



GAZA'S DILEMMA: ANALYSIS AND REEXAMINING: THE CREDIBILITY OF INTERNATIONAL LAWS

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1. Abstract:

Al Nakba (catastrophe), the declaration of independence of Israel that led to the mass displacement and ethnic cleansing of Palestinian, still haunts them today. Currently, some courses of actions have been changed in a more intensifying and a brutal way which reflects the more pugnacious behavior of settler colonial apartheid (Israel). Israel-Palestine conflict is the conquest for identity, integrity, and sovereignty. Their history is plagued by several key events that led to further augmentation of the bone of contention between them. This conflict has always been the focus of attention due to humanitarian catastrophe. Many major stakeholders have played their dysfunctional but pivotal role in this conflict. In the current crisis, most of the major stakeholders were seen as just sitting on the fence. This conflict gave birth to several militant organizations, fundamentalism, and traumatized elements on both sides as every confrontation not just include the combatant casualties but civilian casualties as well. This research paper's foremost intent is to examine the intricacies and perpetuality in this conflict as both entities consider each other as mortal threat. This research paper will also reexamine the credibility of international laws and organization in this dilemma, most probably in current Gaza's dilemma. Through the analytical lens, this paper will scrutinize the intertwined complexities, which hinders the profound implementation of international norms and principles to cure this unwavering dilemma.

Keywords: Hamas, Gaza, United Nation, Israel-Palestine, Apartheid, Conflict.

2. Historical Background:

Israeli-Palestinian conflict and its ensuing crisis dates to 1950s, competitiveness for identity and supremacy is the ultimate core point of their conflict. This conflict has come a long way, with unusual and unfathomable consequences. The exact inception of this conflict and Jews sentimental strive for identity is quite blurry and perplex. Some will begin with Roman conquest (135 AD), another with the evacuation or migration of Jewish community to the Ottoman Empire in the 19th century, due to persecution in the Eastern Europe, rise of Zionism or the Balfour Declaration by the Britain for setting up a national land for Jewish community that led to the instigation of Arab-



Israeli conflict or the world's most fractious conflict. Nevertheless, the documented beginning of conflict is when there was a United Nation's resolution 181 in 1947, for British mandate of Palestine to segregate it into two states – one for Jews and one for Arabs (Palestinian), 55% land for Jews and 45% for Palestinians. As considering it as the solution to the atrocities of Holocaust in by Nazis. While Jerusalem was placed under the international authority. Arabs and Palestinian never gave credence to the establishment of Israel. Fighting broke out and many Arab countries gave an unconditional support to Palestine. During the war, head of Jewish Agency, David Ben-Gurion, declared the establishment of Isarel and was recognized by the United Staes of America on the very same day, May 14, 1948. Palestinian consider this declaration as Al-Nakba (catastrophe), because around 700,000 were displaced and fled and were never allowed to come back. Palestinian still refer that event as the most traumatizing and unjust event of the world's history. (Lamin,2021)

After Israel's victory, which they considered as “war of independence”, United Nation halted the war between Israel and Arab. Palestinian after this catastrophe were struggling with acute refugee crisis, political conundrum, economic dilemma, and daunting administrative condition. (Guardian, 2023)

2.1. Advent of Liberation Movements:

Palestinian predicament led to the popping up of liberation movements. Many Palestinians recruits themselves in rebellion group, which later get named as Palestinian Liberation Organization (PLO) in 1964. Later, Yaser Arafat leads that organization as the head. The infamous Six Day war in 1967, was a significant spot for gaining popularity for Palestinian Liberation Organization and propagating the Palestinian distinctive agenda worldwide. However, the Arab states were utterly defeated by Israel. Israel took control over some major territories i.e., Sinai Peninsula, the Golan Heights, Gaza, the West Bank, and East Jerusalem. As per International Law, this ongoing occupation is not permanent. This encroachment had absorbed the lives of one million Palestinians. (Britannica, 2023)

Palestinian Liberation organization began to justify their grievances by opting terrorist activities i.e., attack on Israel's main water supply in 1965, Air France flight Hijacked (1976), murder of Israeli in Olympic game (1972), rockets and border incursion from Lebanon, hijacking of school in Maalot etc. All these acts instigate the Israelis for operations and targeting of Palestinian camps at Jordan, Lebanon, and Gaza. In 1987, Israel-Palestine conflict entered in a new spectrum, known as the **Intifada**. It aimed was to consolidate the rebellion against Israeli occupation in West Bank and Gaza Strip. With this manifestation, Palestinian in the west Bank took a giant step forward in their battle against Israel. Afterwards, the peace process began and lasted till the Al-Aqsa Intifada in 2000. (Hammad et al., 2022)

2.2. Several Peace Initiatives for Mitigating the Conflict:



Israel-Palestine peace initiatives and talks were held occasionally from 1990s to 2010s along with scattered eruption of violence. There were series of some secret talks in Norway, Oslo peace initiatives. Oslo Accord in 1993, presided over by President Bill Clinton at White House Lawn will forever be symbolized and remembered as the foremost peace initiative. In that notable accord, the Palestinian Liberation Organization (PLO) recognized Israel and Israel also recognized its hostile entity. PLO was then proclaimed as the sole representative of the Palestinian people. A Palestinian authority with self-government attributes got established. However, this progress was not bearable for some radical elements on both sides. Hamas, newly emerged militant group by that time sent suicide bombers to Israel. This act sabotaged the chances of a peace deal. In Israel, Yitzhak Rabin was assassinated by an Israeli extremist in 1995. In the 2000s, peace deals were revived by different stakeholders with the goal of two state solution but never got implemented. In 2014, peace efforts were eventually obstructed due to failed talks and negotiations.

The most recent peace plan was, ‘the deal of the century’ by Donald Trump the then President of America. However, it was shrugged off by Palestine as it was one sided and not applicable. (BBC, 2023)

3. Contemporary Gaza's Dilemma and Standpoint of Hamas:

Palestinian militant organization launched an unparalleled attack on Israel. Hundreds of revolutionaries of Hamas were infiltrating the border of Gaza Strip. Around 1200 Israelis (soldiers and civilians) were killed and some were sent to Gaza as hostages. In retaliation, approximately 11,000 Palestinian have been killed in air and artillery strikes. These air strikes have wiped out the different families. Innocent children under the rubles are screaming and weeping for help. Entire Middle Easter region is on the verge of broader range of war.

Hamas has always been the most giant resistant towards Israel. Even that bloody miscalculation is never regrettable for them. They refer to these atrocities as the greatest cost towards eternal victory. The altering of the status quo and equation is their prime objective. Hamas recent maneuvering elucidates the cause of permanent state of war. The reverse effects of this war only putting the naïve Palestinians in absolute danger. The only anticipation for this war would be the most devastating end for Palestinian people. Hamas combative approach cannot fully demolish the Israel's fate, it is fully irrational to risking the lives of their own people. (Habib & Hubbard, 2023)

3.1. Other Stakeholder's Factor in Recent Dilemma:

Israel and Hamas escalation can put the tranquility of the middle eastern region at risk. Current war has also changed the casualty ratio of war. As stated in new and old wars; in previous wars, the ratio of civilians to military casualties was eight combatants to one civilian killed, but that in recent wars, the ratio has shifted dramatically, with approximately eight civilians to one combatant killed. (Kaldor, 2006)



The number of Hamas casualties is unknown, but it is evident that hundreds of Palestinian civilians are killed for every Hamas fighter killed in Gaza. Apart from this, massive casualties have also hindered the space for secret talks, negotiations, and surreptitious deals. The adjacent countries (Jordan, Egypt, Lebanon, and Syria) fear escalation as it can cause severe geopolitical affliction for them. These countries are showing genuine concern for not feeling the crisis. Some Middle Eastern countries are also taking pragmatics steps for halting the escalation. As Qatar is convincing the Hamas to release the hostages and to avoid further exacerbation. (Kusovac, 2023)

The stance of two most prominent regional player, Iran, and Türkiye is quite bizarre. Tayyeb Erdogan blatantly bashed Israel, during his address in the 100th anniversary of the Turkish Republic. Scholars consider that criticism certainly for political gain. Nonetheless, Iran's stance is more paradoxical and enigmatic. Iran is an archenemy of Israel and responsible for organizing different non-state actors and militia group in the region. Iran is familiar with the bloody conflicts. The overarching question in current scenario would be; How Iran will try to intervene in this bloody conflict? Analysts have suggested that Iran's intervention will bring the loss-loss situation not the win-win one.

Israel and Iran have some past grievance, dates back to Iranian Islamic Revolution that led to the sourness of their relation. Due to which proximity turned into severe enmity. Iran's revolution caused the outbreak of regional anxiety in Middle East. Iran's Nuclear ambitions have obstructed their relations with many states. Iran's nuclear plan is supposed to be an absolute existential threat for many Middle Eastern nation and for those having geopolitical clout. Different forms off critical measures such as sanction have been imposed for halting Iran's nuclear dream. All these measures have badly compelled the Iran for leaving their ambitions and scrutinization of policies. Iran's Nuclear Scientist, Mohsin Fakhri Zadeh has also been assassinated by Israeli Agency Mossad through AI assisted weapon. (Rezaei & Cohen, 2014)

The United States of America have always mediated and intervened to sort out this conventional matter i.e., Oslo Accord, two state solution etc. After Arab spring and some dramatic transitions in Middle Easter region, Uncle Sam's policy makers got little bored with the eternal conflict between Israel and Palestine. However, it is a wholesome responsibility of America to look at the finer points of the conflict and executing national policy for this enduring conflict, because inattention and distraction can utterly daunt the hegemony of USA in the region. Brack Obama has also stated that international politics is constantly in a transition state, so America needs to define and preserve its interest pragmatically. Israel-Palestine conflict has always been a critical and vital national security interest for America. (Aronson, 2013)

The United States of America in recent crisis finds itself in a more precarious situation. United States need to support and defend Israel, even if they are committing war crimes. It seems like the custodian of human rights looking with a blind eye on recent Gaza's predicament. This scenario deliberately blurs the East Asia ambition and diverting America's placement. Leaving more space



for China to possess unwavering threat to America's stance. Israel's nation is turning as a liability for America. It seems like that unfavorable US miscalculation can lead to huge price for state's department integrity. The Middle East contains the greater importance for America. America possesses the two well established reason; vast oil resources and Israel as strong foothold in middle eastern region to eliminate Russia's potential influence. Nevertheless, Hamas attack on Israel has disclosed some complicated challenges for America. (Zafar, 2023)

4. Historical Analysis of International Law in Israel-Palestine Enduring Conflict:

In international law, there is the most renowned fundamental principle, "peremptory norm". According to this norm, it should be considered by would-be peacemakers, not for "legalistic" reasons, which are all too often dismissed as frivolous to the political aspects and paradigms of the conflict, but because they incorporate fundamental principles of fairness and justice. International law forbids states from disregarding peremptory norms in their international activities and relations, nor may they enter into agreements that are conflictual for them. (Scobbie & Hibbin, 2010)

This norm can also be applied on Israel-Palestine conflict. In the context of this enduring conflict, two such peremptory norms can project the most profound implication for the resolution of their territorial rift. They are the democratic principle of a majority population's right to self-determination in previously mandated territories, and the prohibition against acquiring territory through war, which applies to both assaulter and victim.

Following are some war crime illegitimate activities of apartheid Israel, which contravenes the international norms and standards.

- **Israeli settlement:**

Israel's strategy of settling people in occupied Palestinian land and displacing the native population violates the core principles and norms of international humanitarian law. According to Article 49 of the Fourth Geneva Convention, "the Occupying power or the colonial settler cannot deport or expel parts of its own civilian population into the territory which has occupied." Additionally, it also outlaws "individual or mass forcible relocation of civilians, as well as deportations of protected persons from conquered territory". (Amnesty International, 2019)

Israel's settlement construction in the West Bank, including East Jerusalem, violates all these criteria and exceptions. Relocating civilians from the occupying authority into occupied territory is strictly illegal. Furthermore, as previously stated, the settlements and related infrastructure are not transitory, do not benefit Palestinians, and do not satisfy the occupying power's legitimate security necessities. Israel's settlement strategy also breaches a subset of international law requirements known



as peremptory norms, from which no deviation is permitted. The International Court of Justice (ICJ) declared the Geneva Conventions' regulations to be "immutable principles of international customary law." Only a few numbers of international rules are granted this status, reflecting the gravity and relevance with which the world community regards them.

- **Violation and Discrimination of basic Rights:**

Respecting and preserving the rights of those people living in effective control, is every state's foremost obligation. Israel has been obliged to the application of the international convention on civil and political rights and has been a start party to numerous global humanitarian treaties, so for them respecting the rights of occupied Palestine must be the primary intent. Despite that, Israel has committed human rights violations. Unlawfully and brutally, they have killed innocent Palestinians by projecting an aim of intimidating the Palestinian populations. There is even no fair conduct for Palestinian people. Peaceful protest, freedom of speech and freedom of expression has been suppressed and criminalized for Palestine people. People are struggling from systematic and mechanized discrimination. The land and natural resources have been exploited by Israeli authorities which belongs to Palestinians. Israel's urban and zone planning is also setting the worst attributes. Freedom of mobility has been suppressed. Not just adult, even children are under persecution. Heavy restriction is their which limited the access to basic health care. Moreover, education is not accessible for Palestinian people because of unrealistic obstacles.

Different countries have condemned these atrocities and consider them illegal. As European Union (EU) has stated unequivocally that settlement construction anywhere in the occupied Palestinian territory, including Eastern Jerusalem, is illegitimate under international norms, creates an absolute barrier to peace and proximity, and threatens to make a two-state solution unrealistic. Well, it was all about the West Bank's Palestinian people sufferings for quick overview of Israel's inhumanity.

5. Contemporary Gaza's Dilemma and International Law:

Palestinian militant group (Hamas) launched an assault in the first week of October, which sent an alarming reverberation around the globe. Israeli government has now been indulged in war of aggravating magnitude. Israel's military campaign is ready to attain some primary intentions in the Gaza Strips. Categorically, the foremost intent is the destruction of Hamas and the release of Israeli captives in Gaza, which comes under the global norm's obligations. Every action of Israel will now be scrutinized with the lens of international laws. The United Nation, International Court of justice, scholars, civil society, and media will be evaluating all war crimes and comprehensively.



As the high number of civilian casualties in a ferocious explosion at a Gaza hospital has highlighted how an unrestrained war can have a devastating human toll. (Scheffer, 2023)

Hamas has killed more than 1200 Israelis in recent skirmishes and has breached the provisions of international humanitarian law, which address the safety of civilians and their properties during war. Additionally, Hamas's ceaseless rocket against Israeli forces, imposing severe threat to the lives of civilians. While there is also an overarching question regarding Hamas's legal obligation. In the United States, for instance, during the so-called war on terrorism that followed 9/11, the George W. Bush administration advanced a "legal black hole" argument, claiming that al-Qaeda and the Taliban were nonstate actors and thus unprotected by the 1949 Geneva Conventions. However, in 2006, the United States Supreme Court dismissed that legal argument, ruling that Common Article 3 of the conventions did apply to the United States' war against al-Qaeda.

Israel and Palestine have ratified the four 1949 Geneva Conventions. Israel has not ratified the conventions' first and second protocols, which were added in 1977 to further regulate the preserved safety of civilians, property, and the environment during wartime. One of the most notable provisions is Article 75 of Protocol I, which Washington has long regarded as part of customary international law, and thus the protocol would bind not only the US but also Israel.

Israel's population is more contentious and intrusive than Europeans and Americans, causing the blatant exposure and further exposure to indiscriminate violence towards the Palestinians. Both Israeli's and Palestinians, currently having the more warmongering and fundamentalist attitude. Traumatized terror attacks have intensified the public aggression, especially those who have witnessed the demolition of their houses and their families being wiped out in air strikes. Harming thousands of civilians is a shameful act by any combatant. It thwarts the norms and integrity of war. Moral restraint is required to ensure the safety of civilian with international legality and obligations. Because both sides are now on the verge of genuine existential survival. Some analysts have suggested that law or any act in emergency cannot be governable. As it is rightly said by Alexander Hamilton, "When a nation's life is threatened, "no constitutional shackles can wisely be imposed on the power to which the care of it is committed,". (Dill, 2023)

However, the rejection of law must be miserable for this dilemma. The only way out could be to have an intestinal fortitude for this dilemma. The Israel-Palestine is now having the moral conundrum, the clash of moral arguments is unable to constrain the moral wrongdoings. Meanwhile, International conflicts gets the impositions and obligations with no clarity of cause and end. These conflicts endorsed the obligations, even when there is one sided violation. It doesn't even look upon some crucial questions which are related to the permissibility of the violence. While this appears to be a moral flaw in international law, it is the law's crucial moral asset in a conflict where both sides have legitimate outrage, and no distinguished neutral party exists to arbitrate between them. However, the neutral spectators do not care about the cost benefit calculation and cause & end threshold. This moral wrongdoing can be avoided that the interlocuter



for Israel just not be the Palestinian or regional players. In fact, the negotiation is required with its antagonistic entity, Hamas as well.

Israel also needs to be abided by fundamental legitimate laws, that can lead to cure the current dilemma: Israel should not use starvation (deprivation of substantial element for Gaza) as a cunning tactic to humiliate Hamas. Israel should also need to minimize the civilian casualties, while doing air and artillery campaign against Hamas militants. It will be shameful for any to reciprocate the civilian casualties proportionally in retaliations. Israel needs to show some consciousness towards the naïve civilians. Israel and Gaza, both must allow the return of expelled civilians after the war. It would be illegal to permanently displaced all recent evacuated people from the war theater.

6. Probability of Peace between and Palestine:

7.

If we investigate the current conflict, it is probably the worst and most difficult conflict in Israel-Palestine rivalry. The narratives of both states are in collision phase. The pragmatic and rational approach for peace is quite different for both. According to Israel's projection, end of terrorism will lead to peace and for Palestinian, end of occupation or illegal settlement can lead to peace. Nevertheless, hardliners on both sides have gained more rigid position and not yet ready for any concessions. Extremist from both sides is trying hard to mitigate the chances of negotiation. However, some analysts refer this dilemma, as the wakeup call for peace and still believes in the possibility of peaceful negotiations. Some scholars suggested and saw India, China, and some African countries as the forefront mediators in this conflict. (Hille, 2023)

For halting this centuries old tug of war, both nation and all stakeholders must not miss this opportunity. Because the history of this conflict is plagued with several **"missed opportunities"** for striving peace. (Podeh, 2015)

Both countries need to adopt the right and morality-based approach based on consensus. For the resolution of this conflict, moral imperative will give the long-lasting impression in the international arena. It can also advance the broader policy perspective across the region. The resolution plan needs to articulate and recalculate the dilemmatic conundrum for further avoidance. Policy committed institutions needs to be encouraged, which can turn their belligerent attitude to pragmatic one.

One thing is quite evident that different peace proposals have been initiated (i.e., Oslo Accord, two state solution etc.) and later got rejected due to chronic contradiction among public opinion of both states. So, it is naïve to sideline the public opinion and heading toward the diplomatic approach. Both countries need to reshape the public opinion and eliminate the fanatic elements for building symmetrical relationship. All regional players can also play the pivotal role in mending this dilemma.



8. Conclusion:

Israel-Palestine conundrum has always been fortified with aggravated intertwined complexities. Middle Easter region is the hub of appealing oil resources which embarks the global orientation. Any escalation in Israeli-Palestinian conflict can wiped out the crisscrossed interest of major stakeholders in Middle Eastern. The possibility of nuclear flashpoints is also evident. Israel and Hamas, comes under Internal obligations. However, both entities are doing war crimes and severe casualties to civilian, altering the actual meaning of battlefield. The reexamination of international law shows little credibility of its in current contestation. As Israel has never obeyed any international convention and committed wrongdoings. The probability of peace is also blurred because of several missed opportunities of negotiations in past.



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