

**AN EXPERT OPINION
ON THE QUESTION OF
ISRAEL'S RIGHT TO EXIST**

Report by Professor Avi Shlaim, FBA

Produced for CAGE's judicial review of the secretary of state for education's letter on anti semitism

JUDICIAL REVIEW OF THE SECRETARY OF STATE FOR EDUCATION'S LETTER TO SCHOOLS ON ANTISEMITISM

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STATEMENT OF QUALIFICATIONS

1. I was born in Baghdad on 31 October 1945 to a Jewish family; I went to school in Israel and I served in the Israel Defence Force, 1964-66; I received three degrees from British universities; I have dual nationality, British and Israeli; and I have been a university teacher in the UK since 1970. I am an Emeritus Fellow of St Antony's College and an Emeritus Professor in International Relations at the University of Oxford. I was elected Fellow of the British Academy in 2006 and was awarded a British Academy Medal for Lifetime Achievement in 2017.
2. My academic expertise is on the international relations of the Middle East and my main research interest is the Arab-Israeli conflict. My books on the Middle East include *Collusion across the Jordan: King Abdullah, the Zionist Movement, and the Partition of Palestine* (1988); *War and Peace in the Middle East: A Concise History* (1995); *Lion of Jordan: The Life of King Hussein in War and Peace* (2007), and *Israel and Palestine: Reappraisals, Revisions, Refutations* (2009). The updated edition of *The Iron Wall: Israel and the Arab World* was published by Penguin Books in 2014 and is 900 pages long. I have also published my fair share of scholarly articles and countless newspaper articles.
3. My academic qualifications are obviously related to the specific issue on which I have been invited to offer an expert opinion, namely, 'Israel's right to exist'. I also have some competence on the issue of antisemitism, and especially its interplay with the Israeli-Palestinian conflict. My articles on the subject include 'Anti-Zionism and Anti-Semitism in British Politics', *Aljazeera.com*, 12 January 2017

<http://www.aljazeera.com/indepth/opinion/2017/01/170111143904887.html>

and 'On British colonialism, antisemitism, and Palestinian rights', *Middle East Eye*, 1 March 2021

<https://www.middleeasteye.net/big-story/uk-palestine-israel-policy-balfour-johnson-anitsemitism-colonialism>

MR GAVIN WILLIAMSON, THE SECRETARY OF STATE FOR EDUCATION

4. Before turning to the specific complaint about Mr Williamson's letter to schools of 28 May 2021 on antisemitism, I would like to make some general remarks about what I consider to be the mindset that lies behind this letter. Mr Williamson's public pronouncements and actions reveal him to be a staunch pro-Zionist, partisan and one-sided in the matter of the Israeli-Palestinian conflict, someone who habitually conflates anti-Zionism and antisemitism, who uses his ministerial position to restrict freedom of speech on Israel, and who appears to be indifferent to Islamophobia.

5. These beliefs and attitudes found their clearest expression in Mr Williamson's letter of 9 October 2020 to the Vice Chancellors of all the universities in England, instructing them to adopt the International Holocaust Remembrance Association (IHRA) Working Definition of Antisemitism, or face possible financial sanctions. This is a highly controversial and, in my opinion, discredited definition which was promoted by Israel's friends. The two-sentence definition is vacuous, but it is followed by 11 'illustrative examples' of what might constitute antisemitism. Seven of the 11 examples relate to Israel. The real purpose of

the definition is not to protect Jews against antisemitism but to protect Israel against legitimate criticism.

6. I belong to a group of 77 Israeli academics in Britain which was formed in response to Mr Williamson's infamous intervention. On 26 January 2021, we sent a letter to Vice Chancellors and Academic Senates in England, with a copy to the Secretary of State. The letter is available at <https://www.israeliacademicsuk.org/the-letter>. Our letter strongly urged universities NOT to adopt the IHRA document, which we view as detrimental not only to academic freedom and to the struggle for human rights, but also to the fight against antisemitism.

7. On 12 March 2021, I wrote to the Secretary of State with detailed criticism of the IHRA definition and of his high-handed attempt to impose it on higher education institutions. I listed a number of specific concerns that I asked him to address:
 - a. Why did you single out antisemitism and ignore all other forms of racism such as Islamophobia?
 - b. What makes you think that universities that have not adopted the IHRA definition are not taking antisemitism seriously?
 - c. Why do you think that a definition of antisemitism is needed at all?
 - d. If you think a definition of antisemitism is needed, why this particular one? Why this highly controversial and fundamentally flawed definition?

8. The Secretary of State did not reply either to the group of Israeli academics in Britain or to myself. I refer to this episode here because it demonstrates that his letter to headteachers was not a one-off intervention but part of a pattern. The pattern is one of lack of concern

with Islamophobia; indifference to Palestinian rights and Palestinian sensitivities; the weaponizing of antisemitism to silence criticism of Israel and to deter the free expression of solidarity with the Palestinians; ignorance of the complexities of the Israeli-Palestinian conflict; disregard for British laws on education, equality, and free speech; and an authoritarian modus operandi in pursuit of partisan political ends.

9. Mr Williamson opens his letter to headteachers by pointing out that antisemitism is racism. This is undoubtedly true. But he himself is only concerned with combatting one form of racism, ie antisemitism. He reminds schools of their legal duties regarding political impartiality. He urges them to offer pupils a balanced presentation of opposing views. And he advises them not to present materials in a politically biased or one-sided way. Alas, all these virtues are conspicuously absent from his own pronouncements on antisemitism but more specifically on Britain's responsibility for the Israeli-Palestinian conflict.

BRITAIN AND PALESTINE

10. Gavin Williamson is a member of a government with a strongly pro-Israeli record. Most members of the cabinet and about 80 percent of Conservative backbenchers are members of the Conservative Friends of Israel (CFI), a well-connected, well-funded, and highly influential parliamentary lobbying group. This leads the government, like its predecessors, to deny any historic responsibility for the Palestinian tragedy even though it could be said that the Israeli-Palestinian conflict was made in Britain.

11. The first and most crucial British intervention in Palestine was the Balfour Declaration of 1917. It committed the British government to support the establishment of 'a national home for the Jewish people in Palestine', provided nothing was done to 'prejudice the civil and religious rights of existing non-Jewish communities in Palestine'. This was a classic colonial document. In 1917, Jews constituted 10 percent of the population of Palestine, while the Arabs were 90 percent. Yet Britain chose to recognise the right to national self-determination of the tiny minority and to deny it to the undisputed majority. In the words of Jewish writer Arthur Koestler: 'One nation solemnly promised to a second nation the country of a third'.

12. From 1920 to 1948, Britain held the mandate over Palestine. The story of the mandate, in brief, is the story of how Britain stole Palestine from the Arabs and gave it to the Zionists. The cornerstone of mandatory policy was to deny representative institutions until the Jews became a majority. When an Arab revolt broke out in 1936, the British army suppressed it with the utmost brutality. In 1947-48, when the struggle for Palestine entered its crucial phase, Britain secretly supported the plan of its client, King Abdullah of Transjordan, to partition mandatory Palestine with the Jews at the expense of the Palestinians.

13. In his 2014 book *The Churchill Factor*, Boris Johnson described the Balfour Declaration as 'bizarre, 'tragically incoherent' and 'an exquisite piece of Foreign Office fudgerama'. In 2017, Boris Johnson, then foreign secretary, rejected the call for the UK to mark the Balfour Declaration's centenary by officially recognising the state of Palestine, declaring that 'the moment is not yet right to play that card'. Since Britain supports a two-state solution to the Israeli-Palestinian conflict and since recognising Palestine would further that end, this was a strange excuse for inaction.

14. As prime minister Boris Johnson persisted in his partisanship in support of Israel. He also resisted attempts to call it to account for its illegal actions and war crimes. In 2021, he announced that he opposed an International Criminal Court investigation into alleged war crimes in the Israeli-occupied territories. In a letter to the Conservative Friends of Israel, he said that while his government had respect for the independence of the court, it opposed this particular inquiry. 'This investigation gives the impression of being a partial and prejudicial attack on a friend and ally of the UK's,' he wrote. The perverse logic of the statement is that being a friend and ally of the UK places Israel above international law and international scrutiny.
15. As a result of this pro-Israeli policy, the British government has tended to blur the distinction between anti-Zionism and antisemitism. It not only adopted in full the IHRA's working definition of antisemitism with all its 11 examples but tried to impose it on local government councils and public bodies. It has also discriminates in favour of Jews in relation to other minorities. Mr Williamson not only shares in the collective responsibility of the government for this discriminatory policy; he is its aggressive enforcer in all parts of his ministerial domain, from primary schools to universities.

ISRAEL'S 'RIGHT TO EXIST'

16. No nation has a 'right to exist' under international law and Israel is no exception. Israel's 'right to exist' is not a legal right but an ideological and emotionally loaded catch phrase. Ultimately, what matters is not the ethical question upon which there are opposing points of view, but the fact that Israel undoubtedly does exist. For that reason alone, it has exactly the same obligations concerning territory, aggression, the laws of war, military occupation, human rights etc as any other state. The key issue is the extent to which it violates them. Reasoned debate about this is within the ambit of lawful free speech, and to the extent that Mr Williamson is seeking to stifle it he is acting unlawfully.

17. The Human Rights Act 1998 gives further effect to all the rights and freedoms guaranteed under the European Convention on Human Rights. The Act permits ministerial restrictions on free speech only for purposes spelt out in article 10 of the Convention, and then only if the restraint is proportionate. In my opinion the restraint that Mr Williamson has tried to impose on schools in connection with the spike in antisemitic incidents is unjustified, disproportionate, and discriminatory. It is largely based on defending Israel's 'right to exist'. But rather than chasing lawyers down rabbit-holes, I will try to place Israel's 'right to exist' in its proper historical perspective.

18. On 29 November 1947, the United Nations voted in favour of the partition of mandatory Palestine into two states: one Jewish, one Arab. The Jews accepted partition, the Arabs went to war to nullify it. In the course of the 1948 war, the Jewish state extended its territory from the 55 percent granted by the UN to 78 percent of mandatory Palestine. The West Bank

was captured and later annexed by Transjordan, 730,000 Palestinians became refugees, and the name Palestine was wiped off the map. After the end of hostilities Israel signed, in 1949, armistice agreements with Lebanon, Syria, Jordan, and Egypt. These are the only internationally recognised borders that Israel has ever had. On the legitimacy of Israel within these borders, however, there were conflicting opinions. Israel's critics saw it as an outpost of European colonialism, a usurping entity, and a racist project. In their eyes, the State of Israel had no legitimacy in any shape or form. In the eyes of the rest of the international community, however, Israel enjoyed legitimacy within its 1949 borders.

19. The June 1967 war changed the situation fundamentally. In the course of the war, Israel captured the Golan Heights from Syria, the West Bank from Jordan, and the Sinai Peninsula from Egypt. In the immediate aftermath of the war, Israel began to build civilian settlements on occupied Arab land in flagrant violation of the 4th Geneva Convention. Most of Israel's actions in the aftermath of the war were illegal. The annexation of Jerusalem was illegal, the annexation of the Golan Heights was illegal, and all the settlements are illegal. The blockade of Gaza, which Israel imposed in 2007 and which is still in force today, is illegal. It is a form of collective punishment which is proscribed by international law. In 1979 Israel returned the Sinai Peninsula to Egypt as the price for a peace treaty; in 1994 it signed a peace treaty with Jordan, and in 2005 it withdrew unilaterally from the Gaza Strip. But the creeping annexation of the West Bank continues to this day.

20. Israeli governments have done their best to obliterate the Green Line (the old international border) on the West Bank and to treat the settlement blocs as part of the State of Israel. This called into question Israel's legitimacy. For Israel's radical critics this made little difference: Israel

remained an illegitimate, violent, usurping entity. On the other hand, many of Israel's supporters, including liberal Israelis and Jews elsewhere, made a distinction between Israel within its 1949 borders which they consider legitimate, and the Zionist colonial project beyond the Green Line which they regard as illegitimate.

21. The notion of Israel's 'right to exist' thus became much more problematic in the post-1967 era. In the 1970s Israeli spokesmen insisted on this right ever more vociferously in the context of mounting criticism of the illegal occupation. On becoming prime minister Likud leader Menachem Begin stated in the Knesset 'Our very existence per se is our right to exist'. Despite this common sense position, Israel's spokesmen continued to insist that Israel's right to exist had to be acknowledged unambiguously by its opponents and that denial of this right was proof of antisemitism. Dwelling on Israel's right to exist served to divert attention from mounting international opposition to its illegal occupation and from the ever louder calls to grant the Palestinians equal rights. The truth of the matter is that it was not the Palestinians who were delegitimising Israel but the Israeli government which sponsored the occupation and violated the human rights of the Palestinians under its military rule.

22. Israel depicted the PLO as a terrorist organisation that denied its right to exist. This was certainly true of the 1968 Palestinian National Charter. But the PLO gradually moderated its political programme. In 1988, the Palestinian National Council voted to recognise Israel's right to exist, to accept all UN resolutions relating to the Israeli-Palestinian conflict going back to the 1947 partition resolution, and to renounce the armed struggle. Despite these moves, Israel's rejection of the PLO remained absolute rather than conditional. Consequently, no negotiations could take place for a peaceful resolution of the conflict.

23. On 13 September 1993, Israel and the PLO signed the Oslo Accord. This was a historic breakthrough, the first agreement between the two principal parties to the conflict. Mutual rejection was replaced by mutual recognition. The accord boosted Israel's legitimacy on the international stage and resulted in the award of the Nobel peace prize for its architects. But the terms of the agreement reflected the power relations between the two parties. The PLO explicitly recognised Israel's right to exist. The Israeli government, however, only recognised the PLO as the representative of the Palestinian people. Israel most definitely did not acknowledge that the Palestinian people have a right to national self-determination. In the Oslo Accord there is no mention, let alone a promise, of a Palestinian state. The Oslo peace process broke down (in my view primarily because of the relentless expansion of Israeli settlements on the West Bank) but one thing did not change: Israel's denial of the Palestinian right to independence and statehood.
24. The Labour Party accepted in principle the idea of a two-state solution to the conflict but the terms it offered fell short of the minimal Palestinian demands. The right-wing Likud Party, on the other hand, has consistently rejected the idea of an independent Palestinian state. It is a proponent of Greater Israel and therefore of the doctrine of permanent conflict. Its ideology maintains that the Jewish people have an exclusive right to sovereignty over Judea and Samaria (the Biblical names for the West Bank). The Likud was willing to put this claim in abeyance during peace negotiations but never abandoned it.
25. Both Labour and Likud are vociferous in their call for Arab recognition of Israel's right to exist but they are curiously reluctant to acknowledge it when it happens. In 2002, to give one striking example, the Arab League

unanimously adopted the Arab Peace Initiative at their Beirut summit. This plan called for formal peace agreements and full normalisation with all 22 members of the league in return for Israeli withdrawal from the territories occupied in June 1967. The resolution made it clear that the Arab states, individually and collectively, were ready to pay the price for peace not only by recognising Israel as a legitimate state in the area but also to normalise relations with it. Israel's response to this brave initiative was a resounding silence.

26. In 2007 Israel changed its conditions for negotiating a peace settlement with the Palestinian Authority. Previously, it used to insist that the Palestinians recognise Israel's right to exist. From now on it insisted that they recognise Israel's right to exist as a Jewish state. This demand is completely preposterous: diplomatic recognition is of a regime that rules over a clearly demarcated geographical area; it has nothing to do with the political or religious make up of state being recognised. Furthermore, the demand ignores the fact that a fifth of the citizens within Israel's pre-1967 borders are Palestinians and that they cannot possibly be expected to go along with it. Israel introduced this bizarre condition in the certain knowledge that it would be rejected. It was a non-starter designed to derail the negotiations. The purpose of the ploy was to place an insurmountable hurdle and to shift the responsibility for the ensuing diplomatic deadlock from Israel's leaders to the Palestinian Authority.

27. During the premiership of Benjamin Netanyahu, from 2009 to 2021, the demand of Palestinian recognition of Israel as a Jewish state became deeply entrenched. This demand served, as it was intended, to preclude the possibility of meaningful peace negotiations with the Palestinians. Although Netanyahu is the secular leader of a secular party, he ramped up the rhetoric about the imperative of preserving the Jewish character

of the State of Israel. He also weaponised antisemitism in his campaign to discredit critics of Israeli state policies.

28. Netanyahu's principal target was BDS, the campaign for Boycott, Divestment, and Sanctions. He denounced it hysterically as antisemitic and as an existential threat to Israel. His frequently repeated but unsupported claim was that BDS denied Israel's right to exist. The reality is that BDS is a global, grassroots, non-violent movement whose objectives are grounded in international law. Its principal objectives are an end to the occupation of Palestinian lands, equal rights for the Palestinian citizens of Israel, and the right of return of the 1948 refugees.

29. In the campaign against BDS, the very definition of antisemitism has been expanded to include all types of anti-Zionism. A dangerous dynamic was thus set in motion. The worse Israel behaves towards the Palestinians, the greater is the popular appeal of BDS, and the more ferocious become Israel's attempts to delegitimise it. Israel describes its campaign against BDS as an effort to 'delegitimise the delegitimisers'. This glib phrase overlooks the part that its own malpractices and serial war crimes play in turning the country into an international pariah.

30. Israel prides itself on being both a Jewish and a democratic state. This is clearly stated in the 1992 Basic Law. Pre-1967 Israel was a democracy, a flawed democracy to be sure but so are most democracies. There was a whole raft of legislation which discriminated against the Palestinian citizens of the country. Nevertheless, it was a procedural democracy with universal franchise, political parties, and elections. On the other hand, Israel plus the occupied territories is most emphatically not a democracy. It is an ethnocracy: a system of government in which one ethnic

group dominates the other. There is another word for such a system of government—apartheid.

31. The claim that Israel is an apartheid state is hotly disputed but it is a fact. At least, that was the conclusion reached by B'Tselem, the highly respected Israeli human rights organisation. Until recently B'Tselem's reports used to focus on Israeli human rights violations in the occupied Palestinian territories. A point was reached, however, when Israeli practices and policies in the occupied territories could no longer be considered separately from the regime in Israel proper. In January 2021, B'Tselem issued a closely argued position paper entitled 'A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid'. https://www.btselem.org/publications/fulltext/202101_this_is_apartheid
32. It declared: 'The entire area Israel controls between the Jordan River and the Mediterranean Sea is governed by a single regime working to advance and perpetuate the supremacy of one group over another. By geographically, demographically and physically engineering space, the regime enables Jews to live in a contiguous area with full rights, including self-determination, while Palestinians live in separate units and enjoy fewer rights'.
33. If one accepts this report as a fair and objective description of the state of affairs in Israel/Palestine, as I do, the whole debate about Israel's so-called right to exist becomes an irrelevance, a red herring. The report makes clear what ought to be clear in any case to any fair-minded observer, namely, that we are not dealing here with a 'conflict' between two equal parties but a most acute asymmetry of power between oppressors

and oppressed, occupiers and occupied, abusers and victims.

34. Mr Williamson's letter on antisemitism to headmasters should be viewed in the light of this reality. It needs to be placed under an uncompromising lens. Ninety percent of British Jews regard Israel as a central component of their identity, as is their right. Whatever their views, Jews should not be held collectively responsible for Israel's actions. But nor should one be surprised that large-scale Israeli violence against Palestinians, as in the bombardment of Gaza in May of this year, provokes a spike in antisemitic incidents in this country. This has been meticulously documented by the Community Security Trust. Mr Williamson is, of course, right to be concerned about this phenomenon. But his instructions to schools regarding antisemitism are ill-advised, discriminatory, and unlawful.

35. They are discriminatory in the first place because they privilege one minority, Jewish pupils, at the expense of other minorities, notably Arabs and Muslims, who also have strong feelings about events in Israel/Palestine. Secondly, the measures he urges to combat what he regards as antisemitism, will have the inevitable and lamentable effect of restricting free speech on Israel while inhibiting the expression of solidarity with the Palestinian cause. Thirdly, it is inappropriate for him to tell schools what are reputable, and by implication, disreputable organisations based on just one, disputable criterion. And finally, given his own one-sided and highly politicised position on the Israeli-Palestinian conflict, he is hardly the right person to advise professional educators on how to 'offer pupils a balanced presentation of opposing views'.

36. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that

are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

37. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Avi Shlaim



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