elimination of All Forms of Racial Discrimination, 1965, entered into force in 1969, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-2&chapter=4; International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973, entered into force in 1976, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf; Rome Statute of the International Criminal Court, 1998, entered into force in 2002, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

³ Carola Lingaas, “Jewish Israeli and Palestinians as distinct ‘racial groups’ within the meaning of the crime of apartheid?” *EJIL: Talk!*, July 6, 2021, <https://www.ejiltalk.org/jewish-israeli-and-palestinians-as-distinct-racial-groups-within-the-meaning-of-the-crime-of-apartheid/>.

⁴ Yesh Din, “The Occupation of the West Bank and the Crime of Apartheid: A Legal Opinion,” July 9, 2020, <https://www.yesh-din.org/en/the-occupation-of-the-westbank-and-the-crime-of-apartheid-legal-opinion>.

⁵ B’Tselem, “A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid,” January 12, 2021, https://www.btselem.org/publications/fulltext/202101_this_is_apartheid.

⁶ Human Rights Watch, “A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution,” April 27, 2021, <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

⁷ Amnesty International, “Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity,” February 1, 2022, <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>.

⁸ Israel’s Foreign Ministry stated: “In publishing this false report, Amnesty UK uses double standards and demonization in order to delegitimize Israel. These are the exact

components from which modern antisemitism is made.” “MFA Press release: Amnesty UK expected to publish a false, biased, and antisemitic report tomorrow,” January, 31, 2022, <https://www.gov.il/en/departments/news/amnesty-uk-expectedto-publish-biased-antiemitic-report-31-jan-2022>. See also, Lazar Berman, “Israel blasts Amnesty UK for ‘antisemitic’ report accusing it of apartheid,” *The Times of Israel*, January 31, 2022.

⁹ Ben Samuels, “U.S. Jewish Groups Slam Amnesty International’s ‘Israeli Apartheid’ Report,” *Haaretz*, January 31, 2022.

¹⁰ Tovah Lazaroff, “Amnesty: We reject Israel’s bare faced lie that we are antisemitic,” *The Jerusalem Post*, February 2, 2022. Similarly, multiple human rights organizations from Israel responded to the Israeli Government’s attacks on Amnesty, stating in a public letter on February 3, 2022: “[W]e are particularly concerned by the Israeli government’s extremely irresponsible allegation of antisemitism. [...] Attempts to distract from Israeli violations and to avoid substantive debate by hurling spurious accusations is the standard and ongoing practice of successive Israeli governments and their echo chambers overseas.” Alex Kane, “The Amnesty Report on Israeli Apartheid: An Explainer,” *Jewish Currents*, February 9, 2022.

¹¹ See Ilan Peleg and Dov Waxman, *Israel’s Palestinians: The Conflict Within* (Cambridge University Press, 2011).

¹² Both B’Tselem and Amnesty argue that while Israel treats its Palestinian citizens differently than Palestinians in East Jerusalem, the West Bank, and Gaza, Israeli apartheid involves a deliberate, institutionalized effort to dominate Palestinians across the entire area in order to benefit Israeli Jews.

¹³ Mari Cohen and Alex Kane, “Why Liberal Zionist Groups Won’t Say ‘Apartheid,’” *Jewish Currents*, February 10, 2022.

¹⁴ Hussein Ibish, “Calling Israel ‘Apartheid’ Doesn’t Help Palestinians or Jews,” *Bloomberg Opinion*, February 4, 2022.

¹⁵ Muhammad Shehada, “Thank you, Amnesty, For Making Some Desperately Needed Noise,” *Newsweek*, February 2, 2022.

¹⁶ The Association for Civil Rights in Israel, “One Rule, Two Legal Systems,” October 2014, <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>.

¹⁷ The Israeli government fully expects the apartheid accusation against Israel to become more common, and it is bracing for the United Nations to soon make this accusation. Jonathan Lis, “Israeli Officials Fear UN Will Adopt ‘Apartheid’ Narrative This Year,” *Haaretz*, February 2, 2022.

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