On international law and Gaza: critical reflections

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Forthcoming in *London Review of International Law* vol 12 issue 2 (2024)
<https://doi.org/10.1093/lril/lrae012>

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INTRODUCTION

Tor Krever

As Israel's assault on Gaza continues into its tenth month, the language of legality has become the dominant frame of popular and political discourse. Public interest in the International Court of Justice (ICJ) and its proceedings is at a level perhaps never seen before; so too in the International Criminal Court (ICC), its Prosecutor at once urged to act and condemned for inaction, his recent request to judges for the issuing of arrest warrants both celebrated and damned. International law has emerged as the global vernacular of both condemnation and legitimation; few commentators today speak of Gaza or Palestine without invoking the language of il/legality.

What are we to make of this groundswell of interest in and resort to international law? What is the significance of the current series of ICJ proceedings and popular engagements with them? How should we think about the clamorous championing of The Hague and its institutions as the harbingers of justice? The editors of the *London Review of International Law* invited our advisory editors and others in the academic community of critical scholars to reflect on these questions.

Since its founding, the *Review* has celebrated and supported critical, innovative work that contributes to reshaping the contours of international legal scholarship. We are pleased to publish these short essays—produced relatively rapidly as responses to an unfolding event of international concern—in 'section three' of the *Review*, an occasional journal space reserved for opinion, translation, and reflection. The interventions that follow reflect a wide range of views and vary markedly in form and style—from the poetic to more familiar scholarly expositions—and in register—from speculative contemplations to trenchant philippics. The resulting collection takes in a wide span of positions mirroring the heterogeneity of our critical legal community; considerable disagreements abound, from the utility of law and legal argument to the historical specificity of the present conjuncture to the characterisation of events in Gaza.

The collection is organised thematically, albeit loosely—Palestine and law, Palestine and discourse, Palestine and the world, Palestine and history, Palestine and the academy. Few of the reflections, though, sit neatly within any single category and, rather than impose thematic boundaries on readers, we have eschewed sectional headings. All texts were finalised in late June.

PALESTINIAN LIFES MATTER: FRAGMENTS FROM BOSNIA(N)

Marina Veličković

Figure 1. 'Palestinian lifes matter'. © Marina Veličković

i. I was born a human shield. The building shook in July heat. I guess you could say the hospital basement was the first place I've ever known.

ii. Video after video after video after video of children white as ghosts covered in dust that used to be their homes.

iii. I keep having a nightmare in which I am buried under the rubble and can't breathe. My therapist asks if I've considered not watching the footage. *They'll keep killing us even if I look away*. She looks at me. *You mean them?*

iv. I miss home, deep in my bones. So I skip a conference and get on a plane. It's November and being pro-Palestine is not a crime. There is graffiti on the side of a museum that houses memories of the war. It says

v. *Palestinian lifes matter*

vi. I don't go to the rallies for Gaza *here*. The people who organise them are the same people who protest pride every year. Sometimes home is cruel. Sometimes home hurts.

vii. Israel is pinkwashing its genocide. Trying to rebrand annihilation as liberation.

viii. & I can't breathe, & none of us can breathe.

ix. I go to a demo on campus. And I love students. I worry for them.

x. My mother worries for me. She tells me, *you've survived one war let this one go—you've worked too hard—you can't come back here*

xi. I am not sure how to stay away.

xii. My therapist tells me I am the most resilient person she has met. I think she means it as a compliment.

xiii. There is a video of a boy collecting body parts in a plastic bag.

xiv. Israel is greenwashing its occupation. Countless olive trees torched, but look at this vegan-leather. Seventythousandtonnesofbombs. But look at the vegan-leather. Water wells destroyed. But look at the—

xv. vegan-leather boots in hospital hallways. Five Palestinian babies have decomposed on a NICU bed.

xvi. Better traumatised than dead.

xvii. The nightmares are back.

xviii. I sacrifice writing for my sanity. I run. I swim. I never stop moving.

xix. *When's the book coming?*

xx. We always talk about the war as an anecdote. *We had no food and had to eat dandelion leaves.* Isn't that funny! *A sniper bullet once missed my head by half a centimetre.* Isn't that lucky! *We got to live long enough to be traumatised.* Well done us!

xxi. I wonder if the boy with his brother in a plastic bag is still alive.

xxii. All I want for him is to grow up soft. Because,

xxiii. *fuck resilience*

xxiv. Everyone watches the ICJ case and a friend sends me a meme. It's a still from *The Passion of the Christ*. Mel Gibson is saying 'so it's like a televised hearing and there's judges I think'. The blood-covered Jesus sitting next to him is captioned as *Balkaners who basically grew up watching the Hague courtroom in-between cartoons*

xxv. I reply *lol, I love a good trauma punchline*, &

xxvi. We talk about protests and whether to wear a mask.

xxvii. We talk about campus organising.

xxviii. We talk about workers blocking weapons factories.

xxix. We talk about Palestine.

xxx. We don't talk about law. We know better. We know war.

LAW V NEGOTIATION

Frédéric Mégret

Perhaps one of the most remarkable claims to emerge regularly out of the Israel-Palestine conflict is that international law is not conducive to peace and that insisting on one's rights is an unhelpful distraction. Instead, parties (by which is generally meant Palestinians) should negotiate their statehood.

How are we to make sense of the demand to negotiate rather than invest in the law, against the background of otherwise imperious claims made on behalf of the international rule of law? For instance, it is now almost dogma that peace efforts must go hand in hand with accountability initiatives. In every context of territorial dispute, it is the standard prescription that these should be addressed on the basis of international law and through dispute settlement.

I leave aside here the implausible view that all of the 'other' side's legal claims are made in bad faith—merely a form of lawfare—and therefore not even worth considering; if this were correct, then the side making the claim would itself surely have a considerable interest in deploying legal arguments to win its case. A more plausible view might be that international law does not 'tick all the boxes', as it were, merely prescribing a bare minimum within which the conditions of political settlement must still be sought.

To be sure, there is a margin between the broad contours of the settlement of a conflict as they may result from international law and its precise resolution on the ground. International law still needs diplomats and cartographers. It may also sometimes be that the law is too rigid for some of the complex compromises that need to be made and that, as it were, one should not let a point of law get in the way of a good settlement. As I have argued elsewhere, insistence on international law at the expense of all else may result in certain rigidities.[1] As Palestine emerges into statehood, a territorial settlement will have to be reached.

But the fear is that something more ominous is involved in the insistence that parties negotiate rather than waste their time in legal quarrels. To negotiate outside the law is to put everything on the table, in an act of pure political creation, as if the law could only emerge from a pre-legal encounter at arms' length between parties. On the one hand, this appeals to the imagined virtue of the *tabula rasa* as part of a realist tradition that emphasises the world-creating nature of historical compromises. On the other hand, it also represents a dramatic vote of no-confidence in the resolutive power of law that is quite startling—certainly by the standard of bromides about an international rule-based order.

I wonder if those who advocate for pure negotiation realise how having everything in the open may also undermine their own (necessarily, in part, legal) standpoint. But more problematically, I wonder what lies in the radical prioritisation of negotiation over law, if not simply the raw articulation of transactional power. That, of course, may be precisely the point.

There is a certain *déjà vu* here. What this is reminiscent of is the decades during which Haiti had to 'negotiate itself into existence' in the nineteenth century, despite having the international law of state creation and sovereignty so apparently on its side.[2] Western states essentially

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[1] Frédéric Mégret, 'Le droit international de l'usage de la force complique-t-il la résolution des conflits?' *Le Rubicon* (19 July 2023) <https://lerubicon.org/le-droit-international-de-lusage-de-la-force-complique-t-il-la-resolution-des-conflits/>. All URLs last accessed 20 June 2024.

[2] See Liliana Obregón, 'Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt' (2018) 31 *Leiden Journal of International Law* 597.

blackmailed the fragile new republic into concluding a variety of treaties and making strong concessions including, infamously, paying compensation for having expropriated slave owners. Haitian sovereignty has never fully recovered since.

It is one thing to think that international law does not have all the answers. It is quite another to ask a party to a conflict to forfeit all its legal claims as a condition of being heard: to ask it to partake in its own juridical erasure, in fact, precisely in the moment it is claiming sovereignty.

FORUM SHOPPING, FEMINISM, AND FIGHTS OVER DEFINING A CONFLICT

Karen Engle and Fionnuala Ní Aoláin

Israel's ongoing military campaign in Gaza since 7 October 2023 has led many critics—state and non-state actors, international lawyers, and activists—to rely upon and support international law. The critics are not, however, the only ones to use international law; international law plays a constitutive role on all sides of the conflict. This essay takes seriously the ways that Israel and its supporters also deploy international law, not only the hard law of the UN Charter providing the US with Security Council veto power but soft law as well. This reliance on soft law may be surprising in the universe of armed conflict and use of force where hard law norms tend to dominate. Yet, as part of its effort to justify this war domestically and internationally, Israel has used soft law and institutions to achieve UN 'findings' that Hamas engaged in systematic and widespread sexual violence on 7 October. Indeed, aided by many self-proclaimed feminists in Israel and the US, it has engaged in forum shopping to select the gender-focused UN entity it believes would most likely produce the outcome it seeks.

Forum shopping plays a key role in shaping the conflict narrative, including its impact on women. States and feminists alike have moved between hard actors and hard norms (Security Council, ICC, and customary international law) and soft actors and soft norms (UN Women, the Office of the Special Representative of the Secretary General (SRSG) on Sexual Violence in Armed Conflict, and the Women, Peace and Security Agenda). Because institutional authority is intimately connected with competing narratives of the conflict, women's suffering has become for many a proxy not only for the war itself but for the competences and legitimacy of different international institutional bodies. And feminism has become a testing ground for the legitimacy and affirmation of Israel's military action (and vice versa).

UN Women became the first soft institutional actor to consider the gendered effects of the conflict when, a mere two weeks into Israel's attack on Gaza, it issued a report finding that 'the eruption of violence and destruction has already resulted in close to 493,000 women and girls being displaced from their homes in Gaza' and 'a surge of widows'. UN Women called for an 'immediate humanitarian ceasefire', 'sustained humanitarian access', and funding to support local women's organisations.[3] This response was consistent with UN Women's long-standing practices of speaking on 'bread and butter' issues, and stayed in its wheelhouse of programming and practice where it has a field presence.

A number of self-identified feminists in Israel and the US soon began criticising UN Women for not condemning sexual violence committed by Hamas on 7 October. Toward the end of the

[3] UN Women, 'UN Women Rapid Assessment and Humanitarian Response in the Occupied Palestinian Territory' (20 October 2023) <https://www.un.org/unispal/wp-content/uploads/2023/10/un-women-rapid-assessment-and-humanitarian-response-in-the-occupied-palestinian-territory-en.pdf>.

first ceasefire in late November 2023, at the very moment that Israel needed to rally support for its continued military operations, pressure intensified—including through a letter signed by 80 members of the US Congress[4]—for the organisation to make a specific statement of condemnation. Even though UN Women had never before condemned or been expressly called upon to condemn sexual or gender-based violence in any conflict in this way, it relented.[5] In a 1 December statement, it 'unequivocally condemn[ed] the brutal attacks by Hamas on Israel on 7 October', noting alarm at the 'numerous accounts of gender-based atrocities and sexual violence during those attacks'.[6]

This strategic targeting of UN Women has had at least two effects. First, questioning the organisation's (feminist) legitimacy diverted attention away from its calls for a humanitarian response including a ceasefire, mirroring the broader delegitimisation of the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) whose primary function was to meet the population's vast conflict-affected humanitarian need. The attack on these institutions that prioritise hard humanitarian and equality norms aimed not only to limit their influence and effectiveness but also arguably to drown out the norms they champion.

Second, and related, in its condemnation of sexual violence, UN Women—and, later, even critical feminist scholars who opposed those 'weaponizing the issue of rape'[7]—centred international criminal law as the ultimate conflict arbiter. UN Women's 1 December statement called 'for all accounts of gender-based violence to be duly investigated and prosecuted', throwing its weight behind the 'rigorous investigations' of the UN Commission of Inquiry on the Occupied Palestinian Territory (OPT) established by the UN Human Rights Council in 2021, which had called for submissions on gender-based crimes committed by any armed actors in the conflict since 7 October.[8]

Though commissions of inquiry are sometimes created in lieu of criminal or other hard law responses to international conflicts or crises, this one had international criminal law in its sights early on. And as early as 10 October, the Commission issued a statement indicating that it would investigate crimes committed by both sides in the conflict, 'intent on ensuring legal accountability, including individual criminal and command responsibility', and that it would share information with the ICC.[9]

UN Women directed attention towards the Commission partly to respond to another UN entity that was elbowing into this charged conflict space: the office of the SRSG on Sexual Violence in Armed Conflict, led by Pramila Patten. Recognising stark political and institutional realities

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[4] Letter to Sima Bahous (29 November 2023) <https://cherfilus-mccormick.house.gov/sites/evo-subsites/cherfilus-mccormick.house.gov/files/evo-media-document/final-letter-calling-on-un-women-to-condemn-hamas-sexual-violence-against-israeli-women1.pdf>.

[5] Notably, recent reports of widespread sexual violence in other conflicts, including in Sudan and Syria, have not led to similar calls.

[6] UN Women, 'UN Women statement on the situation in Israel and Gaza' (1 December 2023) <https://www.unwomen.org/en/news-stories/statement/2023/12/un-women-statement-on-the-situation-in-israel-and-gaza>.

[7] 'Open Letter to the Israeli and U.S. Governments and Others Weaponizing the Issue of Rape' (Portside, 29 February 2024) <https://portside.org/2024-02-29/open-letter-israeli-and-us-governments-and-others-weaponizing-issue-rape>.

[8] OHCHR, 'Call for submissions on gender-based crimes since 7 October 2023' <https://www.ohchr.org/en/hr-bodies/hrc/co-israel/call-submissions-gender-based-crimes-7-October-2023>.

[9] OHCHR, 'Commission of Inquiry collecting evidence of war crimes committed by all sides in Israel and Occupied Palestinian Territories since 7 October 2023' (10 October 2023) <https://www.ohchr.org/en/press-releases/2023/10/commission-inquiry-collecting-evidence-war-crimes-committed-all-sides-israel>.

but also making clear in UN-speak that Patten had no investigative authority on her own, the December UN Women statement 'welcomed' that Patten would 'proactively share UN-sourced and verified information on incidents, patterns, and trends of conflict-related sexual violence to aid all investigations'.

The forum shopping objectives of Israel, the US, and their (feminist) supporters became clear as Patten negotiated a visit to Israel 'to gather information on sexual violence reportedly committed in the context of the attacks of 7 October 2023 and their aftermath'.[10] Given her mandate limits, Patten's institutional stance was neither 'fish nor fowl'. Though her mission's final report detailed a number of 'findings' of sexual violence by Hamas[11] (though, notably, not of the widespread and systematic accounts that had by then been recounted and contested in the media[12]), her Security Council briefing disavowed that the visit was investigative in nature.[13] Nevertheless, it was considered by several Security Council members to be, in the words of the US representative, 'a methodical and sobering report, which confirms what we have known for months'.[14]

This sequence of events demonstrates how institutional forum shopping within the UN might be used not only to find a more favourable forum to 'adjudicate' one's claim but to achieve a broader desired political result. Here, it arguably delegitimised one institution (UN Women) and its humanitarian aims while elevating another (the SRSG) to support ongoing Israeli military action. In parallel, in attempting to make clear the limited mandate of the SRSG as well as Israel's refusal to allow the Commission of Inquiry to do its work, UN Women and its feminist supporters have perhaps unwittingly deferred resolution of the conflict to an eventual arbiter of the international humanitarian law (IHL) violations committed by each side.

Among the lessons we take from our reflection on this process is that during fraught conflict, we should pay attention to which institutions are being lauded and which are being marginalised, as well as which norms are ascendent and which are in abeyance. These tell us something fundamental about the legitimacy and regulation of the conflict itself, as well as the ways in which legitimacy and regulation both affect and are affected by the presumed status and integrity of feminist responses. Thus, the stakes for both feminism and the conflict are high when the feminist shield against sexual violence is selectively turned into a sword that yields grave gendered and other forms of harm to a broad range of civilians.

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[10] Office of the SRSG-SVC, 'UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms. Pramila Patten, to visit Israel and the occupied West Bank' (24 January 2024) <https://www.un.org/sexualviolenceinconflict/press-release/un-special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten-to-visit-israel-and-the-occupied-west-bank/>.

[11] Office of the SRSG-SVC, 'Mission report: Official visit of the Office of the SRSG-SVC to Israel and the occupied West Bank 29 January – 14 February 2024' (4 March 2024) <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2024/03/report/mission-report-official-visit-of-the-office-of-the-srsg-svc-to-israel-and-the-occupied-west-bank-29-january-14-february-2024/20240304-Israel-oWB-CRSV-report.pdf>.

[12] On the controversy regarding sexual violence and 7 October, see Azadeh Moaveni, 'What They Did to Our Women' *London Review of Books* (9 May 2024) <https://www.lrb.co.uk/the-paper/v46/n09/azadeh-moaveni/what-they-did-to-our-women>.

[13] Office of the SRSG-SVC, 'Briefing by SRSG-SVC, Ms. Pramila Patten to the Security Council – Findings of visit to Israel and the occupied West Bank' (11 March 2024) <https://www.un.org/sexualviolenceinconflict/press-release/briefing-by-srsg-svc-ms-pramila-patten-to-the-security-council-findings-of-visit-to-israel-and-the-occupied-west-bank-11-march-2024/>

[14] UNSC Verbatim Record (11 March 2024) UN Doc S/PV.9572, 11.

HYPOCRISY, RACE AND INTERNATIONAL LAW

Robert Knox

The language of hypocrisy has abounded in response to the Israeli state's assault on Gaza.

The West. The 'rules-based order'. International law. International institutions. The responses of all of these to the Israeli state's brutal actions have been found wanting in comparison to both their legal commitments, and their response to the Russian invasion of Ukraine.

And what explains this hypocrisy? Racism. Whenever international law is called upon to protect those who are not white, or to call to account those who *are* white, it fails. Gaza has unveiled this racist hypocrisy.

At first sight this is a powerful argument.

However, there are reasons to resist this temptation.[15] In this story, the problem with international law is its *inconsistent application*. Were international law to be applied fairly, were its commitment to equality maintained, there would be no hypocrisy. Ultimately, such an account is a *liberal* one, in which international law is—at worst—a neutral force that is instrumentalised for racist ends. This depiction of international law as innocent, if inept, does not capture the relationship between racism and international law and, accordingly, effaces international law's structural *complicity* in Israel's current onslaught. Instead we need to understand international law's role in buttressing racialised violence against the Palestinians, even when applied 'consistently'.

Nowhere is this clearer than in the case of IHL. The Israeli state, and its Western backers, proclaim that Hamas violates the law of war, even as hospitals and schools are levelled and civilians are killed *en masse* by the Israel Defense Forces (IDF). Surely this is an example of international legal hypocrisy?

In actuality, however, this is not a simple example of unequal application. As Chris af Jochnick and Roger Normand noted 30 years ago, IHL developed in the context of the *legitimation* of imperial violence via the rubric of 'military necessity'.[16] This discourse of necessity was one linked to *technology*, whereby 'obsolete' technology was understood as wasteful in relation to military necessity, as compared to advanced, precision weapons. In the context of unequal imperial violence, this distinction entrenched the power of technologically and economically advanced states as against 'primitive' racialised subjects.

This is most evident in the context of the principle of 'distinction', which requires states to distinguish between civilians and combatants. At face value, this is noble. However, 'primitive' technologies, such as unguided rockets, will necessarily be unable to make these distinctions and thus represent 'indiscriminate attacks'. By contrast, far more destructive 'precision' weaponry—smart bombs, drone strikes etc.—will not automatically fall foul of the principle of distinction. Instead, what must be asked is whether or not the violence inflicted is *proportionate*.

In the context of Gaza, then, the means of military violence available to the Palestinians are understood as *per se* unlawful, whereas the technology of the Israeli state is merely in need of

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[15] Robert Knox, 'Imperialism, Hypocrisy and the Politics of International Law' (2022) 3 *TWAIL Review* 25.
[16] Chris af Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49.

further scrutiny. And what is this scrutiny? In essence, the Israeli state must take *precautions* in its targeting, and make sure that such assaults not cause damage 'excessive in relation to the concrete and direct military advantage anticipated'. The first requirement has become a *de rigeur* part of the IDF's repertoire, with warnings, dummy bombs etc.; the latter *presupposes* the legitimacy of military violence, and seeks to abstractly counterpose this violence to an incommensurable value: that of human life.

The contrast between these two is a stark one. 'Backwards' military violence is simply forbidden, but the technological power of advanced capitalism is subject to indeterminate standards. In concrete terms, then, Israeli life becomes absolutely protected whilst Palestinian life can be measured against the standard of 'proportionality'.

This does not result from an unequal application of standards, but rather from IHL's internalisation of a racialised division between civilised and uncivilised forms of violence, in which imperial powers are granted significant room for manoeuvre. This has been borne out very specifically in the ICC's recent arrest warrants, in which more Hamas officials were indicted for more potential crimes than Israeli officials.

The results of this are certainly *racialised* but they are not the result of hypocrisy. The central point here is that we cannot counterpose the abstract equality of the law to racism. Instead, it is precisely through the abstract application of equal standards that international law's racism expresses itself, by equally applying standards which uphold and embed technologically advanced forms of warfare.

International law's abstraction plays a further role of racial mystification. In many respects, the Israeli onslaught in Gaza is unremarkable. Not in terms of its devastation, but rather in terms of its motives. Israel is a colonial capitalist state, driven by the need to accumulate capital and control its subject population: the violence it inflicts is a result of a concrete set of social relations, and the only way to end that violence is to overturn those relations.

International law's abstractions cannot capture this. At the highpoint of the anti-colonial movement, international law *could*—to some degree—single out those countries under alien domination. But it could only translate these struggles into the abstract desire for statehood. Whilst residues of this remain today, international law's abstract equality necessarily translates colonial violence into its more abstract categories of force. In this way, the specificity of the situation in Palestine becomes *materially* unintelligible, understood instead as a simple racial narrative: the clash of ancient hatreds, or a clash of civilisations. Oppression and exploitation are translated into a clash of equals.

This leads to a final twist of the knife. Whilst accusations of hypocrisy can appear as a 'weapon of the weak', they have often been levied by colonial powers *against* subject peoples to delegitimise their attempts to invoke the law as a shield. This argument is one precisely mobilised by the Israeli state to legitimate its own actions—namely the accusation that Palestinians themselves invoke international law in a *hypocritical* manner, to stymie Israel, whilst disrespecting it themselves. Such an accusation becomes intelligible in the context of an international law which abstracts Israel's actions from the social relations of capitalism and imperialism.

This, then, is the limit of the critique of hypocrisy. Even—or perhaps especially—the equal application of international law's standards embeds and reproduces its racism. Any attempt to reckon with the violence of the Israeli state must move beyond international law's abstractions and attack those social relations that underlie that violence.

WHEN THE NEGATION OF CRITIQUE BECOMES BLOODY BUSINESS: TO BE AN INTERNATIONAL LAWYER IN TIMES OF GENOCIDE

Shahd Hammouri

In this short piece, I reflect on memorable quotations from conversations I have had on Palestine and international law in the past year. My positionality shapes my reflections as a Levantine woman working in the field of international law in times of live-streamed genocide of my people.

I

'Cannot you see that by placing hope in international law, you are supporting a project of pacifying the masses?'
Palestinian activist

International lawyers are merchants of phantoms. In a world where the logic of politics dominates, we come to the scene holding Lady Justice to instil hope or despair. Our positionality is powerful, for we are the guardians of the 'acceptable'. During this live-streamed genocide, our words became swords in a violent game of lawfare.[17] Lawfare on laptop screens feed moral ambiguities guiding the blurring or clarity of reality.

I often remind my students that 'with great power comes great responsibility'. If we agree that we live in a networked, interconnected world where power is diffuse, we must agree that responsibility is also diffuse. To imagine diffuse responsibility, we need to expand our understanding of causality, weighing in privilege and capacity.[18] The logic behind my words can be elaborated in the following syllogism:

> *Privilege and capacity heighten individual parameters of responsibility towards atrocities.*
> *International lawyers have privilege and capacity.*
> *International lawyers have heightened individual responsibility towards atrocities.*

II

'The work of Palestinian international lawyers cannot be trusted, they are too emotional.'
British international lawyer

'Between us and liberation there is a thick layer of 50-year-old white men who are hooked on international law as a belief system, and 70-year-old Arab men who are hooked on their own interest.'
Palestinian international lawyer

It is common for decolonial critique to become a sidelined subject, with its call for radical change undermined. For example, in standard international law modules, Third World Approaches to International Law (TWAIL) becomes a subject to be covered at the end if time permits. Those questioning the logic of positivism from a Global South perspective are often

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[17] See 'Anatomy of a Genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 to Human Rights Council, Francesca Albanese' (25 March 2024) UN Doc A/HRC/55/73.

[18] See Iris Marion Young, 'Responsibility and Global Justice: A Social Connection Model' (2006) 23 *Social Philosophy & Policy* 102; Boaventura de Sousa Santos, 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges' (2007) 30 *Review (Fernand Braudel Center)* 45.

sidelined as second-grade international lawyers in practice. My own experience has shown that the words of leading Global South judges such as Alvarez, Abi Saab, and Ammoun are not perceived as de facto adequate for ICJ submissions. The doctrine of sources becomes a belief system associated with institutional privilege determining who gets the aura of seriousness. In this context, I am perplexed: are we seriously negating reality through an obsession with technicalities once again? Are we taking international institutions seriously when they opt for indeterminate language which undervalues the violence of a reality where parents are holding the body parts of their children in bags?

One explanation for this phenomenon starts with articulating the difference between perceiving and conceptualising. It can be argued that mainstream international lawyers perceive colonisation but do not conceptualise it. To perceive is to acknowledge the existence of 'A'; to conceptualise is to reflect on what the existence of 'A' entails. I would argue that without a serious revamp of the core of our discipline, the doctrine of sources, the mainstream conceptualisation of colonialisation remains absent. To adapt to the reality of colonisation, the practices, norms, histories and scholarly works of the Global South must be taken from the fringes to the centre.

The ongoing genocide in Gaza has shed light on the violent nature of this status quo. In the course of this ongoing live-streamed genocide, debates about 'self-defence', 'genocide', 'human shields', 'non-state actors', and 'occupation' clearly demonstrate a collective stance which undermines the practice, norms, histories of scholarly works of the Global South. The legal categorisation of alien domination and subjugation, the historical use of self-defence to justify retaliation against subjugated populations, the colonial preference of 'state' actors, people's right to struggle against alien domination and subjugation, a state's duty to end colonisation, and the civilising rhetoric of the status quo were niche topics of discussion despite their centrality to the Global South.

III

'It is like they do not see the same reality we do.'
Palestinian international lawyer

Our responsibility starts with the bare minimum of a clear comprehension of the reality of which we speak. Far too often, I felt that international legal conversations were distant from the relevant reality. With that in mind, I start each panel discussion in which I participate with a reminder of the brute reality of which we are speaking, a reality reeking of the stench of dead bodies and time passing along with the echo of the sound of drones threatening imminent death.

Two things are clear when it comes to the question of reality: lies grow in excess of representations,[19] and truth can at times be suspended in the quest to maintain the status quo. In times of moral ambiguity, it becomes imperative to champion the clarity needed to uphold clearer representations of reality, if we are to make value judgements to determine rights and duties. This need to touch base with brute reality is the bare minimum outcome of a complexified comprehension of individual responsibility of international lawyers in times of genocide.

[19] Umberto Eco, *A Theory of Semiotics* (Macmillan 1977).

IV

'When you know that international legal language is inherently indeterminate, the international legal community is predominantly liberal, and international legal institutions are unapologetically colonial in thought, why do you even engage with it?'
Palestinian activist

'You are a lawyer, you speak only of the law as it is.'
Arab intelligence officer

On the other hand, from the perspective of the Global South, to take international law seriously in its current form demands a negation of the reality of colonialisation. It demands the acceptance of a system of belief that can only be intuitively normalised for those with immense privilege. The foreign tone of international law, as a language not ours, is crystal clear from the Palestinian perspective.

Why engage? Because Palestine pokes the insecurities of the discipline so clearly. International legal legitimacy is premised on some abstract claim to justice. If it drifts too far from it, its relevance risks becoming obsolete. One is closer to reality when asking 'is this just?' rather than 'is this legal?'

As recently noted by Abdelghany Sayed, what is of 'historic' significance 'is not how the international legal institution is reacting to Palestinian suffering; it is rather the extreme suffering and criminality that force such institutions to act'.[20] In cases of extremity, power relations are laid bare. Palestine as a contemporary case of colonisation—one that is normalised by the political status quo—sheds light on the embedded structures of normalised domination in our discipline. It brings critique to the forefront.

Without integrating concepts needed to conceptualise contemporary forms of domination, the divergence between international legal language and reality has reached absurdity. Such lack of integration is evident in the overwhelming drive among mainstream international lawyers to provide a 'balanced narrative' which negates the structural asymmetry maintained by the colonising state. Negating this divergence is a wilful act of ignorance for which international lawyers cannot claim innocence.[21] This absurdity is at its height when international lawyers debate the indeterminacy of commas and words to make judgements about an ongoing live-streamed genocide. Though it may not be visibly clear, it only takes a tiny cognitive stretch to comprehend that international legal practice in its current form is a bloody business.

INTERNATIONAL LAW IN THE ASHES OF GAZA

John Quigley

The litigation related to Gaza before the ICJ has brought the language of international law into the public discourse. Israel is understood to be a belligerent occupant in Gaza, with all the responsibility that this status brings. Israel's conduct in Gaza is seen as subject to a set of long-

[20] Abdel Ghany Sayed, 'Reading the ICC Prosecutor's Statements on Palestine from the Global South' *Mada Masr* (23 May 2024) <https://www.madamasr.com/en/2024/05/23/opinion/politics/reading-the-icc-prosecutors-statements-on-palestine-from-the-global-south/>.
[21] 'Liberal cosmology provides a particular protection of law's innocence. Law is radically separate from "material life" and can also act on and order that life.' Peter Fitzpatrick, 'Racism and the Innocence of Law' (1987) 14 *Journal of Law and Society* 119, 121.

prescribed norms. The term ‘genocide’ is no longer only associated with what transpired in Europe decades ago but is seen as a term with legal consequences for present-day events. Students encamping on their campuses espouse arguments based on international law. Banners at public rallies denounce ‘complicity’, a doctrine known formerly only to members of the International Law Commission.

States that provide the means of warfare to a state that uses them unlawfully are now assessed not merely from a policy standpoint but are seen as culpable themselves. The terminology of ‘humanitarian law’ has reached a broader audience. ‘Siege warfare’ is no longer a quaint concept for warfare around medieval castles but is seen as applying to an entire population that has no means of escape.

As states on the receiving end of accusations have attempted to deflect the charges against them in The Hague, their reliance on procedural arguments has only highlighted the extent of their malfeasance. Germany says that the international court should not assess the illegality of its military assistance to Israel because Israel is not a party to the case. Israel tries to undermine South Africa’s case for genocide by challenging South Africa’s right to sue. The world’s powerful states, who like to claim they are on the side of the law in international relations, suddenly find their backs up against the wall in a court that they themselves created. When Israel’s belligerent occupancy of Palestine territory is challenged as being so badly carried out as to be unlawful, the US, backing Israel, is forced to acknowledge Israel’s malfeasance, even as it argues that the occupancy is lawful.

Even as the norms of international law reach a broader audience, the various legal proceedings demonstrate the limits of what an international court can do. The UN is seen as incapable of enforcing the orders of its own judicial organ. What could emerge is stronger public backing for limits on the power of the Security Council to block meaningful action. The General Assembly may be pressured into assuming a greater role in enforcement of international law. It could assemble a military force from willing states to march into Gaza to protect its population. It could invoke its power under the UN Charter to admit new members, admitting Palestine even without endorsement from the Security Council.

The disconnect between the illegality of what is being wrought upon Gaza on the one hand, and the inability of the international community to deal with it on the other, holds the prospect of reform that may inure in the longer term to the benefit of the cause for world peace.

‘THE BIGGEST LIE KNOWN TO HISTORY’

Nora Jaber

On 13 April 2024, Ashraf Nafedth, a young Palestinian man in Gaza, filmed himself burning his international law textbook, which he picks up from the rubble of his destroyed home. The book used to have ‘a very special place in [his] heart’ he tells us, before he sets it aflame and denounces international law as ‘the biggest lie known to history’.[22]

In Arabic, we have a word: *qahr*. It encapsulates a deep sense of frustration, festering rage, and profound grief in the face of oppression and injustice. Palestinians have continuously been in a state of *qahr* not just in Gaza, and not just since October 2023, but across Palestine and its

[22] Palestine and MENA Info Center (@PALEMA_IC), ‘Ashraf Nafedth, from within the rubble…’ (X.com, 13 April 2024) <https://twitter.com/PALMENA_IC/status/1779196238216225118>.

diaspora since 1948 and throughout the ongoing Nakba. I recognise Nafedth's *qahr* as he expresses his realisation that the promises the book holds, 'that all countries are equal in rights and in duties', are empty. Although Palestinians' embodied knowledge of international law's entanglements with colonial and capitalist structures of oppression has long since left us disillusioned by it, *qahr* etches itself deeper into our being as Palestinians every time it fails us.

This leaves me, as a critical scholar of international law, conflicted about what to do with international law during an ongoing genocide. I have been grappling with this a lot, in the context of recent invocations of international law to call out and denounce Israel's attacks on Gaza on the basis of their *illegality*. On the one hand, I want to be completely done with it, to turn away from the liberal international legal order and toward more emancipatory sites of resistance that agitate against the brutality of the settler colonial entity, because it is fundamentally morally reprehensible and unjust, regardless of whether the law recognises it as illegal. I feel a responsibility to resist being pulled into, and to work against, interventions that, though well-meaning, ultimately sustain and reproduce the inequitable structure of international legal argumentation that generally upholds the colonial and capitalist underpinnings of liberal legalism.

I struggle with this every time I am presented with an open letter or statement to sign, the entire weight of which rests on legal arguments constructed by legal experts to proclaim Israel's actions *illegal*. I am not alone in questioning how to reconcile the politics and techniques of critical legal scholarship with such tactical invocations of international law (assuming they are tactical, not ideological).[23] Do we, by authoring and signing such letters, reproduce the relations of domination and exploitation that our theory and scholarship understands international law to be constitutive of? Some might read this and think that this is not the time for theory, that the moment needs action and that such letters are one form of it. But are not moments of crisis, moments of acute *qahr,* the real test of the relationship between our theory and practice? Should our revolutionary struggle (for those of us who are invested in it) not be animated by our theory? If we know international law will not save us, why keep saving it?

Having said this, I must admit that I did feel invested when South Africa brought a case against Israel before the ICJ in December 2023. Despite knowing that an ICJ ruling would not in itself change the reality on the ground (and it clearly has not), I, too, hoped for a legal victory, but not out of any ideological commitment to international law, or belief in the possibility of justice through the international legal order. Mainly, I feared that should the ICJ not rule in favour of South Africa and order provisional measures against Israel, the decision would strengthen repression and criminalisation of support for Palestine, and that it might even weaken the morale of the global resistance.

In an attempt to resolve my conflict around what to do with international law in these times, I traced my fear back to where it was directed: how do our engagements with international law affect revolutionary praxis *on the street*? How might they be used to secure concrete material gains that sustain and expand the space for resistance? I am thinking here about defensive uses of law, to push back against universities' attempts to shut down student encampments, or to demonstrate 'lawful excuse' in a defence against charges of criminal damage regularly levelled against protesters. Every engagement with the liberal legal order must contend with its

[23] Matthew Craven, Susan Marks, Gerry Simpson and Ralph Wilde, '"We Are Teachers of International Law"' (2004) 17 *Leiden Journal of International Law* 363. See also Robert Knox, 'Strategy and Tactics' (2012) 21 *Finnish Yearbook of International Law* 193.

limitations, such as the likelihood of losing the legal battle, and, more significantly, the dangers of legitimising and strengthening oppressive legal structures. These are some of the considerations that must be weighed, given what is at stake. Unless international law can be mobilised in the service of a larger liberatory strategy, an anti-imperialist struggle against the material structures of the ongoing Nakba, I second Nafedth in saying, let it burn.

SCURRYING TO THE HAGUE

Tor Krever

I

In his 1995 poem, *al-Muharwiluun*—those who scurry—Nizar Qabbani took aim at those in the Palestinian leadership and wider Arab world who, after Oslo, rushed to embrace conciliation and normalisation. '[W]e ran, breathless / We scrambled to kiss / the shoes of the killers / … In our hands they left / a sardine can called Gaza'.[24]

II

Critical scholars have long warned of scurriers in the legal world, too quick to embrace international law as a necessarily progressive force despite, amongst other things, its inability to grapple with the material structures and systemic logics out of which violence and atrocity arise. In framing the horror unleashed on Gaza in terms of il/legality and insisting on a false opposition between international law and domination, we naturalise those structures and logics, as well as law's role in constituting them.

III

Brecht, another poet writing in exile, nodded to such ideological obfuscation in his 1936 poem *Über die Gewalt*. 'The headlong stream is termed violent / But the riverbed hemming it in is / Termed violent by no one.'[25] We demand an end to war crimes, genocide, illegality in Palestine. But what of the riverbed?

IV

At a time when so many bow to the prevailing political mood and retreat to equivocation and the contorted pretence of 'balance', the critical tradition is more important than ever. Yet many critical legal scholars reveal an impressive lability, rehearsing paeans to the promise of international law, critiques of indeterminacy giving way to trite formalism. They pen and sign open letters in the name of legal expertise in an epistolary deluge. They demand the ICC issue Khan's arrest warrants, and that he request more of them, espousing a faith in the institution—but for its Prosecutor's bias or caution; but for its jurisdictional hurdles—entirely incongruous with its concrete record.

V

All of this is familiar. In 2003, opposition to the US and British invasion of Iraq was also articulated in the language of legal argument—the war was an illegal use of force; the war was

[24] Quoted in Avi Shlaim, *Israel and Palestine: Reappraisals, Revisions, Refutations* (Verso 2009) 136-37.
[25] Bertolt Brecht, 'Über die Gewalt' [1936] in *Poetry and Prose* (Continuum 2003) 54.

the work of war criminals who should be tried in The Hague.[26] Reflecting on their appeal to international law to oppose the invasion, one group of critical scholars entertained the possibility it had carried unintended, even lamentable, consequences.[27] Others were less enigmatic in their warnings.[28] Two decades later, these stand Cassandra-like, frequently cited but seldom heeded.

VI

Anti-imperialism once offered a different vocabulary, exploitation and oppression to be ended not with appeals to the Genocide Convention and judicial diktat but through political organising and revolutionary struggle to overturn the international system that produces such ills. Is South Africa's ANC, leading the rush to The Hague, really, as some would have it, the vanguard of a new Third World movement, its lawyers not merely skilled professionals but an anti-imperial guerilla? The Third World movement was certainly always marked by a tension between revolutionary anti-capitalism and bourgeois nationalism. But can we not stand in solidarity with Palestine today without wearing the straitjacket of legalism or laundering the internationalist credentials of domestic reaction?

VII

In February, I spoke with a colleague at Birzeit in Palestine. There was little interest in international law amongst her students, she confessed, despite the well-publicised ICJ proceedings. 'They just don't see its relevance for their everyday lives'. Perhaps the juridification of resistance and all it entails will yet come to haunt critical international lawyers,[29] a Palestinian Clarence or Anne stalking Bosworth Field: 'To-morrow in the battle think on me'.[30] Or perhaps we will simply scurry once more to The Hague, forever holding aloft international law's edgeless sword.

IMAGINING A FREE PALESTINE: JUSTICE WITHOUT CRIMINAL LAW

Sophie Rigney

What does it mean to imagine a future where Palestine is free? Where babies are not hungry, and where their bodies are safe? Where poets can live and write into old age: not words foretelling their deaths, but singing of their lives? Where fishermen can catch bountiful nets of fish, and the olive trees are full, and the bakeries have flour? Where there is peace, prosperity, care, and nurturement? What does it mean to imagine this, and can international criminal law bring us to that future place?

Many have called for the ICC to respond to the plausible genocide in Gaza through investigations and prosecutions. This appeal to criminal law feels like one of the few tools we possess to stop the killing and destruction. What else are we to do? We have been told for

[26] See Robert Knox, 'International Law, Politics and Opposition to the Iraq War' (2021) 9 *London Review of International Law* 169.
[27] Craven, Marks, Simpson and Wilde (n 23).
[28] See, eg, Knox, 'Strategy and Tactics' (n 23).
[29] See Tor Krever, 'From Vietnam to Palestine: peoples' tribunals and the juridification of resistance' in Brian Cuddy and Victor Kattan (eds), *Making Endless War: The Vietnam and Arab-Israeli Conflicts in the History of International Law* (University of Michigan Press 2023) 233.
[30] William Shakespeare, 'The Tragedy of King Richard III' in *Complete Works* (WJ Craig ed, Oxford University Press 1980) act 5 sc 3.

decades that international criminal law has a 'deterrent' function;[31] a 'socio-pedagogic' function;[32] that it is integral to an international rule of law.[33] If this were true, it would be a mighty tool. But we see all that in ruins now: the politicians who ordered this violence, and the soldiers who carried it out, are not daunted by potential ICC prosecutions. Here is the double bind: we demand the Court to act, but it does not seem to matter much if it does. If the Court does nothing, it proves the critiques that have long been made: its selectivity, its relation to power. But if it does act, those critiques are not disproven: the Court is still selective, still enmeshed in power structures. And so, many implore the Court; but others start to ask, is there a different way?

International criminal law is a carceral system of law. It has shown itself to be incapable of ending the violence; and indeed, can only ever exact more violence. Like domestic systems of criminal law which rely on prisons and police, international criminal law relies on the violence of imprisonment and punishment to address violence committed. Also like these systems, it is extractive: in the words of Ruth Wilson Gilmore, through imprisonment, these systems extract people from communities; in turn, what is extracted 'from the extracted is the resource of life—time'.[34] Yes, a desire to punish is understandable. There is part of me, too, that wants to extract from those who have extracted; to place them in prison for the deaths they have caused. It feels impossible to meet this violence with anything but violence. But as Mariame Kaba implores us, can we 'challenge our punitive impulses, while prioritising healing, repair, and accountability'?[35] I want to try.

So how can we build accountability without relying on criminal punishment? To be clear, this is not about impunity or inaction; it is about resisting the vengeance that will only ensure more harm. To bring us to this Palestine that I imagine—where the poets and the olive trees and the babies are safe, where they are joyful, where they enjoy true peace and self-determination—requires a broader justice than carceral international criminal law can provide. This must involve rapid divestment from military structures, careful demobilisation of troops, debt cancellation, land rights, and increases in aid and worldwide mutual care. These responses to violence, among others, will do 'what criminal punishment systems fail to do':[36] build safety for the harmed, and ensure structural change so that the harm will not happen again. We do not need to position the ICC as the only 'legitimate hand of justice'.[37] We can imagine, and bring into being, a different justice: one which does not rely on extraction, and instead lays the foundations for expansive peace and liberation.

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[31] See, eg, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, preamble.
[32] Mirjan Damaška, 'The Competing Visions of Fairness: The Basic Choice for International Criminal Tribunals' (2001) 36 *North Carolina Journal of International Law and Commercial Regulation* 365
[33] Sang-Hyun Song, 'The Role of the International Criminal Court in Ending Impunity and Establishing the Rule of Law' *UN Chronicle* (December 2012) <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law>.
[34] Ruth Wilson Gilmore, 'Abolition Geography and the Problem of Innocence' in Gaye Theresa Johnson and Alex Lubin (eds), *Futures of Black Radicalism* (Verso 2017) 225, 227.
[35] Mariame Kaba, *We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice* (Haymarket 2021) 59.
[36] ibid.
[37] Angela Y Davis, Gina Dent, Erica R Meiners and Beth E Richie, *Abolition. Feminism. Now.* (Haymarket 2022) 50.

Fragments of international law appear often in accounts of this unfolding catastrophe: specific intent requirements, elements of crimes, jurisdictional disputes, characterisations of armed conflicts, IHL principles. There is a remoteness to these terms and concepts, a clinical quality that enacts distance from the phenomenon of violence. IDF policies expand the weight of military necessity, with the value of specific targets presented to justify increasing numbers of civilian casualties.[38] Collateral damage estimations link the principle of proportionality to bodies on the ground.

Israel asserts that its use of precision weapons offers material proof of its compliance with IHL. In an attack in Rafah on 26 May 2024 that resulted in large numbers of civilian casualties, an IDF spokesperson stated that the military used munitions designed to minimise collateral damage.[39] Some states insist that their use of these weapons is driven by humanitarian considerations even as the outcomes of their use materially undermine this claim. Through the grey areas embedded in its key principles, IHL inadvertently drives weapons development and asymmetrical warfare, providing corporations mostly based in the Global North with endless markets for precision weaponry.

US military aid to Israel is directed toward US-based corporations specialised in weapons and munitions production. The GBU-39 bombs used in the targeted attack on two Hamas combatants in Rafah in May 2024 were produced by Boeing.[40] The bombs were delivered by F-series fighter jets produced in part by Lockheed Martin, the world's largest arms producer, with military jet fuel likely supplied by the Israeli company Paz Oil, who are contracted to supply jet fuel to the IDF.[41] The tail actuation system guiding these bombs to the target was produced by Woodward, another US corporation.[42] This single airstrike in Gaza carried out by the IDF is the culmination of thousands of hours and millions of dollars of corporate effort in weapons development and production.

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[38] For example, in an attack that struck the Jabaliya refugee camp in northern Gaza in October 2023, the IDF stressed the high value of the target. IDF, 'IDF & ISA Eliminate Commander of Hamas' Central Jabaliya Battalion' (31 October 2023) <https://www.idf.il/144297/>. The monitoring group Airwars reported that the strike killed at least 126 civilians. 'ISPT0783' (Airwars) <https://airwars.org/civilian-casualties/ispt0783-october-31-2023/>. For a proportionality assessment of this strike, see Mark Lattimer, 'Assessing Israel's Approach to Proportionality in the Conduct of Hostilities in Gaza', *Lawfare* (16 November 2023) <https://www.lawfaremedia.org/article/assessing-israel-s-approach-to-proportionality-in-the-conduct-of-hostilities-in-gaza>.

[39] IDF, 'Press Briefing About Recent Events in Rafah by IDF Spokesperson RAdm. Daniel Hagari' (28 May 2024) <https://www.idf.il/en/mini-sites/hamas-israel-war-24/briefings-by-idf-spokesperson-rear-admiral-daniel-hagari/may-24-press-briefings/press-briefing-about-recent-events-in-rafah-by-idf-spokesperson-radm-daniel-hagari-may-28-2024/>.

[40] Boeing, 'Small Diameter Bomb (SDB)' (2015) <https://www.boeing.com/content/dam/boeing/boeingdotcom/defense/weapons-weapons/images/small_diameter_bomb_product_card.pdf>.

[41] The Israeli Air Force uses a variety of F-series air platforms, including the F-16. Lockheed Martin, 'Falcon Forward: A New Era of F-16' <https://www.lockheedmartin.com/en-us/products/f-16.html>. Paz Oil, through its subsidiary Paz Aviation Services, has an active contract to refuel aircraft at seven Israeli Air Force military bases. 'Paz Oil Company' (Who Profits Research Center, 14 March 2023) <https://www.whoprofits.org/companies/company/3703>.

[42] See Robin Stein, Christiaan Triebert and Haley Willis, 'Israel used U.S.-made bombs in the strike that killed dozens in Rafah', *The New York Times* (29 May 2004) <https://www.nytimes.com/2024/05/29/world/middleeast/israel-us-rafah-bombs.html>.

What avenues of responsibility exist for such a complex network of actors and accomplices? Can this be brought into the frame of state-centric international law? Here the Arms Trade Treaty (ATT) has provided some form of redress in at least one state party's jurisdiction, the Netherlands, to block the supply of F-35 fighter jet parts, with more litigation invoking the ATT in other jurisdictions. Yet the treaty's text is silent on corporations, arguably absolving them of responsibility, as it is left to states to ensure that transfers of conventional arms do not result in their use in the commission of genocide, crimes against humanity, war crimes, and human rights violations. The export licences granted to corporations after this assessment clear the way for arms transfers to take place. International law—in this case, an international treaty on the regulation of sales of conventional arms—is complicit in providing avenues for corporations supplying weapons to continue their operations.

Beyond the well-covered institutional sites of the ICJ and the ICC as potential avenues of redress, the field of international law might instead start from the material conditions that make the circumstances unfolding in Gaza possible: the larger supply chain that provisions, supports, and profits from armed conflict.[43] The military attacks carried out in Gaza are enabled by multinational corporations, manufacturing and supplying weapons and related technology. The war reflects a broader global commercial enterprise, backed by powerful state and private actors, largely unrestrained by existing areas of public international law.

Apart from using international legal obligations to pressure states, how can arms transfers be regulated? Is there space for thinking about secondary liability for corporations across a broader supply chain? Is this possible within international criminal law, which tends to see individuals as connected to states and armed groups but not private corporate actors? How can we imagine this landscape otherwise? These are critical questions for the field of international law if its supporters wish to reduce the violence unfolding in Gaza. Whether the field is useful now remains an open question.

INTERNATIONAL LAW'S DEAFENING SILENCE ON SETTLER COLONIALISM

Christine Schwöbel-Patel, Nahed Samour and Michelle Burgis-Kasthala

As international lawyers, we are scrambling to bring our legal language to bear on the assault on Gaza. The Genocide Convention is invoked to determine whether a genocide is being committed against the Palestinians; the Rome Statute is invoked to determine whether war crimes such as starvation and the denial of humanitarian aid are being committed against the Palestinians; the Hague Conventions are invoked to determine whether Palestinian territories are illegally occupied. The all-too-familiar indeterminacy critique looms large in these debates, for there are also those international lawyers aligned with Israel who claim that Hamas is committing war crimes, and that it is Hamas which has effective control over Gaza. International lawyers—and many victims and those who stand in solidarity with Palestinians—demand that international institutions such as the UN and international courts such as the ICJ or the ICC *determine* and thus seemingly settle these legal debates. Such gestures depict law as a site distinct from politics, yet also able to shape political outcomes. As Martti Koskenniemi argued, international law is both *over*legitimising (able to legitimise any political behaviour, including genocide), and *under*legitimising (failing to provide a convincing argument for the

[43] We have addressed avenues beyond the ICC in Sara Kendall and Clare da Silva, 'Beyond the ICC: State Responsibility for the Arms Trade in Africa' in Kamari M Clarke, Abel S Knottnerus and Eefje de Volder (eds), *Africa and the ICC: Perceptions of Justice* (Cambridge University Press 2016) 407.

legitimacy of any practice, including the outlawing of genocide).[44] In the background of these normative debates is a deafening silence within international law: settler colonialism as an international legal concept.

International lawyers, while considering global and structural issues of huge moral and ethical importance, and faced with indeterminacy, have the propensity to descend into legal quibbles. This is exemplified by discussions on the plausibility of genocide being committed, centring around the *South Africa v. Israel* provisional measures orders at the ICJ. While Israel's military is (at time of writing) attacking Rafah—a designated 'safe' zone for civilians in Gaza—international lawyers are embroiled in highly technical legal debates, the importance of which pales in the face of very real death and destruction.[45] Legal battlelines are drawn on whether the ICJ found, in its first provisional measures order, that the Palestinians have a 'plausible right' to be protected from genocide or that genocide according to the Genocide Convention was 'plausibly taking place'.[46]

This grasping for legal terminology, and the legal nit-picking around it, is in this case a by-product of the absence of the category of settler colonialism in international law. There is no convention preventing settler colonialism, no legal definition of settler colonialism, and no case precedents of settler colonialism in an international court. So, international lawyers confronted with the violent claiming of land and the displacement of its existing inhabitants for the purposes of settlement and the privileging of settlers have no option but to employ the legal categories that speak *around* settler colonialism's violence, such as conquest, self-determination, occupation, apartheid, genocide. Inadvertently, these positivist discussions tend to have legitimising effects on settler colonialism. One example is the invocation of *ius ad bellum* and *ius in bello*, providing support for the assumption that we are dealing with a 'war' between Israel and Hamas which treats 7 October as an event,[47] rather than treating native elimination as a structure.[48] Also exemplary are the arguments put forward by the German legal team at the ICJ vis-à-vis the Nicaraguan claim that Germany is complicit in the genocide of the Palestinians; Germany was given a platform to discuss at great length the various due diligence mechanisms enshrined in its legal framework governing exports of weapons of war (*Kriegswaffenkontrollgesetz*), thereby evading broader questions of complicity in illegal occupation and genocide.[49] The absence of settler colonialism as an international legal category is of course not accidental. It is symptomatic of the hegemonic tendencies of international law that are a legacy of colonialism, which stratify privileges according to capital and race.

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[44] Martti Koskenniemi, *From Apology to Utopia* (Cambridge University Press 2009).
[45] As Forensic Architecture has documented, 'evacuation orders' and 'safe zones' have been all but 'safe', not only because they were directly attacked by Israeli forces, but also because they lack the basic infrastructure to house, feed, and medically care for these large numbers of displaced civilians. 'Humanitarian Violence: Israel's Abuse of Preventative Measures in its 2023-2024 Genocidal Military Campaign in the Occupied Gaza Strip' (7 March 2024) <https://content.forensic-architecture.org/wp-content/uploads/2024/03/Humanitarian-Violence_Report_FA.pdf>.
[46] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order of 26 January 2024).
[47] Christine Schwöbel-Patel and Nahed Samour, 'The Mislabelling of the Siege on Gaza as a "War" between Israel and Hamas' (2024) 7(1) *APSA MENA Newsletter* 38.
[48] Patrick Wolfe, 'Settler colonialism and the elimination of the native' (2006) 8 *Journal of Genocide Research* 387; Areej Sabbagh-Khoury, *Colonizing Palestine, The Zionist Left and the Making of the Palestinian Nakba* (Stanford University Press 2023).
[49] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* Verbatim Record (9 April 2024) CR2024/16.

Past periods in history have given rise to new legal categories, such as crimes against humanity and genocide (following the atrocities of the Second World War in the 1940s) and Apartheid (following the collapse of the institutionalised system of racial segregation in South Africa in the 1990s). It is understandable that some international lawyers therefore are demanding new legal categories for the ongoing violence committed against the Palestinians, including Nakba.[50] One could envisage a demand for making settler colonialism a new legal category under international law so as to deem its practices illegal. Whether this would structurally prompt change remains undetermined (settler colonialism as a legal category would fall prey to debates from apology to utopia). In the meantime, it is crucial to highlight the *absence* of settler colonialism in international law to unsettle some of the assumptions around the legal categories employed, which are all *insufficient* to grasp the realities of settler colonial practices.

HUMANITY LAW REDUX AND ITS RULE OF LAW

Ruti G. Teitel

For some time now the mere mention of international law to vindicate human rights of the oppressed was considered a rather empty expectation of naive liberals at best, and a pernicious restatement of colonial empire by other means at worst.[51] Yet, notwithstanding (academic) scepticism regarding international law's capacity to solve the world's ills, we are witnessing increased recourse to international law and its institutions by lawyers and policy-makers alike. Here, I briefly explore the tensions inherent in this development.

With Russia's invasion of Ukraine we witnessed a failure of international law, evidenced by the ongoing inability of the Security Council (of which Russia is a permanent member) to respond.[52] Similar paralysis of the Security Council could be observed during Israel's highly destructive campaign in Gaza.[53] Yet, despite these visible failures we are also seeing a centring of international law in anti-war activism. For every failure of the Security Council we have not seen a turn *away* from international law, but a turn *towards* a different international body: whether the General Assembly, the ICJ or the ICC. The failures of the P5 to uphold international law have then resulted in a surge of activism coming from the less powerful states of the Global South using what I have previously termed 'humanity law'.[54]

Consider, for example, the Russian invasion followed by Security Council paralysis and its flipside: the General Assembly passing (with an overwhelming majority) resolutions condemning Russia's operation.[55] Or, similarly, consider that both sides in the Ukraine/Russia conflict headed to the ICJ, shifting the relevant discourse away from politics and diplomacy to claims and counterclaims under IHL. Another evident 'humanity law' move was Ukraine's self-referral of the conflict to the ICC.

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[50] Rabea Eghbariah, 'The Ongoing Nakba: Toward a Legal Framework for Palestine' (2023) 48 *NYU Review of Law & Social Change* 94.
[51] See Martti Koskenniemi, 'Humanity's Law by Ruti G. Teitel' (2012) 26 *Ethics & International Affairs* 395.
[52] Oona Hathaway, 'International Law Goes to War in Ukraine' *Foreign Affairs* (15 March 2022) <https://www.foreignaffairs.com/articles/ukraine/2022-03-15/international-law-goes-war-ukraine>.
[53] The Foreign Affairs Interview Podcast, 'Gaza and the Breakdown of International Law' (16 May 2024) <https://www.foreignaffairs.com/podcasts/gaza-and-breakdown-international-law-oona-hathaway>.
[54] See Ruti G Teitel, *Humanity's Law* (Oxford University Press 2011).
[55] UNGA Res ES-11/1 (2 March 2022); UNGA Res ES-11/4 (12 October 2022).

A similar turn away from the Security Council and towards international courts can be observed in the ongoing conflict in Gaza. Three months into the conflict, South Africa initiated a case under the Genocide Convention, and asked the ICJ for provisional measures which would halt the Israeli military operation in Gaza. South Africa argued that provisional measures are necessary 'to protect against further, severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention'.[56] While the Court initially refrained from ordering a ceasefire, it did find that Palestinians have *plausible rights* relating to failure to prevent genocide; and ultimately, after several additional months of mounting civilian casualties the ICJ issued an order stating that, '[t]he State of Israel shall … immediately halt its military offensive, and any other action in the Rafah governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part.'[57] A number of states from the Global South showed interest in joining South Africa's case, while others brought their own claims (such as Nicaragua's attempt to use the Court to limit Germany's arms sales to Israel).[58]

As with Ukraine, this turn to the ICJ was accompanied by recourse to the ICC, including by Palestine which had accepted jurisdiction of the situation earlier in the conflict. In the latest twist, the Prosecutor turned to a panel of 'humanity law'-focused lawyers and judges for their expert opinion prior to requesting arrest warrants.[59]

These examples demonstrate that invocation of 'humanity law' to establish jurisdiction is often strained. While the ICJ jurisdiction is limited to the crime of genocide, leaving much of what is happening in Palestine outside the Court's purview, the ICC is similarly limited in which offenses it can investigate—jurisdiction which has been subject to challenge.[60] Regardless of one's normative position on the desirability of this turn to courts, it is the reality we currently inhabit, which prompts the question: what might be the utility of this discursive (and political) shift?

First and foremost, humanisation of victims through law is particularly important in times of war, as it challenges the realist account of international law as entirely state-centric. Next, any future litigation will require evidence, foregrounding the importance of investigations and ongoing documentation of the conflict.[61] Further, as we have seen in a number of previous conflicts, indictments can go a long way to jumpstarting political transition by reshaping post-conflict political communities. In Palestine one can imagine that the indicted Hamas leaders would be excluded from a future Palestinian state's government. And in Israel international

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[56] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* Application instituting proceedings and request for the indication of provisional measures (29 December 2023) 73.

[57] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order of 24 May 2024) para 57.

[58] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* Application instituting proceedings and request for the indication of provisional measures (1 March 2024).

[59] Adrian Fulford et al, 'Report of the Panel of Experts in International Law' (20 May 2024) <https://www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf>.

[60] Situation in the State of Palestine, ICC-01/18, Order deciding on the United Kingdom's request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file *amicus curiae* observations (27 June 2024); Adrian Fulford et al, 'Why we support ICC prosecutions for crimes in Israel and Gaza' *Financial Times* (20 May 2024) <https://www.ft.com/content/aa2089c5-6388-437d-bf5c-9268f3a788ce>.

[61] See Iavor Rangelov and Ruti Teitel, 'The justice archive: transitional justice and digital memory' (2023) 11 *London Review of International Law* 83.

law condemnation may eventually weaken the current government and its disastrous strategy. Short-term, one could argue that the ICJ provisional measure calling for a ceasefire has been one factor in the external pressure for a ceasefire agreement that hitherto Israel has opposed, and long-term all of the above could go some way to restoring a sense of legitimacy of the international legal order, as we watch the law overcome deep inequalities in power and resources.

TO PUT YOUR MONEY WHERE YOUR MOUTH IS—FROM CONFLICT TO PEACE CYCLES

Outi Korhonen

Conflict cycles typically have a history counted in centuries if not millennia—for example in Palestine as in Ukraine. Yet injustices seem worthy of our media attention only insofar as they can be construed as crimes—on which we can get tough—despite the fact that criminal justice is a costly posterior modality with extensive delays far removed from experienced positive peace. The processes of apprehension, arrest, proof, prosecution, trial, and sentencing involve uncertainty, formality and huge prosecutorial resources for a single perpetrator that mostly frustrate the service of justice, let alone positive social advancement for the many. With an annual budget of some 180 million euros, the ICC has achieved not even half an annual criminal conviction (10 convictions in 22 years). Although the crimes receive attention, as do the methods to get tough on them, the justice deficit will hardly be cured through criminalising the discourse.

Yet, it is a truism that the seeds of the next conflict are sown during the previous one—at the latest, by a peace treaty. So it is a justice question—but on a different plane. Wars tend to be advocated by demonstrations and remonstrations of the abuses and humiliations suffered during the previous ones. This is one of the reasons why the UN security mechanism was made collective: so that individual states' resentments, leaders' excesses, and national agitation would not spur conflict cycles, which could be prevented through sustained institutionalisation of the preventive efforts. This was a rational idea, but its practical implementation has been but faltering. A variety of internationalisation plans have been considered for Palestine between the Second World War and the end of sixties including UN trusteeship with federalisation and corpus separatum for Jerusalem in which all religions would share overlapping jurisdiction over holy places. Yet, all of these were abandoned as they were based on rapidly outdating tutelage models or obstructed by extremists as juridical fictions espousing a naïve romanticism of co-existence.

Conflict cycles are a cruel marker of shared experiences of injustice. These cycles often intertwine or graduate into complex emergencies, which include economic collapse, poor governance, massive unemployment, extreme polarisation, food and housing crises, human rights violations, environmental disasters, political oppressions and distortions, discrimination, dysfunctional justice systems, corruption—the stuff of which we all know, and the funding of which we constantly cut. The ICJ's Advisory Opinion on the Wall did not solve any of these—not even the issue of drinking water.

If our court decisions cannot guarantee access to drinking water, peace certainly sounds like a utopia. To support such a utopia we should invest as much money as is currently spent on warfare—our 'muscular humanitarianism on steroids'—in a sustainable and just peace process taking into account the rich and diverse historical and cultural context of the region. The

dystopian view is, of course, that Palestine or Ukraine's conflict will continue for a long time as a horrifying bloodshed on both sides, with war crimes, extensive civilian suffering, and environmental destruction much aided by the weapons that deplete any resources for peace. Now that more weapons and military aid are being openly sent to this conflict region than ever before, the least that the West could undertake would be to pledge as much money—hundreds of billions by the EU and the US—to peacebuilding as they spend on aiding the killing—as soon as a ceasefire holds. Peace, in our talk, is valued much more than military aid. Let us walk this talk by pledging hundreds of billions to a sustainable peace process, economic and social rights, victim funds, and truth commissions. It would mean ten-to-twentyfold spending on peacebuilding compared, for example, to the pledges for Afghanistan. It is not, however, likely that we put our money where our mouth is. For instance, in 2015, after the annexation of Crimea, the EU supported Ukraine's survival with only about two billion euros, about *one percent* of what is currently being paid mainly in the form of military aid—not counting the costs imposed by sanctions.

The role of the West is not reducible to the deep-pocketed bystander. It is symptomatic that we now focus on the spectacle of the expensive and hardcore military and individualised international criminalisation as our media cameras are directed at cruelty and bloodshed. Cheaper, persistent, and long-term peace engagement based on a historical memory that spans at least decades if not centuries or millennia does not excite Western imaginations nor pledges.

A TURN TO INTERNATIONAL LAW AND LEGAL INSTITUTIONS?

Bill Bowring

Perhaps it is only the scholars and practitioners of international law who have been so impressed by the recent proceedings in the ICJ, and by the growing pressure on the ICC Prosecutor? There can be no question of course that South Africa's application against Israel under the Genocide Convention, and the inspirational advocacy of its representatives, closely followed in the decisions of the ICJ on interim measures, have had deep political and moral significance, especially in the Global South.

In Britain, however, their impact was muted to say the least, with the British media ignoring South Africa's submissions. And the general public was left as confused as ever by the existence of such an institution and its procedures, if this news impinged at all.

The British government's deep hostility to the UN's human rights activities, especially the reporting of the thematic mechanisms, allows an observer to wonder whether the Tory right wing would like the UK to leave the UN as well as the ECHR. Labour as the traditionally pro-Israel party, deeply wedded to the Zionist project since 1948, and led for the most part by committed Zionists, has joined the Tories in depicting legitimate condemnation of Israel's extreme right-wing government and its murderous policies as somehow antisemitic.

The ICC in turn is hamstrung by the fact that leading states have not ratified the Rome Statute: the US, Russia, China and India—and Israel. Karim Khan KC was the UK government's nominee for Prosecutor. Khan's decision in March 2024 to appoint the former British chief military prosecutor Andrew Cayley to oversee the ICC's investigation into alleged war crimes in the Palestinian Territories has not increased confidence in the likelihood of significant indictments. Cayley played a key role in the process that resulted in former ICC Prosecutor Fatou Bensouda deciding in 2020, inexplicably, to abandon the investigation into allegations of war crimes by UK perpetrators in Iraq.

Nevertheless, the ICC Pre-Trial Chamber has decided to recognise the existence of the State of Palestine, which the UK so far refused to do, and to secure in 2021 the legal basis for the start of investigations into war crimes in the OPT as a whole. In May 2024 he declared online that the ICC's 'independence and impartiality' were undermined 'when individuals threaten to retaliate against the court or against court personnel', following threats by members of the Israeli government.[62] However, the UK media have ensured that, as with the ICJ, the general public is ignorant, or at best confused, as to the significance of the very existence of the ICC.

International law scholars and practitioners can be gratified that their subject matter is now seemingly more relevant than ever before. But is this really the apotheosis of international law and legal institutions? Law is not by its nature emancipatory, as Marx and Engels insisted back in the nineteenth century, although it may well be useful and even necessary to raise legal demands. But both the UN and the ICC are created and paid for by states, and peaceful resolution of disputes, and prosecution of offenders, are what law has been about since the agricultural revolution.

The significance of South Africa's case in the ICJ may well be its impact on world public opinion, even if not in the UK, and the Israeli government's hysterical reaction to the possibility of prosecutions further diminishes Israel's standing in the world. International law scholars and practitioners have a lot of interesting work to do.

THE MÖBIUS STRIP OF PALESTINE AND INTERNATIONAL LAW

Lori A. Allen

The peaks and troughs of attention to international law in relation to Gaza look like the ECG reading of a tachycardia sufferer. I think that this uneven attentiveness says something about what international law and Palestine embody today, how they together fit into the holes left by the confusion many of us are feeling as we live through a world of spreading fascism, full of genocide. Attention rises with the desperation.

There was a flurry of public debate over the efficacy of international legal institutions after the ICJ's interim ruling on South Africa's accusation that Israel is violating the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.[63] As Israel's assaults on Gaza rage on, lawyers, activists, and states continue to make recourse to international law. Nicaragua took Germany to the ICJ, demanding emergency measures to stop Berlin from providing Israel with weapons and other assistance. Although the ICJ rejected that request,[64] Israel's supporters are now quaking in their boots since the ICC seems to have come off its leash, its Prosecutor having requested arrest warrants for Netanyahu and his fellow genocidaire, Israeli defence minister Yoav Gallant.[65]

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[62] Int'l Criminal Court (@IntlCrimCourt), 'Statement of the #ICC Office of the Prosecutor…' (X.com, 3 May 2024) <https://x.com/IntlCrimCourt/status/1786316229688414518> accessed 16 May 2024.
[63] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order of 26 January 2024).
[64] Patrick Wintour, 'ICJ rejects request to order Germany to stop selling arms to Israel' *The Guardian* (30 April 2024) <https://www.theguardian.com/law/2024/apr/30/icj-rejects-request-to-order-germany-to-desists-arms-sales-to-israel>.
[65] Anshel Pfeffer, 'America Has Finally Found Effective Leverage on Israel – and Netanyahu' *Haaretz* (1 May 2024) <https://www.haaretz.com/israel-news/2024-05-01/ty-article/.premium/america-has-finally-found-effective-leverage-on-israel-and-netanyahu/0000018f-339c-d8fb-a1df-bffe7d110000>; Raffi Berg, 'ICC

Zionists and their partisans mobilise international law talk in a desperate effort to stem the tide of public opinion against Israel with absurd suggestions that Palestine be charged with genocide.[66] Such chatter has been swept aside by the grimly growing numbers of Palestinian dead, starving, and wounded in Gaza, and by the spectacle of a new leadership being born in the student protests across campuses in the US and elsewhere.[67] Although the talk has abated somewhat, international law's concepts and institutions hover, ever present, like grey clouds ready for seeding over a forest fire.

There was little public attention paid to the Human Rights Council when, on 5 April, it adopted a resolution (non-binding) calling for Israel to be held accountable for possible war crimes and crimes against humanity in Gaza. Only six countries voted against the resolution, which passed with 28 votes in favour and 13 abstentions. In response, '[t]he council chamber erupted in a wild burst of applause when the results of the vote were announced to the glee of the many countries that supported the resolution.'[68] Why this ecstatic response to another resolution that will not bring Israel to account, while few outside the Human Rights Council even noticed it?

I can only guess at the feelings and motivations of those cheering in the council chamber. But I suspect they were similar to what made so many welcome the ICJ ruling demanding Israel prevent acts of genocide against the people of Gaza. Every reassertion of international legal principles, and every collective demand for Israel's violence to stop, voiced with the authoritative language of international criminal law accusations, is like the gentle squeeze of another's hand. It can't heal you, extract you from the quicksand, or douse the flames, but someone is there saying that it could and should.

This reaction in the council chamber, and all the reactions of scrutiny, celebration, and condemnation, as well as the disregard of these legal events, say something about what international law has always represented. International law is a sometimes carrot of hope that gets dangled, sparking renewed faith in a common humanity. As I explore in my book on the history of Palestinian engagement with international legal ideas and institutions, it is a faith that does not always recognise or consider past disappointments.[69]

Human rights and humanitarian law are meant to constrain human violence, and in the absence of a more respected and effective way to forge a path to justice, many grasp at them. They're like a magic powder. Or a packet of wildflower seeds thrown in the back yard by the garage. International law of this kind crystallises certain values of equal human life and rights, even if

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Prosecutor Seeks Arrest of Israeli and Hamas Leaders' *BBC News* (20 May 2024) <https://www.bbc.co.uk/news/articles/c3ggpe3qj6wo>. The Prosecutor has also requested warrants for three Hamas leaders.

[66] Graeme Wood, 'Charge Palestine With Genocide Too' *The Atlantic* (30 April 2024) <https://www.theatlantic.com/ideas/archive/2024/04/icj-genocide-cases-israel-palestine/678235/>.

[67] Elliott Colla, 'Campus Protests Over Gaza Show That When University Leaders Fail, Students Lead' (DAWN, 1 May 2024) <https://dawnmena.org/campus-protests-over-gaza-show-that-when-university-leaders-fail-students-lead/>; Andrew Lee Butters, 'Teaching Middle East Journalism in the Midst of a Crackdown' *New Lines* (1 May 2024) <https://newlinesmag.com/spotlight/teaching-middle-east-journalism-in-the-midst-of-a-crackdown>.

[68] Lisa Schlein, 'UN rights council accuses Israel of war crimes against Palestinians' *VOA* (5 April 2024) <https://www.voanews.com/a/un-rights-council-accuses-israel-of-war-crimes-against-palestinians/7558605.html>.

[69] Lori Allen, *A History of False Hope: Investigative Commissions in Palestine* (Stanford University Press 2020).

it does so only symbolically and rarely grows anything real out of the muck of *Realpolitik*'s grounds.

There's something particular about this moment that helps explain the repeated recourse to international law over Gaza. It's not just Palestinians who have returned to the realm of international law looking for support, if not salvation. It is many: the overlapping constituencies of humanists, liberals, international legal scholars, students ready to become diplomats and judges, the optimists who always see the glass half full, maybe others who also need protection and have a stake in international law working, and the politically naïve who think that the world runs according to sometimes fair rules.

Palestine and the victimisation of Palestinians by Israel has come to signify what imperils humanity, a symptom of the polarising world. Commentators from The Arab Center have observed the international community's 'split between those eager to uphold [p]ost-WWII international laws and conventions and those supporting Israel's continuing and lawless assault on Gaza'.[70] An organiser with BDS Korea wrote that Israel's actions 'threaten the common foundation of humanity and violate the sanctity of human life … Our collective humanity is at stake.'[71] She echoes Nelson Mandela's famous declaration that the freedom of 'South Africa was incomplete without the freedom of Palestine',[72] expanding the circle of our shared fates, declaring that what happens in Palestine affects us all.[73] Archives of discussions at the General Assembly show how many have believed that solving the Palestine issue through international law was synonymous with the mission of the UN itself.[74] Palestine has, for decades, symbolically represented and materially manifested the unfulfilled promise of universal rights and self-determination. To save or abandon Palestinians is to save or abandon our humanist ideals.

Now, as Palestinians die quickly in the tens of thousands, focusing the attention that was allowed to dissipate under the slower relentlessness of Israel's settler-colonial creep across historic Palestine, the equation has been reasserted. And with all the more urgency because the tsunami of right-wing extremism and populism threatens the liberal-legal project like never before. International law and Palestine intertwine along a Möbius strip, extending the idea of justice and a common humanity into Palestinians' freedom dreams. Our freedom, as so many are seeing at last in this moment, is incomplete without the freedom of Palestine.

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[70] Yara M Asi, Imad K Harb, Khalil E Jahshan, Tamara Kharroub and Yousef Munayyer, 'Six Months of Carnage in Gaza' (Arab Center Washington DC, 12 April 2024) <https://arabcenterdc.org/resource/six-months-of-carnage-in-gaza/>.
[71] Sofia P, 'From Gaza to Seoul, Palestinian-Korean transnational solidarity against imperialism' *The New Arab* (11 April 2024) <https://www.newarab.com/opinion/gaza-south-korea-one-struggle-against-imperialism>.
[72] Crystal Orderson, 'Altruism, opportunism or both: What pushed South Africa to ICJ over Gaza?' *Al Jazeera* (16 January 2024) <https://www.aljazeera.com/features/2024/1/16/altruism-opportunism-or-both-what-pushed-south-africa-to-icj-over-gaza>.
[73] Dina Khadr, 'Beyond bystanderism: Why Palestine is a cause for us all' *The New Arab* (27 March 2024) <https://www.newarab.com/opinion/beyond-bystanderism-why-palestine-cause-us-all>.
[74] Allen, *History of False Hope* (n 69).

INTERNATIONAL LAW IN THE SHADOW OF THE SILENT MAJORITIES

David Chandler

International law is the dominant frame for popular and political discourse on Gaza because international politics, like its domestic equivalent, is exhausted. By exhaustion I refer to an inability to construct a world meaningfully cohered around forms of political representation. Without this, politics takes place in a vacuum with very little accountability or responsibility. The focus on international law in the international realm is a paradoxical effect of this broader process of depoliticisation and social demobilisation. Hundreds of thousands may take to the streets in protest, but without a political form of mediation, they become individual voices with little connection to political processes. As Jean Baudrillard once put it, the simultaneous decline of both the political and the social is self-reinforcing.[75] In this context, 'politics' becomes reduced to expressions of individuated personal conscience rather than a social or political process of institution building and alliance. The expression of this 'alienated', we might call it, condition, results in a paradox.

The paradox is that the more the Gaza conflict comes to the fore of the international and domestic political agendas, the more it exposes the incapacity of the political sphere to ground a meaningful framing. There seems to be little possibility of any political solution, reducing demands for 'one state' or 'two state' 'solutions' to empty rhetoric. Politics, without traditional frameworks of political and social structuring, results in an unmediated relation between individuated expressions and institutional actions. This extends across the board from domestic marches and protests to the conflict itself. While Baudrillard (in the early 1980s) unambiguously took sides against Palestinian terrorism, describing the strikes against Israel as depoliticised, as strikes 'at a mythical, or not even mythical, anonymous, undifferentiated enemy; a kind of omnipresent global social order',[76] it would be difficult to find anything politically strategic on either side in the horror show of the Israel-Hamas conflict. It seems unlikely that the Israeli destruction of Gaza at the cost of a catastrophic loss of human life will do anything to make the state of Israel more secure. At the same time Palestinian aspirations for a state of their own seem further away than ever.

In this space, all that remains are appeals to some imagined 'higher' or 'objective' authority, such as the ICC. The shift of emphasis from the political to the legal register reflects this implosion of both political and social modes through which communities of meaning were generated. This implosion results in the means of political or ethical activism becoming indistinguishable from its ends. Making a statement, condemning a party to a conflict, calling for a ceasefire, calling out war crimes becomes an end in itself. The expression of an opinion becomes a political act in itself rather than part of a process of social or political community-building. The focus on legal bodies, institutions and decisions is a product of this reduction of the political to the atomised and alienated expressions of the individual as petitioner.[77] In fact, the individual becomes an unusual petitioner: a petitioner increasingly more concerned with the act of repetitive petitioning itself rather than the outcomes. There is very little connection here with traditional politics, no formalised attempts to build movements or parties or to express views in a broader structure of political activity. Law becomes the field of appeal in this vacuum of political and social collectivity.

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[75] Jean Baudrillard, *In the Shadow of the Silent Majorities* (Semiotext(e) 1983).
[76] ibid 55.
[77] David Chandler, 'The Israel/Hamas War and "Decolonial Washing"', *E-International Relations* (7 December 2023) <https://www.e-ir.info/2023/12/07/opinion-the-israel-hamas-war-and-decolonial-washing/>.

PERFORMANCE AND HERESY BEFORE THE LAW

Vasuki Nesiah

'Then he reached out his hand and took the knife to slay his son. But the angel of the Lord called out to him from heaven, "Abraham! Abraham! … Do not lay a hand on the boy," he said. "Do not do anything to him. Now I know that you fear God, because you have not withheld from me your son, your only son."'
Genesis 22: 10-12

Faith in international law has long been tested by the occupation of Palestine. For many years, Noura Erakat, Nimer Sultany, John Reynolds and other legal scholars have drawn attention to the oppressions of Israel's occupation of Palestine as enabled by international law and, simultaneously, a violation of international law.[78] With South Africa's case against Israel, the testing of international law's relationship to justice for a colonised people returns to centre stage in the global public sphere.[79]

The Abraham story speaks to this relationship between faith and testing, law and violence, redemption and repudiation—all while haunted by the 'massacre of innocents'.[80] When God asks Abraham to kill his son Isaac, Abraham's proves his faith by proceeding to obey that command. The fateful act is averted by the eleventh-hour interruption by the Angel, whose alarm at the spectre of innocent Isaac's killing seems equal and opposite to Abraham's serenity in responding to God's test of his faith. Would a just god command the killing of an innocent? Is Abraham's ready assent symptomatic of a religious extremism that was alienated from the most basic ethical compass?[81] Do international lawyers present a parallel professional zealotry, solipsistic and blind to stakes beyond law? Does going to court shift attention from Gaza to The Hague? Are lawyers accumulating professional capital while drawing attention, energy and resources from more effective strategies to challenge genocide, or worse, from Palestinians and the genocide itself?

Martti Koskenniemi invoked Abraham's story in considering the 1996 ICJ nuclear weapons case.[82] Koskenniemi argued that petitioning the ICJ about the killing of innocents misunderstands the distinction between international law as a professional commitment, and the axiomatic moral principle that the killing of innocents is an 'extraordinary wrong'.[83]

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[78] See Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford University Press 2019); Nimer Sultany, 'The Question of Palestine as a Litmus Test: On Human Rights and Root Causes' (2022) 23 *Palestine Yearbook of International Law* 1; John Reynolds, 'The Life of the Law in Palestine: The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory Orna Ben-Naftali' (2018) 8 *International Dialogue* art 5.

[79] With particular focus on the international legal prohibition of genocide. See 'Anatomy of a Genocide' (n 17).

[80] There are many powerful depictions of the biblical story of 'the massacre of the innocents' in response to Herod's order to kill all newborn, including by Peter Paul Rubens, Pieter Bruegel and others. Amongst the most recent is that by the Palestinian artist Samia Halaby, currently on display in the 'Foreigners in their Homeland' exhibition in Venice, Italy. See Razmig Bedirian, 'Samia Halaby to showcase new work in Venice alongside 25 Palestinian artists' *NCulture* (17 April 2024) <https://www.thenationalnews.com/arts-culture/2024/04/17/samia-halaby-palestine-artwork-venice/>.

[81] Mark C Taylor, 'Journeys to Moriah: Hegel vs. Kierkegaard' (1977) 70 *Harvard Theological Review* 305.

[82] Martti Koskenniemi, 'Case Analysis: Faith, Identity, and the Killing of the Innocent: International Lawyers and Nuclear Weapons' (1997) 10 *Leiden Journal of International Law* 137. See also *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226.

[83] Koskenniemi, 'Case Analysis' (n 82) 161. He says further that 'Genocide—or better, the unthinkability of genocide—brings to the surface the limits of rational argument and the character of normative knowledge … As lawyers, we need to be able to say that we know that the killing of the innocent is wrong not because of

Turning to law misunderstands this most simple and profound of moral imperatives. If Abraham had questioned God about his command, it would mean Abraham had forgotten the nature of the divine and failed the test of faith. With faith that God's command can only result in divinely just outcomes, Abraham takes his knife and leads Isaac to Mount Moriah. Kierkegaard famously argued that Abraham's faith was so extraordinary that it trumped any earthly ethical compass. There was, he said, 'a teleological suspension of the ethical' because the telos of God's will for the faithful was incomprehensible to human imagination.[84]

Arguing for South Africa at the ICJ, Adila Hassim[85] and Blinne Ní Ghrálaigh[86] suggested that the very premise of the Genocide Convention challenges the dichotomy between the domain of law and the domain of ethical judgement. In South Africa's framing, what is being tested is whether international law seeks to protect the innocent universally,[87] a claim weighted by the history of racism and colonialism. As Namibia argued in an adjacent ICJ case, past victims of settler colonialism and genocide did not enjoy the protection of international law.[88] Does the prohibition of genocide extend to Palestinians today? The racial subtext to international legal texts is central to questions of faith and legitimacy. The fact that South Africans (with their own historical fight against racist governance) brought this case has underscored that 'finding' whether this is a genocide is about 'finding' whether Palestinians can be recognised as victims, whether Israel and its allies can be recognised as perpetrators, whether South Africans and Namibians, not just Israelis and Germans, have the authority to judge and denounce a massacre of innocents.[89] It is significant that movements fighting racism and colonialism such as Black

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whatever chains of reasoning we can produce to support it, or who it was that told us so, but because of who we are.' ibid 157, 162. Koskenniemi suggests the request for an advisory opinion from the ICJ was an exercise in bad faith—not an earnest request seeking the wisdom of the court from petitioners without a view but petitioners who wanted to harness the court's authority to advance their campaign with a willingness to sacrifice the distinction between legal argumentation and moral judgement. 'A purely rational, legal-technical approach to the massive killing of the innocent—the crux of the questions posed to the International Court of Justice—cannot be pursued without unacceptable moral and political consequences. It fails to attain a determinate regulation of the matter, cannot come to grips with the political and moral dilemmas involved and, above all, fails to articulate a defensible conception of what it is to engage in international law as a professional commitment.' ibid 137-38.

[84] Søren Kierkegaard, *Fear and Trembling* (C Stephen Evans and Sylvia Walsh ed, Sylvia Walsh tr, Cambridge University Press 2006) [1843] 58.

[85] In Adila Hassim's presentation of South Africa's case, she begins by speaking of the Genocide Convention as 'giving expression to the very essence of our humanity'. See SABC News, 'SA-Israel ICJ case | Adila Hassim SC' (11 January 2024) <https://www.youtube.com/watch?v=MJzf_52xBJk>.

[86] In Blinne Ní Ghrálaigh's words at the ICJ: 'the Genocide Convention is about much more than legal precedent. It is also fundamentally about the "confirm[ation] and endorse[ment of] elementary principles of morality".' *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* Verbatim Record (11 January 2024) CR 2024/1 para 29.

[87] As articulated further by Max du Plessey in the South Africa submissions, the ICJ itself has invoked this commitment to universality by noting, in its 1951 Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, 'the universal character both of the condemnation of genocide and of the co-operation required "in order to liberate mankind from such an odious scourge"'. SABC News, 'SA-Israel ICJ case | Max du Plessis SC' (11 January 2024) <https://www.youtube.com/watch?v=umwX-yF74cg>. Historically, this focus on universality has been associated with Kant's reading of the Abraham story. See Immanuel Kant, *Religion within the Boundaries of Mere Reason and Other Writings* (Alan Wood and George di Giovanni ed and tr, Cambridge University Press 1998).

[88] Consider Namibia's submissions before the ICJ dealing with Israel's occupation of Palestine: SABC News, 'ICJ Public Hearings | Nations make oral submissions in the case of Israel's Occupation of Palestine' <https://www.youtube.com/watch?v=we7puD3M2aA&t=152s>.

[89] Tafi Mhaka, 'Namibia, Gaza and German hypocrisy on genocide' *Al Jazeera* (20 February 2024) <https://www.aljazeera.com/opinions/2024/2/20/namibia-gaza-and-german-hypocrisy-on-genocide>.

Lives Matter have been at the forefront of transnational Palestine solidarity.[90] Similarly, in the legal academy scholars of Palestine and international law have drawn from critical traditions such as Critical Race Theory and TWAIL.[91]

In reading Abraham's story, I suggest we shift focus from Abraham's internal wrestling with faith to meanings garnered through its public performance. The value and relevance of the ICJ case exceeds the terms of its legal articulation. Its significance lies not in how the court will rule but the collective spectatorship of the drama on our contemporary Mount Moriah; the proceedings at the ICJ built a community by building an audience. Interpolated through the solidarities of anti-colonial left internationalism, the early 2024 hearings reverberated through global Palestine solidarity movements as a Bandung moment.[92] The reception of international legal meanings on a global stage entails a contested navigation of script and event, meanings denoted by legal argument and connoted by the structure of that argument, within the court and outside of it.[93] Those meanings are constructed by the historical conjuncture of today, and haunted by the histories of colonial domination and anti-colonial resistance of yesterday. The canonical meaning of the Genocide Convention centres the Holocaust as the singular reference point; in contrast, these histories pluralise and relativise its meanings by foregrounding colonial genocides against indigenous peoples. These genocides bind destruction to dispossession, tethering the horrors unfolding since 7 October to the disinheritances set in motion by the Nakba.[94] These meanings of genocide move us from the humanitarian sensibility of international law, to attend to the distributive consequences of settler colonial property law that choreographed the transforming of a people into a race, and a territory into property as intertwined processes of extermination and dispossession.[95]

We are a participatory audience to the spectacle at The Hague—an 'imagined community' of transnational solidarity following and unpacking the hearings with doctrinal analysis in one moment, normative critique in another, deconstructing that binary in yet another. Bringing our own political and moral coordinates to the force field of our engagement takes us from spectator to participant in the meaning-making process.[96] Abraham is not the sole author of the story of Abraham; our reception of this story is entangled with its authorship, whether we are framing

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[90] See (2024) 3 *Hammer and Hope: A Magazine of Black Politics and Culture*.
[91] Noura Erakat, Darryl Li and John Reynolds, 'Race, Palestine and International Law' (2023) 117 *AJIL Unbound* 77; E Tendayi Achiume and Devon W Carbado, 'Critical Race Theory Meets Third World Approaches to International Law', (2021) 67 *UCLA Law Review* 1462.
[92] For an allied analysis of the Bandung conference whose lasting significance was less the conference communique than the performance of the gathering itself, see Luis Eslava, Michael Fakhri and Vasuki Nesiah, 'The Spirit of Bandung' in Luis Eslava, Michael Fakhri and Vasuki Nesiah, *Bandung, Global History and International Law* (Cambridge University Press 2017) 3.
[93] For an early articulation of reception theory in critical and postcolonial theory, see Stuart Hall, 'Encoding and Decoding in the Television Discourse' [1973] in *Essential Essays, Volume 1: Foundations of Cultural Studies* (David Morley ed, Duke University Press 2018) 257.
[94] Vasuki Nesiah, '"We are proud to apologize for genocide": The racial investment in humanitarian capital' (*London Review of International Law* Annual Lecture, London, 26 October 2023). Significantly, the South African submission to the ICJ framed the timeline with the Nakba as its starting point.
[95] ibid.
[96] In this sense the Namibian intervention at the ICJ in the occupation case was expressing an anti-colonial scepticism about whether any of the proceedings at the Court will protect the Palestinian people; the killings have continued and Netanyahu's vision for 'the day after' portends further dispossession.

moral and political judgement through legal discourse or judging legal discourse for its moral and political implications.[97]

Significantly, Abraham's fidelity stands in dialectical relation with the interruptive *potentia* of the Angel going rogue.[98] The Angel jumps in and stops Abraham before the climactic act—before, as it were, the court rules. By declaring Abraham's faith as adequately demonstrated and turning our gaze away from the juridical, the Angel's irreverence mocks and challenges the significance of fidelity to the law and refuses Abraham a monopoly on our attentions. It is a profane and profound act of dissensus against the distributive work of the legal priesthood and canonical claims to juridical authority in worldmaking and unmaking.[99] Paradoxically, it is the act of going before the law[100] that may best demonstrate that God was man's invention—re-zoning legality from the sacred to the material, from an adjudicator of conflict to a participant. The Angel's actions—the people protesting in Palestine, as well as everywhere else in the world—draws the audience's engagement from the court to the street, from performing fidelity to performing heresy, from Genocide Convention debates to Palestinian poetry, from action by judges and lawyers to action by dockworkers preventing arms shipments and students building encampments.[101] As we shift our gaze back and forth from Abraham to the Angel, even when we see Abraham arguing in good 'faith', we see that he is not the only actor on the stage. The sacred altar that Abraham legitimised through his faith, the Angel subverted and challenged. Perhaps the same actors are playing all the roles.

WHAT IS INTERNATIONAL?

Ilan Pappé

Ten years ago, it would have been unthinkable that international tribunals such as the ICJ and the ICC might frame Israel as a state that perpetrates genocide and its officials as committing war crimes and even crimes against humanity. Unlike domestic legal systems, the international ones are far more susceptible to the influence of global power politics, on the one hand, and global public opinion, on the other.

I have juxtaposed public opinion and power politics because on Palestine the gap between policymakers, in particular in the Global North, and public opinion is wide and at times seems unbridgeable. This may not need spelling out, but just to be on the safe side, it means that

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[97] Our engagement with the cases, like the street protests, may convey to the Palestinian people that they are not alone in their grief and anger; this solidarity cannot halt the killings or even enact accountability but it is not nothing.

[98] Jacques Rancière, *Disagreement: Politics and Philosophy* (Julie Rose tr, University of Minnesota Press 1999).

[99] I am referencing both Rancière's work on dissensus (see, eg, Jacques Rancière, 'Ten Thesis on Politics' (2001) 5 *Theory & Event*) and Roberto Unger's description of the temples of liberal legalism that critical legal studies encountered: 'When we came, they were like a priesthood that had lost their faith and kept their jobs. They stood in tedious embarrassment before cold altars. But we turned away from those altars and found the mind's opportunity in the heart's revenge.' Roberto Unger, *The Critical Legal Studies Movement* (Verso 2015).

[100] Franz Kafka, 'Before the Law' (The Short Story Project) <https://shortstoryproject.com/stories/before-the-law/>.

[101] See Rafeef Ziadah and Katy Fox-Hodess, 'Dockworkers and Labor Activists Can Block the Transport of Arms to Israel' *Jacobin* (27 November 2023) <https://jacobin.com/2023/11/dockworkers-port-blockade-israeli-arms-solidarity-union-activism-gaza-war>; Emre Basaran, '"Biggest student movement of the 21st century": Pro-Palestinian protests spread across global campuses' *Anadolu Agency* (10 May 2024) <https://www.aa.com.tr/en/world/-biggest-student-movement-of-21st-century-pro-palestinian-protests-spread-across-global-campuses/3215689>.

policymakers still provide Israel immunity for most of its actions against the Palestinians, while public opinion, or civil society, demands a tougher and more assertive action against Israel on this matter.

It is not a coincidence that a country from the Global South was the one that appealed to the ICJ to frame the Israeli actions in the Gaza Strip as genocidal. It is very unlikely that a country in the Global North, even one known as relatively pro-Palestinian such as Ireland or Norway, would have taken such an action.

It seems that both the ICJ and ICC are trying to narrow the gap on Palestine between politics from above and from below. They are not waiting for governments to take action in the face of the unfolding genocide in Gaza and are signalling that according to international law, not only might Israel be accused of committing crimes against humanity, but those that provide it with weapons and ammunition could also be complicit in such crimes.

This crucial moment in history produces a formidable challenge to the international system we all belong to. Two conflicting approaches transpire very clearly in this moment in time. One is fed by a narrative concocted by Israel and its lobbies around the world. International institutions, including international courts and tribunals, are inherently antisemitic and biased against Israel, hence their professional opinions should be discarded. For many in Israel, international law has for some time already been a dirty phrase that signifies the old hatred against the Jews.

Underlying this is the notion is that Israel is a Western state and thus cannot be treated like Iran, North Korea, Russia or African dictatorships, the only ones that should be subjected to the rulings of international law (because Israel like the Global North has a solid domestic legal system). A more popular reference to this would be that Israel cannot be regarded as a rogue or pariah state.

The counter argument is led by the Palestinians, important countries in the Global South, indigenous communities in the West, as well as minorities in the Global North. Put simply, its message is that if a state like Israel is not punished for its criminal policies towards the Palestinians, international law is not international, and the definition of rogue state has to be renegotiated.

Many countries in the Global South, including in the Middle East, would benefit from a careful application of international human rights law given their dismal record of human rights abuses. But the Global North cannot be part of this effort, or even enter into a conversation about it, if it continues to provide absolution to the Israeli criminal policies against the Palestinians.

The Rest (as Stuart Hall famously called them[102]) are going to watch closely and carefully the next steps by both the ICJ and the ICC. Will these tribunals' rulings be followed by action on the ground or will the Anglo-American threat to fully support Israel's disregard of these rulings win the day?

In order to face many of our global challenges successfully, including that of global warming and poverty, we need a consensual and united world. A preferential legal treatment of Israel,

[102] Stuart Hall, 'The West and the Rest: Power and Discourse' in Stuart Hall and Bram Gieben (eds), *Formations of Modernity* (Polity Press 1992).

based on just and fair considerations, will hamper considerably these efforts. A free Palestine is one of the most important keys for a better world.

WHAT'S GOING ON?

Michael Fakhri

There is an ongoing reconfiguration of alliances, friendships, and networks in international law that will never be the same after whatever this moment is. That is, international law's sociological underpinnings are changing. I am reluctant to say 'after Gaza' since the unfolding genocide is not abating. Of course, this is not just about Gaza. The increased rates of settler violence in the West Bank and the attacks against UNRWA have made it clear that this is an escalated attack against the Palestinian people.

Moreover, I do not think international institutions will ever be the same after this moment. For over 75 years, international law and institutions have been 'managing' Israel as a country stuck in a conflict with Palestinians, instead of responding to Israel as a settler colony and apartheid state created through the UN.[103] Because of this history combined with the scale and speed of Israel's brutality and repeated genocidal pronouncements, people working within every UN institution are demanding that their institution respond to Israel's genocide in Gaza. At this point, how every international institution responds, or does not respond, to Gaza will determine the institution's future for decades.

The way I am experiencing international law right now makes me wonder if international law's ability to generate meaning and reproduce itself is now being driven by new discursive dynamics. I find the distinction between many operative binaries—theory and practice, legal and illegal, actions and words, critical and doctrinal, progressive and conservative—to be quickly losing any meaning. These binaries are never stable. But in more typical moments they have some degree of predictability and some power to generate and regenerate international law.

Geopolitically, it is as if the US and some of its allies have exited international law. In the past, the US still maintained some engagement with international legal discourse even as it expanded its 'war on terror': the bombing of Kosovo was illegal but necessary; the attack and occupation of Iraq was in fact sanctioned by the Security Council; torture could be justified through secret legal memos that included an interpretation of the Convention Against Torture; the invasion of Libya could be justified as a responsibility to protect. Whereas now the US makes very few international legal arguments and what few legal arguments the US and its attendant corps of legal experts are making are often obtuse or diffuse. There is of course the usual hypocrisy of international law.[104] But it also feels like the difference between the 'rules-based order' and international law is being hardened and widened.[105]

The international legal debates around Gaza are not so much about whether actions are legal or illegal as such. International lawyers and popular movements are in a more existential

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[103] Ardi Imseis, *The United Nations and the Question of Palestine* (Cambridge University Press 2023).
[104] Knox, 'Imperialism, Hypocrisy' (n 15).
[105] See John Dugard, 'The choice before us: International law or a "rules-based international order"?' (2023) 36 *Leiden Journal of International Law* 223.

battle—through concepts such genocide and starvation—trying to make some meaning of all this horror.

During a recent teach-in on Gaza with *Jadaliyya*, Darryl Li opened his remarks by noting that we are in a unique moment of Palestinian liberation.[106] That is a formidable way of understanding this moment and I think in many ways we are witnessing an expansion and deepening of the 2021 Unity Intifada. With global mobilisation, especially on university campuses, it is also fair to say that we are also in a unique moment of solidarity with the Palestinian people.

All this makes me ask: if international law universalises the particular, can we tactically use international law to universalise this particular moment of Palestinian liberation and solidarity? Are we in a moment where international law is not so much a site of contestation but can be used as a tool for coalition-building towards common emancipatory goals? Is it possible to use international law in a more militant way to gain ground for the purpose of liberation and self-determination as opposed to use international law to resolve disputes, compromise, or capitulate?

TIMES OF VIOLENCE, TIMES OF JUSTICE

Zinaida Miller

'All wars are fought twice', Viet Thanh Nguyen writes, 'the first time on the battlefield, the second time in memory'.[107] In Palestine and Israel, the violence of battle and that of memory have long co-existed. Temporality itself operates as an assertion of power, a subject of regulation, and a resource for resistance.

Sudden violence

7 October was for virtually all Israelis (and the rest of the world) a 'total surprise'.[108] Despite the affective reality—unquestionably, the attack was an atrocious surprise—classifying it as 'sudden' had its own politics, and not only because Israeli intelligence officials had refused to act on reports of an attack.[109] The reading of 'suddenness'—that is, contained in the single moment of time—permitted a decontextualised understanding of the events. To view the violence as sudden was to see it in a vacuum rather than as part of a long-running history. It erased 17 years of siege on Gaza, internal contests over control of the territory among Palestinian groups, and the overarching paradigm of Israeli control.[110] To view the 7 October attacks as other than sudden is not to suggest anyone deserved their fate that day. Rather, it

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[106] Jadaliyya, 'Gaza in Context: A Collaborative Teach-In Series—International Law & the War on Palestine' (28 November 2023) <https://www.youtube.com/watch?v=nykrwUreqbY>.
[107] Viet Thanh Nguyen, *Nothing Ever Dies: Vietnam and the Memory of War* (Harvard University Press 2016).
[108] Amos Harel, 'Over a Year Before October 7, Israel's Army Had Insight Into Hamas' Plan to Attack Israeli Towns, IDF Bases' *Haaretz* (24 November 2023) <https://www.haaretz.com/israel-news/2023-11-24/ty-article-magazine/.premium/over-a-year-before-october-7-israels-army-had-insight-into-hamas-attack-plan/0000018c-02a2-de3d-af9e-0bf7901b0000>.
[109] Yaniv Kubovich, 'The Women Soldiers Who Warned of a Pending Hamas Attack – and Were Ignored' *Haaretz* (20 November 2023) <https://www.haaretz.com/israel-news/2023-11-20/ty-article-magazine/.premium/the-women-soldiers-who-warned-of-a-pending-hamas-attack-and-were-ignored/0000018b-ed76-d4f0-affb-eff740150000>.
[110] Gisha – Legal Center for Freedom of Movement, 'Gaza Up Close' (28 June 2023) <https://features.gisha.org/gaza-up-close/>.

begs a critical reading of the pre-7 October marginalisation of Palestine as an active global concern or Palestinian national politics as an ongoing struggle.

Long violence

Battles over historical context began almost immediately. Different parties asserted context on their own terms while decrying others' contextualisation. Some rejected the notion of context as itself offensive and legally irrelevant.[111] The Israeli government—assisted ably by the US and Germany—situated the attacks within a long history of antisemitism. The repeated invocation of the phrase 'the deadliest day for the Jewish people since the Holocaust' created an implicit historical link between the two.[112] President Biden and others' explicit statements that 'hatred of Jews' drove both the Holocaust and 7 October attacks cast the day's horrors in archetypal terms. The continuing effort to link 7 October to the industrialised Nazi killing machine served to erase entirely the centrality of the Israeli state's subordination of the Palestinian people and the political context for contemporary violence. The Israeli government narrative linking 7 October to the Holocaust implied discarding the political, historical, and legal developments of the intervening decades.

Palestinians and their advocates instead foregrounded the Nakba,[113] ongoing Israeli conquest, and continuing Palestinian resistance. Relying on the concept of Nakba to describe the ongoing erasure of Palestinian life since 1948 reshapes the narrative from one of an ahistorical hatred of Jews to struggle rooted in a specific time and place. This is, of course, not a new assertion.[114] Understanding the attacks, the subsequent war, and questions about Gaza's future within the history of Palestine/Israel brings back into focus Israel's efforts to divide and control the West Bank; the decades-long blockade of Gaza; the Israeli settlement project; and the erasure of Palestinian history. It places politics and law front and centre.

Slow violence

While understanding violence within a long history offers one temporal lens, recognising varying speeds of violence is just as critical. Slow violence is the attritive violence of everyday life over long periods of time in situations of ongoing deprivation.[115] Patrick Wolfe famously discussed settler colonialism as a process rather than an event;[116] slow violence could be seen in parallel as a process of violence rather than a violent event. Even as we recoil from the spectacular violence of immense bombs dropped on refugee camps or children burned alive, the slower dispossession of territory and deprivation of dignity continues throughout

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[111] Robert Baker, 'Lawyers contextualizing Hamas attack is a threat to rule of law' *National Post* (22 November 2023) <https://nationalpost.com/opinion/opinion-lawyers-contextualizing-hamas-attack-is-a-threat-to-rule-of-law>.
[112] Ivana Saric, 'Biden recalls horror of Oct. 7 Hamas attack in Holocaust remembrance speech' *Axios* (7 May 2024) <https://www.axios.com/2024/05/07/biden-administration-combat-antisemitism>
[113] 'Nakba of 1948 and Today Are Not Separate Events, but Ongoing Process of Palestinian Displacement, Replacement, Speakers Tell Panel, Urging Immediate Ceasefire in Gaza' (United Nations, 17 May 2024) <https://press.un.org/en/2024/gapal1467.doc.htm>.
[114] 'The Nakba is not merely a traumatic memory, but continually generates new disasters, voiding the present of any sense of security, and blacking out the future altogether. The Palestinian coinage "ongoing Nakba" (al-nakba al-mustamirrah) expresses this specific temporal feature.' Rosemary Sayigh, 'On the Exclusion of the Palestinian Nakba from the "Trauma Genre"' (2013) 43 *Journal of Palestine Studies* 51, 56.
[115] Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press 2013).
[116] Wolfe (n 48). Notably, Wolfe included both sudden and structural violence in his discussion.

Palestine.[117] The decades-long legal regulation of Palestinians has bolstered state (and state-backed settler) violence, fettered Palestinian movement, and left them in a situation of radical vulnerability.

What role, then, for (international) law in the regulation and reproduction of violence and time? Let me offer (borrow) three categories: the backward-looking view of punishment; the interminable present of discipline; and the risky future of security.[118]

Punishment: the discrete past

Practically since the advent of the ICC—and certainly since the Prosecutor accepted jurisdiction over the situation in Palestine—many hoped that the Court could be a place to hold Israeli officials responsible for widespread crimes against the Palestinian people. Karim Khan raised expectations when he announced he would seek arrest warrants for Israeli officials (as well as Hamas leaders). For longtime critics of the ICC in particular, or carceral systems in general, however, anticipation was inevitably mixed with concern. Not only is punishment backwards looking, but the past to which it looks is restricted. Criminal law examines a discrete action that has taken place and punishes an individual for the role they played, but it cannot account for the 'long violence'—not only what occurred prior to its temporal jurisdiction but the continuing consequences incurred over decades.

There is, of course, a non-criminal case operating in parallel at the ICJ. Unburdened by the exigencies of criminal law, the South African legal team threaded a story of settler-colonialism and apartheid into their plea to halt an ongoing genocide. As a discursive assertion, the case is critically important; the advocates adeptly used their public platform to highlight long violence. But the ICJ too has limits—not only in terms of enforcement but with regard to the reconstruction and reconfiguration of territory, time, and population(s).

Discipline: the infinite present

The international legal concept of occupation itself depends upon a temporal limit: occupation is lawful only inasmuch as it is temporary. The occupation of Palestine has long flouted this rule, but the Oslo Accords for several decades allowed the open-ended nature of Israeli control to hide behind ostensible progress toward an impending peace.[119] Any illusion of an eventual transition had already weakened, particularly as human rights organisations convincingly redescribed the situation as apartheid.[120] While occupation is a legal category bounded by a beginning and end, apartheid is an illegal regime with no inherent conclusion. What occupation and apartheid share in the Palestinian context is a sense of the infinite present constituted by a range of disciplinary devices, from surveillance to the endless waiting created by a regime of

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[117] OCHA, 'Humanitarian Situation Update #180: West Bank and Gaza' (19 June 2024) <https://www.ochaopt.org/content/humanitarian-situation-update-180-gaza-strip-west-bank>; Imad Abu Hawash, 'If you don't leave, we'll kill you': Hundreds flee Israeli settler violence in Hebron area' *+972 Magazine* (22 November 2023) <https://www.972mag.com/hebron-area-settler-violence-expulsions/>.
[118] See Michel Foucault, *Security, Territory, Population* (Palgrave Macmillan 2007).
[119] Zinaida Miller, 'Perils of Parity: Palestine's Permanent Transition' (2014) 47 *Cornell International Law Journal* 331.
[120] Al-Haq, 'Israeli Apartheid: Tool of Zionist Settler Colonialism' (29 November 2022) <https://www.alhaq.org/cached_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf>; Human Rights Watch, 'A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution' (27 April 2021) <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

checkpoints and closures. In addition to taking lives and resources, the Israeli regime of control also 'steals time' from Palestinians.[121]

Security: the risky future

What role then for the future? If anything, the campaign in Gaza—genocidal, scholasticidal,[122] domicidal[123]—has been marked by an erasure of the future. The appalling situation of pregnant and nursing women,[124] alongside the killing of thousands of children, makes this literal. International lawyers struggle to capture the full scope of these harms, let alone stop them or prevent their recurrence. But even as erasure happens on one level, there is also the ongoing *construction* of the population as a threat. The reduction of all Gazans to Hamas since 7 October fed an existing discourse about risk, (in)security, and probability. Security for the future has long been the ultimate justification for the violence of the present.[125] The Palestinian population as a whole has been subject to regimes not only of punishment but discipline and not only discipline but security. To be Palestinian is to be a threat. The logic of 'self-defence' that Israel mobilised after 7 October became increasingly difficult to sustain globally as the scale of dispossession and death grew. Yet the internal projection of a threatening population remains.

The past in the future?

The (re)assertion of the apparent past that in fact continues in the present has a critical role to play. One of the most striking aspects of 1990s 'peacemaking' was the division of the present from the past. The Oslo Accords marked their own Year Zero. The facts on the ground at the time mattered; the ways in which they had come about were seen as a hindrance. The peace process's architects saw justice for past claims as unachievable because there was no way to adjudicate vying claims. Instead, they effectively ratified the violent hierarchy of the moment. Though the fallacy of that approach today is clear, it still largely structures international legal tools, which have been mainly directed at mitigating the violence of the present. Yet the past will be critical for remaking the future—not because a consensus can be reached but because the past maps the distributions of resources and power that exist today. Many have asked what the 'day after' looks like for Gaza. Tragically, we may already be looking at it—albeit with different rulers, unimaginable loss, a decimated population, and bombed-out infrastructure. From a governance perspective, arguing over control by the (despised) Palestinian Authority, a (weakened) Hamas, a (reviled) Israel, or a (suspect) international trusteeship obscures the underlying question of Palestinian futures. Neither narratives of the past nor arrangements for the future are clearcut; while the greater attention to international courts today is salutary, it

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[121] Julie Peteet, 'Closure's Temporality: The Cultural Politics of Time and Waiting' (2018) 117 *South Atlantic Quarterly* 43.
[122] OHCHR, 'UN experts deeply concerned over "scholasticide" in Gaza' (18 April 2024) <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>.
[123] Balakrishnan Rajagopal, 'Domicide: The Mass Destruction of Homes Should Be a Crime Against Humanity' *The New York Times* (29 January 2024) <https://www.nytimes.com/interactive/2024/01/29/opinion/destruction-of-homes-crime-domicide.html>.
[124] OHCHR, 'Onslaught of violence against women and children in Gaza unacceptable: UN experts' (6 May 2024) <https://www.ohchr.org/en/press-releases/2024/05/onslaught-violence-against-women-and-children-gaza-unacceptable-un-experts>.
[125] As Julie Peteet wrote years before 7 October, 'With the Palestinian body perceived as having hidden and violent motives that can be contained by hypervigilance, surveillance, and biosocial profiling, the [Israeli] soldiers' task is to discern the hidden agenda and disable it. Rather than simply discipline it, the body is disabled while simultaneously subjected to a state of ambiguity and temporal suspension.' Peteet (n 121) 47-48.

will be in the material and symbolic redistribution of power and resources that a different future can be found.

SMOULDERING SEMANTICS

Mark A. Drumbl

Genocide is a relatively new, and fast-moving, word.[126] Invented by Raphael Lemkin in the 1940s, it quickly went global. It now wends, winds, and weaves into every language.

Lemkin decided to frame genocide as something to be defined by international criminal law. Hence, he pushed for an international penal convention. Along the way, as I have written elsewhere,[127] amid the gains things also were lost. The crime of genocide narrowed beyond Lemkin's initial conceptualisation of the term as well as his prior writings on vandalism and barbarism.[128] In *Axis Rule in Occupied Europe*, Lemkin initially (and somewhat verbosely) associated genocide with the intention to signify a coordinated plan of different actions that aimed at the destruction of essential foundations of national groups, including disintegration of political and social institutions, culture, language, national feelings, religion, economic existence, along with the destruction of the personal security, liberty, health, dignity, and lives of group members.[129] The scope of genocide shrunk because the definition of the crime became contingent on the political interests of states that negotiated the 1948 Genocide Convention.

This narrowed but crystallised definition quickly ossified. Indeed, when the *ad hoc* tribunals were created in the 1990s, and the ICC's Rome Statute was adopted on 17 July 1998, the same crime of genocide was essentially reproduced for their jurisdictional purposes as that which had been defined for the Genocide Convention. Law concretised, and then fossilised into custom. This, indeed, is the definition that the ICJ—a non-penal institution assessing state responsibility—faces in the current application brought by South Africa.

I have participated in a number of public events on Gaza. My experience is that the term genocide is frequently invoked to describe the nature of the violence that is ongoing. The term is deployed in these contexts with broader meaning than what is covered by the legal meaning. Indeed, the term is often deployed without reference to—or perhaps awareness of or even interest in—the legal meaning. Hence, situating the attacks in Gaza within the frame of genocide turns to definitions of genocide that may differ from the legal definition.

I do wonder about the interaction between the legal definition of genocide, on the one hand, and broader discursive formulations of genocide, on the other. To be sure, there is no clear social or political definition of genocide. There are many definitions of genocide in these contexts. On the other hand, there is one international law definition of genocide. This clarity and singularity of definition is one thing international law has going for it. But this is beside the point, which is that, should the ICJ not find genocide in Gaza, well, I doubt that individuals

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[126] I thank Shannon Fyfe and Kirsten Fisher for helpful comments on an earlier draft.

[127] Mark A Drumbl, 'The Soviet Union and the Gutting of the UN Genocide Convention by Anton Weiss-Wendt' (2018) 32 *Holocaust and Genocide Studies* 297; Mark A Drumbl, 'Genocide: The Choppy Journey to Codification' in Morten Bergsmo and Emiliano J Buis (eds), *Philosophical Foundations of International Criminal Law: Correlating Thinkers* (Torkel Opsahl 2018) 609.

[128] Raphael Lemkin, 'Acts Constituting a General (Transnational) Danger Considered as Offences Against the Law of Nations' (Prevent Genocide International, 13 November 2002) [1933] <http://www.preventgenocide.org/lemkin/madrid1933-english.htm>.

[129] Raphael Lemkin, *Axis Rule in Occupied Europe* (Carnegie Endowment for International Peace 1944).

who believe that Israeli actions are genocidal will say ‘ok, you’re right’ and cease to believe that those actions constitute genocide. That the ICJ has spoken will not change minds. Rather, a perception might emerge that the ICJ is wrong. Another reaction could be to dismiss the credibility of the ICJ, namely, the institution whose intercession is being sought. It might be chided as too old, too stodgy, too beholden to entrenched power interests. Yet another response might be to discount the relevance of the legal definition of genocide entirely. In other words, to say that, well, law is *only one way* to define genocide (a technical, arcane way) and, if law’s intercessions are insufficient, then cause arises to cast aside the legal definition even though the intervention of legal institutions had been beseeched. On the one hand, this could be an incentive for law to catch up, and perhaps return to the broader language initially proposed by Lemkin before his push for treaty codification. On the other hand, it might also be cause to pause and question the ongoing push to sanction through judicial institutions at the international level. To be sure, if the ICJ were to find genocide, I suspect that comparable discounts, critiques, and avoidances would arise amid different political constituencies.

What if Lemkin had pursued a different track? What might things have been like if the idea of genocide had not been leveraged to be cast in an international legal convention? What if the term had just been left to stew and brew—for a generation or two—at the national level amid the *potpourri* of social discourse? What if the concept of genocide had been—as a *débutant*—left to the domain of malleability rather than the exactitude required for the criminal law? One outcome might have been a multiplicity of legal definitions at the national level. Another might have been a broader push to condemn conduct politically and socially and economically rather than juridically, these each being places where precise definitions may matter less. Yet courts have emerged as the *primus inter pares* of the domain of condemnation; and within this constellation international institutions are bestowed with considerable expressive value.

Law privileges remedies such as incarceration and, in the case of the ICJ, satisfaction, restitution, and compensation. Diverse remedies, like divestment and shareholder activism, remain marginal. It is indeed refreshing to me that the protests roiling university campuses do not call for criminal prosecution, or ICJ denunciation, but rather for divestment and thereby open a conversation about wider causal elements. Law also privileges a reductionism—there is one blameworthy entity at fault, namely, the defendant, the respondent, or the accused. Such a parsimonious approach obscures the broader forces that conspire to seed the loneliness and abandonment that, to me, is a *sine qua non* of genocide and other atrocity crimes. The pain of the Palestinian people in Gaza derives to differing degrees from multiple sources, including the actions (and noteworthy omissions) of many states well beyond Israel as well as the conduct of Hamas itself.

In the end, then, the eager embrace of international law and judicial institutions—a premise of this symposium in the case of Gaza—may fail to foreground more expansive language that resonates with broader audiences and addresses the multiple overlapping causes of atrocities.

‘THERE ARE MANY THINGS ONE COULD TALK ABOUT…’[130]

Hani Sayed

Why Palestine? A TWAIL perspective

In the Global North, Palestine is sending shock waves fracturing an entrenched and stagnant political *status quo*. It exposed hypocrisies and widened the cracks in the foundations of ‘empire’. But this cataclysmic political event in the North is barely experienced in the Global South as such—not due to indifference. In that ‘other’ world, Palestine was never misunderstood. It is the history, the struggle, and the hope that make it possible for a multitude of struggles to refocus their meaning.

But why?

Palestine’s political resonance does not stem from the scale of the current humanitarian calamities deluging Gaza. The world we inhabit has normalised the dystopian landscapes of destruction, the images of anguished grieving mothers, mutilated bodies, and emaciated faces. As humanitarian crisis, the claim for any ethical-political primacy for Palestine is indefensible. There is no ethically defensible valuation matrix in which some lives can be more grievable. The fact that we have normalised the spectacle of the suffering of others is, as it should be, outrageous. But that is not about Palestine.

The war on Gaza epitomises the vicissitudes of colonial fiat, once intent on enforcing a reckless vision of a humanity divided into essentialised ethnicities, each entitled to exclusive control over territory. In the east of the Mediterranean the war on Gaza started more than a century ago with the Armenian genocide. When the nation embodies the secular narrative of salvation, of human emancipation, the killing of the nation (*genos-cide*) becomes not only the ultimate crime, but also the likely outcome, ever-present even when latent. The liberation of Palestine is a struggle to dismantle the consequences of that reckless colonial fantasy.

Gaza as archetype

An ethno-nationalist state-building project is a complex of governance practices aiming at the control of the land and the exclusion of subjugated ethnicities. For the proponents of ethno-nationalist projects, *on either side*, the 1949 armistice line (green line) is an arbitrary ‘administrative’ construct. Since 1967, Gaza always posed for the Israeli establishment the challenge of how to contain and exclude the Palestinians as demographic mass. The West Bank on the other hand always posed the challenge of how to expropriate territory.

The international law of belligerent occupation was the dominant legal frame to describe Israel’s control over the Palestinians. Both the Palestinian liberation movement and the Israeli government achieved a great deal from invoking it. The law of occupation is a very malleable frame. The tension between the occupied territories as a battlefield, and as the space over which the occupier is entitled to exercise the power of public authority, allowed this legal framing to persist comfortably with a wide spectrum of practices of domination and resistance with different degrees of intensity and devastation.

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[130] The title is borrowed from that of the 1997 documentary by Syrian director Omar Amiralay (1944-2011), *There are Many Things One Could Talk About....*

But the framing of the West Bank and Gaza Strip (WBGS) as occupied territories has become, at least since Oslo in 1993, absurd for both the Israeli political establishment and for the Palestinian liberation movement.

After Oslo, the government of Israel succeeded in normalising in the WBGS a system of domination that separates military control from the responsibility over the life of civilians, thereby deconstructing a fundamental bargain at the heart of the legal regime of occupation. With the successful fragmentation of the West Bank, Israel's territorial ambitions in the West Bank have reached an upper limit. Short of ethnic cleansing and forced population transfers à la 1948, Israel cannot hope to annex more land from the West Bank. Controlling the West Bank became also about containing and excluding the Palestinians as a demographic mass. In this landscape, the disengagement from Gaza in 2005 and its blockade since 2007 should be understood as the template for control and containment in the West Bank. The outbreak of hostilities on 7 October is already heralded by the necessary logic and constraints of this system of control, and is likely to drown, with comparable devastation, the Palestinians of the West Bank.

Genocide and the court

It is troubling that within the discipline of public international law, too many lawyers unscrupulously believe that the legal/political/ethical credibility of the question of Palestine has been boosted just because it is being adjudicated before an institution embodying European medieval fantasies of robes, white wigs and badly pronounced Latin expressions. The engagement with the court is nonetheless an important political milestone, but for very different reasons.

The consultative and contentious procedures currently pending before the court should be placed against the background of the slow unravelling of occupation law's power to coherently describe Israel's control over the WBGS. International lawyers and activists took notice of the absurdities of the framework of occupation when they started to explore, since the early 2010s, the conceptual and political possibilities of the frameworks of apartheid, or settler colonialism culminating with reports by B'Tselem, Amnesty International and Human Rights Watch. The invocation of the crime of genocide by certain governments and in the UN after the start of the current military actions is a continuation of the same trend.

Systemically, the invocation of genocide to describe *only* the consequences of the current operation in Gaza might be problematic. Grave violations of the Geneva Conventions are *per se* important reasons for legal and political interventions. The danger of rhetorically suggesting that only when a situation can be plausibly described as genocide should the world mobilise for action is that it might dilute the seriousness and urgency of other situations that are currently unfolding elsewhere in the world. Genocide claims are specific, and they should legally mean more and other than an extreme and systematic pattern of war crimes.

At the same time, and more importantly, invoking the term 'genocide' and referencing the obligations under the Genocide Convention transform the policy debate surrounding the Palestinian question. This shift places the scrutiny on the actions and inactions of third parties, positioning their role at the heart of international discussions and redefining their obligations in the context of the conflict. This reframing underscores the imperative for these external actors to reassess and potentially recalibrate their engagement in the region. In fact, it would be fair to say that the two cases brought by South Africa against the Government of Israel and by Nicaragua against Germany are, at their core, cases about the responsibilities of third parties.

The question of Palestine is no longer about the dialectic between occupier and occupied; we are all parties to this relationship.

The ICJ will likely balance between its legitimacy and its inherent, conservative by definition, system-preserving function. This balancing act will likely bring the court to rule in ways that will undermine the position of Palestine. Until that happens, there is a short window of opportunity.

NOT YOUR FATHER'S WAR: THINKING ABOUT INTERNATIONAL LAW IN THE PRESENT MOMENT

Ntina Tzouvala

As I was finalising this note, encampments protesting Israel's genocidal war in Gaza had sprung up in the US and beyond.[131] US protests, in particular, have faced escalating repression with over 2,000 students and university staff arrested for peaceful protest. Australia, where I live and work, is by no means a cradle of political radicalism and dissent. Nevertheless, Melbourne and Sydney (the two largest cities in the country) have been home to weekly protests since October 2023. This moment stands apart from the anti-war movement of 2003: opposition to Israel's genocidal violence seems to be on the rise seven months into the war, while the 2003 movement deflated rapidly after the Coalition's invasion.

All this is to say, this is not a simple repetition of the 2003 Iraq war, when (many) liberals and the left briefly opposed the war largely under the hegemony of the former and by centring the war's illegality. There was no 'war would be illegal' letter in the British left-liberal press signed by the discipline's leading formalists in 2023-24.[132] The idiom of genocide was not introduced into the debate (and into political action) by liberal-legalists or by proponents of 'humanitarian intervention'. It was critical international lawyers, especially TWAIL scholars, who raised the alarm of genocide early, and we did so risking the scorn of 'polite' international legal society.[133] It is true that the proposition that this is a genocidal war is now more openly debated and even (reluctantly) accepted due to the indispensable work of South Africa's legal team and thanks to the legitimising force of the provisional measures orders of the ICJ.[134] This shift is not unimportant for our legal and political analysis: it speaks to the possibility of domestication, but also to the role of mass mobilisation in constructing the 'common sense' of any field.

The current juncture demands that we evaluate soberly—without falling back on habits of thought—the purchase and limitations that international law can have right here and right now. For example, one need not be naive about the structural limitations of IHL, its state-centrism and racialised underpinnings,[135] to nevertheless point out that Israel manages to violate

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[131] I owe many of the thoughts underlying this piece to conversations with Michael Fakhri and Aziz Rana. Responsibility for my arguments is mine alone.

[132] 'War would be illegal' *The Guardian* (7 March 2003) <https://www.theguardian.com/politics/2003/mar/07/highereducation.iraq>.

[133] 'Public Statement: Scholars Warn of Potential Genocide in Gaza' *TWAIL Review* (17 October 2023) <https://twailr.com/public-statement-scholars-warn-of-potential-genocide-in-gaza/>; Darryl Li, 'The Charge of Genocide' *Dissent* (18 January 2024) <https://www.dissentmagazine.org/online_articles/the-charge-of-genocide/>.

[134] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Orders of 26 January, 28 March and 24 May 2024).

[135] Frédéric Mégret, 'From "savages" to "unlawful combatants": a postcolonial look at international humanitarian law's "other" in Anne Orford (ed), *International Law and Its Others* (Cambridge University Press

systematically even this extremely permissive framework. From there, it is both the work of critical international lawyers and, more importantly, anti-war movements to put forward not a demand of compliance that ultimately legitimises war and domination, but the question of what causes such flagrant non-compliance: what is it that compels Israel, like so many settler-colonial powers before it, to violate a law that was designed with its own interests and modalities of violence in mind? A discussion about IHL can become—and to a significant degree has become—a gateway for illustrating, naming and opposing the eliminationist tendencies of settler colonialism in a way that ultimately makes a narrow focus on international (humanitarian) law inadequate: looking seriously at law, its limitations *and* its violations can ultimately become a way of transcending it.

Far from witnessing, then, a repetition of 2003, I suspect that our challenges are different, and potentially more daunting. The urgent question of our times is not whether international law has depoliticised the anti-war movement. As students are being brutalised, arrested and blacklisted to stop this assault against Gaza, it is safe to assume that it has done no such thing. Rather than focusing on the depoliticising power of law, it may be better to re-evaluate its political usefulness in the first place. Otherwise put, what do we gain by mobilising international legal arguments in an era when (Western) governments have become increasingly indifferent to them even on a rhetorical level? The rise of the language of the 'rules based international order' as an explicitly non-universal, legal-ish order,[136] and the diffusion of far-right nihilism with its open contempt for universalism, raise significant questions about the political effectiveness of any universalist language. Mobilising the language of international law often comes with a claim to universalism and a concomitant calling out of the hypocrisies and contradictions inherent in the project of governing an uneven world through some claim to universal values.[137] If Western states and capital have abandoned this pretence of universalism, then the accusation of double standards cannot carry the day even on a discursive level.

My main fear, then, is not that the language of genocide might depoliticise anti-imperialist work. What keeps me up at night is that we might be underestimating the willingness of states and capital and even part of the public to accept genocide as a (*the?*) mode of surplus population governance in the era of climate meltdown.

WATCHING THE LAW, PROTESTING THE WAR

Daniel Joyce

As the catastrophe in Gaza has unfolded following the Hamas terror attacks on 7 October, I have found myself both captivated by media coverage of the conflict and troubled by its absence of clarity. Law and politics require information and public engagement to function effectively. That exercise is increasingly fraught in a fractured informational ecosystem shaped by computational propaganda and algorithmic distortion alongside more traditional forms of state control and corporate interference.

Trust in the traditional media is low and its economic model has been damaged by big tech. Israel has also killed journalists in Gaza in unprecedented numbers. Media freedom to report

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2006); Erakat (n 78); Jake Romm and Dylan Saba, 'Acts Harmful to the Enemy' *n+1* (12 January 2024) <https://www.nplusonemag.com/online-only/online-only/acts-harmful-to-the-enemy/>.

[136] Dugard (n 105).

[137] Knox, 'Imperialism, Hypocrisy' (n 15).

on the violence is clearly jeopardised by continuing efforts to obstruct, censor, exclude and target media professionals. Nevertheless, reportage from key outlets of the traditional Western media has largely been indistinguishable from their own governments' feeble framing of the conflict. In response, many have turned to alternative forms of media and also to the streets to protest the developing tragedy and loss of civilian life.

Media in the democratic tradition has long claimed that it will hold governments and institutions to account as a watchdog. That can and does still happen, but there is often a disconnect between the violence in Gaza and how it is being reported and debated elsewhere. Media reporting can also be distorted through the lens of domestic political contexts. For example, there is a disturbing dissonance between the horrifying reports coming from Gaza of civilian casualties—now in the tens of thousands—and the detached tone of much political analysis in the Australian news I currently consume. It is as if the real story is not the destruction of Gaza, but rather the domestic political risks associated with protesting injustice. In this framing the conflict is a distant, even disconnected, problem and the immediate political imperative is not how to respond to the devastation and its consequences there, but how to minimise any flow-on risks here.

And so the language of international law, the fact-finding conducted by its institutions and personnel (also directly targeted in the conflict) and the familiar techniques of public dissent and concern for the suffering of others retain their power and relevance. Questions of legality connect with ethical and political assessment of the violence and reflect the desire of many for an authoritative forum and framework for redress. That is why diverse global publics continue to seek to inform themselves by watching ICJ proceedings, sharing UN communications, consuming NGO publicity and various forms of news-generative media online.

Perhaps this popular engagement with international law and its institutions in the context of Gaza can partly explain why Israel's permanent representative to the UN performatively shredded its Charter in response to a resolution pushing for greater recognition for Palestine within the organisation. And it also provides context for why certain actors have sought to pressure the ICC (and its Prosecutor) as the institution responds to allegations of war crimes.

I know the many flaws of the international system including its own forms of denial, and that international law's promise can be illusory, but it represents a framework through which publics can seek information and protest injustice. Although infrequent, moments of legal and normative clarity can be found in speeches to the ICJ, in viral images or media coverage, in academic debates, and, most powerfully, in simpler demands for an end to the violence.

NOTES ON GAZA AND INTERNATIONAL LAW

Costas Douzinas

1. A strict hierarchisation of life is evident in the killing of civilians in Gaza. 1,200 Israelis were killed by the atrocious Hamas attack on 7 October and around 270 soldiers had died during the Gaza operation by the end of April 2024. Over 35,000 Palestinians had been killed during the same period, including 13,000 children. The Palestinians have no effective anti-aircraft defences and there is no hiding from the bombing. Israeli action in Gaza is only euphemistically 'war'. From Homer to the twenty-first century, war has had an element of uncertainty; the mighty might lose or suffer casualties. Hegel argued in the *Phenomenology of Spirit* that the fear of death gives war its metaphysical value by confronting combatants with the negativity that encircles life and helping them rise from daily mundane activities towards the universal.

In this sense, the Gaza bombing is not a war but a type of hunting. One side is totally protected while the other has no means of protecting itself. Can the law stop or humanise war or the Israeli killing campaign?

2. Post-WWII international law has moved on a spectrum between realistic pragmatism and legalistic formalism. At one end, international law is not a sacred text, it has no right answers. It provides a 'professional vocabulary' for conducting arguments. At the other, an international rule of law has gradually developed. It is distinct from politics and places constraints on power and the powerful. Its rules have internal consistency and coherence and their disregard by the Great Powers is not the result of weaknesses in the law but of contingent political factors militating against full compliance. What does the war in Gaza tell us about international law and its theory?

3. When the stakes are the highest—war, killing and dying—international law—like foreign policy, economic argument and military strategy—becomes one more consideration governments take into account. It can be wheeled out when it supports their interests and discarded if it creates real or imaginary constraints. The Israeli government turned up at the ICJ for South Africa's case against it; but Netanyahu called the genocide charge 'outrageous' while welcoming the court 'upholding' Israel's right of self-defence. The US claimed at the time that it has not found any incident of Israeli violations of IHL; but Israel states that the ICC should not issue arrest warrants and anyway a prosecution would not affect its actions. The idea that a little more or a little better law would release us from strife, war and atrocity is the noble lie of international relations. The old motto *inter armes silent leges* still holds. The law as a technical means of resolving or humanising conflict works until and unless one of the parties decides against it. When *raison d'état* speaks, the law falls silent; if it keeps speaking, it gets shut up or seriously cut down to size.

4. What does this disregard for international law tell us for the practice? International law is both more and less law-like than its domestic counterpart. On the one hand, the absence of a global legislator and of an effective court turns international law texts into the ultimate but indeterminate reference point. International lawyers enjoy an 'interpretative pre-eminence'. They have greater authority in deciding the meaning of the law than domestic lawyers who defer to higher authority. Their practice is closer to the Protestant tradition of *sola scriptura*, the free interpretation of holy texts unlike the Catholic authoritative renditions by the Church. The international lawyer is the lawyers' lawyer, someone who spends a lifetime poring over the text of treaties, *travaux préparatoires* and the few 'soft' decisions of international tribunals.

5. The combination of the belief that right answers exist in law with despair about the general indifference or disrepute accompanying their discovery marks the dilemma of the legalist. The ICJ may order Russia or Israel to stop the war or change their conduct but nothing much happens. The pragmatist's problem is the opposite: the law does not provide right answers; the solutions must be sought in context. But the context is complex and ever changing. The more certain the law, the weaker its power when a strong state disagrees with it, as the ICJ decision shows. Uncertain, indeterminate law is a better tool for the great powers. The right to (preventive) defence says very little about its means; it is the preferred law of Israel. The *hasard professionnel* of international lawyers is that they are the ultimate exponents of a law whose power is in inverse proportion to its certainty. This combination of interpretative pre-eminence and political irrelevance shadows the debates of international lawyers like Hamlet's ghost.

6. Can progressive international lawyers influence the decision to start war (*jus ad bellum*) or the conduct of war (*jus in bello*)? Tony Blair on the eve of the Iraq war turned legality into a

tool of legitimacy. Blair disregarded and manipulated legal advice to offer a legal gloss to what he had already decided. This was a rare occasion in which academic legal expertise seemed to acquire immediate political significance. A few senior British and Australian international lawyers wrote to *The Guardian* arguing that the planned military action was illegal. They were criticised by the pragmatists for undermining the critique of formalism, to which they were committed, by using international law as if it could give right answers and stop war.[138] But formal arguments can be put to political use. In a debate carried out in terms of legal expertise, the lawyers can use their status and knowledge to construct anti-war arguments. In the debate about the war in Gaza, international lawyers should join their voices with the global anti-war campaign by giving technical arguments against the murderous and genocidal conduct of the war. Lenin said that he would use the rope capitalists sold to him to hang capitalism. We can still use the law to stop or humanise war even if we know that it will not succeed. We must try the impossible to achieve the possible.

LEVERAGING LAW

Souheir Edelbi

As I scroll through my social media feed, each image of destruction, starvation and murder in Gaza reveals a relentless and enraging display of depravity and inhumanity. Each image is a stark reminder of the profound failings of international institutions in preventing and halting Israel's genocidal campaign against Palestinians. As such, I'm sympathetic to the editors' questioning approach to the political utility of international law and institutions in responding to the ongoing genocide. At the same time, I'm interested in asking when and how should international law be used to support and advance the political struggles of Palestinians. Acknowledging the power structures and limitations of international law including its imperial inheritance, Noura Erakat nonetheless argues that international law can be used 'in the sophisticated service of a political movement that can both give meaning to the law and also directly challenge the structure of power that has placed Palestinians outside the law'.[139] Drawing on Robert Knox's writings,[140] Erakat suggests that international law should be understood as a form of 'principled opportunism', where legal interventions can be strategically employed for particular gains.

The ICJ case brought by South Africa against Israel demonstrates the symbolic power of law in exposing colonial genocide and Western complicity. It has reflected and galvanised global solidarity with the people of Palestine, alongside more visible protest-oriented actions like BDS and the recent student encampments. The movement for a 'free Palestine' explains the popular interest in international law and why many non-lawyers and non-legal commentators have followed the ICJ proceedings with great interest. Using Edward Said's term, international institutions offer a crucial 'counterpoint' to Zionist narratives that sustain the European settler colonial project in Palestine, while reflecting popular scepticism of international law; for many viewers, the ICJ itself is being tested on its liberal legal terms. If rights are truly universal, then they must apply universally.

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[138] See Craven, Marks, Simpson and Wilde (n 23).
[139] Erakat (n 78) 4.
[140] See, eg, Robert Knox, 'Marxism, International Law, and Political Strategy' (2009) 22 *Leiden Journal of International Law* 433.

What we are witnessing is not necessarily a surge of interest in international legal institutions, but rather a significant shift in public opinion toward Palestine. In challenging Zionist narratives, legal institutions become arenas for political contestation. The language of legality can thus be employed to place Israel's genocidal actions under close legal and public scrutiny. What makes international law particularly powerful is how it is being leveraged in a variety of ways, within and beyond the courtroom, to generate support through pressure, condemnation, and by focusing attention on Israel's founding and continuing colonial violence against the Palestinian people. Rather than abandon international legal institutions, we need to make use of legal tools in more creative, subversive and contrapuntal ways that enable us to reclaim and reimagine what law should be and what it should look like from the standpoint of the oppressed.

WHAT (IS) INTERNATIONAL LAW FOR GAZA?

Florian Hoffmann

In 1944, in the midst of his exile from Nazi Germany in the US, the Frankfurt School critical theorist Theodor W Adorno famously quipped that 'there is no right life in the false one'.[141] The much-quoted phrase is often interpreted as an expression of a certain fatalism on the part of the co-author of the *Dialectic of the Enlightenment*, yet (arguably) he himself as well as a good number of his subsequent readers have seen it as a call for resistance against what he termed the 'damaged life' to which the modern (capitalist) condition subjected everyone. He was less clear about what such resistance would or should imply, and himself opted for an odd combination of highbrow culturalism and agonistic politics.

At least the latter approach resonates with many who currently feel impelled to resist vis-à-vis the Gaza conflagration through a variety of means including open letters, street protest, or university encampments. However, as with the Vietnam war during the earlier cathartic moment of 1968, 'Gaza' seems to stand for more than the (possible) apotheosis of the Israel/Palestine conflict: it has (arguably) become a much wider signifier for what many of the protesters perceive to be the 'false life' of a late (Western) modernity that seems unable (or unwilling) to expunge the ghosts of colonialism, imperialism and (capitalist) exploitation, amongst others.

International law has been in the midst of this mobilisation (and the ensuing debate thereon), and has arguably been referenced as much more than just a framing device to articulate the conditions of the Palestinian population in Gaza (and in the West Bank as well as of Arab citizens of Israel), of Israeli hostages (and of the dissident part of Israeli civil society), and of the belligerents and their allies on both sides. Like 'Gaza' itself, 'international law' has been leveraged, not least by many on the (critical legal) left, as a symbolic signifier for international justice meant to break through a deadlocked 'normal' politics seen as characterised by pre-existing power asymmetries, hidden agendas, and foul compromises. Indeed, this symbolic 'international law' is, at least implicitly, now often framed as a better politics.

Hence, even some (many?) of those who would have previously been sceptical of the 'force of law' in this realm now seem glued to every twist and turn of the legal drama that is unfolding in parallel with the human one. It is as if, in the current political circumstances, (only) international law was capable of providing a glimpse of the right life and a beacon to the path out of the wrong one—akin (almost) to a revolutionary or, indeed, a messianic script. But can

[141] Theodor W Adorno, *Minima Moralia: Reflexionen aus dem beschädigten Leben* (Suhrkamp 2001) 59.

(and should) international law fulfil this role? Can it really be not one but *the* one view of the facts on the ground (as well as on the history that constitutes these facts)? And should it be framed as a definitive script for (international) justice when it remains historically contingent and politically indeterminate?

Some would, of course, affirm that it can (and should) if used by the right people, notably those committed to international justice. This might well be the case not just with (critical) legal activists but also with a good part of the international legal profession as a whole—ICC Prosecutor Karim Khan, who has requested arrest warrants for some of the (presumptive) lead perpetrators in and of the Gaza conflagration, or the many jurists who have been involved in several proceedings before the ICJ that are aiming at once to clarify and ameliorate the situation (for people) on the ground, and to lay the groundwork for an eventual apportionment of responsibilities, work undoubtedly inspired by a quest for different forms of justice.

However, the good faith commitment to justice on the part of these international jurists notwithstanding, the question remains whether justice inheres in the law that is laid down in these proceedings, or whether it remains distinct from it. Another reader of Adorno, Jacques Derrida, contended that law and justice were not only not identical but stood in an irreducibly mystical relationship to one another.[142] For ultimately what is deemed *just* remains (and must remain) political and is, as such, distinct from either an (*a priori*) higher morality or a law reduced to mere lawfulness. Such 'political justice' is never lawless, however, for as Adorno's contemporary Hannah Arendt saw it, law is always present in the political as both its infrastructure (*nomos*) and its performativity (*lex*).[143]

Such law is not counterposed to politics, but is rather part of it—and must, therefore, subvert all attempts to (over)determine it. Yet here arguably, resides its particular strength: for while it does not (and should not be made to) represent the right life, it can, as political action, help to transform the wrong one. This should not turn (international) lawyers into politicians (and vice versa), but should entangle both in a political quest for immanent (rather than metaphysical) justice—which is arguably what both Palestinians and Israelis most need at this juncture.

BEYOND GENOCIDE

Zeina Jallad and Arnulf Becker Lorca

Since 7 October, international lawyers have resorted to the crime of genocide as a framework for accountability. While this is a powerful rhetorical choice, there are reasons to be cautious. First, the difficulties of proving genocidal intent before a court could lead to a negative ruling resulting not only in disillusionment with international law but global dismissal of Palestinians' plight. By valorising genocide as the 'crime of crimes', as Justice Laity Kama put it,[144] we also risk devaluing other forms of violence or diluting the public energy cultivated over the past several months. Second, genocide imposes an overly narrow focus on the immediate moment, or on a single discrete crime in the case of international criminal responsibility, abstracting from the continuous, decades-long aggression inflicted upon Palestinians and the settler-colonial ideology undergirding it. Third, to the extent that it is specifically criminal

[142] Jacques Derrida, 'Force of Law' in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds), *Deconstruction and the Possibility of Justice* (Routledge 1992).
[143] Hannah Arendt, *The Promise of Politics* (Schocken 2005) 184.
[144] *Prosecutor v. Akayesu* (Sentence) ICTR-96-4 (2 October 1998) 2.

accountability that is sought, such accountability's links to conflict resolution and peace—to achieving durable solutions—are tenuous. What is the endgame to a legal finding of Israeli officials as genocidal? Does the international community in fact need a formal legal pronouncement that the ultimate crime has been committed in order to recognise its moral significance and take action?

Here we propose an alternative framework of 'continuous wrongdoing' in an effort to expand the temporal scope and conceptual horizon of international lawyers' legal imaginaries and capture the multi-dimensional character of the current catastrophe. Our aim is to encompass a broad spectrum of international crimes and violations: those that clearly breach international law and trigger state responsibility, and those wrongdoings that fall outside the scope of international law. The term also allows for an appreciation of the origins of the catastrophe, including, but not limited to, the Mandate period, the reverberations of the Holocaust in Israeli state-formation, and the ethnic cleansing and forced expulsion of the residents of towns like Lydda, Deir Yassin and Tanturah.[145]

Our focus is on wrongdoings falling outside the scope of international law, that is, wrongdoings not defined by international law as crimes or breaches of legal obligations. Some of these, although falling outside international law, point to how international law itself contributes to the problem. Some of the origins of the current catastrophe can be traced back to the interwar period. Channelling the passions of nationalism, international lawyers created legal regimes that disaggregated sovereign entitlements, allocating them to states, peoples, and international organisations. Such was the case of minority treaties, 'free city' status and League administration, and supervision of international responsibilities. In contrast, international lawyers recognised self-determination as a right for a limited list of peoples but understood decolonisation as the self-determination of colonial territories, not of individual peoples.

This caused many subsequent problems, such as imposing the legal fiction that colonial territories were homogeneous national units, and that peoples desiring self-government aspired to continue colonial political structures under local control. Lacking the institutional imagination of the interwar period, each decolonised territory received all the formal entitlements of sovereignty, but not always the substantive autonomy needed to exercise true sovereignty. Not only were Palestinians left with a formal claim to self-determination that was *ab initio* territoriality partitioned, international law offered them only a formal claim to a legal fiction that provided little help in organising the multiethnic, multicultural, multireligious, urban, and rural realities of the Ottoman and Mandate worlds.

On the other hand, European antisemitism and Holocaust guilt carved out an exception to international law's decolonisation of territories instead of peoples. It was not reimagination, as the prize was still statehood, but it was an exception. The Jewish people—not just Jewish inhabitants in the Mandate, but the diaspora—obtained a right to self-determination. It was not traditional decolonisation; they were not a people who, according to later legal standards, enjoyed self-determination due to living in a territory under colonial or alien occupation, or under a racist regime. Rather, they were a people enjoying a right to self-determination exercised by reclaiming a safe homeland after a catastrophe in distant European territories. The

[145] Many of Gaza's residents are themselves refugees from the ethnically cleansed cities of Isdod, al-Majdal, and Bir al-Sabi'. For a detailed explanation of the patterns of forced migration see Maher Charif, 'The Nakba: Stages of a Forced Displacement' (Interactive Encyclopedia of the Palestine Question) <www.palquest.org/en/highlight/160/nakba>.

entitlements of sovereignty—not criminal accountability in Nuremberg—would guarantee that another genocide against the Jews would never again occur.

International law has constructed two impossible and overlapping legal fictions. It recognises self-determination claims for two peoples. Geopolitical power has allowed the legal fiction to be realised for one people at the expense of the other. It is thus the state of Israel that bears greater responsibility for the continuous wrongdoing culminating in the current catastrophe in Gaza. And this is why the geopolitical forces sustaining this power imbalance—namely the UK, Europe and the US—also bear responsibility for the continuous wrongdoing due to their respective roles in the Mandate period, the Holocaust, and in providing military support and Security Council veto.

Perhaps, we international lawyers also bear significant responsibility for our contributions to the creation of an impossible legal structure from which we have been unable to escape. Do we feel professionally empowered and relevant when the world follows ICJ proceedings? And if lengthy judicial proceedings end in disappointment, will we absolve ourselves of responsibility claiming that we tried our best? Most importantly, what is the cost of genocide? Are we ready to accept the implications of a Palestinian statehood that reproduces and crystalises the Israeli precedent of genocide as the price of sovereignty?

Proffering ‘solutions’ like two states reinforces the impossible legal fictions at the root of the problem. International lawyers are responsible for offering very little beyond ‘two states’ and for the failure to reimagine institutional designs that break the legal frameworks responsible for the continuous wrongdoing.

Our well-founded concerns about avoiding the revival of ideas surrounding ‘a sacred trust’, central to the colonial civilising mission, have rendered us without words in our efforts to demand increased international supervision. We never say Europe should take legal responsibility because of the neocolonial implications of such a statement. But then, why not demand the EU offer membership to Israel/Palestine? We may overcome neocolonial trappings by demanding that the UK, US, and Europe pay for their structural contributions to the continuous wrongdoing while multiethnic states with long decolonial histories supervise Israel/Palestine as ‘a sacred trust’.

We rarely look to non-state allegiances and affiliations to attach some of the entitlements that come with sovereignty to non-national entities. In interwar Europe, nascent states received recognition contingent on minority treaties. How would such treaties look if adapted today for minorities in territories administered by a Jewish or Palestinian majority? And if an international city like Free Danzig is a model, what would Jerusalem look like if the UN provides external security, and if overlapping administrative functions are shared between religious institutions for sacred sites and non-ethnic, secular institutions for urban affairs?

Deeper forms of institutional reimagination are in order. If self-determination fantasies are impossible to realise, how can we identify new subjects of self-governance at the provincial, municipal, local, urban, and rural levels? How can ‘non-national’ affiliations, such as individual and communal property arrangements under Ottoman and British Mandate law, be reconstructed in order to reshape legal spaces for self-governance? Instead of an abstract right to return, how can we envision the restitution of confiscated commons and individual property?

And if we address the question of how and when the settler becomes native,[146] how can we design arrangements that consider how Jewish settlers themselves understood their interactions with Palestinian locals?

It is our duty to illustrate the issues that arise when international law is used as a proxy for moral standard setting. We should be as responsible as we are humble. We do not have silver bullets in our toolbox, just frameworks we believe should facilitate peaceful political and moral struggle.

THE TWO FACES OF PALESTINIAN FREEDOM

Alaa Hajyahia and Reshard L. Kolabhai

After the close of the ICJ's first hearing on provisional measures in the genocide case against Israel, the representatives of South Africa and Palestine stood together to speak outside the Court.[147] In a historic moment, the two states—represented by two liberation parties, respectively the African National Congress (ANC) and Palestine Liberation Organization (PLO)—appealed to international law to contest the Israeli regime's ongoing perpetration of genocide and apartheid.[148] The example of South Africa is today often cited approvingly in the context of Palestine, both for its celebrated triumph over apartheid and the international solidarity movement that its struggle inspired. Yet both the ANC and PLO suffer from a lack of internal legitimacy and have themselves been criticised for perpetuating forms of colonial complicity, violence, and corruption.[149] Janus-faced, the parties thus speak both outward and inward—globally and domestically—aiming to reciprocally secure the legitimacy of their claims before the international community at the ICJ on the one hand, and before their national constituencies at home on the other. That the ANC and PLO appear so unusually united with their respective constituencies in their position against genocide and apartheid may be unsurprising in the face of Israel's extraordinary atrocities in Gaza since October 2023. But the union is all the more remarkable for the ongoing disjunction which surrounds this confluence and jars with it.

Andy Clarno illustrated in 2017 how Black South Africans and Palestinians are today continuously marginalised and pushed into zones of invisibility and neglect in similar ways,

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[146] Raef Zreik, 'When does a settler become a native? (with apologies to Mamdani)' (2016) 23 *Constellations* 351.

[147] See the press briefing at PBS NewsHour, 'South Africa holds news briefing after arguments in ICJ genocide hearing against Israel' (11 January 2024) <https://www.youtube.com/watch?v=C2iKK1tWkQo>.

[148] South Africa challenged Israel's apartheid regime in the case through a narration of the context of the genocide, rather than as a direct legal challenge on the merits.

[149] In Palestine, the PLO-controlled Palestinian Authority is viewed as a 'burden' by 65 per cent of the population: Palestinian Center for Policy and Survey Research, 'Public Opinion Poll No 91' (5-10 March 2024) <https://pcpsr.org/en/node/973>; Basem Ezbidi, 'Captured Politics Under Colonial Dominance: The case of Palestine' in Shahram Akbarzadeh (ed), *Handbook of Middle East Politics* (Edward Elgar 2023) 308. In the case of South Africa, see variously Tshepo Madlingozi, 'Social justice in a time of neo-apartheid constitutionalism: critiquing the anti-black economy of recognition, incorporation and distribution' (2017) 28 *Stellenbosch Law Review* 123; Heinz Klug, 'State Capture or Institutional Resilience: Is There a Crisis of Constitutional Democracy in South Africa?' in Mark A Graber, Sanford Levinson and Mark Tushnet (eds), *Constitutional Democracy in Crisis?* (Oxford University Press 2018) 295; S'bu Zikode and Richard Pithouse, 'South Africa's Enduring Unfreedom' *Boston Review* (24 April 2024) <https://www.bostonreview.net/articles/repression-is-always-a-lesson/>.

far from the ideals of progress envisioned for their respective nations.[150] Palestinians, akin to their South African counterparts, find themselves increasingly confined to what Clarno terms 'zones of abandonment'. The Israeli occupation has implemented a strategy of division, physically separating the West Bank from the Gaza Strip and dividing the West Bank itself into disjointed northern and southern regions. These regions are further fragmented into isolated enclaves, a division that was formalised by the Oslo Accords.[151] Building on the concept of 'economic peace' introduced by Oslo—contemporaneous with South Africa's own neoliberal transition during the short-lived 'end of history'[152]—recent years have witnessed efforts to integrate Palestine into the global economy. These economic endeavours—championed by the PLO—have primarily benefited Palestinian elites, exacerbating inequality and intensifying the vulnerability of the Palestinian working class. Much like the impoverished townships, informal settlements, and rural former 'Bantustans' of 'post'-apartheid South Africa under the ANC and its own elites, Palestinian enclaves have remained hotbeds of inequality, where marginalised populations languish at the fringes of global neoliberal capitalism.

What is notable about the parties' presence at the ICJ, then, is not merely that they perform a look *back* to the past to contextualise their case. Rather, it is that they are also looking *forward* towards their preferred future political arrangements, and using that future to constrain a full critical examination of the past and present. Through their presence at the ICJ, the parties are attempting to constitute a particular history, legal horizon, and political imaginary[153] that is able to permit certain forms of critique of colonial power while at once disallowing others. The parties do this by first *retrospectively* narrating South Africa's own constitutional transition as effectively 'post-apartheid' and 'post-colonial', rather than as 'neo-apartheid' and 'neo-colonial'.[154] The parties then simultaneously posit a similar *prospective* horizon of their political imaginary for Palestine's future, by means of the social reality invoked by their legalist arguments. In their symbolic unity outside the ICJ, and in the narration of a shared history of apartheid and colonisation—critical only up to that horizon—the PLO and ANC imply that South Africa's freedom was achieved in 1994, and that the future of Palestine's freedom is something like South Africa's today. In so doing, the vision of these liberation parties at the ICJ draws the critiques of South Africa's past transition into Palestine's future one.

The parties' horizon is thus, on the one hand, underdetermined: it can abhor genocide without explicitly specifying further legal, institutional, or political-economic arrangements for how these societies are fundamentally to be structured and power (re)distributed against the patterns of coloniality from which the parties benefit. Similarly, this horizon can formally abhor apartheid, while not abhorring the ongoing substance of it in South Africa.[155] But on the other hand, when concretely wielded by these particular parties, the horizon is sufficiently determined to risk pre-emptively fixing and limiting the constitutional possibilities for a

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[150] Andy Clarno, *Neoliberal Apartheid: Palestine/Israel and South Africa after 1994* (University of Chicago Press 2017).
[151] ibid 40.
[152] See Dale T McKinley, *South Africa's Corporatised Liberation* (Jacana 2017); Vishnu Padayachee and Robert van Niekerk, *Shadow of Liberation* (Wits University Press 2019); Patrick Bond, *Elite Transition* (Pluto 2014); John Reynolds, Ben Fine and Robert van Niekerk (eds), *Race, Class and the Post-Apartheid Democratic State* (UKZN Press 2019).
[153] Paul Blokker, 'Political and Constitutional Imaginaries' in Suzi Adams and Jeremy CA Smith, *Social Imaginaries: Critical Interventions* (Rowman & Littlefield 2019) 111.
[154] Madlingozi (n 149).
[155] John Eligon, Lynsey Chutel and Lauren Leatherby, 'Has South Africa Truly Defeated Apartheid?' *The New York Times* (26 April 2024) <https://www.nytimes.com/interactive/2024/04/26/world/africa/south-africa-apartheid-freedom.html>.

decolonised Palestine by instead reinforcing coloniality—by, for instance, committing in advance to a neoliberal two-state solution ironically legitimated *through* the performance of a (very brief) anti-colonial narration of the Nakba in the ICJ case.

The inseparability of the international and domestic faces of the case and its horizon is now all the clearer following the ANC's historic plummet in South Africa's recent general elections, falling from a majority of 57.5 per cent in 2019 to a plurality of 40 per cent in May 2024 after 30 years of unbroken majority rule. Because of South Africa's internal politics, an over-reliance on the ANC at the ICJ is precarious; it is not yet clear that the emerging coalition government will support the case in the same way, as the coalition is presently taking the form of an even more neoliberal alliance with parties much less sympathetic to the Palestinian cause. Moreover, this precarity is precisely a result of the ANC's own coloniality—of its narrative of triumph over formal apartheid being used to obscure the substantive reality of ongoing oppression in South Africa. This oppression is now in turn visibly collapsing support for the ANC—and indeed for all of Parliament, the executive, and potentially the very state project itself: voter turnout in 2024 dropped to a historic low of 42 per cent,[156] effectively leaving the ANC with a mere 16.8 per cent of total eligible votes nationally.

Of course, this does not call for a rejection of South Africa's case; it simply calls for critique outside of international legalism and its political horizon. Rather than uncritically lionise South Africa's liberal-democratic transition or its stance at the ICJ, we should ask what kinds of anti-colonial arguments *might* have been made by Palestinians and South Africans, but were left unmade as a result of the case being brought by the ANC and PLO themselves. We should ask what kinds of anti-colonial arguments *cannot* structurally be made at the ICJ—by virtue of the disjunction between the ruling parties and their constituencies; of the very nature of international legal arguments being made by colonial-form states rather than by their constituencies directly; and of the inherited colonial history of international law itself. Most importantly, we should ask what political imaginaries are being constructed by the cases brought on behalf of Palestine by these two parties at the ICJ. There is a danger that uncritical over-reliance on international legalism retreads patterns of colonialism, generating international legitimacy for the same liberation parties and politico-legal regimes that have been part of the machinery of coloniality at home. In place of such uncritical legalism, we should continue to examine closely the colonial forms of violence that are nonetheless deemed 'legal' by international law, on the one hand and thus, on the other, the forms of anti-colonial resistance and political reconstitution that are a-legal (or potentially even illegal) from the point of view of the international legal order and the neoliberal 'cosmopolitan constitutionalism'[157] that it constructs today.

For if 'the [ongoing] problem of South Africa is "South Africa"'[158]—the polity itself, with its colonial nature, structure, political economy and epistemology, maintained and legitimated through international, constitutional and other law of primarily Western provenance, and ruled by a political system disjointed from its people that nonetheless narrates them as 'free'—the future problem of Palestine might yet turn out to be 'Palestine'.

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[156] Bruce Bartlett, 'Voter turnout in the 2024 South African elections' (2024) <https://math.sun.ac.za/bbartlett/assets/2024%20turnout.html>.
[157] Martin Loughlin, *Against Constitutionalism* (Harvard University Press 2022) 179.
[158] Joel Modiri, 'Azanian Political Thought and the Undoing of South African Knowledges' (2021) 68 *Theoria* 56.

SEARCHING FOR BALANCE WHILST IGNORING ASYMMETRY: DISCUSSING PALESTINE AND ISRAEL IN PORTUGAL

Teresa Almeida Cravo

When the news regarding 7 October emerged, most Portuguese expressed immediate and unequivocal solidarity with Israel. The understandable shock over the images of lives lost or taken into captivity was widespread and reflected in mainstream media. Yet the narrative conveyed seldom looked backwards in time. News coverage was profoundly biased, discussion of any background context—the decades of violence and dispossession, overwhelmingly borne by Palestinians—scarce. The extraordinary asymmetry that has long characterised the conflict receded from view, the Portuguese public presented with a representation of an unprovoked attack and of all Palestinians indistinguishable from criminally responsible perpetrators.

Couched in moral outrage, Israel's absolute right to self-defence and unconditional support for its military response was demanded by many commentators. Even those more cautious, like the editor of one of Portugal's most read newspapers, while reluctant to lend unconditional support *per se*, nonetheless demanded, somewhat perversely, backing for Israel in its intention to euphemistically 'enter Gaza' so as to 'avoid a humanitarian disaster' there.[159] Pro-Palestinian demonstrations, another popular columnist remarked, were 'obscene', at this point, 'before [Israeli] blood dries'.[160]

Public voices countering this narrative were limited, in these early days, to a handful of familiar faces that had long argued for Palestine solidarity. Like elsewhere, those commentators who dared remind us of context—the oppression and violence of Israeli occupation—faced public repudiation, even when prefacing their analysis with condemnation of 7 October. Meanwhile, mainstream pundits normalised Israel's supposed right to a brutal response against civilians, whilst calling for the repudiation of Hamas' atrocities—'without a but'[161]—precisely for having targeted civilians. Even social media 'momfluencers' chimed in, with one calling that 'but' repugnant and inexcusable.[162]

As days went by, and the scale of Israel's revenge reached Portuguese dinner tables, more critical opinions were heard and the 'but' became more confident. Political commentators and news anchors began to discuss some moral limits to Israel's acts; a prominent public intellectual wrote an op-ed defending 'the right to say "but, yet, although, however"'.[163] Legal developments—in the ICJ and ICC in particular—played a key role in this shift. Many in Portugal remain reluctant to label the situation as a genocide, but the term, and Israel as possible perpetrator, is now inescapable in contemporary discussion. For most Portuguese, awareness of the intricacies of the law is understandably shallow. But it became clear, early on, that illegality on a great scale was/is occurring. It is not that law superseded moral convictions; rather, the latter were given strength and legitimacy by the law. For better or worse, the

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[159] David Pontes, 'Apoiar Israel para minorar a catástrofe', *Público* (17 October 2023) <https://www.publico.pt/2023/10/17/mundo/editorial/apoiar-israel-minorar-catastrofe-2066920>.
[160] João Miguel Tavares, 'Manifestações pró-Palestina, neste momento, são obscenas' *Público* (12 October 2023) <https://www.publico.pt/2023/10/12/opiniao/opiniao/manifestacoes-propalestina-neste-momento-sao-obscenas-2066447>.
[161] José Ribeiro e Castro, 'Cercados pelo Hamas', *Observador* (20 October 2023) <https://observador.pt/opiniao/cercados-pelo-hamas/>.
[162] Carmen Garcia, 'Os homens que perderam a alma' *Público* (15 October 2023) <https://www.publico.pt/2023/10/15/impar/cronica/homens-perderam-alma-2066663>.
[163] José Pacheco Pereira, 'O direito ao "mas, porém, todavia, contudo"' *Público* (28 October 2023) <https://www.publico.pt/2023/10/28/opiniao/opiniao/direito-porem-2068243>.

pronouncements of legal institutions and actors and their condemnation of Israeli actions offered a path through the propaganda that presented the suffering of Palestinians as justifiable. At the very least, 'enough' has become the minimum common denominator of public discourse.

Beyond the sheer scale of Israeli violence and the mounting evidence of international law violations, a further factor in shifting Portuguese public opinion is undoubtedly interest in UN Secretary-General António Guterres, whose election to the role in 2019 was celebrated in Portugal as a national achievement. A patriotic pride in the former Prime Minister's prominence has seen Guterres' speeches widely covered—and commented on—in the Portuguese media. Impotent in the face of Security Council power dynamics, his role as the world organisation's spokesperson has nonetheless kept him in the spotlight. Moreover, invoking Guterres' words provided a de facto political shield for politicians balancing support for Israel with growing concern for Palestinian lives. More pro-Palestinian op-eds likewise often cited the Secretary-General's stance as implicit support.[164] Officially, Portugal has followed Guterres' lead and voted in favour of UN resolutions calling for a ceasefire, demanding compliance with international law, and supporting Palestinian UN membership—but has so far shied away from formal recognition of the Palestinian state, invoking an imagined opportune moment that never quite arrives.

Ultimately, however, most Portuguese public opinion remains caught in a search for supposed balance, condemning Hamas as nothing more than a terrorist group, whilst limiting criticism of Israel to its military excesses, the latter's good intentions taken at face value. Truth, as Foucault reminds us, lies not outside power but rather is its product. To seek balance without taking into account the context of fundamental asymmetry—from the violence on the ground to the control of public discourse—is necessarily to side with the powerful. As the catastrophe in Gaza draws on, pro-Palestinian voices and resistance have gained space in Portugal and Israel's right to self-defence is no longer a blank cheque. Yet analysis of structural asymmetries—apartheid, settler colonialism, occupation—remains shallow. In the absence of such discussions, mere pretence of balance will not bring us any closer to peace.

THE COMFORT OF NUMBERS

Madelaine Chiam

Since 7 October, public commentators, media reports, politicians and protestors in Australia have invoked international legal doctrines to characterise, support and critique the actions of Israel and Hamas.[165] Speakers have in particular framed their claims in the vocabularies of war crimes, genocide, occupation, self-defence or terrorism.

Within these deployments of legal language, a phenomenon has emerged where the legal authority of public statements has been asserted on the basis of numbers, rather than disciplinary expertise. One example is an open letter,[166] issued by a group of Australian lawyers

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[164] Miguel Sousa Tavares, 'A traição de Israel', *Expresso* (30 May 2024) <https://expresso.pt/opiniao/2024-05-30-a-traicao-de-israel-00fe4daf>.

[165] Thanks to Jessie Hohmann for very helpful feedback on an earlier draft of this piece and to colleagues at the IGLP Scholars Academy for their comments.

[166] Letter to Prime Minister, Minister of Foreign Affairs, Minister of Defence, and Attorney General of Australia (3 November 2023) <https://lawyersletter.au/wp-content/uploads/2023/11/Australian_Lawyers_and_Legal_Academics_Letter_-_Israel_and_Palestine.pdf>. For

and modelled on a UK original,[167] that framed itself as outlining facts and violations of international law by Hamas and Israel. In response, a different group of lawyers wrote their own open letter and defended the actions of Israel as consistent with international law.[168] The authors of the first letter then issued a response to the reply.[169] The language of these letters is that of detailed doctrinal international law, but the overwhelming majority of the signatories are not international lawyers. Instead, they are barristers, solicitors, or lawyers of a different kind. The first letter has been signed by 'more than 1400 lawyers', while the second has 685 signatories. The claim to legal authority in these letters arises not then as a consequence of the discipline-expertise of the signatories, but because of the *number* of signatories attached to the letters and the status of those signatories as lawyers *tout court*. The UK experience with the original lawyers' letter entrenches even further the idea that legal authority arises from both numbers and status, dividing its signatories into hierarchies of legal professionals and foregrounding the number of 'higher status' lawyers (judges and King's Counsel) who have signed it.

Authority in other legal contexts is of course already a question of numbers. For judges, for example, unanimity and majority signify authoritativeness and media coverage of the ICJ decision in South Africa's claim against Israel raised the numeric division of judges in that case.[170] But, at least in Australian public debates, the significance of numbers to establishing legal authority has not been so obviously asserted in the past. In the 2003 Iraq War debates, for example, the strength of competing legal positions was measured by the relative expertise of the speakers.[171]

The emphasis on the numbers of lawyer-signatories on different sides of this legal debate seems connected to an Australian obsession with a simplistic notion of 'balance' in public discourse which provides little guidance to readers on how to assess the plausibility of competing arguments. The preoccupation with balance underpins, for example, the ongoing publication of climate denialism in some mainstream Australian media outlets. In relation to Gaza, the notion of 'balance' has exacerbated an existing tendency for law to be characterised in public debates as a binary construct. So, Palestinian supporters argue that the situation in Gaza satisfies the legal definition of genocide. Israeli supporters argue that it does not. Palestinian supporters argue that Israel is committing war crimes. Israeli supporters argue that its actions are justified in self-defence. The complexities of the meaning and application of these principles are lost. And the persuasiveness of the opposing positions has, it seems, become tied to the number of lawyers who support them.

There are other examples of numbers, binaries and preoccupations with balance governing the debates over Gaza. In almost any public forum in Australia, for example, reference to the (at my time of writing) more than 35,000 Palestinians who have been killed by Israel are inevitably

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a longer discussion of open letters, see Madelaine Chiam, Monique Cormier and Anna Hood, 'Law, War and Letter Writing' *European Journal of International Law* (forthcoming).

[167] Letter to Prime Minister, Foreign Secretary, and Defence Secretary of the UK (26 October 2023) <https://lawyersletter.uk/wp-content/uploads/2023/10/GAZA_LETTER.pdf>.

[168] Letter to Prime Minister, Minister of Foreign Affairs, Minister of Defence, and Attorney General of Australia (3 December 2023) <https://www.lawyersreply.au/letter>.

[169] Letter to Prime Minister, Minister of Foreign Affairs, Minister of Defence, and Attorney General of Australia (15 December 2023) <https://lawyersletter.au>.

[170] See, eg, Donald Rothwell, 'The International Court of Justice puts Israel on notice over its war in Gaza: What could its judgement mean?' *ABC* (29 January 2024) <https://www.abc.net.au/religion/icj-puts-israel-on-notice-over-war-in-gaza-after-hamas-attacks/103400456>.

[171] Madelaine Chiam, *International Law in Public Debate* (Cambridge University Press 2021) ch 3.

rebutted with a statement about the 1,200 people killed by Hamas. In this context, and with the ongoing juridification of politics in Australia and elsewhere, it is probably unsurprising that claims to legal authority in the Gaza public debates have incorporated, and elevated, the significance of the sheer numbers of lawyers who support particular positions.

Politics has always been a numbers game. What do we risk, as lawyers and as communities, when the public authority of legal argument moves the same way?

ARGENTINA'S FOREIGN FOREIGN POLICY ON GAZA

Francisco-José Quintana

On 10 May 2024, the General Assembly overwhelmingly passed a resolution upgrading Palestine's rights in the UN and urging the Security Council to give 'favourable consideration' to Palestine's request for full membership.[172] Only nine states opposed the resolution, including Israel, the US, Viktor Orbán's Hungary, and Argentina. Argentina's negative vote marked a significant departure from its historical stance on Palestinian statehood. This was not its first reversal in the context of Gaza. Since the restoration of democracy in 1983, Argentina had prioritised human rights discourse as a key diplomatic strategy. Yet, faced with the unfolding catastrophe in Gaza, the country became one of the only six to vote against a Human Rights Council resolution on the 'the obligation to ensure accountability and justice' in Palestine.[173] Argentina exemplifies how well-established positions on foreign policy can shift significantly, potentially foreshadowing similar changes elsewhere.

Two key factors help explain Argentina's approach towards Gaza. First, in December, far right Javier Milei assumed office as President. His foreign policy reflects the populist geopolitics of the 'Reactionary International', the global network aiming to propel the far right within and beyond electoral politics.[174] Milei claims to defend the interests of the 'free world' against autocrats and communists. During his campaign, Milei promised to cut ties with 'communist' Brazil and China, the nation's first- and second-largest trading partners. Once in office, Milei rejected the long-cherished invitation to join BRICS and became an unwavering supporter of Israel's military actions.

In Milei's view, Israel 'carries out its operations according to international rules' and 'hasn't committed a single excess'. He dismisses Security Council, General Assembly, and Human Rights Council resolutions on the humanitarian situation in Gaza as not reflecting 'formal' or 'serious international condemnation' of Israel.[175] In response to the applications for arrest warrants against Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant by the Prosecutor of the ICC, the Argentine Ministry of Foreign Affairs promptly issued a highly critical statement.[176] As a middle power, Argentina had once proudly exhibited

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[172] UNGA Res ES-10/23 (10 May 2024).
[173] HRC Res 55/L.30 (26 March 2024).
[174] David Adler and David Broder, 'Meet the Reactionary International' *The Nation* (23 April 2024) <https://www.thenation.com/?post_type=article&p=497535>.
[175] 'Javier Milei con la BBC: "Los motes que me ponen los fracasados que hundieron el país me tienen sin cuidado; ahora lloran por el reconocimiento internacional que tengo"' *BBC News Mundo* (6 May 2024) <https://www.bbc.com/mundo/articles/cer371yvwvgo>.
[176] 'Comunicado de prensa sobre la decisión del Fiscal de la Corte Penal Internacional de solicitar el arresto de altos funcionarios del Gobierno de Israel' (Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, 22 May 2024) <https://cancilleria.gob.ar/es/actualidad/noticias/comunicado-de-prensa-sobre-la-decision-del-fiscal-de-la-corte-penal>.

its leadership in supporting the ICC, underscored by the rare diplomatic achievement that the first Prosecutor and the third President of the ICC were Argentine nationals.

Milei travels globally as a keynote speaker at far-right summits. Unlike him, most headliners at these events are not currently in office, but could soon be. Therefore, understanding their shared worldview is crucial: the 'free world' they claim to defend is framed in reactionary terms and linked to an exclusionary interpretation of Western religious values.[177] In their account, 'the Western world is in danger', demanding what seems to resemble a crusade to uphold the 'values of the West'.[178]

However, the Argentine approach to the tragedy in Gaza cannot be solely attributed to Milei. To understand Argentine policy towards the Middle East, one must consider Argentina's Jewish population, the sixth largest in the world, and the two major terrorist attacks in Argentina during the 1990s that targeted and killed numerous Jews. In 1992, a bomb attack on the Israeli embassy claimed 29 lives. Two years later, a truck loaded with explosives struck the AMIA Jewish community centre, killing 85 people and injuring 300. Neither terrorist attack has been resolved by the Argentine justice system, but both Iran and Hezbollah have been investigated as possibly responsible. The enduring pain from these attacks, compounded by the shameful failures of the Argentine judicial and political system long before Milei, shapes Argentine public perception of the broader Israeli-Palestinian conflict.

This second element also offers global lessons. Argentines elected Milei for many reasons, but his dangerous ideology has not yet entirely permeated public opinion. Indeed, as an Argentine, I must say that many of us who follow international affairs support the two resolutions that our country voted against. Nevertheless, arguably emboldened by Milei's foreign policy, the Argentine press remains significantly indifferent to the plight of Palestinians in Gaza. Far right populists thrive on progressive contradictions and past failures, such as the inability of previous governments to help bring justice for the terrorist attacks.

While this is not the place to offer prescriptions, I hope that foregrounding the particularities of the Argentine context serves as a reminder of the diverse circumstances across countries and regions, and the need to articulate our positions as strongly and persuasively as possible to diverse audiences. Despite its elements of oppression and violence, framing our concerns in the language of international law can still be a powerful tool in this task.

A TURNING POINT IN BRAZIL AND COLOMBIA'S RELATIONS WITH ISRAEL

Laura Betancur-Restrepo and Fabia Fernandes Carvalho

On 18 February 2024, speaking at a press conference during the thirty-seventh African Union summit, Brazilian President Luiz Inácio Lula da Silva was questioned about his government's decision to announce a new financial contribution for UNRWA. Lula criticised Western countries that suspended economic aid to the agency[179] and declared that '[w]hat is happening in Gaza with the Palestinian people hasn't happened at any other moment in history. Actually,

[177] See Juan Gabriel Tokatlian, 'Las tres fuentes de la política exterior de Milei' *Cenital* (13 May 2024) <https://cenital.com/las-tres-fuentes-de-la-politica-exterior-de-javier-milei/>.
[178] 'Davos 2024: Special Address by Javier Milei, President of Argentina' (World Economic Forum, 18 January 2024) <https://www.weforum.org/agenda/2024/01/special-address-by-javier-milei-president-of-argentina/>.
[179] Alasdair Soussi, 'Which countries are still funding UNRWA amid Israel's war on Gaza?' *Al Jazeera* (17 February 2024) <https://www.aljazeera.com/news/2024/2/17/which-countries-are-still-funding-unrwa>.

it has happened: when Hitler decided to kill the Jews.'[180] The comparison between the current situation in Gaza and the Holocaust prompted a strong reaction from Israel. Prime Minister Benjamin Netanyahu described the comments as 'disgraceful and grave', and Lula was declared persona non grata.[181]

On 1 May 2024, Colombian President Gustavo Petro, addressing a crowd gathered for an International Workers' Day march in Bogotá amid a tense national political atmosphere, announced the decision to break diplomatic relations with Israel.[182] Online, Petro added: 'Colombia cannot stand by genocide; international law must be preserved to stop barbarism.'[183] Netanyahu responded: 'Israel will not be lectured by an antisemitic supporter of Hamas … Shame on you, President Petro!'[184]

Petro, Colombia's first left-wing president and a former member of the M-19 guerrilla group, has long been an ally of the Palestinian cause. His commitment to the Palestinians quickly became evident in his stance against Israel's invasion of Gaza and, as many criticised, his lack of timely and firm condemnation of Hamas' 7 October attack. Between 7 and 10 October, Petro tweeted nearly 100 times,[185] condemning Israel's actions and comparing the situation in Gaza to Auschwitz,[186] leading to diplomatic tensions.

President Lula's declarations on the situation in Gaza have changed over time.[187] From condemning terrorism on 7 October, after Hamas' attack, Lula's tone has become more critical towards Israel's growing military responses. On 14 November, after the successful repatriation of 30 Brazilian and binational citizens from Gaza,[188] Lula declared that 'Israel seems to want to occupy Gaza and expel the Palestinians from there … We must ensure the creation of the Palestinian state so that they can live in peace alongside the Jewish people.'[189]

According to Tullo Vigevani and Karina Stange Calandrin, Brazil's relations with both Israel and Palestine have historically, despite 'a few sudden changes', been characterised by 'lines of

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[180] 'Brazil's Lula compares Israel's war on Gaza with the Holocaust' *Al Jazeera* (18 February 2024) <https://www.aljazeera.com/news/2024/2/18/brazils-lula-compares-israels-war-on-gaza-with-the-holocaust>.
[181] 'Brazil recalls ambassador to Israel in row over Lula's Gaza comments' *Al Jazeera* (19 February 2024) <https://www.aljazeera.com/news/2024/2/19/brazil-recalls-ambassador-to-israel-in-row-over-lulas-gaza-comments>
[182] Gustavo Petro, Speech in la Plaza de Bolívar (Bogotá, 1 May 2024) <https://petro.presidencia.gov.co/prensa/Paginas/Discurso-del-presidente-Gustavo-Petro-en-la-Plaza-de-Bolivar-en-Bogota-a-proposito-de-la-conmemoracion-240501.aspx>.
[183] Gustavo Petro (@petrogustavo), 'Colombia no puede estar al lado de un genocidio…' (X.com, 3 May 2024) <https://x.com/petrogustavo/status/1786407336472461415>.
[184] Benjamin Netanyahu (@netanyahu), 'Israel will not be lectured…' (X.com, 11 May 2024) <https://x.com/netanyahu/status/1789352188126339250>.
[185] María José Restrepo, 'El presidente X: diplomacia tuitera de Petro debilita su voz ante el mundo' *La Sila Vacìa* (10 October 2023) <https://www.lasillavacia.com/silla-nacional/el-presidente-x-diplomacia-tuitera-de-petro-debilita-su-voz-ante-el-mundo/>.
[186] Gustavo Petro (@petrogustavo), 'Ya estuve en el campo…' (X.com, 9 October 2024) <https://x.com/petrogustavo/status/1711389434468241597>.
[187] Matheus Moreira and Gustavo Petró, 'O que Lula já disse desde o início do conflito entre Israel e o Hamas' *g1* (21 February 2024) <https://g1.globo.com/mundo/noticia/2024/02/21/o-que-lula-ja-disse-desde-o-inicio-do-conflito-entre-israel-e-o-hamas.ghtml>.
[188] 'Plane carrying 30 repatriated citizens from Gaza lands in Brasília' (Gov.br, 23 December 2023) <https://www.gov.br/planalto/en/latest-news/2023/12/plane-carrying-30-repatriated-citizens-from-gaza-lands-in-brasilia>.
[189] Moreira and Petró (n 187).

continuity'.[190] Such stability in Brazil-Middle East relations, they suggest, can be explained by Brazil's commitment to the 'principle of equidistance based on the Brazilian position regarding the two-state solution, considering the Arab Palestinian and Jewish rights'.[191] For Vigevani and Calandrin, the consistent influence of the US over Brazil and Latin America; fundamental changes in the structure of international relations by the late 1960s, with the growing role of Third World countries' interests at the UN; and pragmatic realities including Brazilian economic interests are all relevant factors to be considered in the study of Brazil-Middle East relations. Accordingly, Brazil supports the creation of a Palestinian state while, at the same time, having played a historical role in the creation of Israel.[192]

In 1975, the PLO was authorised to appoint a representative in Brasília. In 1993, Brazil authorised the opening of a special Palestinian delegation, recognised as an embassy in 1998. In 2004, the Representative Office of Brazil in Ramallah was opened. In December 2010, Brazil recognised the State of Palestine.[193] Argentina followed Brazil's recognition, and they were the first in Latin America to recognise the State of Palestine.[194] Moreover, Brazil supported Palestine's entry into UNESCO in 2011 and its status as a non-observer state member of the UN in 2012.

Colombia and Israel have traditionally been political and military allies. Despite abstaining from the 1947 UN vote, Colombia recognised the State of Israel already in 1949. In contrast, diplomatic relations between Colombia and Palestine began only in 1988.[195] In 1996, a 'Special Mission of the Palestinian Authority' was established in Colombia and in 2014 it was renamed 'Diplomatic Mission of Palestine' without implying the recognition of Palestine as a State.[196] Colombia was the last South American country to recognise the Palestinian state in 2018.[197]

Throughout the Colombian armed conflict to the present day, Israel's military support has been crucial for the Colombian armed forces. Israel has provided training and expertise to the Colombian Army and is a key supplier of defence equipment, telecommunications, aircraft, and munitions;[198] there have also been scandals related to Israeli mercenaries training

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[190] Tullo Vigevani and Karina Stange Calandrin, 'Brazil's policy toward Israel and Palestine in Dilma Rousseff and Michel Temer's administrations: have there been any shifts?' (2019) 62(1) *Revista Brasileira de Política Internacional* e009, 7.

[191] ibid 6.

[192] Brazil held the presidency of the General Assembly in November 1947, when the Partition Plan for Palestine was first presented at the UN. See 'What's troubling Brazil-Israel ties? Unpacking a love-hate relationship' *Al Jazeera* (21 February 2024) <https://www.aljazeera.com/news/2024/2/21/whats-troubling-brazil-israel-ties-unpacking-a-love-hate-relationship>. Oswaldo Aranha (1894-1960), head of the Brazilian delegation, presided the session. See Oswaldo Aranha, 'A New Order Through the United Nations' in Sérgio Eduardo Moreira Lima, Paulo Roberto de Almeida and Rogério de Souza Farias (eds), *Oswaldo Aranha: um estadista brasileiro*, vol 1 (Fundação Alexandre de Gusmão 2017) 419.

[193] 'State of Palestine' (Gov.br, 8 January 2024) <https://www.gov.br/mre/en/subjects/bilateral-relations/all-countries/state-of-palestine>.

[194] Guila Flint, 'Palestinos saúdam reconhecimento e dizem que Brasil é pioneiro' *BBC News Brasil* (6 December 2010) <https://www.bbc.com/portuguese/noticias/2010/12/101206_palestinos_reacao_rp>.

[195] 'Palestina (Franja de Gaza–Margen Occidental)' (Gov.co) <https://www.cancilleria.gov.co/internacional/politica/regiones/palestina>.

[196] Letter from Luz Stella Jara Portilla to Olga Lucía Grajales Grajales (28 August 2018) <https://www.camara.gov.co/sites/default/files/2020-05/RESPUESTA%20CANCILLERIA.pdf>.

[197] Boris Miranda, 'Colombia: el silencioso y sorpresivo reconocimiento de Palestina como "Estado libre, independiente y soberano"' *BBC News Mundo* (8 August 2018) <https://www.bbc.com/mundo/noticias-america-latina-45123898>.

[198] Erich Saumeth, 'Israel capacita a las Fuerzas Especiales del Ejército Colombiano' *infodefensa.com* (1 October 2020) <https://www.infodefensa.com/texto-diario/mostrar/3125598/israel-capacita-fuerzas-especiales-

paramilitary squads involved in serious violations during the conflict.[199] What for some was a 'special relationship' (forming a strategic triangle with the US)[200] has changed drastically since the beginning of Israel's armed attack on Gaza. Diplomatic relations between Colombia and Israel have been very tense, leading to the recent severing of diplomatic ties.

In his statements, Petro frequently refers to international law. He emphasises the need for international institutions to intervene, an approach that serves three main purposes: first, to highlight that international law imposes limits and obligations that cannot be unilaterally broken; second, to advocate for concrete actions by international institutions and courts in this case; and third, to underscore what he calls the hypocrisy displayed by certain members of the international community in response to these violations of international law.

'International law', Petro has insisted, 'should not be selectively used against rivals; it obliges all nations and peoples worldwide.'[201] He also has argued that continued disregard for international law will lead to 'barbarism and the destruction of democracy as a humanity project'.[202] Petro repeatedly calls for international courts to investigate events in Gaza.[203] He characterises the situation as genocide and its political architect a 'criminal against humanity'.[204]

Additionally, Petro criticises the lack of prompt and effective action by various international institutions and major powers. He emphasises the contrast with their responses to other recent events, such as Russia's invasion of Ukraine.[205] In March, Petro praised the Security Council for finally passing a resolution calling for a ceasefire[206] and, when it was not respected, subsequently broke diplomatic relations with Israel.

In the context of the current war in Gaza, with President Lula repeatedly calling for the creation of the Palestinian state,[207] the alignment between Brazil and Colombia's leftist governments is

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ejercito-colombiano>; Nelson Ricardo Matta Colorado, 'Sistemas de defensa y armamento de Colombia están en riesgo por ruptura de relaciones con Israel' *el Colombiano* (2 May 2024) <https://www.elcolombiano.com/colombia/relacion-colombia-e-israel-pone-en-peligro-el-sistema-de-segurida-defensa-y-armamento-LC24401864>.

[199] 'El mercenario israelí que tiene las claves del paramilitarismo en Colombia' *BBC News Mundo* (14 November 2012) <https://www.bbc.com/mundo/noticias/2012/11/121114_colombia_yair_klein_perfil_claves_paramilitarismo_aw>.

[200] José Carlos Cueto, 'Cuál es el origen de la "relación especial" entre Colombia e Israel (y cómo Petro la transformó)' *BBC News Mundo* (1 May 2024) <https://www.bbc.com/mundo/articles/c51n4r9rw0po>.

[201] Gustavo Petro (@petrogustavo), 'La bomba que ven en el video…' (X.com, 2 November 2023) <https://x.com/petrogustavo/status/1720060619032809874>.

[202] Gustavo Petro (@petrogustavo), 'Nuevo crimen de guerra…' (X.com, 4 November 2023) <https://x.com/petrogustavo/status/1720622762849448208>.

[203] Petro, 'La bomba' (n 201).

[204] Gustavo Petro (@petrogustavo), 'Se llama Genocidio…' (X.com, 1 November 2023) <https://x.com/petrogustavo/status/1719565081371935150>. Petro actively supports South Africa's complaint against Israel before the ICJ. See Eddy Mosquera, 'Colombia pide a la CIJ garantizar la existencia del pueblo palestino' *Caracol* (21 February 2024) <https://caracol.com.co/2024/02/21/colombia-pide-a-la-cij-garantizar-la-existencia-del-pueblo-palestino>. And he has called for the ICC to try Netanyahu. See Gustavo Petro (@petrogustavo), 'La República de Colombia…' (X.com, 9 November 2023) <https://x.com/petrogustavo/status/1722629705046819249>.

[205] Gustavo Petro (@petrogustavo), 'El bombardeo de tres hospitales…' (X.com, 10 November 2023) <https://x.com/petrogustavo/status/1723069388880818330>.

[206] Gustavo Petro (@petrogustavo), 'Por fin sale del Consejo de Naciones Unidas…' (X.com, 25 March 2023) <https://x.com/petrogustavo/status/1772277357153317352>.

[207] Moreira and Petró (n 187).

worth noting. A joint declaration by both presidents was issued in Bogotá on 17 April 2024, on President Lula's official visit to the thirty-sixth International Book Fair of Bogotá. The language of international law permeated the whole declaration, with the two presidents demanding Israel 'immediately cease all actions affecting the Palestinian population [and] fulfil its obligations under international law'. They further called for 'a viable State of Palestine living side by side with Israel in peace and security' and 'reiterated their unwavering support for Palestine's admission as a full member of the United Nations'.[208]

Despite these common points between Brazil and Colombia's stances, they do not represent a unified Latin American leftist position nor fully encapsulate Brazil or Colombia's national positions. This convergence appears to be a contextual peculiarity arising from the ongoing Gaza conflict.

'S IST LEIDER KRIEG—UND ICH BEGEHRE, NICHT SCHULD DARAN ZU SEIN

Lys Kulamadayil

'Wir haben miese Karten, regiert von Psychopathen
Verwaltet von Bürokraten, die keine Gefühle haben
Kontrolliert von korrupten Cops, die oft Sadisten sind
Verdächtige suchen nach rassistischen Statistiken
Gefüttert von Firmen, die uns jahrzehntelang vergifteten
Informiert durch Medien, die's erst zu spät berichteten'
Samy Deluxe[209]

Political Berlin has been suffering from what can be described as a case of selective myopia and anacusis. It is blind and deaf to the images and testimonies of those trapped in Gaza as well as the desperate pleas of human rights advocates and humanitarian agencies, all speaking to the unimaginable horrors unfolding in Gaza as part of the ongoing genocide of the Palestinian people.

Scrolling through mainstream news outlets or the social media posts of federal bureaucracies and individual politicians has been an out-of-body experience at times. It is as if what is visible and audible to me—indeed what is visible and audible to all—goes unsensed by German politicians and policymakers. The ever escalating and all-encompassing violence in Palestine has been met not with mere silence, but aggressive dog-whistles, such as the now infamous *Spiegel* cover featuring Chancellor Olaf Scholz with the quote/headline 'We finally have to deport at large scale',[210] or remarks by Friedrich Merz, leader of the opposition Christian Democrats, that any refugees from Gaza would not be welcome in Germany, as there were already 'enough antisemitic young men in the country'.[211]

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[208] 'Declaração Conjunta dos Presidentes de Brasil e Colômbia' (Gov.br, 17 April 2024) <https://www.gov.br/mre/pt-br/canais_atendimento/imprensa/notas-a-imprensa/declaracao-conjunta-dos-presidentes-de-brasil-e-colombia>.
[209] Samy Deluxe, 'Weck mich auf' (Eimbush 2001).
[210] *Der Spiegel* (21 October 2023).
[211] Oliver Maksan and Marc Felix Serrao, 'Friedrich Merz: "Deutschland kann nicht noch mehr Flüchtlinge aufnehmen. Wir haben genug antisemitische junge Männer im Land"' *NZZ* (21 October 2023) <https://www.nzz.ch/international/friedrich-merz-wir-haben-genug-antisemitische-junge-maenner-im-land-ld.1761710>.

In universities, and think tanks, the conversations on Gaza, to the extent that they are taking place, frequently employ silencing and distracting strategies, typically by using claims of antisemitism as a rhetorical weapon. Consider two examples. When I told a friend that making sense of erasure by deprivation of food, water, and housing would be one of the crucial issues for the ongoing legal proceedings at the ICJ, their genuinely concerned response was that I needed to be careful not to go too far down the 'antisemitic rabbit hole'. Another friend, knowing of my focus on Gaza, insisted I needed to meet this one peace activist who organised a weekly vigil for the hostages taken by Hamas and marches against antisemitism. Another variant of these encounters is the ritualised reference to Germany's historical responsibility for, and special relationship with, the Jewish people.

When it comes to Gaza, German empathy is reserved for the sensitivities of the *white* German majority. Confronting the suffering of Palestinian people would require a reckoning with the fact that the erasure of the Jewish people from German identity is not merely historical, but materialises concretely in the genocidal violence that we see today in Gaza. The Nakba is inseparable from the Shoah and Germany's historical responsibility is not, as many would have it, resolved by its commitment to the state of Israel, which has become the symbol of Germany's atonement, but carries into the present and is owed just as much to the people of Palestine as it is to that of Israel.

A MEANS BY OTHER POLITICS

Darryl Li

Palestinian steadfastness in the face of Israel's genocidal war in the Gaza Strip has opened a chasm of outrage between the states arming the Zionist regime and their enraged populaces. This is especially true in the place from which I write—the US.

Against this backdrop, a curious paradox has emerged. On the one hand, there has been a revitalisation of international legal institutions, especially the ICJ[212] and ICC,[213] and the unprecedented global attention their proceedings have drawn. Yet at the same time, public criticism of Israel in the US is less defined—and delimited—by the language of international law than before, as greater attention shifts to the problems of Zionism itself.[214] Does this make international law more relevant for Palestine or less? Perhaps the answer is both.

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[212] As of writing, the ICJ has in 2024 held 12 days of hearings in two contentious cases (brought by South Africa against Israel and by Nicaragua against Germany) and one advisory opinion request concerning Palestine. It has issued three provisional orders in the genocide case brought by South Africa in just a few months—an unprecedented pace of activity.

[213] ICC Prosecutor Karim Khan's 20 May decision to seek arrest warrants arising from the situation in Palestine post-7 October 2023 comes after years of stonewalling in the face of advocacy by Palestinians and allies. A request by the Palestinian leadership for an investigation into the 2008-09 assault in Gaza was deflected by the Prosecutor on jurisdictional grounds in 2012; a preliminary examination into Israel's deadly 2010 assault on a humanitarian aid flotilla to Gaza was closed with no further action in 2014. A formal investigation into actions in Palestine was finally opened in 2021 extending back to 2014 but has not resulted in charges for any pre-7 October acts.

[214] Perhaps the clearest sign of this shift in *zeitgeist* is the moral panic in mainstream media publications such as *The New York Times* over concepts such as 'settler colonialism' and their applicability to the situation in Palestine. See, eg, Roger Cohen, 'Who's a "Colonizer"? How an Old Word Became a New Weapon' *The New York Times* (10 December 2023) <https://www.nytimes.com/2023/12/10/world/europe/colonialist-word-gaza-ukraine.html>; Bret Stephens, 'Settler Colonialism: A Guide for the Sincere' *The New York Times* (6 February 2024) <https://www.nytimes.com/2024/02/06/opinion/settler-colonialism.html>; Lydia Polgreen, 'Restoring the

In recent years, there has been ongoing disquiet with, if not growing despair of, dominant international law framings and their role in the struggle for Palestinian freedom and liberation.[215] Such a trajectory of disillusionment[216] will be familiar to many readers of the *London Review of International Law*, as it also largely tracks with larger 'critical' debates in international legal scholarship against the backdrop of the US-led war of aggression on Iraq and the broader legal contortions of the US-led War on Terror.[217] Across these interventions was a growing sense that the problem wasn't simply the non-implementation of international law, but rather that international law itself, even when followed, was part of the problem. Dominant legal paradigms such as the laws of war (including belligerent occupation) tended to occlude the settler colonial nature of the situation and marginalise Palestinian self-determination.[218] Moreover, international law's largely elitist practice (and practitioners) were seen as detached from popular energies and reducing political horizons of freedom and liberation to the narrower language of rights.[219]

Often, the critique was less a call to abandon international law altogether than a reminder that international law is best thought of as a tool whose effectiveness could only be defined in relation to a larger political mobilisation. If law—like war, and hence the hideous portmanteau 'lawfare'—is politics by other means, then to what ends are these means to be employed? The limit of this argument, however, was that on its own terms it could never provide a way out: the answer was simply a kind of a return to 'politics' without necessarily having to define or theorise what politics was supposed to be, or what kind of politics one desired.

Since 7 October, Palestinian popular resistance, armed and unarmed, has upended the status quo, mobilising an ever-widening circle of solidarity worldwide. That popular activity creates space and demand for, among other things, legal action, and legal struggle has again become one important focal point of popular energy. While material successes are incremental and uncertain at best, the Zionist project finds itself more exposed and isolated than it has in decades. Suddenly, in this context of escalation, to a certain extent, legal formalists have become legal realists and vice versa.[220] Mapping out the full consequences of this shift is beyond the scope of these reflections, but several quick observations are readily apparent.

First, the problems of international law and its relationship to Palestine have not gone away. The fading legitimacy and relevance of Palestine's official international legal representatives continue to militate against hopes of their formulating a viable international legal strategy in support of anti-colonial struggle; likewise, the contradictions and erasures of state-led solidarity efforts from the Global South remain. It is as clear as ever that law by itself will not

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Past Won't Liberate Palestine' *The New York Times* (18 February 2024) <https://www.nytimes.com/2024/02/18/opinion/israel-gaza-palestine-decolonization.html>.

[215] The critiques have grown too numerous to fully cite here, but one key early moment crystallising this tendency was the 2009 edition of the *Palestine Yearbook of International Law*, which featured several articles influenced by TWAIL—see Ardi Imseis, 'Introduction' (2009) 15 *Palestine Yearbook of International Law* 1.

[216] See Lori Allen, *The Rise and Fall of Human Rights: Cynicism and Politics in Occupied Palestine* (Stanford University Press 2013).

[217] See, eg, Craven, Marks, Simpson and Wilde (n 23).

[218] See, eg, Romm and Saba (n 135); Rinad Abdulla, 'Colonialism and Apartheid Against Fragmented Palestinians: Putting the Pieces Back Together' (2016) 5 *State Crime Journal* 51; Darryl Li, 'Occupation Law and the One-State Reality' *Jadaliyya* (2 August 2011) <https://www.jadaliyya.com/Details/24275>.

[219] See, eg, Mezna Qato and Kareem Rabie, 'Against the Law' *Jacobin* (21 April 2013) <https://jacobin.com/2013/04/against-the-law/>.

[220] This is a paraphrase of an insight by John Reynolds, 'The Role of Law ~ The Legacies of Edward W Said: Academic Praxis and the Question of Palestine' *TWAIL Review* (15 December 2023) <https://twailr.com/part-two-the-role-of-law-the-legacies-of-edward-w-said-academic-praxis-and-the-question-of-palestine>.

bring liberation—or as the South African ICJ judge Dire Tladi lamented: 'But the Court is only a court!'[221]

Second, this wave of international legal activism is nonetheless enabled by a palpable shift toward global multipolarity that in turn opens more space for manoeuvre to smaller and middle powers.[222] In contrast, in the US, mainstream international law positions on Palestine remain too radical for the ruling class while for a resurgent popular movement they have become in a way too moderate—or rather, one could say their use as a 'safe' alternative for voicing critiques of Israel without interrogating Zionism may be on the wane. If the movement for Palestinian liberation continues to grow and coalesce, it will treat international law less as a ceiling on the strategic imagination and more as a tactical floor of minimum principles.

But perhaps most interesting from the point of view of movement lawyering is a rethinking of the relationship between politics and international law in praxis. Take for instance the recent report by UN Special Rapporteur Francesca Albanese on genocide in Gaza.[223] The typical format of such reports is to state the applicable legal framework, chronicle violations of those rules, and then restate a demand for compliance. In the Palestine context, this legalism frequently comes at the cost of erasing the fundamentally colonial nature of the situation. The Albanese report, however, does not merely seek to establish a legal case for genocide—it also provides an analytical framework in which the legal claims can be made socially and politically intelligible. It does this by starting with the concept of settler colonialism—a framework *not* delimited by international law—and then situates genocide (as both crime and as sociological concept) as its most intensified expression.[224] This is a marked contrast from dominant attempts to root genocide in either moralistic frameworks or essentialising 'ancient hatreds' arguments—here, Albanese introduces an explicitly anti-colonial reading of genocide into international legal discourse.[225] Moreover, the report devotes considerable attention to how Israel has weaponised IHL to legitimise and extend colonial violence against Palestinians.[226] This analysis complicates the standard demand for legal compliance: implicit in Albanese's framing is the recognition that mere demands for compliance can do little more than provide roadmaps to legitimising future violence, and that political energy must take aim at the states that arm and support Israel instead. In this respect, the report does not transcend the limitations of law, but it points to ways of remapping law's contradictions to bring into view new horizons of contingency.

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[221] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Declaration of Judge Tladi, 24 May 2024) para 19.
[222] See American Prestige Podcast, 'The ICJ Israel Case Explainer with Aslı Bâli' (28 January 2024) <https://www.americanprestigepod.com/p/special-the-icj-israel-case-explainer>.
[223] 'Anatomy of a Genocide' (n 17).
[224] See ibid para 9.
[225] See also Li, 'The Charge of Genocide' (n 133).
[226] See 'Anatomy of a Genocide' (n 17) para 55.

GENOCIDE AND/AS CIVILISATION

John Reynolds

It was clear from the outset, from the moment on 7 October that Israeli government representatives started calling already for 'a Nakba that will overshadow the Nakba of 48':[227] this would be a ramping up of Israel's race war, an escalation in the extermination of Palestinians. After many decades refuting the notions of Zionism as racism and the Israeli state as a colonial entity, the mask slipped quickly.

For a long time, part of the '*Zionism is decolonial, actually*' narrative had been based on the claim that the original Zionist leaders were simply a product of their time. And so when they spoke about Zionism as a colonial idea, about their colonial rights to the land, about establishing colonial companies and trusts, about courting Cecil Rhodes as a fellow colonial visionary, about the Zionist state as a rampart of civilisation against the barbarism of the natives, that was just *the language of the time*.

And yet, a century on, it remains the language of our time too. In December 2023, a full two months into the Gaza genocide, Israeli president Herzog said: 'it's a war that is intended, really, truly, to save western civilisation, to save the values of western civilisation'.[228] Samera Esmeir had warned of this colonial discourse back in October: 'Signs of obliteration appear first in language. Hence, civilized states and international organizations, liberals and conservatives, and US university presidents and donors alike have all lined up to participate in this discourse', one that 'contains not a single dignifying reference to Palestinians'.[229] Be it Herzl in 1896 or Herzog in 2023, Israel is presented as the West's only defence from the barbarism of east and south—from Palestinians, Yemenis and others who dare to contest and resist Western imperialism. The civilising mission is deployed in the form of crippling munitions: Israel dropping nearly as many bombs on Gaza in one week as the US was dropping on Afghanistan in a year.[230]

Zionist leaders regularly summon the colonial tropes of civilisation and barbarism, light and darkness. As their forces kill and maim thousands upon thousands of children, they claim to be defending 'the children of light' against the 'children of darkness'.[231] 'The children of Gaza brought it on themselves', declares Meirav Ben-Ari in the Knesset.[232] Israeli ministers and

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[227] Ariel Kallner quoted in 'Israel MK calls for a second Nakba in Gaza' *Middle East Monitor* (9 October 2023) <https://www.middleeastmonitor.com/20231009-israel-mk-calls-for-a-second-nakba-in-gaza/>.
[228] 'Israeli President: "'We have the right to defend ourselves"' *MSNBC* (5 December 2023) <https://www.msnbc.com/ana-cabrera-reports/watch/israeli-president-we-have-the-right-to-defend-ourselves-199420485922>.
[229] Samera Esmeir, 'To say and think a life beyond what settler colonialism has made' *Mada Masr* (14 October 2023) <https://www.madamasr.com/en/2023/10/14/opinion/u/to-say-and-think-a-life-beyond-what-settler-colonialism-has-made/>.
[230] Kwan Wei Kevin Tan, 'Israel says it dropped 6,000 bombs on Gaza in one week. That's almost as many as what the US dropped in Afghanistan in one year' *Business Insider* (6 November 2023) <https://www.businessinsider.com/israel-dropped-as-many-bombs-in-gaza-us-afghanistan-2019-2023-11>.
[231] 'Gallant: "This is a war between light and darkness"' *Jerusalem Post* (15 October 2023) <https://www.jpost.com/israel-news/article-768470>.
[232] Jonathan Ofir, 'Israeli politician: "The children of Gaza have brought this upon themselves"' *Mondoweiss* (18 October 2023) <https://mondoweiss.net/2023/10/israeli-politician-the-children-of-gaza-have-brought-this-upon-themselves/>.

ambassadors speak of saving humanity itself from Palestinians cast as 'human animals',[233] 'inhuman animals',[234] or 'human savages, beasts of prey'.[235] We recall Fanon: 'when the colonist speaks of the colonized he uses zoological terms'.[236]

Netanyahu invokes the spectre of uncivilised lawlessness—Gaza as unruly jungle—echoing EU officials who speak (unironically) of Europe as a garden and most of the rest of the world as a jungle.[237] In this case, as Israel lays waste to the soil and earth and very ecology of Gaza, European leaders, with few exceptions, have remained consistent: *Europe stands with Israel*. We recall Césaire: Europe is indeed indefensible.[238]

History did not start on 7 October, Palestinians have been at pains to remind us. And yet, for all the South African legal team's efforts to give voice to the collective Palestinian memory of the ongoing Nakba and *haq al 'awda* and Israel's 75-year apartheid, the ICJ's own account reproduced precisely what Palestinians have been educating and agitating against. In the court's narration in its first provisional measures order in January 2024, things *did* start on 7 October.[239]

Several rounds of South African submissions and urgent requests later, in their third provisional measures order in May 2024 the ICJ judges continue to describe the situation in Gaza in stark terms: 'catastrophic', 'apocalyptic', 'gut-wrenching', 'unimaginable'.[240] And yet the Court still can't bring itself to order Israel to *immediately suspend its military operations in and against Gaza* in those terms requested by South Africa since December 2023. Instead, the ICJ made a convoluted order for the partial 'halt' of 'offensive' operations in one area of Gaza. Israel hears what it wants to hear and says it 'has not and will not' conduct any military actions in Rafah which conflict with the Court's order.[241] Britain and the US continue to back the Israeli position.[242] International lawyers and scholars and even the ICJ's own judges engage in absurd debates about the position and meaning of commas in the Court's order. Shortly after the Court had read out its order, *Al Jazeera*'s broadcast cut to its reporter in Gaza who couldn't bring herself to tell or ask people there about this latest development, for fear of disappointing them. This is what the law recognised by civilised nations amounts to in a time of genocide.

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[233] Yoav Gallant quoted in Parth Sharma, '"We Are Fighting Human Animals": Dehumanization of Palestinians' *Palestine Chronicle* (21 May 2024) <https://www.palestinechronicle.com/we-are-fighting-human-animals-dehumanization-of-palestinians/>.
[234] 'Another senior Israeli calls Palestinians "inhuman animals"' *Middle East Eye* (26 October 2023) <https://www.middleeasteye.net/live-update/another-senior-israeli-calls-palestinians-inhuman-animals>.
[235] 'Gallant: "This is a war"' (n 231).
[236] Frantz Fanon, *The Wretched of the Earth* (Richard Philcox tr, Grove Press 2004) 7.
[237] 'European Diplomatic Academy: Opening remarks by High Representative Josep Borrell at the inauguration of the pilot programme' (European Union External Action, 13 October 2022) <https://www.eeas.europa.eu/eeas/european-diplomatic-academy-opening-remarks-high-representative-josep-borrell-inauguration-pilot_en>.
[238] Aimé Césaire, *Discourse on Colonialism* (Joan Pinkham tr, Monthly Review Press 2000) 32.
[239] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order of 26 January 2024).
[240] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Order of 24 May 2024).
[241] Jacob Magid, 'After ICJ ruling, Israel says it "has not and will not" destroy Rafah's civilian population' *Times of Israel* (24 May 2024) <https://www.timesofisrael.com/after-icj-ruling-israel-says-it-has-not-and-will-not-destroy-rafahs-civilian-population/>.
[242] Patrick Wintour, 'US and UK to back Israel over ICJ ruling after blurring their Rafah red lines' *The Guardian* (24 May 2024) <https://www.theguardian.com/world/article/2024/may/24/us-and-uk-to-back-israel-against-icj-while-blurring-their-rafah-red-lines>.

Elsewhere in The Hague, Palestinian rights organisations have filed extensive documentation with the ICC since 2014, including submissions on Israel's crimes of colonisation, apartheid and now genocide. But when Karim Khan announced his request for arrest warrants in May 2024, he very pointedly started with Palestinian crimes on 7 October before moving to subsequent Israeli crimes. The materials published by the Office of the Prosecutor and its Panel of Western Experts made no mention of colonisation, apartheid or genocide. Abdelghany Sayed points out that Khan's 'bothsidesist' pretension of balance is actually completely off balance in view of the incomparable extent and intensity of Israeli-perpetrated atrocities.[243] And yet Israel recoils at its inclusion at all, its officials saying the quiet part out loud: the ICC is only meant to go after the uncivilised natives; 'nations of the civilised, free world' should 'stand by Israel' and 'outright condemn' arrest warrants against Israeli leaders.[244]

Regardless of any ICJ order or ICC arrest warrant, Israeli leaders vow to continue unperturbed. Shortly after the ICJ's May order, Israel bombed Rafah 60 times in 48 hours.[245] Israel had also issued instructions for already-displaced Palestinians in Rafah to move to a 'safe' area marked as Block 2371. On 26 May, the Israeli airforce dropped multiple 2,000lb bombs on those people sheltering in tents in Block 2371. We watch videos of incinerated, mangled bodies and people looking for their loved ones 'amidst the smell of burning flesh',[246] the camp submerged in flames and thick smoke. We recall Hala Alyan: 'This is I did not know they made smoke like ocean / This is aluminium dusk and sulphur clouds /… This is steam and ruin and flashlit bodies / This is counting your lost / This is losing count.'[247]

We lose count of the categories of massacre, let alone the number of massacres themselves: the hospital massacre, the school massacre, the civilian convoy massacre, the safe zone massacre, the flour massacre, the tent massacre. Nimer Sultany points to Israel's chosen ICJ judge Barak's categorisation of the pummelling of Gaza as Israel's 'second war of independence', and asks: what does it say about Israel when its 'independence' equals ethnic cleansing and genocide, on repeat?[248] Israeli forces have also made a show of razing and erasing Gaza's universities, libraries, and mosques. They destroy the last active *hammam* in Gaza, almost 1000 years old.[249] This civilisational obliteration is done, as Herzog put it, 'to save western civilisation'.

In the wake of formal empire, 'western civilisation' is primarily projected in the form of expanding capitalism. The *Gaza 2035* blueprints released by the Israeli Prime Minister's office in May 2024 set out plans to transform the Gaza 'open-air prison' Bantustan into a Gaza 'free

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[243] Abdelghany Sayed, 'Reading the ICC Prosecutor's statements on Palestine from the Global South' *TWAIL Review* (24 May 2024) <https://twailr.com/reading-the-icc-prosecutors-statements-on-palestine-from-the-global-south/>.
[244] Bethan McKernan, 'Israel calls on "civilised nations" to boycott ICC arrest warrants against its leaders' *The Guardian* (21 May 2024) <https://www.theguardian.com/world/article/2024/may/21/israel-calls-on-civilised-nations-to-boycott-icc-arrest-warrants-against-its-leaders>.
[245] Mersiha Gadzo, Maziar Motamedi and Usaid Siddiqui, 'Israel's war on Gaza updates: "More than 30" killed in Rafah strike' *Al Jazeera* (26 May 2024) <https://www.aljazeera.com/news/liveblog/2024/5/26/israels-war-on-gaza-live-news-hamas-claims-capture-of-israeli-troops>.
[246] Quds News Network (@QudsNen), 'Amidst the smell of burning flesh…' (X.com, 26 May 2024) <https://x.com/QudsNen/status/1794831561759814012>.
[247] Hala Alyan, 'Gaza' (5 August 2014) <https://www.youtube.com/watch?v=y9TdGXHlCa4>.
[248] Nimer Sultany (@NimerSultany), 'Imagine this…' (X.com, 28 March 2024) <https://x.com/NimerSultany/status/1773403190932697193>.
[249] '1,000-year-old Hamam al-Sammara destroyed by Israeli bombing in Gaza' *Middle East Eye* (27 December 2023) <https://www.middleeasteye.net/live-blog/live-blog-update/historic-1000-year-old-hamam-al-sammara-destroyed-israeli-bombing-gaza>.

trade zone' Bantustan over the next ten years. This project is the latest in a long line of Israeli designs for managing the 'problem' of Gaza and the existence of Palestinians there, this time speaking of rebuilding Gaza 'from nothing.'[250] It presents a 'utopian' (dystopian?) vision of turning Gaza into a port and pipeline hub for fossil fuel extraction, solar energy and low-cost (read: cheap Palestinian labour) electric car manufacturing to compete with Chinese production[251]—genocide in the name of civilisation paving the way for 'capitalism as civilisation'.[252]

It is unlikely that the *Gaza 2035* plan will actually come to pass in anything like its projected form, but it allows Israel and the regional capitalist class to maintain the allure and mirage of a shiny, prosperous 'day after'. And in the meantime, the promise of such a day, when the Palestinians are sufficiently compliant and 'civilised', provides justification for continuing repression. Palestinian resistance and *sumud* continue, though, and the global solidarity movement is now broader and more committed than ever. While Israeli forces detonate universities and stage photos of themselves in front of burning books, the encampments that have sprung up across the globe—from Columbia to Cork and Tunis to Tokyo—have been creating libraries, hosting reading groups, sharing knowledge, and demanding their institutions divest. They will not rest. They are building movements and power in the face of genocide, and forging alternatives to the reactionary manifestations of 'western civilisation'. Over the last nine months the Israeli state has sought to expedite the ethnic cleansing of the Palestinians, and to further erase Palestine itself. Instead, now, Palestine really is everywhere.

ON THE QUESTION OF PALESTINE SOLIDARITY

Abdelghany Sayed and Luis Eslava

Historically, a common feature of debates on Palestine and international law has been the presence of solidarity networks, of all kinds and shapes, supporting Palestinians' quest for sovereignty.[253] Recently, grassroots solidarity with the Palestinian cause has expanded geographically and demographically reaching the level of the anti-apartheid movement against South Africa in the 1980s and early 1990s.[254] Yet, as in any other human affair, with the outbreak of each round of news, and the mobilisation of new groups supporting Palestine from Colombia to Egypt to Norway, the question of what we talk about when we talk about Palestine solidarity—as the American novelist Raymond Carver once asked about love—has become trickier to answer.[255] And this is because the Palestinian cause is today as much about the

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[250] Yuval Barnea, 'From crisis to prosperity: Netanyahu's vision for Gaza 2035 revealed online' *Jerusalem Post* (3 May 2024) <https://www.jpost.com/israel-hamas-war/article-799756>; 'Patrick Kingsley, 'Israeli Officials Weigh Sharing Power With Arab States in Postwar Gaza' *The New York Times* (3 May 2024) <https://www.nytimes.com/2024/05/03/world/middleeast/israel-gaza-postwar-plan.html>.

[251] Itamar Eichner, 'חשיפה - זה החזון האוטופי לרצועה, שבוחנים בלשכת נתניהו: "2035" עזה', *Ynet* (3 May 2024) <https://www.ynet.co.il/news/article/ryopqkmmc>.

[252] Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge University Press 2020); Ntina Tzouvala and John Reynolds, 'Capitalism, Civilisation and International Law' *TWAIL Review* (6 November 2020) <https://twailr.com/capitalism-civilisation-and-international-law/>.

[253] We would like to thank Eric Loefflad, Rose Parfitt, Mariana Prandini Assis and Hannah Franzki for invaluable suggestions on earlier drafts of this text.

[254] Omar Barghouti, Tanaquil Jones and Barbara Ransby, 'Let us remember the last time students occupied Columbia University', *The Guardian* (3 May 2024) <https://www.theguardian.com/commentisfree/article/2024/may/03/columbia-pro-palestinian-protest-south-africa-divestment>.

[255] Raymond Carver, *What We Talk About When We Talk About Love* (Vintage 1989).

ongoing denial of the Palestinians' right to self-determination as about deeply entrenched power asymmetries in the international order.

Figure 2. Palestine solidarity graffiti, Bogotá, Colombia, 18 January 2024. © Luis Eslava.

Under the banner of solidarity with Palestine, diverse groups come together. The liberal proponents of a self-proclaimed universalist, apolitical 'humanity' form part of the Palestine solidarity movement. Their solidarity comes in defence of the promises made by the modern liberal international legal order. Although the post-War legal order reproduces imperialism and is distant from the aspirations of the (formerly) colonised, even these promises could not be observed over the past decades (such as in Vietnam, Iraq, and in Palestine itself). As a result, even the believers in the liberal global legal order could not but stand in defence of Palestine today. These liberal solidarity expressions are often contingent upon and in direct proportion to the perfect victimhood of the Palestinians. But alongside these expressions, there are also long-standing and often quantitatively larger groups which are more political (in the sense of taking a clearer stance on Palestine beyond metrics of suffering). These groups—liberals of all shades and many others—are not only different but also sometimes in conflict with one another. In this context, it is extremely challenging to try to say 'one thing' about *all* of them at once.

So perhaps the one thing that can be said about Palestine solidarity is that it brings together the many *others* of modern society. Of course, there is rarely a perfect *other*, a perfect outcast. What we are rather talking about here is those whose subjectivities in some respects have been *othered*. In a rally or event for Palestine today, dispersed collectives are brought together because each considers that they (their group, people, family, generation, beliefs, or their very

person) have been rendered somehow *other* by a particular strand of modernity and, with it, the hegemonic operation of international law. Many postcolonial states, too, are engaged in Palestine solidarity. Even if a government like Sisi's in Egypt or Ortega's in Nicaragua, and their supporters, represent power within the parameters of their national borders, these states are still, in many ways, the *others* of the international legal order. And even Global North states like Spain, Ireland, Belgium, and Norway have come to join the ranks of Palestine solidarity, expressing with this a distance—at least partially—from their otherwise filial alliance with their 'developed' peers.

They—and this is a very large *they* formed by individuals and collectives—see their grievances and the injustice they themselves experienced, and continue to witness in the world, crystallised in or through the lens of Palestine. Their solidarity with Palestine stems, then, from an identification with the Palestinian cause, rather than mere 'sympathy' with an imagined (always-helpless) Palestinian. An identification with the feeling of otherness, and an experience of injustice, is the common denominator. Subjectivities in the face of the Palestinian situation are, as a result, split in a manner that some dimensions of peoples and states—those dimensions where *otherness* is found—become the ground to experience and express this identification.

Solidarity with Palestine is rarely (or ever?), however, an individual act. Collective subjectivities—the *we*—are central in the backing of Palestine. They are, for this very reason, as ambitious as they are diverse. Looking at the immense diversity of the constituents of the Palestine solidarity movement, one may be able to imagine a pluralistic world that embraces the histories and realities of the uncountable rest. This is why one reflection of solidarity by Egyptian fishermen and farmers from al-Warraq Island that has circulated widely amongst activist circles and social media platforms reads 'al-Warraq Island stands with Palestine'.[256] The *we* here is not the state-centric, cartesian confined *we*: the Egyptians, the Arabs, the Muslims, the UN peoples of the world, the cosmopolitans. Rather it is the *we* of the outcasts of Giza's Nile, whose livelihoods and homes, too, are under the threat of the state's heavy vehicles, prepared to bulldoze the land and water for yet another mall and another five-star hotel (see Figure 3).[257] In a Foucauldian reversal, one might think of Palestine solidarity, in this sense, as a way of defending the idea of society or, even better, other societies, ones that have not been defended so far. These other societies, of course, like any, would never be free of internal disagreement, or totally compatible with our own politics.

One additional shared characteristic of Palestine solidarity, in all of its diversity, is its critical stance against the dehumanisation of Palestinian suffering, in contrast to international law which has been doing much work recently to (re)interpret such suffering: (re)presenting, for example, the human as a shield, the child as a (potential) soldier-terrorist, and every death and destruction as a (lawful) 'incidental' effect, a (collateral) damage, under some provision in the Protocols Additional to the Geneva Conventions.[258]

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[256] Support al-Warraq Island, 'al-Warraq Island stands in solidarity with the Palestinian people' (Facebook, 13 October 2023) <https://www.facebook.com/photo?fbid=749441457195473>.
[257] Heba Afify, 'On Warraq Islands, popular democracy defies secret state plans' *Mada Masr* (19 November 2017) <https://www.madamasr.com/en/2017/11/19/feature/politics/on-warraq-island-popular-democracy-defies-secret-state-plans/>.
[258] See, eg, David Kennedy, *Of War and Law* (Princeton University Press 2006); Craig Jones, *The War Lawyers* (Oxford University Press 2020); Luigi Daniele, 'Incidentality of the civilian harm in international humanitarian law and its *Contra Legem* antonyms in recent discourses on the laws of war' (2024) 29 *Journal of Conflict and Security Law* 21.

Figure 3. 'One of the demolished buildings' by Zeinab Mohamed (17 July 2017) is licensed under CC BY-NC-SA 2.0. It was adapted from a colour image to black and white. The original, unmodified image is at https://www.flickr.com/photos/96884693@N00/35918795411/ and the license at https://creativecommons.org/licenses/by-nc-sa/2.0/.

One example of this interpretative role of international law is captured by the Israeli defence arguments in the Genocide Convention case brought by South Africa before ICJ.[259] *What you see is not what you think it is*: *the hospital is a command and control centre (it can be destroyed)*; *the street is the ceiling of a terror tunnel (it can be flattened)*; *the child's room is a military base (it can be occupied, they can be killed). We are a liberal democracy*. *Trust us*.[260] Following this, US-Israeli and European officials' answers to journalists' requests for comments on specific war images always begin with 'as I said', 'again'.[261] The idea is that there is already a system of interpretation, legitimised and almost entirely prefigured by international law. If we share this system, then any image of death and destruction, however massive, is acceptable. There is nothing the Western official can add.

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[259] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* Verbatim Record (12 January 2024) CR 2024/2 paras 2, 22, 6, 30, 36, 37-39, 47.

[260] See, eg, analysis in Nicola Perugini and Neve Gordon, 'Medical lawfare: the Nakba and Israel's attacks on Palestinian healthcare' (2024) 53 *Journal of Palestine Studies* 68 and this logic expressed in Yoav Zitun, 'Some childhood: Weapons of war discovered under the beds of Hamas official's children' *Ynet* (23 November 2023) <https://www.ynetnews.com/article/hjy7kk64t>; Graeme Wood, 'The UN's Gaza Statistics Make No Sense' *The Atlantic* (17 May 2024) <https://www.theatlantic.com/ideas/archive/2024/05/gaza-death-count/678400/>; Stand With Us, 'Hitler's "Mein Kampf" in a children's center in Gaza' (12 November 2023) <https://www.youtube.com/watch?v=G7El56LTUOY>.

[261] See, eg, Forbes Breaking News, 'Karine Jean-Pierre Discusses Israel's Mission In Gaza's Al-Shifa Hospital Against Hamas Militants' (2 April 2024) <https://www.youtube.com/watch?v=-pk3E4BuUGk>; Sky News, 'US official challenged over Israel's detention of Palestinian men stripped to underwear in Gaza' (12 December 2023) <https://www.youtube.com/watch?v=J_5ahzNh_yo>; DawnNews English, 'Journalist Confronts US State Dept On Israel's Demolition Of University In Gaza' (19 January 2024) <https://www.youtube.com/watch?v=pyEO7IutgxE>.

Figure 4. Palestine solidarity rally, Oslo, Norway, 20 March 2024. © Luis Eslava.

In contrast, Palestine solidarity is a confirmation that we can still identify beyond a system of signs in which signified and signifier have parted ways. When *others* see the image of pain, they see pain. And pain is what they feel. Although the mainstream international legal discourse presents complex *ad-bellum/in-bello* systems of (re)interpretation, the banner at the Palestinian rally reads 'ceasefire now' as protesters, here and there and everywhere, have been shouting on streets across the world for months. There is a 'we do not care' about international law expressed in these *other's* renditions, which in itself speaks about *other* international law.

Taken together, in its diverse and collective nature, Palestine solidarity could be subsumed thus under umbrella terms like Global South or Third World solidarity, sites that in the past have mobilised different international laws. But these terms fall short of encapsulating both the scope and depth of the Palestinian cause. In response, Partha Chatterjee's 'most of the world',[262] or even better, Gloria Anzaldúa's imagined 'mundo surdo', a left-handed world of difference that can only exist in the struggle of becoming in a relational manner, are better rubrics to think through what we talk about when we talk about Palestine solidarity.[263] And it is in this plural but directed understanding of solidarity where one can glimpse the emancipatory potential of a different international law. Whether it will come to exist or not is beyond the question. What matters is that it delivers what it promises.

[262] Partha Chatterjee, *The Politics of the Governed* (Columbia University Press 2004).
[263] Gloria Anzaldúa, 'The coming of el mundo surdo' in AnaLouise Keating (ed), *The Gloria Anzaldúa Reader* (Duke University Press 2009) 36.

GAZA AND THE REVOCATION OF THE UNFULFILLED PROMISE OF HUMAN RIGHTS

Jessica Whyte

Amnesty International's April 2024 report on the 'state of the world's human rights' begins with a requiem for the human rights system: the world 'is hurtling backwards past the 1948 promise of universal human rights', it reads.[264] Israel's conduct in Gaza, and the support it has received from the US and European leaders, the report argues, has 'dishonoured' the principles enshrined in the UN Charter, the Genocide Convention, and international human rights law and so 'put at risk the entirety of the 1948 rules-based order'. A month later, Israel's ambassador to the UN stood in front of the General Assembly and passed the UN Charter through a miniature paper-shredder, providing what may well come to be the definitive symbol of his own state's role in undermining the never-realised promise of international law and human rights. Gaza poses a crucial question to those who have long been critical of the international human rights system: what to do with the revocation of a promise that remained unfulfilled? How to respond to a form of power that has seemingly freed itself of the need to mask its own violence and domination in the language of universal human rights?

In contrast to genocide, war crimes, and crimes against humanity, the language of human rights has been remarkably absent from the global movement in opposition to Israel's destruction of Gaza. While human rights NGOs, and even the US State Department, continue to report on Israel's violations of human rights, it is increasingly clear that the enumeration of individual cases of what the latter calls 'torture or cruel, inhuman, or degrading treatment or punishment by government officials' obscures a systemic pattern of settler-colonial elimination. Nor do the standard tactics of human rights NGOs have purchase on Israel's conduct in Gaza. How to shame soldiers who post their own war crimes on TikTok or statesmen who openly proclaim their genocidal intent? What purchase does the language of universal humanity have against those whose every word and action reveal their devaluation of Palestinian life? Of what use is the form of legal accounting that the State Department human rights report exemplifies once the US State has made clear its 'ironclad commitment' to protecting Israel's right to commit a genocide? And what comes after the last utopia?

The framing in the Amnesty Report is familiar: the failure of the architects of the post-WWII system to uphold their commitments augurs 'a descent into a hell whose gates had been closed in 1948'. Gaza, whose hospitals have become graveyards, has indeed been turned into a living hell for the millions who still live there. Yet, its hell may not be that of the past but that of a future in which our rulers no longer need to make promises to those they rule. The hegemonic moment of human rights as 'the morals of the market' was indissociable from the globalisation of trade and finance. It is not clear that the emerging regime of accumulation requires the universal moral commitments that accompanied globalising neoliberalism. In a context of climate crisis, surplus populations, and stalled growth and increasingly zero-sum economic relations, Gaza is a laboratory for techniques of death and destruction without alibi. As people across the globe fight for all those living in Gaza, they also fight for a world in which Gaza does not become the norm. The stakes are too high to rely on comforting historical myths about the redemptive force of human rights, to assume that opposing genocide puts us on 'the right side of history', or to pine for a return to the familiar human rights hypocrisy of the past.

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[264] Amnesty International, *The State of the World's Human Rights* (Amnesty International 2024).

LORIMER, HERZL, KANAFANI

Martin Clark

Within James Lorimer's 1883 *Institutes of the Law of Nations* lies a short footnote: '[t]he restoration of the Jews to Palestine would be the most curious and interesting political experiment that ever was made'.[265] Lorimer's work presents an arcane and eccentric account of a structurally racist vision of international law, resting on entrenching the 'real' *in*equalities between peoples, and dispensing with liberal international law's pieties of the equality of status and rights of all states. We pretend he is an outlier conjuring a nightmarish international law. But Lorimer reveals a world that we know is truer to international law's reality, then as now; its teetering systems, its stupid contortions, its sick jokes.

A few pages earlier, Lorimer wrote that 'Jews, and Mahometans, and Atheists, and Communists, and Nihilists' could be accepted within a state, but their religions or ideologies are forever incapable of grounding a real, genuine state. In this peculiarly worded worldview, each state must have an 'ethical factor' of reciprocity in its dealings with other states.[266] States must 'exhibit' their 'reciprocating will' to each other, 'not as a general sentiment, but on the special occasions when its passions and prejudices run highest'.[267] Absent any central international organisation, international law must always demand of each state a set of 'moral requirements' higher than those that a state makes of its citizens.[268] That is what is needed for recognition. For Lorimer, Jews and Muslims alike are members of 'intolerant' religions and so incapable of recognition: '[t]hat much of the teaching of the Hebrew prophets was inspired by a far higher and wider spirit is unquestionable; but it was not till the coming of Christ that the ethical element became prominent, and that the doctrine that the Gentiles "having not the law, are a law unto themselves," was consistently proclaimed in Jewish ears. The failure of modern Jews to accept this doctrine, is no doubt the cause of the alien character which everywhere belongs to them.'[269] It is after this screed—near-baffling, but logical and coherent in Lorimer's international law—that the note cited above appears.

Theodor Herzl completed a doctorate in law in the same year Lorimer's *Institutes* appeared: 1883. He began a diary the year before, which ran to the early 1900s.[270] During the mid-1890s, Herzl frequently turned to international law. In 1896, he wrote that declaring the independence of a Zionist state would be 'impracticable' because the Great Powers would refuse recognition, regardless of Ottoman strength. 'My program, on the other hand, is to halt infiltration and to concentrate all energies on the acquisition of Palestine under international law. This requires diplomatic negotiations, which I have already begun, and a publicity campaign on the very largest scale'.[271] Later, Herzl wrote that the Society of Jews 'sets itself the task of acquiring, under international law, a territory for those Jews who are unable to assimilate'.[272] Later still, he criticised a proposal for an international Court of Arbitration as 'contrary to the sovereign rights of monarchs and the independence of nations', dangerous because of its 'idealistic basis

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[265] James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities*, vol 1 (Blackwood 1883) 120 n 1.
[266] ibid 112-13.
[267] ibid 112.
[268] ibid.
[269] ibid 119-20.
[270] See Derek Jonathan Penslar, *Theodor Herzl: The Charismatic Leader* (Yale University Press 2020) 26-27.
[271] Theodor Herzl, *The Complete Diaries of Theodor Herzl* (Raphael Patai ed, Harry Zohn tr, Herzl Press 1960) [1896] 355.
[272] ibid 408 (5 July 1896).

of justice' and the risk of forming two blocs: '*Etats de l'arbitrage* [Arbitration States], and others—a kind of *outlaws* under international law', with Herzl's editor noting that 'outlaws' is written in English.[273] And yet, later again, Herzl writes 'in French the word *territoire* had not only the international-law sense, but also meant a *suite de terrains*. We are not asking for *terrains*; the soil is too bad for that. We can accomplish something only if we have a continuous area.'[274]

But Herzl's most revealing invocation of international law precedes all these. On 4 July 1895, Herzl sketched his plans for a novel in which a 'Baron has misunderstood the office of "sovereign"'; he cannot become both 'President of the Company' and Chief of its new state. 'At that point the hero hits upon an ingenious solution. He says to the Baron when they are about to be recognized under international law: "All right, now both of us will retire. If we want to become part of history, we must do all this unselfishly. Henceforth we shall be merely observers. I shall so arrange it that you are offered the sovereignty—but you must immediately refuse it."'.[275]

For us in the university, what is our sense of reciprocity, and will, and responsibility; what are our offers, our part in history, our refusals? What do we need to do, unselfishly, living in Lorimer and Herzl's nightmares? Our position in and from the university might be the least important part of how we enter a roiling collectivity of action for justice and freedom. In December last year, to begin a workshop, I read out parts of Ghassan Kanafani's 1956 'Letter From Gaza'. Kanafani writes to his friend Mustafa to explain why he cannot join him to leave Gaza for the University of California. Kanafani says his friend must return and find himself 'among the ugly debris of defeat'. Mustafa must 'come back' and learn 'what life is and what existence is worth'. Kanafani writes that Mustafa must do that through contemplating the amputated leg of Kanafani's niece, Nadia, who lost it shielding her sisters and brothers from 'the bombs and flames'. Her sacrifice and refusal to leave sealed Kanafani's own decision to stay. 'I'll stay here, and I won't ever leave'. He ends: 'We are all waiting for you.'[276]

BLOODY BALFOUR

Richard Clements

Thin Chancellor swathed in red,
eyes on the middle. Embalmed
and embroidered *noblesse oblige* to the virtuous cantab
walking by, gazing up.

They made you a cartographer god,
turning page to architecture raised to faces set
against guilt and back to the book,

[273] ibid 844-45 (16 June 1899), mentioned in an entry and a letter to the Grand Duke of Baden.
[274] ibid 1459 (1 April 1903).
[275] ibid 193. This novel would become Theodor Herzl, *Altneuland* (Hermann Seemann 1902). On Herzl and colonialism, see further especially Edward W Said, 'Zionism from the Standpoint of Its Victims' (1979) 1 *Social Text* 7, 23-26, 30-32.
[276] Ghassan Kanafani, 'Letter from Gaza (1956)' in *The 1936-39 Revolt in Palestine* (Tricontinental Society of London 1980).

they who remember—because they were not told—
the Armenians like a distant uncle.

They find their way back now—your mouth gagged red.
Did she get you in the eye? You were blind before now. Your body
cut to fold down, buttress exposed, the shining pallor of power.
A scimitar scraping up from below.

Restoration team called, needs adjustment:
not the gown of state, a tourniquet;
not the sound of canvas scored
but *zanana*
[زنانة]
in B flat drones;
and we heard about Mitchelstown, too.
The blood in its centrifuge spat back on you.

You lie at Whittingehame, an ingraved state.
They rest at last, a canvas just to paint.

'TELL NO LIES, CLAIM NO EASY VICTORIES': SOUTH AFRICA AT THE ICJ, AGAIN

Christopher Gevers

'Tell no lies. Expose lies whenever they are told.
Mask no difficulties, mistakes, failures. Claim no easy victories . . .'
Amilcar Cabral[277]

In December 2023 South Africa returned to the ICJ, six decades after its last appearance in contentious proceedings. The details of the 1966 *South West Africa* decision are well-known to international lawyers, who would sooner rather forget them. The decision's impact was immediate and profound: in response to the Court's 'scandalous and wicked' judgment African states threatened to abandon the Court altogether.[278] Its impact *in South Africa* is less well known. The apartheid state was ebullient following its 'victory' at the ICJ. So too were the white settlers of South West Africa invested in the continuation of apartheid. To show their 'faith in the objectivity of the law as a result of the 1966 decision', and in the hope 'that public international law would be capable of protecting them against the inevitable black Africanisation tide rolling relentlessly southwards', they started a Fund for International Law.[279] That fund would finance the establishment of South Africa's first *two* international law journals in the late 1960s and early 1970s.[280] This short reflection draws four lessons from both the 1966 decision and its aftermath, in the key of Amilcar Cabral's famous aphorism.

[277] Amilcar Cabral, *Revolution in Guinea* (Stage 1 1969) 72.
[278] UNGA, 21st Sess, 1432nd Plen Mtg, UN Doc A/PV.1432 (7 October 1966) para 113.
[279] Hercules Booysen, *An Academic Life Over Continents: Reflections of an Afrikaner on the Changes which Engulfed South Africa During the Second Half of the Twentieth Century* (Interlegal 2007) 129.
[280] ibid.

First, tell no lies

The 1966 decision reminds us, in a moment of its redemption, that international law was the engine and freight of colonialism, and remains 'colonial' in many respects. Israel's recent invocation of the language of 'barbarism' and 'civilisation' is not mere rhetoric; it is an attempt to re-colonise international law—to invoke its underlying *racial grammar* in order to demonise Palestinians and their allies as unworthy of international law's recognition and protection, even when they go to the ICJ. This is not a throwback to language of another time; it is an effort to reassert international law's colonial and racial grammar in the present.

Second, expose lies whenever they are told

The risk of uncritically placing international law on the side of post-apartheid South Africa is that we flatten out international law's complex relationship with apartheid, shoring up the common and 'comforting myth'[281] that the two were in opposition. This is *at best* a half-truth: international human rights law *eventually* opposed apartheid; the *majority* of the General Assembly opposed apartheid. But international law and institutions *as a whole* simply did not. Like colonialism, international law laid the foundations for the establishment of apartheid, which lasted as long as it did partly because of, not in spite of, international law and international legal institutions—including the Security Council and, for a time, the ICJ. The 1966 decision reminds us that South Africans did not get good at international law overnight, or even in 1994: the uncomfortable truth is that apartheid South Africa was already very well versed in the language of international law.

Third, mask no difficulties, mistakes, failures

In the case against apartheid South Africa in the 1960s there were difficulties, mistakes and failures which are often sidelined by the scandal of the fraudulently re-configured 1966 bench revisiting and reversing its 1962 decision on standing.[282] We can't know what would have happened in the absence of extrajudicial shenanigans, but the assumption is often made that Liberia and Ethiopia would have won on the merits and the ICJ would have ruled that apartheid violated international law. Truth be told, that outcome was far from certain: only *two* of the seven dissenting opinions explicitly stated that apartheid violated international law.

Some of these difficulties arose from the legal tactics of apartheid South Africa in 1966—which have been mirrored by Israel today. The first is to dismiss the case as a cynical and political abuse of the court. The second is to take technical points, such as whether there was a dispute or 'unispute'.[283] The third is to produce alternative sets of facts about the conditions in South West Africa or Palestine, one that contested the UN's narrative and, more importantly, the accounts of those directly affected: then the South West Africans, today the Palestinians.

The most fateful mistake of African states in 1966, however, was to place all of their faith in the justice of international law and its ability to jump its colonial shadow. Liberia and Ethiopia ended up relying solely on the claim that apartheid *by its very nature* violated international law. It is not certain by any means that they would have been successful, but even if they had, it

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[281] Chinua Achebe, 'An Image of Africa: Racism in Conrad's *Heart of Darkness*' (2016) 57 *Massachusetts Review* 14, 18.
[282] See Victor Kattan, 'Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the *South West Africa* Cases' (2015) 5 *Asian Journal of International Law* 310.
[283] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* Verbatim Record (12 January 2024) CR 2024/2 26.

would have been on *the hardest* of all the available arguments. In the current proceedings South Africa—for reasons of jurisdiction—has no choice but to make the hardest possible argument: that Israel is not only wantonly destroying the lives, homes and livelihoods of Palestinians but *is doing so with the intention to destroy them as a group*. There is no other route to the ICJ other than through the eye of this particular needle.

There are at least two other, more hopeful, arcs from 1966 to the present. The first is South Africa's claim that Israel's genocide against Palestinians does not only affect their rights alone, but implicates the rights and obligations of South Africa (and other states) as the prohibition against genocide generates obligations *erga omnes*. This was the same justification underpinning African states' case in 1966: that apartheid South Africa's obligations in respect of South West Africa could be enforced by other states, and African states *in particular*. This radical approach to the enforcement of fundamental norms of international law is also the heritage of 1966.

The second arc passes through 1973. In the wake of the ICJ's decision, African states attempted to reimagine and remake international law in order to ensure it would be on the right side of history, and the wrong side of apartheid. The centrepiece of these efforts was the Apartheid Convention, which not only declared apartheid a crime against humanity but also drew a link between colonialism, apartheid and genocide. African states rejected the claims that genocide was unique to the Holocaust or that apartheid was unique to South Africa. In doing so, the Apartheid Convention adopted a *structural account* of the crime of apartheid—as a *system* of political, economic, social and cultural *domination*, as opposed to a series of individual rights violations—and, by implication, extended this account to the Genocide Convention as well.

It was this historical and theoretical understanding of the situation in Gaza that South Africa invoked at the outset of proceedings in The Hague, explaining that 'the genocidal acts and omissions by [Israel] "inevitably form part of a continuum", of illegal acts perpetrated against the Palestinian people since 1948'.[284] Notably, in December 1966 the UN delegate from Guinea noted—with hindsight—that *the real mistake* in bringing apartheid South Africa before the ICJ for violating the rights of the peoples of South West Africa was that it 'distort[ed] the true nature of the problem of South West Africa's future, which … *was a colonial problem*'.

The success of South Africa's case going forward may well hinge on its ability to hold the Court's attention on the broader context of colonialism and apartheid that are the conditions of possibility for the ongoing genocide in Gaza. There are no easy victories here, as international law *and human rights law* have historically been hostile to recognising and redressing structural harms like colonialism and apartheid, or even acknowledging the struggles of the majority of the world's people against them as well as the legal tactics, traditions and epistemologies these struggles have generated. However, the consequences of doing so will be profound: not only for the immediate case and the question of Palestinian freedom, but for question of freedom everywhere—including in South Africa. In this sense, the 1966 moment reminds us of the possibility *and also the fragility* of not only a different, more just international order, but of another international law.

[284] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* Verbatim Record (11 January 2024) CR 2024/1 17.

FROM THE HUMANITARIAN TO THE DIPLOMATIC TO THE JUDICIAL

Nahed Samour

In the midst of the horrors they are experiencing, many Palestinians do not have much trust in international law to bring change to their plight. Yet Palestine, as legal factor and a legal cause, is currently centre stage at more than one international court. The necessary caution about liberal-legal possibilities notwithstanding, the question of genocide, the il/legality of the Israeli occupation and Israel's adoption of related discriminatory legislation and measures, as well as the status of Jerusalem, are all currently being litigated at the ICJ. Clearly, Palestine is at the forefront of international law.

This seems odd, given the precarious relationship that the case of Palestine has had with international law. International law was designed to privilege nation states at the expense of non-state actors, to favour sovereign states over those that are still struggling to see their collective self-determination fulfilled, and to approve of 'the civilised' over the 'savages' or, in modern parlance, 'terrorists'. At a time when one part of the world was making attempts to reverse colonialism and foreign domination, it was the 'international' legal community of colonising states that authorised the General Assembly's partition plan of 1947, taking away territory from the indigenous Palestinian community, against its will, to give to another, the incoming Jewish community. Additionally, it is IHL, especially the law of occupation, that for too long has been providing 'humanitarian camouflage'[285] to the continued dispossession and expropriation of Palestinian land by covering up the widespread, systematic and grave human rights violations against the Palestinian people.

Nonetheless, this growing turn to international law, and the numerous appeals to international courts for application of the international legal framework, highlights a key change in how (not) to understand the case of Palestine and signals a paradigm shift from the humanitarian to the diplomatic and, momentously, to the legal, particularly the judicial. Here I want to describe three steps in this process.

First, we are seeing the case of Palestine moved from a 'humanitarian relief for refugees' framework to a 'legal solutions for victims of international crimes' framework. Many states and intergovernmental entities, including the UN, have referred to the Palestinians displaced by Israel from 1948 onwards primarily as a humanitarian problem of refugees, one to be managed by funding humanitarian assistance. Humanitarian aid is 'voluntary in nature' and does not as such entail legal obligations, as we have seen in the *Nicaragua v. Germany* case currently before the ICJ.[286] The humanitarian paradigm serves to deflect from concrete legal responsibilities. In its pleadings before the Court, Germany proudly stated 'We have been making humanitarian assistance available directly to the Palestinian people for months', noting it is 'the largest individual donor of humanitarian assistance' and had 'increased its support threefold since October 2023'.[287] The reality, though, is that simultaneously, in 2023, 280 individual export licences for military equipment to Israel were authorised, amounting to 326.5 million euros.[288] This marks a tenfold increase from 2022, when the total value of approved

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[285] 'Anatomy of a Genocide' (n 17) 14.

[286] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* (Order of 30 April 2024) para 19.

[287] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* Verbatim Record (9 April 2024) CR 2024/16 10-11.

[288] Forensis, 'German Arms Exports to Israel 2003-2023 – Update' (7 June 2024) <https://counter-investigations.org/investigation/german-arms-exports-to-israel-2003-2023>. See also Bundesregierung,

licences amounted to 32.3 million euros.[289] The largest volume of these licences in terms of value—75 per cent—was authorised in the last three months of 2023, namely in October, November, and December.[290] Some 185 export permits were approved in the 26 days between 7 October and 2 November 2023 alone.[291] Germany's duty to prevent genocide is thus allegedly said to be met by increasing its humanitarian aid threefold, while increasing its arms exports tenfold. This is what 'white saviourism' in international law looks like. We see the same with the US building a floating pier to enable delivery of humanitarian aid by sea while, at the same time, providing a further US$1 billion of arms and ammunition to Israel. The spread of famine and starvation, as well as infection and disease—prompting a third round of ICJ provisional measures on 24 May 2024— will not be fought by the dialectic of aid and weapons. Rather, it is the apparent fig leaf of humanitarian aid that makes this extreme violence possible.

Second, we are seeing a shift away from the diplomatic and political realm of negotiations—multilateral and bilateral—to the legal. It has become clear that political and, in particular, diplomatic efforts have proved fruitless. The Security Council's failure to provide for even a humanitarian 'pause' or 'ceasefire', in the language, respectively, of the US and UN, has rendered such efforts futile. The Middle East Quartet, always ineffective, has vanished into insignificance. Set up in 2002, the Quartet consists of the UN, EU, US and Russia. Its mandate is to 'help mediate Middle East peace negotiations and to support Palestinian economic development and institution-building in preparation for eventual statehood'.[292] Not only has it failed to overcome the deep freeze of the peace process, but it has also been unsuccessful in thwarting deadly attacks on Gaza (2008, 2012, 2014, 2018, 2021, 2023-24) and massive settlement expansion across the West Bank and East Jerusalem. The latter is of crucial significance for those who cling to the rhetoric of 'peace process' and 'two-state solution' as it undermines any such possibility. In its last available statement from 2021, the Quartet offered little more than an appeal 'to ensure humanitarian efforts' and undefined steps towards a resolution of 'the conflict'.[293] Obviously, local bilateral diplomatic and political negotiations between Israel and the Palestinian Authority, bypassing the PLO, have not only failed to wield positive results for the Palestinians, but in fact have helped establish a system of indirect rule by Israel over Palestinians via the Palestinian Authority whilst allowing for further territorial confiscation and annexation of Palestinian land. It is increasingly difficult to deny a one state reality in which Israel governs the area from the river to the sea.[294] This indirect rule also

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'Antwort der Bundesregierung, Drucksache 20/10993' (9 April 2024) <https://dserver.bundestag.de/btd/20/109/2010993.pdf> 3.

[289] Forensis, 'German Arms Exports to Israel 2003-2023' (2 April 2024) <https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf> 5. See also Bundesregierung, 'Bericht der Bundesregierung über ihre Exportpolitik für Konventionelle Rüstungsgüter im Jahre 2022' (20 December 2023) <https://www.bmwk.de/Redaktion/DE/Downloads/B/bericht-bundesregierung-exportpolitik-konventionelle-ruestungsgueter-2022.pdf> 121.

[290] Forensis (n 288).

[291] 'Deutsche Rüstungsexporte nach Israel fast verzehnfacht' *Tagesschau* (8 November 2023) <https://www.tagesschau.de/inland/israel-deutschland-ruestungsexporte-100.html>.

[292] 'Joint Press Statement by the Middle East Quartet Envoys' (18 November 2021) <https://unsco.unmissions.org/sites/default/files/quartet_envoys_joint_press_statement_-_18_november_2021_2.pdf>.

[293] ibid.

[294] Michael Barnett, Nathan J Brown, Marc Lynch and Shibley Telhami (eds), *The One State Reality: What Is Israel/Palestine?* (Cornell University Press 2023); B'Tselem, 'A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid' (12 January 2021) <https://www.btselem.org/publications/fulltext/202101_this_is_apartheid>; David Remnick, 'The One-State

reminds us of a colonial mindset in which local rulers and institutions were created and utilised to administer colonial territories.

Third, we are seeing a new focus on Palestine as a legal and judicial question, the death of Palestinians and land grabs treated not as political contingencies but as crimes that demand adjudication before an international court. Palestinians and the State of Palestine are not alone in turning to international courts. It was South Africa that brought the question of genocide of Palestinians to the ICJ, Nicaragua that raised the complicity of third states, such as Germany, at the same Court, and the many states of the General Assembly that brought the question of the il/legality of the occupation, with the State of Palestine, 49 states, and three international organisations presenting their legal arguments to the Court. The ICJ is not the only judicial forum embraced: the State of Palestine submitted the first interstate communication against Israel to the Committee against All Forms of Racial Discrimination on questions of segregation and apartheid,[295] while the ICC Prosecutor has applied for arrest warrants for Palestinian and Israeli leaders.[296] The latter was overdue: an investigation into the 'Situation in the State of Palestine' was approved already in 2021. Nonetheless, these developments speak to the treatment of the expansive land grab and discriminatory population management as crimes to be adjudicated, not as subjects for political negotiation or target of humanitarian aid.

The horrors in Palestine, but also the ICJ's hearings and the ICC's activities, have garnered the world's rapt attention. We know that international law is only useful when it is upheld equally for everyone, enforced on the ground when necessary, and complemented by local steps—undertaken today by students, poets, writers, and labour unions. Whether or not international law can serve as a tool for realising a dignified life for everyone living between the river and the sea is therefore an open question. Palestine is nonetheless at the forefront of international legal movements but, maybe more importantly, also social movements, pushing the law beyond court rooms and governments to 'generate a praxis of (new, or different) universality'.[297]

CRUEL OPTIMISM

Ihab Shalbak

As Palestinians in Gaza were attacked by Israeli forces, a colleague of mine remarked that she could no longer teach her international law course in good faith. Around the same time, a Lebanese university professor apologised to his students for decades of teaching them about international law.[298] Even a senior officer of the most respected Palestinian human rights and international law organisation, Al-Haq, declared on 17 October, 'the mask is off: Gaza has

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Reality' *The New Yorker* (10 November 2014) <https://www.newyorker.com/magazine/2014/11/17/one-state-reality>.

[295] OHCHR, 'Inter-state communications' <https://www.ohchr.org/en/treaty-bodies/cerd/inter-state-communications>.

[296] ICC, 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine' (20 May 2024) <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

[297] John Reynolds and Sujith Xavier, '"The Dark Corners of the World": TWAIL and International Criminal Justice' (2016) 14 *Journal of International Criminal Justice* 959, 978.

[298] Camille H Habib (@camille_ha2), 'اعتذر من طلابي في الجامعة اللبنانية لانني كنت متشددا في تدريس مقررات القانون الدولي' (X.com, 31 October 2023) <https://x.com/camille_ha2/status/1719395728273854609>.

exposed the hypocrisy of international law'.[299] Apart from these almost visceral reactions, a few years earlier anthropologist Lori Allen had concluded her research into a century of international law engagement in the region by delivering a definitive judgment: 'when it comes to Palestine, this dead horse requires no further flogging'.[300] Yet in the past few months, international law seems to have been resurrected, as a saviour, not necessarily of Palestinians as such but of the very idea of a vanishing normative order, an order not reducible to might makes right, that we can neither revive nor survive without.

It is correct to say that the moral weight of South Africa in its case against Israel before the ICJ provided international law with redemptive respite, and that the flogging of Karim Khan's ICC from its slumber proved that the instrumental and tactical use of international law could eventually lead to the 'gradual end' of Israel's absolute impunity.[301] At another level, it is also correct to say that what we are witnessing is part of a greater tendency of invoking the law 'as an end in itself' that, over the course of the past few decades, has led to the increasing 'juridification of resistance.'[302] These all are valid explanations of the centrality of international law, but in the wake of the relentless Israeli assault on Gaza they appear insufficient. There is something more than redemption, flogging and juridification at stake here.

One hint that helps us to gauge what this 'something more' may be comes from critical legal scholar Marina Veličković, who writes about her personal and professional investment in the hope that the law might do '*something*' with tangible effect on the situation in Gaza.[303] Veličković acknowledges that this wish is an instance of a 'deep investment in the liberal international legal order'. In other words, she acknowledges the slippage between instrumental investment in international law to achieve certain ends and investment in it as a constitutive, as opposed to a mere regulative, ideal of our contemporary world. In its constitutive capacity, international law came to stand as a redeemer of a humanity that survived the evils of the past and bid farewell to its failed gods. The Israeli attack on Gaza battered this constitutive ideal, but without any other horizon, without any other language, we return to international law as a surrogate of an order that we cannot imagine surviving beyond. In this circumstance, our critique risks becoming a tacit yearning for a liberal order no longer living up to its own ideals.

This yearning reveals a mutation of personal and professional investments into a generalised desire. We are incurably attached to the promise of international law to order and maintain our world. Therefore, we cannot contemplate losing the *something* that international law might provide. To echo Lauren Berlant, the loss of international law as 'the promising object/scene itself will defeat the capacity to have any hope about anything'.[304] The attachment means that even when we are, intellectually and politically, not feeling optimistic, we are irredeemably and inherently optimistic about the prospect of international law doing *something*. Berlant aptly calls this 'cruel optimism'.

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[299] Wesam Ahmad, 'The mask is off: Gaza has exposed the hypocrisy of international law' *Al Jazeera* (17 October 2023) <https://www.aljazeera.com/opinions/2023/10/17/the-mask-is-off-gaza-has-exposed-the-hypocrisy-of-international-law>.
[300] Allen, *History of False Hope* (n 69) 247.
[301] Mouin Rabbani, 'The Gradual End of Israel's Absolute Impunity' (DAWN, 29 May 2024) <https://dawnmena.org/the-icc-and-israel-a-democracy-in-exile-roundtable/>.
[302] Krever (n 29).
[303] Marina Veličković, 'International law and failure in the context of Gaza' (Critical Legal Thinking, 2 April 2024) <https://criticallegalthinking.com/2024/04/02/international-law-and-failure-in-the-context-of-gaza/>.
[304] Lauren Berlant, *Cruel Optimism* (Duke University Press 2011) 24.

For Berlant, cruel optimism 'is not to err, but to project qualities onto something so that we can love, hate, and manipulate it for having those qualities—which it might or might not have'.[305] Rather than succumbing to fatalism and resignation by adopting the moral and political precepts of international law as 'the most we can hope for',[306] cruel optimism turns international law into a placeholder for everything we hope for. In this capacity international law has returned to the forefront in the struggle over Palestine to stand not simply for legalism but for justice and liberation—two goods international law is not equipped to realise. And as such international law names the 'impasse' that cruel optimism signifies 'when [the misrecognition of] something you desire is actually an obstacle to your flourishing'.[307]

ON GAZA, INTERNATIONAL LAW, AND FUTURE CONVERSATIONS

Justina Uriburu

I was once told that each generation of scholars is defined by the crisis of their time. This has not necessarily been true for my generation: my education and early steps as a scholar have been marked by manifold crises and the general sense of an unsustainable world. Yet the atrocities in Gaza have exposed extraordinary violence against and dehumanisation of the Palestinian people. The first genocide where victims are broadcasting their destruction in real time, someone said.

For international law scholars, the past months have meant another moment of reckoning, reopening conversations about professional responsibility, ethical practices, and our roles as teachers, researchers, and colleagues. What are we doing while Gaza endures such violence? As academics, how should we steer the conversation, and what should we foreground in discussions of Gaza, both in the classroom and beyond? These are the questions we ask ourselves today and will continue to ask for years to come.

A common trope in reflections on Gaza and international law has been that international law has failed. Other scholars reacted, contending that what Gaza revealed is that international law actually succeeded. It succeeded both through states' use of the ICJ (the cases instituted against Israel and Germany, third states' interventions in those cases, and the advisory proceedings on the legal consequences arising from the policies and practices of Israel in the OPT) and the firm condemnations of states in international legal language. I find these framings misleading because they obscure from view that international law, by itself, does not fail or succeed, save or abandon. Instead, it is states, political leaders, corporations, public intellectuals, experts, and university management, who, to different degrees, bear responsibility for this political and moral failure. Likewise, I do not believe that drawing the focus towards ICJ proceedings is necessarily a vanity-driven move to glorify the legal craft or an exercise implying a normative commitment to international law and its institutions as beacons of justice.

In future international law classrooms and discussions, we will not (I think, I hope) discuss the horrors of Gaza solely through the lens of ICJ proceedings. We will not portray these proceedings as the natural next step in the operation of international law but as the exploitation of a narrow window of opportunity, one that lay open for contingent, not virtuous, reasons: the

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[305] ibid 122.
[306] Wendy Brown, '"The Most We Can Hope For…" : Human Rights and the Politics of Fatalism' (2004) 103 *South Atlantic Quarterly* 451.
[307] Berlant (n 304) 1.

existence of a treaty with a compromissory clause that, unlike the US, Israel did not opt out of, and the political willingness of South Africa to lead the way. We will acknowledge that conditions could easily have been, and indeed usually are, different. We will acknowledge that the international judicialisation of massacres seldom results in the achievement of restorative, redistributive, and historical justice, or, in this case, what justice looks like for the Palestinian people. We will acknowledge that the resort to the ICJ under the Genocide Convention cannot be divorced from the institutionally entrenched hegemony that paralyses the Security Council. We will recognise that praising a legal team for putting the international law machinery to good use does not mean redeeming international institutions (the UN), bodies of law (the Genocide Convention), or situations of institutionalised impunity enabled or constituted by international law.

As I write, it is early to discuss the impact of the ICJ's orders on the ground; what the ICJ will make of the case in future judgments also remains to be seen. However, among the many portrayals that may emerge, one could describe South Africa's resort to the ICJ as a vehicle for showcasing arguments before the world and for obtaining factual and legal determinations that helped articulations of protests, from public letters by academics and public intellectuals to student and popular mobilisations across the globe. We may even foreground how the work of the South African legal team before the ICJ and the texts of judges were instruments against gaslighting. They certainly helped me in my interactions within and outside academia, particularly when talking to people in my home country, Argentina. Far-right President Javier Milei has gone over and above to show his support for Netanyahu's actions, including by abstaining from voting on the right of the Palestinian people to self-determination at the Human Rights Council and affirming that 'Israel is not committing a single excess'.[308]

We can choose to place our focus elsewhere; there are plenty of histories, materials, and lenses through which we can discuss the onslaught in Gaza. As international law scholars, however, we may well embrace our understanding of the law, including the ICJ, and use it critically and politically in the classroom and beyond. Not to champion, reify, or legitimise but to mobilise every tool at our disposal against violence, oppression, and injustice.

GOING NOWHERE

Umut Özsu

Some 20 years ago, amid a deluge of interventions about 9/11, the invasions of Iraq and Afghanistan, and the broader 'War on Terror' they ushered in, Martti Koskenniemi famously likened contemporary international law to kitsch—an aesthetic form premised upon the mass manufacture of cheap commodities, each saturated with sentimentality and produced for a world of mechanical reproduction.[309] This characterisation has always sat well with me, particularly as Koskenniemi uses it to skewer the pompous prattle that so often accompanies invocations of *jus cogens* and obligations *erga omnes*. But a sharper aesthetic strikes me as befitting the current conjuncture: international law today, it seems to me, is less kitsch than art deco, the grand interwar Euro-American endeavour in modernist design and craftsmanship. Whereas kitsch invites a detached romanticism that is ultimately intended to comfort, a

[308] CNN en Español, 'Milei dice que "Israel no está cometiendo ni un solo exceso" en la guerra contra Hamas' (27 March 2024) <www.youtube.com/watch?v=szft1RzIEpc>.
[309] Martti Koskenniemi, 'International Law in Europe: Between Tradition and Renewal' (2005) 16 *European Journal of International Law* 113, 121-24.

paperback copy of *Chicken Soup for the Soul* one might pick up at an airport shop, art deco encourages a stalwart resilience that is engineered to exalt, defying anxieties of decline with exhortations to continue building a more rational and prosperous future. Like kitsch, art deco is fuelled by self-reflection, even what Pierre Bourdieu termed 'self-reflexiveness'—the methodical excavation and examination of biases and the social conditions that make them not only possible but seemingly necessary.[310] Unlike kitsch, though, art deco does not mollify, either through melodrama or melancholy. Instead, it proudly proclaims its commitment to progress, promising a sleek and sophisticated path forward. Kitsch reproduces the past, cynically and in a refracted register, while art deco leverages it to project a new and more ambitious future on the basis of a roiling, disjointed present.

This may seem like an odd characterisation—and no doubt it is. Yet what is remarkable about the world that humanity and what it calls 'international law' have produced is the abiding starkness of legal forms in the face of social facts. Far from winking knowingly at its own shabbiness, or meekly reminding potential customers of the solace it offers at a discounted price,[311] today's international law flatly affirms its authority, doubling down on its solemn pedantry and demarcating once again the line between permitted and prohibited. The IDF is incinerating disabled children in Gaza? No need to worry, Article 2 of the Genocide Convention is here to assure us that this is genocide. Ukraine is being torn to pieces by years of Russian aggression and NATO imperialism? Article 2(4) of the UN Charter is ready and waiting, as are, for that matter, a host of prosecutors in The Hague. Sudan's decades-long fragmentation is descending into full-blown civil war? A battalion of well-heeled litigators are on hand to offer easily downloadable PDFs of the second Protocol Additional to the Geneva Conventions.

Denouncing international law is not difficult. It requires no great insight (most undergraduates can replicate even sophisticated arguments against it with little effort or experience), and it has long been a routine, stock-in-trade feature of the way many around the world try to cope with or simply understand 'times of crisis'. International law is 'part of the problem'; it is frequently unenforceable; it is shot through with 'indeterminacy'; it reproduces relations of domination and exploitation; it displaces 'politics' by fetishising top-down technocracy; it engenders the very violence it purports to forestall or humanise; it provides a readymade ideological gloss for *Realpolitik* and *raison d'état*—there is no end to the hamster wheel of pre-packaged critique. Just as no war can break out now without a hastily drafted Judith Butler op-ed, not to mention hundreds of thousands of 'takes' on the social media fora that have come to litter our imaginations, so too has the critique of international law become a mundane, sloganistic affair, to be bandied about for kicks or careers. And yet this behemoth called 'international law' remains, its forms ever ready to stand in judgement of a world it has helped to foster.

What, then, is to be done with this polished edifice? Admire it? Certainly not. Demolish it? If only that were even partly feasible. How about harnessing and transforming it? Maybe, maybe not. What is perfectly clear, if nothing else, is that a 'world beyond law' is under present circumstances a species of delusional romanticism, an admission of indifference to law's

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[310] See especially Pierre Bourdieu and Loïc JD Wacquant, *An Invitation to Reflexive Sociology* (University of Chicago Press 1992).

[311] I am reminded of Carla Del Ponte's well-known remark to Goldman Sachs at the height of the Second Gulf War: 'And finally, international justice is cheap… See, I can offer you high dividends for a low investment'. Carla Del Ponte, 'Speech to Goldman Sachs' (London, 6 October 2005) <https://www.icty.org/en/press/speech-icty-prosecutor-carla-del-ponte-goldman-sachs-london>.

inherence in capitalism's social ontology. Hurl invectives at this glass-encased skyscraper if you so desire—but it is not going anywhere anytime soon.

'I AM HERE TO EXPLAIN, NOT TO DEFEND'

Gleider Hernández

The horrors of 7 October and thereafter are forever seared into our discipline with a single word: Gaza. In recent years alone, faced with repeated headlines about catastrophes in Sudan, Ukraine, Syria, Ethiopia, Myanmar, only the most hardened idealists would come to international law for salvation. Whether in the classroom or academic events, or in private conversations amongst colleagues, friends and family members, a genuinely existential question haunts me: if international law allows such violence, what is the point of continued engagement with it? Why study it, teach it, practise it? Why explain it to our violent world, why uphold it? Why not simply take to the streets, or take a lucrative job elsewhere? How can making sense of this despair be—in the most literal sense—my job?

The day before drafting this essay, I gave a public lecture at my university in a building under encampment. It was at the request of our doctoral students, most of whom are not international lawyers. Perhaps it was the dazzle of the Peace Palace and potential ICC warrants, or perhaps the vivid Security Council debates (and vetoes) splashed across the front pages. Though I expected excoriating critique of international law's failures, the students did not want to hold international law to account. Instead, they demanded to understand the structures, the institutions, the rules of international law. Of course they wanted to make sense of the unspeakable violence and why international law could not make it stop, but before that, they wished to understand how it worked.

I had come prepared to speak on international law's inner politics or the limits of the UN Charter system; but as I responded to their thoughtful, probing questions, I spent most of my time discussing basic doctrines such as the competing theories of recognition in relation to the State of Palestine, the binding effect and limits of provisional measures orders, the rules on distinction and precautions in attack, the link between individuals and states in the commission of international crimes. If anything, I was teaching the foundations of positive international law, and though I continually repeated what has become the title of this essay—'I am here to explain, not to defend'—to the point of self-satire, that was a bit beside the point. The students had not come for advanced scholarly critique; they wished to understand the frames through which international legal claims have been formulated. Following their lead, I felt it important to allow the students to set the agenda and, if they wanted a degree of *ex cathedra* lecturing, that they were entitled to responses to their questions, however black-letter they felt.

For my part, the lecture and subsequent conversations keep raising the vivid memory of my own 'Gaza moment' in early 2003: the US-UK-led invasion of Iraq. I was an LLM student at Leiden at the time. I remember boarding the train to compete in the Dutch national rounds of the Jessup Moot Court, held in the Peace Palace in The Hague. I will never forget the trains headed to Amsterdam, where some 75,000 protesters gathered to demonstrate against the imminent invasion of Iraq. Perhaps it is self-indulgently autobiographical, and the symbolism is rather blunt, but I remember feeling that I had made, or would imminently be making, a choice between resistance and conformity, between ideals and action.

In the febrile, numbing months that have marked the 2023-24 academic year, our students, our next generations, deal with these very same choices. The swings and roundabouts of

international law are nothing new; but are we condemned to perpetual oscillations of crises and ceasefires, of violence and reconstruction?

For some time I have adopted a somewhat moderate, or potentially lukewarm, posture to international law and to its teaching: whatever our ethical standpoints, to teach international law requires one (or me, at least) to engage with its structure, form, and vocabulary. One should thoroughly understand international law, how it works, its inner logic; and that ideally one must go through that process of socialisation and understanding in order to challenge it.[312] To know international law is to know *why* it fails to prevent violence, to end suffering or poverty, or to stop the destruction of our planet. These are not failures of international law itself: they are woven into its story.[313]

And yet despite this posturing, both personal and professional, the question gnaws at me with increasing anxiety: is this a cop-out? Does a demand to understand the grammar of international law entail the reproduction of hierarchies that aims to internalise its prevailing modes of thinking,[314] its embodied ideas and structural biases, and to accept the power imbalances caused by it? Is it even possible to teach international law's vocabulary and structure, to socialise newcomers into the discipline, whilst teaching to transgress?[315] By explaining international legal claims, by taking them through mainstream legal notions like enforcement jurisdiction, 'collateral damage', ICJ versus ICC standards of evidence, are we neutrally passing on the tools for their own ethical action? Or is it nothing more than a performance, a call for action knowing full well that though some strategies will work, most will not, yet that the toolbox will endure? How many times can we explain international law without defending it—and is that even possible?

For all this, just as my profound ambivalence about teaching the toolbox has corroded any lingering sense of professional virtue, my impression from our student population, despite their sense of impotence and of despair, was of their demand for understanding. The calls to understand the basic mechanics of international law in Leuven seem to have extended beyond student populations: Grietje Baars noted recently how critical scholars, even those of the most disillusioned variety, briefly 'pressed pause' and celebrated the ICJ's January finding of a 'plausible' risk of genocide, setting aside their ontological, immanent critique of international law itself.[316] For a brief moment, crits were positivists, engaging in technical, doctrinal analysis, and I am not sure it was merely instrumental.

Though at present I have no answers, only questions, as to the impact that the horrors of Gaza have had on our discipline. What is more, I wonder whether the current atrocities are little more than the newest manifestation of international law's inability to constrain violence, and—without irony—holding out the promise of justice. And I return to the image of my younger

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[312] Gleider Hernández, 'The Responsibility of the International Legal Academic' in Jean d'Aspremont, Tarcisio Gazzini, André Nollkaemper and Wouter Werner (eds), *International Law as a Profession* (Cambridge University Press 2017).
[313] More provocatively, see international law and its discursive reproduction in Veličković (n 303).
[314] Anne Orford, 'Embodying Internationalism: The Making of International Lawyers' (1998) 19 *Australian Yearbook of International Law* 1, 19. See also David Kennedy, 'Spring Break' (1985) 63 *Texas Law Review* 1377.
[315] bell hooks, *Teaching to Transgress* (Routledge 1994) 207.
[316] Grietje Baars, 'The uses of Marxist theories of law during a genocide' (Critical Legal Thinking, 19 February 2024) <https://criticallegalthinking.com/2024/02/19/the-uses-of-marxist-theory-of-law-during-a-genocide/>.

self standing at the train station in Leiden, literally at the midpoint between resistance and the Peace Palace, and ask why, decades later, I am at the same crossroad.

ON PROFESSIONAL VOCATIONS

Immi Tallgren

Soldiers fire guns. Soldiers sit at their computers and order bombs down. Soldiers enter homes and libraries, they burn books. Soldiers say they keep us safe.

Doctors try to save lives. They cut out hurt limbs. They try stop the bleeding. They hurry to get meagre babies out of tired wombs alive. But often they cannot.

Journalists report on the soldiers, and on the doctors too. And a bit on the babies, too. They travel, they investigate, they argue, they write.

Photographers take pictures. Of tents on fire, of dying babies, of bombs. Of soldiers, too. So many pictures.

Editors select and publish contents, make products out of all this writing and those pictures. They sell news.

International judges wear long, black robes. They walk slowly, in silence, because they are so important. They enunciate complicated words, phrases, sentences. Those sentences are read out and repeated, for years and years on.

Academics in law? Mum, what do they do? Oh, they fight over the meaning of a comma. They brag over their publications, having foreseen this or that interpretation. They publish articles over their fights over a comma. They apply for new funding to write more.

What would you like to become when you grow up, my child?