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RETHINKING
INTERNATIONAL
LAW AFTER GAZA

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FACULTY OF LAW

RETHINKING INTERNATIONAL LAW AFTER GAZA

The Boğaziçi International
Law Conference

Editors

Dr. Hasan Basri Bülbul

Dr. Beheşti Aydoğan

Dr. Ömer Erkut Bulut

Dr. Ayşe Didem Sezgin

Dr. Deniz Tekin Apaydın

Hüseyin Dişli

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AUTHOR BIOGRAPHIES

Ali Emrah Bozbayındır is an associate professor of criminal law and criminal procedure at Boğaziçi University, Faculty of Law. He holds LL.M. and Dr. jur. degrees from the Faculty of Law of the University of Cologne (Germany). In 2019, he was a Herbert Smith Freehills Fellow at the Faculty of Law of the University of Cambridge. Last year, he was an Alexander von Humboldt Foundation Fellow at the Faculty of Law of the University of Tübingen. He has published in Turkish, Italian, English, and German. His publications in English include *Turkey and the International Criminal Court: A Substantive Criminal Law Analysis in the Context of the Principle of Complementarity*, Nomos Verlag, Baden-Baden, 2013; *The Advent of Preventive Criminal Law: An Erosion of the Traditional Criminal Law?*, *Criminal Law Forum*, 2018, vol. 29, no. 1, pp. 25-62; *The Venture of the Comoros Referral at the Preliminary Examination Stage*, in Morten Bergsmo and Carsten Stahn (editors), *Quality Control in Preliminary Examination: Volume 1*, Torkel Opsahl Academic EPublisher, Brussels, 2018, pp. 555-667; *The Role of the Judge in the European plea bargaining procedures: Three models compared*, *The International Journal of Evidence & Proof*, 2023.

Richard Falk is Albert G. Milbank Professor Emeritus of International Law at Princeton University where he was an active member of the faculty for 40 years (1961-2001), Chair of Global Law, Faculty of Law, at Queen Mary University London (2021), and co-Director of its Centre of Environmental Justice and Crime, Research Associate the Orfalea Center of Global Studies at the University of California, Santa Barbara, and Fellow of the Tellus Institute. He directed the project on Global Climate Change, Human Security, and Democracy at UCSB and formerly served as director in the North American group in the World Order Models Project. Between 2008 and 2014, Falk served as UN Special Rapporteur on Human Rights in Occupied Palestine. His most recent book, written in collaboration with Hans von Sponeck is *Liberating the UN: Realism with Hope*; see also *Power Shift* (2016); *Revisiting the Vietnam War* (2017); and *On Nuclear Weapons: Denuclearization, Demilitarization and Disarmament* (2019); His book *This Endangered Planet* (1972) was selected by the journal *Foreign Affairs* as one of the six most influential books published in the last century to address global issues. His memoir, *Public Intellectual: The Life of a Citizen Pilgrim* received an award from Global Policy Institute at Loyola

Marymount University as 'the best book of 2021.' He has been nominated for the Nobel Peace Prize several times since 2008.

Mutaz M. Qafisheh is Professor of International Law, the founding and former dean, Hebron University College of Law and Political Science, Palestine. He holds PhD in International Law from the Graduate Institute of International and Development Studies, Geneva, and is a practicing international lawyer, pleading before International Criminal Court, Palestinian Court of Cassation and Constitutional Court. He chairs the board of trustees of Law for Palestine Organization, UK, and is Deputy President of Palestinian Research Council. Prof. Qafisheh founded the Hebron University 15 legal clinics. He advises a number of institutions: UN, PLO, NGOs, companies and law firms. He supervises PhDs in universities in Palestine, Europe and the Middle East. Qafisheh formerly worked as Human Rights Officer at the UN Human Rights Office in Geneva, Beirut and Ramallah; Director of Legal Education Program for Palestine law schools; and Legal Advisor for Palestinian Parliament. He co-founded the Human Rights Program of Al-Quds-Bard Honors College, Jerusalem-New York. He authored and edited six books and 60 peer-reviewed articles published by top international publishers. He is the most cited faculty in all Palestinian law schools by Google Scholar, holds the most classified law publications in Palestine by Scopus. Qafisheh's scholarship relates to international law, human rights, humanitarian law, international criminal law, dispute settlement, citizenship, refugees, security sector, Israeli-Palestinian conflict, law of the sea, criminology, clinical legal education, gender, legislative drafting and Islamic law. He is a member of over 20 international professional foundations. He worked in over 15 countries and now lives in Jerusalem.

Mohsen Al Attar is a Reader and Associate Dean of Learning & Teaching at Xi'an Jiaotong-Liverpool University. He holds a PhD from Osgoode Hall Law School, where he worked with Ruth Buchanan, Obiora Okafor, and Ikechi Mbeoji. As an anti-colonial legal scholar, he is best known for his writings on Third World Approaches to International Law, a theory that guides his investigations into international economic law and political economy. In his forthcoming book, *A Guerrilla at the Hague* (OUP), he argues that many principles of international law preserve a Eurocentric view of human development and flourishing. This argument is inspired by his earlier writings on the Eurocentrism of international law and on the strangulation of Third World epistemic realities. Mohsen is equally reputed for his teaching and is a Senior Fellow with the Higher Education Authority. He eschews a black-letter analysis of law, preferring to engage with its context and history. His narrative approach aligns with an iconoclastic tradition that treats information as a tool of resistance. Injustice in the modern era is preserved not through gunboats alone but, as the great Kenyan bard Ngugi wa Thiong'o said, with the chalk and the blackboard. Mohsen forever tells his students that education is a struggle on the path to emancipation.

Polona Florijančič is a legal researcher and analyst. She holds an LLM in International Human Rights Law and a PhD with a focus on the impediments at the World Trade Organisation to the right of third world countries to economic development. She has published extensively in reputable journals and edited collections in the fields of domestic, transnational and international criminal law and human rights, with elements of geopolitics and social sciences. Among other modules, she has taught Islamic Law and Human Rights, Criminal Law of England and Wales, and International Trade Law and Human Rights at Brunel University in London. She has worked as an analyst and expert on several international projects on enhancing domestic legislation, legal finish and transnational cooperation in the fields of general criminal law, counter-terrorism and maritime crime including for EUROJUST and UNODC.

Omar Kamel is a Lecturer and Doctoral Researcher at Sciences Po Law School in Paris, where he teaches public international law and armed conflicts. His PhD thesis appraises the sway

of media discourse on the laws of war, and the outcomes of armed conflicts in the Middle East. His writings on the intersection between mass media and international law have sought to highlight the normalising effect of news coverage on legal discourse, and have featured discussions with Professors Noam Chomsky, Richard Falk, and Chris Hedges. Formerly a Visiting Scholar and Fellow at Cornell Law School and Johns Hopkins University, he has lectured courses and research seminars at universities in France, Japan, and the United States, such as Sciences Po Paris, Cornell University, Keio University, and Temple University. He was previously an Associate Legal Officer at UNESCO's Office of Legal Affairs, and was consulted by the UN Team of Experts for Rule of Law on the model legislative provisions for victims of conflict-related sexual violence. With Professor Mohsen Al-Attar, he is the co-founder of the *Opinio Juris* Podcast: Fresh Squeezed.

Hasan Basri Bülbül graduated from Istanbul University Faculty of Law in 2013. He completed his master's (2016) and PhD at King's College London (2022). He is a Research Affiliate of the Refugee Law Initiative at the School of Advanced Studies, University of London. Currently, he works as an assistant professor of public international law at Boğaziçi University in Istanbul. His main areas of interest are public international law, migration and refugee law, international criminal law and international human rights law. He also actively takes part in the advocacy work of Worldwide Lawyers Association (WOLAS).

Shahab Saqib is a Lecturer at the University of Leicester and a Teaching Fellow at SOAS University of London. He has previously worked at King's College London and Oxford Summer Courses. Additionally, he has served as a visiting research fellow at the University of Toronto and is accredited as a Fellow of the Higher Education Academy (FHEA). His research critically examines anti-discrimination and equality laws within the framework of international human rights law. He is also a practising attorney in the Higher Courts of Lahore, where he offers legal consultation on commercial, Islamic law, and human rights disputes. Dr. Saqib has forthcoming publications with prestigious journals and publishers, including the *Leiden Journal of International Law* and Oxford University Press. His academic interests encompass a range of subjects, such as critical perspectives on international human rights, public international law, Islamic law, comparative law, and Pakistani law.

Muthucumaraswamy Sornarajah is Emeritus Professor of Law at the National University of Singapore (NUS). He was CJ Koh Professor of Law at NUS. He was the Tunku Abdul Rahman Professor of International Law at the University of Malaya at Kuala Lumpur. He was Head of the Law School of the University of Tasmania, Australia. Professor Sornarajah studied law at the University of Ceylon (LLB, First Class), the Yale Law School (LLM) and at King's College, University of London (LLM, PhD, LLD). He has taught law at several universities around the world. His leading work in international law is the *International Law on Foreign Investment* (5th Edition, Cambridge University Press, 2021). He has published several other books and articles on public international law. He is an Honorary Member of the Indian Society of International Law.

Saul J. Takahashi is Professor of Human Rights and Peace Studies at Osaka Jogakuin University in Osaka, Japan. He is an international human rights and humanitarian lawyer, and his main research interests include human rights in Palestine, third world approaches to international law, and Islamophobia in Europe. Saul started his career working with refugees in Amnesty International in Japan and then in London, after which he moved to the UN, where he served as Deputy Head of Office of the Office of the UN High Commissioner for Human Rights in Occupied Palestine from March 2009 to May 2014. Saul holds an LLM in international human rights law from the University of Essex, and also serves as Senior Non-resident Fellow at the Hashim Sani Centre for Palestine Studies, University Malaya, and as an Expert of the Global Network on the Question of Palestine. Saul is the author of several books in English and in Japanese, including *Civil and Political Rights in Japan: a Tribute to*

Sir Nigel Rodley (Routledge, ed.), *Human Rights and Drug Control: the False Dichotomy* (Hart Publishing), and *The Palestinian People Continue to Suffer: Why the UN Can't Solve the Problem* (Japanese, Gendai Jinbun-sha).

Victor Kattan is Assistant Professor in Public International Law at the University of Nottingham School of Law, and a former legal adviser to the Palestinian Negotiations Affairs Department in Ramallah. He is a member of the Editorial Board of the *Asian Journal of International Law* and is Area Editor for the Middle East and Islam for *Oxford Bibliographies of International Law*. Dr. Kattan's publications include an edited book, *Making Endless War: The Vietnam and Arab-Israeli Conflicts in the History of International Law* (Michigan University Press, 2023, with Brian Cuddy). He is also the editor of *The Breakup of India and Palestine: The Causes and Legacies of Partition* (Manchester University Press, 2023, with Amit Ranjan). His other publications include *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict 1891-1949* (Pluto Press 2009) and *The Palestine Question in International Law* (British Institute of International and Comparative Law 2008). Dr Kattan's scholarship has been cited by the Office of the Prosecutor of the International Criminal Court, Judges of the International Court of Justice (ICJ), states and international organisations in advisory proceedings before the ICJ, Special Rapporteurs to the UN Human Rights Council, and leading academics. Victor is an associate member of Temple Garden Chambers in London.

Jinan Bastaki is Associate Professor of Legal Studies. She holds an LLB from the London School of Economics and Political Science, an LLM from the University of California (Berkeley), and a PhD from the University of London (SOAS). Bastaki is an international law scholar focusing on forced displacement, human rights, refugee law, and citizenship, and she has been working on international law and Palestine for over a decade. In 2018, her paper on nationality-based detention of migrants won the International Committee of the Red Cross and the International Institute of Humanitarian Law's (IIHL) best essay prize. Her work has appeared in major publications, including the *Journal of Refugee Studies*, *Citizenship Studies*, *Refugee Survey Quarterly*, and others. She was a Visiting Scholar at the University of Oxford's Center for Socio-Legal Studies, and has taught for the IIHL.

Ahmed F. Khalifa is an Assistant Professor of International Criminal Law at Ain Shams University, Cairo, Egypt. Since 2014, he serves as the Deputy Secretary General of the International Association of Penal Law and serves also as a member of the Board of Directors of the Siracusa International Institute for Criminal Justice and Human Rights, in Siracusa, Italy. Dr. Khalifa is an expert consultant with the ICRC in the MENA region where he is advising on several projects, delivers training across the region on IHL. Furthermore, he is the technical expert for the translation of the new commentaries of the Geneva Conventions into Arabic. Moreover, he serves as a consultant with several international organizations including the United Nations Office on Drugs and Crime (UNODC), the United Nations Children's Fund (Unicef) and the World Bank in Egypt. Previously, he served as a full time in-house legal consultant with the United Nations Interregional Crime and Justice Research Institute (UNICRI), Torino, Italy. Dr. Khalifa obtained his PhD in ICL from Poitiers University in France after finishing his LLM focusing on IHRL from Temple University, USA. His areas of research covers international criminal law, international humanitarian law and comparative criminal law.

Eric Loefflad is a Lecturer in Law at the University of Kent. His research is largely focused on the world-historical co-evolution of international law and modern political consciousness in a manner that centres empire, colonialism, and capitalist political economy. Towards this end, he is especially interested in the base-level material structures of law, property, the state, and the international order, and, relatedly, in the construction of identity and ideology in liminal/semi-peripheral regions, especially Central/Eastern Europe (with a particular

interest in Zionism's ideological development in this context), the former Soviet Union, and Latin America. His work is highly interdisciplinary and, in addition to law, draws upon international relations theory, historical sociology, global history, intellectual history, history of political thought, and legal/political anthropology. He holds a BA in Political Science from the Pennsylvania State University, a JD from the Gonzaga School of Law, an LLM in International Law from the School of Oriental and African Studies, University of London, and a PhD from Kent Law School. Additionally, he has been admitted to practice law before the Supreme Court of the Commonwealth of Pennsylvania and the Tribal Court of Kalispel Nation and has legal practice experience in the domains of US civil rights law and tribal law in the North American Indigenous context.

Luigi Daniele is a Senior Lecturer at Nottingham Law School (Nottingham Trent University), where he teaches international humanitarian law and international criminal law at undergraduate and postgraduate levels, while supervising Ph.D. candidates in public international law. His current research focuses on indiscriminate and disproportionate attacks in international law, theme of his forthcoming monograph (Hart Publishing, 2025). His previous contributions concern conduct of hostilities war crimes, military law enforcement systems in occupied territory, freedom of expression, genocide denial, and the right to boycott. Luigi is co-founder of the Climate Justice Hub has co-convicted at Nottingham Law School the first international law webinar in Europe on the 2022 Russian invasion of Ukraine, and world leading initiatives on various themes, including the 'Women, Life, Freedom' protests in Iran, and the evolutions of the situation in Palestine before the International Criminal Court.

Rana Kharouf teaches International Humanitarian Law (IHL), Victims' Rights and Transitional Justice at the Paris School of International Affairs of Sciences Po. Paris. She is also lecturer at the Sorbonne University. She is nominated by the United Nations High Commissioner for Refugees (UNHCR) as a member of the French National Court for Asylum where she is currently Judge Assessor. Dr. Kharouf worked as legal advisor of the International Committee of the Red Cross in Syria and Libya. Previously, Dr. Kharouf worked as a legal expert at the United Nations for Education, Science and Culture (UNESCO). She is researcher at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg where her research focused on the implementation of international public law. Professor Kharouf is the author of dozens of international law review and other scholarly articles. Her thesis is published at Bruylant (Brussels). She graduated from the faculty of law of Paris Sorbonne University and was awarded by the Academy of Paris.

Hilal Elver is the co-director of the Climate Change, Democracy and Human Security project at the UC Santa Barbara. She is a professor of international law, specialized on human rights and environmental law. She taught between 2003 to 2013 at UCSB, and since 2015 she became a Distinguished Global Fellow at Resnick Food Law and Policy Center at the UCLA Law School, teaching courses on Right to Food and Global Food Justice. From May 2014 to May 2020, Elver served as the United Nations Special Rapporteur on the Right to Food. She is currently serving as a member of the Steering Committee of the High-Level Panel of Experts (HLPE) of the United Nations World Committee of Food Security (CFS), and a member of the Scientific Advisory Committee of the UN Food Systems Hub. She taught and maintained several affiliations with academic institutions worldwide. Her book on Peaceful Uses of International Rivers: The Euphrates and Tigris Rivers Basin, was published in 2002; Headscarf Controversy: Secularism and Freedom of Religion was published in 2012 by the Oxford University Press, and her co-edited book with Paul Wapner Reimagining Climate Change was published in 2016. Currently she is working on a manuscript titled Right to Food in Times of Starvation and Famine. Her Select publications, UN reports, and some articles can be found on her website hilalelver.org.

Satvinder Juss has been a Professor of Law at King's College London since 2008 and serves as a Deputy Judge of the Upper Tribunal. He completed his PhD in Law at Emmanuel College, Cambridge in 1986 and was a Harkness Fellow at Harvard Law School in 1996.

His career began as a Fellow and College Lecturer at Emmanuel College, Cambridge from 1985 to 1988. He was called to the Bar at Gray's Inn in 1989 and became a Bencher in 2021. Since 1989, he has been practicing as a barrister and completed his pupillage at 4–5 Gray's Inn Square in 1990. From 1991 to 1993, he was a Law Lecturer at the University of Wales College, Cardiff, and in 1997, he was a Human Rights Fellow at Harvard University. He served as a Visiting Professor of Law at Indiana University, Bloomington in 1998.

From 1998 to 2001, he was a Certified Lecturer for the Law Society of England and Wales and a Consultant at the College of Law. He joined King's College London as a Lecturer in Law in 2000, became a Reader in Law in 2003, and was appointed Professor of Law in 2008. He has also been a Visiting Fellow at Georgetown University (1996-97), the Alice Tay Lecturer at the Australian National University in 2013, and delivered the Annual Human Rights Lecture at the New Zealand Centre of Human Rights in 2014.

He has advocated for the Government of Wales as a member of Panel A from 2012 to 2016 and for the Equality and Human Rights Commission of England and Wales since 2015. He has been a member of the Council and Migration Commissioner for the RSA since 2004 and a Life Member and Council Member of the Indian Council of Arbitration since 2010. He is also a Fellow of the Royal Society of Arts (FRSA).

Zeynep Erhan Bulut is an assistant professor at Çankırı Karatekin University in Turkey. She graduated from law school in Turkey and worked as a lawyer for three years.

After three years of work experience, she earned her master's degree at the University of Sussex, focusing on the extradition of terrorism suspects and the political offence exception, graduating with distinction.

Following that, she obtained a PhD in International Criminal Law at the University of Sussex. Her thesis, "Turkey and the International Criminal Court: Resistance and Reluctance," passed without any corrections. Her supervisors were Richard Vogler and Michael Kearney.

After her PhD, she worked at the ICC Court of Appeal for five months in The Hague. At the Court, she worked on the Bemba et al. case, which involves crimes against the administration of justice under Article 70 of the Rome Statute.

Following that experience, she returned to Turkey in 2018. Since then, she has been teaching international law, international criminal law, law of armed conflict, and very recently cyber security under international law.

Osayd Awawda is a certified legal translator, a practicing lawyer, and an Assistant Professor of Public Law at Qatar University College of Law in Doha, Qatar. He holds an LLB from Birzeit University with distinction, an LLM with second-degree honor, and a PhD with distinction from Melbourne Law School, Australia. His Ph.D. thesis, which is now available as a book, was entitled: "The Palestinian Supreme Constitutional Court: A Critical Assessment of its Independence under the Emergency Regime of the West Bank". He participated in multiple conferences and published several papers about legal challenges present in Palestine in various fields such as Constitutional Law, Administrative Law, Tax Law, Labour Law, International Humanitarian Law, and International Trade Law. He regularly trains the teams of the Faculty of Law and Political Science at Hebron University in moot court competitions. He often appears in media programs to discuss and analyse imminent legal issues in Palestine.

Susan Akram is the director of the International Human Rights Clinic (IHRC or Clinic) at Boston University School of Law. The IHRC Clinic provides practical experience to law students in the areas of forced migration, refugee/asylum, humanitarian, human rights litigation and advocacy at the local, national, and international levels. She has worked on

issues of protracted refugee and stateless communities globally for three decades and has been advocating for refugees and displaced persons through direct representation and in the UN human rights machinery. Prof. Akram received two Fulbright Senior Scholar awards, one to Palestine in 1999-2000 to teach at al-Quds and Birzeit universities in the West Bank, and most recently to Spain in 2021-22 to teach at the University of Murcia and collaborate with UM faculty and colleagues at the NGO Fundacion Cepaim on a refugee resettlement project. Professor Akram has taught at the American University in Cairo and co-teaches an Oxford University course on Palestinian refugees both at Oxford and in the region every year (the course has been offered in Damascus, Istanbul, Amman and/or Beirut since 2011). She has degrees from the University of Michigan, Georgetown University Law Center, and Oxford University, and holds a diplome in human rights from the International Institute of Human Rights in Strasbourg. She has written and presented extensively on issues relating to refugees, forcibly displaced and stateless persons, immigration and human rights, with a particular focus on Palestinian refugees. Her presentations include providing expert opinions to refugee and immigration authorities, judges and parliamentarians in the EU, other European countries, Canada, and UN agencies.

Andrea Maria Pelliconi is a Teaching Associate at the University of Nottingham. In September 2024, she will be Assistant Professor in Human Rights Law at the University of Southampton. Previously, she worked at the London School of Economics (LSE) and The City Law School, University of London. Andrea completed her PhD in Law at The City Law School researching on the practice of demographic engineering under public international law and international human rights law. Her dissertation received the 2024 Georg Schwarzenberger Prize for outstanding contribution to the field of International Law. Andrea is the co-convenor of ICON-S Interest Group on Migration and Climate Change and the co-coordinator of the Programmes Committee of the Association of Young International Criminal Lawyers (AYICL). In 2022 and 2023, she held visiting fellowships at the University of Bologna (Young Investigator Training Programme) and at the Max Planck Institute for International, European and Regulatory Procedural Law in Luxembourg. Andrea is a qualified lawyer (non-practicing) at the Rome Bar Association and previously worked in private practice and with the International Bar Association's Human Rights Institute (IBAHRI) and the Civic Freedoms; Human Rights Defenders Programme of the Business; Human Rights Resource Centre (BHRRRC).

Rama Sahtout is a lecturer at the Law School and the Institute of Arabic and Islamic Studies at the University of Exeter. Her research is interdisciplinary engaging with law, politics, and Middle East Studies. Rama is specialised in international refugee law and broad research area includes international law, human right law decolonial/postcolonial theory. She has published on issues related to refugee law, Palestinian refugees, Syrian refugees, and the question of IDPs in Syria, and currently working on her first book. She is a member and an expert on the Question of Palestine Program- ARDD, and a member of the Refugee law Initiative- School of Advanced Studies.

Dilahan Bice-Kurtoğlu is a PhD candidate at Warwick, where she is working on a socio-legal research project on the realities of the Greek asylum system. Her research investigates the lived experiences of refugees and asylum seekers with complex asylum procedures and legal support mechanisms in Greece. For this project, she conducted fieldwork in Athens, Thessaloniki and Ioannina and was a visiting fellow at the European Law & Governance School of the European Public Law Organisation. Prior to starting her PhD, Dilahan completed her LL.M. at Sussex Law School with Distinction in addition to her bachelor's degree in law from Hacettepe University. She is a member of several research networks (such as RLI, WiRL, and SLSA) and a qualified lawyer registered with Ankara Bar Association in Türkiye.

Asif Qureshi is a leading authority in Public International Law and International Economic Law currently holding a tenured Chair at the School of Transnational Law, Peking University since 2021. Between 2012 to 2021 he was a tenured Professor at Korea University, Korea. Prior to that he was a tenured Professor at the University of Manchester, UK since 1985. He is a barrister attached to Quadrant Chambers in London, UK. He has acted as a consultant for various governments and international organizations with respect to international trade issues. He has held numerous Visiting Professorships worldwide. Professor Qureshi is the founding Editor-in-Chief of the Manchester Journal of International Economic Law. He has published over one hundred and forty articles/chapters/commentaries in international journals/books and authored sixteen monographs/textbooks and edited works from leading international publishers. His work has been used and cited variously, including in the work of international economic organisations, and the WTO Appellate Body. Professor Qureshi is listed as an Arbitrator on the Panel of International Arbitrators by the Korean Commercial Arbitration Board; and Shenzhen Arbitration Commission, China. Since 2002 he has been a member of the Roster of Non-Governmental Panellists eligible for Panel service, appointed by the Dispute Settlement Body of the World Trade Organisation. Asif Qureshi graduated from the University of London, with an LL.M and PhD from the London School of Economics, UK. In 1988 he was an intern in the Legal Department of GATT in Geneva; in 1992 he was a Visiting Scholar at Yale Law School; and in 2016 he was a Visiting Professor in the IMF Legal Department. He holds dual nationality from UK and Pakistan.

Yi Lu is a Senior Lecturer at Peking University School of Transnational Law. She received her J.S.D. degree and LL.M. degree from Yale Law School and J.D. degree and J.M. degree from Peking University. As an academic, Dr. Lu served as Lecturer in Law and Assistant Director of the Center for Research on Transnational Law at Peking University School of Transnational Law. As a licensed attorney in China, Dr. Lu practiced at TransAsia Lawyers, Clifford Chance LLP, Morrison & Foerster LLP, Shenzhen Municipal Government, and Burger King (China) Holding Co. Ltd. Dr. Lu's academic interests include administrative law, food and drug law, risk regulation, consumer law, labor law, international trade, and comparative law.

Ali Kerem Kayhan is an associate professor in the Department of International Law at Yalova University's Faculty of Law. He received his law degree from Istanbul University in 2007 and his LL.M from the University of Oregon in 2010. That same year, he joined Yalova University's Faculty of Law as a research assistant in the Department of International Law. In 2016, he earned his PhD in public law at Istanbul University's Institute of Social Sciences. During his doctoral studies, he was a visiting researcher at UCLA School of Law from 2013 to 2014. After finishing his doctorate, he pursued postdoctoral research at the Max Planck Institute of International Law in Heidelberg in 2018 and at the Lauterpacht Centre for International Law at the University of Cambridge in 2024.

Harun Halilović holds a BA in Law from the University of Sarajevo, and an LL.M. from the University of Buckingham and Queen Mary University of London, which he completed as a recipient of the Chevening scholarship. He obtained a PhD in Law from the University of Tuzla Faculty of Law. Harun Halilović is an Assistant Professor at the Faculty of Law of the International University of Sarajevo. Prior to joining academia, he worked as an experienced Attorney at law and a mediator. He has published several books and articles related to various issues of civil law, international law, and human rights.

Liliana Obregón is professor of law and director of the LL.M. in international law at the University of Los Andes in Bogotá, Colombia. She holds a degree in law from the same university, an MA from the School of Advanced International Studies (SAIS) of the Johns Hopkins University (Bologna-Washington), and a doctoral (SJD) degree in law from Harvard University. Obregón's research focuses on international legal history and historiography, exploring ideologies of historical narratives and global and transnational intellectual history.

Her particular interest lies in peripheral histories, colonialism, and overlooked actors and events of the 19th and 20th centuries in the Americas and Europe. She examines how historical narratives can have intended or unintended normative outcomes. Obregón has extensively published her work in both English and Spanish and has been invited to present and teach at universities throughout the Americas, Europe, and Australia.

George Bisharat is an Emeritus Professor at UC College of the Law, San Francisco, where he has taught criminal procedure, law in the Middle East, Islamic law, and other topics. Professor Bisharat holds a Ph.D. in Anthropology and Middle East Studies from Harvard University, a J.D. from Harvard Law School, an M.A. in Middle East History from Georgetown University, and a B.A. in Anthropology from UC Berkeley. Bisharat writes frequently for both academic and popular publications and his work has appeared in *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *the Chicago Tribune*, *USA Today*, *Haaretz*, *Jewish Currents* and others. He serves as a media commentator on Israel/Palestine and on issues in the criminal justice system. He is a senior fellow at the Center for Security, Race, and Rights at Rutgers University.

Lena Salaymeh is Professor in the Section des Sciences Religieuses of the École Pratique des Hautes Études (Paris Sciences et Lettres). Salaymeh is a scholar of law and history, with specializations in Islamic studies, Jewish studies, legal theory, and decolonial theory. Her research focuses on laws of war, as well as law and “religion.” She received a Guggenheim fellowship and her first book, *The beginnings of Islamic law: late antique Islamicate legal traditions*, received the American Academy of Religion Award for Excellence in the Study of Religion in the category of Textual Studies. The beginnings of Islamic law proposes the craft of legal recycling as a framework for conceptualizing Islamic law’s relationship to non-Islamic law. The book’s case studies (on prisoners of war, circumcision, and wife-initiated divorce) deconstruct conventional research (particularly the Orientalist notion of “origins”), as well as offer critical and historicist alternatives. She was previously British Academy Global Professor in the Oxford School of Global and Area Studies at the University of Oxford; Visiting Fellow at the Davis Center, Department of History, at Princeton University; and Robbins Visiting Professor at Berkeley Law. She was also the Co-Founder and Co-Director of the Decolonial Comparative Law Program at the Max Planck Institute for Comparative and Private International Law (Hamburg) from 2019-2023. She received her JD from Harvard Law and her PhD in Legal and Islamic History from UC Berkeley.

José-Manuel Barreto works on the decolonization of human rights and international law relying on the Third World Approaches to International (TWAIL) and explores ways of emotionally warming the global human rights culture by telling stories and through the arts. He edited “Human Rights from a Third World Perspective. Critique, History, and International Law” and is about to publish “Human Rights and Decolonial Theory”. He studied Law at the Externado University and holds a BA in Philosophy from the National University of Colombia, and an MA in Human Rights from the Institute of Commonwealth Studies, University of London. He received his PhD in Law from Birkbeck College, University of London. He was a Post-Doctoral Fellow at Humboldt University, Berlin, and the Käte Hamburger Center for Advanced Study in the Humanities ‘Recht als Kultur’, University of Bonn. He has been a Visiting Researcher at the Max Planck Institute for Legal History, Frankfurt, and the ZIF, University of Bielefeld. He teaches Law at the Javeriana University and the University of the Andes in Bogotá.

Hüseyin Dişli graduated from Istanbul University School of Law in 2014 and obtained his LLM by research in the History and Philosophy of Law program at Edinburgh University with a dissertation titled “Law as an Expression of Pure Reason in Leibniz.” He has been a lawyer affiliated with the Antalya Bar Association (Turkey) since 2015. Currently, he is a final-year PhD candidate at the University of Kent, where he is writing a thesis on the evolution of

‘juridical truth’ in modernity through the dual lens of Platonic *alētheia* and the Heideggerian problematisation of metaphysics. He taught English Legal System and Public Law modules at Kent Law School from 2021 to 2023 and is currently convening Legal History and Legal Philosophy modules at Boğaziçi University Faculty of Law. Additionally, he serves as the vice president of the Worldwide Lawyers Association (WOLAS).

Bana Abu Zuluf is a Palestinian interdisciplinary researcher and PhD candidate in international law at Maynooth University, Ireland. Along with her involvement in academia, she acts as the research and communications officer at the Good Shepherd Collective organisation based in Palestine. She writes on epistemic oppression, decolonisation, the politics of refusal, and international law’s coloniality.

Brendan Ciarán Browne is Assistant Professor of Conflict Resolution & a Fellow of Trinity College Dublin. He holds Undergraduate and Master’s degrees in Law & Law and Human Rights, and a PhD from Sociology, from Queen’s University Belfast. His previous academic positions include as a research fellow at Queen’s University Belfast, and as Assistant Professor of Transitional Justice and International Law at the Al Quds University, Occupied Palestine. His research focuses on issues related to transitional justice, liberal peacebuilding and forced displacement in the context of Palestine and the north of Ireland. He has published extensively in a range of academic journals, in print and online media, and has a number of books, including: ‘Experiences in Researching Conflict & Violence: Fieldwork Interrupted’, and ‘Transitional (in)Justice & Enforcing the Peace on Palestine’, nominated for the 2023 Middle East Monitor Palestine book award. In addition, he is an executive producer on the documentary film entitled ‘We Will Remain’, focused on the forcible transfer of the Palestinian Bedouin communities in Palestine which received ‘official’ selection for screening at the Ciné Palestine Film Festival, Toulouse and the Al Ard Film Festival, Sardinia. You can follow Brendan on twitter @brendancrowne.

Muhammed Beheşti Aydoğan is an international lawyer and critical scholar. Holding a PhD from the University of Warwick, where his research focused on the legal dimensions of institutional actions and responsibility within international organizations, Aydoğan critically examines and challenges existing paradigms in international law. He is dedicated to reshaping perspectives and legal frameworks for enhanced responsibility regimes and contributing to the dynamic and self-critical understanding and development of international law in both academia and practice. His research and teaching incorporate international security and international relations theories, as well as the economic and technological aspects of law. Previously, he worked on the use of force and armed drones and the regulation of social media.

Ömer Erkut Bulut is an Assistant Professor at Boğaziçi University Faculty of Law in Istanbul, Turkey. He specializes in international economic law, international arbitration, business and human rights, and conflict of laws. Dr. Bulut completed his Ph.D. at King’s College London, his LL.M. at Queen Mary University of London, and his LL.B. at Galatasaray University. He was also based at Columbia Law School and Max Planck Institute Luxembourg as a guest researcher with scholarship.

Dr. Bulut has published notable academic work, including an article titled “Drawing boundaries of police powers doctrine: a balanced framework for investors and states” in the Journal of International Dispute Settlement. He has extensive teaching experience in the fields of general international law, international human rights law and international arbitration.

Ihsan Adel is the Founder and Chair of Law for Palestine, an international lawyer, and a PhD researcher in international law in Germany, focusing on “The Legality of Occupation and International Responsibility for its Termination.” He holds a master’s degree in international humanitarian law, with a thesis on “The Legal Status of Palestinian Prisoners in Israeli Jails under International Humanitarian Law.” Adel has over ten years of experience in the human rights field across the MENA region and Europe, including work with refugees. He worked on

several human rights projects in several countries, including: Palestine, Jordan, Libya, the Gulf, Egypt, Yemen, Italy, Greece, and with the Human Rights Council in Geneva, Switzerland. Adel has published numerous articles and two books, one of which explores “Palestine as a Non Member Observer State at the United Nations: Legal and Political Dimensions,” while the other, published in a co-authored book, examines IHL regulations concerning the arrest of civilians during occupation. Adel is also a regular commentator on TV channels such as Al-Jazeera, Al-Arabiya, France 24, and DW.

PREFACE

The 2024 Boğaziçi International Law Conference (BILC 2024) titled *Rethinking International Law After Gaza* was organised in response to unfolding genocide in Gaza and the shrinking space for genuine academic engagement on the Palestinian issue, particularly in Western contexts. Recognising one of the most urgent crises of our time, we at Boğaziçi University Faculty of Law felt it was our duty to speak up, to create a space where scholarship could honestly confront the realities of ongoing atrocities and reflect on what international law can, and cannot, do to protect those most at risk. At a moment when voices raised for Palestine were being systematically silenced in the West and serious objections to the ongoing atrocities in Gaza struggled to gain international attention, holding such a program in Istanbul was particularly significant, providing a rare and critical space for open dialogue, scholarly reflection, and the amplification of perspectives often excluded from mainstream debates.

The conference was designed as an open and inclusive forum, with strong Palestinian representation and participation from scholars of diverse backgrounds, regardless of their location or ideological perspective. It convened some of the most distinguished scholars recognised for their expertise on the Palestinian issue. BILC 2024 sought to unsettle entrenched orthodoxies within international law, foreground marginalised perspectives, and interrogate how historical and contemporary power structures intersect with legal frameworks. It aimed

to confront the many ways in which epistemic colonialism silences critical voices, while emphasising the need for inclusive approaches to the debates regarding international legal order. Together, these contributions offered an in-depth, multidimensional analysis of the structural, doctrinal, and normative challenges facing international law in responding to the Palestinian question.

It is now our privilege to present this collection, which provides the proceedings of the BILC 2024 and its accompanying symposium on *Opinio Juris*, offering a rigorous examination of international law in the context of Gaza. It comprises of four sections. Part I contains the opening remarks delivered by Prof. Dr. Naci Inci, the Rector of Boğaziçi University, Prof. Dr. Cüneyt Yüksel, member of the Turkish Parliament, who also serves as Chairman of the Parliamentary Justice Commission of the Grand National Assembly of Türkiye, as well as by Ali Emrah Bozbayındır, Dean of the Faculty of Law at Boğaziçi University. Their statements set the tone for the conference, emphasizing the importance of critical engagement with international law at a time of profound global contestation.

Part II comprises the conference proceedings. These contributions reflect the diverse perspectives of the speakers and provide in-depth discussions on the central themes of the conference. The discussions addressed a broad range of topics, including genocide, self-determination, the right of return, the Nakba, the legitimacy of resistance, apartheid, state responsibility, international criminal law, the role of adjudication mechanisms, particularly the International Court of Justice and International Criminal Law, the ineffectiveness of UN mechanisms, and the colonial frameworks shaping these issues.

Part III presents a collection of blog essays originally published on *Opinio Juris*, a prominent forum for debate in international law, between October 7 and 11, 2024. The symposium, edited by Prof. Mohsen Al Attar, Dr. Hasan Basri Bülbül, and Dr. Beheşti Aydoğan, carried the same title, *Rethinking International Law after Gaza*. Authored primarily by conference participants and supplemented by contributions from other scholars, the essays continue the conference discussions, extending the conversation to a wider audience and situate the conference debates within the ongoing global discourse.

Part IV presents the conference summary and Declaration of Action, which highlighted the failures of international law to protect Palestinians, called for decolonising legal frameworks, and urged concrete steps to uphold justice and accountability, ending impunity for international crimes.

Convened when expressions of solidarity with Gaza and Palestine were still heavily marginalised in much of international academia, the decision by international law scholars to speak out represents an early and important marker in the historical record. The growing global awareness and outcry over the Palestinian cause since then only underscore the value of this early contribution. This collection captures the intellectual energy of BILC 2024 and reflects the conference's commitment to fostering an urgent and transformative space for rethinking international law in light of Gaza. It underscores the need for scholarship guided by conscience and offers a vision of a fairer, more inclusive, and decolonised legal order: one that listens, learns, and acts in the face of injustice.

Editors
Istanbul, 2025

ACKNOWLEDGEMENTS

We would like to extend our sincere thanks to Prof. Dr. Naci Inci and Dr. Mustafa Metin Başbay for their enduring support of the Faculty of Law, and to Dean Ali Emrah Bozbayındır for his invaluable contributions to the organisation of the conference. We also wish to thank our sponsors and partners whose generous support made BILC 2024 possible, including the Boğaziçi University Development Foundation (BUVAKIF), Worldwide Lawyers Association (WOLAS), Turkish Cooperation and Coordination Agency (TIKA), Turkish Airlines, Anadolu Agency (AA) and The Turkish Radio and Television Corporation (TRT). Our heartfelt thanks go to the students of the Boğaziçi Law Society (BULAW), whose immense efforts in logistics and coordination ensured the smooth running of the conference and made it an unforgettable experience for all. We would also like to thank Meryem Sezgin for her valuable contributions to the preparation of this volume, and Boğaziçi University Press for their support throughout the process. All contributions were essential in bringing together scholars, facilitating discussions, and supporting the publication of these proceedings.

PART ONE

Opening Remarks by the Rector of the Boğaziçi University

Naci Inci

Naci Inci is a Professor of Physics at Boğaziçi University

Dear Participants, Colleagues, and Esteemed Guests,

Welcome to the first International Law Conference hosted by The Boğaziçi University Law School. It is a great pleasure to have you all here on our beautiful South Campus.

As many of you may know, Boğaziçi University was founded as Robert College in 1863 by American missionary Cyrus Hamlin and transitioned into a state university in 1971. Today, with 15,000 students selected from among the brightest in our young population, Boğaziçi University stands as one of Türkiye's most prestigious and well-established academic institutions.

The Boğaziçi Law School, however, is still in its infancy. Established only three years ago, we are filled with excitement and optimism for the future of our school. Despite its youth, The Boğaziçi Law School has already attracted a hard-working, dynamic, and vibrant group of faculty members and students.

In fact, The Boğaziçi Law School now ranks as the second most competitive law program in Türkiye, drawing some of the nation's brightest minds. We believe that The Boğaziçi Law School will become a vital platform for free speech and critical thinking, particularly in matters of global justice and human rights.

The Boğaziçi University International Law Conference is organised to fulfil this very objective: to provide a space for free speech and the

exchange of critical ideas. This year's conference theme, "*Rethinking International Law after Gaza*" addresses one of the most pressing issues of our time: the Palestinian struggle. The recent events in Gaza have underscored the urgent need to reassess the foundational principles of international law, including justice, universality, and legitimacy.

The catastrophe inflicted on the Gazan population, including but not limited to civilian casualties, the destruction of homes, places of worship, hospitals, and universities, can only be described as a humanitarian disaster. The international community's near-indifference to this crisis has inflicted profound wounds on humanity's conscience. Despite the sensitivity shown by some, the neglect by Western institutions and governments toward the plight of Gaza is indeed difficult to comprehend.

This humanitarian tragedy, coupled with the inaction against it, highlights the inadequacies of international law and the pressing need for its reform. Yet, in the face of such brutality, we must move beyond mere mourning. We must think, discuss, and act on new ideas.

Hope can only be fostered through concerted efforts. We are all familiar with the hypocritical attitudes of some international institutions. Now, more than ever, it is crucial to develop methods to overcome this. We must meet more often, research, discuss, and raise our voices for the same purpose.

In this regard, it is an honour for Boğaziçi University to provide a platform where international law and human rights can be freely discussed, especially at a time when discussions on the Palestinian issue face various restrictions worldwide. This beautiful city of Istanbul, historically a meeting point of different cultures and ideas, remains an ideal setting for such a critical dialogue, and The Boğaziçi Law School is deeply committed to playing this role.

This conference aims to explore the effectiveness of international law at the highest level in a sincere and open manner. As I mentioned, our primary goal is to take a step forward in re-examining the main principles of international law. The Palestinian issue and the events in Gaza necessitate a comprehensive re-evaluation of the legitimacy and effectiveness of the international legal system.

Another goal is to explore interpretations of international law from non-Western perspectives, which, I believe, are often marginalised in

Eurocentric social sciences. By embracing diverse perspectives, we hope to initiate a critical dialogue and build knowledge in these areas.

I hope that the Boğaziçi University International Law Conference will contribute to establishing a more just and inclusive order in international law by addressing these critical issues. I extend my deepest gratitude to all the academics, experts, and participants who have made this conference possible. I wish you all a productive and inspiring experience.

Before I conclude, I must address a concern: There have been attempts to block this conference and discourage participation, reflecting some of the internal challenges we face. While we may not fully understand the motivations behind these efforts, it is clear who benefits from the suppression of such discussions. To those who believe they are at the centre of the world, I remind you that our focus here is on Gaza and the Palestinian people. They are enduring unimaginable suffering.

I am also proud to say that since the beginning of the attacks on Gaza, Boğaziçi University has made every effort to support our Palestinian students and their families. We have also strongly adhered to the principles of boycott, divestment, and sanctions against organisations that support the Israeli occupation.

Let us not forget: Despite decades of oppression, with a deep sense of homeland rooted in their souls, the Palestinians remain steadfast and do not abandon their homeland.

For humanity, I wish for a conscientious stance, and for us, the strength and wisdom to resist evil.

Lastly, I wish mercy from Allah for our brothers and sisters who have lost their lives in Gaza.

Thank you.

Opening Remarks by the Vice Dean of the Boğaziçi University Faculty of Law

Ali Emrah Bozbayındır

Ali Emrah Bozbayındır is a Professor of Criminal Law and International Criminal Law at Boğaziçi University Faculty of Law

Your Excellencies, Distinguished Guests, Esteemed Colleagues, and Honoured Participants,

Welcome to Istanbul,

It is with immense pride and a deep sense of responsibility that I welcome you all to the Boğaziçi International Law Conference (BILC 2024). As the Vice Dean of the Faculty of Law at Boğaziçi University, I am honoured to inaugurate this significant gathering of legal scholars, practitioners, and experts from around the globe.

Boğaziçi University, with its prestigious legacy spanning over 160 years, has always been a beacon of academic excellence and a champion of progressive education. The establishment of our Faculty of Law in 2021 and the welcoming of our inaugural cohort in September 2022 marks a new chapter in our illustrious history.

Our Faculty specialises in international law across its various branches. It is dedicated to a dynamic, international, interdisciplinary, and comparative approach to legal education. It aims to elevate legal research and education to their highest standards, drawing from diverse disciplines and legal systems to prepare our students for the global challenges that lie ahead.

Today, we gather to address one of the most pressing issues in contemporary international law, in line with the ethos of our faculty which emphasises international and comparative law. The theme of BILC

2024, “Rethinking International Law After Gaza,” invites us to critically examine the current international legal order in the aftermath of Israel’s invasion of Gaza.

The dominant narrative in international news outlets tends to take October 7, 2023, as the starting point of the crisis in Gaza. Yet, this would be misleading. Neither the crisis in Gaza nor the Israel-Palestine conflict started on October 7. Gaza and the West Bank have been under permanent occupation by Israel since June 1967, following the Six-Day War.

What was meant to be a temporary occupation has transformed into a permanent one, with Israel creating “facts on the ground” through the ever-expanding settlements in the West Bank. In its latest advisory opinion, the ICJ once again undisputedly recognised the illegality of Israeli settlements in the West Bank and the need for their complete dismantling.

As for Gaza, the disengagement of the Israeli military and the dismantling of settlements in the Gaza Strip lasted only three years, followed by a total blockade since 2007. This blockade has denied even the most basic materials to 2 million people in a tiny strip. Constant surveillance and the denial of basic necessities have left Gaza in a dire state. The events in Gaza and the Occupied Palestinian Territories, unfortunately, constitute grave violations of international law.

One should be mindful and aware of the broader context in evaluating the subjects and should investigate complex problems from a historical perspective. Indeed, the present conference seeks to foster a platform for exploring new perspectives for a justice-oriented international legal order that is truly universally acceptable. Our discussions will encompass a range of pivotal themes, including challenging global narratives of human rights and international law, the intersection of international law with war and violence, and questions of international criminal and economic law revolving around Gaza. We will also delve into the potential of international adjudication and the profound challenges faced by international humanitarian law in today’s fragile world.

One of the central themes is the decolonisation of international law. Historical and ongoing power structures, rooted in colonialism, continue to influence contemporary legal frameworks. The settler-colonialism in the Palestinian lands is rooted in the misstatement of Palestine being

“a land without people for a people without land.” Yet, Palestine was never a land without people. As John Dugard aptly put, many of the West’s interpretations of international law that have favoured Israel at the expense of the Palestinians are rooted in the West’s wish to find a solution to the ‘Jewish Question’ arising from the Holocaust and the understandable guilt flowing from the West’s failure to protect Jews. Our sessions will examine how enduring colonial influences can be addressed, drawing insights from historical struggles against domination. We will scrutinise the implications of the Gaza conflict in exposing the limitations of traditional, and perhaps obsolete, perspectives on international law and propose alternative frameworks that are more inclusive and just.

Furthermore, we will address the potential and limitations of international adjudication. The role of international judicial bodies, such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), will be scrutinised in light of their responses to the Gaza conflict. The ICJ has acquired an unexpectedly important role in bringing justice to one of the most emergent political and humanitarian crises in the world. The plausible case of genocide unfolding in Gaza is before the ICJ. As I mentioned, the ICJ also very recently issued its advisory opinion on Israel’s occupation of West Bank and called for the removal of the illegal settlements. It is significant that both the US and German judges, Cleveland and Nolte, ruled in favour of the decision. As Professor Matthias Goldman underlined after the ICJ opinion, this is likely to have significant consequences in terms of international law, international legal policy, geopolitics, and the humanity’s memory. The decision of the ICJ has renewed our hopes for the future of international law, which ought to be for the many, not for the few. Indeed, it is difficult to deny that Palestine remains the litmus test for the credibility of international law and the international system as a whole.

In addition to existing judicial mechanisms like the ICJ and the ongoing cases before it, our conference features a panel examining the systemic challenges international law institutions face in navigating the complexities of state and individual responsibility, and how their legitimacy can be strengthened to ensure accountability and justice.

We will also explore the broader implications of the Gaza conflict on international humanitarian law. The brutal nature of the conflict has intensified discussions on the laws governing the conduct of war and the

use of force. We will delve into whether international law, as it stands, is capable of addressing the challenges posed by modern conflicts, or if it requires significant reforms to remain relevant and effective.

Another critical theme is the issues of international economic law in the context of armed conflict. The protection and promotion of social and economic rights in the Palestinian territories, or the lack thereof, are pivotal for the development of the Palestinian territories and the emancipation of the Palestinian people. Our session on this topic will shed light on how the challenges of international economic law might affect the questions of armed conflict, development, the responsibility of corporations, and the rights of indigenous people.

As we embark on this timely and topical event, I extend my gratitude to all the participants who have travelled from near and far to contribute to these critical discussions. Your presence here signifies a collective commitment to reshaping the contours of international law, promoting justice, and addressing the deficiencies and gaps in its current structure.

I would like to thank everybody who contributed to making this conference happen. First and foremost, we thank our rector Professor Naci Inci for his unwavering support from the start. I also wish to thank our sponsors. Above all, I express my gratitude to my esteemed colleagues from the faculty for their immense efforts to make this conference happen, notably Dr. Hasan Basri Bulbul, Dr. Ömer Erkut Bulut, and Dr. Mustafa Metin Başbay. I also want to mention Dr. Beheşti Aydoğan, and Hüseyin Dişli for their invaluable efforts in this organisation. I also thank our students in Boğaziçi Law School and the staff of Boğaziçi University, who have all worked tirelessly day and night to realise this conference.

Thank you most kindly for your participation. I wish you all a productive and insightful conference.

Opening Remarks by the Chairman of the Parliamentary Justice Commission of the Grand National Assembly of Türkiye (GNAT)

Cüneyt Yüksel

Cüneyt Yüksel is a Professor of International Law and a Member of the Turkish Parliament, serving as an Istanbul Deputy for the Justice and Development Party.

Dear Rector, Professors, Students, Guests, Press Members, and Ladies and Gentlemen,

It is a privilege for me to address this distinguished gathering. I am honoured to be here at the beautiful campus, for the Boğaziçi International Law Conference titled “Rethinking International Law After Gaza”. I believe that this conference, with the contributions of valuable participants who are experts in their fields, will offer a comprehensive perspective on the crises faced by the international legal system along with the events occurring in Gaza. As a professor for many years at this university, I proudly taught courses on law and “Managing the Global System.”

“Never has a professor of international law felt such doubt about the value of his field. Hasn't the conflict we see today shown, with painful clarity, how fragile this so-called legal order between states really is, even as it was declared secure? Is it not a serious mistake to make people believe in the power of law, when in the end, force decides?”

These words could easily be taken as just another expression of disappointment with international law in 2024. However, they were pronounced by Dionisio Anzilotti in his inaugural conference at the University of Rome just a few weeks before the first World War started in 1914. Today when we think on the question of “what is left from international law after Gaza”, it is difficult not to share the same thoughts and sentiments with Anzilotti.

We are at a critical turning point in the field of interstate relations and human rights. The developments in Gaza, especially since October 7, 2023, require us to think deeply about the effectiveness, fairness, legitimacy, and future of international law. The recent events in Gaza have once again exposed the limitations and challenges of international law in addressing complex humanitarian crises.

“What distinguishes the double standard in the case of Gaza from many other cases of selective application of international law is that it is too brutally obvious to deny, too difficult to obfuscate, too arbitrary to rationalize.”

Or as the United Nations Secretary-General Antonio Guterres briefly pointed out that *“Gaza is more than a humanitarian crisis. It is a crisis of humanity.”*

Dear Participants,

The United Nations Security Council (UNSC), tasked with maintaining international peace and security, has faced criticism for its failure to adopt a strong resolution denouncing the attacks or demanding a lasting cessation of hostilities, particularly in densely populated areas like Rafah. With a significant population of approximately 1.5 million Palestinian civilians feeling confined, the lack of decisive action is a stark reminder of the challenges we face.

Reforming the veto power and representation within the Security Council is essential for an effective and fair international system. Our President Recep Tayyip Erdoğan has been advocating for such reforms with the principle *“The world is bigger than five, and a fairer world is possible.”*

Although the UN General Assembly can, and has, used its authority to debate and vote on urgent matters that are deadlocked at the Security Council under the Uniting for Peace Resolution, the General Assembly has only the power to recommend. While the famous international lawyer Louis Henkin described the international law transformed by the UN system as the “age of rights”, this description seems to be losing its validity.

Dear Guests,

To seek justice and ensure the punishment of criminals, on November 23, 2023, a complaint petition consisting of three folders of information, documents, and evidence related to genocide, crimes against humanity, and war crimes was submitted to the International Criminal Court (ICC)

in The Hague. The submission was prepared in collaboration with a team of legal professionals and was endorsed by more than 3,000 legal experts from thirteen countries. During another visit to the ICC on June 26, 2024, evidence of crimes, especially those committed against women and children, was shared with officials of the ICC Prosecutor's Office and the Office for Victims.

That is why the significant step taken by the ICC Prosecutor's Office on May 20, 2024, in requesting arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant was encouraged and welcomed. The Prosecutor's Office accuses Netanyahu and Gallant, who bear the greatest responsibility under Articles 25 and 28 of the Rome Statute, of violating Articles 7 and 8 of the Rome Statute, which regulate crimes against humanity and war crimes, respectively. They are charged both as "perpetrators by participating directly in the crime" and as "superiors" for encouraging and instructing their subordinates to commit crimes.

It is expected that the Pre-Trial Chamber to evaluate the application and the evidence or other information presented by the Prosecutor and issue an arrest warrant for the perpetrators without further delay. To eliminate the perception of "impunity", international courts like the ICC and the ICJ must not only issue judicial decisions but the global system must swiftly enforce these decisions and punish those responsible.

Dear Guests,

As you know, since October 7, in the 10th month of Israel's attacks on the Gaza Strip, more than 40,000 civilians, including 16,000 children and 10,000 women have been killed, and more than 90,000 individuals have been wounded. Israel is openly committing genocide, crimes against humanity and war crimes, just like Nazi Germany. The genocide in Gaza is not merely the result of recent events post-October 7, 2023, but the culmination of Israel's 75 years of apartheid, 56 years of occupation, and 16 years of blockade against Palestine.

First and foremost, through deliberate killing of civilians, bombing non-military targets, targeting refugee camps and hospitals, systematic and widespread attacks, blockade and starvation, and collective punishment; Israel has been committing crimes against humanity and war crimes within the meaning of respective articles of Rome Statute and Additional Protocol No. 1 to the Geneva Conventions.

All these actions of Israel should also be examined within the framework of acts constituting genocide included in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. According to this; The killing of members of a national, ethnic, racial or religious group (protected group) with the aim of destroying it in whole or in part constitutes an act of genocide.

The attacks carried out by Israel for 10 months show us that Israel's aim is much more than continuing the military conflict with Hamas. Israel is targeting the existence of the entire Palestinian population in Gaza. It is also seen that Israel acted with the intent to destroy. The attacks that took place before the bombing of hospitals and camps and the process that followed the bombing clearly reveal this intention. In a way that meets the material element of the crime of genocide- *actus reus*, Israel committed the acts of killing members of the protected group and inflicting serious physical and mental harm against the Gazans within the framework of Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide.

While committing these actions, Israel acted with special intent (*dolus specialis*), with the intention to destroy partially or completely which is the moral element of the crime of genocide - the so-called *mens rea*. This special intent, as revealed in the Akayesu decision of the Rwanda Criminal Court, is seen as an indispensable element of the crime of genocide and is deemed necessary for the occurrence of the crime. Israel is targeting the existence of the entire Palestinian population in Gaza. It is now obvious that Israel acted (*dolus specialis-mens rea*), which is necessary for the crime of genocide to occur, and that it accomplished this.

As you know, the Republic of South Africa filed a lawsuit against Israel before the International Court of Justice (ICJ) on December 29, 2023, requesting provisional measures on the grounds of violation of the Convention on the Prevention and Punishment of the Crime of Genocide.

The ICJ is independent of the UN political bodies in its decision making, but as the international tribunal of the United Nations, must revert to the Security Council for enforcement of its judgments. This process undermines the watershed ICJ provisional measures of January 26, March 28 and again on May 24, 2024.

It was ordered for Israel to terminate all genocidal acts in Gaza; to immediately allow unrestricted humanitarian assistance including food, water, and other essentials to the population; and to cease incitement to genocide and punish those inciting genocide against Palestinians and cease military operations in Rafah. Nonetheless, Israel have not complied with any of those orders. The United States and Israel immediately denounced the ICJ's orders, calling South Africa's case of genocide 'meritless.'

This brings us to the re-examine the roles of the ICJ and the ICC in addressing these ongoing violations within the broader context of structural crises in international law. The ICJ, in particular, faces a significant challenge. It must balance immense public expectation and political pressure to halt Israel's military operations while maintaining its judicial integrity and adhering to its legal boundaries. The jurisprudence of the ICJ on cases like the Bosnian Genocide and the Croatia Genocide has set important precedents. In the Bosnian Genocide case, the ICJ found that Serbia had violated the Genocide Convention by failing to prevent the genocide at Srebrenica and for not cooperating with the ICTY. Similarly, in the Croatia case, the court examined acts committed by Serbian forces, although it did not ultimately find that genocide had occurred. These cases highlight the Court's crucial role in interpreting and enforcing international law concerning the most severe crimes.

Through a series of interventions, the ICJ's function has evolved from merely interpreting conventions to actively condemning the accused state, thus demonstrating an adaptive approach to its responsibilities. One notable development in the ICJ's jurisprudence is the changing role of intervention in its cases. On June 28, 2024, Spain became the sixth country to submit a declaration to intervene in the case between South Africa and Israel before the ICJ. Previously, seven states intervened in *The Gambia v. Myanmar*, and 32 states intervened in the *Ukraine v. Russia* case under the 1948 Genocide Convention. This unprecedented development of 'mass intervention'—where states take advantage of the right to intervene to make arguments in favor of one party in the case—raises two timely questions: what impact does it have on the equality of the parties, and how should the ICJ react to it?

Article 63 of the ICJ Statute grants states that are parties to a Convention the right to intervene in proceedings that concern the construction of that convention. Under Article 84(1) of the Rules of Court, the Court

must determine that these conditions are met. ICJ judges have addressed the role of Article 63 intervention in past cases. *Judge Weeramantry* noted that intervention in domestic and international proceedings had two functions: to avoid repetitive litigation and to achieve harmony of principle. Judge *Cançado Trindade* viewed the role of intervention under Article 63 as contributing to the progressive development of international law itself, especially when matters of collective or common interest and collective guarantee are at stake. Scholars such as *Miron* and *Chinkin* argued that Article 63, by engaging broader state participation in the act of interpretation, acknowledges the ‘*res interpretata* effect’ of the Court’s judgments. Other scholars, such as *McIntyre*, have explained how intervention might expand the normative legitimacy of the Court.

From the intervenor’s perspective, Article 63 protects their right to be heard. Since all parties to a treaty have an interest in its construction, they should be allowed to express their interpretation to the Court before it delivers a decision on the matter, even if that interpretation would not be binding on states that are not parties to the case or have not intervened under Article 63. In practice, how the ICJ interprets a multilateral treaty affects the legal interests of all state parties.

Articles 62 and 63 of the Court’s Statute provide two distinct mechanisms for states wishing to intervene. Both are incidental proceedings governed by largely uniform procedures under Articles 81-86 of the Rules of Court. Neither requires the consent of the parties to the case, but both necessitate that the intervening state establish a form of legal interest in the case.

Under Article 62, this interest must be a particular ‘interest of a legal nature which may be affected by the decision in the case.’ Article 63, on the other hand, allows states that are parties to a convention being interpreted by the Court to intervene.

If a state intervenes as a non-party under Article 62, the judgment may take its interests into account but will not bind the intervening state. Conversely, Article 63 intervention results in a judgment that binds both the parties and the intervenors. This distinction is crucial as it affects the legal ramifications for the states involved.

I would like to acknowledge that Türkiye, in support of South Africa’s case against Israel for violations of the Convention on the Prevention and Punishment of the Crime of Genocide, filed at the ICJ on December 29,

2023, and upon the instruction of our President, has decided to intervene in the ongoing proceedings at the ICJ to ensure an effective legal process.

I can exclusively share here in this conference that our official submission is going to be made in a few days. Turning to the point of what Türkiye may submit in its intervention is prominent. There is a great opportunity for Türkiye to include and reflect the recent Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. The Court in its opinion made very powerful statements about the illegality of the occupation. Israel's obligation to end the illegal occupation and more importantly, considered all the Palestinian territories as one single unit. Confirming integrity of the Palestinian territories bring the issue of all violations in different part of the Palestine may be connected in the same cases before the ICJ or ICC.

To focus on what Türkiye's position is regarding the genocide in Gaza, Türkiye believes it is imperative to balance the seriousness of the crime of genocide with the need for a fair interpretation that does not render the prosecution of such crimes nearly impossible. Firstly, Türkiye stresses the importance of interpreting the *dolus specialis* requirement in a manner that acknowledges the extreme seriousness of genocide without making it excessively challenging to establish genocidal intent. This balance is crucial to ensure that the gravity of the crime is recognised while also enabling justice to be served when such heinous acts occur.

In assessing genocidal intent, Türkiye suggests that the Court may find it useful to refer to religious statements and declarations that dehumanise Palestinians. For example, Prime Minister Benjamin Netanyahu's use of derogatory terms such as "Amalek" and "monsters" to refer to Palestinians is significant. The term "Amalek" is particularly notable, as it refers to a verse in the Old Testament where God instructs Saul to "go and strike Amalek, and completely annihilate everything they possess, sparing no one; kill both man and woman, infant and nursing child, ox and sheep, camel and ass." Such references can provide crucial context in understanding the intent behind actions taken against the Palestinian people.

Türkiye believes that the International Court of Justice, as the principal judicial organ of the United Nations, should consider information, evidence, and reports from the United Nations, its agencies, and other credible sources with expert knowledge of the situation in Gaza.

It is advisable to assess findings from impartial investigations conducted by the United Nations before categorizing a scenario as genocide. This thorough approach should be adopted in the current case to ensure a fair and comprehensive assessment.

Moreover, Türkiye emphasises the need for the Court to thoroughly investigate the issue of limited access to humanitarian aid in the Gaza Strip. Despite previous mentions of this matter in the provisional measures related to this case, it remains a critical issue. Attacks on journalists, humanitarian workers, UN workers, and international staff must be addressed with great care, as these individuals play a crucial role in detecting and disseminating information about crimes and evidence. The restriction of humanitarian aid is causing living conditions in Gaza that may meet the criteria outlined in paragraph c) of Article II of the Convention.

Türkiye may submit that targeting the health system is relevant to determining specific intent. When assessing if certain conduct qualifies as an underlying act of genocide, the impact on civilians, particularly in hospitals and health institutions, must be considered. The targeting of these essential services can have devastating effects on the population and may indicate a genocidal intent.

The Court's provisional measures, implemented on 26 January, 28 March, and 24 May 2024, provide explicit directives on how Israel should fulfill its commitment to avoid certain actions. Notably, the Court's Order of 26 January 2024 explicitly instructed Israel to fulfill its obligations under the Genocide Convention, directing it to take all necessary measures to prevent acts of genocide, acts of direct and public incitement to commit genocide, and to preserve evidence related to allegations of such acts against members of the Palestinian group in the Gaza Strip.

The Court reaffirmed these measures in its orders of 28 March and 24 May. Türkiye may urge the Court that it should assess the continuity of attacks against the civilian population in Rafah as an indication of genocidal intent, given these legally binding provisional measures, which include explicit instructions regarding the duty to prevent acts of genocide.

Furthermore, when determining whether particular intent may be deduced, a court or tribunal must thoroughly and exhaustively evaluate

the relevant evidence in a holistic manner. The case law of international criminal tribunals illustrates that this method is not only preferable but also a crucial component of the effective administration of justice.

Türkiye always made the point that with the approach of the ICTY Appeals Chamber, which mandated trial chambers to evaluate whether the collective evidence establishes a genocidal intent and cautioned against using a compartmentalised mode of analysis. This holistic approach is essential to ensure a comprehensive and just investigation.

Dear Guests,

Most recently, the ICJ has once again highlighted the legal consequences of Israel's unlawful and unjust actions, 20 years after its 2004 Advisory Opinion on the Construction of a Wall.

Türkiye, among the 54 states and 3 international organisations that provided written submissions in this process, was the first to present its statement, demonstrating the great importance it attaches to this Advisory Opinion and its close attention to the legal process initiated before the ICJ.

In its presentation, Türkiye emphasised that Israel's occupation in Palestine obstructs the Palestinian people's right to self-determination and therefore Israel must "immediately and unconditionally" end the occupation. Türkiye reiterated its call before the ICJ for a permanent and enduring solution, which includes ending Israel's occupation of Palestine and establishing a sovereign and independent Palestinian state with Jerusalem as its capital within the 1967 borders.

The ICJ made its own evaluation within the framework of the statements and presentations and shared its Advisory Opinion with the public on 19 July 2024. Thus, no country is above the law. Israel is not exempt from legal and humane obligations. The International Court of Justice affirmed that Israel is an occupying power in the Palestinian territories. The most striking aspect of the Advisory Opinion is the recognition of the right of return for Palestinians displaced since 1967 due to Israel's unlawful practices and the compensation for the damages they have suffered.

In this context, I would like to remind the world of our President's significant statements on the Palestinian issue: "*The efforts to deport the people of Gaza from their lands are null and void for us. The depopulation*

of Gaza is utterly unacceptable.” Consistent with the ICJ ruling, now we have a full right to expect the UN General Assembly and the UN Security Council to take concrete additional measures to end the occupation promptly.

Dear Guests,

The rethinking of international law after Gaza is not just an intellectual exercise; it is a moral imperative. We owe it to the victims of the conflict, to future generations, and to ourselves to build a legal framework that transcends political interests and prioritises human rights. The global system must act swiftly and decisively to enforce international legal decisions and hold those responsible for war crimes accountable.

We believe that peace will not come to the region without the establishment of an independent, sovereign State of Palestine within the 1967 borders, with Jerusalem as its capital, with geographical integrity, and which has taken its place in the global system as an equal member of the international community.

In my closing remarks, I would like to once again express my gratitude to all the speakers for their presentations and contributions. Let us hope that the valuable insights and scholarly discussions held on these platforms will contribute to the more effective activation of international mechanisms, alongside the conscience of humanity, which has already been mobilised worldwide, and lead to an end to the bloodshed and brutality occurring every day in Gaza and the rest of Palestine.

As Rashid Khalidi once remarked, *“Only such a path based on equality and justice is capable of concluding the Hundred Years’ War on Palestine with a lasting peace, one that brings with it the liberation that the Palestinian people deserve.”*

In light of the historical perspective offered by Anzilotti’s words during the tumultuous times of 1914, it is indeed tempting to view the current challenges facing international law with a similar sense of skepticism and foreboding. Yet, history also teaches us that, despite its frailties, international law has evolved and adapted, contributing to a more structured and predictable global order. As we confront today’s crises, particularly in the aftermath of the situation in Gaza, let us hope that Anzilotti’s doubts are proven wrong.

PART TWO

Relevance of International Law, Enforceability and Legal Reforms

The Gaza Challenge: Does International Law Matter if It Cannot Be Enforced?

Richard Falk

Richard Falk is an Emeritus Professor of International Law at Princeton University and a former United Nations Special Rapporteur on the situation of human rights in the Occupied Palestinian Territories.

Boğaziçi International Law Conference promises to be the most comprehensive and perceptive attempt to understand the relationship of international law to the horrific happenings in Gaza over the last 10 months. It is most unfortunate for the people of Gaza that the theme of this conference, ‘after Gaza’ was far too optimistic and premature. It is really during this prolonged ordeal experienced by the whole of Gaza that makes it more appropriate for us to speak of the successes and failures of international law, ‘in light of Gaza’, or ‘with reference to Gaza’ but not wait until “after Gaza” becomes a reality to make a final assessment of ‘international law after Gaza.’

Israel’s Recourse to Genocide: Overt Yet Denied

It is with extreme regret that an objective observer is compelled to acknowledge that the genocide continues even during the ceasefire, posing increased threats of wider destructive political violence in the region, which is directly linked to Gaza, and has become an increasing concern and worry as genocide approaches a culminating phase. Before I get to the topic I had been asked to talk about, which is the dismissal of international law as a misleading and useless deception in circumstances of this sort, let me mention a widely circulating misconception, which is an understandable cynicism about the value of international law arises because Israel has so flagrantly disregarded authoritative judgments

without adverse consequences. Had Israel complied, it would have stopped the genocide in its tracks, and as well, would have ended the occupation of not only Gaza but the West Bank and East Jerusalem as a near unanimous majority of the International Court of Justice decreed in its historically important Advisory Opinion July 19, 2024.

The international community reflecting the documented views of the leading international Human Rights NGOs had concluded several years ago that the Israeli administration of the Occupied Territories of Palestine commencing after the 1967 War had adopted the policies and practices of an apartheid regime, and thus the Occupation constituted an international crime associated with racist domination and subjugation. This apartheid assessment suggests further that Palestine and its peoples were being victimised by a form of settler colonialism, suggesting comparisons with the experience of the breakaway British colonies: the United States, Canada, Australia, New Zealand, which had premised their state-building processes and societal stability on systemic racial domination in relation to the resident native peoples, which amounted to apartheid before the crime existed, in effect, 'apartheid before apartheid.'

To the extent that patterns of control did not succeed in overcoming resistance to the colonising project, each of these colonial undertakings increased the severity of their efforts to displace the native population and take advantage of its economic resources. This dynamic generally led to increased resistance, generating a cycle of action and reaction that led to a harsher form of apartheid, and after that if resistance persisted, to a systemic inflection point that in rare instances gives up its criminal path as South Africa surprisingly did, or the regimes supersedes apartheid by recourse to genocidal tactics of dehumanisation and mass killing as Israel has done after the Hamas expression of armed resistance that occurred on October 7, and was accompanied by its own commission of war crimes..

In other words, in situations of settler colonialism, genocide often becomes a sequel to apartheid in a situation such as existed in Palestine. The historical context has changed. Unlike many earlier genocides, including the Holocaust, the Palestinian experience occurs in a post-colonial, historical atmosphere in which both apartheid and genocide have been criminalised, and a series of anti-colonial wars have brought victory to the resisting native or national population. This historical contextualisation is crucial conceptually to enable adequate appreciation

of how this reversal of outcomes in encounters between the natives and the colonisers has come about. It also explains the emergent critical reinterpretation of the initial mainstream Western decontextualised interpretations supportive of Israel after the Hamas attack of October 7, with the effect of obscuring the settler colonial dimensions of events on that fateful day.

It was widely observed in the West that the Netanyahu coalition government that took over in January of 2023, was called the most extreme government in Israel's history. What made it extreme was that it made no secret of its commitment to displace Palestinians from the West Bank by whatever means necessary, and subsequently from Gaza, as well. Always, the West Bank was the prize that the Zionist Project coveted. It never gave up the objective of eventually incorporating the West Bank into Israeli sovereignty. This makes it important to observe the reaction of Israel and the West to October 7 through a settler colonial optic. It also makes relevant an assessment of why the Israeli government ignored the reliable warnings from multiple sources, including the US Government and the Egyptian intelligence services. It is also almost impossible to believe that Israel's sophisticated surveillance capabilities would not have detected the signs of an impending Hamas attack, strengthening still further the conclusion that Israel let October 7 happen so as to have a sufficient rationale for its genocidal response.

It seems reasonable to conclude that Israel let the attack happen or chose to respond in a very tepid way and/or feeble responses on the day of the attack. And what followed cannot be justified by appeals to self-defence or Israeli security, which could have been upheld more efficiently with much less devastation of Gaza's infrastructure and far fewer Palestinian deaths, injuries, disease, and traumatizing of survivors. So, in other words, what I am suggesting is that October 7 provided a pretext for what this Netanyahu government already prior to the attack wanted to achieve by way of ethnic cleansing, forcible evacuation and unregulated settler violence, which was given a green light from the day that Netanyahu resumed control of the Israeli government. Settler violence in this pre-October 7 period was often accompanied by a message pinned to Palestinian cars on the West Bank, 'Leave or we will kill you.' This is a chilling message for Palestinians already living under an abusive occupation to receive. Such toxic sentiments were given

additional credibility by the ferocity of settler violence, burning a village and making life miserable for the Palestinians who were supposed to be protected by international humanitarian law against Occupier abuse.

The proper contextualisation of what happened in this period preceding Israel's recourse to genocidal violence is, in my view, very relevant. It gives a territorial rationale for the dehumanizing the Palestinian people as a people. Throughout history there has rarely been such an explicitly undertaken genocide in which the leaders themselves supplied overwhelming evidence of specific intent by their own political language, including its grisly confirmation by Israel's Minister of Defence, Yoav Gallant, in the form of formally and publicly ordering a total embargo on all Gaza imports of food, fuel, and electricity. Netanyahu's approving reference to the Amalek passage in the Bible, which proposed killing an adversary of biblical Israel, including every adult, child, and even the animals that were possessed by the Amalek people. This amounts to invoking a genocidal precedent to serve as both a justification for and confession of the nature of the Israeli response.

The Performance of International Law: Disappointing Yet Significant

Turning to what is widely believed in response to the very natural concern as to how one can accept any serious role for international law in this area of global security, war prevention, and international crime after observing how systemically it has been disregarded during this period of time after October 7. This disregard was exemplified by the behavior of the leading Western liberal democracies that profess a fundamental commitment to extending the rule of law to international relations. In the case of Gaza, despite authoritative rulings of the most respected international institutions, leading governments and influential media in the West have refused to grant validity to authoritative judicial rulings by the most respected international tribunals. If you compare the response of complicit countries, especially my own, the US, to Israel's onslaught against Gaza, with the outraged Western reaction to the Russian attack on Ukraine that relied on a self-righteous invocation of international law in relation to the UN Charter. This appeal to international law in the Ukraine context was reinforced by a Western attempt to involve the

International Criminal Court from day one in bringing coercive action against Russian leaders.

Such a position contrasts with the effort to argue that reliance on international law on behalf of the Palestinian people being subjected to this kind of genocide was ‘without legal merit,’ to recall the cavalier dismissal of South Africa’s recourse to ICJ by the American Secretary of State, Antony Blinken. Such double standards is not only an expression of moral hypocrisy, but also represents an irresponsible tendency to convert international law into a policy instrument useful against adversaries, but unacceptable if invoked against friends. In a very real sense, this amounts to the distinction in the influential fascist jurisprudence developed by Carl Schmitt, who denigrated international law unconditionally and forthrightly conceived of international relations as determined by interactions between ‘friends and enemies.’ Such an outlook viewed norms of moral and legal restraint as applicable only to relations among friends. In dealing with enemies, there are no rules, but only tactics designed to gain victories or avoid defeats. Conflict of a serious kind are resolved by superior displays of hard power.

To be sure, this is a very nihilistic view of international society and the way in which its normative order operates. If there is to be an effective law in the domain of security, it has to have an imperative principle of treating equals equally. The practice of double standards in judgment and action is just the opposite, that is, treating equals unequally based on strategic and geopolitical priorities. This tension between contradictory roles of international law is in the background of statecraft. Reliance on the primacy of geopolitics and disregard of international law is most troubling in this most explicit challenge of this kind faced since the end of World War II. Having so concluded, and adding that however authoritative the judgments and opinions of the International Court of Justice are, there is a near zero prospect that Israel will comply or that sufficient political will is present to enforce the judgments. It is a critical situation where there exists a first-order humanitarian emergency, and yet the organised international community fails to respond despite the clarity of the law. This failure constitutes “a crisis of implementation.” A clear legal path exists alongside the equally clear geopolitical path, and the latter path has been chosen despite the humanitarian disaster that unfolded.

Despite All, International Law Matters

The dismissal of international law that results from the US and Israel choosing the geopolitical path has been a disaster for the reputation of the liberal democracies of the West, highlighted by the disgraceful welcoming of Netanyahu in 2024 to a joint session of Congress openly honouring one of the worst war criminals since Hitler. So far, I have highlighted the negative experience in the course of the Gaza genocide with respect to the role of international law. It tempts an acceptance of the cynical view that international law does not matter, or it has no positive role to play in international life. I reject this nihilistic interpretation. I want to insist very briefly that despite these serious disappointments and failures, deficiencies, international law continues to matter. It matters for several reasons.

First of all, during the Gaza genocide it was demonstrated that trust in the professionalism of the International Court of Justice can be depended upon in even politically sensitive cases. And further, that ICJ interpretations of the relevance of international law are not subject to political manipulation by backroom interference. In this way, the ICJ can be contrasted with the operational realities of the Security Council and General Assembly, which are explicitly political institutions. Also impressive was the size of the majority at the ICJ that condemned the genocide, calling it ‘a plausible genocide’ in its Interim Judgment and additionally ordering Israel to cease all acts that have a potential genocidal impact. Particularly impressive was the composition of the majority vote that included several Western judges who voted against their country’s political positions on the issues. In other words, the ICJ in this historically important moment demonstrated both professional competence and independent identity, earning widespread public respect as a preferable way of resolving even the deepest international conflicts. This greatly helps establish the ICJ as an important resource for the future and for international juridical development overall.

Furthermore, and particularly with reference to the July 2024 Advisory Opinion on the legality of Israel’s occupation that commenced in the aftermath of the 1967 War, the ICJ delivered an authoritative legal assessment. This highest and most revered international judicial tribunal concluded that Israel was systematically and flagrantly in fundamental violation of the Fourth Geneva Convention and International Humanitarian Law with respect to its legal duties as the Occupying Power

A third level of positive contribution by international law in this kind of situation that is often overlooked. It is that such an authoritative rendering of international law lends legitimacy to solidarity initiatives such as the Boycott, Divestment, and Sanctions Movement and other forms of civic action putting pressure on Israel to change its ways. International law condemnation of Israel lends a legal foundation for the advocacy of an arms embargo and gives symbolic support to ways of civil society chooses to give policy effects to a growing delegitimation of Israeli behaviour. This kind of global civil society activism proved instrumental in the South African context of the successful struggle against apartheid and helped sway the engagement of the US government in the Vietnam War, bringing peace and victory to the militarily weaker military side.

A fourth reason for adopting a more positive view of international law is, what I would call, its pedagogical value in teaching students and concerned citizens around the world what international law prescribes in situations of this kind and why it is important to shape foreign policy by law rather than by military power. And, it builds, in my view, a political consciousness that is much more responsive to law-governed behavior and the future increased influence of a world order perspective that displaces geopolitics in favor of law.

A Concluding Remark

Depending on subsequent developments, Gaza could prove to be a turning point from adherence to a Schmittian worldview of friends and enemies using international law strategically and generate a much stronger effort to make international law an effective regulative framework. Such effectiveness in global security policy domains would then become similar to the manner in which law has long operated in many other sectors of international life, including international diplomacy, the maintenance of stability in the oceans and space, and high levels of compliance in most economic relationships. So, it is wrong to think of this dismissal of international law extends beyond the boundaries of its supposed role in war prevention, human rights, and the management of global security.

Leaving war prevention and the management of global security to the discretion of winners of World War II is something that was decided back in 1945, and perhaps the biggest mistake in the peace-building approach that prevailed in the aftermath of that most significant of international

wars. What we are observing in Gaza is part of the deferred legacy of leaving world peace and the observance of human rights within domain of geopolitics rather than seeking to accept an international law framework binding on the strong as well as the weak.

At the end of World War II, the losers were held accountable by punishing through the judicial processes which accused political, military, and corporate figures that physically survived, while giving impunity to the crimes of the winners, including Hiroshima and Nagasaki. This whole post-1945 normative order was built on a solid foundation of double standards and moral hypocrisy. We must promote international law as a regulative instrument that binds all members of international society, regardless of the outcome of wars, and repudiate this kind of flirtation with the fascist insistence on linking justice to power. Universities around the world have a momentous potential opportunity to motivate engaged citizenship, and a vocational dedication for justice through law in this time of unprecedented jeopardy for the human species.

The War on Gaza, System Deficits and Prospects for International Legal Reform

Mutaz M. Qafisheh

Mutaz Qafisheh is a Professor of International Law at Hebron University.

We, Palestinians lived under the Ottoman Empire for four centuries, and we were really happy with that. Palestinians still think and remember the good memories from that period. So, Türkiye is very popular in Palestine. I am from Jerusalem (Al-Quds), and I teach at the Hebron University, which is Al Khalil University. The Turkish name is El-Halil, the city of Abraham (Prophet Ibrahim), which is just 30 to 40 kilometres from Gaza. Those who knows the map will recall, we live in mountains and Gaza is the coastal area. So, we can see Gaza from Hebron hills. We have seen and heard the bombs raining on Gaza until this moment.

All these issues come to my class as a professor of international law. When I teach my students, I could see from their eyes that they do not believe me! I talk about human rights, international humanitarian law and international criminal law. Then everybody says: “*Where is international law?*” I tend to tell them that it is not a problem of international law. We have very cool instruments of international law: the four Geneva Conventions, the nine core human rights treaties, International Criminal Court, and International Court of Justice. They, especially the freshers, still tell me that they do not see this law on the ground: “*We need to see something working.*” This has made me think that the problem lies -not only, as I was telling students for a long time- in the system or in international organisations and the individuals who operate them- but also in the law itself. So, this is what I address in this paper.

I have identified several gaps in international law that I am going to highlight. At the outset, I have to state that this genocide in Gaza is probably underestimated in the history of humankind because we could see this genocide taking place in densely populated areas. Recall that Gaza is just 360 square kilometres, which is like 1-5% of Istanbul, with 2.5 million people living there. The people do not even have the possibility of escaping this mass murder. If we take the genocide against Jews in World War II, they had at least the possibility of escape. But the Gazans do not even have the pleasure of just leaving. All the population is targeted. This is what my colleague Dr Osayd Awawda and I call in another paper, the “cides” of Gaza, namely the various types of genocide(s) taking place in Gaza, which are also related to several international law fields that I will touch upon. Although I have identified ten fields of international law, I will only be able to focus on two or three due to the limited scope of this paper. It should be noted that when I refer to the reform of international law, I do not mean the reform of the United Nations Security Council, which is an issue that has been discussed for long by politicians, historians and legal scholars. I rather discuss the substance of international law that is supposed to apply on daily basis in areas affected by conflict.

Take, for example, common Article 1 of the four Geneva Conventions, which provides that state parties should respect and ensure respect the Conventions at all circumstances. Take the principles of distinction, proportionality and necessity. These are beautiful words, but how can these words be translated into practice? The Geneva Conventions are actually silent on that, because there is no mechanism to ensure that states will respect their duties based on the Conventions. I think there is a problem or a gap in the law itself. Of course, one may say that we have the universal jurisdiction of national courts, yet, the universal jurisdiction has not been widely applied. If we take the history over the past century, there are just a few cases, and universal jurisdiction cannot meet the real problems that we witness at the global level.

Let us take another example. The Genocide Convention and the question of complicity. According to the Genocide Convention, all states should avoid complicity with genocide. But what we see now is that almost all states are complicit in one way or another with what is going on in Gaza, either by being complicit by supporting Israel directly, like the United States and Britain, at least under Rishi Sunak regime, or by being

politically supportive of Israel, for example, when voting resolutions at the Security Council, or maybe by supporting Israeli views in international courts, or at least to be silent. I think silence is also a form of complicity. Yet, even if we talk about genocide in Gaza, I think talking is not enough. What is going on in Gaza will not be resolved by talking and discussing. Of course, it is always good to have this and that conference. BILC 2024 is the greatest conference that I witnessed since the October 7th that I took part in out of maybe 50 events. It is the best, probably. But still, I think it is not enough. Based on Boğaziçi International Law Conference, we need to discuss which actions that everybody, every one of us, can do in order to contribute to the end of genocide and ensure accountability in Gaza.

Let me now focus on my specific point at this second part of the paper, the International Criminal Court, and its handling of the case of Palestine. As you may know, the question of Palestine was first brought before the ICC in 2009. Now it has been 15 years, and the Palestinian question is before the Court. In the beginning, we had the first Prosecutor of the Court, Luis Moreno Ocampo. He, at the time, said that Palestine could not be a member of the Court because Palestine was not a state. We said, fine, we will go and apply for the membership of the United Nations. We got the observer status of the United Nations that made Palestine qualified to be a member of the Court. But this process took us six years from 2009 until 2015 until Palestine was finally acceded to the Rome Statute. That prosecutor wasted six years just for discussing the issue of whether Palestine is a state or not, exemplifying how colonised international organisations, international law and courts.

Then there was Fatou Bensouda, the second prosecutor of the ICC. She acknowledged that there are serious crimes committed in Palestine, implying that an investigation should start. We were very optimistic at that time. Personally, I wrote articles claiming that we will start to see international justice on the ground. But then Bensouda spent another four years, until 2019, to conclude that there are serious crimes going on in Palestine. Why would you take such a long time while pretending to be pro-justice? Even though Bensouda agreed that there are reasonable grounds to believe that serious crimes committed in Palestine, the Court itself delayed the process for another four years by opening the floor for anyone in the world to submit *amicus curiae* memos on the jurisdiction

of the Court. I personally filed amicus submission on behalf of the Palestinian Bar Association to the ICC in order to convince the Court that there is a territorial jurisdiction. Just to convince the Court that there is a territorial jurisdiction in Palestine took several years for judges to decide, and not all of them were convinced. For example, Judge Kovács, a member of the pre-Trial Chamber that decided on the ICC territorial jurisdiction, was not convinced. He adopted the Israeli point of view that there is no jurisdiction for the ICC in Palestine.

In 2021, Karim Khan was assigned as the third prosecutor of the Court. It seemed that he was unconvinced that there are crimes being committed in Palestine. Israel had to start its genocide in Gaza in late 2023 for him to start thinking that there are probably war crimes and crimes against humanity. It took him more than eight months, from October 2023 to May 2024, to conclude that there are crimes committed in Gaza.

Yet, when we looked at Khan's application for arrest warrants, we discovered that three Palestinians will be arrested and only two Israelis, Prime Minister Netanyahu and Minister of Defence Gallant. Ismail Haniyeh, who was recently assassinated, was one of the those who were on the list for arrest, although he was not involved, and there are some reports that he did not even know, that the October 7th attacks will happen. The decision for the 7th of October was taken by Sinwar and Deif, the other two individuals on the arrest list. If you look at the accusation that Khan directed towards these three individuals, they are mostly false or baseless charges including the question of rape and beheading babies. I believe that Khan is sure that these atrocities were not committed on October 7th. This suggests how international judges, prosecutors and staff are Westernised in their views, how much they are colonised in their way of thinking. They take Israeli arguments for granted that Palestinians are backward people who commit such types of crimes. But those who are committing the genocide in Gaza, the head of the Israeli army, Chief of Staff, is not on the list although almost all crimes are committed by the Israeli army. Why did he not issue arrest warrant against the Chief of the Israeli Air Forces? Most bombings causing all types of destruction, massive killing, were carried out by airplanes. Ministers who declared clearly and incited to genocide against Palestinians in Gaza were absent from the arrest list. So, this is just a simple example of the how international

law and institutions are manipulated. I think there is also a problem in the Rome Statute that established the ICC itself. How come the Statute leaves the decision in the hands of one person, the prosecutor, to decide if certain crimes are committed or not?

On the other hand, Khan has not mentioned the question of genocide. So, for him it appears that there is no genocide going on in Gaza, just war crimes and crimes against humanity. Time and again, in the process, the United Kingdom came and applied for an objection for the jurisdiction of the Court! Why this time? The United Kingdom claimed that there is an issue of lack of jurisdiction because of the Oslo Accords. The United Kingdom claimed that the Oslo Accords denied Palestinian courts from prosecuting Israelis, and therefore Palestinian courts could not delegate their power to the International Criminal Court. It is a ridiculous claim by Britain. But then the Court was too ready to take this claim seriously, opening the floor again for another process of *amicus curiae*. Therefore, any interested individual may now apply for the amici, delaying the process one more time. By this, one can notice how Karim Khan and the Court are complicit in the issue of genocide although they see genocide unfolding before their eyes and they just work and do business as usual. What would be the usual process is to issue 20 or 50 or maybe 100 arrest warrants for not only against Israeli officials, but also against Israeli soldiers who film themselves, where and when they commit their atrocities in Gaza. Now, we have about 60 applicants for *amicus curiae*, each of them is 10 pages, which means, there are about 600 pages that the Court needs to review before deciding if Netanyahu and Gallant arrests will go forward. That might take us until the end of the year, or maybe early 2025. By then, Israel will have killed maybe 50.000 more Palestinians. And yet, at the end, judges may even say, sorry, we do not have jurisdiction!

This demonstrates how international law is really colonised and needs decolonisation. I do not think this will happen overnight. It is a process. We, Türkiye, the Arab world, Africa, Asia, Latin America did not take serious part in the development of international law. I think now, after the Gaza war, we need to rethink international law. And international law after Gaza should not be the same as it once used to be.

Decolonising International Law and Gaza

Rethinking International Law: A Tale of Domination and Dignity

Mohsen al Attar

Mohsen al Attar is Associate Dean of Learning & Teaching at Xi'an Jiaotong-Liverpool University.

Gabriel García Márquez was one of the great authors of the 20th century. A Colombian writer renowned for his friendship with Fidel Castro, he is best known for his contribution to the literary genre known as magic realism.

His most famous book is *One Hundred Years of Solitude*, a story set in the village of Macondo. It follows several generations of the village as the community transforms across the times. One character goes by the name of Remedios, Remedios the Beauty. At an unexpected point in the story, Remedios the Beauty unexpectedly waves farewell to her family and floats off into the clouds.

For those who have read the book, this is a peculiar twist as there was no hint that Remedios could fly, that she could levitate, that she was some type of spirit. Several years later, a journalist asked Márquez what happened to Remedios. Márquez replied: “For the tale to continue, Remedios had to die, but I had fallen in love with her, and I couldn’t wield the knife, so I sent her to the heavens, where I hope she still is.”

This is a fascinating tale about knowledge, about epistemology, about the way we create knowledge in unique and culturally specific ways. And I want you to remember the clouds, the heavens, because we will return to them at the very end of this talk.

What can we learn about international law from Márquez and Remedios? The world is populated with many thoughts about

international law, with many epistemologies, and many of these are unwelcome. Within international law, gatekeepers ensure that the narrative remains the same. And we are often told — and I even heard it at Boğaziçi International Law Conference — that the world is better with international law than without it.

I find this statement epistemically flawed. Why? First, it assumes that international law is neutral. That it is benevolent, philanthropic, and yet the history of international law is bathed in the blood of Third World peoples. International law has been used to justify the Transatlantic slave trade. It has been used to justify the colonisation of Africa. It has been used to justify the exploitation of workers across the planet. It has been used to justify assassinations, sovereign debt, and, of course, the dispossession of the Palestinians.

The second epistemic flaw in that statement about the world being better with international law is that it assumes a relationship between international law and justice, while at the same time masking the ideological and material roles that international law plays in preserving a very unequal and unjust status quo.

The theme of the Boğaziçi International Law Conference 2024 is “Rethinking International Law”, and I would like to propose that we approach thought, that we approach cognition, knowledge and epistemology from an epistemologically plural perspective. Let us expand the boundaries of international law, and let us include the knowledge and experiences of non-white peoples.

I will proceed in three parts now. I’ll begin by making some general remarks about international law, about TWAIL — Third World Approaches to International Law — and about a concept known as white ignorance. Afterwards, I will speak about the racism that is embedded within international law, including specifically anti-Palestinian racism. And then, in the final part, I will link international law to domination, domination to resistance, and resistance to Palestinian dignity. And I will do all of that in the remaining 18 minutes.

The foundation of international law is similar to the foundation of modernity: it is steeped in racism, anti-black racism, anti-Muslim racism, anti-Ottoman racism. Those of you who have read Tony Anghie’s fantastic book will remember Vitoria’s speech and that Vitoria, in addition to singling out indigenous peoples, also singled out the Saracens; and said

explicitly that the Saracens were incapable, intrinsically, of ever waging a just war.

White supremacy is at the foundation of international law. We see this in Vitoria. We see this in Grotius, we see this in Vattel, we see this in Lorimer, Lauterpacht, Westlake, Oppenheimer. The list goes on and on. But don't just take my word for it. Let us look at what John Westlake, Professor of International Law at Cambridge, has said:

“The international society which develops international law is composed of all the states of European blood, that is of all the European and American states except Turkey.”

He goes on and says, once he was made president of the Institut de Droit International, that the institute is “the International Society of the white race.” This was just four generations ago.

By the mid 1950s, Westlake would have been quite disappointed had he been around to see that the idea of overt racism was no longer fashionable. It presented a conundrum for international legal scholars: how do we nurture normative commitment to international law — including the predatory racism upon which the whole system was fashioned — by the very people who were brutalised by it? How do we get decolonising self-determining Third World states to commit to a Eurocentric, racialised, racist, international legal order?

The solution was quite simple, juvenile you might even say. We will ignore the elephant in the room. We will play ostrich. James Gathii published a piece just a few years ago, in which he examined the scholarship of the American Journal of International Law over 100 years, and he noted that the corpus makes virtually zero references to race, or to racism. Within a century of scholarship. He did the same with the European Journal of International Law. They did a little bit better though there is virtually no in-depth discussion of racism and international law.

In textbooks on international law, there is almost no mention of race, racism, racialised domination, and certainly not white supremacy. And so it's useful to think of this exclusion of race from scholarship on international law through the lens of white ignorance.

White ignorance is a concept developed by the philosopher Charles Mills. Ignorance is often understood as a lack of knowledge. “I don't know”. It can also be understood as an error of false belief, “I was

mistaken”. But Charles Mills tells us that ignorance can also be an epistemic position. It is an ignorance that resists; it is an ignorance that refuses to know; an ignorance that fights back.

International law has been indifferent to the place of white supremacy within its frame. It resists any conversations about racial domination.

I can see many of you in the room looking at me and saying, but what about the Committee on the Elimination of Racial Discrimination? Aren't they doing good work? Don't we have treaties? Isn't there a prohibition on racial discrimination? And I say, yes, because talk of racial discrimination is consistent with liberalism, and is consistent with modernity.

Why? Because racial discrimination tells us stories about individual wrongdoers. “That person is a racist.” It tells us about individual injuries and victims. “That person was harmed by so and so's racism.” And it tells us about corrective measures that happen for the individual.

But when I use the language of white supremacy, what I am pointing to is not just a systemic problem; I am also pointing to those who benefit from racism. And there is a large demographic in the world who benefit from racism in the same way some within the international legal academy derive privileges from the racism that is perpetuated by the system.

The language of white supremacy — unlike the language of racial discrimination — forces us to engage in a contextualised assessment of international law rather than a normative one. Indeed, I am reminded of a fantastic quote by W. E. B. Du Bois, where he said: “Awareness of the exploitation of colonised peoples would be fatal to Europe's high ideals of justice, freedom and culture.” How can Europe make any claims whatsoever to civilisation when exposed to any aspect of European history?

White ignorance leads to moral and cognitive errors in our thinking about the law. Knowledge is not neutral. It is oriented towards an understanding of the way the world should work, and yet we continue to shape that world according to a Eurocentric epistemology, that was fashioned around the dispossession and dehumanisation of non-Europeans.

Another excellent quote was delivered by German Foreign Minister Annalena Baerbock, who declared: “The security of the people in Israel is just as important as the survival of the Palestinians.” Israeli security is on par with the survival of an entire people. What makes that statement

even more visceral and egregious is that it was reported in the media as representing a chastening of Israel by Germany.

International law has been a tool used to justify not just material conquest, but also a type of epistemic conquest. And this domination is, as Vincent Lloyd said, the arbitrary exertion of one's will over another, and its primal scene is the master-slave relation. This master-slave relation appears often in international law, without even looking at the topic of slavery.

Within TWAIL, we represent international law as an instrument of ignorance, an instrument of domination. Over the centuries, the main question that international law has had to contend with is, how do we, as Europe, justify taking the land of others? The easy way was to use weaponry. But of course, this has to be done in a manner that legitimises my own identity, my self-loving, my perception of myself as a law-abiding, humane, liberal individual. To do that, I use law as a way to justify the dispossession that I want to carry out.

And how do I legally justify that dispossession of others? Simply by dehumanising the others. If the other ceases to be human, then the dispossession is moral, because I am doing it for the benefit of either humans or those beasts who I am gradually going to raise to the level of humans.

I give you an example. Some of you will have heard of the Zong Massacre. Some of you will not. The Zong was a ship carrying people who had been enslaved and were being transported from England to the "New World." Along the way, the ship captain realised they didn't have enough water, they didn't have enough food, they didn't have enough supplies to sustain both the sailors and the enslaved. So what did they do? They threw 130 people into the abyss. Now that violence, in itself, is pretty standard in the history of Europe's encounters with others, and we've become accustomed to that type of behavior. Here, it goes further, and this is where the law enters the frame.

Upon returning to London, the ship owner made a claim to their insurance company: this "cargo" is valued at X, you must reimburse us X. The insurance company resisted. But the source of their resistance was not the savagery of the act but the voluntary spoilage of the cargo by the captain. What is most fascinating about the story is that the ship owner won in court, and the insurance company was ordered to compensate them.

To their credit, some other people looked at the situation and said: “Well, these individuals were not cargo. These were people. And so that act of jettisoning 130 people into the sea was an act of mass murder, and we should bring criminal charges against them.”

In response to this demand, the Solicitor General remarked: “What is this claim that human people have been thrown overboard? This is a case of chattels or goods. Blacks are goods and property. It is madness to accuse these well-serving honourable men of murder. The case is the same as if wood had been thrown overboard.” TWAIL draws attention to these historical patterns that Europe prefers to ignore; the thorniest legal problems we are dealing with today are tied to white supremacy and its afterlives.

Consider the UN Security Council. I attended a panel yesterday about the veto power. Does anyone think about it and say, “Huh, that’s interesting. Four white states have veto powers: not a single black one, not a single brown one, not a single Muslim one.” How valid is sovereign debt? What about the validity of the Balfour Declaration? We are told that we must take all of these for granted because these are part of the international legal order? The Vienna Convention says so. The doctrine of *uti possidetis* demands that we respect colonial borders.

In short, international law proposes answers to three key questions: a normative question, a political question and a sociological one. How do we regulate relations, who decides, and who owes what and to whom? Normative, political, sociological. Meaning, we are dealing with an epistemological order. And the answer for international lawyers is: Europe’s preferences during the colonial era provide answers to all three questions. That is the epistemology that we must rely upon.

This leads us, then, to Palestine. From an international legal perspective, there are three thorny aspects to zionism.

The first one, and many here understand this better than I do, is the nature of international law. The Geneva Conventions, The Hague Regulations, these are ill-fitted for settler colonial scenarios. The law of occupation does not address settler colonialism. It deals with something else. Zionism is a settler colonial ideology; Israel is a settler colonial state. And so when we turn to international law, we come up short in terms of the answers, and we are forced to deal with zionism as a type of extralegal ideology.

The second problem is what Vincent Lloyd, who I referenced earlier, refers to as the primal scene of domination. International law's foundations, as I've said to you on multiple occasions and others have already demonstrated, is settler colonial. Vitoria, Grotius, Vattel, Westlake, each and every one used international law as a way to justify the taking of the lands of others. This dispossession was always racialised, and involved the dehumanisation of the other. We remain, as international legal scholars, unwilling to confront the foundations of international law, the very same foundations that enable the dispossession of Palestinians. How often do we talk about the legality of states such as Canada or the United States or Australia or New Zealand or Zimbabwe or South Africa?

In fact, there is an entire area of international law, international investment law, that was designed to prevent any accountability for the dispossession of third world peoples. The doctrine of intertemporality was developed to prevent holding to account those who benefited from the dehumanisation of non-white peoples: "We can't hold you accountable because what you lament today — slavery, genocide, colonialism — weren't illegal at the time. At least not to those who wanted to enslave, massacre, and dispossess."

Now this brings us to the third problem, and this is what I will conclude on; the racism, the white supremacy, the anti-Palestinian bigotry that is baked into the system. Some of you will recognise this quote by Joe Biden: "I have no notion that the Palestinians are telling the truth about how many people are killed." Why not? Why? Are Palestinians inherently unreliable, intrinsically deceitful? Some of you read the Guardian or the New York Times, and you read about the *Hamas-run* or *Hamas-controlled* health ministry. Those same newspapers ran stories about 40 beheaded babies, about mass rape. Secretary Blinken, declared that Netanyahu had provided credible and reliable assurances that Israelis were complying with international humanitarian law. What about the 15,000 dead children? Are that many dead children IHL compliant? The State Department went as far as to declare: "The blockade is probably famine-inducing. We recognise that, but it's still international humanitarian law compliant."

Contrast this response with the one that followed Israel's declaration that "Some people who work at UNRWA are connected to Hamas." Instantly, the organisation was defunded, accelerating the deaths of thousands of more Palestinians. White supremacy, anti-Palestinian and

anti-Muslim racism mean that Palestinians must contend with a discursive environment — but, more importantly, an epistemic environment — that treats them as presumptively deceitful, shifty, immoral.

How do we understand the resistance that Palestinians engage in? We often enquire about its legality. Is their resistance lawful? And we celebrate the advisory opinion, we celebrate the statement by the Chinese in which they recognise Palestinians have a right to resist with armed struggle, and this right is enshrined in law. But there's another way that we can look at it.

Resistance is intertwined with freedom. The goal is self-determination, but the goal is also dignity. And dignity is a core concept of international law. But the dignity in international law is one that I would describe as passive. It recognises the equal, inherent, and inalienable value of every person. Yet, we know full well when looking at over 40,000 dead Palestinians, over 100,000 injured, tens of thousands missing, we know full well that that concept of dignity is fallacious, is fictitious, is a fraud.

Instead, I like to reflect on what's known as anti-colonial dignity, or Black dignity, or Palestinian dignity. It is not dignity in status, but dignity in performance. In this case, how do the dispossessed struggle for their dignity?

And this is an idea that Vincent Lloyd developed: “Bourgeois philosophy, white philosophy, naturalises and mystifies the ideas of the wealthy and powerful, entrenching projects of domination.” The second part of his quote is most interesting: “The experts at challenging domination are those who have been dominated. Their insights are essential, though they ought to be treated as conversation starters and not conversation stoppers.” What the Palestinians are doing through resistance is living, and they live in a world that is committed to their destruction.

They are not the first to engage in this type of resistance. Some of you know the great anti-abolitionist, Frederick Douglass. He described in relevant terms a situation in which he fought back against his slave owner: “I found my strong fingers firmly attached to the throat of the tyrant as we stood as equals before the law.”

This form of dignity is not concerned with respectability. This form of dignity is ill concerned with equality, at least not in a world where they are dehumanised. When we read, when we study, when we deliberate

Palestinian resistance, we are looking at the domination that international law perpetuates.

The struggle that Palestinians are engaged in is ontological; it has to do with their very identity. It is sociological: their ability to live. It is epistemological — what does dignity even mean?

For those who can stomach it, you will find some fascinating interviews being shared on social media sites, interviews carried out with young Palestinian children. They are asked a simple question: “What will you do after the bombing stops?” They say: “I’m going to read a book.”, “I’m going to go to school.”, “I’m going to see my friends.”, “I’m going to see my grandparents.”. The dignity in those simple desires and smiles is unparalleled yet the current international legal system has no language for it. For Palestinians, the struggle is to imagine, to embrace a dignity and a future where they are free from domination.

At the very beginning of this talk, I mentioned the heavens and the clouds, and I return to them now, and I conclude with a final question.

In a fantastic poem, the Palestinian bard, Ghassan Kanafani said: “I wish children didn’t die. I wish they would be temporarily elevated to the skies until the war ends. Then they would return home safe. And when their parents would ask them: “Where were you?” They would say: we were playing in the clouds.”

Considering that Kanafani said this 50 years ago, that we needed to send Palestinian children to the clouds then to keep them safe, that we need to send them to the clouds now to stay alive. I ask you: what value does international law have for them?

Colonial Framing of Resistance

Polona Florijančič

Polona Florijančič holds a PhD in Law and is currently an independent legal researcher.

My contribution focuses on the label ‘terrorist’ that has been attached to the Palestinian resistance movements as well as the anti-apartheid struggle in South Africa and how this restricts the Overton window of acceptable discourse along colonial interests.

But first, I would like to make an observation. There has been a lot of critique of international law at Boğaziçi International Law Conference, accompanied with what seems to be a call to throw it all away and start with entirely new concepts. The expression, throw the baby away with the bathwater comes to mind. And I really do not believe that this is the way forward. There have already been numerous positive developments within international law, despite its colonial origins, and we should be striving for progressive expansions of the law and its definitions, and not simply discard it. If I may comment on previous presentations; personally, I believe that all of the specific killings and destructions that have been enumerated are already included in the Rome Statute not merely as war crimes and crimes against humanity but also under the genocide definition, since the killings are done with the intention of destroying the group as such thus falling under Art.6(a). Some of the acts also constitute imposing conditions calculated to bring the physical destruction of the group under Art.6 (c) and some arguably fall under Art.6(d) in terms of imposing measures intended to prevent births. In other words, the intentional mass killing of children, women,

intellectuals, medics, the destruction of critical infrastructure and even the mass inflicted psychological trauma are all already covered in the current definition of genocide and other crimes. So, do not despair in terms of international law as such. I am glad we are rethinking it, and we should be, but it is not all bad. And yes, you will be frustrated when it comes to implementation, but again, this is normal. You know, the law is one step, and then there is activism, and then there is lobbying, and then there is bringing geopolitical alliances. All of these are essential steps in implementing the law and the people play an essential part in this incremental process towards progress. Unfortunately, we do not have a tool to stop the genocide. We have to be clear about that. But it does not mean that the ICJ advisory opinion is useless, or the international law as a whole is useless or should just be discarded.

Talking about terrorism, it seemingly has nothing to do with international law, because it is mainly a matter of domestic definitions and proscription regimes, but it is still important to address, because the narrative of terrorism is used in international fora. For example, even the Prosecutor of the International Criminal Court unjustifiably used the term in relation to Palestinian resistance groups. And I think, every country has the power to combat these narratives, and one way is to simply refuse to use the term “terrorist” altogether. So, let us say Turkey abandons this terminology in relation to what it considers to be their own ‘terrorists’ and other countries can do the same. I believe it is not a useful term, and it is open to politicised interpretation and manipulation. For example, in terms of Palestinian resistance we have international humanitarian law and all the necessary definitions of crimes that can describe individual acts without creating a risk of delegitimizing as terrorism the legitimate resistance to illegal occupation as a whole.

As a resident of the United Kingdom (UK), I also want to illustrate how the label terrorist impacts our freedom of expression and the acceptable discourse. Then I want to link it to South Africa and the African National Congress and how they were branded as terrorists, while the state terrorism of South Africa itself was, of course, not perceived as such. Before doing so, however, I would like to briefly address on the October 7th and what actually happened on that day, because I think there is still a lot of misconceptions. I do not claim to know everything that happened, particularly since there has not been an independent

investigation, due to Israel preventing it from taking place. However, we have certain reports from the UN which are credible and are based on video and other reliable evidence, so it is not drawn out of thin air like some Zionist claims, which we all know were simple fabrications. So, while we recognise as false the claims of 40 beheaded babies, of eyes gouged out, or fetuses cut out and so on - we know none of that ever happened - we have to nevertheless recognise things that did happen which were clearly criminal. There were essentially two phases of the military raid, which is the expression that is most appropriate to those events.

At the keynote speech of Professor Richard Falk on the first day of the conference¹, there was a little tension with a member of the audience, because Prof. Falk did not recognise the success of the raid in disrupting the intelligence and communication nodes that the IDF relies on to mobilise for a response in case of an attack. So, what the member of the audience wanted was a recognition of how professional that attack was, how well it was carried out. Along the border, the fighters neutralised sensors, cameras, radio intercept capabilities, human intelligence monitoring and the repeating stations. They struck at the headquarters of the Gaza division, which is the local intelligence hub, and they delayed what should have been a five-minute response to one that took five hours. Now, I am not saying that necessarily excludes Richard's hypothesis that maybe it was allowed to happen to an extent. Maybe both are true, but there was definitely a very successful attack in that first phase, and I believe the member of the audience at the keynote session was trying to say that denying this success was part of the narrative that dehumanises the resistance and presents them as barbaric and incompetent. Yet, I am pretty sure words of praise in that respect would land you a prison sentence in the UK under s. 12(1A) of the Terrorism Act 2000, since the only supportive belief or opinion you are allowed to express about a proscribed terrorist organisation in practice appears to be in the context of them laying down their arms. Ironically, even *The Washington Post* described the first phase of the raid as a highly organised stealth attack.

¹ Richard Falk, *'The Gaza Challenge: Does International Law Matter if it cannot be Enforced?'*, in Keynote Panel Session I Justice and International Law in Boğaziçi International Law Conference *'Rethinking International Law After Gaza'* 3-4 August 2024. (Directed by Boğaziçi Üniversitesi, 2024) < https://www.youtube.com/watch?v=6G0QvXlq-1E&t=5636s&ab_channel=Bo%4%9Fazi%3%A7i%3%9Cniversitesi > accessed 15 August 2025.

But then in the second phase, it kind of evolved into this bloody, chaotic and criminal rampage. Hamas representative, Ali Baraka, said it himself, “*We were expecting to get a smaller number of hostages and return, but the army collapsed in front of us. What were we to do, the Israeli army has become a paper tiger, and that is why the number of hostages was so big, and the number of Israeli casualties was so big.*” So, basically, they were expecting that 90% of them would have died in the first phase, but they more or less all managed to get to the second phase. Of course, we have to recognise that a lot of the civilian victims were killed by the IDF, not just through applying the Hannibal directive, but also through not knowing who is who when they were trying to shoot at the resistance fighters, but we do not know the exact numbers. I will just address the death toll in total. What was from the Israelis, what was from the Palestinians, we do not know for sure. But it was not 50% or 100% by the Israeli side, like some are claiming. No, there were a lot of civilian casualties caused by the Palestinian fighters.

So, all in all the death toll was 1200 people of which 314 were military personnel and police forces, but some of them *hors the combat* - basically, even if you are a soldier, if you are in pajamas, hiding under a table, you should not be killed, and people were killed in that position. Then there were 63 members of the kibbutzim armed response security units. These individuals were armed. They were not unarmed civilians. And then what is also important is that while not all children were spared, all in all, there were less than 5% of child victims, two of them, we know, killed by Israel, while their army fired at a kibbutz directly. So, my point is, while we recognise that most of the claims spread through the media were blatant lies, we have to also recognise that civilians *were* intentionally killed, including those trying to flee or hide, and most regrettably, even some that surrendered. It included those targeted on roads, in private and public shelters into which the militants threw hand grenades and even shot RPGs; those killed in fields and orchards, those hiding in bushes, toilets and in houses which were set on fire. Several deceased soldiers' bodies were also decapitated or had their heads and faces stepped on. Of course, this does not compare with the claim of 40 beheaded babies, but it is still a crime. Perhaps one of the most disturbing things I have seen was a body of a woman which was paraded through the streets in her underwear, her head held up by her hair, being spat on by bystanders. I will not continue enumerating because I do not want to waste time, but

my point here is that there were two sides to the raid. One of them is the breaching of the wall, the attacks on military posts and combatants in general, which falls squarely under the right to resist, as recognised in international law. The other is the attacks on civilians, the desecration of bodies and other crimes which fall under crimes against humanity and war crimes. But in the Western mainstream narrative, it is all being lumped together and simply branded a terrorist attack with all of the 1200 simply referred to as innocent civilians. There is no differentiation allowed in the narrative between acts of legal resistance and the illegal war crimes or crimes against humanity.

It is essential to keep in mind that despite well over 100 definitions of terrorism being put forward, there has never been one that has been agreed on by the international community. One of the reasons for this is that there is no consensus on the status of liberation movements. So, what we have instead are domestic definitions and domestic proscription regimes largely based on self-interest and alliances in foreign policy, and they disregard internationally recognised norms, including the principle of self-determination and the right to resist colonial domination, alien occupation and racist regimes in pursuit of self-determination. I will not go into the several resolutions and other legal instruments, because there is another panel that is specifically talking about the right to resist. Yet, I want to mention that what is also being ignored is that both the General Assembly and the UN Commission on Human Rights, envisage terrorism as a crime when it is aimed at the destruction of democracy or the destabilizing of legitimately constituted governments and pluralistic civil society. None of which apply to Israel. The use of the label is furthermore largely actor-centric instead of act-centric. In South Africa, the nationalist liberation movement was termed a terrorist movement, and Nelson Mandela himself was called a terrorist not just by South Africa but also the United States and the United Kingdom. Ironically, those UK politicians who wanted to hang Mandela were later sitting in the front rows when he came to give a speech. But what is largely forgotten is that the state of South Africa itself used terrorism against the so-called terrorists and those that would potentially be joining them. They used conventional terrorist methods such as bombings and targeted killings, but also many other methods similar to those Israel is using to terrorise the Palestinian population.

The point of terrorism is the intention to create and manipulate the psychological state of terror through the use of threats of violence or actual violence in pursuit of political ends. And that is exactly what South Africa was doing and what Israel is doing, but they are doing it to retain the status quo of colonialism, apartheid, occupation and oppression, instead of changing the status quo. Thus, we have this different perception of things. When someone is challenging oppression, they are a terrorist, but when someone is enforcing the oppression through terrorism, we do not call them a terrorist. The Truth and Reconciliation Commission, which was set up after the end of the South African apartheid, heard many of the generals and police spell their intention out by saying: *We were trying to terrorise the people. We were trying to instill fear so that they would not join the resistance.* And back in December 1947, Ben Gurion approved the idea of random violent action against Palestinians and their infrastructure that would ‘terrify’ them and assure that the population understood they were at the Zionists’ mercy and anything the Jews wanted could be done to them, including ‘starving them to death’. The same terrorist tactics they have been using to this day. Yet, none of their actions are recognised as such.

I would now like to return to the UK Terrorism Act and how it enforces colonial narratives through criminal law. My co-panellist stated that Hamas are heroes. In the UK, he would be facing a 14-year long sentence for this statement. In the beginning of the conference, I was clapping after Cuneyt Yuksel, a member of the Turkish Parliament, made a speech in which he mentioned that he was at Haniyeh’s funeral. Possibly, this clap could get me arrested as well. I do not know. Am I expressing criminal support of a proscribed organisation simply by sitting here? How can we have honest discussions on resistance under such draconian regimes? I would also like to mention a case where three women were wearing, during a protest, small print-outs of a drawing of a paraglider, not specifically a Hamas paraglider, just an image of a paraglider. They were all convicted of supporting a proscribed terrorist organisation because, as the prosecutor said, in this context, they may have been supporting the paraglider technique, which was used by Hamas, therefore, they appear as supporting Hamas. Because Hamas is a proscribed organisation, this makes it an offence under section 13 of the Terrorism Act 2000. But why should they not be allowed to support the paraglider technique? There was nothing illegal in the breaching of

the illegal wall. And it was a humble means of getting over the wall of the brutal occupier. We are not talking here about attacks on civilians. We are talking about legitimate resistance recognised in international law and under any moral standards of humanity. Nevertheless, these women now have a criminal record. Because the law is so strict, all their defence could argue was that the print-outs did not relate to the October 7th and that a paraglider is a symbol of freedom in general. Of course, I cannot read their minds, and I am not going to say what they were thinking, yet, it seems quite obvious to me that they were referring to the paragliders of the October 7th, however, this should not have landed them a criminal record. Especially not in the context of anyone being entirely free to praise the terrorist state of Israel and its genocidal army, display their insignia or wave their flag. In fact, British citizens are free to join the IDF.

Worthy & Unworthy Victims: Mass Media as the Adjudicators of Legality in Gaza

Omar Kamel

Omar Kamel is a PhD Candidate at the Law School of Sciences Po, Paris.

I would like to pull a slightly unorthodox move, and I am going to ask for your indulgence as I take you away from Gaza for just one minute. And instead, I want to take you to four other places. And actually, we are going to go back in time, and we are going to go to 2022, just two years ago, at the last week of February. So, the 20th of February. The 20th of February was quite an interesting week, because we saw four things happening around the world simultaneously. The first was the bombardment of Yemen by a Saudi campaign. This saw the worst month for Yemeni casualties since the fighting began in 2014, and the conflict has since gone up to 500,000 casualties. This was a really significant moment for Yemen generally, and it was called the biggest famine and humanitarian catastrophe by the UN agencies. So, that is number one. Number two is a bombardment by the US forces on Somalia, destruction of critical infrastructure, dozens of victims, casualties, civilians. Number three, we go to Syria. Israel bombarded the Golan Heights, or as they would call it, had a targeted, tactical operation in the Golan Heights. This went exactly as we might expect, dozens of casualties yet again. The fourth element is the invasion of Ukraine by Russia, and it unfolded as we all know it did.

I was quite fascinated by the fact that four major events took place in the same week, and yet in my news feed, in the news that I consumed every morning, it seemed that only one of those was represented. And

I thought, surely, this is just my consumption of news. If I were to look at the five major English language newspapers and media outlets around the world, there is no denial that all the others might be represented, at least to some extent. Yes, that is what I hoped. So, I ran an analysis. This is my field of research, quantitative analysis. I took the five major news outlets around the world and looked at what they said for all four of those conflicts, and then I took it to my students and said: "Have a guess how much coverage you think each of those got. Now they sort of know my style already, and so they had good guesses. They said: "We think Ukraine had at least double or triple the coverage of Somalia, maybe quadruple the coverage of what happened in Syria". And that was a good guess. If you would like the answer, the answer is that over a one-week period, there were 1298 articles covering the invasion of Ukraine. In order of magnitude, these are the following results for the three other conflicts: For Yemen, one article; Syria, two articles.

Somalia caused an error in my algorithm because there were zero articles on Somalia. What is fascinating here is not necessarily the discrepancy in coverage. It is a difference not in degrees, but in the kind of coverage that is afforded to these different conflicts. Right? You might expect that there could be variance, give or take here and there, but you do not expect it to be a magnitude of 1298 to one. So, I looked then at how these different conflicts were being covered. I thought maybe there is some difference, something we can learn in the way they were actually portrayed in the media. So, essentially, we are looking at how much coverage they are getting, but also the modality, the manner in which they are being covered, what language is being used when they are being covered. Now this is fascinating. You look at it and you see a lot of empathy, a lot of racialised aspects, quotes like: "these are refugees, the likes of which could move in a family next door". "We are surprised because, unlike Iraq, Ukraine is a relatively civilised, relatively European city". "War is no longer something that is visited upon the impoverished North African countries". So, there was a lot of alarmism, but also for the first time in my life, in my memory, the first time that legal terms were used by news outlets in a very technical and very specific way. As soon as the invasion happened, Deutsche Welle came out and used terms like "flagrant breach of international law". The New York Times magically found its legal faculties of analysis and started using terms like "defence", "self-defence", "resistance", "sovereignty", "war crimes", "international

legal accountability”, “international tribunals”; terms that you rarely ever see in the *New York Times*.

This is fascinating because, for once, the narrative, it seems, that was built by the media facilitated a position for Ukrainian victims in which their territorial sovereignty was acknowledged, but also their status generally as a worthy victim was emphasised for everybody to see. So, why did I take you the reader on this detour? Why did we go through the whole shebang of going through the case studies and spelling this out? This is an illustration of what I want to argue here, and it is about the power of media discourse in actually creating narratives about international law and also forging your understanding of what international law is, because the media does not simply report on the facts. The media commands the ability to determine, shape and frame how international law is understood by the general public, and this includes decision makers, but also the general populace.

And this is fascinating, so much so because it defines what our most prized international legal principles are, the way they are written in stone or in articles. What is a violation? You only know if it is a violation if the *New York Times* tells you it is a violation. You only know who is committing the violation when the *New York Times* tells you this guy is committing one. And finally, you only know who the victim is when the *New York Times* tells you this person is the victim to whom the violation was applied. So, for example, what you and I know casually as occupied territories. The *New York Times* calls administered areas: “area C”, “area B”. What we call ethnic displacement, the *New York Times* calls evictions in the West Bank. All settlements are called neighbourhoods. What we call children are known in *The Guardian* as young men of 10. What we call the occupied Golan Heights is known as the Israeli-controlled Syrian border. So, it is all a game of narrative of discourse, and by using this discourse, they normalise specific understandings of international law for the common public. Now, we already this. We know that public opinion is important. People that we like to cite half-heartedly, like the James Lorimers of international law, even said it back in the day. They said: “The binding force of international law depends on public opinion and public sentiment, as formulated by the press.” In other words, the press determines public opinion about the issue, and that determines how people feel about it, and if the legal action that follows will be

popular, unpopular, viable, non-viable for the politicians undertaking it. We already know this. This is nothing new, per se, what is important about this is that shaping discourse sways policy, but also manufactures your consent and support for international legal violation by hiding or alleviating the atrocities from our gaze. If we do not see the atrocities, they are really not happening.

I have some examples to return to Gaza. I am not picking my grandmother's basement publication. This is the New York Times. This is the standard of journalism(?). You might find things like the passive voice. Many of Gaza's medical workers have been detained or killed by whom, where, how? Another one, "Gaza building collapses under airstrike. Collapse? Was it tired? What happened? What? Who is the author in this action? Of course, for those who know a bit of journalistic context, the passive voice is a massive taboo. You never find the passive voice in any coverage of any question, ever domestic, international, legal, non-legal, whatever it may be. So, then this takes us to the object of my talk. The media adjudicates these conflicts because they managed to determine one of the four elements that I mentioned earlier, who the victims are. And victimhood, victim status is important, not because it attracts people's pities, but because it determines how much justice you're going to be allocated when the conversation about justice comes to play. Noam Chomsky and Edward Herman wrote this book now a few decades ago, called *Manufacturing Consent*. And within it, they discussed the concept of worthy and unworthy victims. Worthy victims are those that we are allowed to pity, those we are allowed to show some form of compassion and empathy for, and those that we are allowed to describe in legal terms, those that we are allowed to say they are being invaded, occupied, like the Ukrainians. Unworthy victims are the victims of our own hegemony. By our I mean the West's hegemony, right? They are the ones who are in Iraq in Syria and Palestine in Yemen and Somalia and Libya, who are the enemies of our own hegemony, and who are not afforded pity, are not afforded empathy, and most importantly, are not afforded legal terminology in the way we describe what is happening to them, because as soon as you start using legal terminology to say this is a violation of international law, these are war crimes, public opinion dips immediately in favor of the victims, and accountability enters the conversation.

Now, having said that, I want to make two last points: it is impossible to hold war criminals responsible and accountable, if only worthy victims are deserving of justice. This is the problem about the distinction that is made by the media between worthy and unworthy victims. Borrowing from Mohsen al Attar, I want to emphasise that “through dehumanisation, dispossession is legitimised.” By dehumanising these victims, by assuming that they are not allowed the status of victimhood, we legitimise the suffering that they undergo, and not only that, remove any path to justice to which they would be entitled.

To return to Gaza in my empirical studies, another study I tried to attempt is one on English Language Media, normally in Europe, but also in the United States to see how legal terminology is used by media in coverage, and how there might be a correlation between that and public opinion. So, in other words, the way in which what is happening in Gaza is described with legal terms in the New York Times, in the Washington Post, in The Guardian, or Le Monde, or Deutsche Welle, has a direct impact on how people perceive what is happening, and the favourability rating that the Palestinian conflict occupies in European society. This is paramount, and this is paramount for one major reason that is repetitiously emphasised in this edited collection. People indicated the “ICJ proceedings”, and that “we have the advisory opinion”, and it is “a legal victory”, and it is, to some extent, a victory of a kind. But now what? Now, what do we do with it? Are we going to keep doing lawfare and win some more breadcrumbs, legally speaking, or are we going to try and actually capitalise on the victories we have earned by conveying them to the general public, and marketing our victories to ensure that they actually reach the people who they need to be reaching. This is how I would like to volunteer at this conference. We saw this happen to an extent with the ICJ proceedings. We saw this happen with social media, and you have seen yourselves it on Instagram, on Twitter, where your news feeds are filled with things like Middle East Eye and Eye on Palestine, that start to communicate the legal aspects of these conflicts to you and make you understand, you and your friends, that there is a legal aspect, and that legal aspect is very important. As academics, we cannot lose sight of that. Lawfare is good, but we have done a lot of it. I would volunteer; now we need to actually drive our victories home and make sure they are disseminated as widely as they can be. One last point, at the risk of maybe dampening the intellectual ecstasy from which we have benefited during

this edited collection is light years ahead in terms of discourse from what is being said outside. We are having conversations that are really elevated. They are really legally full of legalese, legally minded, but they are not necessarily in accordance with what public opinion thinks or what the public conversation is, even for those who are favorable to the cause. And this is an important point that we have to keep in mind, lest we lose track of where the conversation actually is. The conversation when you go outside, is actually led by people ranging from Thomas Friedman at the New York Times to Benny Moritz on every single podcast it seems these days, and runs along the lines of “both sides, and this is a difficult conflict, and we need to be cognizant of the challenges, and there is a lot of emotion that goes into this. And war crimes are bad, but resistance is worse.” So, while our conversation is at the level of: “Is this resistance legitimate?”, and “Is this apartheid or occupation?” We need to be able to modulate our conversation in a way that actually attains the targeted audience, which is the general public. And we do this by speaking to the media. We have an initiative with some participants of this edited collection on blogs such as *Opinio Juris* but others as well, where we try to disseminate some of these thoughts and to ensure that we actually capitalise on the victories that we have earned.

Frozen in Time: The 'Israeli Exception' in Applying Colonial International Law on the Use of Force

Hasan Basri Bülbül

Hasan Basri Bülbül is an Assistant Professor of International Law at Boğaziçi University Faculty of Law.

Critical legal studies and Third World Approaches to International Law have challenged the mainstream narrative that international law is neutral, objective and always progressive. They have exposed the role of international law in justifying brutal colonial practices, particularly in the 19th century.

They have further documented how colonial behaviours persist today, carried out arguably through less violent manners, possibly through the consent of other states when possible. However, when vital interests are at stake, brute violence has always been reintroduced under a 'state of emergency.' This has invoked 'exceptional laws' for exceptional times. As Carl Schmit famously put "*the Sovereign is he who decides on the exception*" Hegemonic powers in the world remained in a position to decide exceptions in the international legal system when needed. Perhaps, the most prominent example was the invasion of Iraq by the U.S., where the Bush administration bent the most fundamental legal principles, including the right to self-defence.

In early modern times, international law was regarded something precious that was completely exclusive for the use of the civilised European nations. Others were uncivilised, they were barbarous, they were primitive, so that they lacked the necessary intellectual capability to govern themselves. It was therefore claimed that they were unable to form a political structure and then they could not have sovereignty. Thus, they

could not be actors of international law, it was argued. These required that they had to be governed and subordinated. These arguments were quite explicit in the writings of the international lawyers of the time.

Yet, international law has transformed in the last 100 years. Today, we talk about sovereign equality of nations. The blatant narrative of civilised/uncivilised has been arguably abandoned or at least replaced by some softer terms based on development and some others.

However, there is a country in the world, Israel, which has been permitted by global hegemonic powers to be an exception not only in relation to specific incidents, but within the entire international legal order, blatantly applying 19th-century colonial international law in the 20th and 21st centuries. For so long, it has been as if time was frozen for Israel, allowing it to continue applying the cruellest colonial international law. This is evident in many aspects, and I would like to point out a few similarities between European colonial endeavours and the Israeli legal narrative, both today and in the past.

The concept of *terra nullius* may be a good start. This means empty lands, or more precisely in legal terms, ‘a territory with no sovereign’. The idea is whoever comes first gets it. So, Europeans used this concept to justify the possession of the lands despite those lands were not really empty, they were populated by local indigenous people. And the Zionist motto to describe Palestine was almost the same. Palestine was described as “*the land without people for the people without land*”. Then we all know how a large-scale settlement started to Palestine, that is similar how Europeans migrated to newly found lands.

Similarly, Israeli authorities continue to dehumanise Palestinians through a civilisation narrative. For instance, Netanyahu’s tweet on Christmas Eve claimed that the conflict is not between Israel and Hamas, but between civilisation and barbarism. Israel uses this rhetoric not only to justify the excessive violence used against Palestinians, but also justify denying Palestinians the ability to govern themselves, reminiscent of Europeans who denied sovereignty to ‘intellectually primitive’ indigenous peoples.

One of the other ways Israel has been made exceptional by hegemonic Western powers is by persistently framing it as ‘*the only democracy in the Middle East*’. This also resonates with the civilisational discourse. Because democracy is a possession only of the civilised. But what is the

point of emphasizing a democratic nature of a state while it engages with genocide in the meantime? Would not it be even more terrifying that a democratic country commits genocide as we are not talking about one single crazy dictator? When democracies commit genocide, should not it be even more terrifying since a whole nation is somehow involved in the decision-making mechanisms? But we all know that Israel is not a democratic state, but an apartheid state, recently confirmed by the ICJ in the Advisory Opinion.

But calling it a democracy in times of genocide does serve a purpose. It creates a distinction between 'us' and 'others,' aiming to convince Western audiences that the others deserve atrocities. This narrative is used to justify the support of Western liberal states to Israel in the eyes of their people, amounting to the complicity of them in the grave violations committed by a democratic fellow against the 'barbarous.'

Further, similar insights might be deduced from the Western narrative of *Israel has the right to defend itself*. Although we know that this is inapplicable to occupied territories, as the ICJ decided in the Wall decision some 20 years ago, Western countries continue to make this statement in every instance possible. One of the reasons for this is to shape international law. International law is a constant creation emerging from the interaction of states through customs, and statements by states carry legal weight. By claiming that Israel has the right to defend itself against the territory it occupies, Western governments attempt to create yet another exception for Israel. This really enables Israel to use excessive violence against Palestinians.

But the violence of Palestinians, meaning their armed struggle and resistance for self-determination is demonised at the same time. This is not to say that everything is legal to achieve self-determination. It is rather to say that the responses by the hegemonic powers to the level of violence by the parties are extremely unbalanced. This takes us to the problem of the racialised hierarchy in international law. A perception is created that the enemies, meaning 'inferior Muslims and Arabs' in this context, are, as Tzouvala and Samour argue, inherently violent and so they deserve all those atrocities. Therefore, legally, they could only be the subject and target of the violence but should be prevented to use violence to defend themselves.

What characterises these decades long exception is indeed the impunity that Israel has been permitted to enjoy. It has rarely been held accountable for its actions. George Bisharat rightly compares this with the experience of Iraq after it occupied Kuwait. The swift forcible response by the UN and the US against Iraq has never been made an option to stop the occupation of Israel. Bisharat continues and I quote “*the position of Western states, in particular that of the United States, has ensured that no effective action can be taken to end the Israeli occupations.*”

This is apparent in the use of veto power in the Security Council, this is visible in the threats by the United States against the International Criminal Court when it wants to open an investigation against the Israeli authorities. This is visible in the attempts by the UK to slow down the ICC processes.

Nevertheless, the recent developments from various international adjudication mechanism provides for some room to be hopeful for the future. These include *South Africa v. Israel* case, *Nicaragua v. Germany* case, ICC arrest warrants and the latest ICJ advisory opinion. I see them as small but significant steps to ending the Israeli impunity. What needs to be done is to turn every single word of these legal documents to a concrete outcome not only in international arena but also in all domestic jurisdictions.

Decolonising the Narrative of Equality in International Human Rights Law After Gaza

Shahab Saqib

Shahab Saqib is a Assistant Professor at University of Leicester.

The theme of the Boğaziçi International Law Conference in 2024 is “Rethinking International Law after Gaza”. Which part of international law are we thinking about? International law is obviously divided into different branches. This volume has addressed aspects of international criminal law, international humanitarian law, International human rights law, different subdivisions of international law, which impacts different groups differently. However, my work focuses on equality law, from international legal perspective. Equality law conceptualises a worldview which regulates how societies are to be understood as egalitarian. My paper examines how equality is conceptualised in international world order and what Gaza did with that conception.

This paper proceeds in three parts. First, I describe how equality law works, and in doing so, I explain how the liberal manifestation of this field works since the understanding of equality in international human rights law is inevitably linked with liberalism. It is important to note that it was constructed in colonial contexts that led to liberal expansion after world war. Second, I focus on different categories, especially race and sex, to show how Gaza allows us to see equality from a different perspective.

On human rights and equality law, I think Mohsen al Attar was right in pointing that equality in international human rights law is extremely individualised. In other words, international law does not look at equality from a standard that examines the equality of ‘states’ or ‘organisations

within states'. Instead, it looks at individuals. As an example, imagine I held two water bottles. According to international law understanding of equality, "*both bottles look equal, thus, they shall be treated equally*". Even if there are differences, because they are equal, they should be treated equally, since this is what the concept of equality demands.

This is how the categories of equality in international law come into existence. The category of race requires different kind of races to be treated equally. The category of sex demands that irrespective of your sex, you should be treated equally. But how do we understand what race or sex for international human rights law? Since these concepts of international law were very much colonised, these categories are in fact imaginations. Race for instance, is understood through various dimensions such as colour, ethnicity, etc. Nevertheless, these dimensions are colonial constructs as well. The meaning of colour, for instance, varies in comparison to a normal or a colour-blind person. Historically, Irish were not called white, but they were physically white. Al Attar also mentioned earlier, by giving an example, that Italians had white skin but they were not called white. So, how do we understand race? Perhaps as a colonial project of exclusion. Karen Brodtkin talks about how Jews were classified as white while they were not white. Michael talks about how Asians were called yellow, but they were never yellow in colour. It is, therefore, a framework that was developed through colonial thinking.

Especially in the context of sex, I have a strange example which I found in the UK framework of equality law. In *Webb v. EMO* case, a woman who was pregnant, asked for maternity leave. She claimed that she should be paid during that maternity leave because, comparatively, a man also gets paid during that time. When it went to the Court of law, the Court stated that she is pregnant while her comparator, a man cannot get pregnant, therefore there is no case of sexual discrimination. Eventually, the liberally oriented egalitarian framework did find a solution to that issue. The solution for the Court was that a pregnant woman can be compared to a sick man. Since a sick man can be paid, a woman on maternity can also be paid. I shared this example with a Muslim woman. She was shocked to hear the logic of the Court. She stated that getting pregnant is one of the best things that could ever happen in her life. She would never want to get compared to a sick person. What are we dealing with here? It seems to be a construction of epistemological structures that

the colonial institutions created. Once the epistemes are generated, we construct our reality through them to understand equality.

Let us turn now on to the second part, which relates to the genocide in Gaza. As Mevlana Jalaluddin Rumi says, '*Wound is the place where light enters you*'. What has happened in Gaza somehow deconstructed various parts of equality law for me. I will start with race which seems to be quite obvious. We have witnessed how every aspect of what Israel has done in Palestine was inegalitarian. They could shoot children, kill the prisoners, rape the prisoners and unleash dogs on Palestinian old woman. They can do whatever they want. They can hold Palestinians against their will and classify them as prisoners, while for Israelis, they will use the language of hostages.

Hence, there is an entire narrative in which every aspect of life was based and essentialised on inequality. In the context of international law, one starts questioning where one can find this racialisation addressed in international law. For example, in the recent advisory opinion, ICJ did find Gaza episode as a grave example of systematic discrimination. However, the issue is much more complex, if viewed from the lens of equality law. Equality does not merely mean recognition of wrong. Eye for an eye is equally egalitarian. In the given context, one can fairly argue that if someone has unleashed their dogs on a mother, while it is wrongful to do so, why Palestinians do not have the agency to do the same. Hence, what we are talking about is the way in which international law, and even the advisory opinion, conceptualises discrimination through their own understanding of wrongfulness. For Palestinians, it might be more satisfactory and equal, for the sake of argument, to do to Israel that they have been doing to them. In the given sense, the entire ideal of equality becomes controversial, making this conflict an essential issue of inequality.

The second aspect of it is actually more disturbing, where I think Gaza has changed the entire frame of equality law. Gaza seems to provide for us a strange form of social legal reality. It is a structure in which we are looking at different groups who are trying to resist in a certain way. This is where I will bring the category of sex into play. If you look at Gaza in terms of social legal reality, we will see three things are manifested in their structure in the worst possible manner. Number one, there is death. No one can deny that people are dying continuously in Gaza. Number two, there is this continuous effort of survival. They want to survive. They will

do whatever they can for their survival. And number three, they want to resist the domination of the settler colonial. This is the socio-legal reality of Gaza.

There are different aspects of this sociolegal reality. However, one particular aspect has been highlighted by black feminist scholars. Dorothy explains in her book, “killing the black body”, “race”, “reproduction” and “the meaning of liberty”, how the idea of resistance revolves around the concept of reproduction. This is because for a woman to survive, for their race to survive, they have to reproduce. They have to reproduce, and within that structure of reproduction, there are various disadvantages that they accrue. The reproduction cycle ties them to homes which is caused due to colonisation. The narrative that women are only free if they are working in the liberal forms of fictitious and fetishised markets deconstructs in this context. To the contrary, the Gaza or colonised woman has to be at home. She has to be involved in that process of reproduction. Man, on the other hand, because they are not involved in that process, becomes segregated. He chooses to resist through fighting against those who dominate them.

Hence, this is a strange form of socio-legal reality. It pushes us back to a traditional understanding of law, something indigenous scholars have discussed. They discussed that within these societies, because the socio-legal reality is different, these categories work in a very different way as well. If these categories work in a different way, then the conceptualisation of equality is nuanced, something that we cannot understand the way it is put forward by the liberal frameworks. Hence, Gaza deconstructs and dismantles the entire ideal of equality as essentialised by liberal legal frameworks. It exposes the hegemony of unequal equality which is constructed through colonial and capitalistic structures and fetishised as an ideal that has to be followed by many. It shows that the way these concepts were constructed, they only worked for the very few. They were never meant to work for those who were trying to resist. This is where it leads us to.

How we would then reconceptualise equality? How would this reconciliation work through law? How we will put forward those experiences which were, and still are, simply dismissed because colonial powers decided to do so?

**The Right to Resistance and
Self-Determination of
Palestinian People**

Resistance of Power: Self-Determination and the Struggle for Palestine

Muthucumaraswamy Sornarajah

Muthucumaraswamy Sornarajah is an Emeritus Professor of Law at the National University of Singapore.

My principal subject has been the international law on foreign investment. The object of my research has been to show that the growth of this area of the law has been greatly influenced by the power not of states, but of multinational corporations and of the increasingly smaller group of the very rich in the world. Therefore, the law is something that is created by individuals or by corporations in order to serve their interests and ensure that the investments that they make are protected in the developing countries, which are the sources of resources and of labor that enables the production of their materials. They are sold in the different markets of the world. Their profits make the rich richer and enable them to exert control over the world.

So, power becomes a central feature in the understanding of the law on foreign investment, on which I have done most of my work. I have strayed into this subject, relating to the Middle East, relating to Palestine, because of the fact that you find the same situation being repeated in this area. This area, again, is replete with power, not of states, but of individuals, as much as with the multinational corporations. The power of individuals in the creation of both Israel and the modern problem relating to the Palestinians in Gaza is very significant. So, if one looks at the history of Palestine, of Israel, would find that it was initially the thoughts of just one man, Theodore Herzl, who created the notion of a Jewish home for the people of that particular religion and race who

were in Europe. He said that his hope was to create a rampart of Europe against Asia, making this a racist project. The assumption was that the Europeans had a superior culture when this is historically inaccurate. They had the most recent of human cultures, coming to civilisation long after the people of the rest of the world. Yet, in the period of colonisation, they pretended to be a superior culture and rationalised colonialism on the ground that they were lifting the standard of civilisation for the people they civilised. So, in the case of the Islamic world, which had taken civilisation across Europe into Spain and beyond, Europeans claimed that they were bringing civilisation into an uncivilised world. The Jewish claim rode on the back of this lie and pretended that they were the representatives of the Europeans bringing civilisation to Palestine and the rest of the Islamic world. Someone asked Mahatma Gandhi what he thought of Western civilisation. He is reputed to have replied: "I think it would be a very good idea".

Therefore, this was a project initially outlined by an individual, Theodore Herzl, who spoke in rather racist terms that existed at that time, of creating a zone of Western civilisation within the Middle East. It was a strange suggestion as Western civilisation had rejected the Jewish people, despising them as an alien presence. So, it started with a fiction that the object of international law is to ensure that there is colonialism and that the promotion of a standard of civilisation is the basis of the principles of international law, which justifies the conquest of much of Africa and Asia, and later, of course, the settlement of Palestine.

The World Zionist Movement starts with individuals and is fostered by individuals. Let us take the philosophy that is propounded by a man called Jabotinsky, an extremist philosophy that requires the use of violence in order to ensure that the people of Palestine are driven out of Palestine so that there could be the creation of a new state. So, the ideology that is central to this Zionist Movement has already been formulated in the late 19th century by men like Theodore Herzl and Jabotinsky, and the direct descent of the later leaders of the Zionist movement, and particularly of Israel, can be traced to the views that have been expressed, particularly in the extremist writings of Jabotinsky. Men regarded as the paragons of modern international human rights law joined in promoting this ideology that was founded on the denial of the homeland of the Palestinian people. Later leaders of Zionism, like Begin, Sharon,

and Netanyahu are disciples of this Jabotinsky, and the same thinking, the racist thinking, and the biblical thinking that influenced the early Zionist leaders, unfortunately continue to influence the present leaders of Israel. So, when Netanyahu speaks to the US Congress, he describes Israel as an outpost of civilisation, the pillar necessary for the protection of Western civilisation, an outpost of a culture that needs to be protected against barbarians. There is a continuous reference to the original purpose of the founding of Zionism, the ethnic cleansing of the Palestinians so that their land could be occupied by Jews. The displacement that takes place is a project that had been articulated from pretty early times. When Netanyahu talks about Amalek, he makes references to the Bible, again, there is a throwback to ideas that had been expressed from the late 19th century and the reinforcement of myths on which Israel is founded.

And, of course, there is a lot of falsehood in the creation of international law itself. Here, for example, you find that, as in all settler colonial countries, there is the idea of the settled countries being *terra nullius* or occupied by no persons. You find the colonisation of Australia by the English based on the idea that Australia is an unoccupied country, that it is *terra nullius*, in which no people live, ignoring the fact that the Aboriginal people, the dark-skinned Aboriginal people, have been living in Australia for a long period of time. And as always happens when there is settler colonialism, it is followed by genocide in order to ensure that the existing people are eliminated so that the settlers can move into the vacated spaces. My first teaching appointment was at the University of Tasmania. I was there as a university lecturer for about eight years, and that was the country in which a whole race, a unique Aboriginal race, the Tasmanian Aboriginals, were wiped out. They were simply killed off. So, the worst, the most complete genocide, a total genocide took place in Tasmania. This is much forgotten about in current discussions of genocide, the notion of the mass killings of a people being displaced by the horrors of the Jewish holocaust, but the fact is that in every situation where there is settler colonialism, you would find such colonialism being followed by genocide. The term genocide was coined by Lemkin to describe the Holocaust, but exactly similar events occurred during settler colonialism when whole races of people were rounded up and killed. And as I argued, the notion of settler colonialism and the lies that are perpetrated in settler colonialism are repeated over and over again. So, when the Zionist talks in terms of a land without people, for a people

without land, in justification of the settling of Israel, one would find the same justification stated for the origin of the colony of Australia, the idea that it was *terra nullius*, not occupied by any human beings. So, there is a repetition of myths and legends that are the very basis of international law.

I had, in the context of foreign investment, formulated the view that international law is an instrument of power that is used in order to achieve objectives that people in power sought to achieve. This is a view that could be applied to the Jewish project as to the creation of Israel and justifications for the ethnic cleansing of the Palestinians. A succession of powerful Jewish men, some of them enormously wealthy like the Rothschilds, along with European leaders who wanted to solve their historical Jewish problem by finding a home for the Jews outside Europe along with the Jews who had found a home in Europe and who did not want their fellow Jews to remain in Europe and thereby continue the Jewish problem, drove the idea of Israel. And the best way of looking at the situation in Palestine, is to look at it as a project that had been initiated by the Zionist movements towards the end of the 19th century; a racist project, as articulated by Herzl, the creation of a Western outpost to theories that were prevalent at that time within international law.

Thus, international law, taught to students from Western textbooks as a neutral discipline, is hardly neutral. It is a discipline that seeks to justify power. It is an instrument that is used by power in order to provide legitimacy on the basis of untruths like the standard of civilisation. The history of the creation of Israel again illustrates there is a manipulation of rules and principles of international law in order to give credibility or legitimacy to certain instruments. When one looks at the Balfour Declaration of 1917, which is the earliest of the instruments on which Israel is founded; they would find that it was really a declaration made by the then-Secretary of State, Balfour. It was contained in a newspaper, *The Times*, not in an official document as such. And it declared that the British government would facilitate the settlement of Israel by the European Jews. There are other instances of justification provided, like the British Mandate, which promised to lead the Palestinians into self-government. The British did anything but that. They perfidiously participated in the Zionist aim of setting up a Jewish state. They discarded the terms of the mandate. Then the Partition Plan came

about. The validity and the legitimacy of the Partition Plan is open to question. These are all the early symbols of hegemonic project that had been started by the World Jewish Congress and other associations in order to rationalise the creation of Israel through the settlement of European Jews and the ouster of the Palestinians from their land. This hegemonic project, as I have pointed out, is something that rests upon a large number of myths that have been perpetrated at that time. The fact that Palestine, then, becomes a colonial project, a project aided to a large extent by the British government and thereafter supported by the United States, is very clear from the history of the creation of Israel. The situation that arises is a situation of settler colonialism, which mainstream international law has always justified and tried to steer clear of in modern times when its bases have been shaken due to the obvious injustices that attended its commencement and continuance. Instead, the issues relating to settler colonialism that continues have to be looked at in the context of the norms on the alternative international law that the African and Asian countries constructed in order to free themselves from the yoke of colonialism.

It is clear that the perfidious international law that was fashioned without any heed as to the injustice that was being committed through the settlement of Palestine after driving the Palestinians from their homeland can provide answers to the predicament of the Palestinian people. One must seek redress from concepts such as self-determination as fashioned by the people who liberated themselves from colonialism and not as circumscribed in mainstream international law after its creation.

Wilsonian self-determination, thought of at the conclusion of the First World War, was not intended to apply to the colonies of Africa and Asia. The thought that it could apply to the native peoples of the United States was far removed from the Wilsonian vision. Africans and Asians secured self-determination from violent and non-violent struggles. So, what happened then is that this idea of self-determination was fought for by the people of Africa, in Asia; by the Indians, through the Gandhian movement, through non-violence; through violence in countries like Kenya and Indonesia, as the Indonesians fought a long and protracted war against the Dutch. Also, the Algerian people fought a long war against the French and the South Africans fought a war in order to bring apartheid to an end, both through violent as well as through non-violent means.

So, I come to proposition of the law which the third world countries, or the Afro-Asian countries, had articulated at the time of their independent struggle, that the struggles that they were making through violence are wars of national liberation fought to end a long-standing aggression that had initiated colonialism many years back. This contains within it the idea that colonialism, including settler colonialism, is a continuous aggression against which the target population has a continuous right of self-defence until such colonialism is ended.

The Western view has been different. They have perniciously used self-defence to justify the actions of Israel, which has continuously decimated Palestinian settlements, engaged in ethnic cleansing, and instituted a system of apartheid against the Palestinians in their own homelands. Each act of protest by the weak Palestinians is followed by the unleashing of violence against them by the Israeli armed forces, which is justified as self-defence. This view is based on the refusal to consider the legality of the founding of Israel through ethnic cleansing and forcible dispossession. UN resolutions based on the condonation of these illegalities are themselves of doubtful validity and do not represent the views of the international community.

Now, the doctrine on the wars of national liberation is something that is hardly referred to in the context of the struggle for Palestine, but it is a vital idea that had been articulated in the context of this alternative system, that the third world was fighting for at the time of decolonisation. It is the foundation of self-determination, now acknowledged in several judgments of the International Court as a *jus cogens* norm. The Palestinian struggle is a struggle for self-determination. They have, in pursuance of that struggle, the right to use legitimate force. There cannot be self-defence against such use of force. That having been said, it must be acknowledged that the attack by Hamas on Israeli civilians cannot be so justified as it violated principles of international humanitarian law. On the other hand, the response of the state of Israel was grossly disproportionate and was a violation of international law that amounted to a genocide.

Settler colonialism on which Israel is founded involves continuous violence against the people on whose lands the settlements are made. Resistance to this original violence is inherently justified by the principle of self-determination. It is a central proposition that remains a

contribution of the freedom struggles of Africa and Asia. It is a principle that is the basis of the struggle for Palestine.

Thus, this is the theory that must be used in the context of Palestine. Self-determination is accepted as a *jus cogens* norm. It provides an exception to the prohibition of the use of force, which is also a *jus cogens* norm. The notion of self-defence has now been captured by Israel and its allies, principally the United States. This capture is based on false premises. One might argue that Israel is acting in self-defence, when, in fact, it is the other way around, that there is a perpetual right in the people of Palestine to ensure that their colonisation by the Jewish people comes to an end; as it was in the case of the people of Africa and Asia. The war that the Palestinian people are fighting, either through violence or through non-violent means, involves a war of national liberation, which entitles them to a right of self-defence, a perpetual right of self-defence, until the end of colonial rule in Palestine. So, the idea that a future state of Palestine is the gift of Israel is such a misconception. But what people have been thinking of is that the two-state solution somehow depends upon the consent of Israel, when in fact every instrument, as I have argued before, relating to the creation of Israel is founded on an illegality. And, of course, I have argued that if you adopt the doctrine of the war relating to national liberation, then the current struggle of the Palestinian people is entirely similar to the struggle of the African and Asian countries for their independence from colonial rule. Then, one would argue to that extent that there should be a return to these alternative principles that have been suggested by the African and Asian countries during their independence struggles. It is true that there is some progress made in recent times, such as the Genocide Convention, and many have spoken about the plus factors that have emerged from the activities before the International Court of Justice. The point that I make is that these are factors drawn from within international law by standing inside international law, forgetting the fact that there are a host number of factors which are not covered by the Genocide Convention. So, my argument is that we would be much better off as people who are concerned with the struggle of self-determination to assimilate it to the situation of the African and Asian states fighting for independence, and have recourse to the doctrine relating to the wars of national liberation in articulating the central idea that the fight for Palestine is based on the right of self-defence of the Palestinian people, that their struggle is in

every way justified in international law and that they have an inherent right to the establishment of a state. There is no right of self-defence against the legitimate pursuit of this right to a Palestinian state.

What was shameful in the episode was the absence of action by the international community to prevent the unfolding of the immense catastrophe that took place in Gaza. The hegemonic power of the United States was used to cover up the enormity of the crimes that were being committed by Israel. It raises once again the question of whether there should be recourse to the use of force to prevent humanitarian catastrophes outside the purviews stated in the Charter where there is an absence of Big Power unanimity. But though the states stood aside, the people of the world condemned what took place in Gaza. Israel stood isolated in the eyes of the world. What must result is the recovery of international legal principles devoid of the dictates of power and is reflective of principles of justice. The people of Palestine deserve to have their rights assessed in accordance with principles that their fellow Afro-Asian people devised in throwing off the dictates of colonial power. The State of Palestine must arise.

The Right of Resistance: Self-Determination and the Palestinian “Exception”

Saul J. Takahashi

Saul Takahashi is a Professor of Human Rights and Peace Studies, Osaka Jogakuin University.

There has been a lot of commentary on whether international law is still relevant, and, given its imperialist origins and its connections with colonialism, whether international law is even worth thinking about. Before I begin, I want to acknowledge that there is no question about those problems with international law, that are its origins and its use as a tool of colonialism and Western imperialism. We see that, of course, in the double standards that Western countries apply to Gaza and Palestine in general, as opposed to, for example, Ukraine. At the same time, once you create a law, then it can also be used as a tool to help oppressed people. It is certainly not always a perfect tool, but it can be used. As an international lawyer, that is where I am coming from.

Just to recall that the right to self-determination is not included in the 1948 Universal Declaration of Human Rights (a very fateful year). Of course, there were proposals when they were drafting the UDHR to include a right to self-determination, but those were basically shouted down by the Western countries, and it ended up not being included. There is a little reference in the preamble suggesting a right of resistance, which I will address later.

One important point to recall is that the United Nations (UN) in 1948 looked very different from what it does now. At the time, there were only 58 member states. About a quarter of those were the countries that would be included now in the Western European and other group, and

another quarter or so were basically settler colonial spin-offs of Western countries in Latin America. Those were the power dynamics at the time, when over half of humanity was still living under colonial rule and had no representation in the UN. Therefore, there was no way self-determination would be included as a fundamental right in the UDHR.

However, over the next 20 years, circumstances changed. Many former colonies achieved independence, often through very bloody wars of independence. As this was going on, the two international human rights covenants were being prepared in the UN. Once again, the Western countries had no intention whatsoever of including self-determination; in fact, some of them, in particular Britain, tried to include a clause in the human rights conventions that would allow state parties to remove colonies from application of the human rights conventions. That is how blatantly hypocritical these actors were.

However, by 1966, the advantage had shifted to the newly independent countries, and, in the end, Article 1 of both international human rights conventions contained the right to self-determination. Those who are versed in international humanitarian law (IHL) will know the terminology of “Common Article 3” of the four Geneva Conventions. I would like to suggest a similar terminology for self-determination, namely “Common Article One of the Human Rights Covenants,” due to its significance. As all lawyers will agree, Article 1 is generally the most important provision in any legal text.

Since then, self-determination has been recognised by the International Law Commission and others, as *jus cogens*. Various human rights experts have referred to it as a platform right: without self-determination, there is really no point in talking about other human rights as they will inevitably be violated. It is nonsensical to talk about protection of human rights when the most fundamental one, the right of your people to self-determination, is being violated. Still, self-determination is often avoided by many academics. It is frequently regarded as political, and even dangerous. That is particularly the case when we talk about the right to armed resistance as a component of, or at least a mean towards, the fulfillment of that right. This is one of the gaps I aim to fill in this paper.

One thing that we have observed since October 2023 is an even more blatant and overt characterisation of any kind of Palestinian armed resistance as terrorism, illegitimate, evil, savage, barbaric etc. This has

increased dramatically since 7 October, but it has been occurring for a long time, well before October 2024. Regarding the 7 October attacks, there might have been some violations of IHL committed by the Palestinian armed groups in October; there is a lot that remains unclear. Of course, there were many military targets as well, and it is worthy to recall that an unknown number of Israelis were actually killed by the Israeli Defence Forces (IDF), as they started mowing down people that had been taken hostage. These points must be borne in mind.

In any case, how 7th of October is pitched in the Western media and Western governments, in the western discourse in general and how Palestinians are looked upon as an exception to the right of self-determination is symptomatic of a broader phenomenon. What I would like to argue here is that Palestinians have a right to armed resistance in pursuit of their right to self-determination, regardless of how it may be portrayed in the Western media.

The maps of what Palestine looked like in terms of land ownership and population at the time of the Partition Resolution have been widely circulated. The partition plan of the UN deviates dramatically from that reality. 93 percent of the land was owned by Palestinians, who also made up two-thirds of the population. And yet, the UN is giving 57 percent of the land to Zionist settlers for the Jewish state – and it is much better land as well, in terms of quality. Anybody with eyes and half a brain will look at this and say, how can this be? It is a manifest injustice, clear as the light of day. Everyone knows the story, with the 1917 Balfour Declaration during World War 1. After the war, and as the League of Nations was being formed in 1919, the position of the UK was expressed by Balfour in a letter to the Prime Minister of Britain at the time, basically saying: why did these savages think they have the right to self-determination? It is a waste of time to even consult them about this. We have decided that this land, which we have conquered from the Ottomans is going to be the Jewish national home, and the savages are just going to have to live with it. That is basically the idea here.

Self-determination was advocated by US President Wilson after World War I, but non-white people were not really regarded as worthy of it. It was not a right, but a political principle, that they, maybe, sort of, would like to implement, if it is politically feasible and expedient. It was not a right. Now, the League of Nations created the Mandate system: the sacred

trust of civilisations for people who are not yet able to stand by themselves in the grueling conditions of the modern world. I think that was the language. So, colonialism by another name. The Mandates were created to allow the victorious imperial powers to take over the Ottoman and the old German colonies, but they were ostensibly aimed at independence. That was the idea. And Palestine was one of the highest ranking of the mandates, which meant that they were basically ready for independence very soon. The notion that the Mandates were aimed at independence was a façade, but it did happen for some of the other countries.

However, the Palestine mandate was an exception. The Brits openly said, well, we are incorporating the Balfour Declaration into our mandate of Palestine, and that is just it. We are not talking about Palestinian independence; this land is for the Jewish national home, and as in the Balfour Declaration, of course, the “national minorities”, i.e. the Palestinians, are not even named in the Mandate. The national minorities should be ensured their civil rights, but there was no question of national self-determination, no question of national rights. Then we fast-forward to World War II, and then afterwards the Partition Resolution, and the maps that everyone knows so well. Once again, it is just such a manifest injustice. I think we should all have these maps in all corners of our household to look at and get angry about every minute of the day, because the injustice is so clear.

Palestinian self-determination was basically denied outright, and the situation was framed as one of competing self-determination claims. It was not said explicitly in that language, but the idea was: “We got a great idea. Why do not you give over half of your country over to these European colonisers?” There was no question of Palestinian self-determination being on an equal footing as white colonisers from Europe.

Once again, we have to look at the makeup of the United Nations. In 1947, there were only 57 member states. It was a very, very different organisation than it is now. However, though self-determination became a fundamental human right in the international covenants in the 50s and 60s, the Palestinian exception seemed to remain. The situation was looked upon as one of competing claims of self-determination. After 1967, of course, things just get worse, because Palestine starts getting framed as a belligerent occupation, and not a situation of colonisation. In 1993, the Palestine Liberation Organisation (PLO) in the Oslo Agreement

concedes a huge amount of Palestinian claims based on the right to self-determination, just to gain a seat at the table. After Oslo, Palestinian self-determination is looked upon as only covering 22 percent of their land, and it is also conditional on behaving like good boys and girls, like the Israelis and the West demands. This is something that Ardi Imseis writes about in great detail in his book¹, as many other critics of the Oslo Agreements and the Oslo framework.

The so-called “peace process” starts to replace Palestinian rights. But it is important to recall – and both ICJ Advisory Opinions have said this explicitly – that the right to self-determination is inalienable. Just because the PLO at that particular time may have made this strategic decision to do whatever it did does not mean that the Palestinian people have somehow revoked or lost their right to self-determination. It is still there, as an inalienable right of the Palestinian people.

Turning to the right of armed resistance, I will very much build on an excellent paper by Law For Palestine (L4P).² There was an agenda item in the General Assembly (UNGA) from 1970 to 1995 that focused basically on the right to self-determination, called the “Importance of the Universal Realization of the Right of Peoples to Self-determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights”. This agenda item was repeated year after year, which is something not unusual in the UN. Every year there was one resolution under this agenda item, which contained this language: the UNGA “Reaffirms the inalienable right of all under colonial and foreign domination and alien subjugation to self-determination, freedom and independence” and “Also reaffirms the legitimacy of the people’s struggle for liberation ... by *all available means, including armed struggle*. (emphasis added) e.g. 3070 (XXVIII) 1973.

There are minor differences in some years; some years actually do not have the armed struggle language, but most of them do. After 1995, post-Oslo, the agenda item admittedly starts getting merged with a more general agenda item on self-determination and starts getting kind of weak. However, what is important is that these resolutions have never

¹ Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity*, Cambridge University Press, 2023.

² Shahd Hammouri, “The Palestinian People have the right to resistance by all means available at their disposal”, *Law for Palestine*, 2023.

been explicitly repudiated or revoked in any way. I would certainly argue that they remain valid. And many of these resolutions also contain specific reference to the Palestinian people.

IHL standards are another legal authority that I would cite for the rights to armed resistance. The First Additional Protocol to the Geneva Conventions applies only to international armed conflicts. However, it explicitly provides, despite repeated objections by the Western states participating in the drafting conference, that it shall also apply to armed conflicts “in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination.” (Art 1.4) Clearly, Israel fits the bill here. There is also mention of guerrilla warfare, and the applicability of the treatment of guerrilla fighters as prisoners of war (POWs): Article 44(3) states that combatants who, “owing to the nature of hostilities”, cannot distinguish himself from the civilian population should still be given equivalent protections as prisoners of war. (Art 44.3) So, that is also recognition of the legitimacy of struggles of colonised peoples to fulfill their right of self-determination.

What I would like to stress is that the context of many of these was the struggle against South African apartheid, and colonialism in general. Many of the UNGA resolutions mentioned South Africa, Namibia, Portugal, Palestine, among others. But there is also a clear emphasis on the need to fight apartheid, and the legitimate right to struggle against racist regimes and colonisation. It is also the same with the First Additional Protocol to the Geneva Conventions.

The conclusion that I would like to advance is that the armed resistance for self-determination against racist regimes in the context of colonisation and in the context of apartheid, is legitimate. Israel, needless to say, fits that bill very well.

Lastly, I would like to finish up with some quick thoughts regarding the international institutions, and how can we make them more representative. This is not about how to reform the Security Council, which is, of course, clearly a sick joke. Should we not also be thinking of why it is just governments that make international law, and why not representatives of the people, representatives of the citizenry? This is the kind of thing that we should really be thinking about.

**Palestine before the ICJ:
Critical Reflections**

Apartheid in All but Name: A Critical Reflection on the ICJ's 19 July 2024 Advisory Opinion on Palestine

Victor Kattan

Victor Kattan is Assistant Professor in Public International Law at the University of Nottingham School of Law.

Introduction

The crime against humanity of apartheid is defined in international law as a systems crime. That is, it is a crime that occurs in the context of a regime of systematic oppression, discrimination, and domination.¹ What is distinctive about the crime of apartheid is its focus on the structure of the state in which these multiple rights violations are perpetrated. Bearing this in mind, my remarks comprise three parts. First, I will explain why the crime of apartheid is no longer exclusively associated with the policies and practices of the former governments of ‘Southern Africa’, that is, South Africa, Southwest Africa (Namibia), and Rhodesia (Zimbabwe), As I shall explain, the definition was drafted broadly enough to capture similar policies and practices elsewhere in the world. Second,

¹ See Article II. International Convention on the Suppression and Punishment of the Crime of Apartheid GA Res. 3068 (XXVIII) 30 November 1973, 28 UN GAOR Supp. (No. 30) at 75, UN Doc. A/9030 (1973), 1015 UNTS 243, entered into force 18 July 1976. The 1973 Apartheid Convention also influenced the definition of apartheid in the International Convention against Apartheid in Sports, which entered into force on 3 April 1988. See 1500 *United Nations Treaty Series* (1988), p. 178. Article 1 (a) of the treaty provides that ‘The expression “*apartheid*” shall mean a system of institutionalized racial segregation and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them, such as that pursued by South Africa...’ See also Article 7.2(h) Rome Statute of the International Criminal Court, 17 July 1998. 2187 UNTS 3. Entered into force 1 July 2002.

I will consider the ICJ's 19 July 2024 ICJ advisory opinion², where the Court found a breach of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) which refers to segregation and apartheid.³ As you will note from reading the advisory opinion, the judges remained on the fence as to whether there was segregation or apartheid in the occupied West Bank. They also did not define what they meant by segregation or apartheid. Instead, the advisory opinion uses this curious expression, 'systemic discrimination', and I want to suggest that this expression was used as a synonym for apartheid. It was a finding in my view, of apartheid, in all that name. I will then conclude my remarks with some suggestions as to how the advisory opinion's finding on apartheid, including the arguments made by states before the ICJ, can be used for advocacy purposes by the State of Palestine at the political organs of the UN.

Apartheid beyond South Africa

So, let me begin with my first point that the crime of apartheid is no longer, if ever, exclusively associated with the policies and practices of the pre-1994 government of South Africa. In his separate opinion, the South African judge, Dire Tladi, sensed there was a reluctance amongst his colleagues to describe the policies of Israel in the occupied Palestinian territories as apartheid, which he had attributed to the fact that to date, only the policies of the pre-1994 South African government had been described as apartheid.⁴ Tladi's Declaration indicates that there was a discussion amongst the judges in the deliberations about the use of the term apartheid, and that some of them exclusively associated it with the policies of the National Party Government of South Africa that ruled the country from 1948-1994.

Well, as you know, apartheid is a word from the Afrikaans language and due to that strong association, it may be difficult to conceptualise the crime as applying anywhere else. In other words, the crime of apartheid

² Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, I.C.J. Reports.

³ International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Entry into force: 4 January 1969.

⁴ Declaration of Judge Tladi, para. 36.

may have been perceived of as being exclusive to one place, South Africa and Southwest Africa, a bit like early debates on the crime of genocide, which came out of the Nazi experience in occupied Europe during the Second World War. Now, we know that that this is not the case anymore, that the words apartheid and genocide are used to describe a wide range of policies, practices, and acts beyond their geneses, geographically and temporally.

Can a ‘Global South Crime’ reflect Customary International Law?

My own intuition is that this reluctance to use the word apartheid by the ICJ Judges in the advisory opinion may also have something to do with apartheid being thought of as a ‘Global South crime’. If you know anything about the drafting history of the International Convention on the Suppression and Punishment of the Crime of Apartheid (the ‘1973 Apartheid Convention’), you will know that the Western states wanted to have nothing to do with it. They refused to participate in its drafting. These states portrayed the Convention as a Soviet-Third World ‘plot’.

This view of the Convention is also borne out in the state parties to the Convention. Of the 110 states parties to the Apartheid Convention, all hail from the Global South.⁵ Not a single Western state has ratified it. Given this schism, some prominent jurists like the German scholar Christian Tomuschats, and even the revered Italian scholar, Antonio Cassese, claimed that the crime lacked a universal *opinio juris*.⁶ Basically, what they are saying is that the crime against humanity of apartheid is not part of customary international law.

The problem with this claim is that it overlooks the impact of the Rome Statute of the International Criminal Court on the development of customary international law, where apartheid is defined in Article 7 as a crime against humanity. And in contrast to the Apartheid Convention, most of the States that have ratified the Rome Statute are Western states.

⁵ South Africa became the 110th State Party, acceding to the Apartheid Convention in May 2024. See Gerhard Kemp and Victor Kattan, ‘The Significance of South Africa’s Accession to the 1973 Apartheid Convention and Suggestions for Improving the Treaty Text’, *Opinio Juris*, 31 May 2024.

⁶ Christian Tomuschat, “Crimes against the peace and security of mankind and the recalcitrant third state”, *Israel Yearbook on Human Rights* 24 (1994): 41-62 at 53-56. Antonio Cassese, *International Criminal Law* (Oxford University Press, 2003), p. 25.

So, when you look at all the states that have ratified both Conventions, the Apartheid Convention and the Rome Statute, which provide the basis for criminalizing acts of apartheid, it is around 168-169 States, almost as many states that are parties to the Genocide Convention. Western scholars will immediately say, of course, that genocide is a universal crime, and it is customary international law.⁷ But when it comes to the crime of apartheid, there seems to be this reluctance.⁸

I next discuss the ICJ's finding of systemic discrimination and why they avoided using the word apartheid. As I said, the ICJ found a breach of Article 3 of CERD, which refers to racial segregation and apartheid, but they did not explain whether they were referring to segregation or apartheid in making this finding. They left it open. When we look at separate opinions, we see that, for example, President Salam and Judge Tladi thought that the finding amount mounted to an acceptance of the policies and practices of Israel's breach of the prohibition of apartheid.⁹ In contrast, Judge Iwasawa of Japan said the court did not qualify Israel's policies as apartheid,¹⁰ and Judge Nolte of Germany said that the court simply left the matter open.¹¹ So, what was going on?

Do not Mention Apartheid.

When I read the advisory opinion and the ICJ's reluctance to use the word 'apartheid', it reminded me of an experience I had when I was a legal advisor to the negotiation affairs committee of the Palestine Liberation Organisation (PLO) back in 2012 when the United Nations fact-finding mission on Israeli settlements was established.¹² I mention this experience because the report of that fact-finding mission is liberally

⁷ See e.g. Tomuschat, *ibid*, p. 56.

⁸ I note that the most recent edition of *Cassese's International Criminal Law* accepts that 'it could be argued that the ICC Statute has ... contributed to the recent formation of a customary rule on the matter.' See A. Cassese and P. Gaeta (et al), *Cassese's International Criminal Law* (Oxford University Press, 2013), p. 107.

⁹ Declaration of President Salam, *ibid*, paras 15-17. Declaration of Judge Tladi, para 41.

¹⁰ Separate Opinion of Judge Iwasawa, para 13.

¹¹ Separate Opinion of Judge Nolte, para 8.

¹² See Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN doc. A/HRC/22/63, 7 February 2013. The Fact-finding mission was established on 22 March 2012: <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session19/israeli-settlements-in-the-opt>

referenced throughout the advisory opinion.¹³ Dr Saeb Erakat, who was then head of the Negotiations Affairs Department (and later Secretary-General of the PLO), and Fouad Hallak, my colleague, who is an expert on mapping Jerusalem and the settlements, and I, had to travel to Amman, Jordan, from Ramallah because the Israeli government did not allow the fact-finding mission to enter occupied Palestine. Our address to the Commission was significant, as I believe it was the first time the PLO officially made an apartheid claim before a UN commission. In our submission to the Commission, which was based on a written report,¹⁴ we argued that the settlements, when looked at holistically, the attendant segregation, and the different application of Israeli laws to settlers (Israeli civil and criminal law) and Palestinians (Israeli military law) constituted an apartheid system.

The commission was chaired by three members. It was an all-female Commission. The Chairwoman was called Christine Chanet of France, a high-ranking human rights lawyer and judge. The two other commissioners were the late Asma Jahangir (1952-2018) of Pakistan, and Unity Dow of Botswana, both human rights lawyers.

I have a vivid recollection of my meeting with the Commission, for as soon as I mentioned the word ‘apartheid’, Chanet nearly fell off her chair. She was shocked. It was as though I had used an expletive, like I swore at her or something. She was just horrified. Chanet went bright red in the face, whereas Jahangir and Dow nodded in agreement. So, immediately the Global North/Global South divide was replicated right in front of me in a Marriott hotel conference room in Amman: the Global South members were like, yes, we can see plainly that this is apartheid. But the Global North member was shocked that I would even suggest it. And so, in the end, the report does not use the word apartheid, it uses the words

¹³ See 19 July 2024 advisory opinion, paras 68, 120, 128, 131, 164, 200, 203, and 215.

¹⁴ Raja Shammass and I had previously submitted a written report to the Commission. I have not been able to locate the report, but I recall it made use of the report by the South African Human Sciences Research Council and Democracy and Governance Programme: Middle East Project, “Occupation, Colonialism, Apartheid? A reassessment of Israel’s practices in the occupied Palestinian territories under international law” (May 2009). I contributed to both reports.

‘total segregation’. The Commission came up with a new expression to avoid using the dreaded ‘a-word.’¹⁵

Word games

I sensed that something similar happened with the advisory opinion. The judges came up with another way of referring to apartheid without using the word. The result was this reference to ‘*systemic discrimination*’ that does not find any textual basis in any of the instruments the Court cited. The Court refers to the UN Charter, to CERD, to the International Convention on Civil and Political Rights, etc., which all have different and overlapping definitions of racial discrimination, but none of these Conventions use the adjective ‘*systemic*’ before discrimination.

Now, the word ‘systemic’ is usually associated with crimes against humanity. The definition of crimes against humanity includes systemic and widespread inhumane acts. It is also a word that is used in the definition of the crime of apartheid in international criminal law. Both the 1973 Apartheid Convention and the Rome Statute refer to it. The Apartheid Convention uses the word ‘systematically, and the Rome Statute uses the word ‘systematic. So, they threw in the word ‘systematic’ before ‘discrimination.’ You draw the conclusion.

What is interesting to note is that the section on discrimination in the advisory opinion is longer than any other section. Consider the factual description of Israel’s policies and practices provided in the ICJ’s advisory opinion and the similarities to apartheid in South Africa: 85% of the agricultural land of the West Bank has been expropriated by Israeli companies; the quarrying industry is dominated by Israeli companies; the Israeli occupying authorities do not allow Palestinian companies to have licences to quarry their own land; there is water apartheid and the use of disproportionate force against peaceful Palestinian protests; there is a discriminatory ID system, restrictions on freedom of movement, the demolition of property, affecting Palestinians only, territorial

¹⁵ I had a similar experience when I spoke at a debate on the Israel-Palestine conflict at the University of Birmingham in 2011, alongside Jeremy Corbyn and Ben White. As soon as I used the word ‘apartheid’ the chairwoman of the debate stopped me and said that I was prohibited from using it. I continued my remarks by referring to ‘the word that begins with the letter a that I am prohibited from saying’.

fragmentation etc.¹⁶ For me, this is a description of what happened in South Africa during apartheid. Replace ‘Israel’ with ‘South Africa’ in the text of the advisory opinion. Replace the word ‘Jerusalem’ with ‘Cape Town’, ‘Johannesburg’, or ‘Durban’, and you have a description of what was going on in apartheid South Africa in the 1960s and 70s.

In the words of Judge Tladi, ‘if we compare the policies of the South African apartheid regime with the practices of Israel in the OPT it is impossible not to come to the conclusion that they are similar.’¹⁷

Conclusion

The way forward is clear to me: The State of Palestine, with the support of its close friends and allies, should use the advisory opinion to encourage States to reconstitute the Apartheid Convention’s treaty monitoring body that was suspended in 1995.¹⁸ They have enough support from the Global South to do this as attested to by the number of states that claimed that Israel was practicing apartheid in their written and oral statements to the ICJ.¹⁹ The Palestinian leadership should also give thought to establishing an anti-apartheid committee at the UN modelled on the one that was focused on ending apartheid in South Africa.²⁰ So, I think that is where the argument should be going forward from now for Palestinian liberation.

¹⁶ See Victor Kattan, ‘Apartheid or Systemic Discrimination? A Connotative Reading of the ICJ’s Advisory Opinion’, *Verfassungsblog*, 17 October 2024.

¹⁷ Declaration of Judge Tladi, para 37.

¹⁸ See Victor Kattan and David Johnson, ‘The Crime of Apartheid beyond Southern Africa: A Call to Revive the Apartheid Convention’s “Group of Three”’, *EJIL: Talk!*, 21 September 2023.

¹⁹ See Victor Kattan, ‘The Implications of An ICJ Finding that Israel is Committing the Crime Against Humanity of Apartheid’, *Just Security*, 20 March 2024.

²⁰ I was pleased to see that this was one of the options recommended by the UN Secretary-General: Advisory opinion of the International Court of Justice on the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of the continued presence of Israel in the Occupied Palestinian Territory: Report of the Secretary-General, UN doc. A/79/588, 19 December 2024, para 18. This report was submitted pursuant to UN General Assembly resolution A/ES-10/L.31/Rev.1, 13 September 2024, para 14.

Turning International Law on Its Heels: South Africa and Nicaragua at the ICJ

Jinan Bastaki

Jinan Bastaki is an Associate Professor of Legal Studies at NYU Abu Dhabi.

Under this provocative title, I will address the early days of the ICJ and who took whom to court, what were the advisory opinions that were issued, issues that states wanted to take to the ICJ, and how the composition of the court changed. With those changes, international law is pushed by the Global South towards a vision that is more just. It has not been accomplished yet, but I want to look at certain cases to highlight this progressive shift, and then to look at how perhaps South Africa and Nicaragua are ‘turning international law on its heels’ by amending the power imbalance or at least attempting to.

In the early days of the ICJ, many Global South states were not independent. At the time, few of them started proceedings against Global North States before the International Court of Justice in contentious cases. Indeed, the opposite was true. Many Global North states attempted to enforce pre-independence treaties on states in the Global South. In 1949, for example, France brought proceedings against Egypt when the latter had put a number of French nationals in camps after they sequestered their property during the 1948 Arab Israeli War.¹ France brought the case against Egypt based on a Convention² that was signed in 1937 when Egypt was still a British protectorate, so Egypt eventually

¹ *Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)*, [1949] ICJ.

² The Convention regarding the abrogation of the Capitulations in Egypt, signed at Montreux on May 8th. 1937

withdrew the challenged measures, and the case was removed from the docket.

The key point, however, is that France sought to enforce a pre-independence treaty against Egypt in 1951.

Additionally, in response to the nationalisation of the Anglo-Persian oil company, the UK instituted proceedings against Iran³, and while the Court in that case ultimately declined the jurisdiction, it issued provisional measures, and the provisional measures would have undone the effects of nationalisation. At the time, the status of provisional measures was not clear, thus, Iran did not abide by the order. In 1955, relying on a number of historical treaties, Portugal brought proceedings against India to claim the right of passage of its aircrafts over Indian territory to reach Portuguese territories within India.⁴ Eventually, a narrow majority of the ICJ judges denied any Indian wrongdoing, yet, the Court, in principle, affirmed Portugal's rights.

Newly independent states had to accept those treaties that they had 'signed' when they were not independent. This tells us a little bit about the story of international law that was largely created by European colonial powers, which was imposed upon the Global South. Yet, third-world states did not reject or discount international law. They still attempted to use it. Global South states tried to bring legal questions to the ICJ in the early years for advisory opinions. On the other hand, neither the Hyderabad question in 1949 nor the Suez Canal question went to the Court due to the objections by Global North States. The objection to having these advisory opinions largely, though not exclusively, came from Global North States. They came from the older states who wanted a 'political' solution, rather than a legal solution, which is something that is not unfamiliar to us today. Syria in 1948 attempted to bring the Palestine question to the ICJ for an advisory opinion, yet, it failed. It needed seven votes at the Security Council in order to be taken to the ICJ, but it only got six. The countries that were in favor were Argentina, Belgium, China, Colombia, Syria and the UK.⁵ And those that abstained were Canada, France, the USSR and the US, and thus the case never actually went to the ICJ for an advisory opinion at that time.

³ *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*, [1951] ICJ.

⁴ *Right of Passage over Indian Territory (Portugal v. India)*[1955] ICJ

⁵ https://history.state.gov/historicaldocuments/frus1948v05p2/pg_1215

The South African cases⁶ proved to be, in a sense, a turning point in terms of the composition of the Court and where international law was going, at least at the ICJ. Apartheid was condemned in the General Assembly starting in 1952, but South Africa did not change course, and the Security Council never really did anything, it never took any enforcement measures against South Africa until much later. But South Africa was actually apprehensive when judicial proceedings were instituted against it. There were three advisory opinions⁷ that were delivered at the ICJ in the 1950s which a) affirmed the status of the mandate territory, even though South Africa said they had annexed it b) stated that the General Assembly could take decisions on the mandate by majority and c) stated that the General Assembly could hold hearings with petitioners from the mandate.

Ethiopia and Liberia then instituted proceedings in 1960 against South Africa.⁸ The first question to decide was whether Ethiopia and Liberia had standing to challenge South Africa's conduct as a mandate power. In 1962, a narrow majority of eight votes to seven held that Article 7 of the Mandate for South West Africa did not require the claimants to show an individual material interest to bring a case. This was a win for Ethiopia and Liberia. Yet, six of the seven judges who were in the minority wrote almost scathing dissenting opinions claiming that Ethiopia and Liberia did not have standing in these cases. These judges were from Poland, France, Australia, the United Kingdom, Italy, and then the ad hoc South African judge. In 1966 the composition of the court changed again, essentially overruling the decision that was given in 1962. The Court, in 1966, held that the mandate system did not provide UN members with any right to require the due performance of the mandate and discharge of the sacred trust, and that the right was vested exclusively in the League of Nations. There is a switch where the majority stated that they do not have standing and that they could not take a decision in this

⁶ The series of disputes and advisory opinions before the ICJ in the 1950s–70s that dealt with South Africa's administration of South West Africa (present-day Namibia) and, indirectly, its apartheid policies.

⁷ *International Status of South West Africa*, 1950, Advisory Opinion, ICJ; *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*, 1955, Advisory Opinion, ICJ; *Admissibility of Hearings of Petitioners by the Committee on South West Africa*, 1956, Advisory Opinion, ICJ.

⁸ *South West Africa (Liberia v. South Africa)* [1960] ICJ, *South West Africa (Ethiopia v. South Africa)* [1960] ICJ.

case. The dissenting judges in this case also wrote thundering dissenting opinions.

When the composition of the court changed again, there were four African judges that were on the bench in 1970 and only two of the judges who were there in the 1967 case were on the bench when the advisory opinion on the Namibia case was issued in 1971.⁹ This time, a different view of international law starts to emerge. The Court in the Namibia case states that the concepts that are embodied in article 22 of the League of Nations Covenant regarding mandate system are not static. They are, by definition, evolutionary, as was the concept of the sacred of trust. The Court stated that there had to be consideration for the changes which had occurred in the last half century. The interpretation cannot remain unaffected by the subsequent development of law through the Charter of the United Nations and by way of customary international law. From here, one sees this further push at the ICJ towards a counter-hegemonic potential.

There is frequently a stalemate in the United Nations due to the veto power. Consequently, Global South states are always at a disadvantage, being unable to really affect international law or its enforcement. International law was done to them, as opposed to them being involved in the development of international law. Yet, the ICJ provided a forum in which international law could be developed to encompass a more emancipatory potential of the law.

At this point, I want to move from then to where we are with the ICJ today. Moritz Koenig stated recently that the current situation in Gaza, the case under the Genocide Convention brought by South Africa to the ICJ¹⁰, and recent student encampments have brought such considerations about the ability to authoritatively speak about international law into sharp relief. Hillary Clinton has accused student protestors calling for an end to genocide in Gaza of ‘ignorance’, dismissing their ability to speak about the crime of genocide based on their lack of knowledge of the Middle East. Expertise, in this case, works as a rhetorical device that sets apart purportedly uninformed ‘radicals’ from seasoned career

⁹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*

¹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* [2023] ICJ.

diplomats who, according to Clinton, possess the cultural etiquette and professional decorum to pronounce which international legal arguments are valid and which ones are not. Universities have also told their students that they must remain ‘neutral’ to be able to speak about the conflict. Moreover, Western governments and Israel have repeatedly dismissed South Africa’s case to the ICJ as its legal team has, in their view, presented ‘biased and false claims.’ Officials have called on the ICJ to dismiss the case referred to it as an ‘abuse’ of the court. Equally, German officials have called Nicaragua’s legal challenge¹¹ ‘grossly biased’, and German media has portrayed the supporters of Palestinian liberation as petulant children who misunderstand law and politics. In parallel, Western nations have virulently dismissed the application of the Genocide Convention as an ill-guided attempt to ‘play politics’. Accusations of bias and gross misunderstandings of international law work to paint lawyers from the Global South and social justice movements for liberation as irrational actors who do not comprehend the intricate details of international law. An extremely circumscribed version of international legal expertise thus distributes entitlements to make international legal arguments while serving to infantilise non-Western legal arguments and extending W.E.B. Du Bois’ colour line to contemporary debates.

This is where we find ourselves in international law. When Global South states resort to international law and push international law towards its emancipatory potential, it is considered political or a misuse of the law. What I want to do next is to look at South Africa and Nicaragua at the ICJ and what their decisions in these provisional measure cases have given us in terms of international law. The ICJ issued its first interim order in response to South Africa’s application in January of 2024¹², then the second¹³ and the third¹⁴. It affirmed certain matters about the law:

¹¹ *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* [2024] ICJ.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, Order of 26 January 2024*, ICJ.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order Indicating Provisional Measures of 26 January 2024, Order of 28 March 2024*, ICJ.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024*, ICJ.

genocide as a *jus cogens* norms, and that all states have a responsibility to bring to an end the breach of a peremptory norm and affirming the urgency of the situation in Gaza. The provisional measures order builds on the *Bosnia v. Serbia* case¹⁵, which affirmed the responsibility of third states not to be complicit and the responsibility to prevent an impending or potential genocide from occurring. What these provisional measures orders establish is the responsibility of third states to do something in order to prevent the genocide from occurring. Certain states did indeed follow through these orders or rather, some of their courts did. For example, in the Netherlands, a domestic court ruled for the prevention of the transfer of certain weapons to Israel while Japan terminated cooperation with the Israeli military. The provisional measures order established that it was not sufficient to claim that states were uninvolved; they also bore responsibility. When Nicaragua took Germany to the Court and asked for provisional measures, there was hope that, following the three provisional measures orders that were issued by the ICJ in *South Africa v. Israel*, perhaps the ICJ might even expand upon the capacity to prevent. Yet, this did not happen, and it seems that the Court was quite convinced by Germany's arguments that their weapons are not being used in Gaza and that the transfers decreased. The Court refrained from making any pronouncement. In my view, this was an opportunity for the Court to consider these provisional measures orders together and, even if it convinced that Germany at the time was not contributing to what was happening in Gaza, to expand the concept of the capacity to prevent, as it did in the Bosnia cases. While the Court did not take this step, it did emphasise that third states bear a responsibility. Thus, although there is certain potential, there are also clear limitations to how far the Court is willing to go.

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ.

The War in Gaza and the Responsibility of Third-Party States in International Law between Moral and Legal Limits

Ahmed F. Khalifa

Ahmed F. Khalifa is an Assistant Professor of Criminal Law and International Criminal Law at Ain Shams University, Cairo.

One must salute the courageous decision, institutionally and individually, to adopt the title of the 2024 Boğaziçi International Law Conference as “Rethinking International Law after Gaza”. Unfortunately, we have witnessed how individual academics are sanctioned in the Western world for taking positions that condemn violations of the Israeli military actions in Gaza, or for sympathising with the victims of such operations. Similarly, several institutions have been sanctioned in one way or another for activities that shed the light on the mass violations of international law that caused enormous sufferings for Palestinians. This is why the institutional decision to adopt such a cause and to put it to the front line, regardless of the consequences that may be, from a pragmatic perspective, harmful to a nascent institution that tries to build relations in the academic circles, is a courageous act that is to be not only respected but also admired.

This courage has to be recognised and is not to be overlooked. Therefore, Boğaziçi University should be applauded for standing with the moral obligation of opening a forum to discuss without excluding anyone, or imposing anything on anyone, but just allowing a free discussion on an issue that is not only important for Palestine but for the world community.

Another element that has to be noted in relation to the context of the 2024 Boğaziçi International Law Conference is the fact that it is a moment of crisis; not only a humanitarian crisis, but more importantly,

a crisis in the essence of the value of our humanity. It is a moment where all people watch on screens documented violations of every single rule of International Humanitarian Law, of the most prominent rules of public international law, of respecting the United Nations decisions, of respecting the Charter of the United Nations by the powerful states, bluntly disobeyed, bluntly discarded, and it seems that nobody cares, or at least some other realpolitik considerations are trumping. This is an extremely hard moment for any person working in international law. Personally, for three weeks I could not find anything to say in my lectures as the days October, November, and early December were representing the loss of any meaning or value for any discussion relating to international law.

The historical move of South Africa filing a case at the ICJ against Israel¹ returned us some window of hope that maybe there is something that we can do as scholars, as academics. This was even more enforced by the decision on the provisional measures issued by the ICJ on the 26th of January 2024.² Along the same line, the filing of Nicaragua of a claim against Germany³ regarding the implication of the latter in the same situation in Gaza. Finally, a huge boost to the legitimacy of international law came with the advisory opinion of the ICJ on the illegality of the ongoing occupation of Palestinian territories on the 19th of July 2024.⁴

This paper deals with the moral versus the legal obligations of third-state parties and the responsibility of these States between the moral and the legal limits. I will start with the title of the Conference itself, which is interesting, smart and inspiring: “Rethinking international law after Gaza”. Unlike other conflicts that are still ongoing, Gaza is a turning point for international law as it challenges the discipline from several perspectives. This brings us to the second word, “Rethinking.” Do we mean rethinking international law as it currently exists, that is, exploring new areas, new perspectives, new tools, and new interpretations of what is already in place, in order to offer meaningful or helpful

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* [2023] ICJ.

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, Order of 26 January 2024*, ICJ.

³ *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* [2024] ICJ.

⁴ Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, I.C.J. Reports.

solutions for the difficult moment we are witnessing? Or do we mean rethinking international law in its very existence, thus not merely rethinking international law as it is, but rethinking the very foundations of its existence? These challenges to the essence of the existence of the current international law have been called by some as deconstructing international law, by others as decolonising international law, or in the older line of thinking of TWAIL. Yet these efforts put the weight of its impressive capacity for analysis and critique to show the inherent problems in the current international legal world order but usually do not present alternatives. They present respectful trials to deconstruct without an effort to reconstruct. I will focus on rethinking international law as it exists, keeping my humble contribution about rethinking international law in its existence as a concluding remark.

We are witnessing a situation that is claimed to be a genocide; an armed conflict including two parties with mass violations, or claims of violations, that we cannot count in one session committed from one party against another for the period of months. In the meanwhile, the only meaningful action, in legal terms, that had been taken to condemn these ongoing violations originated from a third-state party; South Africa. It is ironic that such a claim brought to the ICJ was not initiated by Palestine, not Jordan, not Egypt, not Syria, not Lebanon, not what we call the border countries that may be impacted in a way or another. This claim resulted, for the time being, in the ICJ provisional measures decision of 26 January 2024. Moreover, another decision came from the ICJ in its advisory opinion of 19 July 2024. Both decisions tackled the issue of the obligations of third-state parties. Thus, I would like to engage with each one of these decisions to show how the role assigned to third-state parties is reflected not only from a normative framework, but also from an enforcement perspective.

It is to be mentioned that the discussion is ongoing about whether the deficiency of international law is due to its normative framework or rather it is due to the lack of sufficient enforcement mechanism. Some argue that both aspects are problematic with different weights given to the contribution of each depending on the opinion of each scholar. Regardless of this debate, one may notice that there is some kind of normative change addressing the role and obligations of third-state parties in both decisions of the ICJ; the provisional measures decision, and in the advisory opinion decision.

On the one hand, the decision of the ICJ on the provisional measures does have important implications for third-state parties. It is true that the operative paragraphs are only addressing Israel. Still, what this decision implies in relation to third state parties is not negligible, because in this decision, the ICJ recognised that there is a risk of genocide. Therefore, there is a negative obligation on all countries not to be part of a genocide, and this is stemming directly from the Genocide Convention⁵, in particular article three of the Convention that forbids any act that constitutes a complicity in genocide. If we read this decision along with the 2007 ICJ decision on *Bosnia v. Serbia*⁶, where the Court stated in paragraph 432 that there is no reason to make a distinction, in substance, between complicity in genocide that is prohibited under Article 3 and the prohibition to aid and assist any wrongful act by another state within the meaning of Article 16 of ARSIWA rules.⁷

This link is quite important, and it will be reflected in enforcement, because we usually think of complicity in genocide through the lens of *mens rea*, which looks for criminal responsibility more than international responsibility; the *mens rea* of having a specific intent to eradicate. Yet, when the Court linked complicity to genocide to the prohibition imposed on all countries to aid or to assist any unlawful act contributing to the risk of genocide, the Court has recognised it as an unlawful act in itself. This imposes an obligation on States to refrain from helping any activity that may lead to the possibility of a genocide. Such a reading allows for considering that it is not necessary to prove that there is the *mens rea*, the specific intent of eradicating people, to establish the responsibility of third-state parties for contributing to genocide. I believe that without this decision, it would have been very hard for Nicaragua to present its claim against Germany in March 2024, just a few weeks after the provisional measures' decision on the 26th of January 2024.

Based on this decision, third-state parties are normatively concerned in cases related to genocide and this may also have an implication on ways to enforce such an obligation. I want to draw attention to a forum

⁵ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277

⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ.

⁷ UN General Assembly, 'Responsibility of States for Internationally Wrongful Acts' (12 December 2001) UN Doc A/RES/56/83, Annex.

that is often overlooked: to domestic courts. Governments are often constrained in their actions by numerous factors, including pragmatic and political considerations, as well as the nature of the regime, whether democratic or otherwise. But the judiciary is not. It is quite possible that domestic courts become the forum for trying to impose a certain way of behavior on one's own government. Theoretically, there is nothing that would stop individuals from soliciting their national courts to order their governments to stop certain companies from providing arms or any form of products that support illegal action that would be attributable to the state itself by its failure to stop the contribution of these companies to the ongoing internationally wrongful conduct. This is an area that requires greater investment from the community of scholars and activists. This may simply lead to a remarkable change in the whole enforcement paradigm through small drops of water. Some IHL legal clinics are already exploring this possibility.

On the other hand, the role of third-state parties was clearly mentioned in the advisory opinion of 19 July 2024 related to the ongoing occupation by Israel to the Palestinian territories. In the operative paragraphs, the Court imposed on states not to recognise the occupation and not to aid and assist in its continuation. This is a negative obligation. But in paragraph 279 of the decision, the Court actually added a positive obligation that did not appear in the operative paragraphs. This paragraph imposes three obligations on third-state parties: not to recognise, not to aid, and to work, to disable, to remove any obstacle of the rights of the Palestinian people to self-determination and their right to liberate themselves occupation.

This positive obligation is originating directly from the ICJ reading of states' obligations in the case of occupation. One can hardly dismiss this obligation under the pretext that advisory opinions are not binding from the positive point of view. As Richard Falk argued, even if advisory opinions are not binding in principle, it is a statement of the law by the highest instance about issues that are not clearly settled in international law.⁸ Whose words else would be binding on such issues other than the ICJ?

⁸ Richard Falk, *The Gaza Challenge: Does International Law Matter if it cannot be Enforced?*, in Keynote Panel Session I Justice and International Law in Boğaziçi International Law Conference *Rethinking International Law After Gaza* 3-4 August 2024. (Directed by Boğaziçi Üniversitesi, 2024) <https://www.youtube.com/watch?v=6G0QvXlq-1E&t=5636s&ab_channel=Bo%24%9Fazi%23%A7i%23%9Cniversitesi> accessed 15 August 2025.

This idea may have serious implications if taken to enforcement levels. It is quite possible to follow many paths of pursuing companies in domestic courts, not only in relation to genocide, because this is the provisional measures decision, but also any commercial transactions with any activity that contribute to the illegal action of perpetuating the occupation, for example, any trade operations in relation to products from the settlements from the West Bank and Gaza. It is now an option that one may resort directly to their national jurisdiction objecting to the fact that their government is continuing trade or commercial relations with another company that is directly trading or dealing in occupied territories, because this is against international law. Of course, this is subject to the status of international law inside each regime, whether it is a monistic or dualistic regime, and it depends also on the independence of the judiciary inside each regime. What is certain, however, is that there is a new space of adjudicating the case of Palestine from a national jurisdiction's perspective. I do believe that this path will be much less politicised than the international adjudication of the Palestine issue.

Another point that should be addressed in relation to rethinking international law as it exists is the right to veto and the normative framework regulating it and its impact on the enforcement framework. The current regime is criticised for including the right to veto since its inception, it is labelled as unbalanced, and thus unfair. This issue becomes particularly relevant when a third-state party employs its veto in relation to the matter under consideration. In such cases, third parties are not positioned to facilitate action; rather, they act as obstacles. This raises the question of whether the right to veto granted to the five permanent members of the Security Council is truly unconditional.

The serious discussion about the right to veto surfaced in the 2001 International Commission on Intervention and State Sovereignty report.⁹ In paragraph XIII, the report stated that “the Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital State interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support”. This limitation to the right to veto was not repeated. In fact, there was an

⁹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, 2001)

attempt to include it in the General Assembly World Summit Outcome in 2005¹⁰, where the notion of the Responsibility to Protect was endorsed, yet the United States insisted on its removal.

It is a valid debate now to question whether you can challenge the legality of using a veto to stop the risk of committing genocide. The ICJ may be a forum for such a question. If the General Assembly asks for an advisory opinion from the ICJ with an abstract question about the potential limitation for the right to veto in certain cases, this would be a forum where we may be able to use the existing tools of international law to rethink it.

I do believe that this is a moment where the current regime of international law, established after Second World War, is fractioned or even collapsing. It is a moment where there is a clear confrontation between the main powers consecrated by the regime, whether the US or the European Union or Russia, are bluntly and clearly not only adopting double standards in what they do as compared to what they say, but also further announce in their public discourse that they support something that is illegal according to the decisions of the international bodies. To my knowledge, this is an unprecedented moment. Even in 2003 during the weeks that preceded the war in Iraq, the situation was different as there was no decision indicating that going to war was illegal per se. There was a failure to get a consensus to have a resolution allowing the war.

This unique situation we are witnessing today deprives the discourse of international law as it is since 1945 from its foundational legitimacy, even in appearance. It is not anymore a question of double standards, it is a question of clear and direct defiance of the decisions of international instances. This prompted Richard Falk to refer, ironically, to China as probably the most reasonable international power.¹¹ At the very least, it may be said that China is the least unreasonable of the major powers. To be clear, I support limiting the right to veto rather than abolishing it entirely. I do not believe the international community is prepared to

¹⁰ UN General Assembly, '2005 World Summit Outcome' (24 October 2005) UN Doc A/RES/60/1.

¹¹ Richard Falk, *The Gaza Challenge: Does International Law Matter if it cannot be Enforced?*, in Keynote Panel Session I Justice and International Law in Boğaziçi International Law Conference *'Rethinking International Law After Gaza'* 3-4 August 2024. (Directed by Boğaziçi Üniversitesi, 2024) <https://www.youtube.com/watch?v=6G0Qvxlq-1E&t=5636s&ab_channel=Bo%24%9Fazi%23%27i%23%29Cniversitesi> accessed 15 August 2025.

eliminate the veto for various reasons, which I do not have the space to address here.

In conclusion, it is a moment where we need to hear new visions of how a new international world order should look like, after producing a lot of doctrine shedding light on inherent injustices in the normative framework of the current regime. In fact, it is our right, or even our duty, to dream about a more balanced and more just international regime; rethinking international law in its current existence is a must, yet deconstructing international law and rebuilding it again is a magistral project that may take decades. Another path that we shall not overlook is to rethink international law as it exists, trying to work on carving some paths of development from inside the existing regime. I think it is an era where we have to deal with a lot of deceptions, but also with a lot of hope.

International Humanitarian Law: Access, Rights and the Future

‘Traumatocracy’: Personified Statehood, Military Necessity, and the Future of Customary International Law

Eric Loefflad

Eric Loefflad is a Lecturer in Law at the University of Kent.

When imagining the future of international law after Gaza, a preliminary task is imagining how international law’s present is conditioned by international law’s past. In few domains is this truer than in the domain of the ‘law of armed conflict’ (sometimes referred to as ‘international humanitarian law’) that, if its history is taken seriously, we can observe a vast archive of shifting thoughts on the relationship between truth, violence, and normative order.¹ On this point, one needs to only consider how the tactic of inflicting mass starvation that we have witnessed in Gaza has long been excluded under the category of ‘war crime’ and was thus considered a legitimate means of war only until its condemnation in the First Additional Protocol to the Geneva Conventions in 1977.² With Additional Protocol I still being considered controversial—such controversies largely resulting from American and Israeli rejection—as Jessica Whyte has shown, the current violence in Gaza reveals the chilling prospect that, according to some lines of legal interpretation, genocide in Gaza is consistent with the operation of international humanitarian law.³

¹ See Pablo Kalmanovitz, *The Laws of War in International Thought* (Oxford University Press 2020)

² Nicholas Mulder and Boyd van Dijk, ‘Why Did Starvation Not Become the Paradigmatic War Crime in International Law?’ in Ingo Venzke and Kevin Jon Heller (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press 2021)

³ Jessica Whyte, ‘A “Tragic Humanitarian Crisis”: Israel’s Weaponization of Starvation and the Question of Intent (2024) *Journal of Genocide Research* 1

How then should this law, and the ethos that attaches to it, be historicised with a view towards the future when something like a genocide consistent with core humanitarian legal precepts is possible in the minds of some? My approach for interpreting this perverse outcome of ‘humanitarian genocide’ requires thinking carefully about how the interpretation of the laws of armed conflict is closely linked to an uneven geography of how wartime trauma is understood, and on this basis ‘whose trauma matters?’⁴

As an initial point, trauma is a vital, yet deeply under-explored, consideration when analysing the law in this area. After all, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, lists as a potentially genocidal act, ‘[c]ausing serious bodily or *mental* harm to members of the group.’⁵ Despite this textual inclusion, the category of ‘mental harm’ has long been neglected and/or subject to exceedingly narrow interpretations that do not seriously consider how all-pervasive experiences of mental harm denigrate group identity, the Genocide Convention’s very object of protection.⁶ For instance, in its reservation to the genocide convention, the US stated that, in its understanding, ‘the term “mental harm”...means permanent impairment of mental faculties through drugs, torture or similar techniques.’⁷ As Benjamin Meiches makes clear, such narrow international legal views do not at all do justice to the latest advances in neuroscience that show very strong points for linking the collective experience of mental trauma, beyond what is directed towards individuals, to the larger matter of group survival.⁸ Relatedly, as Tom Dannenbaum has shown, international law has not adequately reckoned with the ways in which siege starvation further this trauma in what amounts to ‘societal torture’ whereby

⁴ Adam Sutcliffe, ‘Whose Feelings Matter? Holocaust Memory, Empathy, and Redemptive Anti-Antisemitism’ (2024) 26 *Journal of Genocide Research* 222

⁵ *Convention on the Prevention and Punishment of the Crime of Genocide*, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII, at Art 2 (b) (emphasis mine).

⁶ Stephen Gorove, ‘The Problem of “Mental Harm” in the Genocide Convention’ (1951) *Washington University Law Quarterly* 174

⁷ *Declarations and Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, available at <http://www.preventgenocide.org/law/convention/reservations/> (last accessed 02 March 2025)

⁸ Benjamin Meiches, ‘Genocide and the Brain: Neuroscience, Mental Harm, and International Law’ (2022) 24 *Journal of Genocide Research* 23

individual survival imperatives are turned against the very social bonds that uphold a group’s identity.⁹ While these considerations could not be more relevant to Gaza, focus must also be on the ways in which these traumas – and their genocidal implications – are discounted through interpretations of the laws of armed conflict that privilege these same interpreters in the fetishisation of their own trauma.

When sketching a genealogy of the production of uneven geographies of meaningful trauma through the articulation of laws governing war, there is absolutely no shortage of history of how these laws served the greater violent process of European colonisation of the rest of the world.¹⁰

However, a major milestone came in the anticolonial struggles of the post-Second World War era as the forces waging national liberation wars against colonial powers viewed recognition under the international laws of war as a key source of legitimacy.¹¹ Importantly, one struggle occurring within this general context that had major implications for the law-war-trauma continuum was the American War in Vietnam that was highly publicised as it concerned the failures of the US to supply virtuous world leadership.¹² As the war became highly unpopular with an American public as a betrayal of American ideals, and Veterans of the war struggled both with the harm they witnessed and the harm they personally caused, a new discourse of ‘Post-Traumatic Stress Disorder’ took hold. According to the radical psychiatrists at the forefront of this work, namely Robert Jay Lifton and Chaim Shatan, the path for a Vietnam veteran to recover from the mental harm caused to others had to take the form of an active

⁹ Tom Dannenbaum, ‘Siege Starvation: A War Crime of Societal Torture’ (2021) 22 *Chicago Journal of International Law* 368

¹⁰ See Frederic Mégrét, ‘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 2006); Helen Kinsella, *Settler Empire and the United States: Francis Lieber on the Laws of War* (2023) 117 *American Political Science Review* 629; Christopher Szabla, ‘Civilising Violence: International Law and Colonial War in the British Empire, 1850–1900’ (2023) 25 *Journal of the History of International Law* 70; Joseph MacKay, *The Counterinsurgent Imagination: A New Intellectual History* (Cambridge University Press 2023)

¹¹ Amanda Alexander, ‘International Humanitarian Law, Postcolonialism and the 1977 Geneva Protocol I’ (2016) 17 *Melbourne Journal of International Law* 15; Boyd van Dijk, *Internationalizing Colonial War: On the Unintended Consequences of the Interventions of the International Committee of the Red Cross in South-East Asia, 1945-1949* (2020) 250 *Past and Present* 243

¹² Mark Atwood Lawrence, *The End of Ambition: The United States and the Third World in the Vietnam Era* (Princeton University Press 2021)

and public denouncement of the imperial militarism that placed them in the position to cause this harm.¹³

These debates about the politics of combatant trauma had a vast contemporaneous international legal component as the conference to revise the laws of armed conflict began in Geneva in 1974, and was novel in its representation of Third World national liberation movements – an initiative furthered in great measure by Vietnam.¹⁴ Yet, in its campaign to have wars of national liberation recognised as international conflicts, and those waging them recognised as legitimate combatants, the conference sparked a major backlash led by Israel. In presenting the victimhood of the Holocaust as incontestable proof of Israeli dedication to an international legal order with the purpose of humanizing war, the Israeli delegate accused the Third World states of unduly politicizing that which were apolitically ‘legal’ matters.¹⁵ While Israel was the sole vote of ‘no’ at this conference when it came to the signing of the Geneva Protocols in 1977, arguments made here deeply resonated with a number of key American scholars as their country faced its reckoning with the Vietnam War and its associated hopes of restoring American confidence.

As the 70s gave way to the 80s – and Ronald Reagan assumed the American Presidency in a capacity that was decidedly anti-Third World, pro-Israel, and dedicated to reversing the American humiliation of the Vietnam War – a new politics of the laws of armed conflict came to the fore. This was nothing short of a grand bifurcation of this law as, on the one hand, in a movement largely consisting of academics and non-governmental organisations, sought to transform the law of war/armed conflict into ‘international humanitarian law’ in a manner overlapping extensively with the growing movement of international human

¹³ Nadia Abu El-Haj, *Combat Trauma: Imaginaries of War and Citizenship in post-9/11 America* (Verso 2022), 38-64

¹⁴ Amanda Alexander, ‘Revolutionary War and the Development of International Humanitarian Law’ 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)

¹⁵ *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts Geneva (1974 -1977): Volume VII* (Federal Political Department, 1978) 215-216; see also Jessica Whyte, ‘The “Dangerous Concept of the Just War”: Decolonization, Wars of National Liberation, and the Additional Protocols to the Geneva Conventions’ (2018) 9 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 313

rights.¹⁶ On the other hand, in the opposite purposive direction, the US military began undertaking a program of ‘operational law’ whereby international legal standards were shaped in a manner that privileged military perspectives and military efficiency.¹⁷ While technical and realist in its presentation, this turn to operational law was deeply imbued with the broader effort to professionalise the military and recover the honour and the confidence lost as a result of Vietnam.¹⁸ This objective manifested strongly in 1987 as the Reagan Administration, influenced by Vietnam veterans and staunchly pro-Israel Neoconservatives, rejected the previously signed Additional Protocols of the Geneva Conventions on the grounds that they enabled Third World ‘terrorism’ and ‘totalitarianism.’¹⁹ Moreover, within this same time period, the discourse of ‘trauma’ in the US moved away from overseas wars (especially as they concerned victims of American actions) and became focused on domestic American realities – often in ways that emphasised victimisation at the hands of criminals which in turn demanded further action from an American carceral state apt to using war-like justification in the domestic social sphere.²⁰ In a connected capacity, the war in Vietnam was popularly reimagined into a narrative of American heroism that denied atrocities committed abroad as the source of veteran trauma and rather proclaimed this trauma resulted from a lack of heroic welcome/popular American support.²¹

As the Cold War ended, this bifurcation of the laws of war (and the different forms of trauma associated with it), took on a whole new dimension as international criminal tribunals (responses to violence in the former Yugoslavia and Rwanda) in the 1990s generated a novel channel for articulating the law of armed conflict on a customary, as opposed to

¹⁶ Page Wilson, ‘The Myth of International Humanitarian Law’ (2021) 93 *International Affairs* 563; Page Wilson, ‘Law Wars: Academia and the Manufacture of International Humanitarian Law’ (2024) 26 *Journal of International Humanitarian Law* 383

¹⁷ Craig Jones, *The War Lawyers: The United States, Israel, and Juridical Warfare* (Oxford University Press 2021), 91-124

¹⁸ Andrew Bacevich, *The New American Militarism: How Americans are Seduced by War* (Oxford University Press 2013), 37-48

¹⁹ Victor Kattan, ‘“The Third World is a Problem”: Arguments about the Laws of War in the United States after the Fall of Saigon’ in Cuddy and Kattan, *Making Endless War* (n 14)

²⁰ Abu El-Haj (n 13) 82-91

²¹ *Ibid.*, 91-103

treaty-based, basis.²² Thus, when the attacks of 9/11 happened, and the US launched its ‘Global War on Terror’ – while it had numerous justifications to draw upon as developed through its projects of ‘operational law’ – the developed customary body of law of armed conflict had ample grounds to contest it. As the Americans turned to their fetishised conceptions of their own trauma (something operational law and new formulations of trauma enabled) such international legal claims outside this particular model of self-identification were liable to being rejected as illegitimate ‘lawfare.’²³ This is to say nothing of the US’s special relationship with Israel which, already in the midst of suppressing the Palestinian’s Second Intifada, used 9/11 as an opportunity to cast its efforts in transcendent terms as a battle of the ‘civilised’ against the ‘barbarians’ exceeding any of the actual particularities of the question of Palestine.²⁴ The ‘lawfare’ label was used here with similar enthusiasm and for similar reasons through a process driven in great measure through American-Israeli collaboration in developing international legal justifications in manners excluding most of the rest of the world.²⁵ Flashing forward to the present, these basic structures of argument remain largely intact as certain assertions of the law of armed conflict are fuelled in capacities that centre narrow self-perceptions of trauma easily aligned with Zionist narratives of victimhood.²⁶ A genocide consistent with ‘international humanitarian law’ thus becomes conceivable and actualised.

²² Giovanni Mantilla, ‘From Treaty to Custom: Shifting Paths in the Recent Development of International Humanitarian Law’ (2024) 37 *Leiden Journal of International Law* 359

²³ Freya Irani, ‘“Lawfare”, US Military Discourse, and the Colonial Constitution of Law and War’ (2018) 3 *European Journal of International Security* 113

²⁴ Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (Wiley-Blackwell 2004) 121.

²⁵ Gordon Neve, ‘Human Rights as a Security Threat: Lawfare and the Campaign Against Human Rights NGOs’ (2014) 48 *Law and Society Review* 311

²⁶ Zoé Samudzi, ‘“We are Fighting Nazis”: Genocidal Fashionings of Gaza(ns) After 7 October’ (2024) *Journal of Genocide Research* 1.

Will There Be Any IHL After Gaza? From the Law of Armed Conflict to Israel's 'Law' of Armed Genocide: A Global Threat to Civilians Worldwide

Luigi Daniele

Luigi Daniele is a Senior Lecturer at Nottingham Law School, NTU.

Boğaziçi University International Law Conference is an exemplary academic endeavor to put international law scholars together in a safe space of scholarly discussion, which is often what is missing in the academic environment of western countries, which are apparently pursuing an opposite endeavor, often removing these topics from the areas of legal discussion and normalising what we could call the Palestine exception to academic freedom.

I completely agree with scholars who puts a particular emphasis on the viciously Eurocentric and white supremacist influences on the history of international law, which is a core theme of Mohsen al Attar's paper in this collection. I want, however, to propose a slightly different angle. Those were undoubtedly the origins of international law in the 1600s and the structures of privilege and exclusion lasted for centuries, but we are no more there and should not be pushed back there. Decolonisation has changed those structures. Leaders, activists and diplomats from the Global South decisively contributed to the development of the human rights agenda of the international community, and, crucially, to the latest stage of codification of the laws of armed conflict, in particular the Additional Protocols to the four Geneva Conventions. Major military powers were still trying to universalise, as Karma Nabulsi taught us in her work¹, their

¹ Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law* (Oxford University Press 2005).

traditions of war, of occupation, of subjection, whereas those who had recently won the fight for their self-determination and emancipation from colonial yokes were striving for the legal recognition of wars of national liberation.

I want to propose that what is happening in Gaza, in my humble opinion, has almost nothing to do with the structural features of international law, and has much more to do with the Israel exception to international legality. This exceptionalism is inscribed in the history of the codification of the Genocide Convention, born while the 1948 Nakba was being perpetrated, in the shadow of the Holocaust, pushing Palestinians in the shadow of international legality since then. From this point of view, I would rather capsizesome of the things that have been proposed so far and take seriously, rather than indicate as naïve, what Palestinian jurists are asking us: helping them dismantling this exception to international legality, walk with them in the struggle for the achievement of '*nothing more, nor nothing less than what is their right*', as Raji Sourani often says.

Far from simply perpetuating traditional structures of exclusion essential to international law, in international humanitarian law, Israel is trying to reinscribe contemporaneity into the admissibility of pre-modern means and methods of warfare, as well as of medieval, tribal conceptions of war and warfare.

Sadly, by means of implausible distortions of the laws of war, Israel is often succeeding in this most dangerous endeavour. Distortions of the laws of war that have been long in the making, and there are sectors of the international legal scholarship that are profoundly co-responsible for what is happening in Gaza now.

For the last 15 years, every time Palestinian civilians were killed *en masse*, there were always some Western scholars ready to blog about the potential legality of the killing of Palestinian civilians. It is difficult, of course, to talk about this after seeing day in day out, for 10 months, fathers and mothers picking pieces of their killed children from their houses. Children, indeed, are protected by a customary rule of international law requiring a special respect and their protection. Philippe Lazzarini, the president of UNRWA, has showed that the killing of children in Gaza exceeded that of all the armed conflicts in the world since 2019. How could this be perpetrated? Has our discipline done something in this regard?

An investigation by the Financial Times, not a pro-Palestinian pamphlet, revealed that Israeli weapons used in Gaza amount to “2000 pound MK 84 - US provided bombs”.² The radius of impact of these bombs is such that if you are on the goal line of a football field, and the bomb is dropped on the opposite goal line, you are still in the lethal impact radius of the bomb.

The United States has provided, according to Reuters, at least 14,000 of these weapons to an ally that they knew was intending to use them on areas with 34,000 people per square kilometer.³ Since each of these weapons has a lethal impact radius, as I mentioned above, of more than 360 meters, if you combine the lethal radius of impact of all these 14,000 bombs, it amounts to firepower capable of razing to the ground 5000 square kilometers of inhabited areas, which is 15 times the total surface area of the Gaza Strip.

One may recall the so-called ‘safe zones’. A New York Times report in January discovered, through satellite analysis, at least 208 craters of 2000-pound bombs thrown in the southern Gaza areas where Palestinians were forcibly sent, telling them that those were safe.⁴ The result was that, with the same indiscriminate or disproportionate attack, twice as many civilians were killed.

These material means of exterminations have been accompanied by theoretical and legal arguments to legitimise their use. Some examples are as follows. In 2014, a most lethal offensive was launched in Gaza. Of all those killed by the IDF, more than 70% turned out to be civilians, more than 500 of which were children. Eminent scholars wrote afterwards that the “*impressive targeting capabilities of the IDF undeniably enhance the accuracy of the likely military advantage and collateral damage estimation*”,⁵

² ‘Military briefing: the Israeli bombs raining on Gaza’ Financial Times (5 December 2023) <<https://www.ft.com/content/7b407c2e-8149-4d83-be01-72dcae8ace7b>> accessed 24 September 2025.

³ Humeyra Pamuk and Mike Stone, ‘US has sent Israel thousands of 2,000-pound bombs since Oct. 7’ *Reuters* (28 June 2024) <<https://www.reuters.com/world/us-has-sent-israel-thousands-2000-pound-bombs-since-oct-7-2024-06-28/>> accessed 24 September 2025.

⁴ ‘NYT Investigation: Israel Used ‘Most Destructive’ Bombs in Safe Zones in South Gaza’ (22 December 2023) *Haaretz* <<https://www.haaretz.com/israel-news/2023-12-22/ty-article/nyt-investigation-israel-used-one-ton-bombs-in-safe-zones-in-south-gaza/0000018c-91f4-d47c-a7fd-bfcc0bb0000>> accessed 24 September 2025.

⁵ MN Schmitt and J Merriam, ‘The Tyranny of Context: Israeli Targeting Practices in Legal Perspective’ (2015) 37 *University of Pennsylvania Journal of International Law* 53.

and they concluded that the IDF imposes military policy restraints that go “above and beyond” the requirements of the law of armed conflict. This is just a single example. I could come up with dozens of such examples.

How this scholarship has hegemonised the field of international humanitarian law remains a mystery to me. Probably, some self-criticism is required. Probably we were not careful enough. We have not pushed back enough. Be it as it may, this scholarship has created the discursive dispositives to legalise what is happening now in Gaza. Although now it is happening to such an extent that makes legalisation impossible. For example, in 2021 the IDF bombed the al-Jalaa tower building in Gaza, where the offices of Al Jazeera and Associated Press were located, at least after a warning. And scholars propose that if one flat in a residential tower with hundreds of flats was used in the past by Palestinian armed groups, then the entire residential tower is a lawful military objective in its entirety. Even the International Law Association Study Group Report on the IHL Challenges of the 21st Century Warfare⁶ affirms that when only one roof or one apartment of a building is used for military purposes, and claims that the prevailing understanding today argues similarly. I contest that this is the prevailing understanding of the notion of military objective which supposedly argues that once an object is used in such a way as to fulfill the definition of military objective, the entire object becomes a lawful target. This is borderline unlawful. International humanitarian law talks about the status determination of objects, whichever objects, and says that warring parties can only target those objects which first make an effective contribution to military action of the enemy and also whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage to the attacking side.

The same has happened with people. I cannot dwell on all the things I want to address here, but similar dispositives have been used to spread the quality of being a lawful target between Gaza residents as if it was a sort of viral infection. After years of subsuming the question of Palestine in the broader framing of the War on Terror, now we witnessed the

⁶ International Law Association, *The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare* (Final Report, 25 June 2017) <<https://www.ila-hq.org/en/documents/ila-final-report-25-june-2017>> accessed 24 September 2025.

obsessive repetition of the label of terrorists, terrorists in Gaza that, as the IDF repeats, '*disguise as teachers, nurses, doctors, journalists*' and I suppose even as children. So, if each civilian in Gaza is a potential terrorist, and supposedly all the civilians around the potential terrorist are human shields, and all human shields around are potentially collateral damage, then you understand very clearly how words borrowed from the law of war and emptied of their meaning can become a pseudo-legal newspeak to legitimise a genocide.

Speaking of children, I really want to emphasise this. In 2021, an IDF colonel, former IDF prosecutor in the West Bank, asserted publicly on press and social networks "*Considering the military advantage gained by eliminating senior terrorists, it is irrelevant to ask how many children were incidentally killed.*"⁷ Even just this statement *per se* sheds light on a subculture of war crimes. It testifies the rejection, on a racial basis against Palestinians, of the applicability of the war crime of disproportionate attacks, codified in the Rome Statute of the International Criminal Court.

What has happened in the last months has gone far beyond. I think that one of the key aspects of the merits judgment of the ICJ will be scratching beyond the surface of these justifications that Israel puts forward and analyse how the framing and interpretations of the law of armed conflict construe the entirety of the Palestinian civilian population as if it could be considered an extension of a military infrastructure, thus destroyable in its entirety until all the war aims are achieved.

The argument of some scholars, notably of the Special Rapporteur Albanese, as well as that of scholars that have contributed to the debate of the Journal of Genocide Research, is that the building blocks of genocidal intent can be found precisely in these distortions of the laws of war. Look how the concept of IHL proportionality, before I conclude, is framed. Legally, IHL proportionality means that every commander has to weigh on a sort of ideal scale the concrete and direct military advantage anticipated from a single attack with the incidental civilian arm foreseeable. It is prohibited to launch attacks anytime the incidental civilian harm is foreseeable as excessive, and we know this unequivocally

⁷ Maurice Hirsch, 'Considering the military advantage gained by eliminating these senior terrorists...' (X, 2023) <<https://x.com/MauriceHirsch4/status/1655840611704897536>> accessed 24 September 2025.

refers to individual strikes. Instead, what the Ministry of Foreign Affairs of Israel tells us is that the military advantage may refer to and can be construed as an advantage anticipated from an operation as a whole. Put together with this with the idea, also repeated obsessively, that this assault on Gaza is an existential war for Israel. What is the outcome? The outcome is a distortion of the laws of war that will inevitably ‘collateralise’ every entity of anticipated mass killing of Palestinian civilians, so that the scales of IHL between military necessity and humanity are irremediably altered. The military advantage anticipated from the overall purposes of the war, in this eliminationist conception, will always outweigh the mass killing of Palestinian civilians. There is, therefore, in good substance, virtually no amount of anticipated mass killing of Palestinian civilians that will ever be considered disproportionate by the IDF.

In sum, through all these arguments, Gaza has been construed as a military objective in its entirety, and Israelis have said it. They have said that the entirety of the Palestinian population was a sort of component part of Hamas. Thus, the targets of the IDF are not only on the military targets. The crosshair of the army enlarges, and enlarges, and enlarges, using categories such as human shields or voluntary human shields, and then enlarges more talking of ‘*civilian objects turned into military objectives*’, and then enlarges exponentially by claiming that every massacre is proportional collateral damage. In the end, no one is safe in Gaza, and no one is really protected from attacks as a civilian.

This is how all the violations do not amount simply to a sum of war crimes or crimes against humanity. The policy and pattern of the assault on Gaza reveals that the Israeli leadership has indeed framed the Gaza civilian population as a whole as unprotected and ‘legitimately’ destroyable.

I think that there is a fundamental misconception in western legal debate on the issue of the ‘only reasonable inference standard’ of genocidal intent at the ICJ. There are many scholars, not only Israeli scholars, confusing this standard for a sort of exclusivity of the genocidal purpose, as if anything that goes alongside the intent to destroy the group, something else, some further motive, could exclude genocide by definition. This is wrong legally, and crazy historically. Legally, a *dolus specialis* of destruction of the group can fully coexist with other motives (such as destroying part of the group to impart an exemplary lesson to

other potential enemies in the future). Historically, no genocidaires ever framed the destruction of the victim group as their ultimate and sole purpose. All the genocide perpetrators in history always said that eliminating the victim group was a necessary means to achieve some further superior ideological aim, such as the long-term security of the nation, the defence of the race, or the survival of the settler colonial group, threatened by the mere existence of the indigenous population.

So, if we accept this misconception of the only reasonable inference, we are essentially ruling out the applicability of the Genocide Convention⁸.

Professor Rajagopal told us about the segmentation of international law.⁹ I can synthesise what I have tried to argue in this paper: an attempt to put two segments of international law at work against each other. Basically, Israel and many Western powers with it are trying to put the 1949 Geneva Conventions at work against the applicability of the Genocide Convention. I think one of our duties is to reconcile the complementarity of these two instruments. IHL protects individual civilians, their survival, their permanence in their living space and the Genocide Convention protects them collectively as populations, with their inherent right to survive and exist as such, in freedom and dignity.

⁸ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277

⁹ Balakrishnan Rajagopal, 'International Law or Rules-based Order? Or Which International Law for Global Justice?', in Keynote Panel Session I Justice and International Law in Boğaziçi International Law Conference 'Rethinking International Law After Gaza' 3-4 August 2024. (Directed by Boğaziçi Üniversitesi, 2024) <https://www.youtube.com/watch?v=6G0QvxIq-1E&t=5636s&ab_channel=Bo%C4%9Fazi%C3%A7i%C3%9Cniversitesi> accessed 15 August 2025.

Discourses of International Humanitarian Law and Humanitarian Access

Rana Kharouf

Rana Kharouf is a Lecturer at the Paris School of International Affairs at Sciences Po and Judge assessor at the French National Court of Asylum.

Drawing on my field of experience as a former legal adviser to the International Committee of the Red Cross and as a legal officer with the UNHCR, I combine practice with theory through my teaching at the Paris School of International Affairs at Sciences Po. Upon arriving in Istanbul, I was welcomed with the phrase: “Welcome to Istanbul, the meeting of the world.” This captures the unique opportunity to discuss international law from a city where East and West engage in meaningful dialogue. So, this bridge between civilisations brings us to the issue of how to make the war much humanitarian. And, for this purpose, what is happening today in Gaza is a very important point to discuss in which direction the international law could be efficient and in the main mission of protection of civilians during the armed conflict.

My intervention focuses on the humanitarian principles under the international humanitarian law, the legal framework and particularly the case of occupation. Gaza is under occupation, and it has been declared a besieged area since 2007. So, then I will go through the specific case of the humanitarian access and the challenge that these parts of the world became like a mirror of not protecting civilians during the armed conflict. So, let us start with one of the pillars of international humanitarian law. Jean Piquet, in summarizing the means of international humanitarian law, highlights the four Geneva Conventions concerning the protection of prisoners of war, the wounded, and civilians, with a particular emphasis

on medical personnel. Overall, the main message of the IHL rules is that nobody in enemy hands can be outside the law. These engagements of all states, which was translated from the signature of the four Geneva Conventions, and this has been the case for almost all states since 1949, push us to think about how those rules can be effective for protecting the civilians during an armed conflict and also occupation, which is definitely regarded an international armed conflict.

Humanitarian means to consider the enemy as a human being without any discrimination of race, religion, political opinion, or affiliation to restricted identities. For this reason, international humanitarian law allows humanitarian access, considering civilians as the element of survival and the element of life, which is the duty of all the parties to the conflict. This is exactly what the first common article of Geneva Conventions enshrines - the obligation to respect and ensure respect for all the parties of the conflict. Yet, when it comes to humanitarian aid, this brings us to think about the duty of this humanitarian aid and to remember the principles of this humanitarian aid, which is, as I have just noted right now, that humanity is to alleviate the suffering of human beings during armed conflicts. The impartiality of humanitarian aid should never be directed to take part in the conflict or to encourage or support one party of the conflict against the other.

Dependence means not being subordinated to the objectives of the fighting parties. Most importantly, neutrality means that the delivery of humanitarian aid should always be carried out with respect for all parties to the conflict and without taking part in the hostilities. Those are the rules of the humanitarian aid which was clearly notified by several UN resolutions and specifically with the General Assembly.

One should recall that the duty and obligation to ensure respect lies with the states. However, in situations of occupation, the primary duty is to ensure the elements of life—such as food, medical supplies, and other resources essential to the survival of the population—are provided from the resources of the occupied territories. Because, primarily, it is the obligation of the states, which in the constitutions of each state, is the duty of the state to ensure the vital needs of the population. But, in the case of occupation, there is the international humanitarian law which underlines and emphasises the obligation of the occupied power to respect the survival of the population under their control. It is also

important to remember the humanitarian relief obligation according to the Article 142 of the Fourth Geneva Convention and the duty to ensure the supply of effective and adequate relief to all protected persons. This obligation includes the materials which could be considered as vital needs as well as the essential materials for the survival such as the fuel.

Talking about humanitarian aid, it is very important to remember Article 59 of Geneva Convention related to collective relief, which clearly puts the obligation to facilitate all the means in the disposal of the occupation power to ensure the provisions of the food, medical supplies, and clothing. When it comes to the right to access, the question is one of fighting terrorism, or counter terrorism, versus humanitarian aid. In its previous jurisprudence, the ICJ clearly emphasised that humanitarian aid can never, ever be considered as support for any party to the conflict, as highlighted in the case concerning military and paramilitary activities in and against Nicaragua. Yet, in occupied territories, the occupying power is bound not only to accept the offer of such services, but also to facilitate them by all means at its disposal. Thus, it must also permit the free passage or relief to guarantee the protection of the humanitarian aid.

Sometimes in the media coverage, one can see an amalgam or confusion advocating for the classification of the conflict. Here, regardless of the classification of the conflict, non-international armed conflict or international armed conflict, which is the case of occupation, the access to civilians and the protection of civilians is part of the customary International Humanitarian Law (IHL) rules. So, how could the safe access be ensured during the humanitarian relief process? Very important point is the importance of the prevention measures, including the roles, or integrating or implementing the rules of IHL in the military manuals of the armed forces.

At this point, it is worth noting that Israel did not ratify the first and the second Additional Protocol of 1977 to Geneva Conventions. However, the customary IHL is still binding, and one of the main important pillars of the protection of civilians in all Geneva Conventions is the respect of the Red Cross and Red Crescent emblems. Today, what is happening in Gaza include the deliberate targeting of the UN staff as well. And, the main uncertainty concerns UNRWA, which is deliberately targeted. Counter terrorism should be based on facts. To date there is no

evidence about what it was debated, but for sure humanitarian relief can never be considered as supporting of terrorism.

Second, with respect to the Red Cross and Red Crescent, they are deliberately targeted by the military action, along with administrative obstacles to granting authorisation to enter the Gaza Strip. Therefore, we saw together the obligations under IHL at their current stage, the evolution of the ongoing conflict puts the challenges of humanitarian access in the centre of the obligation of protection of civilians in Gaza Strip. And the latest advisory opinion of the International Court of Justice¹ makes it very clear that Israel must be considered an occupying power and highlights the importance of implementing international humanitarian law at the domestic level. The obstacles at the Rafah crossing are clearly visible to the humanitarian relief convoy of the International Committee of the Red Cross. Therefore, it is important to notice that, according to the OCHA, more than 1,700,000 people are displaced inside of the Gaza Strip and more than 90% of the people left already their hometown. Thus, they are considered civilians and, by definition, protected under IHL, except when they are directly participating in the hostilities.

The context of the blockade since 2007, which is extended to the access from air, land, and sea, makes the lifesaving humanitarian access a huge challenge in the Gaza strip. There are many cases where the United Nations, as well as some NGOs like the International Red Cross and Red Crescent Movement, are operating under threat, particularly the Palestinian Red Crescent, which was clearly and deliberately targeted during humanitarian missions. Thus, the question is, although I already mentioned the resolution and the binding nature of customary IHL, what measures should be taken to alleviate the humanitarian suffering caused by the blockade, as well as by the violations of IHL. This brings us to consider the role of ensuring respect, which is the duty of other states beyond the parties to the conflict, and the need to initiate prosecutions for war crimes through the various mechanisms that is discussed throughout the proceedings. Gratitude is extended to all who have taken part in the advocacy process for the humanisation of war.

¹ Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, I.C.J. Reports.

Challenges in International Criminal Law and Adaptive Strategies

When Starvation is a Crime: A Case of Gaza and Beyond

Hilal Elver

Hilal Elver is a Professor at the University of California, Santa Barbara, and a former United Nations Special Rapporteur on the Right to Food.

This paper examines the starvation and devastation in Gaza following Israel's assault, which began in October 2023. As of August 2024, the war was still ongoing, and famine conditions had been detected in various parts of Gaza since December 2023. Yet famine had not been officially declared by the United Nations. The deliberate blocking of food, water, and other necessities indispensable to civilian life constitutes a war crime and, under certain conditions, may also amount to a crime against humanity. Starvation in Gaza should be regarded not only as a war crime but also as part of a broader preparation for genocide. While forced starvation may occur without genocide or explicit genocidal intent, in Gaza, starvation—supported by clear statements from Israeli leaders—has operated as a preparatory mechanism of genocidal intent. In South Africa's genocide case against Israel, the International Court of Justice (ICJ), in its first provisional measures order of January 2024, made this connection especially clear. Consequently, international law experts are increasingly examining the relationship between starvation, famine, and genocide in light of Gaza and other conflict zones where food has been weaponized. Before addressing the international legal principles governing starvation crimes, this paper first briefly summarizes the humanitarian situation in Gaza.

Currently, more than 200 million people worldwide suffer from starvation or acute food insecurity, the majority of them being in

conflict zones. Among them are Gaza's 2.3 million residents. One crucial distinction between Gaza and other starvation crises is that there is no safe place for civilians to flee; the entire territory is under siege and military assault. Israel's targeting of the entire population constitutes collective punishment, which is prohibited under international law. The distinction between civilians and combatants has been systematically eroded. Children and women, especially pregnant women, are afforded heightened protections under international humanitarian law due to their particular vulnerability.

Access to clean water in Gaza had already been severely restricted before the war, but conditions have since deteriorated catastrophically. Water is now largely unsafe, and infectious diseases are rapidly spreading. Clean water availability has fallen to less than one litre per person per day, while the World Health Organization (WHO) recommends a minimum daily amount of approximately 15–20 litres per person for survival and basic health.

Secondly, malnutrition is a major silent and slow killer. While starvation is generally measured through caloric deprivation, malnutrition concerns the nutritional quality of food, including essential vitamins and micronutrients. In wartime, when food shortages become acute, nutritional quality is often deprioritized. However, even short-term malnutrition can have devastating and irreversible consequences, particularly for young children between the ages of zero and two. Nutritional intake during the first 1,000 days of life is critical. Malnutrition during this period can permanently impair cognitive development, weaken immune systems, and create generational harm that extends far beyond immediate mortality.

The humanitarian situation in Gaza therefore represents a perfect storm: hunger, lack of clean water, destroyed sanitation systems, lack of housing, and a collapsed health infrastructure combine to produce catastrophic outcomes. Treatable illnesses such as diarrhoea become deadly under these circumstances. More recently, Gaza has also faced outbreaks of serious infectious diseases such as polio and cholera, despite previous eradication efforts.

Starvation and famine are not caused solely by blocking humanitarian aid; they also result from destroying a population's ability to sustain itself. Israeli forces have systematically destroyed agricultural lands, farms,

and food production systems in Gaza, thereby eliminating Palestinians' capacity for self-sufficiency. Smallholder farming, once an essential survival mechanism, has been devastated. During the current war, approximately 60 percent of Gaza's agricultural land has been destroyed, in addition to significant destruction that had already occurred before October 2023. Fishing infrastructure, another major source of nutrition, has also been nearly eliminated. This was a major nutritional source in Gaza during the siege.

Livestock, a critical source of protein—especially for children—has likewise been decimated through direct attacks, lack of water, and lack of feed. Although the UN Food and Agriculture Organization (FAO) has attempted limited recovery programs, conditions remain catastrophic. Nearly all bakeries were destroyed within the first months of the war. By late 2023, approximately 75 percent of Gaza's housing had been destroyed, leaving most Gazans displaced into overcrowded tents or ruined buildings without security or basic services.

There is also an ecocide unfolding in Gaza. This war is not only directed against people but also against nature itself. Agricultural systems, soil, water resources, and marine ecosystems are being systematically damaged, threatening Gaza's long-term habitability. Post-war reconstruction must therefore address environmental devastation alongside humanitarian and infrastructural collapse.

Humanitarian aid is intended to function as a life-saving mechanism protected under international humanitarian law. Yet for the first 21 days of the war, Gaza was subjected to a total blockade. Israeli officials publicly announced their intention to cut off food, fuel, water, and electricity. These declarations were explicit and widely disseminated. Humanitarian aid throughout the conflict has remained sporadic, inadequate, and heavily obstructed despite repeated United Nations Security Council resolutions.

UN Secretary-General António Guterres described Gaza not merely as a humanitarian crisis but as “a crisis of humanity,” highlighting the profound failure of the international legal and humanitarian system. His statement reflects the broader reality that international law often collapses when the geopolitical interests of powerful states prevail over legal obligations.

Another major dimension of this crisis has been Israel's systematic undermining of the United Nations Relief and Works Agency for Palestine Refugees in the wider Middle East (UNRWA). Established in 1949, UNRWA has served as a crucial humanitarian institution for Palestinian refugees to provide, education, health, and food distribution. Israeli allegations against the agency, about UNRWA's personnel involvement in the October 7 attack, despite lacking credible substantiation, were sufficient to trigger major funding suspensions from Western governments. Combined with military siege and destruction of self-sufficiency, attacks on UNRWA have created a perfect storm and intensified Gaza's humanitarian collapse.

Throughout the war, humanitarian aid convoys have repeatedly been obstructed or attacked by not only IDF, but even Israeli civilians. The so-called "Flour Massacre" of February 29, 2024, in which more than 100 Palestinians seeking food aid were killed and 760 were injured, stands as one particularly horrific example. Likewise, the attack on European NGO "World Central Kitchen," killing 8 aid workers generated international outrage, exposed disparities in global responses depending on the nationality of victims. In the early days, more than 400 Palestinians were killed during the humanitarian aid delivery. There was no outrage, no news. But when the seven workers of World Central Kitchen died, the issue suddenly became very important. The Security Council made a decision, Resolution 2720, to make further rules on humanitarian aid in Gaza. They appointed a new person to control the humanitarian aid. The situation had slightly improved. Israelis had opened the two or three gates. After two weeks though, they blocked the aid again.

There is a calculated policy about the humanitarian aid in Gaza. Israelis are controlling the aid. Is there any famine coming close? Israeli military seems to allow the aid, then they block it again. The Gaza Strip is territorially divided into two separate parts in practice: North and South, and it is very difficult to access between the northern and the southern parts. If there is a threat to famine, the food aid is given to the North, not to cause a famine, and then if there is a danger of famine, the aid goes to the South. The United States decided to bring aid from air, and sea. Even though a temporary port was tried to be built on the Gaza Strip, it was unsuccessful despite the allocation of high financial resources to the project.

The manipulation of famine thresholds has further complicated international legal and humanitarian responses. In order to declare famine, there are three conditions. Declaration must be done by the United Nations, if these three conditions exist: 20% of the households must be in extreme lack of food, 30% of people shall face acute malnutrition, and the death of two people by starvation in every 10,000 inhabitants. Although Gaza's population had reached catastrophic hunger levels by mid-2024, formal famine declarations remained absent. By contrast, famine was declared elsewhere, such as refugee camp in the northern part of Sudan, under arguably less severe conditions. This discrepancy raises serious concerns regarding political influence over technical determinations of famine. Conditions on the ground can easily be manipulated, especially in war situation, such as calculation of the numbers for dead and sick children is difficult if there is no hospital record. In case of Gazans these were already beyond the legal threshold by August 2024. Unfortunately, it was still claimed there was not enough proof or data to declare famine.

How Should International Law Change After Gaza?

Several branches of international law—including international humanitarian law, international human rights law, and international criminal law—contain norms intended to protect populations from starvation. Since 1949, and more explicitly following the 1977 Additional Protocols, international humanitarian law has prohibited starvation of civilians as a method of warfare. Under this framework, the principle is clear: civilians may not be starved to secure military advantage. Article 55 and its Additional Protocol I, mention starvation as a war crime.

The Rome Statute (1998), which established the International Criminal Court (ICC), codified starvation as a war crime under Article 8(2)(b)(xxv), prohibiting the intentional use of starvation against civilians by depriving them of indispensable survival resources, including through obstruction of humanitarian aid. Yet despite this codification, no ICC prosecution has yet produced a conviction for starvation crimes. This enforcement gap is central to Gaza's legal significance.

Historically, famine or starvation has been a tool of war, aggression, occupation, colonisation, not only physical tool, but also, they had been used to have devastating effects on the culture and national identity.

Indigenous populations in North America and Australia, victims of Biafra, Bangladesh, Bosnia, Cambodia, Ukraine's Holodomor, and numerous other historical atrocities all suffered from weaponized hunger. Again, the United States in the Second World War used it against Japan. They blocked all the ports and water-gates against hundreds of thousands of Japanese people who were subjected to such an explicit use of starvation. They all used these because it was cheaper, effective, and easy. So, it was the weapon that everybody could have used. Maybe this was the reason why states hesitated to designate it directly as a crime. Gaza, however, is distinctive because famine there is overwhelmingly man-made and directly linked to military policy rather than mixed political-natural causes.

One reason for the historical reluctance of states to robustly criminalize starvation may be that starvation has been repeatedly used by powerful states themselves as an inexpensive, effective, and politically expedient weapon. This historical complicity has contributed to legal hesitancy.

For decades, starvation was marginalized in international criminal jurisprudence. Although genocide law could theoretically encompass starvation under certain interpretations, starvation itself remained weakly prosecuted. This has created significant accountability challenges.

This lack of interest to implement crime of starvation in many earlier cases made these crimes to prosecute difficult. For instance, in Cambodian and Bosnian cases, no one focused much about on starvation. One of the reasons might be partly due to much bigger crimes committed while also starvation was committed. Also, in most of the cases, there were several other reasons besides deliberately blocking food and water that created starvation. In these cases, it is very difficult to make the link of causality between the action and result in courts. Starvation is a slow death, suffering from malnutrition and infectious diseases. Malnutrition, however, is not present in any international document, even though most of the death is as a result of acute malnutrition. As already discussed, most of the killings between 0-2 years of children are acute malnutrition, and its long-term adverse impact on children when they grow up. This long-term impact was observed in the Chinese famine during the Second World War. Despite such a generational damage there is no recognition of criminality in relation to deliberate acute malnutrition the field of international law.

Who Is Responsible for Starvation Crimes in Gaza?

A central legal question is whether Israeli political and military leaders—including Prime Minister Netanyahu, President Herzog, and military officials—can be held individually criminally responsible for starvation crimes.

The ICJ's provisional measures in South Africa's genocide case repeatedly emphasized the plausibility of genocidal conduct, including starvation and malnutrition. However, the ICJ addresses state responsibility, not individual criminal accountability. Individual prosecutions fall within the jurisdiction of the ICC.

There are important distinctions between genocide and starvation crimes regarding intent. Genocide requires proof of specific intent to destroy a protected group in whole or in part. Starvation crimes, by contrast, require deliberate deprivation of food or survival resources to kill, harm, or control a population, regardless of whether total annihilation is intended. Even acts of omission—such as blocking humanitarian aid—may suffice to establish criminal liability. Importantly, starvation crimes do not require proof of actual death; deliberate deprivation itself can constitute the offense.

Given recent developments, Gaza may force international law to more clearly connect starvation and genocide or, alternatively, strengthen starvation as an independently prosecutable crime. Reports by UN bodies, Special Rapporteurs, Francesca Albanese's *Anatomy of a Genocide*, and Amnesty International all point toward the urgent need for stronger legal frameworks and enforcement mechanisms.

Conclusion

Gaza may ultimately become one of the defining legal crises of the twenty-first century. It exposes the profound weaknesses in international law's ability to prevent and punish starvation crimes, famine, and mass atrocity.

First, impunity for starvation and famine crimes must end. International law requires stronger, clearer definitions and more enforceable accountability mechanisms. Second, the distinction between starvation and famine must be better understood legally. Starvation

is criminalized, while famine remains largely treated as a technical humanitarian category rather than a prosecutable crime. Third, Gaza highlights the need to recognize additional atrocity categories such as domicide and ecocide. Finally, rather than relying on reactive legal responses after catastrophe, the international community must develop proactive legal mechanisms capable of preventing starvation, famine, and broader systems of mass destruction before they unfold. Without such reform, Gaza will not be remembered merely as a humanitarian disaster, but as a devastating symbol of international law's systemic failure.

Defining Genocide as an Inclusive State Crime

Satvinder Juss

Satvinder Juss is a Professor of International Law at King's College London.

The ICC prosecutor has recently issued five arrest warrants. Two of them are against Israelis, and three of them against Palestinians. The third of the Palestinians *Ismail Haniyeh* has now been assassinated. So, it is now two and two; and eight counts against Palestinians, but again, only seven counts against Israelis. And people have said that this is possibly an attempt to both-side the equation. Well, actually, I think it is worse than that.

There is no basis for saying that this should be an attempt to both-side it because the fact is, only one side is committing illegal occupation, and has been doing so for the last 76 years, and only one side has got the means to implement that kind of illegal occupation. And yet, the prosecutor began by saying that he *'seeks to charge those most responsible'*. Again, the prosecutor ignores, incidentally, Karim Khan is a graduate of King's College London, not that that should necessarily qualify him to be making the right decisions but ignores the asymmetry of the way in which the David and Goliath – and the David in this case – are the Palestinians and the Goliath, of huge proportions, is, of course, Israel. It ignores the asymmetry of the infliction of violence that you have got here. Not only that [but] the prosecutor goes on to say, and I quote, again, *'Israel, like all states, has the right to take action to defend its population.'* And this reference to self-defence, again, ignores the occupation. In fact, I am reminded of how Barack Obama, when he used to refer to the territories, never used the word 'occupied' territories. It was always 'the territories'.

And so there seems to be this blind spot of always ignoring the blindingly obvious. And it is against the background that the prosecutor goes on to speak about how Hamas – but not Israel – stands indicted for torture, cruel treatment, war crimes, outrages against personal dignity. And this is surprising, given that, again, Israel has mistreated thousands of Palestinian people, detained them, inflicted on them torture, cruel treatment and the like and so and so forth. And all of that, again, ignores the central aspect here, which is that the ICC prosecutor says nothing regarding the ongoing pre-October allegations against Israeli leaders with respect to settlements and with respect to apartheid. Now, why do I mention any of that? Well, simply this: the ICC prosecutor makes no mention, in relation to Israel of genocide. So, against that background, despite the credible allegations by the International Court of Justice of genocide, there is no mention of that. Instead, the reference is to crimes of starvation and extermination, both of which, of course, do qualify as genocide as well. So, why is it that the West and prosecuting authorities are so reluctant to refer to genocide?

Well, of course, genocide first arises in the aftermath of 1948 when the Genocide Convention creates a ranking list of atrocities and criminal transgressions. And yet, despite that categorisation, what has happened in the intervening years is this: it has resulted in reducing the kinds of actions that can amount to genocide. Ironically, it has narrowed down the scope of transgressive acts. It has limited the ability of international law to address it as such. Why would that be the case? And here's the central point: the reason why that is the case is these? Genocides have been and continue to be equated with the Nazi holocaust. It is almost as if what happened with the Nazi Holocaust remains a unique example of this mass killing which can never be reached, a standard which can never be attained, where Nazi Germany's genocide alone qualifies for genocide and nothing else does. And the reason why the West continues to take that approach is this: it is used as a basis for ignoring the founding violence of their own civilisation, a civilisation that based itself on the idea of colonial settler acquisition of property, which involved, of course, the mass extermination of the native Indian population in America. It involved, of course, the genocide of the Aborigines, the Tasmanian aborigine – unless I am wrong – I think the elimination of the Tasmanian aborigine is the only documented example in human history of total genocide where there does not exist now any longer a Tasmanian refugee.

The Tasmanian refugee actually did not know how to make fire. 12,000 years ago, Tasmania broke off from Australia, and what they had done was they had simply kept fire burning somewhere on the island. And if you ran out of your fire, you walked around and you found somebody who would give you some fire. So, they did not know how to make fire. And when they looked across the sea, they saw themselves as really the only civilisational outpost with no other human civilisation anywhere. I mention this to highlight a distant people's limited perception of their existence in this world. And then along comes, of course, the settlers, and they kill them all off. The last surviving one has their skull in vinegar kept in some British Museum in England as an example of a missing link between the animal world of the chimpanzees and guerrillas and so on, and the human race.

And so, this idea really, really the incipient criminality of the founding of many of the western states themselves, is something that has enabled the West to conveniently ignore other genocides around the world today. The way in which genocide has been exercised. And so, it is really viewing things through the lens of the Holocaust. And that is the kind of legacy that we have been saddled with, the intellectual straitjacket that we still have. So, when Biafrans in Nigeria claim that they were being *en masse*, killed off, or when the East Pakistanis Bangladeshis were fighting for their independence, they may say, '*Look, we are being subjected to genocide*'. But what the World Court says [is], no, what you what you're going through is a civil war. This is not actually genocide at all, because genocide is what happened during the Holocaust. Okay? So, for this reason many, many examples around the world of mass casualties, of civilian casualties, are not getting the recognition in international law that they deserve. The great irony, of course, is this, that when Raphael Lemkin, who brought about the concept when he was talking in 1943 of a way of finding in one word – encapsulating in one word – the entire intellectual tradition of talking about atrocities through a language of transgression, he created this word of '*Genocide*', and when he did so, (which incidentally in the Nuremberg trials, genocide was not one of the crimes), but when he did so, he was drawing from colonial examples. He was drawing from the genocide of the aborigines, and the Tasmanians. He was drawing from the Native Indian population that had been killed off. He was drawing from colonial examples. He was saying that genocide really is the benchmark of mass criminality, and yet that has been very conveniently sidelined,

marginalised in a way that allows us to now really refer to genocide only in terms of the Holocaust.

And yet, you know, as the Genocide Convention 1946 says the genocide are *'crimes shocking to the conscience of mankind'*, and why not, therefore also Biafrans, why not also the Bengali people? As a result of that, we have never asked this question of, what were the interests that predominated in the drafting process when *'genocide'* was being talked about, why have those existing categories existed at all in the way that they have done so these are questions that have never really been spoken about. Now, here is one example that I will end with: that of Myanmar. So, what happens is this. Amnesty International reports in 2019 that the Myanmar authorities are practicing apartheid. The truth is they were actually practicing apartheid since 2016, but the view that was taken was that these are rogue, out of control soldiers or units. And a mid-2018 a Draft Statement from the US Secretary of State, Mike Pompeo, is leaked, and what he says is this: 'Well, look, this is not genocide occurring in Rakhine.' And, by the time in 2018 Trump comes on board, he also opts out against the use of the 'G-word'. He does not describe it as genocide. Why is that? We subsequently learned that the reason for that is because the US wanted to retain an active role in the region, so because of that, they decided not to call it genocide. Okay? Well, fast forward. Then in 2019 The Gambia finally brings a claim of allegations of genocide. In The Hague, Aung San Suu Kyi, the Nobel Prize Laureate, arrives, the Gambia pleads, *'This court is the ultimate guardian of the Genocide Convention. It is on you that the eyes of the world are turned today.'* On 23 January 2020 an immediately binding historic order is passed with provisional measures saying that the International Court of Justice has to take some actions, and Myanmar is ordered to prevent all acts of genocide against the Rohingya. There is then a lapse, and by February 2022, further hearings are to be resumed to determine whether it has jurisdiction to judge if atrocities committed by Myanmar military against the Rohingya have taken place. And there is a fear, by March 2022, that maybe what is going to happen is this: that the international community is going to say – or the court is going to say – this is not genocide. So, Anthony Blinken moves in. And, Blinken says, *'Oh, this is genocide'*. He has got to say it is genocide, because at this stage now, Myanmar is going to be ostracised!

I will end with one other point, and that is this to demonstrate my point in crystal clear fashion with what happened at Washington's Holocaust Memorial Museum. When the Holocaust Museum is first set up, at that time, President Jimmy Carter, refers to the 5 million non-Jewish Nazi victims as also having been killed. Now do not forget, back then Hitler killed of a whole bunch of gypsies and homosexuals and the disabled as well! Up goes the cry from the leading Israeli historian Yehuda Bauer, who accuses President Carter of attempting to de-Judaize the Holocaust. He condemns the urge, *'to submerge the specific Jewish tragedy in the general sea of suffering caused by the many atrocities committed by the Nazi regime as part of a worldwide phenomenon connected with the dangers of antisemitism'*. The reason I end with that is simply this. You will all have seen that every time sensible observation is being made about what is going on in Gaza, up goes the same cry. If every time the ICJ picks up the issue or the ICC addresses it, up goes the cry, 'Oh, this is nothing short of antisemitism!' Well, it might have worked once, but quite frankly, it does not work anymore.

The ICC Investigation(s) Into the Situation in Palestine: Does the ICC Really Function?

Zeynep Erhan Bulut

Zeynep Erhan Bulut is an Assistant Professor of International Law at Çankırı Karatekin University.

In this paper, I will discuss the ICC investigations into the situation in Palestine and pose a fundamental question: Is the ICC truly functioning? Before addressing this specific question, I have a broader concern regarding the conflict in Gaza. During the spring term, I was teaching humanitarian law, also known as the law of armed conflict, and emphasizing to my students the importance of protecting civilians during armed conflict. However, at the same time, Israel was carrying out airstrikes that resulted in civilian casualties. This contradiction led me to question whether something is fundamentally wrong with international law. I began to explore whether the issue lies in specific legal frameworks, such as humanitarian law, or whether it stems from international law as a whole. Alternatively, could the problem be in the judicial decisions, sanctions, or measures that should be enforced by international institutions? Or is the failure embedded within the international system itself? I believe this is a critical issue that requires deeper reflection.

Let us move on to my key questions to better understand the subject.

1. The history of the relationship between Palestine and the ICC: Why has there been no justice yet?
2. The arrest warrant decision: Do these warrants truly matter, and if so, how?
3. The ICC's ability to enforce justice: Can the ICC function effectively to bring justice, and does it hold real power without state cooperation?

Since the second and third questions are closely related, the second part of my presentation will focus on state cooperation with the ICC, examining cases of violations of cooperation obligations with the Court. This is crucial, because, without cooperation, the ICC cannot function effectively.

The Relationship Between the ICC and Palestine

The relationship between the ICC and Palestine has a long and complex history. The first application to the ICC was made in 2009, following Israel's military operations in 2008–2009. This application was based on Article 12(3) of the Rome Statute, which allows a non-state party to accept the ICC's jurisdiction on an *ad hoc* basis. Through this declaration, Palestine formally accepted the ICC's jurisdiction over its territory.

However, as we know, the ICC does not possess universal jurisdiction. Because of this limitation, the Prosecutor had to conduct a preliminary examination to determine whether the preconditions for jurisdiction were met. This process took nearly three years, primarily due to controversies surrounding Palestine's statehood under international law. The key question that emerged was: Who has the authority to determine whether Palestine is a state? The Prosecutor stated that they did not have the authority to decide whether Palestine qualifies as a state and referred the matter to the Assembly of States Parties and the United Nations Security Council. This decision was based on Articles 125 and 112 of the Rome Statute. According to the prosecutor, these two bodies, which I consider to be political, have the authority to determine whether Palestine qualifies as a state to become a party to the Rome Statute under Article 12.

Following this decision, the UN General Assembly passed a resolution recognising Palestine as a non-member observer state. As a result, Palestine became a party to the Rome Statute on April 1, 2015. However, prior to becoming a party, Palestine submitted an application in 2015 under Article 12(3). In response, the prosecutor initiated a preliminary examination to assess whether the necessary conditions were met.

During this examination, the prosecutor evaluated jurisdiction, admissibility, and the interests of justice in accordance with Article 53 of the Rome Statute. Finally, in 2019, the prosecutor concluded the

preliminary examination and determined that all statutory criteria under the Rome Statute had been met for opening an investigation. However, given the complex legal and factual issues surrounding the situation, the prosecutor announced that they would seek a ruling from the Pre-Trial Chamber to clarify the territorial scope of the Court's jurisdiction in this matter: What exactly is the territory of Palestine as a state? In 2021, the Pre-Trial Chamber affirmed that the State of Palestine could be accepted as a fully authorised State Party to the Rome Statute and that the ICC has jurisdiction over the occupied Palestinian territories, including the West Bank, East Jerusalem, and Gaza.

This decision is significant because it provides a concrete territorial definition for the State of Palestine. However, it took 12 years to reach this determination and to recognise that the ICC could apply its jurisdiction to Palestine's territory. It also took a surprising three years just to decide that the prosecutor lacked the authority to make this determination. I understand that it is a complex matter, but it should not have taken three years to reach such a straightforward conclusion.

As we know, in 2024, the ICC prosecutor filed an application for arrest warrants against several suspects, including Benjamin Netanyahu, Yoav Gallant, Yahya Sinwar, Mohammed Deif, and Ismail Haniyeh. However, since Ismail Haniyeh has been killed, the proceedings against him will probably be reversed.

Now, the Pre-Trial Chamber must decide whether the necessary standard for issuing arrest warrants has been met. This is just an application at this stage, and we will have to wait and see whether the Pre-Trial Chamber determines that the standard has been satisfied.

The question is: do these decisions really matter? Ultimately, we will see whether states cooperate with the ICC, as the Court does not investigate or judge persons in absentia. Cooperation is essential.

That said, this decision is significant. It can be seen as a symbolic victory for Palestinian legitimacy in its conflict with Israel. It also has a political dimension, and for me, it is crucial for the ICC's institutional legitimacy. As we know, the ICC has been criticised for selective prosecution, often focusing primarily on Africa and certain other states. This decision is also significant as it demonstrates the ICC's resolve to act despite political pressure from powerful states.

However, how events will unfold remain to be seen. The investigation now extends to the conflict that began on October 7, 2023. While an arrest warrant decision has been made, numerous factors create obstacles to completing the investigation and reaching a judgment. In my view, there are two main challenges, particularly state cooperation and the sanctions imposed by either the United Nations Security Council or the Assembly of States Parties.

As Professor Antonio Cassese famously described the ICTY, it was a “giant without arms and legs” that needed artificial limbs to function. The ICC faces a similar challenge—it lacks its own police force and depends entirely on state cooperation to enforce its decisions.

Regarding cooperation, two key articles of the Rome Statute are particularly relevant:

- Article 86 states that if a country is a State Party, it must cooperate with the Court. While there are exceptions, we won't go into those details here.
- Article 87(5) also addresses cooperation, particularly in relation to non-party states.

Without state cooperation, the ICC's ability to function effectively remains uncertain.

Article 87(5) of the Rome Statute states that the Court may invite any state that is not a party to the Statute to provide assistance based on a specific arrangement, agreement, or any other appropriate basis. In other words, if a state is not a party to the Rome Statute, it has no obligation to cooperate with the ICC.

This provision applies to Israel as well as to Russia, given that there is also an outstanding arrest warrant for Vladimir Putin. Essentially, if a state is not a party to the Rome Statute, cooperation with the ICC is entirely voluntary and depends on that state's consent. However, if a non-party state does give its consent, it then assumes an obligation to cooperate. Otherwise, it has no legal duty under the Rome Statute. This makes Article 87(5) a crucial provision.

Another important provision is Article 87(7), which is directly relevant to our discussion. It states that when a State Party fails to comply with its obligation to cooperate with the Court, it bears responsibility for that failure. Specifically, the article states that if a State Party does not comply

with a request for cooperation, contrary to the provisions of the Rome Statute, and this failure prevents the Court from exercising its functions and powers, then a judicial finding of non-cooperation may be made. This creates a threshold: non-compliance must impair the Court's ability to function effectively.

Cases of Sudan, Libya, and Kenya

Article 87(7) involves a separate legal judgment from the main case. It is essentially a matter of obstruction of justice within the ICC framework. There have been three notable cases involving Libya, Sudan, and Kenya:

- Kenya is a State Party to the Rome Statute, meaning it has a legal obligation to cooperate with the ICC. If it fails to do so, the Court can make a judicial finding of non-compliance under Article 87(7).
- If the Court determines that a state has failed to comply, it may refer the situation to the United Nations Security Council or the Assembly of States Parties. However, this referral is not mandatory, the Court has discretion in deciding whether to escalate the matter.

In the cases of Sudan, Libya, and Kenya, the ICC found judicially that these states failed to cooperate and referred the situations to either the UN Security Council or the Assembly of States Parties.

The first case involves Sudan. Although Sudan and Libya were not parties to the Rome Statute, the United Nations Security Council (UNSC) has the authority under Article 13(b) of the Rome Statute to refer situations to the ICC if they threaten international peace and security. Because of such UNSC resolutions, Sudan was required to cooperate with the ICC, despite not being a State Party, as its obligation stemmed from the UN Charter, rather than the Rome Statute itself. The first request in this context was for an arrest warrant for Omar Al-Bashir. However, Sudan failed to comply. Al-Bashir travelled to several states, including Malawi, Chad, the Democratic Republic of the Congo, Djibouti, Uganda, and Jordan, and none of these states cooperated with the ICC. In response, the ICC Prosecutor requested the Pre-Trial Chamber to rule on whether these states had violated their cooperation obligations.

The main reason cited by these states for their non-cooperation was head of state immunity. Initially, the Court was unclear in addressing

this issue, as it struggled to define the relationship between Article 27 and Article 98 of the Rome Statute:

- Article 27 establishes that all individuals are equal before the Court, meaning there are no exceptions for heads of state.
- Article 98 deals with immunity and the obligations of states regarding surrendering individuals to the ICC.

Ultimately, the Pre-Trial Chamber determined that these states had violated their cooperation obligations and notified both the United Nations Security Council and the Assembly of States Parties. However, no concrete measures have so far been taken against these states.

The second case involves Libya. Like Sudan, Libya's situation was referred to the ICC by the United Nations Security Council. Following this referral, the Pre-Trial Chamber issued arrest warrants, including for Muammar Gaddafi, who later passed away, leading to the case against him being dismissed. Additionally, arrest warrants were issued for Saif al-Islam Gaddafi and Abdullah al-Senussi. However, there was an admissibility challenge regarding their case. It is a long story, but ultimately, the case against Saif al-Islam Gaddafi was deemed admissible, meaning Libya was obligated to cooperate with the ICC regarding his arrest and the execution of the arrest warrant. However, Libya failed to comply. As a result, the Pre-Trial Chamber issued a finding of non-compliance by the Libyan government for failing to execute two cooperation requests from the ICC. The matter was then referred to the United Nations Security Council (UNSC). At the time of drafting this paper, the UN Security Council has not taken any action in response to the referral.

The last case involves Kenya, which, as a State Party to the Rome Statute, was legally obligated to cooperate with the ICC. However, Kenya also failed to comply with the Court's requests. Consequently, the ICC made a judicial finding of non-compliance and referred the matter to the Assembly of States Parties.

In these cases, we see two key bodies responsible for deciding on potential sanctions or measures to compel state cooperation with the ICC: The United Nations Security Council and the Assembly of States Parties. Yet, no measures have so far been taken by them. In fact, the UN Security Council has largely ignored the ICC's referrals, demonstrating a persistent lack of enforcement.

For example, during 18 briefings, the ICC Prosecutor questioned the purpose of these briefings, asking: *What is the point of the Office of the Prosecutor briefing if there is no concrete follow-up action taken by the Council?*

A similar situation occurred with the ICTY. The Tribunal's prosecutor, Carla Del Ponte, expressed disappointment, stating that no measures were taken by the UN Security Council in response to a report on Serbia and Montenegro's failure to cooperate with the ICTY. This pattern continues with the ICC. The UN Security Council has never acted upon a judicial finding of a state's failure to cooperate with the ICC under Article 87(7) of the Rome Statute.

The second body with the authority to impose measures is the Assembly of States Parties. Under Article 87(7), if the Court finds a state in violation of its cooperation obligations, it may refer the matter to the Assembly of States Parties. However, the Rome Statute makes no mention of specific sanctions in such cases. We can say that the Assembly of States Parties may apply diplomatic or political pressure on states that fail to cooperate with the ICC. The term *pressure* is more accurate in this context. However, in practice, when cases are referred to the Assembly of States Parties, the President of the Assembly typically writes an open letter to the non-compliant state. This letter simply serves as a reminder of their obligation to cooperate with the ICC, but that is all. This is insufficient.

The Assembly of States Parties does have some legal and administrative tools at its disposal. A relatively new approach, though its effectiveness is uncertain, includes:

- Monitoring the travel of individuals subject to ICC arrest warrants
- Tracking movements through diplomatic networks or other means
- Using online monitoring tools such as Google Alerts, Twitter, and social media
- Sharing relevant information with State Parties and civil society

Conclusion

Over the past 20 years, the United Nations has established numerous investigative mechanisms to examine serious violations of human rights law and humanitarian law in Palestine. However, none of these mechanisms have meaningfully challenged Israel's actions. Many of these

investigations were either abandoned due to Israel's refusal to cooperate, or blocked because investigators were denied access to occupied Palestinian territories. While the recent ICC investigation into Palestine is a welcome development, the Court will struggle to function effectively without state cooperation.

Post-October 7th International Criminal Law and Accountability: Emerging Legal Concepts and Terminology

Osayd Awawda

Osayd Awawda is an Assistant Professor Public Law at Qatar University.

Many of the crimes committed by Israel in its recent war against Gaza lack specific terminology within the international criminal law framework. To hold Israelis accountable for their mass atrocities, there must be legal provisions that explicitly define these actions as punishable offences. This idea is encapsulated in the Latin principle *nullum crimen sine lege*, meaning “no crime without law”: without a law, there is no crime, and without a crime, there is no punishment.

So, what have the Israelis done beyond—or in addition to—genocide against the people of Gaza? While we are all familiar with the gravity of their actions, our challenge now is to establish the proper legal terminology. We need a term that accurately reflects the specific nature of the crimes committed by Israel, which could then facilitate the amendment of the Rome Statute of International Criminal Court. Though amending the Statute is a challenging process, it is essential to ensure that these actions become legally punishable.

Before I delve further into the legal aspects, I would like to share something more personal. I, Osayd, am a Palestinian, born and raised in Palestine. I completed my bachelor’s degree there, and during my time in Palestine, my father was arrested by Israeli forces over 16 times. Collectively, he has spent 6 years in Israeli prisons. In 1996, he was tortured by the Israeli intelligence for 33 consecutive days while in solitary confinement. In 1992, he was deported to southern Lebanon, to

a place called Marj az-Zuhur, where 400 Palestinians were exiled after the apprehension of an Israeli soldier. My father was among them.

Recently, in January, the Israelis raided my father's home. They destroyed the furniture, emptied the closets, and threw the contents in the middle of the room, all while claiming they were searching for money, suspecting my father of financing armed resistance in the West Bank. Of course, they found nothing. They also confiscated my father's car, declaring it the property of the State of Israel because of his supposed support for the resistance. The car was never returned, and now my father is afraid to purchase another one, fearing it would also be confiscated. This raid and the ongoing harassment of my father exemplify the destructive and oppressive tactics used by Israel. But more than just physical destruction of his home, this represents a broader campaign of corruption and brutality that continues to afflict the Palestinian people.

At times, when we participate in conferences such as the Boğaziçi International Law Conference, we find ourselves asking: Are we being cowards? Are we attending these conferences just to convince ourselves that we are doing something meaningful for the Palestinians, while in reality, what the Palestinian people truly want is strong, armed resistance—people who will stand firm against the Zionist criminals who excel in killing women and children?

We find solace in my faith as a Muslim, particularly in a verse from the Holy Quran, *Surat at-Tawbah*. The verse translates as: “*Nor do they tread on any ground that enrages the disbelievers, nor do they inflict upon an enemy any infliction but that it is registered for them as a righteous deed.*” While we know that participating in a conference will not immediately free Palestine or stop the Israeli terrorists from killing innocents in Gaza, I am confident that this work still serves a purpose. By participating in the Boğaziçi International Law Conference, we are treading on a ground that enrages those who are harming Palestinians, inflicting harm in a different way—even if it is secondary compared to armed resistance. I firmly believe that the primary means to liberate Palestine is through armed resistance. However, I also see value in what we are doing here, as it supports and complements that resistance.

Returning to the question of terminology, why is it necessary to propose new terms? As mentioned, there can be no crime without a law. If you confront the Israelis and accuse them of crimes like destroying

universities, killing babies, and murdering women, they will point out that nothing in the Rome Statute or international criminal law specifically defines these acts as crimes. They exploit legal gaps very well.

Let us consider the definition of genocide. Genocide refers to the destruction of a group based on national, ethnic, racial, or religious identity. When Israelis destroy universities or kill children, they do not claim to do so because of national or ethnic identity. They target universities because they are part of Gaza's infrastructure, hospitals because they provide services to the people, and children to suppress the Palestinian population from growing.

I want to emphasise the critical importance of developing new legal terms. First and foremost, it enhances deterrence. When a crime has a specific legal term, it becomes easier to recognise and prosecute. In certain circumstances, this creates a stronger deterrent effect against those who might otherwise commit these crimes. Second, ease of proof. It would be much easier to prove that the Israelis committed *educide*—the destruction of an educational system—if there were a specific term for it. Lastly, it highlights the severity of punishment. Having such terms allows us to impose more severe penalties on those committing these heinous acts.

So, what terminology do we need to ensure these specific crimes are punishable by law? I will provide three new terminologies that I will be introducing in my forthcoming paper with Dr. Mutaz Qafisheh. The first is “*medicide*”. It refers to the systematic destruction of healthcare systems or the intentional denial of medical services to a particular group. To make this more relatable, we conducted a brief survey on the number of hospitals in Türkiye. According to recent reports, Israel has destroyed 75% of Gaza's hospitals, which amounts to 19 hospitals. If the same ratio is applied to Türkiye, this would be equivalent to destroying 1,160 hospitals. Imagine the scale of that destruction. To put this into perspective, consider what happened at al-Shifa hospital. Israeli forces left prematurely born infants in incubators without food, milk, or electricity in the hospital, knowing these infants would die within weeks due to a lack of basic medical care.

The second term is “*pedicide*”. *Pedo* relates to children, and *pedicide* refers to the systematic killing of children, often used as a tactic to destroy the future generation of a particular group. In Gaza, reports indicate that

more than 31,000 children have been killed. To put this into perspective, if the genocide Israel committed against Gaza were carried out against the Turkish people, this would equate to the killing of 1.3 million Turkish children—1.3 million children in just nine months.

The third term, “eduocide”, involves the targeted killing of intellectuals, educators, and thinkers to erase a group’s cultural and intellectual heritage. In Gaza, many individuals, including university professors, were specifically targeted even when displaced. You might have seen the footage of what the Israelis did to the judicial complex. A group from the Israeli engineering brigade entered the building, which housed the courts and the Bar Association, manually placed bombs, and then detonated them, reducing the entire structure to rubble. There were no Palestinian fighters inside; this was purely an attack on Gaza’s legal infrastructure.

Israelis have destroyed 63% of all universities in Gaza, which amounts to 17 universities. If the same destruction had been carried out in Türkiye, it would equate to the destruction of 131 universities out of the 208 universities in Türkiye.

As you can see, none of these three crimes—medicide, pedicide, and eduocide—have specific terminology within the Rome Statute. This is why there is a need to amend the Rome Statute and include these crimes. As I have emphasised, *nullum crimen sine lege*—there is no crime without a law. You must have a law in place to punish those who commit these acts.

Amending the Rome Statute would be a challenging task, as it requires securing the agreement of three-quarters of the ICC’s General Assembly. However, there may be an alternative approach: incorporating these crimes into domestic constitutions. While this could also be difficult, some constitutions could address how states are prohibited from committing such crimes, giving citizens the right to appeal to the constitutional court to stop their governments from engaging in illegal actions.

Before I conclude, I would like to share a verse from the Holy Quran that I believe offers great comfort during these times, especially as we witness the atrocities in Gaza. The paper is partly related to knowledge production, and as Muslims, we must remember that our knowledge is rooted in revelation. We do not see this world as the only life; we believe

in the hereafter and in the reward that God has promised to those who show patience in hardship.

God says in the Quran in Surah Al-Imran verse 195: *“Those who emigrated or were evicted from their homes, or were harmed in My cause, or fought or were killed, I will surely remove from them their misdeeds, and I will surely admit them to gardens beneath which rivers flow, as a reward from Allah. And Allah has with Him the best of rewards.”*

Forced Displacement, Right of Return and Self-determination

An Examination of Forced Displacement, Siege and Denial of Right of Return of Palestinians as War Crimes and Crimes Against Humanity

Susan Akram

Susan Akram is a Clinical Professor of Law at Boston University School of Law.

The ICC cases under consideration against Benjamin Netanyahu and Yoav Gallant are for war crimes and crimes against humanity for their prosecution of the war on Gaza. Included in the grounds for the applications as listed by the prosecutor are: starvation of civilians as a method of warfare; extermination and/or murder, including in the context of deaths by starvation; persecution as a crime against humanity; and other inhumane acts as crimes against humanity. Now the prosecutor has indicated in rather puzzling fashion, that he is treating the commission of these crimes as both in an international (IAC) and a non-international armed conflict (NIAC) between Israel and Palestine in the first context, and between Israel and Hamas and other armed groups in the second context. I cannot say with certainty how he is going to proceed on this basis, but because of that, I am going to look at the main crimes related to forced displacement under both frameworks. I want to address the war crimes and crimes against humanity charges specifically as they relate to the crimes underlying forced displacement of Palestinians; that is sieges, starvation, mass displacement, and the implications for the denial of the right of return. These crimes relate not only to the current genocide in Gaza, but also to the ongoing forced displacement of Palestinians relating back to 1948, and the denial of right of return of the Palestinian people that has continued collectively until today.

I shall give an overview of the key issues that must be resolved in the prosecutor's case on crimes related to forced displacement and address their implications for the right of return. Aside from the problematic issues in the prosecutor's list of crimes, I posit that incorporating sieges, along with forced starvation and forced mass displacement, as well as denial of right of return, are a cluster of crimes that are essential precedent for achieving justice, not only for Gazans, but for the Palestinian people as a whole. Because the prosecutor has indicated that he applies both IAC and NIAC frameworks, I am going to touch on both. It is important to note that Palestine has ratified both Protocols 1 and 2 to the Geneva Conventions, but Israel has not ratified either of them.

Forced Displacement Crimes

Starting with forced displacement crimes, the prosecutor has spelled out forcible transfer or forced displacement within his grounds for war crimes or crimes against humanity. However, forced displacement has been part and parcel of the siege and starvation strategies used in Gaza, as Israel has issued numerous evacuation orders, corralling over 2 million Palestinians from one side of the Gaza Strip to another into smaller and smaller spaces where access to food and water and means of survival are in shorter and shorter supply. The repeated forced displacement has been intricately linked to the starvation and siege warfare that Israel has waged in Gaza.

To give just an overview of the crimes involved in forced displacement, the strongest prohibitions against forced displacement are those applicable in international armed conflict in the belligerent occupation provisions in the Fourth Geneva Convention; Article 49 of the Convention prohibits individual or mass forcible transfer and deportation from occupied territory, regardless of the motives of the occupier. However, evacuations for imperative military reasons are permissible, as long as those evacuated are returned to their homes at the immediate cessation of hostilities. Evacuations outside occupied territory are impermissible except for material reasons which make displacement impossible to avoid. Undoubtedly, in Gaza, this will be the Israeli argument: that material necessity justified these repeated displacements, and particularly if Gazans are forced out of Gaza entirely. These are also war crimes which can be prosecuted.

The main governing legal framework in a non-international armed conflict is Additional Protocol II (AP II), to which, as I said, Palestine is a party, but Israel is not. In AP II we find a provision in Article 17, which mirrors the Fourth Geneva Convention's Article 49, prohibiting the displacement of civilians except where necessary for the safety of the population or imperative military reasons. The International Committee of the Red Cross, the ICRC, in its authoritative Study on Customary International Humanitarian Law, claims that the prohibition against forcible displacement of a civilian population is a customary international law rule binding on all parties, including in a NIAC. Whether this is accurate is a matter of contention and remains to be resolved. According to the ICRC Study, no party is permitted to order displacement of a civilian population in a NIAC except for *imperative* military reasons.

Turning from individual crimes of displacement to collective forcible dislocation-- since the prosecutor has included collective punishment-- such crimes can be classified as war crimes, crimes against humanity, or genocide. In *the Stakić* case, the International Criminal Tribunal for the former Yugoslavia defined forced displacement as including, and this is important, 'physical force', but also the 'threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power...or a coercive environment.' In the *Karadžić* case, the Trial Chamber concluded that civilian displacement occurred because of fear of the same violence that other non-Serbs suffered at the hands of the Serb militias. Forcible transfers and forced displacement, however, can comprise crimes against humanity if they target a civilian population and are part of either widespread or systematic and organised practices occurring in either war or peacetime. This point will be addressed below.

Siege and Starvation as a Method of Warfare

The second cluster of crimes related to forced displacement is when siege and starvation are used to compel a population to capitulate, leave or starve. It may come as no surprise, but sieges have historically been an acceptable method of warfare. They have historically been legal. The Geneva Conventions have different approaches towards siege and starvation in non-international as opposed to international armed conflicts. The Fourth Geneva Convention places the duty on

the occupying power to use all available means to ensure adequate food and medical supplies for the occupied population, including to facilitate delivery of humanitarian relief. Outside of occupation law, however, the Four Geneva Conventions' regulation of starvation is weak, *allowing* encirclement starvation, and only requiring the evacuation of particularly vulnerable persons.

The Additional Protocols finally prohibited starvation as a method of warfare. AP I (Article 54) bans starvation of civilians as a method of warfare and prohibits the attack, destruction, removal or rendering useless of objects indispensable to civilian survival "for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive." An analogous rule appears in Article 14 of AP II for NIACs and has no exceptions for military necessity. Israel is not party to AP I or II as I mentioned, and whether these provisions are now customary international law is an open question. The Rome Statute parallels this structure, criminalizing, 'intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies.' The crime is established when it is shown that a perpetrator, acting with intent to starve civilians as a method of warfare, deprives them of objects indispensable to their survival. The prosecutor has explicitly included this, referring to the relevant Article 8 (2)(b) in his charges. In 2019, the States Parties to the ICC approved an amendment incorporating the war crime of starvation of civilians as a method of warfare in NIACs. Prior to this amendment, the Rome Statute had criminalised this practice only in IACs. As the non-international crime was added later and must be separately ratified by individual states, only when states have ratified it can the International Criminal Court extend jurisdiction; neither Palestine nor Israel have ratified the provision.

The big problem with this provision is that views differ as to whether the crime attaches to the act of blocking the delivery of essentials, like food and water, to an encircled and starving population, when that obstruction is performed with the goal of starving out ensconced enemy forces. In one interpretation, for the crime to attach, it has to be established that the besieging party acted with *the aim of* weaponizing civilian suffering. In other words, it would require a specific *mens rea*. In another view, engaging in deprivation with knowledge that it *could* cause

civilians to starve would be sufficient. These perspectives diverge in terms of both the range of operations to which the crime might attach and the particular acts for which prosecution would be viable. The ICC has never prosecuted the crime of starvation as a method of warfare. In light of this crime's dormancy as an IAC, and the NIAC crime's recency, there is no case law or broader jurisprudence that might help settle the issues of interpretation. The particularly difficult questions around intent and purpose have to be resolved by the prosecutor before this charge will have traction.

Denial of Right of Return as a Crime against Humanity

I turn to the final point, which is denial of right of return as crimes against humanity and is the last part of the cluster of crimes of forced displacement as relevant to the prosecutor's warrants. Can the denial of right of return, intimately related to forced displacement, be prosecuted as a crime at the ICC as a crime against humanity? Again, to date, there have been no ICC prosecutions for prohibiting the right of return of expelled or forcibly displaced populations. However, in the Myanmar case, two pretrial chambers indicated that depriving individuals of the right to enter their own country, or deportation and denial of the right of return, could be a crime against humanity within the ground of persecution under Article 7(1) of the Statute.

Article 7's *chapeau* clause describes crimes against humanity as comprising any of 10 categories of violations crimes as part of widespread or systematic attack directed against a civilian population with knowledge of the attack. The 10 categories include persecution, defined in Article 7(1)(h) as the commission of any of nine separate acts specified in the article; other grounds universally prohibited under international law; or the commission of any crime in the Court's jurisdiction. To be persecution, the acts must be against any group or collectivity on political, racial, national, ethnic, cultural, or other protected grounds. Among the listed acts are deportations or forcible transfers of populations. A final paragraph broadens the ground to 'other inhumane acts' that intentionally cause great suffering or serious injury to body or to mental or physical health. These parallel the prosecutor's list.

Persecution is further defined in Article 7(2) as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity. Under the Court's Elements of Crimes, persecution involves severe deprivation of fundamental rights, as codified in international human rights treaties and customary international law, like the Universal Declaration, the International Convention on Civil and Political Rights (ICCPR), and the Convention on the Elimination of Racial Discrimination (CERD). The group, of course, must fall into a protected ground, that is, political, racial, national, ethnic or religious.

This brings us to the explicit rights the ICC pretrial chambers have implied that, if denied, would comprise persecution in the Myanmar case. The three rights are:

1. Everyone has the right to leave any country, including his own, and to return to his country; the Universal Declaration right in Article 13(2);
2. No one shall be arbitrarily deprived of the right to enter his own country; the ICCPR right, Article 12(4); and
3. and States Parties must guarantee the right to everyone to leave and return to their country, and the right to nationality, without distinction as to race, colour, national or ethnic origin. That is the provision in Article 5(d)(ii) of the CERD.

Israel is a party to these treaties. The right to nationality and the right to enter one's country are, in any event, customary international law. The customary international law right to enter or return was referenced in both the ICJ Myanmar and the Chagos Islands cases. In terms of the group or collectivity, Palestinians are already established as a protected group, and the right of return has been affirmed and reaffirmed since 1948 in Resolution 194. This brings us to the last point, which is: do Palestinians have the right to return to territory within Israel as nationals? Are they nationals of the territory now declared part of the Israeli state? Answering this question is far too detailed to address here. However, it is safe to say that Palestinian nationality dates back to the Lausanne Treaty of 1924, and remains intact today as an international law matter, regardless of Israel's laws of 1950, the denationalisation of Palestinians in the 1952 citizenship law, and the 2018 Nation-State law.

In sum, persecution can be connected to any act under Article 7(1) or to any crime under the Court's jurisdiction, including war crimes;

deportations and forced expulsion, are war crimes. To conclude, a cluster of forced displacement crimes, some explicitly raised by the prosecutor's warrant requests, and some that could be raised as crimes against humanity, have profound implications for successful prosecutions, not only on behalf of Gazan victims, but for Palestinians as a whole, for crimes relating back to 1948. Much work needs to be done to provide evidence to address the gaps in the law that I have briefly covered, but also to build on the Gaza prosecutions for the forced displacement. Palestinians have suffered for decades, particularly for the ongoing crime against humanity of the denial of the right of return for all of the Palestinian people.

From Settlements to Genocide: The State-Sponsored Demographic Engineering of Palestine and the Challenge of Enforcement in the Aftermath of the 2024 ICJ Advisory Opinion on Israel’s Occupation

Andrea Maria Pelliconi

Andrea Maria Pelliconi is an Assistant Professor of International Human Rights Law at University of Southampton.

This paper focuses on the illegality of Israel’s establishment and ongoing expansion of settlements in the West Bank, and addresses other occupied territories within the broader context of an eliminationist demographic engineering project. The central argument is the notion that the policies and practices of Israel’s settlement expansion are part of a larger strategy of demographic manipulation aimed at undermining Palestinian self-determination. The concept of “demographic engineering” here refers to state-driven practices designed to alter the demographic composition of a territory, often in ways that undermine the territorial integrity and self-determination of the local population. In the case of Israel, the settlement policy operates in tandem with the dispossession and forcible displacement of Palestinians, the ongoing denial of their right to return, and the genocidal actions unfolding in Gaza, to limit, reduce, or eliminate the demographic presence of the Palestinians in the occupied territories.

In this essay, I discuss the legal implications of Israel’s demographic engineering activities, particularly in relation to settlements, and the role of the International Court of Justice (“ICJ” or “Court”) advisory opinions in addressing these issues. My argument is that the law on this matter is unequivocal. As Professor Michael Lynk noted in his intervention, the legal framework concerning settlements is well-established and has

been clear for a long time.¹ In its advisory opinion of 19 July 2014, the ICJ unequivocally stated that Israeli settlements in the occupied Palestinian territories are illegal² – but we have known this since their very establishment.³ Despite the 2024 advisory opinion, which reaffirms well-established international legal norms, settlements in the West Bank continue to expand,⁴ and there is a real risk that settlements will be re-established in Gaza.⁵ The priority for the international community in the aftermath of the 2024 advisory opinion should be focusing on ensuring compliance and preventing that the illegal demographic engineering actions taking place in the West Bank expand to Gaza too.

The question of “demographic changes” in the 2024 ICJ advisory opinion

It should first be clarified why it is important to look at settlements and, more broadly, at the concept of demographic changes in the occupied territories. In its first question posed to the ICJ in its 2022 request for an advisory opinion on the legality of Israel’s policies and practices in the occupied Palestinian territories, the United Nations (“UN”) General Assembly specifically mentions the issue of demographic changes in the

¹ Michael Lynk, *Israeli Settlements under the Rome Statute of the ICC*, in Keynote Panel Session II Occupation, Racism, and Resistance in Boğaziçi International Law Conference *Rethinking International Law After Gaza* 3-4 August 2024. (Directed by Boğaziçi Üniversitesi, 2024) <<https://www.youtube.com/watch?v=IcPCw3sxlQ8>> accessed 20 May 2025.

² *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Advisory Opinion)*, 19 July 2024 <<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-pre-01-00-en.pdf>> accessed: 5 May 2025 (*Israel’s Policies and Practices*).

³ UN Security Council Resolution 446 (22 March 1979) UN Doc S/RES/446, paras. 1 and 3; UNSC, Resolution 452 (20 July 1979) UN Doc S/RES/452, para. 1; UNSC, Resolution 465 (1 March 1980) UN Doc S/RES/465, para. 5.

⁴ See e.g. Caleb Diehl and Joseph Federman, ‘A Look at How Settlements Have Grown in the West Bank Over the Years’ (AP News, 5 July 2024) <<https://apnews.com/a-look-at-how-settlements-have-grown-in-the-west-bank-over-the-years-0000019079d8d0f6a3da79dcbdb0a0000>>.

⁵ Yasmien Serhan, ‘Why Palestinians Fear Permanent Displacement From Gaza’ (*Time*, 2 November 2023). Office of the High Commissioner for Human Rights of the United Nations, ‘Israel Working to Expel Civilian Population of Gaza, UN Expert Warns’ (Press Release, 22 December 2023) <<https://www.ohchr.org/en/press-releases/2023/12/israel-working-expel-civilian-population-gaza-un-expert-warns>> accessed: 5 May 2025. More recently, settlement plans in Gaza have been reiterated by the newly re-elected President of the United States Mr. Donald Trump, who mentioned his intention to build a “Riviera” of the Middle East on Gazan shores.

occupied territories.⁶ The question asks the ICJ to elaborate on the legal consequences of Israel's violations of Palestinian self-determination rights, the prolonged occupation, the settlement and annexation of Palestinian territories, and measures aimed at altering the demographic composition, character, and status of the holy city of Jerusalem.⁷ While the question mentions settlements, its primary focus is on broader measures that aim to alter the demographic composition of the occupied territories. These measures include the displacement of Palestinians, the expansion of settlements, the denial of the Palestinian right to return, and other demographic engineering policies that contribute to the fragmentation of Palestinian territorial and social cohesion.

The General Assembly's request for the advisory opinion was somewhat narrow, as it specifically focuses on the demographic changes in Jerusalem, rather than addressing demographic engineering across the entire West Bank or all occupied territories. Although the question was framed in this way, many of the thirty-six states and international organisations that submitted their observations to the ICJ referred to demographic changes in the broader context of the entire West Bank, not just Jerusalem. A total of forty-two submissions engaged with the legal consequences of demographic changes in the occupied territories, and four of these—Qatar, the UAE, Cuba, and France—devoted significant sections of their submissions to this issue.⁸

In its advisory opinion of July 2024, the ICJ did address demographic changes in the broader context of the West Bank. However, it did not delve deeply into demographic engineering as a holistic issue. Instead, the Court primarily focused on the legality of settlements, which are one part of the broader demographic engineering strategy.

The illegality of settlements under international law

As mentioned, the law surrounding Israeli settlements in the occupied Palestinian territories is well-established, and numerous legal authorities, including the ICJ, have reiterated that the establishment of settlements

⁶ UN General Assembly, Resolution 77/247: Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem (30 December 2022) UN Doc A/RES/77/247, Question (A).

⁷ *Id.*

⁸ Data from author's own tabulation.

in such territories is a violation of international law. As Professor Lynk highlighted, there have been thirty-one UN Security Council resolutions addressing settlements, and even more that refer to demographic changes in general, particularly measures taken by Israel to alter the physical character and demographic composition of the Palestinian and other Arab territories it occupies.⁹ It is the establishment and expansion of civilian settlements in occupied territories that is illegal under international law – and not just settler violence, which has largely been the focus of international attention in most recent years.

The ICJ's advisory opinions have reinforced the illegality of settlements as such. As articulated by the ICJ in its 2004 advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territories,¹⁰ and reiterated in the 2024 advisory opinion on Israel's policies and practices,¹¹ settlements in occupied territories constitute a serious breach of international humanitarian law violating Article 49(6) of the Fourth Geneva Convention, which prohibits the transfer of an occupying power's civilian population into the territory it occupies.¹² The Rome Statute of the International Criminal Court recognises the establishment of settlements as the war crime of forcible transfer under Article 8(2)(b)(viii).¹³ Both the 2004 and 2024 ICJ advisory opinions noted that Israel's demographic engineering policies and practices (including the construction of the wall in Gaza) are intended to reinforce illegal Israeli settlements and coercively displace the Palestinians.¹⁴

Such practices seek to alter the Palestinian population and fragment the territorial integrity and continuity of Palestinian land. As acknowledged

⁹ Lynk (n 68).

¹⁰ ICJ, *Legal Consequences of the Construction of a Wall (Advisory Opinion) 2004* <<https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>> accessed 5 May 2025 (Wall), para. 121.

¹¹ ICJ, *Israel's Policies and Practices*, paras. 118-119.

¹² *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287* (Fourth Geneva Convention). Cf. ICJ, *Israel's Policies and Practices*, paras. 155-156.

¹³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3. In the 2020 request for a ruling on the Court's territorial jurisdiction in Palestine, the former Prosecutor stated that 'there [was] a reasonable basis to believe that in the context of Israel's occupation of the West Bank, including East Jerusalem, members of the Israeli authorities have committed war crimes under article 8(2)(b)(viii) in relation, *inter alia*, to the transfer of Israeli civilians into the West Bank' (para. 95).

¹⁴ E.g. ICJ, *Israel's Policies and Practices*, para. 143.

in the 2024 ICJ advisory opinion, the expansion of settlements and demographic changes in the occupied territories amount to a violation of the right to self-determination, as they aim to disrupt the unity of the Palestinian people and prevent the exercise of their fundamental rights.¹⁵ The right to self-determination is protected against actions that disperse or undermine the unity of a population by changing its composition, territorial presence, and distribution. These changes are part of a demographic engineering effort to fragment the Palestinian demographic unit in the occupied territories, thereby violating the Palestinians' right to self-determination.

A particularly significant aspect of Israel's demographic engineering activities is the denial of the right of return to Palestinians who were displaced during the 1948 Nakba and subsequent conflicts.¹⁶ The right of return is enshrined in international law, including UN Resolution 194, which affirms the right of Palestinian refugees to return to their homes.¹⁷ However, Israel's policies of displacement and the creation of a permanent Israeli presence in Palestinian territories have systematically denied this right, further exacerbating the Palestinian society and territorial continuity. The denial of the right of return is not merely an individual violation but also a measure of demographic engineering. As such, it constitutes a denial of the collective right to self-determination, as it prevents the Palestinian people from reconstituting their territorial integrity and political cohesion.

In addition to violating the Palestinians' right to self-determination, demographic engineering also serves as a tool to establish "creeping sovereignty" over occupied territories. Such policies and practices have led to irreversible changes in the demographic composition and territorial integrity of the occupied Palestinian territories, particularly in the West Bank and East Jerusalem.¹⁸ These activities alter the demographic status

¹⁵ ICJ, *Israel's Policies and Practices*, paras. 230-243.

¹⁶ Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891-1949* (Pluto Press 2009), p. 211.

¹⁷ UN General Assembly, Resolution 194 (III): Palestine—Progress Report of the United Nations Mediator (11 December 1948) UN Doc A/RES/194(III) para. 11. See also, more recently, UNGA *Resolution 76/77: Assistance to Palestine Refugees* (9 December 2021) UN Doc A/RES/76/77, para. 1.

¹⁸ See UN Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (12 August 2022) UN Doc A/HRC/49/87, para. 35).

of the occupied territories by creating a permanent Israeli presence. They also alter the legal status of the occupied territories by *de facto* annexation and exercising Israeli sovereignty over certain parts.¹⁹

In the light of their illegality, the 2024 ICJ's advisory opinion identified Israel's obligation to repeal measures aimed at modifying the demographic composition of any part of the occupied territory.²⁰ The Court emphasised that other states and international organisations have an obligation not to recognise any changes in the physical character or demographic composition of these territories.²¹ These obligations extend beyond the specific issue of settlements to include broader demographic engineering practices, such as the denial of the right to return for Palestinians.

Settlements as genocidal demographic engineering

Although the ICJ's advisory opinion reiterates these well-established legal principles regarding settlements, it could have further unpacked the broader legal analysis of demographic changes.²² While settlements are an important part of the problem, they are only one aspect of the larger demographic engineering efforts. For example, as mentioned, the ongoing denial of the right to return also constitutes an illegal demographic change. The ICJ acknowledged demographic changes as a violation of international law but did not fully explore the broader scope of these violations.

Typically, settlements and demographic changes are viewed through the lens of war crimes, forcible transfer, or serious breaches of international humanitarian law. While this perspective is not without merit, it is

¹⁹ Id. See also ICJ, *Wall*, para. 121.

²⁰ ICJ, *Israel's Policies and Practices*, paras. 267-272.

²¹ Id., paras. 273-279; 280-283. See also the following resolution: UNGA, Request for an Advisory Opinion of the International Court of Justice on the Legal Consequences Arising from Israel's Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem, and from the Illegality of Israel's Continued Presence in the Occupied Palestinian Territory (18 September 2024) UN Doc A/ES-10/L.31/Rev.1.

²² Andrea Maria Pelliconi, 'The UNGA Request for an ICJ Advisory Opinion on Palestine: The Role of Demographic Alterations in the Process of De Facto Annexation and Legal Consequences under International Law' (City Law Forum, 22 February 2023) <<https://blogs.city.ac.uk/citylawforum/2023/02/22/the-unga-request-for-an-icj-advisory-opinion-on-palestine-the-role-of-demographic-alterations-in-the-process-of-de-facto-annexation-and-legal-consequences-under-international-law/>> accessed: 5 May 2025.

somewhat limiting in understanding the true nature and objectives of settlements and demographic changes. This is not to suggest that we should disregard these legal frameworks—after all, as mentioned earlier, the law in this area is very clear and is a powerful tool to demonstrate that settlements, in and of themselves, are illegal. However, focusing solely on the illegality of settlements and demographic changes through the lens of forcible transfer and war crimes offers a limited perspective. This approach tends to focus on individual actions and the criminal responsibility of settlers or those who encourage settlement activity, overlooking the broader, systematic context in which these settlements and demographic changes occur. By examining demographic engineering within the framework of a broader genocidal and eliminationist agenda, we can better appreciate the systemic nature of this settler-colonial project.

The concept of genocide has often been narrowly associated with the Nazi crimes, leading to a limited understanding of genocide as something that must replicate the exact events of the Holocaust.²³ However, genocide, in its essence, is the elimination of a particular group (even in part) from a specific land. Genocidal campaigns are aimed at either fully or partially eradicating a group, with the ultimate objective being the removal of that group from the land and its replacement by another group deemed more legitimate or entitled to occupy it. This is why even smaller-scale demographic changes are intrinsically connected to genocidal ideologies. By recognizing this, we can more fully grasp the systemic nature of these practices and understand how they align with broader strategic goals. Additionally, this framework allows us to frame the situation not merely as an individual responsibility issue but as a “state crime”, or an internationally wrongful act, one that engages state responsibility²⁴ rather than just individual accountability. This does not undermine the importance of international criminal law, but it is crucial to appreciate the broader scale of the issue and structural responsibilities.

To support this claim from a legal perspective, consider the evolution of the concept of forcible transfer, especially in relation to the war crime

²³ See *inter multis* Rebecca Jinks, *Representing Genocide. The Holocaust as Paradigm?* (Bloomsbury Publishing, 2016).

²⁴ Article 2, Article 40, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001) UNGA, 56th Session, Supp No 10, UN Doc A/56/10.

of illegal settlements under the Rome Statute. As Professor Lynk has shown, the rationale behind criminalizing settlements is often framed in terms of preventing annexation.²⁵ However, if we look back at the *travaux préparatoires* and earlier work on draft conventions, forcible transfer, and other instruments from the late 20th century, we see that the concept of state-sponsored demographic changes and their illegality was explicitly tied to the emerging idea of ethnic cleansing and, more broadly, to genocidal aims—not just to forcible transfer as we understand it today.²⁶ It is important to revisit this original idea, which has somewhat faded in positive international criminal law, and adopt a more holistic and systemic view of the rationale behind this strategy.

While the law on settlements is clear, we must recognise that demographic engineering extends beyond settlements to include various policies and practices that ultimately aim to permanently alter the demographic composition of the occupied territories. What starts with settlements and other demographic engineering policies and practices risks to escalate in ethnic cleansing and full-fledged genocide. This broader view is crucial because it allows us to connect what is happening in the West Bank with what is unfolding in Gaza. Although these two issues are often treated as legally separate, with distinct contexts and situations, they are ultimately driven by the same strategic eliminationist goals. It is thus crucial to take a more holistic approach when addressing these issues, especially in light of the recent advisory opinion and the acknowledgement of the systemic nature of these policies and practices as a state strategy.

Looking Ahead: The Challenge of Enforcement

The legal principles surrounding demographic changes in the occupied Palestinian territories are well-established, yet the practices of demographic engineering continue largely unchecked. While the 2024 ICJ advisory opinion is important in reaffirming the illegality of settlements and demographic changes in the occupied territories, it has

²⁵ Lynk, (n 68).

²⁶ Andrea Maria Pelliconi, 'Settlements in the Occupied Palestinian Territories, Demographic Changes, and Forcible Transfer as a Violation of Self-Determination' (Blog Droit International Pénal, 23 January 2024) <<https://www.nottingham.ac.uk/hrlc/newsholding/news-2024/andrea-forcible-transfer.aspx>> accessed: 5 May 2025.

not led to significant enforcement of international legal norms. As the advisory opinion from the ICJ has reiterated, Israel has an obligation to cease its settlement activity and ensure the right of return for Palestinian refugees. Nevertheless, the absence of effective enforcement mechanisms has led to a situation where international law is ignored and undermined, eroding its very foundation and legitimacy.

This gap in enforcement is compounded by Israel's continued defiance of the ICJ's rulings and its expansion of settlements in the occupied West Bank and support for settler violence, undermining Palestinian territorial integrity and self-determination. The international community has failed to hold Israel accountable for these actions – a further demonstration of the weaknesses inherent to international law and the inevitable gaps in the enforcement system under the UN Security Council. What is more, there is a real risk that illegal settlements will be re-established in Gaza after the local Palestinian population has been wiped out.

While the scope of the ICJ's 2024 advisory opinion centred primarily around the West Bank, the broader implications of demographic engineering policies extend *a fortiori* to Gaza, where similar efforts to alter the demographic composition of the territories and replace the local population are evident. The ongoing violence, the genocidal campaign, the displacement and the ethnic cleansing of civilians in Gaza, the denial of their right to return home, as well as the continued threat of re-establishing Israeli settlements, are all part of a systematic strategy aimed at expanding Israeli sovereignty over the occupied Palestinian territories to establish a "Greater Israel". In other words, the Gazan genocide is a manifestation of the settler-colonial project of demographic engineering that operates across the entirety of Palestine.

The history of international law and the engagement of the UN with the question of Palestine has typically marginalised the Palestinians, positioning them as a legally subaltern group while privileging dominant states such as Israel and the United States within the international legal order.²⁷ For once, international law – as articulated in the 2024 ICJ advisory opinion – offers a decisive stance on the rights of the Palestinians and the illegality of Israel's presence in the West Bank and Gaza. However, despite the clarity of this legal framework, there remains a significant lack

²⁷ Ardi Imseis, *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge University Press, 2023).

of political will to uphold and enforce these norms and achieve justice for the Palestinian people. The United States and Israel continue to deviate from their own “rules-based international order”, selectively applying international law only when it serves their own interests. European and other western states are increasingly fading into geopolitical irrelevance, and other states struggle to translate moral, legal, and political positions into tangible action to address Israel’s conduct. In the aftermath of the 2024 ICJ advisory opinion, more than re-building a new set of rules, the real challenge lies in enforcing these well-established legal norms and ensuring that Israel adheres to its obligations under international law.

Palestinian Refugees in Gaza and the Limitations of Refugee Law

Dr. Rama Sahtout

Rama Sahtout is a lecturer at the Institute of Arabic and Islamic Studies and the Law School at the University of Exeter.

When discussing the ongoing Israeli genocide in Gaza, many commentators overlook a crucial fact: 70% of Gaza's population is already refugees, the majority displaced in 1948. Their continued displacement is not an accident of war but part of a longer colonial history of forced removal and dispossession, one that refugee law, in its current form, struggles to address. Thus, I invite the reader to think critically about the broader structures of power that dictate who is granted protection, who is left in perpetual exile, and whose displacement is normalised or even erased from the narrative.

The prevailing discourse among some of the refugee law scholars - particularly their narrow framing of legal responses aimed at 'protecting' Palestinians in Gaza during the current genocide, while ignoring that Palestinians' displacement is a settler colonial aim was a central motivation for writing this paper.

Among the minority of scholars who have chosen to speak out -while the majority remain silent - I noticed a recurring tendency to confine advocacy to the framework of *non-refoulement*, often focusing narrowly on opening the Rafah crossing. When the issue of the Erez crossing was raised, one scholar responded: "there is no refugee crisis there- on that border," disconnecting the question from both the genocide and the right of return - and when the notion of displacement as a form of erasure was highlighted, it was met with: "Palestinians have the right to seek asylum."

These responses expose a deeper conceptual, legal, and political dilemma - one that this paper seeks to address by interrogating the limitations of existing legal tools in capturing the specificity of the Palestinian condition.

The dilemma is as stark as it is painful: measures proposed to avert genocide too often reproduce, in another register, the very dispossession they seek to mitigate. In the Palestinian case, displacement is never a neutral or temporary condition; it carries the sedimented history of expulsions and the persistent threat of erasure. One is compelled to ask how such movements - when they occur - might be conceived without effacing identity, memory, and the enduring claims to land and return. For Palestinians, this is a lived continuity, in which each episode of forced movement reactivates an intergenerational memory of loss and dispossession.

From its inception, Zionism has functioned through a consistent logic: the depopulation of Palestine and the replacement of its native inhabitants. The ideological rationale that justified the ethnic cleansing of Palestine in 1948 remains unchanged, and it continues to serve as the justification for Israel's settler-colonial violence today, particularly in Gaza. Israel's atrocities in Gaza are driven by what Patrick Wolfe describes as the "logic of elimination", a foundational principle of settler colonialism. Displacement, expulsion, and mass transfer are not just military tactics; they are integral to the settler-colonial goal of replacing the Palestinian people.

In this contribution, I start from the fact that the genocidal war in Gaza is part of a long-standing settler colonial project designed to replace one people with another. I add that the epistemic violence of settler colonialism extends beyond Palestine, shaping how Palestinians are seen, classified, and often erased. The current legal tendencies not only overlook the nature of settler colonialism but also forget that Palestinians in exile are subject to countless legal sub-categories that in most cases recognize them as anything but Palestinians. Across the world - whether stateless, refugees, naturalised, or women- they endure a slow, ongoing erasure. The Palestinian struggle is not only waged on the ground but also within legal, discursive, and institutional frameworks that consistently fail to recognise the Palestinian identity.

I call this process the ‘Taxonomy of Erasure’ a regime of categorization that does not merely mislabel Palestinians but also disfigures the political meaning of being Palestinian. Through bureaucratic, and ‘legal’ classifications - stateless, refugee, displaced, nationalised etc - Palestinians are fragmented and rendered legible only through imposed sub-categories. The Palestinians occupy a fragmented space shaped by categories — reclassified and erased — while their collective identity is treated as a bureaucratic problem.

To counter this, I introduce the ‘Palestinian’ as a distinct *status* - a decolonial, political, legal, and existential subjectivity that transcends the limitations of the nation-state system. It aims to address the erosion of Palestinian identity through the lenses of settler colonialism, international law, and the ongoing Nakba.

This proposal is shaped by my lived experience as a Palestinian. I write from within the struggle, where the personal and the scholarly are linked. My recommendation to recognize the ‘Palestinian status’ emerges from my own navigation of legal, institutional, and epistemic structures that often render our identity fragmented. I situate this work as a part of a broader commitment to decolonial thought and solidarity - to imagining a future rooted in justice and presence.

Before explaining what, I mean by the ‘Taxonomy of Erasure,’ let me first introduce the dilemma that the field of refugee law faces today. I will then conclude by outlining the key characteristics of a unified status for Palestinians, and the role of academics in shaping and advocating for this ‘Status’.

At the core of refugee law are the norms of protection, asylum and of *non-refoulement*. Yet, in the face of genocide, one must ask: Does refugee law hold relevance when faced with a settler-colonial project that seeks not only to displace but to annihilate?

This is not merely a legal question – it is a moral and existential one. Today, it is more urgent than ever. The right to seek asylum and the principle of *non-refoulement* appear, in practice, to be in tension with the right of return and the right to self-determination. How do we uphold refugee law without facilitating the replacement of Palestinians? And how do we prevent erasure without resorting to containment, rendering Palestinians out of sight, out of mind, and ultimately out of rights? Do

we accept a hierarchy of norms? Are there logical, measurable standards for establishing such a hierarchy?

The current refugee law framework, dominated by a Eurocentric, positivist epistemology, was never designed to address a case like Palestine, and the questions above have been sidestepped through what can be called ‘a policy of avoidance’ and the discourse of ‘preventing another Nakba’. But what does this mean when Gaza is rendered uninhabitable? Avoidance will ultimately lead to a silent, and managed displacement - one that functions as a continuation of the settler-colonial logic of elimination.

Until May 2024, individuals were able to cross into Egypt via the Rafah crossing, but access was heavily restricted. Those with dual nationalities were evacuated by their respective states, as their foreign citizenship provided them with a means of escape. Another category consisted of individuals with Egyptian nationality, who were permitted entry into Egypt. The third category included those who could afford to pay what has been referred to as “coordinating fees,” essentially purchasing access to leave. This system, shaped by *ad hoc* measures and selective allowances, has served as a mechanism to evade deeper discussions about the crisis and its implications. This approach reflects the broader pattern of deflecting responsibility rather than confronting the contradictions and failures inherent in the refugee system. As scholars, we must engage critically with these paradoxes rather than allowing them to be swept aside.

Palestine has, for decades, both symbolically and materially embodied the unfulfilled promise of universal rights. As a contemporary site of settler-colonial violence, it demands that we scrutinise and challenge the limitations of refugee law, bringing its postcolonial critiques to the forefront of legal and political discourse. Indeed, within refugee law, the question of state responsibility for displacement remains one of the least researched topics. Similarly, burden-sharing and responsibility-sharing remain discretionary rather than binding principles, reinforcing a system that places the burden on displaced populations rather than on the actors responsible for their displacement. Moreover, mainstream refugee law scholarship has historically been dominated by a positivist, legalistic approach that concerns itself with the technicalities of refugee definitions,

rights frameworks, and non-entry regimes, all while avoiding the broader political realities that produce displacement.

In moments of crisis, states and international institutions default to *ad hoc*, exceptional, and pragmatic arrangements allowing the current refugee regime to manage displacement in a way that accommodates geopolitical interests rather than ensuring justice. The development and promotion of *ad hoc* arrangements in refugee crises often reveal the inherent contradictions within international refugee law (IRL). Evacuation for example can constitute a crime, yet in the context of forced displacement, it can be framed as a pragmatic policy response. A relevant precedent is the Kosovo crisis of 1998. In Kosovo, displacement was a direct consequence of an ethnic cleansing policy, and thus, addressing the root causes of that displacement was essential. The international response to Kosovo was twofold: an evacuation program to alleviate pressure on Macedonia, the host state, and temporary protection for refugees in third states. Importantly, the combination of evacuation and temporary protection ultimately facilitated the refugees' return. However, it is critical to emphasise that the context of Palestine is different – it is shaped by decades of settler-colonial violence and different geopolitical realities and interests.

What concerns me deeply is how international refugee law remains isolated and reactive, concerned with managing displacement rather than addressing its root causes. This disciplinary isolation allows us to focus on symptoms while avoiding the harder questions of state responsibility and colonial violence. For Palestinians, this means that their statelessness remains unresolved, their displacement is perpetually deferred rather than remedied, and their right of return is continuously denied under the logic of settler-colonial erasure.

But can we, in this moment, think of Gaza as a case for expanding the frontiers of refugee law?

As mentioned earlier, displacement, expulsion, and mass transfer are not just military tactics; they are integral to the settler-colonial goal of replacing the Palestinian people. Moreover, the epistemic violence of settler colonialism extends into the lives of Palestinians everywhere. The Palestinians — women, the stateless, refugees, and those naturalised as nationals around the world — are subject to a slow and ongoing erasure under a system of elimination – I call it the ‘Taxonomy of Erasure’.

I believe that most of the Palestinians who ended up in western countries are familiar with the XXX acronym- including myself. I travelled to the UK to begin postgraduate studies. At the Home Office, I was asked my nationality. I answered confidently: “I am Palestinian,” holding a Palestinian refugee travel document issued by Syrian authorities. What followed was two hours of confusion — officers consulting others, unsure what to write. In the nationality section, I was labelled Syrian, then PSE, then OPT, then XXB. When I renewed my permit, I became XXP. My identity was not acknowledged; it was wiped out. Friends who were also Palestinian refugees from Syria assumed they were Syrian. Those of us who applied later for a refugee status under the 1951 Convention, had to abandon and hand over the travel document for Palestinian Refugees first - a standard pre - condition to obtain the 1951 Convention travel document.

Palestinians are categorised differently depending on the country and legal regime - as refugees, stateless persons, nationals of host countries, or, in many cases, as individuals with precarious or no status. Their position is shaped by the legal and political context of each state, such that their rights, recognition, and protections vary across geography, time, and political interests—sometimes even across different categories within the same country.

For Palestinians, this ‘regime of categorisation’ results in their being treated not as a unified people subject to settler-colonial conditions, but as fragmented cases of humanitarian concern. In the absence of a coherent status, ad hoc responses such as evacuation and temporary protection - the usual exceptions in times of crisis - risk reinforcing patterns of displacement and erasure. Proposing a unified status for Palestinians-beyond the categories of refugee, stateless person, or national - is therefore urgent. It reframes Palestinians within the international legal order as subjects whose dispossession exposes the exclusions of that very order. This is far more than a matter of bureaucratic recognition; it represents a fundamental paradigm shift.

We know that crises are exploited for strategic gain. The genocide in Gaza is one such manufactured rupture. These moments of crisis are used to circulate ideas that shape the future. In Palestine, each cycle of destruction - from 1948 to today - has served to shift discourse, justify

land appropriation, and expand Israeli control. However, global solidarity is growing, and this momentum must not be lost.

Legal milestones such as the *South Africa v. Israel* genocide case at the ICJ, and the 2024 Advisory Opinion on the illegality of occupation, alongside rising global awareness, provide an opening to disrupt this cycle.

In this context, the articulation of a “Palestinian Status” can be seen as a framework that affirms collective existence - not as a derivative of the nation-state model, but as a decolonial form of political subjectivity that exceeds the confines of Westphalian sovereignty. Rather than replacing existing legal or political categories, this status would complement them, offering an additional avenue through which Palestinian memory, continuity, and political agency can be asserted. It represents a move toward challenging structures that dispossess and marginalise, while advancing a future grounded in justice, decolonisation, and the full recognition of Palestinian rights. Civil society, academics and academic institutions, and potentially some governments could contribute to recognising this status through forms of grassroots diplomacy, helping to build a parallel system of legitimacy.

At its core, this proposed status would rest on several interrelated principles: recognition of Palestinians as a people engaged in resistance and political struggle; affirmation of a transnational form of belonging; the centrality of the right of return, alongside claims to restitution and reparation; and the assertion of a decolonial political identity that resists exclusionary frameworks.

Relocating the Crisis and Reconsidering the Refugee Subject in Light of Palestinian Displacement: A Critical Approach to the Construction of Refugeehood in International Law

Dilahan Bice-Kurtoğlu

Dilahan Bice-Kurtoğlu is a PhD Candidate at the University of Warwick.

“Palestinian refugees have been placed on the edges of legal exclusion for half a century. The images of the destroyed Jenin refugee camp and the carnage on the streets of Israel must haunt all who have faith in law.”

Siraj Sait (2002)

“I tried to put the displacement between parentheses, to put a last period (full stop) in a long sentence of the sadness of history, personal and public history. But I see nothing except commas. I want to sew the times together. I want to attach one moment to another, to attach childhood to age, to attach the present to the absent and all the presents to all absences, attach exiles to the homeland and to attach what I have imagined to what I see now.”

Mourid Barghouti (2004)

It is hard to feel useful while witnessing great injustices unfolding before our eyes. It is not easy to sit down and continue working on your project about international refugee law after seeing on the news that they have just bombed the refugee camp where mostly children were residing. So, we bear witness. When I started working on this research, it was an interesting time, because it was the beginning of October 2023. Coming across these quotes in my readings during that period was not easy to take in, because we continue to see commas and yes, it haunts us all, so we are here today. I believe coming together to write and discuss these issues makes it easier to keep working and resisting.

I want to begin by stating that this paper is a work in progress and a part of the historical analysis section of my thesis. Legal scholarship on refugee and asylum law mainly has a top-down characteristic, as in many other areas of law. However, in my PhD research, I adopt a bottom-up approach and prioritise the experiences of the subjects and the practitioners of the system. Yet when we go to the basis of the system, the framework is still there. This takes me back to the refugee definition. This definition that was shaped by some specific states in a specific period of time and in a specific historical context still impacts the practice immensely, because it stays at the core of the system.

While examining the reproduction of refugeehood in current asylum practice, I also adopt a critical approach to the construction of this framework, and I take inspiration from TWAIL. It provides me two significant points to consider. The first one is a motto that we should always remind ourselves to analyse international law-making, which is history matters. The second is the question of who were involved in these history-makings, law-makings, or in my case, subject-makings, because it is rightly provided by Angie and Mutua that the current international legal order has been mainly built without the Global South's consent and contribution to it. So, acknowledging who had a say in the construction of modern refugeehood is crucial to understand some embedded assumptions about and expectations from people seeking asylum. Therefore, some part of my research requires me to delve into the history of the 1951 Refugee Convention, and more particularly, the history of the refugee definition.

In the past decade, we have seen that states have increasingly used crisis rhetoric concerning refugees and people on the move, while deliberately keeping their eyes closed to many crises and catastrophes happening in the world. We have witnessed that the acknowledgement of suffering is dependent on someone's colour, religion, or how much they look like us, as in the case of Ukraine. This has been the case, particularly in Europe where the original major crisis occurred. We must remember that the crisis rhetoric is not new and was also evident in the post-WWII period. The saddening events and the problems relating to the reception of refugees in Europe resulted in the framework we have today. This crisis rhetoric comes to the surface occasionally, and one of the recent ones was during 2015, the location was again Europe. Some problematise this

rhetoric for what it produces on the ground, particularly in relation to the rise in xenophobia and the hate against migrant groups, which I agree. Some argue that we should reject the idea that this is a refugee crisis due to the connotation that it has like this is caused by refugees and migration flows, because it is actually a crisis that belongs to the states who prove themselves to be incompetent to provide an adequate response to this escalating need of assistance. I also agree with it.

However, considering its enduring place in the political narrative, I would like to briefly address how this rhetoric has or has not been used for the Palestinian refugees. UNRWA's official website explains that the Nakba, the catastrophe, is a distinct refugee crisis. The Palestinian displacement unfolding at the time of drafting had been excluded from this legal protection regime, while Israel was included in the drafting committee. The Palestinian refugees were considered as an exception, which paved the way for different arrangement and protection regimes for them. But why is it so? In order to understand this, we should look at the chronology of events. The Nakba started in 1948 when the convention was not considered properly yet. These people became refugees within the borders of their own country. However, the framing of displaced Palestinians as non-refugees was already in progress. They were kept out of the scope on purpose. A timeline of how refugee protection arrangements emerged between 1949 and 1951 indicates that UNRWA is very early at this point. I shall return to this later.

Article 1B offers states to choose this territorial scope of their responsibility, according to the Convention. And there is a phrase there called "elsewhere". It is already Eurocentric, but the Palestinian refugees were again not included in that. The reason lies in paragraph D of Article 1 and that exclusion is pertinent on the condition that they receive protection elsewhere via the UNRWA. Therefore, the convention did not offer any recognition towards the Palestinian suffering.

Moving on to the preparatory work of the Convention to see how this framework was created, the process began with the appointment of the Ad Hoc Committee by the Economic and Social Council (ECOSOC). The committee was set up to consist of 13 member states who had special competence in this field. Eventually, Poland and the USSR did not join the committee due to their rejection of the inclusion of China in the committee. Some states were tasked with determining the new

refugee definition. However, the main matter of the discussions in the Committee became very quickly about if the definition should only apply to existing categories of refugees or to future refugees as well. There were three dominant perspectives during the initial discussions. These were the perspectives of the UK, France and the US. The first two were keener to adopt a broader definition, while the last insisted on a narrower approach. Due to the US Representative describing the suggested definition in the draft of the International Refugee Organisation, the UK and France as too vague, the term “blank cheque” was introduced for the first time in the discourse of refugee and asylum law. He was not shy at all about for whom the US did not want to extend the protection regime.

The presentation of the broad definition as a “blank cheque” and as a dangerous tool that could be used for unknown numbers of people or unknown groups of refugees proved highly influential. Thus, the US approach prevailed within the committee, and the draft definition was finalised to include two main limitations, a time limit and a geographical limit for the events that happened only in Europe as a result of the persecution by the Nazi regime in Germany and the Falangist regime in Spain.

After the completion of the initial work by the Ad Hoc Committee, the discussion then moved to the ECOSOC. In 1950, there was a significant change in the atmosphere of the debate, because France’s standpoint changed. In the meantime, the newly appointed French delegate was now in support of the US approach. So, two main groups remained. The motivation of the Europeanists was sufficiently clear. They wanted to create a narrow refugee definition to address the results of the European displacement after the Second World War. The conflicts happening in other parts of the world where their interests were not greatly invested, were of no concern to them, and of course, consequently, to the Refugee Convention. On the other hand, viewing the Universalists as devoted advocates of human rights or inclusivity does not provide a complete or accurate picture, because it is worth remembering that decolonisation was still in progress during the 1950s. Now, it is evident that there were some hidden colonial concerns in these approaches that were not articulated at the time. For instance, Lucy Mayblin provides a detailed contextual

account of the UK legislators' aims for the Convention.¹ Overall, her analysis of the British cabinet discussions related to the Convention shows that they were heavily concerned about keeping the people of the colonies out of the scope of the Convention, while advocating for a Universalist definition in the United Nations.

After the discussion at the ECOSOC and a couple of changes on the text, the UN General Assembly gathered to discuss the final draft, the approaches of the Global South countries varied. However, I would like to highlight one approach that belongs to the Arab countries. Of course, they discussed the Palestinian displacement. However, their stance was that it could be better if this issue would be taken care of by specialised UN arrangements for them. This miscalculation of the situation turned out to be a very beneficial argument for Israel and its backers, who wanted Palestinians outside the regular protection net of international law.

Going back to the discussions, thanks to the majority's preference for the broader definition, the Article 1 adopted by the General Assembly dropped the focus on Europe. Nevertheless, the dateline was maintained. In reality, however, it was still an indirect implication of the events that happened in Europe. Then, the General Assembly called for the Geneva Conference. The Conference's participation remained incredibly low compared to previous experiences. The most heated debate was still around the topic of a regional focus on Europe. The intensity of the debate was so great that some exchanges between the delegates were later removed from the records. After the encouragement by Canada and Switzerland to find a balance, it was decided to offer an option that is seen in Article 1B, allowing states to choose the territorial scope of their responsibility. However, the aftereffects of the tension experienced in the Conference were reflected in the number of signatories to the Convention at the first instance, which was only 10, and the extraordinary decision of the US for not signing it at all. Overall, this is a brief summary of the drafting process.

I would now like to go back a bit and focus on another state among the Universalists, which was Israel. Content-wise, a piece by Rotem Giladi is very interesting.² It is written from a complete Israeli perspective, as we also

¹ Lucy Mayblin, 'Colonialism, Decolonisation, and the Right to be Human: Britain and the 1951 Geneva Convention on the Status of Refugees' (2014) 27 *Journal of Historical Sociology* 423.

² Rotem Giladi, 'A "Historical Commitment"? Identity and Ideology in Israel's Attitude to the Refugee Convention 1951-4' (2015) 37 *International History Review* 745.

understand from the funders of the article. However, if we are to critically read between the lines, it provides us with material from the official archives of Foreign Affairs Department in Israel during 1950s, and it reveals the quarrel among Israeli officials regarding their position for the Refugee Convention. It illustrates that Israel has never been fully committed to the Convention and its protection regime. Thus, its simultaneous persecutory action towards Palestinians is not a contradiction.

First of all, Giladi introduces Jacob Robinson as a prominent lawyer figure of time, considering his research initiatives and his assistance to the prosecution at the Nuremberg trials. Yet then it starts to challenge this portrait by describing him, I quote from the article, as “*a tedious lawyer who at times failed to separate weeds from chaff*”.³ We know that Robinson was incredibly commentative for every aspect of the Convention, and once it was finalised, he was also confident to go for signing it as one of the first in the room. He thought that the ratification of Israel would be fast too. According to Giladi’s analysis, this is where he was mistaken. There was no will whatsoever on the Israeli government side, because their Zionist plan was different. Thus, the Israeli government was not interested in the Convention. Apparently, this unwillingness resulted in this three-year gap until they ratified it. The government did not want to bother to change domestic law to comply with the Convention. Obviously, they also did not want to include any chance of Arab refugees falling under this framework. Therefore, the negotiations between Robinson and government officials started with a consideration of choosing Article 1B, thus, restricting their responsibility only to refugees arriving in Israel due to the events occurring in Europe.

Subsequently, however, they did not keep the conversation going. Robinson’s messages were not replied, so he started to emphasise in his correspondence that morality demands us to be among the first six to ratify the Convention. However, the government replied again that there is no significance or benefit in this Convention for Israel. By the time passed, Robinson increased his pressure. He shared that the convention relating to the status of stateless persons was also about to be discussed soon, and this is significant for Jewish people all around the world. He said, “*we must ratify the Refugee Convention so we can appear with clean hands*”. After seeing no proper action, he even threatened the Israeli

³ *ibid.*

government by saying that I might not be able to undertake representing Israel under these circumstances anymore. Well, this sounds like an internal diplomatic crisis.

What is more interesting in Giladi's comment on the situation, however, is that this was a turbulence caused by Robinson and his unparalleled intentions with the Israeli government. Quoting from Robinson, Giladi argues that the historic commitment to the Convention was "Robinson's, not Israel's", because the government did not see any significance in this legal regime. The important issue for them was rather the representation of the new state. when the Israeli government was finally compelled to act, it ratified the Convention. Yet even then, even in relation to the stateless persons, they were not on the same page with Robinson because he was motivated for both facilitating immigration of Jews to Palestine and protection for those who do not wish to do so. But the second concern was not shared by the dominant opinion within the Israeli government, because this was not in line with their best interest to establish the apartheid state they were trying to form. They did not want to provide displaced Jews with options. They wanted them to migrate to Palestine, become settlers and support the Zionist cause. So, in the end, even though Robinson seemed successful in his constant diplomatic pressure by securing the ratification, Israel actually never incorporated the Refugee Convention into its domestic law.

For my conclusion, there is a substantial body of literature to unpack colonial legacies that still exist in international law, including international refugee law. However, I believe we need more acknowledgement of certain states' shaping role in these frameworks. What I tried to do here was only limited to the Refugee Convention itself. However, for instance, we need to unpack what happened in terms of the political dynamics of the 1967 protocol, considering its overlap with the Six Days War. Reconsidering historical context equips us with new perspectives to challenge and critique the unlawful practices that we witness today. For Palestinians, the cruelty caused by these practices continues for more than 75 years now. It has reached to a point that it is actually a practice of dehumanisation. For all the other groups though, there is also a "deindividualising" practice going on to make access to asylum incredibly hard for people on the move. The Eurocentric nature of the refugee definition results in not fitting into the ideal or worthy refugee image for many asylum seekers.

I suggest, as international lawyers, we must highlight these hypocritical aspects of international law-making as much as we do for colonial legacies. Only then, I believe, new horizons are possible to be established in international legal order.

Social and Economic Rights in the Occupied Palestinian Territories

International Economic Law & the Israel/ Palestine 23/24 War?

Asif Qureshi

Asif Qureshi is a Professor of International Law at Peking University.

This paper takes a global approach to the relationship between international economic law and the Gaza conflict. Insofar as international economic law scholars are concerned, present company accepted there is actually a dearth of interest in looking at the Gaza issue from an international economic law perspective. But not only is there a dearth of analysis, but also those who engage in the Gaza conflict come to it from the point of view of human rights and territorial issues and have a view of international economic law that is transactional, in other words, that they have the impression that international economic law has little to offer to the Gaza conflict. And so, this paper aims to present that international economic law has a lot to say and offer to this conflict. This is also underlined by the advisory opinion that has recently come out from the International Court of Justice, wherein there is quite an interesting analysis of economic issues despite not speaking about bilateral investment treaties (BITs). It should be noted that the advisory opinion talked about confiscation, expropriation, and the issue of compensation. So, international economic law has a lot to offer. And the activists and other stakeholders with respect to the Palestinian/Gaza issue, must also understand this fact, because international economic law has important tools to bear to a resolution of this conflict. It is important not to compartmentalise the issues in terms of human rights, international criminal law and so on, but actually, to look at them from a broader

perspective, which would be a more fruitful approach to take according to the present author.

This paper will explain briefly how international economic law should move forward to demonstrate, in a transparent way, its human face. International economic law is not just about trade or investment. It is very much about the advancement of human rights including humanitarian concerns. It has that human face. It is necessary to highlight this humane dimension. It should be developed further. So, the question, what level of blood to be shed for a nation to exist, what level of blood for a people to have statehood, is a question profoundly about sharing economic responsibility, about ensuring economic duties, about the development of economic tools in peace and war, and about ensuring that international economic law has a human face. So, international economic law must have a more open-ended approach to the class of beneficiaries that it generally focuses on. Not just states and multinational companies, but it should also look at nascent states and the ultimate beneficiaries of the international economic system. Also, the paper argues that the substantive law of international economic law must be considered from an ethical and impartial perspective. There are distributive justice issues here that need to be addressed with respect to the Palestinian people's historical claims and the collective responsibility of the international community in this scenario. And therefore, this paper reiterates the legitimacy of the unilateral economic sanctions that have been applied by states both to some individuals in Israel and Palestine, is a subject that does need to be looked at because they are unilateral judgments that are being made about disparate engagements in the Gaza issue. And finally international economic lawyers need to make clear what effective tools there are in international economic law that can be availed, in a strategy to deal with the Gaza/Palestine issue. But also, importantly, the paper argues what the Gaza/Palestine issue highlights is the importance of integrating international criminal law/international humanitarian law into international economic law and thus mainstreaming them in the very fabric of international economic law and institutions. In sum, these are the principal arguments and issues addressed in this paper.

This section will briefly focus on WTO law and international trade law. First, the paper will briefly look at economic sanctions, and then, to reflect upon how international economic law can offer a better set

of tools that should be reflected upon, and how international economic organisations themselves need to respond to this situation here. So, insofar as WTO law is concerned, WTO law ensures that there is no discrimination in international trade, that there are no restrictions in the flow of international trade, and that there are no export subsidies in international trade. US arms sales to Israel can be looked at from this perspective and can be challenged in the WTO. There may be a counterargument in terms of national security defence. The United States' position may be this way, but this paper argues that the literature out there would suggest that this would be a weak defence on the part of the United States. Similarly, US sanctions on trade with certain residents of Palestine can be challenged in the WTO, these are restrictions on trade, and there have been examples of such challenges in the WTO in the past, for example, with reference to US sanctions on Cuba, and not only on Cuba, but also on third states trading with Cuba. The Israeli blockade is another example of an import restriction that can be challenged, as it violates certain fundamental norms in trade. Also, all members of the WTO may of course impose restrictions on the United States and Israeli goods on the basis that they offend trading with countries engaged in such violations of fundamental norms of international law, offending domestic basic public morals. For example, the United States was at the receiving end of a challenge by China relatively recently, with reference to its restrictions on Chinese imports into the United States. In defence, the United States relied on the public morals exception in the WTO, and tried to justify restricting Chinese imports into the United States on the basis that violating intellectual property rights is theft, and it offends the public morals of US citizens, and therefore it is quite legitimate for the United States to impose restrictions on imports from China. In the same vein, restricting imports from the United States, which is complicit in fundamental violations of human rights and other international norms along with Israel, would be justified. Certainly, the panel that was considering the case with China, which was just mentioned, accepted in principle the US line of defence as a ground for restricting imports.

Now, not perhaps many may realise here that although normally disputes in the WTO are brought by affected parties, the jurisprudence of the WTO is quite clear on this, namely that if a member of the WTO wants to bring a case in the WTO to enforce import restrictions on Israel it may do so even if its own trade is not directly affected as such.

However, in this case, it is the exceptions that are in question, not so much the generality of the WTO norms. But nevertheless, it should be noted that members of the WTO have this clout if they wish to use it to impose import restrictions on Israel, or the United States, leaving aside the question whether this would be practically feasible or not. As for the economic sanctions, it is known that since October 7, there have been quite a number of economic sanctions imposed by the United States and Europe, and Japan, Canada, Australia, and recently, some sanctions have also been imposed on Israeli settlers. But this paper has a kind of a different take on this, recognizing that in the array of tools that are needed to resort to in order to deal with this complex conflict, it is necessary to avail of whatever one can reasonably do so, but I think that the better approach to my way of thinking is not applying unilateral sanctions, but rather to work towards collective sanctions, and those would be more effective. I might come back later if there is time on this question. So, what else can international economic law offer to address this crisis, and how can it develop further in order to be able to better respond to this conflict? First of all, international criminal law, food security, international trade, international transactions, international investment, all have a causal relationship. There is a causal relationship between international economic law and international economic transactions and international criminal law. And whereas international criminal law, with all its defects, is out there, the paper proposes that it needs to be mainstreamed into international economic law. It means it needs to be made more transparent within the system of international economic law. For instance, in terms of environmental law, there is a movement to incorporate the crime of 'ecocide' into international criminal law on the basis that climate change has a relationship to the commission of genocide. By analogy, this paper argues that we can also talk about 'Itocide', in other words, where international trade contributes to the commission of an international criminal offence, then we should not just talk about it in terms of 'complicity in' or 'aiding and assisting in', but we should come up with a label such as 'Itocide' to embrace serious violations of rules of international law, not just genocide, but other peremptory norms of international law. And this can be a step also towards working within the WTO to focus on such trade activities. As you may or may not be aware currently, whereas the WTO has a remit in export controls, most major developed countries, have their own unilateral export controls with

their own unilateral list of items for export controls. But moving towards Itocide, if it can be called like that, could also resolve the divergence in export controls between the different nations.

International economic organisations such as the WTO and the IMF have existing systems that can be availed, that should respond to, for example, the Advisory Opinion of the International Court of Justice, and to the extent of their existing mandate, albeit perhaps with some tweaking there is scope for them to ask questions to countries with respect to their economic policies. So, the IMF regularly engages in surveillance exercises of member countries, to look at exchange rate violations, or compliance with the IMF's Articles of Agreement on exchange restrictions. As a result, economic sanctions may be imposed for violations of exchange restrictions and export subsidies can have an impact on balance of payments. So, it is in the remit of the IMF to ask questions. For example, where is this expenditure being made? Why is it being made? Because it is affecting the balance of payments of a country, because it is affecting the exchange restrictions and the liberalisation of exchange restrictions. By the same token, the WTO engages in regular reviews of countries and their trade policies, and there are no sound reasons why the WTO should itself not ask questions about trade practices that violate fundamental norms of international law.

So, in conclusion, this paper reiterates that international economic law has a human face. We need to tap into it, and that human face needs to be developed further. In terms of the theme of Boğaziçi International Law conference, the rethinking of international economic law after Gaza has to take place as well.

From Law to Action: Addressing Food Insecurity in Conflict Areas Through Enhanced International Legal Mechanisms

Yi Lu

Peking University, School of Transnational Law.

Food security refers to the basic human right to food. The UN definition provides that all people at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. This is the fundamental human right.

It has four dimensions. The first one is availability. This refers to the regional or national dimension. The second one is accessibility, that every household should have the ability to get access to food. Third is the utilisation. It refers to the individual. Every individual should have the ability to utilise the food at their affordable level. And the fourth one is the stability, which is a time dimension, meaning that the food supply in this region should be sustainable and foreseeable.

This is the basic definition of food security, the right to the food, which is a fundamental human right. However, according to the Integrated Food Security Phase Classification (IPC), it says that from May to June, about 90% of the population in the Gaza Strip, which is more than 2 million people, faced high levels of acute food insecurity, which amounts to the emergency level, which is the IPC phase 4 of the food insecurity crisis. And in this region, 22% of the population is facing Phase 5 food insecurity.

In order to provide a brief introduction about the five phases, the fourth phase refers to the emergency that the people, the households

either have large food consumption gaps that reflected in very high levels of acute malnutrition and excess mortality, or are able to mitigate large food consumption gaps, but only by employing emergency livelihood strategies and asset liquidation.

The whole of the Gaza Strip area is in this phase 4, in particularly 22% of the population is in Phase 5, which is the highest and the most severe level of food insecurity. It has two levels, either it is a disaster level or it is a famine level. So, the catastrophe is classified at the household level. For the famine, which is a more large-scale problem, it is extended to the regional scope.

If it meets the following standards, the IPC levels, it is in Phase 5. The first element is that 20% of households face an extreme food shortage. The second is that 30% of children suffer from acute malnutrition. And the third is the death of two adults or four children per 10,000 people every day.

22% of the population, or around 500,000 people, are in this kind of crisis as of August 2024. This is the current situation, and the FAO has also raised the alarm about the high risk of famine access in the entire Gaza Strip, given the restrictions on humanitarian access, according to its reports on 26 June 2024. The forecast for the following three months to the end of September is for increased coverage of phase four and phase five levels, with the main drivers being ongoing hostilities and restricted humanitarian access. And the crisis level is expected to expand.

In this regard, the paper will elaborate on five parts. The first one outlines the legal framework of international law on food insecurity. The second one outlines the obligations of both the state and non-state actors. The third one is on accountability mechanisms, and the fourth one is on the current challenges. Finally, with some suggestions for actions will be provided.

First, the legal framework governing food security in conflict zones will be explored. The right to food, as it is briefly summarised in accordance with the UN principles in the beginning, it has two elements. The first one is freedom from hunger. The second one is the right to adequate food at different levels. Apparently, people are suffering in Gaza. Their right to food has been materialised and violated by the current situation.

As for the legal framework, it contains several branches of law. The first and foremost is the international humanitarian law, which is basically

formulated in the Geneva Conventions and the additional protocols. In sum, Geneva conventions prohibit starvation, protect humanitarian aid and the civilian objects, which are all related to food security.

That is to ensure the constant supply of supply to the people in the region and also the customary international humanitarian law, through the International Convention of the Red Cross, it also reiterates these obligations that it prohibits the destruction of objects indispensable to the survival of the civilian population, and also the parties to the conflict must allow and facilitate the rapid and unhindered passage of humanitarian aid to civilians in need. This provision establishes clear obligations for parties to a conflict, to respect and protect the food security of civilian populations. However, its implications and enforcement in complex, protracted conflicts such as the one in Gaza often face significant challenges. The first and foremost branch of law is international humanitarian law.

The second branch is international human rights law. For instance, the International Convention on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food and the fundamental right to be free from hunger.

It reiterates the basic human right of the right to food as well as some other conventions, such as the Convention on the Rights of the Child, recognise the rights of children to adequate nutrition and oblige states to combat malnutrition. This raises the classical question of the interaction between the international human rights law and international humanitarian law.

The ICJ has suggested that the IHL, as *lex specialis*, takes precedence in armed conflicts, but IHRL continues to apply to complement and reinforce the protections offered by the IHL, the second branch.

The third area is international criminal law. Briefly, international criminal law criminalises certain acts related to food insecurity in conflict. The first one is the war crime of deliberately using the starvation of civilians as a method of warfare. The second is the crime against humanity, which, while not explicitly mentioning food deprivation, includes in Article 7 of the Rome Statute includes acts such as extermination and other inhumane acts, which could include deliberate actions leading to widespread food insecurity.

Some of these legal instruments may not be legally binding, but they provide important guidance for the interpretation and implementation of the legal obligations related to the food security in conflict zones. As mentioned earlier, some legal instruments might not be legally binding. International legal documents that are considered soft law, non-binding instruments are a frequent phenomenon in the field of international law. Although they are not legally binding, they are widely recognised in the international community, such as the UN Security Council Resolution, the Guiding Principles on Internal Displacement, the Sustainable Development Goals, and also resolutions on facilitating food security insurance in local crisis.

This is the overview of the legal framework for international law of food insecurity. The paper will now turn to the obligations of state and non-state actors.

For states, the primary responsibility is to ensure the right to food for their populations, including in times of armed conflict. In the UN documents, the State has three explicit obligations. The first one is the obligation to respect, which means that it must not take any measures that result in the denial of existing access to food. The second one is the obligation to protect civilians and their food sources from attacks by non-state armed groups. The third one is the obligation to fulfil, which has two aspects. The first one is to facilitate the access and validation of resources and means to ensure their livelihood, including food security. The second is the obligation to provide, although sometimes it is beyond the control of the state, but people still have the right to adequate food through the means at their disposal. States have the obligation to fulfil their right directly. These obligations are explicitly clear. Particularly in the context of occupation, as in the current Gaza crisis, the occupying power has additional obligation under IHL, which is to bring in necessary foods, medical supplies and other items, if the resources of the occupied territory are inadequate.

States also have extraterritorial obligations, such as the food aid, humanitarian assistance and economic sanctions, and they must consider about the impact on the food security and also the regulation of the transnational corporations operating in the conflict zones. They also have obligations, and the parent states have an obligation to regulate them.

However, the current practical challenges have been imposed to stop the state from fulfilling its obligations, like the limited state capacity, like the competing priorities, some states may prioritise military objectives over humanitarian needs, and non-state armed groups also complicate the fulfilment of the state's obligations, and also, lastly, the resource constraints, which are quite practical obstacles to the fulfilment of the state's obligations.

There are a number of non-state actors. First and foremost are the non-state armed group, NSAGs, and the *de facto* authorities that control the territory. For example, the Geneva Convention requires them to ensure the survival needs of the civilian population. It also explicitly prohibits the starvation of civilians as a method of combat. And also in the customary international humanitarian law, as mentioned earlier, an ICRC study has included the prohibition of starvation as a method of warfare and the obligation to allow and facilitate humanitarian relief. So, even there are non-state actors, they are still obliged to comply with these obligations.

The second actor is the UN. As mentioned, the UN has issued a lot of repeated calls, resolutions, statements, and declarations to draw attention to the problem in the region. However, the Chinese Ambassador Fu Cong has mentioned last month it is observed that the UN Security Resolution has unfortunately not been materialised on the ground.

The third actor is the international organisations and NGOs. They have their institutional mandate, and they are active in providing humanitarian aid such as the WFP and Oxfam, and also the corporate actors who follow the voluntary principles.

The next issue is about accountability mechanisms. the legal framework and the obligations of both state and non-state actors was just outlined. Accountability mechanisms are designated to ensure the law is enforced. These mechanisms are the ICC, the UN Human Rights Council special procedures, the national and international fact-finding missions, civil society monitoring, and reporting. However, practical challenges remain such as the impact of the blockade and restricted access, as well as security concerns affecting delivery of human aid.

The following issue is the legal obstacles. There are certain bills about the legal status of Gaza, which is a fundamental legal issue, and the extent of Israel's obligations as an occupying power. A relevant issue

is the fragmentation of international law, as mentioned, the interface between the IHL and IHRL. Although they have the same objective, they have different focuses, different origins and different procedures. When it comes to the interplay of these two branches of law, there are some disputes.

There are also trade law conflicts. The next issue is the lack of funding mechanisms. Several legal mechanisms were mentioned, but most of them are soft law. They are not binding. The compliance mostly rely on people's organisations and voluntary commitment. Therefore, the lack of funding mechanisms is a problem. Moreover, international sanctions can inadvertently affect food security.

The last part of this paper is about the proposed measures. The first one is obviously to improve the implementation of international humanitarian law. The second one is to strengthen the protection of the right to food and IHRL. Basically, this paper is calling for enhanced implementation of the IHL and IHRL. It also proposes enhanced international cooperation and support which is quite important in the time being, and then improving humanitarian access and the aid delivery which is urgently needed in the region. the root causes of food insecurity in conflict zones should also be addressed. Once the root causes of food insecurity are addressed, international community will be on the right path to solving these issues. The last proposal is to leverage in the technology and innovation, which is to use the current, fast developed technology to solve these issues. So, finally, in conclusion, the challenges have been involved in several facets, including legal, political and practical obstacles. Accordingly, the paper proposes that in order to move forward, it is crucial that the international community prioritise food security in its responses to the armed conflict.

**Learning from Comparative Histories
of Apartheid and Genocide: Engaging
the Question of Palestine**

Strategies for Engaging Against Israel in Light of Ongoing Apartheid Practices: Lessons From South Africa

Ali Kerem Kayhan

Ali Kerem Kayhan is an Associate Professor of International Law at Yalova University.

This chapter provides a comparative analysis of the experience of South Africa compared to the apartheid practices faced, especially for a couple of decades, in Israel. I will first give a brief information about the apartheid regime in South Africa. Then, I will move to the State of Israel experience and address the similarities between these two apartheid regimes. After that, I will highlight the differences between these two regimes. At that point, I will point out the lessons that we learned from South Africa, which can be used against the Israeli apartheid system. There are some limitations. First of all, I am not going to delve into the recent Advisory Opinion by the International Court of Justice.¹ I am not going to talk about the events after October 7, 2023, as I believe the apartheid practices have already been ongoing for decades.

There are two meanings of the word ‘apartheid’. One is the historical meaning that is very much linked to South Africa, and the other is apartheid as a crime. Indeed, when apartheid is defined, it is quite difficult to exclude the South African experience as we are familiar with this concept through the experience of South Africa. It is important to note that this discrimination aspect of apartheid is not [solely] a racial one. It also includes national, ethnic or other forms. 1969 International Convention on the Elimination of All Forms of Racial Discrimination

¹ Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, 19 July 2024, I.C.J. Reports.

provides that racial discrimination is based on race, colour, descent or national or ethnic origin. Thus, this definition fits in the conflict between Israelis and Palestinians. In the context of this paper, apartheid practices include the policies and practices that involve legal discrimination, political exclusion and social marginalisation. Looking at the history of South Africa, the apartheid regime persisted from 1948 to 1994. However, its colonial background must also be taken into account. In the 1948 elections, the National Party, which won, was expected to establish an apartheid regime because, rooted in the colonial context, it had already been pursuing a program of segregation.

There are three main components of an apartheid regime: discrimination, separation and domination. Let us look at discrimination first. Obviously, it is a structured discrimination and South Africa employed a wide range of tools to enforce it. First, access to basic services were lacking against the non-whites, including water, sanitation and electricity. They were receiving a very basic education, which led them to expect to remain unskilled labourers in the economy. They also were not receiving any health care. Their life expectancy compared to white people was half in the 1950s. They were receiving different payments for the same jobs that white people were doing.

The second pillar of the apartheid regime was segregation, dividing people based on their races, with tools such as residential segregation. Non-whites lived in different places, in the Bantustans - native homelands, and received separate education. They did not have access to the same amenities as the white people, such as public toilets and beaches. The third pillar is domination. The regime had to make sure that blacks, natives or non-whites should stay in their places as cheap providers of labour, and there were so many laws to suppress them such as 1950 Group Areas Act and 1951 Bantu Authorities Act. To sum up, South Africa was a virtual paradise for whites, who enjoyed living standards far higher than those of others.

Shifting to the Israeli apartheid, there are different approaches to when it began. While some intellectuals trace the apartheid regime back to the 1970s, others argue that it started even earlier under British colonial rule. In my opinion, the apartheid regime became more explicit after the 1990s with the adoption of the Oslo Accords, which allowed Israel to implement segregation policies such as checkpoints, closures, and permits. Since

the 1990s, the UN and NGOs have begun referencing Israel's apartheid practices, with the ICJ recently following suit in its Advisory Opinion of 19 July 2024.

There are similarities and differences between South African and Israeli apartheid regimes. The first similarity is the colonial motives. South Africa and Palestine have both colonial backgrounds.

Scholars argue that this reflects the adoption of the colonial belief that Europeans could settle anywhere in the world. This shows how the two states share a similar colonial background. Moreover, this colonial background also fits in with the concept of settler colonialism, which Israel is already implementing.

The second, both states have become regional powers and interfered with neighbouring countries using military power. South Africa attacked Namibia, Mozambique and Angola while Israel attacked Egypt, Lebanon and Jordan. They have also both employed their military power to oppress the natives and used discriminative policies against them. South Africa's policies explained above are some examples. Looking at Israel, similar kind of discriminative acts can be observed everywhere in the daily lives of people. The discrimination wall is just a physical image of this, as well as the residences, the enclaves that was put with the Oslo Accords in the West Bank. There are various places where a Palestinian needs permits to go from one to another.

Both South Africa and Israel controlled the movement of people. Israel has used permits, disclosures, and checkpoints to regulate movement through barriers, fences, and the separation wall. Both states also relied on technology to monitor individuals and observe their activities. In addition, they employed various forms of fragmentation. For example, a Palestinian Israeli citizen who marries someone from the occupied territories cannot reunite with their spouse in the State of Israel.

While similarities are striking, I think it is even more important to analyse the differences. Citizenship was the most crucial aspect, as non-whites in South Africa were considered citizens and mainly used as labour. Yet, in Israel, there are so many different forms regarding citizenship and nationality: Palestinians in the West Bank, Palestinians in Gaza, the people in East Jerusalem, the Palestinian Israeli citizens and also the refugees. They all face different forms of apartheid.

The issue of majority also constitutes an important distinction. In South Africa, blacks or non-whites were the majority, and the South African economy depended on their labour. Israel, however, is a Jewish-majority state. Here is a different perspective to consider: the majority and the minority. Leila Farzad says: “In South Africa, apartheid wanted the land and the people, but in Israel, Israel wanted the land without any people”. That is the policy of Israel.

There are also different resistance strategies being used in Palestine, which are fragmented. There was unity in South Africa as they fought for their rights, against racial discrimination using a rights-based approach. There were economic differences that were already explained. But Israel is far superior to South Africa in terms of high technology. The most important part, I think, is the fact that the policy South Africa was explicitly discriminatory which was legally enforced. But in Israel, it is not very apparent. Israel appears to be a democratic state, but in a closer look, there are so many differentiations in there. Let us look at the government institutions. For example, the National Development Authority or Jewish National Fund were all built for Jewish people in Israel, not for the Palestinian-based Israeli citizens. In 2018, with the adoption of the Basic Law in Israel, apartheid has become more explicit. It basically says that the right to self-determination in the State of Israel is unique to the Jewish state, which denies the right to self-determination of Palestinians.

Some scholars say that Israel is a *de facto* apartheid state, and some argue that it is a sophisticated or neoliberal or a special type of apartheid. I use the term as an advanced form of apartheid, since it is less explicit than in South Africa and functions as an unchallenged apartheid regime. It is not being challenged by the international community as it has been in South Africa. I think we should note that an unchallenged apartheid can result in a genocide.

Let us return to South Africa and explore how South Africans handled the apartheid regime. As said, there was a rights-based movement and many tools were adopted in the UN, such as the 1973 Apartheid Convention, and the Security Council sanctions. Sanctions were initially voluntary, then became obligatory. By the late 1980s, South Africa was isolated from the international community, despite Western States’ support until the 1980s. However, it was destined to collapse. After apartheid, South Africa no longer practices torture, detention without

trial, or limits on freedom of movement. However, inequality still remains. The old white elites still control the land, while emerging black elites also have significant influence. These ongoing issues continue to pose challenges for the country. Nowadays, there are still some places that are very much like the Bantustan homelands.

The challenge with Israeli apartheid is that it may still be in the early steps. Unlike the global boycott and sanctions that eventually emerged against South Africa, it does not seem likely that a similar response will materialise in the case of Israel. This is especially true given the United Nations Security Council decisions regarding Israel and Palestine; but sanctions may be imposed by individual states.

To conclude, there is widespread recognition that Israel is an apartheid state. It may be regarded as a more advanced form of apartheid, and recognition of this fact constitutes the first step. There are many lessons to be drawn from South Africa, including from the differences between the two regimes. The apartheid framework may serve as an umbrella, as it did in the South African context. Accordingly, the ICC, ICJ, and other mechanisms available to the international community in addressing apartheid should be situated within this approach. Recognition of apartheid and its associated policies may itself form part of the solution. The concept of apartheid therefore represents a crucial step in addressing the ongoing discrimination in the occupied territories.

Srebrenica and Gaza: Reflections and Lessons for Genocide Prevention

Harun Halilović

Harun Halilović is an Assistant Professor of International Law at International University of Sarajevo.

This paper addresses the similarities and reflections between the Srebrenica genocide and Gaza, exploring lessons on how, if at all, we can prevent genocides from happening again. The famous flower of Srebrenica is usually white with the green in the middle. We, in Bosnia, experienced so many similarities with what is happening in Gaza. We have felt well, instant understanding, and instant connection between what we experienced in Bosnia, particularly in Srebrenica and what is happening in Gaza today on so many levels, on a personal level, on a collective level, looking through, historical, political, but even legal, scope of the situation. We felt it almost instantly so much so that people immediately began making these flowers of Srebrenica in the colours of the Palestinian flag. This is because we understood almost immediately what is going on there.

My topic is on the similarities between the Srebrenica and Gaza, and the prevention of genocide. This paper will go briefly over what genocide is, but generally, the prevention of genocide is the fundamental obligation in the international law. Since the adoption of the Genocide Convention, the world has seen again and again that the genocide is repeated in Rwanda, in Bosnia & Herzegovina. We have pending cases related to Rohingya minority in Myanmar and in Gaza today before the International Court of Justice. Thus, the question is why the world is failing on fulfilling its most basic obligation of genocide prevention.

Well, there are many reasons for that, but looking through the experience of Srebrenica, perhaps the biggest reason for the failure of the world to prevent the genocide was the dysfunction of the UN system, primarily related to the decision making in the Security Council, and also the inability to enforce the decisions of the of the Security Council. First of all, the rules of composition and decision-making in the Security Council can often lead to paralysis in the decision-making due to geopolitical reasons, and this is what international community have experienced in many cases. But, even in the cases where the Security Council makes a decision, there is a question related to the enforcement of international law. How do we make the countries comply with the rules and decisions of the international law? This is a topic for another conference. But even in the cases where we have the Security Council decisions like the one in Srebrenica, which established a safe zone covering Srebrenica, it had absolutely no effective means of enforcement. So, there is a dual failure: first the decision-making paralysis, and then the inability to enforce the decisions once they are made. So, all of those issues lead to perpetrators being encouraged and embolden the perpetrators to continue to do what they want without impunity, which we have seen in Srebrenica and what we see in Gaza.

As I pointed out, Srebrenica was designated as a safe area by the UN Security Council decision in 1993. Srebrenica genocide happened in July 1995. So, what did happen, really, in the meantime? It is after the decision, after the resolution of Security Council was adopted, the Bosnian Army had to give up their arms, and the part of the deal was that Bosnian Army gives up their arms, that the attacking Serbian forces withdrew for certain kind of length from the front lines, and that the UN troops were positioned into enclave to protect the area. The UN Troops that were stationed, the infamous Dutch battalion, was completely ill-equipped and small in numbers. They were really not in the position to defend themselves at all. The idea was that they should have been protected, that the reinforcements should come in, such as air support from the NATO, primarily from the American air forces stationed in Italy. After the arrival of the UN troops and the establishment of the safe area, what did happen in the meantime? What happened in the period of the following year was that Serbian forces continued to attack the town, basically on daily basis, with the goal to provoke and probe to see if there was going to be any reaction? So, the city was again and again

bombarded just with the goal to see if those planes would come. And after a year has passed, they saw nothing was happening. No planes were coming. They considered it as an encouragement. They were emboldened to advance into the city, run over the small and unequipped Dutch forces and committed genocide.

If we draw parallels between Srebrenica and genocide, and if we come back to this inability of decision making and inability of enforcement again in Gaza, we also have ICJ interim measures with absolutely no effective means of enforcement. In Gaza, there are also the situations of the so-called designated safe areas, which are again targeted repeatedly, which points out to the fact that they are being deliberately targeted. So, coming back to the first thing that I said, this inability of the UN system only encourages the perpetrators to continue with their work.

Generally related issue is the memory and the context. Indeed, recognition after 'failure to prevent' cannot really remedy the consequences, and means little to the victims. However, recognition is important for the establishment of the culture of memory as a means to prevent genocide from happening in the future, and this is also related to what happened in Srebrenica. For example, in World War II, we had similar atrocities that happened in Drina Valley. After the World War II, those atrocities were kind of put under the rug because the idea was we were establishing a new socialist Yugoslavia. We were going to create a new world. We should not talk about these bad things from the past. We were moving on. So, what happened in reality was that the victims were robbed of that memory, and the perpetrators were in fact got away with it. So, it is important to understand the pre and post-July 1995 context of the Srebrenica, because now we have again issues of denial. Now, we have issues of perpetrators not willing to give the locations of the mass graves, which is still a very important issue for real closure of the victims and their families.

I remember Amor Masovic. He is an extraordinary individual who did important work in the identification and the localisation of the skeletons of the genocide victims. And everything was done in an unimaginably scientific way; every bone was identified with the DNA given by the relatives. Indeed, the Srebrenica genocide is, absolutely beyond doubt, scientifically proven and documented. I remember he was saying that he once saw that a skeleton of a young boy was found in seven different

mass graves throughout Bosnia, which means that they were dug up and carried out to another place to somehow cover up. And relating to that, a cover up to the culture of memory persists. We had this UN General Assembly Resolution that declared the 11th of July as an International Day of Remembrance of the Srebrenica genocide. If we come back to the issue of denial again in this context, ignorance of the war crimes that happened during the World War II was an important catalyser for the genocide in Srebrenica.

Making a reflection with Gaza, we can say that one cannot really look at what is happening now in Gaza, just in the context of the 7th of October and post-7th of October. Of course, the need for the context is to take it in a long history of the apartheid system, and the inability and unwillingness to react, and this selective outrage is really rooted in a lot of situations, such as Islamophobia and racism. In Palestine, we have both of those issues. In Bosnia, we had the issue of Islamophobia and the unwillingness to react against it.

Another aspect which is very similar in Srebrenica with Gaza is the ICJ case. In Srebrenica, we have a genocide case before the ICJ that which is now over and closed. On the other hand, in case of Gaza, the ICJ case is in the early stages. In this regard, when you look at the genocide through the lenses of international courts, you need to prove the *actus reus*, and the *mens rea* as well as unimaginably high threshold of *dolus specialis*. In the case of Srebrenica genocide, for instance, there was actually a document issued by the political leader of the Serbs, Karadzic, which ordered Serb troops, I am going to paraphrase it, “*to create conditions which render the life of the Muslim population in the area unsustainable*”; which was taken as a proof. Having such an intent on the paper like this is really a rarity in the genocide investigation. So, it really tells how brazen they were, and how sure they were that they would get away with it, believing that that nothing would happen. Yet, in the case law of the ICTY and ICTR, this *dolus specialis* can be proved by looking at the pattern of behaviour as well. In this context, taking into account the long-term pattern of behaviour in Gaza by Israel, I am confidently that they pass this threshold well. Indeed, the ICJ case brought by South Africa is on solid legal grounds and cannot be dismissed as politically motivated or antisemitic. There are elements of solid proof for *actus reus* and for *mens rea* of genocide.

Lastly, looking at the experience of Srebrenica, genocide prevention cannot be achieved without a radical reform of the UN system in my opinion. It is a big task, but if we want to achieve the prevention of genocide, it needs to be done. The dysfunction of the UN system serves, as in Srebrenica and so in Gaza, only to embolden the perpetrators. Recognition after the fact is important in a historical sense and in the sense of closure, yet it really cannot change the effects. It means nothing to victims and means very little to the families. Therefore, after all these experiences, the goal should be to focus on prevention, rather than merely acknowledging that it happens, or that it has happened once again: yesterday in Srebrenica, today in Gaza.

Shifting Alliances: Latin American States on Israel/Palestine at the Bicentennial of the Monroe Doctrine

Liliana Obregón

Liliana Obregón is an Associate Professor of International Law at the University of Los Andes, Colombia.

The Monroe Doctrine as Background

Though Latin American states may seem peripheral or distant to the Israel-Palestine conflict, they are much involved through their own relations with the United States (US) and its economic and military policies. A good starting point to understand this connection is two centuries ago, when President James Monroe gave a report to the US Senate and House of Representatives, parts of which became known as the Monroe Doctrine.¹ Monroe's original message emphasised US progress and expansion, celebrating the nation's growth and infrastructure improvements. It framed the Americas as a sphere of influence free from European intervention while relying on the "Doctrine of Discovery," a legal justification from the American colonial era that legitimised the colonisation of indigenous ("barbarian") peoples and opened the door for the future of Manifest Destiny, continuing religious and civilising motives behind US expansionism.

Monroe's message divided the hemisphere into "civilised" nations—sovereign states under the law of nations—and indigenous "tribes," depicted as either hostile or incapable of modernisation. He aligned the new Spanish American republics with the US as fellow colonisers, sharing

¹ James Monroe, *Message at the Commencement of the First Session of the 18th Congress (The Monroe Doctrine)* (2 December 1823) Records of the United States Senate, 1789–1990

European heritage and legal claims to indigenous lands, asserting that the entire continent should be left to “American hands”—both US and Latin American. His concern over European interference stemmed from the fear that they might seize indigenous lands first. However, as the US viewed Latin American states as failed coloniser due to the excessive integration of the creole class with the indigenous population, the Monroe Doctrine shifted into the ideology of “Manifest Destiny,” rooted in the belief that US Americans were uniquely ordained to spread civilisation, dispossessing indigenous peoples in North America by annexing Texas in 1845. This led to the Mexican-American War, which ended with the 1848 Treaty of Guadalupe Hidalgo, in which Mexico ceded nearly half of its territory, including present-day California, Arizona, New Mexico, and Texas. In practice, the Monroe Doctrine reinforced inter-American settler colonialism, establishing a continental framework for indigenous dispossession.²

The Monroe Doctrine also played a role in US expansionist policies linked to slavery. Fearing another slave revolution like Haiti’s, Southern slaveholders sought to expand into Latin America through clandestine military expeditions supported by filibusters and secret societies such as the Knights of the Golden Circle, which aimed to establish a pro-slavery empire with Havana, Cuba, as its capital.³

One hundred years later, the Monroe Doctrine centennial was celebrated in Hollywood, with performances that highlighted the discovery of America, the fall of the Aztec Empire, and the expansion of US territory over indigenous lands. The academic description of the centennial, described the Monroe Doctrine as a way to balance power in the Americas, and to help “the Latin races, because they have never been successful colonists, ...their separation from Spain did not bring stability and was not followed by progress” and “they have fallen into the hands of petty little tyrants of all colours and races.”⁴

That same year, Chilean international lawyer, Alejandro Álvarez, celebrated the centennial from the Latin American side by publishing

² Caitlin Fitz, ‘The Monroe Doctrine and the Indigenous Americas’ (2023) 47(5) *Diplomatic History* 802

³ David C Keehn, *Knights of the Golden Circle: Secret Empire, Southern Secession, Civil War* (LSU Press 2013)

⁴ George F. Tucker, *Official Souvenir Programme: American Historical Review Motion Picture Exposition and Monroe Doctrine Centennial* (James G. Evans, Los Angeles 1923)

a book that analysed the doctrine's evolution, reception, and its role in international relations for the Spanish American states.⁵ Though Latin American states adopted the Monroe Doctrine as their own in resisting further European and US imperialism through the principle of non-intervention, they also used similar civilising policies to expand their own control over indigenous territories and to encourage European immigration to “whiten” the population and improve their “stock.”⁶

This historical framework remains relevant in contemporary discussions of global conflicts, including Israel-Palestine especially when the binary opposition between civilisation and barbarism of the 19th century Monroe Doctrine resurfaces as when, Israeli Prime Minister Benjamin Netanyahu referred to the conflict with Palestine as “a clash between barbarism and civilisation...between those who glorify death and those who sanctify life. For the forces of civilisation to triumph, America and Israel must stand together. Because when we stand together...We civilisation win. They barbarians lose.”⁷

1938 – The Jewish Question at the Évian Conference

In 1938, President Franklin D. Roosevelt convened a conference in Évian, France to address the Jewish refugee crisis. He did not want the US to take in refugees, as the country was focused on economic recovery, most US Americans were anti-Semitic and isolationist, the 1924 Immigration Act restricted immigration based on eugenics, and there were fears of German retaliation. The Latin American states participating—a majority at Évian—also rejected receiving Jewish refugees under a veiled anti-semitism, with excuses such as having enough immigrants, restrictive quotas, cultural and language differences, and fear of Nazi Germany.⁸ The Dominican Republic, under dictator Rafael Trujillo, was the exception, offering to take in 100,000 Jewish refugees in order to help “whiten” their

⁵ Alejandro Álvarez, *The Monroe Doctrine: Its Importance in the International Life of the States of the New World* (Oxford University Press 1924)

⁶ Richard Gott, ‘Latin America as a White Settler Society’ (2007) 26(2) *Bulletin of Latin American Research* 269

⁷ Benjamin Netanyahu, Speech before a Joint Session of the United States Congress (25 July 2024)

⁸ Paul R Bartrop, *The Evian Conference of 1938 and the Jewish Refugee Crisis* (Springer International Publishing 2017)

population, though only around 800 eventually settled there.⁹ Despite 300,000 Jewish visa applications in 1938, only a fraction were ever allowed to leave Europe before the end of World War II.

1947-1960: Support for Israel

Of the fifty-six voting states in the 1947 United Nations Partition Plan for Palestine, twenty were from Latin America. Citing trust in the UN's conflict resolution role, sympathy for Jewish refugees, support for self-determination, faith in a two-state solution, strategic alignment with the US, and perhaps Catholic shame for not acting decisively to save Jewish lives from the Holocaust already occurring during the 1938 Évian conference, thirteen Latin American States—Brazil, Bolivia, Costa Rica, Guatemala, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Uruguay, and Venezuela—voted in favour. Six abstained—Argentina, Chile, Colombia, El Salvador, Honduras, and Mexico—citing neutrality, non-intervention, relations with the US, Western powers, and the Arab world, and concerns over future conflicts. Cuba was the sole Latin American state to vote against, arguing that imposing the state of Israel was morally unjust, violated self-determination, and would likely escalate conflict.¹⁰

1960-1990: Solidarity with Palestine and Covert Military Support from Israel

From 1947 to 1960, most Latin American states still favoured relations with Israel, but a shift towards greater support for the Palestinian people was growing with greater economic and political engagement with Arab states, following the 1973 OPEC oil embargo. Venezuela, Mexico, and Brazil—major oil producers themselves—developed strong ties with the Arab world to protect their own energy markets.¹¹ In 1974, UN General Assembly Resolution 3236 recognised the Palestinian people's right to self-determination, national independence, and sovereignty and the PLO

⁹ Allen Wells, *Tropical Zion: General Trujillo, FDR, and the Jews of Sosúa* (Duke University Press 2009)

¹⁰ United Nations General Assembly, '128th Plenary Meeting' (29 November 1947) UN Doc A/PV.128

¹¹ Regina Sharif, 'Latin America and the Arab-Israeli Conflict' (1977) 7(1) *Journal of Palestine Studies* 98

as their sole representative with observer status in the UN. The PLO declared the State of Palestine in 1988, claiming sovereignty over the West Bank, including East Jerusalem, and the Gaza Strip. That same year, 78 countries recognised Palestine.

The Cuban Revolution (1959) and the Arab-Israeli wars of 1967 and 1973 influenced more radical positions in favour of Palestine across the continent. The Sandinistas in Nicaragua (1979-1990), after overthrowing the US-backed Somoza dictatorship, aligned themselves with the Palestine Liberation Organisation (PLO), cut ties with Israel, and recognised Palestine as a legitimate state actor. The Chilean left under President Salvador Allende (1970-1973), as well as guerrilla movements in El Salvador, Guatemala, and Colombia, also expressed solidarity with Palestine. Indigenous groups, such as the Mapuches in Chile and the Zapatistas in Mexico (EZLN), emerging in the early 1990s but rooted in decades of indigenous activism, frequently referenced Israeli policies in the West Bank as similar to their own state's repression over indigenous territorial claims.¹²

The Non-Aligned Movement (NAM), a multi-lateral forum for States established in 1961 as a consequence of the Bandung Conference of 1955, advocated for anti-colonialism and self-determination, to maintain neutrality amidst the US-Soviet rivalry during the Cold War. The NAM organised a committee dedicated to Palestine and admitted Palestine as a State member in 1976. Cuba was the first Latin American nation to join NAM in 1961, with Fidel Castro serving as NAM's Secretary-General from 1979 to 1983. Cuba severed diplomatic relations with Israel in 1973 and actively supported the Palestine Liberation Organisation (PLO), providing military training and assistance to Palestinian liberation movements. Jamaica (1970), Guyana (1970), Peru (1973), Panama (1976), Bolivia (1979), Ecuador (1983), and Colombia (1983) joined NAM while maintaining formal diplomatic relations with Israel but supported numerous NAM-backed resolutions in favour of Palestinian self-determination. Chile briefly joined NAM in September 1971 under the socialist presidency of Salvador Allende, expressing solidarity with the Palestinian cause until the US-backed military coup in 1973, after which it terminated its participation and shifted its position on Palestine.

¹² Federico Vélaz, *Latin American Revolutionaries and the Arab World: From the Suez Canal to the Arab Spring* (Ashgate 2016)

Nicaragua, following the Sandinista revolution in 1979, joined NAM and recognised the PLO as the legitimate representative of the Palestinian people and condemned Israeli actions.¹³

United Nations General Assembly's Resolution 3379, adopted on November 10, 1975, declared that "Zionism is a form of racism and racial discrimination." Brazil, Cuba, Guyana Mexico voted in favor while Costa Rica, Dominican Republic, El Salvador, Haiti, Honduras, Nicaragua, Panama, Uruguay voted against and Argentina, Bolivia, Chile, Colombia, Ecuador, Guatemala, Jamaica, Paraguay, Peru, Trinidad and Tobago, and Venezuela abstained.¹⁴

During the Cold War, the US often used Israel as a proxy in conflicts where it wished to avoid direct involvement such as in Guatemala's civil war in the late 1970s, where Israel provided nearly \$40 million in military assistance—including rifles, helicopters, surveillance equipment, and military training—contributing to genocidal violence against indigenous Mayans. Israel also supported El Salvador with almost all the weapons used to equip death squads responsible for massacres in the 1980s, such as those of El Mozote and El Calabozo where more than a thousand civilians were killed. During the dictatorship of Augusto Pinochet, after the US ceased military exports to Chile in 1976, Israel became a major arms supplier, providing missiles, aircraft, naval vessels, and intelligence support that contributed to human rights abuses, including the torture, disappearance, and execution of thousands of dissidents. Argentina also cooperated with Israel on arms deals and intelligence matters during its military dictatorships (1976-1983), despite its official neutrality in the Arab-Israeli conflict.¹⁵ In Colombia, Israeli Colonel Yair Klein was convicted in Colombia for training paramilitary forces affiliated with the United Self-Defence Forces (AUC) in the 1980s, but was released from a Russian prison before extradition.¹⁶ These paramilitary groups were

¹³ Germán Albuquerque, 'América Latina en el Movimiento de Países No Alineados: un asunto de autonomía y soberanía, 1961-1990' (2020) 46(3) *Estudios Ibero-Americanos*

¹⁴ United Nations General Assembly Resolution 3379 (XXX) 'Elimination of All Forms of Racial Discrimination' (10 November 1975) UN Doc A/RES/3379(XXX)

¹⁵ Benjamin Beit-Hallahmi, *The Israel Connection: Who Israel Arms and Why* (Pantheon 1987). Israel Shahak and Saad Chedid, *El Estado de Israel armó las dictaduras en América Latina* (Canaán 2007), International Jewish Anti-Zionist Network, *Israel's Worldwide Role in Repression* (2012)

¹⁶ Case of Klein v Russia (App No 24268/08, ECtHR, 1 April 2010, final 4 October 2010). Joel Gillin, 'Convicted Israeli Trainer of Colombia Paramilitaries Claims CIA Ties' (Colombia Reports, 17 November 2014)

responsible for widespread massacres, and their actions contributed to what Colombian law officially recognises as “political genocide” against the left-wing Patriotic Union party.¹⁷

1990–2010: The End of the Cold War and the Shifting Geopolitical Landscape

The collapse of the Soviet Union in 1991, the decline of revolutionary movements in Latin America, and the signing of the Oslo Accords (1993–1995) presented a new phase in the region’s approach to the Israeli-Palestinian conflict. Due to diminishing polarisation and strengthening US hegemony, several Latin American states reestablished diplomatic relations with Israel and strengthened partnerships in security, intelligence, trade, and agricultural technology. Some governments, particularly those led by leftist parties, continued cooperation with Palestine, but remained critical of Israeli expansion of settlements and military operations in Gaza and the West Bank.

In Argentina, the largest Jewish population in Latin America and the third largest in the Americas, after the US and Canada, played a role in shaping foreign policy under President Carlos Menem (1989–1999) who strengthened ties with Israel purchasing military technology and reinforcing bilateral security cooperation. The bombings of the Israeli Embassy in Buenos Aires (1992) and the AMIA Jewish community centre (1994) and consequent civilian deaths, reinforced government support for Israel and increased of fears of antisemitism and terrorism in the region.

Colombia, under Presidents Álvaro Uribe (2002–2010) and Juan Manuel Santos (2010–2018), also reinforced its relationship with Israel. During Uribe’s tenure, Israel revived its support in intelligence and counterinsurgency operations against armed guerrilla groups, particularly the FARC. Mexico took a pragmatic approach, strengthening commercial relations throughout the 1990s and becoming the first Latin American country to sign a free trade agreement with Israel in 2000. In international forums, Mexico occasionally voted in favour of resolutions condemning Israeli actions in Gaza and the West Bank. Brazil, under President Fernando

¹⁷ *Case of Members and Militants of the Patriotic Union v Colombia* (Judgment in Inter-American Court of Human Rights, 27 July 2022, Series C No.455 (Preliminary Objections, Merits, Reparations, and Costs))

Henrique Cardoso (1995–2003), pursued a pragmatic diplomatic relationship with Israel, focusing primarily on trade. This shifted with Luiz Inácio Lula da Silva (2003–2011), who sought to expand Brazil’s global diplomatic influence, particularly through closer ties with the Arab world.

2010- 2023: Recognition of Palestine while Strengthening Relations with Israel

Cuba was the only Latin American country to recognise Palestine as a state during the Cold War in 1988. In the 21st century, recognitions followed steadily: Paraguay (2005), Costa Rica (2008), Venezuela (2009), Brazil, Argentina, Bolivia, and Ecuador (2010), Chile, Peru, Uruguay, El Salvador, and Honduras (2011), Guatemala and Haiti (2013), and Colombia (2018). Mexico and Panama have not recognised Palestine. Today, 146 of the 193 UN member states recognise it.

Under Hugo Chávez (1999–2013), Venezuela was explicitly pro-Palestinian and actively advocated for Palestinian statehood in international organisations. Israel’s “Operation Cast Lead” (2008–2009) led Chávez to sever diplomatic ties with Israel, accusing it of genocide against the Palestinian people. Bolivia’s Evo Morales followed by ending relations with Israel in 2009, denouncing its actions in Gaza as “crimes against humanity” while advocating for Palestine’s international recognition. Chile, home to the largest Palestinian diaspora outside the Middle East, maintained relations with Israel, while domestic Palestinian lobbying efforts pressured its government to adopt a more critical stance toward Israeli occupation policies.

During Barack Obama’s presidency (2009–2017), Latin America experienced a leftward political shift, with Brazil, Argentina (under Cristina Fernández de Kirchner), Venezuela, and Bolivia aligning with Palestinian statehood efforts. However, Obama’s administration prioritised trade and security cooperation with Latin America and avoided direct interference on positions over the Israel-Palestine conflict. Colombia and Mexico maintained close ties with Israel, particularly in defence cooperation, while other regional governments continued to denounce Israeli military actions in Gaza.

The first Trump administration (2017–2021) brought a radical shift in US policy, strongly favouring Israel, including the controversial

recognition of Jerusalem as Israel's capital and the Abraham Accords. Trump's approach encouraged right-wing Latin American governments to align more closely with Israel, as seen in Jair Bolsonaro's Brazil and Iván Duque's Colombia, which expanded defence, intelligence, and economic ties. Paraguay briefly moved its embassy to Jerusalem in 2018, reflecting this shift, though it later reversed the decision under a new administration. Meanwhile, leftist governments, including Mexico under Andrés Manuel López Obrador and Argentina under Alberto Fernández, maintained a more balanced approach, reaffirming their support for Palestinian self-determination at the United Nations.

The Biden administration (2021–2023) largely sought to restore traditional US-Latin America relations, prioritizing multilateralism and democratic governance over ideological alignments on Israel-Palestine. While Biden did not reverse Trump's pro-Israel policies, his administration did not exert pressure on Latin America regarding the conflict, leading to a continuation of diverse regional positions. Chile's Gabriel Boric, a strong advocate of Palestinian rights, furthered criticism of Israel, while El Salvador and Guatemala maintained warm relations with Israel, demonstrating Latin America's internal divisions on the issue, often reflecting the broader ideological spectrum shaped by US foreign policy shifts.

Oct 7, 2023-2024 – The War in Gaza

The October 7 attacks, in which Hamas militants carried out a large-scale assault on Israeli territory, killing more than a thousand civilians and taking 250 hostages, prompted immediate condemnations from Brazil, Mexico, Argentina, Paraguay, and Guatemala, denouncing Hamas and expressing solidarity with Israel. Others, such as Venezuela, emphasised the need for an immediate ceasefire, framing the conflict within a broader call for peace and diplomatic resolution.

As Israel's military defence intensified, disproportionately killing thousands of Palestinian civilians, especially children, and bombing sites protected under international humanitarian law, regional responses began shifting. On October 31, Bolivia took the most drastic step by severing diplomatic ties with Israel, citing what it described as war crimes against the Palestinian population. The following day, Chile and Colombia recalled their ambassadors, condemning what they viewed as disproportionate military actions and humanitarian violations. By mid-

November, Honduras joined in recalling its ambassador, while Belize went further by suspending relations altogether. Brazil, as president of the UN Security Council in October 2023, played a leading role in calling for a humanitarian ceasefire, a position later reinforced when, by early 2024, President Luiz Inácio Lula da Silva escalated his rhetoric, openly accusing Israel of committing genocide in Gaza. Mexico maintained a more neutral stance, urging de-escalation and adherence to international humanitarian law without severing ties or taking drastic diplomatic measures. Brazil, Colombia, Chile,¹⁸ and Honduras recalled their ambassadors, though a year later Colombia broke ties and closed its embassy in Tel Aviv.¹⁹ Nicaragua instigated proceedings at the ICJ against Germany, requesting provisional measures to suspend Germany's military assistance to Israel and resume its support and financing of UNRWA.²⁰

Aside from these state actions, many social movements, university students and faculty, and indigenous peoples across the region have protested and organised in favour of the Palestinian people. The region has also seen the rise of anti-Zionist Jewish groups aligning with pro-Palestinian movements, particularly in Argentina, Mexico, and Brazil, where there are larger Jewish populations.

In April 2024, the UN Security Council voted on a resolution recommending Palestine's admission as a UN member state. Ecuador, the only Latin American state on the Security Council, voted in favour along with 11 other states. Switzerland and the United Kingdom abstained, while the United States vetoed the resolution, preventing its adoption.

2025 Addendum: The Second Trump Administration

In addition to claiming US sovereignty over the Panama Canal, Canada, and Greenland, in the first month of his second administration, President Donald Trump proposed US control over Gaza, relocating its two million Palestinian residents to neighbouring countries and

¹⁸ Ministry of Foreign Affairs, 'Chile llama en consultas a embajador de Chile en Israel' (Press Release, 31 October 2023) <<https://www.minrel.gob.cl/noticias-antteriores/chile-llama-en-consultas-a-embajador-de-chile-en-israel>>

¹⁹ Luca DeCola, 'The Colombian Left Has Every Reason to Condemn Israel' (Jacobin online, 5 May 2024) <https://jacobin.com/2024/05/colombia-israel-patriotic-union-genocide>

²⁰ *Application Instituting Proceedings and Request for the Indication of Provisional Measures* (Nicaragua v Germany) (International Court of Justice, 1 March 2024)

transforming the area into the “Riviera of the Middle East.” Widely condemned as imperialist and a violation of international law, Trump’s plan was denounced by UN Secretary-General António Guterres, who emphasised the necessity of preventing any form of ethnic cleansing. Brazilian President, Luiz Inácio Lula da Silva, criticised the plan as based on forced displacement and against Palestinian self-determination. President Claudia Sheinbaum of Mexico opposed any external control over Gaza and continued to support a peaceful and non-interventionist solution. Gabriel Boric, President of Chile, stated that Trump’s plan was “a dangerous step toward further destabilisation and an affront to the dignity of the Palestinian people.” Colombian President Gustavo Petro called the plan “neo-colonial” and imperialist.²¹ In addition to governmental condemnation, human rights organisations, student movements, and pro-Palestinian advocacy groups held demonstrations in Buenos Aires, São Paulo, Santiago, and Mexico City, calling for solidarity with the Palestinian people and demanding respect for international law.

Trump’s proposals echo the Monroe Doctrine and Manifest Destiny’s original policy of US expansionism by colonising indigenous lands through the argument of civilisation through displacement and genocide. As this brief overview shows, Latin American states have oscillated between support for Israel and Palestine, often reflecting the political leanings of ruling parties and their alignment with US foreign policy more than their traditional support for international law. During periods of right-wing governance, closer ties with Washington have frequently translated into more favourable positions toward Israel, while left-leaning administrations have historically expressed solidarity with Palestine as part of broader anti-imperialist and decolonial positions. The strong rejection of Trump’s Gaza plan by some governments in Latin America may be part of a broader regional distancing from current overtly imperialist and isolationist US policies that do not take international law into account, yet history suggests that future political shifts could once again reshape these positions.

²¹ Eman Abusidu, ‘Widespread Latin American Opposition to Trump’s Gaza Plan’ (*Middle East Monitor*, 7 February 2025) <<https://www.middleeastmonitor.com>>

PART THREE

Rethinking International Law After Gaza: A Symposium and a Call to Action*

Mohsen al Attar

Mohsen al Attar is Associate Dean of Learning & Teaching at Xi'an Jiaotong-Liverpool University as well as a Contributing Editor to *Opinio Juris*.

Israel's latest bombardment of Gaza—a fifth since its false¹ disengagement in 2006—has once again exposed the catastrophic failures of international law in protecting the world's most vulnerable from militarism and settler-colonialism. While purportedly targeting resistance, a dubious goal in its own right, Israel has intentionally and systematically destroyed the bulk of Gaza's civilian infrastructure: hospitals, universities, water treatment plants, bakeries, kindergartens, farms, and just about anything else they could set their crosshairs on. This devastation has produced mammoth quantities of rubble² that will require over 15 years to clear. What is worse, underneath this rubble are scores of

¹ 'Gaza: Israel's "Open-Air Prison" at 15' (*Human Rights Watch*, 14 June 2022) <<https://www.hrw.org/news/2022/06/14/gaza-israels-open-air-prison-15>> accessed 5 May 2025.

² Jason Burke, 'Clearing Gaza of Almost 40m Tonnes of War Rubble Will Take Years, Says UN' *The Guardian* (15 July 2024) <<https://www.theguardian.com/world/article/2024/jul/15/clearing-gaza-of-almost-40m-tonnes-of-war-rubble-will-take-years-says-un>> accessed 5 May 2025.

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children (for those with the stomach for it, you can access details here,³ including data on the children who died from precision headshots⁴).

Consider that, in just four months, Israel killed more children than all of the wars across the world achieved in four years⁵, combined, or the equivalent of 25x more children than those who died in Ukraine. Eight months have passed since the Zionist state reached that grim milestone, prompting the UN Secretary-General to describe Israel's assault as a war on children⁶ (and to be banned⁷ from Israel for this and other accurate observations). He is not alone. The head of Médecins Sans Frontières, Avril Benoît, offers a gut-wrenching account:

In Gaza, we are not simply treating children with war wounds, but wounded children who are dehydrated and under-nourished; children who have lost everything they ever knew of safety. Children who are so psychologically traumatised by displacement and loss that some plead with our medics to just let them die. Dehydrated, starved, and orphaned, these children are testament to international law's inadequacies, to lethal effect.

There is no doubt about the scale of the savagery Israel has deliberately⁸ inflicted on civilians. Even the World Bank⁹ recognises this. Reporting in January 2024, it declared that three months of carpet bombing has caused severe damage “in every sector of the economy, the

³ Defense for Children, 'Targeting Childhood: Palestinian Children Killed by Israeli Forces and Settlers in the Occupied West Bank' <https://assets.nationbuilder.com/dcipalestine/pages/5323/attachments/original/1725884141/Targeting_Childhood_report.pdf?1725884141>.

⁴ 'Children 'shot in the Head': US Doctor's Account of Gaza War' (<https://www.newarab.com/>, 23 July 2024) <<https://www.newarab.com/news/children-shot-head-us-doctors-account-gaza-war>> accessed 5 May 2025.

⁵ 'Transcript: Avril Benoît, Doctors Without Borders Executive Director, and Janti Soeripto, Save the Children President, on "Face the Nation," April 7, 2024 - CBS News' (*CBS News*, 7 April 2024) <<https://www.cbsnews.com/news/avril-benoit-doctors-without-borders-janti-soeripto-save-the-children-face-the-nation-transcript-04-07-2024/>> accessed 5 May 2025.

⁶ 'No Place for Children in Conflict, UN Chief Tells Security Council | UN News' (28 June 2021) <<https://news.un.org/en/story/2021/06/1094922>> accessed 5 May 2025.

⁷ Starcevic, 'Israel Bans UN Chief Guterres from Entering the Country' (*POLITICO*, 2 October 2024) <<https://www.politico.eu/article/ban-united-nations-chief-antonio-guterres-enter-israel-katz/>> accessed 5 May 2025.

⁸ Somdeep Sen, "Dahiyeh Doctrine" Returns to Dahiyeh' (*Al Jazeera*, 3 October 2024) <<https://www.aljazeera.com/opinions/2024/10/3/dahiyeh-doctrine-returns-to-dahiyeh>> accessed 5 May 2025.

⁹ World Bank, 'Gaza Rapid Damage and Needs Assessment: February 2024' <<https://thedocs.worldbank.org/en/doc/14e309cd34e04e40b90eb19afa7b5d15-0280012024/original/Gaza-Interim-Damage-Assessment-032924-Final.pdf>> accessed 05 May 2025.

housing sector and population centres have sustained the majority of damages.” The *housing sector* and *population centres* are zombie terms, banker-speak designed to conceal the levelling of homes, communities, and families. Still, I commend the bankers for being more direct in their accounting of Israeli violence than Biden and Starmer, UCL and Harvard, ESIL and ASIL, an indictment that reveals just how one-dimensional the interlocutors of liberal internationalism happen to be when an ally declares their genocidal intent and validates this by starving children¹⁰, attacking aid convoys,¹¹ and restricting medical supplies.¹²

An urgent question arises from this carnage: what value does a legal system hold when it repeatedly fails to deliver justice for vulnerable peoples? Will international law ever operate to safeguard the occupied and oppressed or is its predatory episteme structurally determinative? These questions and many more have reverberated across *Opinio Juris* over the past year and were front and centre at a recent conference hosted by Boğaziçi University’s Faculty of Law: Rethinking International Law After Gaza.

Academics in attendance and some virtually—including Palestinian colleagues whose travels ended at Israeli checkpoints—presented a range of perspectives where a familiar polarisation emerged. Many retained a critical faith in international law’s capacity to, *eventually*, protect Palestinians. Others were sceptical, doubting whether international law could ever evolve sufficiently to grant Palestinians the same rights as those who oppress them. Sadly, since the conference, their doubts have been validated: as the ICC’s pre-trial chamber drags its feet¹³, as Harris outpaces Biden and Trump in expressing sympathy for Zionist violence, and as Germany and the UK litigate to maintain the flow of weapons, we are left to ponder whether persistence with international law is a *danse*

¹⁰ UN Human Rights Council, Starvation and the Right to Food, with an Emphasis on the Palestinian People’s Food Sovereignty: Report of the Special Rapporteur on the Right to Food, Michael Fakhri (13 July 2023) UN Doc A/79/171.

¹¹ Paul Adams, ‘Gaza War: Israelis Attack Aid Convoys Sent for Palestinians’ (*BBC*, 25 May 2024) <<https://www.bbc.com/news/articles/cz9950n003yo>> accessed 5 May 2025.

¹² ‘Gaza: MSF Hospitals Facing “Unthinkable Reality” amid Critically Low Supplies’ (*MSF*, 28 February 2024) <<https://msf.org.uk/article/gaza-msf-hospitals-facing-unthinkable-reality-amid-critically-low-supplies>> accessed 5 May 2025.

¹³ Souheir Edelbi, ‘“State of Exception”: Judicial Discretion and the Amicus Curiae Mechanism in the ICC’s Palestine Proceedings’ (*Opinio Juris*, 2 September 2024) <<https://opiniojuris.org/2024/09/02/state-of-exception-judicial-discretion-and-the-amicus-curiae-mechanism-in-the-iccs-palestine-proceedings/>> accessed 5 May 2025.

macabre, buying time for Israel to pursue what Lydia Wazir provocatively describes as its ‘own final solution’.¹⁴

The richness of viewpoints at the conference led the organisers and me to carry the conversation forward via this symposium, ensuring allies who were unable to attend could still engage with the insights. Alongside the demonstrations taking place around the world in condemnation of a year of grotesque violence, over the next five days, we will publish perspectives on varied aspects of the occupation, apartheid, genocide, Zionism, and, of course, resistance, all through the lens of international law. Just like the conference, this symposium is not just an academic exercise—it is part of a global movement to rethink, reframe, and ultimately reshape international law to serve those it continues to fail.

I have the honour of drafting this introduction, a task I approach with the urgency of the moment. As we will see in the coming days, solidarity may involve agitating at universities, revisiting aspects of the Genocide Convention, or petitioning Third World states to align their rhetorical support with stronger participation in boycott campaigns. For example, Behesti Aydoğan and Ömer Erkut Bulut argue for states to approach trade from a principled stance, using international economic law to deter the commission of atrocities.¹⁵ Indeed, it was the intersection of legal scholarship and activism that defined the Boğaziçi event, where students, professors, and activists deliberated on concrete ways to displace the Eurocentric centre of international law and usher in a more just global order. This symposium thus also doubles as a call to action, urging readers not only to engage intellectually with these vital issues but to act in solidarity with those fighting for justice in Palestine.

In the following essay, I offer brief remarks on the value of legal scholarship and conferences in challenging established power structures,

¹⁴ Lydia Wazir, ‘Israel Is Conducting Its Own “Final Solution” in Gaza’ (*Middle East Monitor*, 19 December 2023) <<https://www.middleeastmonitor.com/20231219-israel-is-conducting-its-own-final-solution-in-gaza/>> accessed 5 May 2025.

¹⁵ M Beheşti Aydoğan and Omer Erkut Bulut, ‘Rethinking International Law After Gaza Symposium: Trade, Resistance and International Law – Responding to Atrocities’ (*Opinio Juris*, 11 October 2024) <<https://opiniojuris.org/2024/10/11/rethinking-international-law-after-gaza-symposium-trade-resistance-and-international-law-responding-to-atrocities/>> accessed 5 May 2025.

the necessity of anti-Zionist¹⁶—by which I mean anti-racist—activism in the struggle to liberate Palestine, and the implications of an incontrovertible consensus beyond the West. Throughout, I draw on the symposium's texts, which I had the pleasure of editing, and observations from the conference, which I was honoured to speak at.

Activism and Critical Legal Scholarship

International law has a Jekyll and Hyde character about it. Like Jekyll, the regime presents itself as a benevolent force, claiming to mediate the relations between states and to promote peace. Hyde, however, lurks within, enabling imperialist exploitation and legitimising racialised violence. Much like Utterson, we critical scholars are both moral and naïve, navigating these contradictions by exposing international law's sinister side as a vehicle for oppression, while clinging to the hope of redemption through its—our—emancipation.

Utterson's optimism is also evident in the praxis of generations of critical international legal scholars, whether in the works of Abi-Saab and Bassiouni, or Anghie and Gathii. In an interview¹⁷ with Omar Kamel and me, Abi-Saab explained that, despite international law's palpable shortcomings, he was committed to reforming it from within. The same is true of Anghie, Gathii, and many TWAIL scholars who speak of the importance of populating international legal spaces with heterodox scholarship that counters the progressive narrative of standard textbooks. José-Manuel Barreto's contribution is of that variety. As he argues, colonial genocides¹⁸ and land appropriation are common in European history, and provide the inspiration behind Israeli behaviour, aspects of the current moment that orthodox legal academia consistently ignores.

¹⁶ Nasim Ahmed, 'Anti-Zionism Is Now a Protected Belief in Britain; Time for a Reckoning for pro-Israel Lobbyists?' (*Middle East Monitor*, 7 February 2024) <<https://www.middleeastmonitor.com/20240207-anti-zionism-is-now-a-protected-belief-in-britain-time-for-a-reckoning-for-pro-israel-lobbyists/>> accessed 5 May 2025.

¹⁷ Mohsen Al-Attrar, 'People Make the World: A Conversation with Georges Abi-Saab' (*Opinio Juris*, 3 October 2024) <<https://opiniojuris.org/2024/10/03/people-make-the-world-a-conversation-with-georges-abi-saab/>> accessed 5 May 2025.

¹⁸ José Manuel Barreto, 'Rethinking International Law After Gaza Symposium: The Palestinian Genocide and the Colonial Core of International Law' (*Opinio Juris*, 8 October 2024) <<https://opiniojuris.org/2024/10/08/rethinking-international-law-after-gaza-symposium-the-palestinian-genocide-and-the-colonial-core-of-international-law/>> accessed 5 May 2025.

On Palestine, however, even critical scholars have often fared poorly, exposing a little of Hyde within. Many critical legal studies, critical race theorists, and TWAIL scholars¹⁹ have been weak or silent on Palestine (sometimes complicit), reflecting academia's worst careerist impulses. This was true historically and remains true today, as Bana Abu Zuluf explores²⁰. By contrast, many others have proven principled. Balakrishnan Rajagopal, Richard Falk, and Muthucumaraswamy Sornarajah, keynote speakers at Boğaziçi, have a history of bucking the trend. Indeed, even in the face of the violence of academic institutions and networks that Brendan Ciarán Browne describes, a growing number of critical scholars prefer to subvert oppressive orthodoxy,²¹ refusing to comply with the careerism or herd mentality so common in the ivory tower.

Utterson was in attendance at Boğaziçi and is present in this symposium as well. Many were eager to find salvation in international law, with one colleague declaring that international law was “80-90% good.” In this vein, Saul Takahashi calls on the UN General Assembly to demonstrate some of this *good* by expelling Israel from its halls²², as the UN Charter insists it must do. He even provides a blueprint for bypassing inevitable sabotage by the usual suspects in the Security Council. Takahashi's critique is sharply contrasted by Abu Zuluf, who is less convinced of international law's potential. As she points out, despite the UNSC resolutions and ICJ advisory opinions condemning Israel's violations of the UN Charter, Israel, backed by Euro-American powers, has ignored them all. George Bisharat makes a similar point, noting that

¹⁹ Mohsen Al-Attar, 'Reimagining Palestine in TWAIL Scholarship' (*Opinio Juris*, 10 October 2023) <<https://opiniojuris.org/2023/10/10/reimagining-palestine-in-twail-scholarship-a-conversation-with-noura-erakat/>> accessed 5 May 2025.

²⁰ Bana Abu Zuluf, 'Rethinking International Law After Gaza Symposium: International Law Beneath the Rubble – Academic Complicity in Gaza Genocide' (*Opinio Juris*, 10 October 2024) <<https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-international-law-beneath-the-rubble-academic-complicity-in-gaza-genocide/>> accessed 5 May 2025.

²¹ Brendan Ciarán Browne, 'Rethinking International Law After Gaza Symposium: Containing Liberation – The Transitional Justice Industrial Complex in Palestine' (*Opinio Juris*, 10 October 2024) <<https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-containing-liberation-the-transitional-justice-industrial-complex-in-palestine/>> accessed 5 May 2025.

²² Saul Takahashi, 'Rethinking International Law After Gaza Symposium: Israel Must Be Expelled from the United Nations' (*Opinio Juris*, 9 October 2024) <<https://opiniojuris.org/2024/10/09/israel-must-be-expelled-from-the-united-nations/>> accessed 5 May 2025.

Israel ranks second only to the U.S. in violating the Charter²³. Given this, Abu Zuluf prefers to focus on other forms of activism, doubting whether UN advocacy will ever overcome its performative tendencies. Jinan Bastaki and Harun Halilovic fall somewhere in the middle. They rightly chide the ICJ for adopting standards that make it near-impossible²⁴ for a charge of genocide to ever stick, while pointing the court toward the more reasonable standard at play in case law from the ICTY and ICTR, though these, too, have their shortcomings. Similarly, Ihsan Adel speaks of the need to rethink the meaning of aggression, including the development of rapid responses to counter its calcification into occupation.²⁵

Ultimately, as Souheir Edilbi argued,²⁶ Palestine is not just another case study; it is the litmus test for the contradictions and failures of international law. I believe it is also the barometer by which we will come to measure the value of critical legal scholarship. At Boğaziçi, the weight of this responsibility was evident to all, despite differing views on strategy. This symposium aims to amplify the voices of those scholars fighting for Palestinian liberation, whether they work within or outside established frameworks.

The Role of Conferences in Challenging Power

Conferences like Rethinking International Law After Gaza are essential for confronting the dominance of established power structures, particularly in how international law is framed and debated. Unlike academic gatherings in Europe and North America, which often reinforce

²³ George Bisharat, 'Rethinking International Law After Gaza Symposium: Palestine at the ICJ – International Law v The "Rules Based Order"' (*Opinio Juris*, 7 October 2024) <<https://opiniojuris.org/2024/10/07/palestine-at-the-icj-international-law-v-the-rules-based-order/>> accessed 5 May 2025."plainCitation": "George Bisharat, 'Rethinking International Law After Gaza Symposium: Palestine at the ICJ – International Law v The "Rules Based Order"' (*Opinio Juris*, 7 October 2024

²⁴ Jinan Bastaki and Harun Halilovic, 'Rethinking International Law After Gaza Symposium: Genocide at the ICJ – The Bosnia Case and Implications for Gaza' (*Opinio Juris*, 8 October 2024) <<https://opiniojuris.org/2024/10/08/rethinking-international-law-after-gaza-symposium-genocide-at-the-icj-the-bosnia-case-and-implications-for-gaza/>> accessed 5 May 2025.

²⁵ Ihsan Adel, 'Rethinking International Law After Gaza Symposium: Unlawful Occupation as Ongoing Aggression – Rethinking Legal Responses in the Context of Palestine' (*Opinio Juris*, 11 October 2024) <<https://opiniojuris.org/2024/10/11/rethinking-international-law-after-gaza-symposium-unlawful-occupation-as-ongoing-aggression-rethinking-legal-responses-in-the-context-of-palestine/>> accessed 5 May 2025.

²⁶ Edilbi (n 13).

a hegemonic orthodoxy even when talking about race or *double standards*, this symposium invited radical critique of international law and its antinomies. Hasan Basri Bülbül and Hüseyin Dişli, for example, celebrate UNRWA²⁷ for providing an essential lifeline to Palestinians and under unbearable conditions. However, they do not shy away from reflecting on UNRWA's disempowering dynamic, designed "to ensure that Palestinians remain passive victims." Indeed, Boğaziçi International Law Conference provided a platform for marginalised voices from the Third World, whose experiences of colonialism and resistance are often treated as peripheral²⁸ to mainstream legal discourse, and whose insights can drive the struggle in pioneering directions.

Most remarkable about the conference was its location in the Global South, where space for critical, anti-colonial conversations persists. In contrast, at European and North American universities, the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism has corrupted²⁹ their deliberative climate. Zionist lobby groups such as UK Lawyers for Israel have weaponised the definition to suppress legitimate critique of Israel and Zionism, enlisting institutions³⁰ to punish their faculty and students for commenting on Israeli settler-colonialism and Palestinian liberation. In his contribution, Victor Kattan conducts a thought experiment,³¹ hypothesising whether the Boğaziçi conference

²⁷ Hasan Basri Bülbül and Hüseyin Dişli, 'Rethinking International Law After Gaza Symposium: The Double-Edged Sword of Humanitarianism – UNRWA and Struggle for Palestinian Agency in the Colonial Context' (*Opinio Juris*, 9 October 2024) <<https://opiniojuris.org/2024/10/09/rethinking-international-law-after-gaza-symposium-the-double-edged-sword-of-humanitarianism-unrwa-and-struggle-for-palestinian-agency-in-the-colonial-context/>> accessed 5 May 2025.

²⁸ Mohsen Al-Attar, 'Tackling White Ignorance in International Law—“How Much Time Do You Have? It's Not Enough”' (*Opinio Juris*, 30 September 2022) <<https://opiniojuris.org/2022/09/30/tackling-white-ignorance-in-international-law-how-much-time-do-you-have-its-not-enough/>> accessed 5 May 2025.

²⁹ 'Freedom of Speech and Academic Freedom in UK Higher Education: The Adverse Impact of the IHRA Definition of Antisemitism' <<https://archive.jpr.org.uk/object-3797>>.

³⁰ Leila Nasr, 'Silencing Dissent: Palestine Solidarity under Attack - LSE Human Rights' (*LSE Human Rights - A student-led blog from LSE Human Rights*, 25 January 2016) <<https://blogs.lse.ac.uk/humanrights/2016/01/25/silencing-dissent-palestine-solidarity-under-attack/>> accessed 5 May 2025.

³¹ Victor Kattan, 'Rethinking International Law After Gaza Symposium: A Thought Experiment – What If We Tried to Organise the “Rethinking International Law after Gaza” Conference in the UK?' (*Opinio Juris*, 10 October 2024) <<https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-a-thought-experiment-what-if-we-tried-to-organise-the-rethinking-international-law-after-gaza-conference-in-the-uk/>> accessed 5 May 2025.

would have taken place at a British university. His account vividly describes the challenges and suppression a UK-based academic would face in promoting academic discussion on Palestine. It gets worse. As witnessed at the University of Amsterdam, UCLA, and NYU, among others, administrators are even willing to use formidable violence³² against their students to prevent debate on Zionism's role in the oppression of Palestinians.

The conference and this symposium stand defiantly as a counterexample of the possibilities of Third World solidarity. Despite some opposition to the conference, even among ostensibly critical scholars, Boğaziçi provided a vital space for open engagement with the realities of colonial violence. Its location just beyond the influence of Western powers allowed this to go ahead and underscores the value of freeing international law (and the self) from traditional, mainstream confines. To some academics, these conversations may be little more than niche scholarship, a means of advancing tenure and promotion, but not liberation. Yet, as we have seen with Israel's Dresden-like destruction of the tertiary education system in Gaza—scholasticide³³—for Palestinian colleagues and students, their lives hang in the balance. Participants in the conference and contributors to the symposium are aware of the stakes and, as Abu Zuluf explains, the risks we bear are miniscule in comparison.

Ultimately, such conferences are vital because they disrupt the West's seeming monopoly over debates on international law. However, as Bisharat warns, even international law is at risk as many in the West are stealthily substituting international law with the *rules-based-order*, a liberal-cum-legal variation of the Washington Consensus. As he explains, Western powers have no qualms collapsing international law to prevent Third World states making use of it. Reminiscent of the US states that shut swimming pools rather than allow Black children to swim in them, the Atlantic coalition will incinerate its own institutions (and universities,

³² Source: AP, 'Riot Police Break up Pro-Palestinian Protest in Amsterdam – Video' *The Guardian* (13 May 2024) <<https://www.theguardian.com/world/video/2024/may/13/riot-police-break-up-pro-palestinian-protest-in-amsterdam-video>> accessed 5 May 2025.

³³ 'UN Experts Deeply Concerned over "Scholasticide" in Gaza' (*OHCHR*, 18 April 2024) <<https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza>> accessed 5 May 2025.

their students) before permitting freedom of expression³⁴ in defence of the oppressed.

By bringing together critical legal scholars, activists, and practitioners, Boğaziçi upended the normative assumptions that dominate Euro-American academic discourse. Moreover, with a strong contingent of Palestinian scholars, Boğaziçi International Law Conference also affirmed the centrality of the experiences of Palestinians and other colonised peoples in the conversation. Returning to Browne, academic networks such as the transitional justice industrial complex often normalise anti-Palestinian racism³⁵, holding events about Palestinian futures without Palestinians. In stark contrast, Boğaziçi ensured Palestinian scholars had the podium.

The Global Consensus Beyond the West

Alongside life and death, the history of humanity offers one additional certainty: the law of unintended consequences. Netanyahu recently declared that Israel is “winning,” demonstrating a fundamental misunderstanding of the world around him. Born and raised in the U.S., Netanyahu reflects the same insular thinking that grips much of the American legal academy. Where some American legal scholars believe international legal scholarship begins and ends with AJIL,³⁶ Netanyahu prospers on the idea that the White House’s perspective is all that matters, failing to recognise the global shifts occurring beyond the West. What the global consensus affirms is that, by razing Gaza, Israel has also laid waste to itself.³⁷

With the dark days of the 80s and 90s well behind us, the Third World is once again flexing its muscles. At the ICJ, the number of states

³⁴ Gouri Sharma, “‘Complete Censorship’: Germany’s Palestinian Diaspora Fights Crackdown” (*Al Jazeera*, 26 October 2023) <<https://www.aljazeera.com/features/2023/10/26/complete-censorship-germanys-palestinian-diaspora-fights-crackdown>> accessed 5 May 2025.

³⁵ ‘Anti-Palestinian Racism’ (*Anti-Palestinian Racism 101*) <<https://www.antipalestinianracism.com>> accessed 5 May 2025.

³⁶ Oona A Hathaway and John Bowers, ‘International Law Scholarship: An Empirical Study’ (Social Science Research Network, 5 May 2024) <<https://papers.ssrn.com/abstract=4817645>> accessed 5 May 2025.

³⁷ Othman Moqbel, ‘Across the Western World, Public Opinion on Palestine Is Finally Shifting | Israel-Palestine Conflict | Al Jazeera’ (26 April 2024) <<https://www.aljazeera.com/opinions/2024/4/26/across-the-western-world-public-opinion-on-palestine-is-finally-shifting>> accessed 5 May 2025.

supporting Palestine and South Africa has multiplied. Several Asian and African states are disrupting trade flows with Israel, forcing the USA to bankroll a genocide its own population disavows. Bar Argentina, Latin America has collectively turned away from Israeli normalisation. Perhaps most dramatically, Israel has alienated much of Asia with China repeatedly condemning³⁸ Israel's behaviour in the strongest terms and championing the Palestinian right to armed resistance. While Israel has found a new ally in India, a state in the throgs of its own ethno-chauvinist moment, the Indian state is also transactional in its support, insisting on visas³⁹ in exchange for allyship. Athletes are refusing to compete alongside Israelis, universities are shelving partnership agreements, and businesses are withdrawing from the Israeli economy. To say that Israel has lost the youth is a euphemism as social media channels verify that future generations of politicians, journalists, and CEOs will approach Israel as the pariah it has made itself. And, as we witnessed in the global demonstrations this past weekend, the groundswell is building.

Central to this shift is recognition of the racism embedded in Zionism. Zionism, as a political ideology, not only sought to establish a Jewish homeland but to do so through the violent dispossession of the indigenous population. This logic of ethnic cleansing, rooted in notions of racial supremacy,⁴⁰ is central to the enduring apartheid conditions in Palestine today including, as Falk observes, this year's attempt to forcibly expel "as many Palestinians as possible." Israelis racialise Palestinians as inferior and subject them to systems of control that mirror other colonial enterprises where indigenous peoples were deemed subhuman and denied rights under law, hence the rabid support Australia and Canada provide: the defence of Israel is also a way redeeming their own shameful histories.

Yet, global recognition of Zionism as racism is not new. In 1975, the UNGA passed Resolution 3379, declaring Zionism as "a form of racism and racial discrimination" and "a threat to world peace and security" while

³⁸ 'China's UN Envoy Condemns Israel for "Heinous" Gaza School Massacre' (*Al Jazeera*, 14 August 2024) <<https://www.aljazeera.com/program/newsfeed/2024/8/14/chinas-un-envoy-condemns-israel-for-heinous-gaza-school-massacre-2>> accessed 5 May 2025.

³⁹ Omkar Khandekar and Dīaa Hadīd, 'With Palestinian Laborers Shut out of Israel, Indian Workers Line up for Jobs There' *NPR* (17 February 2024) <<https://www.npr.org/2024/02/17/1229525320/india-israel-amas-war-jobs-migrant-workers>> accessed 5 May 2025.

⁴⁰ Noura Erakat, Darryl Li and John Reynolds, 'Race, Palestine, and International Law' (2023) 117 77.

calling on “all countries to oppose this racist and imperialist ideology.” This was a landmark moment in recognising the racism that drives Zionists to celebrate⁴¹ Palestinian suffering, again and again.⁴² Sadly, Western powers made the revocation of the resolution a precondition to the Oslo negotiations. Since then, Third World states have revisited the issue at subsequent World Conferences Against Racism, which the West boycotts,⁴³ underscoring the extent to which they wish to disappear the racialised discourse of Zionism from public view. Yet, despite their best efforts at censorship, one of the unintended consequences of the Palestinian Genocide is widespread acknowledgement of Zionism as vintage white supremacy.⁴⁴ Like Abu Zuluf, Lena Salaymeh exemplifies this shift in tone, providing an unapologetic condemnation⁴⁵ of Zionism in her critique of the Genocide Convention.

While the Euro-American coalition has historically dominated international legal discourse, a broader global consensus has emerged that centres Israel’s violations of international law and affirms the justice of the Palestinian cause. Outside the narrow corridors of Western legal academia, scholars and activists see Palestine not as an exception but as a paradigm for the broader struggle against colonialism and imperialism. The Boğaziçi conference and this symposium channel that consensus, reminding us that the struggle for Palestinian liberation is part of a larger, global movement for justice. It challenges the Eurocentric framework of international law, highlighting how scholars and activists from the Global South are leading the charge to rethink the legal order. I thus end this (lengthy) introduction with a call to action.

⁴¹ Malu Cursino, ‘Israeli Protesters Attack Gaza Aid Trucks in West Bank’ (14 May 2024) <<https://www.bbc.com/news/articles/cg300jek94zo>> accessed 5 May 2025.

⁴² Michael Hauser Tov, “‘We’re Rolling out Nakba 2023,’” Israeli Minister Says on Northern Gaza Strip Evacuation’ *Haaretz* (12 November 2023) <<https://www.haaretz.com/israel-news/2023-11-12/ty-article/israeli-security-cabinet-member-calls-north-gaza-evacuation-nakba-2023/0000018b-c2be-dea2-a9bf-d2be7b670000>> accessed 5 May 2025.

⁴³ ‘UN Expert Criticises Boycott of Durban Process, Calls for Urgent Action against Transnational Racism’ (*OHCHR*) <<https://www.ohchr.org/en/press-releases/2021/10/un-expert-criticises-boycott-durban-process-calls-urgent-action-against>> accessed 5 May 2025.

⁴⁴ Noura Erakat, ‘Beyond Discrimination: Apartheid Is a Colonial Project and Zionism Is a Form of Racism’ (*EJIL: Talk!*, 5 July 2021) <<https://www.ejiltalk.org/beyond-discrimination-apartheid-is-a-colonial-project-and-zionism-is-a-form-of-racism/>> accessed 5 May 2025.

⁴⁵ Lena Salaymeh, ‘Rethinking International Law After Gaza Symposium: Massacring Civilians – Genocide as International Legal Conundrum’ (*Opinio Juris*, 8 October 2024) <<https://opiniojuris.org/2024/10/08/massacring-civilians-genocide-as-international-legal-conundrum/>> accessed 5 May 2025.

A Call to Action

As this symposium unfolds, we call on readers to not only engage with the ideas presented but to take action (and the organisers of the conference make a powerful statement⁴⁶ to this effect). One year on, and the Palestinian people are facing cascading catastrophes that demand more than academic reflection—it behoves solidarity and tangible support. It is evident that we must champion a ceasefire and accountability today, and a long-term resolution premised on a complete Israeli withdrawal from the Occupied Palestinian Territories of Gaza, West Bank, and East Jerusalem. For any international legal scholar worth their salt, the self-determination of the Palestinian people, the end of occupation and apartheid, the right of return, and accountability for the perpetrators of this genocidal assault are fundamental imperatives of justice and the legitimacy of the international legal order.

We urge you to circulate these pieces widely and to bring these ideas and language into your lecture theatres to help educate students and colleagues about the role of international law in perpetuating injustice. Indeed, the contributions in this symposium are part of a larger project to mobilise legal scholarship in service of justice, but they must be accompanied by collective action. The fight for justice in Palestine is not just a regional issue; it is a global one that speaks to the heart of what international law should stand for. Together, we can push back against the forces of imperialism, colonialism, and racism and build a legal order that serves the oppressed while advancing the Palestinian struggle for liberation.

As Ghassan Kanafani remarked: “Everything in this world can be robbed and stolen, except one thing; this one thing is the love that emanates from a human being towards a solid commitment to a conviction or cause.” A free Palestine and a just international law are convictions I willingly stake my career on.

⁴⁶ Hüseyin Dişli and others, ‘Rethinking International Law After Gaza BILC 2024: Summary and Declaration’ (*Opinio Juris*, 11 October 2024) <<https://opiniojuris.org/2024/10/11/rethinking-international-law-after-gaza-bilc-2024-summary-and-declaration/>> accessed 5 May 2025.

Rethinking International Law After Gaza Symposium: Palestine at the ICJ - International Law v the “Rules Based Order”*

George Bisharat

George Bisharat is an Emeritus Professor at the University of California College of the Law, San Francisco, and writes frequently on law and politics in the Middle East for both academic and general audiences. He is currently leading an international comparative research project examining the role of private violence in settler colonial societies.

Three cases related to Palestine have been before the International Court of Justice in The Hague in the last two years. The first¹ of these cases involved the United Nations General Assembly’s 2022 request for an advisory opinion regarding Israel’s long term military occupation of Palestinian territory. The second² involved South Africa’s charge in late December 2023 that Israel was committing genocide in Gaza through its response to the 7 October 2023 Hamas-led attack on Israel. In the third³ case, filed in March 2024, Nicaragua charged Germany with complicity in Israel’s alleged genocide in Gaza by dint of its arms transfers to the Israeli military. Together these cases constitute a litmus test regarding the direction the global community may take in the years

¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024].including East Jerusalem} [2024] Advis Opin (ICJ)

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures) Order of 24 May 2024.

³ *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v Germany)* (Order) [2024].

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ahead. Will it support the primacy and universality of international law? Or instead, will it follow the “rules based international order” championed mainly by the United States, and followed by a number of its closest allies?

As John Dugard has pointed out⁴, these are not the same thing, even though they at times sound like it. International law is the set of rules that have evolved to govern relations between nations that are enforced by defined structures, such as the International Court of Justice. The rules-based international order (RBO), in contrast, is a set of principles that US officials have been invoking with increasing frequency since the 1991 demise of the Soviet Union. They include democracy, the rule of law, free trade and markets, collective security, multilateralism, and protection of individual rights. And this RBO is typically presented by its proponents as one pole in a grand global struggle between democracy led by the US on the one hand, and autocracy, on the other.

While RBO principles in the abstract all sound positive, they are, unlike international law, ill-defined and vague, and therefore flexible to interpretation. Nor is it explicit who, exactly, has the right to define the rules of this rules-based order nor how they are generated. As a matter of practice, it is the United States that typically invokes these rules against its chief geostrategic rivals, Russia and China. So, in a May 2022 NYT op-ed,⁵ President Biden said of Russia’s invasion of Ukraine “And it could mark the end of the rules-based international order, and open the door to aggression elsewhere, with catastrophic consequences the world over.”

To be clear: President Biden could have invoked international law rather than the RBO, because Russia’s invasion of the sovereign state of Ukraine certainly violates that law and the Charter of the United Nations, which only permits war in defence from imminent attack or when explicitly authorised by the UN Security Council. Why did he not do so? What function does the rules-based order play in American diplomacy?

⁴ John Dugard, ‘The Choice before Us: International Law or a “Rules-Based International Order”?’ (2023) 36 *Leiden Journal of International Law* 223.

⁵ Joseph R Biden Jr., ‘What America Will and Will Not Do in Ukraine’ *The New York Times* (31 May 2022) <<https://www.nytimes.com/2022/05/31/opinion/biden-ukraine-strategy.html>> accessed 5 May 2025.

It is worth noting, that in a recent survey⁶ rating the compliance of 74 nations with the United Nations Charter going back to 1945, the United States ranked last and Israel second-to-the-last.

The role of the RBO in U.S. diplomacy is evident in the positions it has taken in regard to the three Palestine-related cases before the International Court of Justice. This is particularly true in the positions argued by State Department lawyers in litigation over the United Nations General Assembly's request for an advisory opinion on the legal consequences arising from Israel's more than 57-year occupation of Palestinian Territories. An unprecedented 52 states and three regional organisations joined in hearings in February 2024; Israel, for its part, abstained from oral arguments.

The gist of the U.S. position was that the ICJ shouldn't order a unilateral end to Israel's occupation, because this would undermine the land for peace framework established by United Nations Security Council in its resolutions 242 of 1967 and 338 of 1973 and thus weaken the rules-based order. Such a court order would hand Palestinians the land without handing Israel peace, while neglecting Israel's security interests.

Yet, these supposedly foundational UNSC resolutions were adopted after wars between Israel and the Arab states and make no mention of the Palestinians nor their national rights, referring only to a "just resolution of the refugee issue". They staked out a political, not legal position, and were arrived at by a political process, that is, negotiations within the Security Council in which Palestinians had no voice. Meanwhile, the US has not seemed in any way offended by treaties between Israel and Egypt in 1979, nor between Israel and Jordan in 1994. Recently the U.S. fostered the Abraham Accords between Israel and now four Arab countries (the United Arab Emirates, Bahrain, Morocco, and Sudan). All of these awarded Israel peace with Arab states without giving the Palestinians land (the treaty with Egypt, of course, involved Israel's return of the occupied Sinai Peninsula to Egypt).

⁶ Jeffrey D Sachs and Guillaume Lafortune, 'Opinion | Adhering to the UN Charter: Barbados First and the United States Last | Common Dreams' (*Common Dreams*, 13 November 2023) <<https://www.commondreams.org/opinion/multilateralism-index-united-nations>> accessed 5 May 2025.

So why does the United States accept peace with no land, but not land with no peace? Wouldn't a court judgment that clarified the rights of the respective parties support a fair and just resolution in accord with international law? Did U.S. opposition to a court finding that Israel's occupation of Palestinian authority arises from its acceptance that Israel keeps lands in the West Bank that it acquired in violation of the UN Charter's rule against territorial acquisition by war? Does the U.S. prefer that Palestinians be forced to negotiate while the occupation continues, in other words, at the point of an Israeli gun?

On July 19, 2024, the ICJ issued its advisory opinion on the legal status of Israel's occupation. Among the major findings of the court: Israel's 57+ year occupation of Palestinian territory, including East Jerusalem, the West Bank, and the Gaza Strip is illegal in its entirety, not just in its discrete practices. The court based its conclusion on two grounds: the occupation amounts to *de facto* annexation, which violates the UN Charter's prohibition against the acquisition of territory by war; and, in doing so, it denies the Palestinian people their right of national self-determination. Accordingly, the occupation must be brought to an end as soon as possible. The court also found that Israel's occupation violates Article 3 of the Convention on the Elimination of Racial Discrimination, which bars racial segregation and apartheid.

In December 2023, South Africa lodged a complaint against Israel at the ICJ claiming that in its onslaught against the Gaza Strip, Israel was violating its obligations under the UN Convention on the Prevention and Punishment of the Crime of Genocide. Soon thereafter, South Africa requested that the court “indicate provisional measures,” in other words, to take emergency action to preserve Palestinian rights during the pendency of the case. Hearings in the case began in January in which both sides presented evidence and argument on the request for provisional measures.

The Court found plausible evidence that genocide was occurring, and ordered that Israel do everything in its power to prevent genocidal acts and to facilitate the entry of aid and its distribution within Gaza, and to report back on its efforts within a month. That month passed, and Israel submitted a report on its compliance with the measures that has not been

made public. Meanwhile, the situation on ground worsened, prompting South Africa to go back to the ICJ in early March to seek additional provisional measures. The ICJ accepted that invitation and, on 28 March 2024, found that the deepening threat of famine was a changed condition justifying modification of its earlier orders. While affirming those earlier orders, the court sharpened and made more specific its demand that Israel cooperate in the provision of humanitarian aid.

When the situation on the ground was worsening still, and Israel was threatening to invade Rafah, where more than a million Palestinians had taken refuge, South Africa went back to the court yet again seeking more provisional measures. This time, on 24 May 2024, the court ordered that Israel halt its military operations against Rafah – an order which Israel simply ignored. The court has set 28 October of this year for the submission of South Africa’s written memorial, and 28 July 2025 for Israel’s response. While the US has assumed no formal role in the case, Secretary of State Antony Blinken has dismissed it as “meritless” and a distraction from negotiations toward a Gaza ceasefire.

The third case, *Nicaragua v. Germany*, was filed March 1, more than a month after the ICJ had ordered provisional measures in *South Africa v. Israel*, and after Israel had submitted its report on compliance. Nicaragua charged Germany with violating its duties under Genocide Convention and other provisions of international humanitarian law, such as the Fourth Geneva Conventions, in its provision of arms aid to Israel, cutting off aid to United Nations Relief and Works Agency (the main conduit for aid to Palestinian refugees worldwide) despite being on notice by ICJ’s decision in *South Africa v. Israel* that there was plausible case for genocide.

So far, the court has only made one interim ruling in the case, declining Nicaragua’s application for provisional measures that would have included ordering an immediate halt to Germany’s arms shipments to Israel. This case reflects desperation by Nicaragua to do something, anything, to halt the continuing wholesale slaughter of Palestinians and the complete destruction of the conditions for life in the Gaza Strip.

The three cases leave us with very serious questions: Will the primacy and universality of international law prevail? Can international law and the architecture of the post-WWII international system effectively

halt a genocide in action? Will we continue to tolerate a decades long “occupation” that is palpably not temporary, and that has evolved into a mechanism for racial oppression and apartheid? Or will the international community yield to the flexible, “heads-I-win, tails-you-lose” construct of the rules-based international order, where it is heads, the U.S. and its small clutch of global partners win, or tails, where opponents of the U.S. lose? And, as John Reynolds⁷ has asked, do symbolic spectacles that are not accompanied by concrete actions function to appease protesters, both states and members of civil society, and siphon off energy from other actions that might ultimately have greater effect on the ground?

Encouragingly, the United Nations General Assembly, by a vote of 124 in favour, 14 against, with 43 abstaining, has endorsed⁸ the ICJ advisory opinion, including its call on individual states to take actions to end Israel’s illegal occupation. Yet to date, only three states, Colombia, Namibia, and Türkiye have taken concrete actions that might impact the situation in Gaza on the ground. Namibia has recently held up an arms shipment to Israel passing through its port. Colombia has suspended coal exports to Israel, while Türkiye has imposed import and export bans on Israel.

Meanwhile: South Africa maintains normal trade and diplomatic relations with Israel, despite its leadership of the ICJ genocide case. Brazil also has maintained its fossil fuel shipments to Israel despite the government’s criticisms of Israel’s Gaza genocide. Therefore: do the rhetoric and symbolic gestures actually challenge the status quo of violence and oppression? Or do they, in fact and in effect if not intention, support the status quo of violence and oppression? Will the Global South, or “the rest” (of “the West and the rest”), stand up concretely for one of its own, or simply continue, literally, to carry on business as usual beneath a façade of performative rhetoric and ineffectual diplomatic gestures? And if the latter, is it fear of repercussions — for example, sanctions from the U.S — or simply naked self-interest that negates effective action?

International law is legitimate insofar as it is fairly and universally applied. When it is applied selectively, unfairly, and cynically, it is merely an elevated form of propaganda. The credibility of the post-WWII system

⁷ John Reynolds, ‘Genocide Trade-Offs’ (*LPE Project*, 30 July 2024) <<https://lpeproject.org/blog/genocide-trade-offs/>> accessed 5 May 2025.

⁸ UNGA Res A/ES-10/L.31/Rev.1 (18 September 2024).

is being stretched to the limits, at a moment when we as a species face existential danger in the form of climate change and are most in need of international cooperation and peaceful means of resolving conflict. The invitation to substitute an amorphous but politicised rules-based international order in place of the relative clarity of international law — from a serial violator of the United Nations Charter, no less — is one we should firmly reject.

Rethinking International Law After Gaza Symposium: Massacring Civilians – Genocide as International Legal Conundrum*

Lena Salaymeh

Horrifying images of children in Palestine and Lebanon murdered and mutilated by Israeli bombs are provoking renewed questions about the efficacy of international law. Current debates frequently rest on a presumption that the laws generated by contemporary international institutions (particularly the United Nations (UN)) are “good,” but the application and enforcement of those laws is “bad.” Accordingly, current debates tend to concentrate on how to “improve” the application and enforcement of contemporary international laws. In this essay, I propose a reconsideration of these conventional assumptions by arguing that some contemporary international legal doctrines manifest epistemic neocolonialism.

After supposed “formal decolonisation” in the mid-twentieth century, neocolonialism emerged as a new form of domination.¹ The category of neocolonialism reflects the perspectives of many in the global South who experience neocolonialism as extending prior forms

¹ Kwame Nkrumah, *Neo-Colonialism : The Last Stage of Imperialism* (Panaf 2009).

* This contribution, edited by Mohsen al Attar, M. Beheşti Aydoğan and Hasan Basri Bülbül, was originally published as part of the *Opinio Juris* symposium “Rethinking International Law After Gaza,” which followed the Boğaziçi University International Law Conference (BILC) 2024. We thank *Opinio Juris* and the author for their kind permission to include it in this volume. <https://opiniojuris.org/2024/10/08/massacring-civilians-genocide-as-international-legal-conundrum/>

of colonialism. In general, previous forms of colonialism were overt; in contrast, neocolonialism is obscured by institutionalisation and legalisation, often in the form of international institutions (such as the International Monetary Fund)² and international legal categories (such as “human rights”).³ The contemporary international legal system largely began in the context of colonialism, and it is part of neocolonialism’s institutionalisation and legalisation.⁴ Neocolonial power is perpetuated by the structural inequality of the UN, which gives more power to certain global North states than to other states (such as in the Security Council).⁵ Similarly, international legal organisations (like the International Criminal Court) primarily prosecute global South leaders for violations of international law.⁶ Since neocolonial states mainly enforce it, the contemporary international legal system’s structure generates rule by law, not rule of law. These are well-known critiques of the contemporary international legal system.⁷

However, the neocolonialism of contemporary international law cannot be overcome by merely changing the structure of international legal institutions or expanding international law’s enforcement in the global North. Specifically, as I have elaborated elsewhere, the contemporary international legal system cannot be “fixed” by interpreting or enforcing international legal doctrines “correctly” or “fairly.”⁸ Many

² Chloe Cain, ‘The IMF Loan Conditionalities and Neo-Colonialism: Understanding through the Third World Approach to International Law Essays’ (2022) 47 *Exeter Law Review* 7.

³ Vishal Sharma, “Human Rights Are a Form of Neo-Colonialism and Cannot, Therefore, Address the Neo-Colonial Injustices of the Neoliberal Global Order” [2021] SagePub <https://www.researchgate.net/publication/349085570_Human_rights_are_a_form_of_neo-colonialism_and_cannot_therefore_address_the_neo-colonial_injustices_of_the_neoliberal_global_order> accessed 5 May 2025.

⁴ Lena Salaymeh, ‘Demystifying the Neo-Colonialism of International Law’ (*Critical Legal Thinking*, 19 December 2023) <<https://criticallegalthinking.com/2023/12/19/demystifying-the-neo-colonialism-of-international-law/>> accessed 5 May 2025.

⁵ Nicholas Lees, ‘The Dimensions of the Divide: Vertical Differentiation, International Inequality and North–South Stratification in International Relations Theory’ (2012) 25 *Cambridge Review of International Affairs* 209.

⁶ Mihret Getabicha, ‘Decolonizing the International Criminal Court: Considering Questions of Bias in the Prosecution of African Leaders’ <<https://hdl.handle.net/2152/112675>> accessed 5 May 2025.

⁷ Antony Anghie, ‘Rethinking International Law: A TWAIL Retrospective’ (2023) 34 *European Journal of International Law* 7.

⁸ Lena Salaymeh, ‘Comparing Islamic and International Laws of War: Orthodoxy, “Heresy,” and Secularization in the Category of Civilians’ (2021) 69 *The American Journal of Comparative Law* 136.

contemporary international legal doctrines are based on a neocolonial epistemology. The contemporary international legal system generates ways of thinking that advantage the global North and disadvantage the global South. In this essay, I will illustrate the neocolonialism of the legal notion of genocide by examining three aspects of the contemporary international legal system: precedent, context, and legal reasoning.

Legal Precedent: Ignoring Civilian Massacres

Contemporary international law prohibits “extreme state violence” (including genocide, crimes against humanity, and war crimes).⁹ Nonetheless, the extreme violence of settler-colonial and neocolonial states has not been prohibited or criminalised unambiguously in the contemporary international legal system. Settler-colonial states are established through extreme state violence and neocolonial states exercise their power through extreme state violence. Specifically, colonisers of previous centuries and neocolonisers of today perpetrate mass killings. For example, in previous centuries, the United States (U.S.) killed millions of indigenous peoples.¹⁰ More recently, the U.S. conducts a purported “war on terror” in 78 countries, killing at least 4.5 million people (mostly Muslims), and displacing 38 million people.¹¹ Today, the U.S. is sponsoring Israel’s massacres in Gaza and Lebanon.¹² The contemporary international legal system has not condemned or punished the U.S. for its past massacres or its current ones.

In the specific case of Palestine, the contemporary international legal system facilitates extreme state violence by legitimating a settler-colonial and neocolonial state (Israel). In 1948, the UN recognised that Zionists massacred Palestinians and declared a Palestinian right to return and reparations in General Assembly Resolution 194 but did not enforce

⁹ Bruce Cronin, ‘International Legal Consensus and the Control of Excess State Violence’ (2005) 11 *Global Governance* 311.

¹⁰ Donald L Fixico, ‘When Native Americans Were Slaughtered in the Name of “Civilization”’ (*HISTORY*, 2 March 2018) <<https://www.history.com/articles/native-americans-genocide-united-states>> accessed 5 May 2025.

¹¹ ‘Latest Figures | Costs of War’ (*The Costs of War*) <<https://watson.brown.edu/costsofwar/figures>> accessed 5 May 2025.

¹² Tara Copp, ‘US Approves \$20 Billion in Weapons Sales to Israel | AP News’ (14 August 2024) <<https://apnews.com/article/israel-gaza-20-billion-weapons-us-aid-b6a99129c88a5dcc4a4753e20b5e19ec>> accessed 5 May 2025.

it.¹³ (In this essay, Zionism is an ideology that endorses the colonisation of Palestine. Zionist colonialism is not limited to Israelis. To emphasise that neocolonial states—including the U.S., the United Kingdom, Germany, and France—support and sustain Israel, I will refer to it as the Zionist colonial state.) Despite condemning an early Zionist massacre of Palestinians, the UN recognised Zionist settler-colonial sovereignty in 1949.¹⁴ The number and magnitude of Zionist massacres has increased with the passage of time.¹⁵ In particular, Gaza has been a concentration camp subjected to massacres and collective punishment for decades.¹⁶ A massacre is not an exceptional event in the history of a settler-colonial state, which manifests its sovereignty by butchering indigenous peoples. The contemporary international legal system has not punished Zionists for any of their past massacres in or near Palestine.

Today, the Zionist settler-colonial state is again massacring the indigenous Palestinians—most of whom are refugees from earlier Zionist massacres.¹⁷ During the past year, experts estimate 335,500 civilians have been murdered, nearly two million people have been displaced, and Gaza's infrastructure has been decimated, rendering it uninhabitable.¹⁸ The Zionist state's most recent massacres are more intense—in terms of both speed and scale—than the many massacres that preceded it, but they are not aberrations. When the United Nations recognised Israel, it legitimated a settler-colonial monster that feeds on Palestinian land and Palestinian bodies.

¹³ BADIL, 'The Meaning of UN Resolution 194 and the Right of Return' [2002] BADIL Occasional Bulletin No. 11 <https://www.palestineportal.org/wp-content/uploads/2016/10/BADIL_Meaning_UNRes194_RightOfReturn.pdf> accessed 5 May 2025.

¹⁴ UNGA Res 273 (III) (11 May 1949) UN Doc A/RES/273(III).

¹⁵ Joseph Massad, 'Israel's Mass Murder of Palestinians in Gaza Began Seven Decades Ago' (*Middle East Eye*, 26 December 2023) <<https://www.middleeasteye.net/opinion/israel-mass-murder-palestinians-gaza-began-seven-decades-ago>> accessed 5 May 2025.

¹⁶ *Is Gaza a Concentration Camp?* | Norman Finkelstein (Directed by Robinson's Podcast Clips, 2024) <https://www.youtube.com/watch?v=ory_IDwagT0> accessed 5 May 2025.

¹⁷ Tayseer Muhaisen, 'Palestinian Refugees in the Gaza Strip, 1948-1967' (*Interactive Encyclopedia of the Palestine Question – palquest*) <<https://www.palquest.org/en/highlight/22188/palestinian-refugees-gaza-strip-1948-1967>> accessed 5 May 2025.

¹⁸ Devi Sridhar, 'Scientists Are Closing in on the True, Horrifying Scale of Death and Disease in Gaza' *The Guardian* (5 September 2024) <<https://www.theguardian.com/commentisfree/article/2024/sep/05/scientists-death-disease-gaza-polio-vaccinations-israel>> accessed 5 May 2025.

Legal Context: Incoherence of Laws Prohibiting Civilian Massacres

The massacres, torture, and other forms of collective punishment being live streamed from Gaza show a genocide that is simultaneously acknowledged and denied using contemporary international law.¹⁹ ²⁰ Neocolonial states camouflage their extreme violence through the incoherence and indeterminacy of international legal doctrines. The contemporary international legal system creates a paradox by both permitting and repudiating massacres of civilians.

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (the Convention) defines genocide as requiring the “intent to destroy, in whole or in part” a group. More precisely, contemporary international law prohibits massacres of annihilation when there is a finding of both *mens rea* (i.e., intent) and *actus reus* (i.e., acting on the intent).²¹ The requirement of *mens rea* must be juxtaposed with two other international legal doctrines: state self-defence and prohibition of terrorism.²² Neocolonial states consistently allege to be acting in self-defence or in the interest of global security when they massacre civilians in the global South. (The U.S. “war on terror” exemplifies this tactic.) These neocolonial states also allege that mass civilian deaths are “mistakes” or “collateral damage.” The state’s claim of self-defence is so sacred in the contemporary international legal system that the burden of proof falls on victims of massacres to prove civilian targeting. Neocolonial states consistently murder disproportionately more civilians than non-state groups.²³ When international law privileges the ostensible security of a settler-colonial state, it permits massacring indigenous peoples.

¹⁹ Aryeh Neier, ‘Torture in Israel’s Prisons’ (2024) 71 *The New York Review of Books* <<https://www.nybooks.com/articles/2024/10/17/torture-in-israels-prisons-aryeh-neier/>> accessed 5 May 2025.

²⁰ Raz Segal, ‘A Textbook Case of Genocide’ (*Jewish Currents*) <<https://jewishcurrents.org/a-textbook-case-of-genocide>> accessed 5 May 2025.

²¹ William A Schabas (ed), ‘The Mental Element or Mens Rea of Genocide’, *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) <<https://www.cambridge.org/core/books/genocide-in-international-law/mental-element-or-mens-rea-of-genocide/31674349AEA895D2577CFDE899046B9E>> accessed 5 May 2025.

²² Thomas Weatherall, ‘The Status of the Prohibition of Terrorism in International Law: Recent Development’ (2014) 46 *Georgetown Journal of International Law* 589.

²³ Salaymeh, ‘Comparing Islamic and International Laws of War’ (n 8).

The Zionist state habitually denies its intent by alleging that it is acting in self-defence and falsely claiming that combatants are embedded in hospitals, schools, and other targets that result in mass civilian casualties.²⁴ ²⁵ By blaming artificial intelligence for indiscriminate targeting, the Zionist state will find additional pretexts to deny intent to commit genocide of Palestinians.²⁶ Nevertheless, the evidence indicates that the Zionist state is targeting civilians (i.e., committing state terrorism²⁷) in Gaza.

In contrast to the genocide doctrine's requirement of intent, contemporary international law does not require a clear finding of *mens rea* for terrorism. International law generally identifies terrorism as violence exercised for intimidation or coercion, with intent to cause injury.²⁸ ²⁹ The discrepancy of imposing a strict *mens rea* standard for a finding of genocide and not for terrorism—even though a state's massacre of civilians is far more destructive—reflects the international legal system's *a priori* legitimization of state violence. The contemporary international legal system primarily criminalises the *targeting* of civilians when the perpetrator is a non-state actor opposed to the global North. Similarly, in effect, it criminalises *massacres* of civilians when the perpetrator is a state actor opposed to the global North. The notion of genocide—like the notion of terrorism—disguises neocolonial state violence.³⁰ In the contemporary international legal system, the notion of “terrorism” delegitimizes anticolonial resistance and the notion of “genocide” legitimizes neocolonial state violence as “not intended to

²⁴ Camilla Boisen, 'Israel's Punitive War on Palestinians in Gaza' 0 *Journal of Genocide Research* 1.

²⁵ 'New Evidence of Unlawful Israeli Attacks in Rafah Causing Mass Civilian Casualties' (*Amnesty International*, 12 February 2024) <<https://www.amnesty.org/en/latest/news/2024/02/israel-opt-new-evidence-of-unlawful-israeli-attacks-in-gaza-causing-mass-civilian-casualties-amid-real-risk-of-genocide/>> accessed 5 May 2025.

²⁶ Ben Reiff, "A Mass Assassination Factory": Inside Israel's Calculated Bombing of Gaza' (+972 *Magazine*, 30 November 2023) <<https://www.972mag.com/mass-assassination-factory-israel-calculated-bombing-gaza/>> accessed 5 May 2025.

²⁷ Ruth Blakeley, 'State Violence as State Terrorism', *The Ashgate Research Companion to Political Violence* (Routledge 2012).

²⁸ Kimberley N Trapp, 'The ICJ and International Terrorism' [2023] *Max Planck Yearbook of United Nations Law Online* <https://brill.com/view/journals/mpyo/26/1/article-p534_22.xml> accessed 5 May 2025.

²⁹ Ben Saul, 'Defining Terrorism in International Law' (*GlobaLex | Foreign and International Law Research*, December 2021) <<https://www.nyulawglobal.org/globalex/>> accessed 5 May 2025.

³⁰ Salaymeh, 'Comparing Islamic and International Laws of War' (n 8).

annihilate people” (i.e., “not genocide”). Comparing the prohibition of genocide with other contemporary international legal doctrines indicates that the system criminalises status (particularly non-state or global South figures), rather than actions. Because they are tools of neocolonial power, the legal notions of terrorism and genocide are overall more detrimental than helpful to colonised peoples.

Even if the International Court of Justice were to determine that the Zionist settler-colonial state is intentionally committing genocide, the punishment would be trivial.³¹ Article IV of the Convention declares, “Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.” Contemporary international law punishes individuals, but not sovereign states. In the case of a settler-colonial state, potential punishment of specific public figures or soldiers is woefully inadequate. Surveys show that nearly 90% of Israelis believe that the Zionist settler-colonial state’s massacres are justified, and a large majority oppose permitting humanitarian aid into Gaza.^{32 33} Potential indictments by international courts of specific Israeli leaders will not prevent future massacres because Zionists endorse and rationalise mass civilian deaths. Moreover, settler-colonial and neocolonial states employ extreme violence against civilian populations, but international law does not punish these states. Probably the only punishment that could potentially deter civilian massacres is the loss of state recognition in the international legal system. (By way of example, the General Assembly’s suspension of South Africa in 1974 arguably contributed to the eventual dismantling of apartheid.)³⁴ So, long as the UN recognises the Zionist settler-colonial state, the UN is complicit in its massacres.

³¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures) Order of 24 May 2024.

³² Richard Hardigan, ‘Polls Show Broad Support in Israel for Gaza’s Destruction and Starvation’ (*Truthout*, 10 February 2024) <<https://truthout.org/articles/polls-show-broad-support-in-israel-for-gazas-destruction-and-starvation/>> accessed 5 May 2025.

³³ *Israeli Protesters Hinder Aid Trucks from Entering Gaza* (Directed by TRT World, 2024) <<https://www.youtube.com/watch?v=fOipv5W9vBo>> accessed 5 May 2025.

³⁴ Raymond Suttner, ‘Has South Africa Been Illegally Excluded from the United Nations General Assembly?’ (1984) 17 *Comparative and International Law Journal of Southern Africa* 279.

Legal Reasoning: Neocolonial Violence As “Not Genocide”

Contemporary international law constructs the notion of genocide to prohibit certain types of massacres, in a system in which neocolonial power delineates which civilian massacres will be permitted or prohibited. Consequently, although contemporary international law prohibits and criminalises a notion of genocide, it simultaneously facilitates extreme settler- and neo-colonial state violence.

The notion of genocide is based on a false distinction between apolitical violence and political violence.³⁵ (A parallel, deceptive division differentiates hate speech (i.e., apolitical speech) from political speech.)³⁶ Article II of the Convention defines genocide as requiring the “intent to destroy” a group *because* of their “nationality, ethnicity, race, or religion.” Accordingly, it must be proven that the Zionist state intends to annihilate Palestinians in Gaza because they are *Palestinian* and not for any other reason. This evidentiary standard is unreasonable and reflects neocolonial logics. Zionist governance uses a regime of differential treatment for different groups of Palestinians; in turn, this apartheid regime protects the settler-colonial state from international legal criminalisation. That is, some Zionists allege that Israel is not committing genocide because it is not currently committing massacres of Palestinians in Israel’s open-air prisons (the West Bank) or mass detention area (‘48 Palestine)—although they are being subjected to assassinations, pogroms, torture, and imprisonment.³⁷ International criminal liability of states should not rest on the identification of a group as a national, ethnic, racial, or religious group because this identification is itself part of a colonial epistemology. Neocolonial states strategically use these modern, Eurocentric categories to shroud neocolonialism, not to protect oppressed

³⁵ A Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge University Press 2021) <<https://www.cambridge.org/core/books/problems-of-genocide/1C48C9BAE4A2CA4EA6727F19771651A6>> accessed 5 May 2025.

³⁶ *Performing Legality in Service of Colonialism: ‘Anti-Antisemitism’ as Censorship* (Directed by Watson Institute for International and Public Affairs, 2023) <https://www.youtube.com/watch?v=_fn9x_Fe_xc> accessed 5 May 2025.

³⁷ ‘West Bank: Israel Responsible for Rising Settler Violence’ (*Human Rights Watch*, 17 April 2024) <<https://www.hrw.org/news/2024/04/17/west-bank-israel-responsible-rising-settler-violence>> accessed 5 May 2025.

groups.³⁸ Palestinians are being massacred because they are colonised—not because they are a specific nation, ethnicity, race, or religion. If the objective of international law were to prevent, stop, or punish massacres of civilians, then international criminal liability of states would be based on consequences, not on intent. The evidence of Gaza’s devastation should be sufficient proof of intent to annihilate the colonised Palestinians in Gaza.

In addition, the Convention functions as a form of neocolonial disorientation because the notion of genocide is unnecessary: international laws of war already prohibit massacring civilians. Article 48 of the Geneva Convention’s Additional Protocol I requires all parties to distinguish between civilians and combatants. Article 50 defines a civilian as persons who are not members of armed forces, militias, and those who openly use arms to resist an invading force. Article 50 also declares, “In case of doubt whether a person is a civilian, that person shall be considered a civilian.” In addition, Protocol I delineates a target verification rule, requiring parties to “do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects.” In contrast to the Geneva Protocols, the Convention (against genocide) generates confusion and diversion about the legal legitimacy of civilian massacres. The Convention was not intended to prohibit massacres of civilians in general or to deal with a settler-colonial state’s violence against the indigenous population. Indeed, there are no laws in the contemporary international legal system that adequately protect colonised peoples from colonial violence.

The international legal prohibition of genocide is an *obstacle* to criminalizing colonial state massacres.³⁹ The legal notion of genocide rests on a purported difference between political violence and apolitical (or hate-based) violence and that illusionary distinction is a form of epistemic neocolonialism. Settler-colonialism is a declaration of war against a civilian population. The notion of genocide—like the notion of terrorism—disguises neocolonial state violence.⁴⁰

³⁸ Lena Salaymeh, ‘Decolonial Translation: Destabilizing Coloniality in Secular Translations of Islamic Law’ [2021] *Journal of Islamic Ethics* 5 250.

³⁹ Moses (n 35).

⁴⁰ Salaymeh, ‘Comparing Islamic and International Laws of War’ (n 8).

Decolonial Approaches to Civilian Massacres

Thus far, I have shown that the contemporary international legal system's precedents, doctrinal context, and legal reasoning create a conundrum surrounding civilian massacres. This legal analysis demonstrates that international legal notions are embedded in a neocolonial epistemology that protects neocolonial states and their violence. Consequently, decolonising the contemporary international legal system necessitates much more than increased roles for global South states. To begin challenging the neocolonial power of the contemporary international legal system, we should look for epistemological alternatives in precolonial history and in the experiences of colonised peoples. For instance, prohibitions against massacring civilians were prevalent in some premodern legal traditions, such that the contemporary international legal system does not provide new legal protection.⁴¹ International law's invention of a new legal notion (such as genocide) does not necessarily result in more legal protections of civilians. Instead, contemporary international law introduces a new legal perplexity through the notion of genocide.⁴² Given that modern states and their weapons are the most powerful in human history, misleading international legal doctrines have lethal consequences.

To decolonise—or replace—the neocolonial epistemology of contemporary international law, we must look outside the narrow confines of the contemporary international legal system. Epistemic decolonisation necessitates decentring neocolonial positionality. Victims of the ongoing Zionist colonial massacres may illuminate alternatives to the neocolonial logics of contemporary international law. Muṣṭafá al-Najjār, a Palestinian recently martyred in Gaza, left a last testament, observing, “There is another way of describing our situation other than defeat, insofar as we decided that we will not die before trying to live.”⁴³ Since many Palestinians experience life under the Zionist settler-colonial state as an incremental, endless massacre, they experience martyrdom

⁴¹ *ibid.*

⁴² Moses (n 35).

⁴³ 'X'te شهداء غزة' Gaza martyrs: “الشهيد مصطفى النجار #حكاية_شهيد #شهداء_غزة” <https://t.co/f3UMPpl0fc> / X' (X (formerly Twitter), 29 March 2024) <<https://x.com/Gaza-Shaheed/status/1773683652913705054>> accessed 5 May 2025.

as a form of liberation (rather than death). Zionist settler- and neo-colonialism engages in perpetual warfare against Palestinians.

The keys to decolonising contemporary international law are in the hands of the children in Palestine and Lebanon who are experiencing these ferocious and sadistic massacres. Merely punishing the perpetrators of civilian massacres will not assuage them. Their witnessing makes obvious what we will witness in the future: the children of Palestine and Lebanon—who witness up close the horrors that traumatise us from afar—will seek justice. Fuelled by these brazen, gruesome massacres, one can only imagine the intensity of their opposition to Zionist settler- and neo-colonialism. These children will not forget, and they will demand what all colonised peoples demand: liberation, return, and land. We are witnesses not only to massacres, but also to a potential decolonisation of the neocolonial epistemology that underlies the contemporary international legal system.

Rethinking International Law After Gaza Symposium: The Palestinian Genocide and the Colonial Core of International Law*

José-Manuel Barreto

José-Manuel Barreto works on decolonising human rights and international law based on TWAIL and Decolonial Theory. He teaches law at the Javeriana University in Bogotá and will publish 'Decolonial Theory and the History of Human Rights' in 2025.

The Palestinian genocide has unveiled the deep colonial structure of the international legal order. The so-called Westphalian system has been inveterately depicted and legally defined in the UN Charter as one of 'equal' 'sovereign' 'states.' Against the black letter of positive international law, the Palestinian Genocide has made evident the material reality of the formally liberal (based on the sovereign liberty of states) and democratic (obeying the equal value of the will of each state) international legal order: this is not an order of equals, neither of sovereigns nor states. Rather, as the images of decapitated boys and girls and remains of bodies show up again and again for twelve months on the screens of mobile phones, computers, and televisions, the international legal system has revealed its true core: a colonial order before our very eyes—an order of unequal subjects; sovereigns and colonised; and of states, empires, settlers, and colonies.

The places, moments, and decisions in which the colonial reality of international law has been revealed are, first, the times in which the

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United States has exercised the veto to block proposals put before the UN Security Council ordering Israel to stop the genocide in Gaza and withdraw. The right to veto is not only a privilege of the victors in WW2; it is an advantage given to themselves by the same vanquishers that simultaneously happened to be at the time former and new empires: the British, French, US, and Russian/Soviet empires.

The great powers have two personalities or act in two different capacities: legally as states and materially as empires. The veto of a single permanent member of the Security Council is first a 'right' that trumps the votes of all the other permanent and transitory members, i.e. a naturalised shutdown of the democratic principle of majority. This prerogative allows the vote of one to be valued more than the vote of all other sovereigns. As a result, they are not equal sovereigns as the rest of the members of the Security Council and the United Nations. In an Orwellian fashion, these five states -including the US- are more sovereign than all other sovereigns and, therefore, truthful empires -even after all the sovereign subjects of international law were formally declared states according to international law in Westphalia in 1648 and San Francisco in 1945.

The veto also has a second qualitative advantage allowing the holders to rise above international law. The principle of sovereignty of states was transformed by the human rights system, allowing the UN and the international community to inspect the human rights situation in every sovereign state and to hold it responsible for its violations. Such a permeability of sovereignty disappeared every time the US vetoed the proposals ordering Israel to stop the genocide. The will of an empire shielded the sovereignty of the state of Israel -a settler colonial state- allowing it to continue perpetrating not only a common or even grave violation of human rights but the campaign of destruction that has led to the most vile and egregious of all: genocide.

International Law Reform to Hold Back Genocide

The Palestinian Genocide has urged prompt international law and United Nations reform. Although such a move surely would not have consequences for the current genocide, it can have effects on future instantiations. Beyond the ideal elimination of the veto, a more feasible reform is needed. To diminish the imperial powers of the permanent members and the colonial character of the Security Council, as well as to

avoid the Security Council being paralyzed in front of genocide -and the whole UN discredited as good-for-nothing as it is today for many in the world- a key reform of the veto powers would put the suffering of entire peoples before imperial capacities: It should be out of use in the case of genocide.

The previous decision about the existence of genocide cannot be left in the hands of a political body but of the International Court of Justice, which has been charged since 1948 with the guardianship of the Genocide Convention. In this context, the Court should act fast enough according to the gravity and urgency of ending genocide in a special and speedy procedure, not as it can in pursuit of establishing state responsibility years after everything is finished, and tens or hundreds of thousands of human beings, children and adults, have been maimed, killed and torn to pieces. The Court has given proof of being able to comply soon enough with such a task when responding to the request of South Africa ordered a month later provisional measures and afterward found there was an 'imminent risk' of genocide, or 'plausible', likely or probable the claim by South Africa about the existence of genocide.

Turning to the examination of individual responsibility in the Palestinian Genocide, it has transparent how the International Criminal Court has been subjected to menaces like that of the Mossad, and to overt pressures like that of a bipartisan group of members of the US Congress generously supported by the AIPAC. Such intimidations have resulted in the Court being refrained from adopting a decision about the application by the Prosecutor for arrest warrants for Israel's Prime Minister Netanyahu and Defence Minister Gallant. Such activities are usually typified in national jurisdictions as the crime of contempt of court. A new international crime should be introduced in the Rome Statute to prosecute those responsible, including the agents of imperial or colonial interference in judicial proceedings.

The Palestinian Genocide and the History of Colonial Genocide

The Palestinian Genocide also brings to light the five hundred years of history and the concept of colonial genocide. The common idea of genocide is Eurocentric. Coined by Raphael Lemkin in the context of the Nazi atrocities, the term was later enshrined in the 1948 Genocide

Convention quoting the Holocaust as antecedent. This became the first and universal legal definition of genocide as both an international crime and a human rights violation. The creation of the word and the legal recognition responded to a dreadful crime committed within Europe's geography. This crime still occupies a central place in the history of Europe and the world. Critically, the victims were Europeans, the European Jews, in most of the cases. The Genocide Convention mentions the territory of a state as the place in which genocide can be accomplished. The Nazi totalitarian state was the death machine behind the horrendous crime of the Holocaust, and the victim was characterised as an ethnic and religious group, and a minority: the Jews. Dirk Moses has written that the Holocaust has become the legal paradigm of genocide, and for an event 'to be genocide needs to resemble the Holocaust'. In this cultural landscape, the Eurocentric history of genocide is composed of one single event, at the same time the first and the last one of its kind: the Holocaust.

Nevertheless, if we recontextualise genocide in the history of modern colonialism we can see that genocide is not only a XX Century and quintessentially European phenomenon, and that there is also a modern history of colonial genocide from the XV and XVI centuries. This history was inaugurated by the Conquest of America and the extermination of hundreds of American indigenous peoples and millions of human beings and extended until today throughout the history of modern colonialism. We can mention among them the Congo and the Namibian genocides.

The Congo genocide was carried out at the end of the XIX Century by a Belgian private businessman who happened to be King Leopold II -the only stakeholder and single owner of the International Society of Congo, a colonial company. To plunder the rubber and ivory of this huge African region, the company appropriated most of the land, enslaved and mutilated part of the population including children and was responsible for the genocide of between 10 and 20 million people.

The same moral, legal, and political recognition and condemnation given to the genocide of the European Jews was not applied to a genocide committed just a few years earlier, by the very same criminal state, Germany. However, the material authors were not the SS, but troops of the German Empire occupying the colony of German West Africa, which were commanded not by Hitler but by General Lothar Von Trotha.

The genocide was outside Europe, in Africa, in today's Namibia. And the victims were not Europeans but the colonised Nama and Herero indigenous peoples.

Colonial genocides have been committed in the global geography of the colonised world. Colonial genocides are not the make of states against minorities. By contrast, empires, colonial companies, and occupying states or settler colonial states have perpetrated colonial genocides against indigenous peoples. We can count among them the colonial genocide in Palestine.

As it has happened for the past five centuries, the Palestinian Genocide shows that European settler colonialism continues to perform one of its historical tasks: genocide. Empires and former empires like the US, the UK, and France continue to be authors and accomplices of genocide by enabling the genocidal aggression of a people. The settlers are mainly European and US citizens. They were the survivors of the Holocaust, or the descendants of the victims of the Holocaust. They are part of the Jewry dispersed all over the world that goes back to a land purportedly promised more than 2000 years ago by their God, as it is written in sacred texts (though contested by many Jews and scholars of the Judaic tradition). The settler state or the occupying state of Israel is at the same time the instrument and the product of the colonial dynamic of occupation and appropriation of the land. The empires providing the planes and the bombs to carpet bomb Gaza are the US and the old European empires, including Germany, which thinks it is dispensed of responsibility for a genocide being the accomplice of another genocide. Israel is an extension of the colonial use of violence by the US and European empires.

Re-defining International Law

What can be the consequences of the recurrence of colonial genocide throughout five centuries of modern colonialism for the very definition of international law? In the Westphalian and Eurocentric tradition international law is characterised as a path to peace and international cooperation. This is in accordance with the hegemonic historiography composed mainly of European peace conferences and treaties, among them Westphalia, Utrecht, Vienna, The Hague, Versailles, and San Francisco, which usually ended wars between European sovereign states. This is only the provincial European narrative of the political and legal

hallmarks of modern international law as a corpus of norms created by sovereign states and, in turn, regulating the relationships between them, as well as securing peace and protecting humanity and freedom.

By contrast, in the context of modern colonial history international law has been a master of extreme violence, and a source of legitimacy of colonial domination and genocide over centuries and the geography of all continents in the times of the global world. In the terms of Wilhelm Grewe, across the epochs of international law, *ius gentium* has lent a hand to the so lethal advance of the Portuguese, Spanish, Dutch, French, British, Belgian, German, US and Soviet empires over the territories and countless lives of colonised peoples.

We should deem as partial, ideological and merely positivist definitions of international law constructed around states as only sovereigns, and as norms guided by the teleology of peace and humanity. Such a conceptualisation should be put in tension and supplemented by a more comprehensive and decolonial understanding that portrays International law also as a tool for the destruction of the lives and bodies of millions of human beings inhabiting the colonies -as a discourse of justification and legitimation of genocides enacted by empires and colonial companies.

To conclude, the Palestinian Genocide testifies to the fact that the coloniality of military, political, and economic power structure that characterises the contemporary world system is the material condition for genocide to be perpetrated again. For the last five hundred years and still today when we approach the first quarter of the 21st Century, the international legal system is organised around a structure of imperial powers, including empires (or empire-states, empires disguised as states, and former empires), and colonial and transnational companies, on the one hand. On the other, colonised peoples, former colonies, neo-colonies or Third World peoples. The neo-colonial contemporary world structure of power pursues the immanent objective and long historical logic of the appropriation of land and colonial accumulation of capital enabling genocides to be committed in the Third World, including the Palestinian genocide.

Rethinking International Law After Gaza Symposium: Genocide at the ICJ – The Bosnia Case and Implications for Gaza*

Jinan Bastaki^a, Harun Halilovic^b

^aJinan Bastaki is an Associate Professor of Legal Studies at New York University, Abu Dhabi

^bHarun Halilović is an Assistant Professor at IUS Law School. He holds a BA in Law from the University of Sarajevo, and an LL.M. from Queen Mary University of London. He obtained PhD in Law from the University of Tuzla Faculty of Law. He is an author of several research articles and books. He has experience working with international organisations and in legal practice as an attorney at law.

Genocide is a notoriously difficult crime to prove due to the high standard of proof required to satisfy the *dolus specialis* requirement of genocide — that genocide must be the ‘only reasonable inference’ from the prohibited actions. For example, despite the widespread crimes targeting Bosnian Muslims in Bosnia and Herzegovina between 1992-1995, only the killings in Srebrenica were determined to reach the threshold of genocide by the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Court of Justice (ICJ).

The standards of proof for finding individual criminal responsibility for genocide were developed by the ICTY and the International Criminal Tribunal for Rwanda (ICTR), as well as some other novel legal standards. Although some of the decisions of the ICTY were criticised, a few of the standards developed — which may have helped to find state responsibility for genocide — were not applied by the ICJ in the 2007 case of *Bosnia and Herzegovina v. Serbia*, finding ultimately that Serbia was *not* responsible for the Srebrenica genocide, but *was* responsible for its failure to prevent genocide.

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More recently, several states in *The Gambia v. Myanmar*¹ case have urged the ICJ to rethink its approach in order to ensure that making a finding of genocide is not made impossible, despite the preponderance of evidence. This post will examine and critique the ICJ's application of certain standards devised by the ICTY and ICTR and its reluctance to apply others, ultimately making it even more difficult to find state responsibility for genocide. We also consider its implications for South Africa's case² against Israel.

Genocide Determination in International Law

Article 2 of the Genocide Convention lists the different acts through which the crime of genocide can be committed (the *actus reus* of genocide). What differentiates genocide from other crimes under international law is the *mens rea* requirement, which is defined as the "... the specific intent to destroy, in whole or in part, the protected group." The ICJ clarified that this specific intent is the "*essential* characteristic of genocide, which *distinguishes* it from other serious crimes," (*Croatia v Serbia*³, 2015, para. 132, emphasis added).

The ICTY and ICTR developed extensive jurisprudence in processing genocide and several cases where individual criminal liability for genocide was established, such as the ICTY cases of *Karadžić*⁴, *Mladić*⁵, *Tolimir*⁶, and *Popović et al*⁷, and the ICTR cases of *Seromba*⁸ and *Aakayesu*⁹. The ICTY cases which sustained convictions for genocide were exclusively related to the genocide committed in Srebrenica. Besides the work of the ICTY and ICTR, at the international level, the Extraordinary Chambers in the Courts of Cambodia (ECCC), set up as a quasi-international UN-

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Preliminary Objections) [2022] ICJ.

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures) Order of 24 May 2024.

³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)* (Judgment) [2015] ICJ Rep 3.

⁴ *Prosecutor v Karadžić* (Judgment) IT-95-5/18-T, T Ch I (24 March 2016).

⁵ *Prosecutor v Mladić* (Judgment) IT-09-92-T, T Ch I (22 November 2017).

⁶ *Prosecutor v Tolimir* (Appeal Judgment) IT-05-88/2-A, A Ch (8 April 2015).

⁷ *Prosecutor v Popović et al* (Appeal Judgment) IT-05-88-A, A Ch (30 January 2015).

⁸ *Prosecutor v Seromba* (Appeal Judgment) ICTR-01-66-A, A Ch (12 March 2008).

⁹ *Prosecutor v Akayesu* (Appeal Judgment) ICTR-96-4-A, A Ch (1 June 2001).

backed judicial mechanism tasked with the processing of crimes of the Khmer Rouge regime in Cambodia, also found a former Khmer Rouge leader guilty of genocide over Cambodia's Muslim Cham minority and the Vietnamese minority in the 2018 Nuon Chea case.

Yet when it comes to responsibility of states for the acts of genocide, existing case law is scarce, though growing. Only a few ICJ cases relate to state responsibility for genocide, such as the case of mutual accusation between *Serbia and Croatia*, both eventually dismissed. Further ongoing cases are *The Gambia v. Myanmar*, *Ukraine v. Russia*¹⁰, and of course, *South Africa v. Israel*. However, currently, the only relevant case that was concluded establishing the existence of genocide and the existence of some form of state responsibility is the 2007 *Bosnia v. Serbia*¹¹ case.

State Responsibility v. Individual Criminal Responsibility

The ICTY and ICTR, on the one hand, and the ICJ, on the other, are not functionally or conceptually connected. The ICJ has affirmed this, stating that “State responsibility and individual criminal responsibility are governed by different legal regimes and pursue different aims,” (*Croatia v. Serbia*, para. 129). The competence of the ICTY and ICTR, as ad-hoc international tribunals, was primarily related to the prosecution of individuals and the adjudication of individual criminal liability, and as such is different from the competence of the ICJ to decide over the responsibility of the states, although certain standards relate to issues beyond mere individual responsibility. The Court stated that it would “nonetheless take account, where appropriate, of the decisions of international criminal courts or tribunals, in particular those of the ICTY” (*Croatia v. Serbia*, para. 129). Adopting standards of proof needed for individual criminal responsibility in cases of state liability are questionable at best, particularly since the criteria for deciding what is appropriate was not expanded upon.

¹⁰ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (Preliminary Objections) [2024].

¹¹ ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 43’ <<https://www.icj-cij.org/case/91/judgments>> accessed 5 May 2025.

When it came to state responsibility for genocide, the ICJ had to decide for the first time what constituted an appropriate standard of proof in the *Bosnia v. Serbia* case. Bosnia had argued that for finding state responsibility, “the standard is the balance of evidence or the balance of probabilities, inasmuch as what is alleged is a breach of treaty obligations” (para. 208). Judge Cançado Trindade, in his dissenting opinion¹² in the later *Croatia v. Serbia*, differentiated between the burden of proof required for state responsibility and for individual responsibility. Using ECtHR and IACtHR cases, as they deal with the responsibility of states for violations of human rights, he stated “that a stringent or too high a standard of proof would be unreasonable... The ECHR, like the IACtHR, admitted shifting the burden of proof (onto the respondent States) whenever necessary, as well as resorting to inferences (from circumstantial evidence) and factual presumptions, so as to secure procedural fairness, in the light of the principle of equality of arms (égalité des armes),” (para. 120).

In *Bosnia v. Serbia*, the ICJ ended up adopting, seemingly haphazardly, even higher standards of proof for finding state responsibility. The ICJ decided not to adopt the ICTY’s more reasonable standard of control needed to attribute the acts of non-state agents to the respondent state (‘overall control’, expanded upon in the Tadic case), and instead relied upon the more strenuous standard of ‘effective control’ established in the Nicaragua case (whose application is potentially relevant for *The Gambia v. Myanmar* case). As a result, the respondent state, Serbia, was not found responsible for the commission of genocide, but ‘merely’ for failure to prevent it.

The ICJ’S *Bosnia v. Serbia* case: Making the Near-Impossible, Impossible

In *Bosnia v. Serbia*, the Court extensively cited the jurisprudence of the ICTY (paras. 188, 195, 219, etc). This meant that the Court only focused on what was determined a genocide by the ICTY – namely the killings in Srebrenica, where more than 8,000 Bosniak men and boys were executed (although numerous female victims were also found). This is despite the

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (Dissenting Opinion of Judge Cançado Trindade) [2015] ICJ Rep 270.

fact that many crimes targeting Bosniaks specifically occurred before Srebrenica including, for example, the Višegrad killings where up to 3,000 Muslims were murdered including some burned alive, and where no Muslim remained when the war ended in 1995. Interestingly, national courts in Germany in the late 1990s, acting on universal jurisdiction, tried members of the Bosnian Serb Army who emigrated to Germany. Domestic courts established the existence of genocide in several towns in Bosnia and Herzegovina, including in the cities of Doboj (Jorgić case), Zvornik (Sokolović case), and Kotor Varoš (Kušljic case).

Yet, in *Bosnia v. Serbia*, the ICJ required that the pattern of acts should “have to be such that it could *only point to the existence of such intent*” (para. 373, emphasis added) i.e. the intent to destroy in whole or in part the targeted group. Hence, the ICJ saw that while crimes were committed in other cities of Bosnia and Herzegovina, such as in the city of Prijedor, and found that what took place satisfied the requirements of the *actus reus* of genocide, the specific genocidal intent was not sufficiently proven beyond reasonable doubt (paras. 276-277, 319). Judge al-Khasawneh, in his dissenting opinion¹³, severely criticised the court’s conclusions for a number of reasons. Regarding intent and what amounts to a reasonable inference, he stated that the Court,

... ignores the facts and substitutes its own assessment of how the Bosnian Serbs could have hypothetically best achieved their macabre Strategic Goals [of a Greater Serbia]... Coupled with population transfers, what other inference is there to draw from the overwhelming evidence of massive killings systematically targeting the Bosnian Muslims than genocidal intent? If the only objective was to move the Muslim population, and the Court is willing to assume that the Bosnian Serbs did only that which is strictly necessary in order to achieve this objective, then what to make of the mass murder? (Vice-President al-Khasawneh, Dissenting Opinion, para. 41)

Proving genocidal intent is a difficult and, in some cases, an impossible task, especially if we consider the habitual non-existence of written evidence. Still, the practice of the ICTR and ICTY established that the specific genocidal criminal intent can be proven through the existence

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Dissenting Opinion of Vice-President Al-Khasawneh) [2007] ICJ Rep 241.

of a specific pattern of behaviour (the *Seromba* and *Aakayesu* cases at the ICTR), or through the existence of a certain plan or policy (as in ICTY's *Krstić*¹⁴ case related to Srebrenica genocide). In its conclusion, when the ICJ affirmed that what occurred in Srebrenica was a genocide since it aimed to destroy the Bosnian Muslim population in that area by destroying the part of the group vital for its existence, it *did not* rely on the specific pattern of behaviour or the existence of a certain plan, which was the ICTY and ICTR's approach. Rather, it relied on evidence such as direct orders given by the political and military leadership of the Republic of Srpska, like the infamous "Directive 7", issued by the then President Radovan Karadžić (para. 371). The ICJ concluded that Bosnia's "contention that the very pattern of the atrocities committed over many communities, over a lengthy period, focused on Bosnian Muslims and also Croats, demonstrates the necessary intent, the Court *cannot agree with such a broad proposition*" (para. 373, emphasis added).

Possible Implications for *South Africa v. Israel*

Various reports¹⁵ and statements¹⁶ from experts have found that genocide is underway in Gaza. While that is, of course, different from a criminal trial, it can constitute evidence that the ICJ may consult. Yet, could Israel's stated aim of "destroying Hamas"¹⁷ be used to preclude findings of genocide, since the court may interpret that as being a reasonable inference of the mass killing? In Judge Trindade's aforementioned dissenting opinion in *Croatia v. Serbia*, he specifically pointed out that:

¹⁴ *Prosecutor v Krstić* (Appeal Judgment) IT-98-33-A, A Ch (19 April 2004).

¹⁵ UN Human Rights Council, *The Anatomy of Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967* (26 April 2025) UN Doc A/HRC/57/3. 2024.

¹⁶ 'Lemkin Institute for Genocide Prevention on X: "The Lemkin Institute has had it with the cynical lies and propaganda from Israel and the USA. One can have different views about the definition of genocide, but one may not use definitional disputes to deny genocide. If a genocide may be occurring, every nation is compelled by <https://t.co/KTZrbACgyW>" / X' (*X (formerly Twitter)*, 28 May 2024) <<https://x.com/LemkinInstitute/status/1795295046088221017>> accessed 5 May 2025.

¹⁷ Maryam Jamshidi, 'Reflecting on Genocidal Intent in the ICJ Case' (*Opinio Juris*, 2 August 2024) <<http://opiniojuris.org/2024/08/02/reflecting-on-genocidal-intent-in-the-icj-case/>> accessed 5 May 2025.

... perpetrators of genocide will almost always allege that they were in an armed conflict, and their actions were taken ‘pursuant to an ongoing military conflict’; yet, ‘genocide may be a means for achieving military objectives just as readily as military conflict may be a means for instigating a genocidal plan.’ (para. 144)

As Francesca Albanese, UN Special Rapporteur on Human Rights in the OPT, has shown in her report¹⁸, *Anatomy of a Genocide*, “Israel has strategically invoked the IHL framework as ‘humanitarian camouflage’ to legitimise its genocidal violence in Gaza,” (para. 6). Indeed, the now multiple evacuation orders – which in IHL are meant to be provisional and “taken in the interests¹⁹ of the protected persons themselves” — have contributed to the displacement of 90% of Palestinians in the Gaza Strip, the death of countless civilians, and may²⁰ constitute part of the *actus reus* of genocide if they inflict conditions of life calculated to bring about Palestinians’ physical destruction.

The previous position taken by the ICJ can be seen as alarming and consequential not only to the case of *South Africa v. Israel*, but other ongoing and future cases related to genocide; it would behove the ICJ to rethink its approach. Indeed, in *The Gambia v. Myanmar*, a number of states expressed that it was

... crucial for the Court to adopt a balanced approach that recognises the special gravity of the crime of genocide, without rendering the threshold for inferring genocidal intent so difficult to meet so as to make findings of genocide near-impossible. (Joint Declaration of Intervention by Canada, Denmark, France et al, *The Gambia v. Myanmar*, para. 51).

The Declarants then urged the Court to apply a “reasonableness criterion” (para. 52), to “assess the evidence available to it comprehensively and holistically” (para. 54), to take into account “the overall factual picture” and not simply “each individual incident or alleged underlying act of genocide” taken in isolation (para. 56), and scale (para. 59). The

¹⁸ UN Human Rights Council, *The Anatomy of Genocide: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967* (26 April 2025) UN Doc A/HRC/57/3.

¹⁹ ‘Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.’ <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49/commentary/1958>> accessed 5 May 2025.

²⁰ Jinan Bastaki, ‘Gaza, Forced Displacement, and Genocide’ (*EJIL: Talk!*, 5 April 2024) <<https://www.ejiltalk.org/gaza-forced-displacement-and-genocide/>> accessed 5 May 2025.

Court would not even have to develop new standards, even though that may be desirable, because these aspects are all considered in the ICTY and ICTR cases. In fact, in the above cited para. 373 of the Judgment in *Bosnia v. Serbia*, the ICJ did not completely close the door on the possibility of the use of a “pattern of behavior” to prove genocidal intent. The commission of most crimes under international law, especially genocide, can, and usually does, involve massive campaigns of cover-up and denial, therefore, to expect the existence of, for example, an official written order to commit acts of genocide, stating the specific intent, is unrealistic. Indeed, Judge Trindade warned that,

The attempts to impose a high threshold for proof of genocide... are most regrettable, ending up in reducing genocide to an almost impossible crime to determine, and the Genocide Convention to an almost dead letter. This can only bring impunity to the perpetrators of genocide. (Judge Cançado Trindade, Dissenting Opinion, *Croatia v. Serbia*, para. 143)

Worryingly,²¹ in Judge Nolte’s separate opinion in the ICJ’s July Advisory Opinion, he expressed that, in terms of the *mens rea* required for apartheid, there could be other plausible justifications for Israel’s disproportionate and/or illegal actions, such as security considerations and the desire to assert sovereignty over the West Bank, therefore likely failing to meet the specific intent of ‘domination’ (Judge Nolte, Separate Opinion²², 19 July 2024, para. 13 – though several other judges, including Judges Salam, Tladi, and Brant, disagreed). The difference in the *South Africa v. Israel* case is that there is ample evidence of public statements signifying genocidal intent²³, and acts that are directly committed by state organs and their representatives.

²¹ Jinan Bastaki, ‘Whose Reasonable Inference? The ICJ’s Advisory Opinion and the Threshold for Apartheid’s Mens Rea’ (*EJIL: Talk!*, 22 August 2024) <<https://www.ejiltalk.org/whose-reasonable-inference-the-icjs-advisory-opinion-and-the-threshold-for-apartheids-mens-rea/>> accessed 5 May 2025.”plainCitation”.”Jinan Bastaki, ‘Whose Reasonable Inference? The ICJ’s Advisory Opinion and the Threshold for Apartheid’s Mens Rea’ (*EJIL: Talk!*, 22 August 2024

²² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (Separate Opinion of Judge Nolte) [2015].

²³ ‘Law for Palestine Releases Database with 500+ Instances of Israeli Incitement to Genocide – Continuously Updated’ (*Law for Palestine*, 4 January 2024) <<https://law4palestine.org/law-for-palestine-releases-database-with-500-instances-of-israeli-incitement-to-genocide-continuously-updated/>> accessed 5 May 2025.

The case law of ICTY and ICTR contributed in many ways to the development of the body of international law, and as such is a noteworthy source that gives the ICJ opportunity to rethink its approach. The Court would do well to follow the jurisprudence of the ICTY in the Jelisić²⁴ (Appeals, 2007, para. 49) and Stakić²⁵ (Appeals, 2006, para. 226) cases that differentiate between motive and intent, since one may have a personal or other motive, but this does not preclude having genocidal intent. The court has plenty to work with in order to rethink its approach so that the standard for state responsibility is not higher than the standard for individual criminal responsibility.

²⁴ *Prosecutor v Jelisić* (Judgment) (Appeals Chamber) (2001) 40 ILM 71.

²⁵ *Prosecutor v Stakić* (Judgment) (Appeals Chamber) (2003) 42 ILM 1237.

Rethinking International Law After Gaza Symposium: Israel Must Be Expelled From the United Nations*

Saul J. Takahashi

Saul J. Takahashi is Professor of Human Rights and Peace Studies at Osaka Jogakuin University. From March 2009 to May 2014, Saul served as Deputy Head of Office of the Office of the UN High Commissioner for Human Rights in Palestine.

The resolution adopted¹ by the United Nations General Assembly (UNGA) on 18 September 2024, subsequent to the Advisory Opinion² by the International Court of Justice (ICJ) on the legal consequences of Israeli policies and practices in the Palestinian territories conquered by Israel in 1967 (the “Occupied Palestinian Territories” – OPT) is an important one. In the resolution, the UNGA welcomed the ICJ’s recognition that the wide array of Israeli policies aimed at the colonisation of the West Bank (including East Jerusalem) “amount to annexation”, in flagrant violation of the international prohibition of the acquisition of territory by the use of force. The UNGA also cited the ICJ’s condemnation of Israeli policies as a violation of the prohibition of apartheid in the International Convention on the Elimination of All Forms of Racial Discrimination.

¹ UNGA Res A/ES-10/L.31/Rev.1 (18 September 2024).

² *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024] .including East Jerusalem} [2024] Advis Opin (ICJ)

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The Resolution concludes with the declaration that the UNGA “strongly deplores the continued and total disregard and breaches by the Government of Israel of its obligations under the Charter of the United Nations”, and that “Israel must be held to account for any violations of international law” in the OPT. It is welcome that the UNGA recognised explicitly that Israel has enjoyed impunity for its violations of international law for far too long.

Despite its strengths, the measures announced by the UNGA are inadequate given the gravity of the situation in Palestine, and in particular the urgency in the midst of a genocide live-streamed since October 2023. The UNGA did call on member states to implement economic sanctions against Israel, including the halt of arms transfers. However, while demanding clearly that Israel end the occupation of OPT, the UNGA gave Israel twelve months to comply – an unacceptably lengthy period of time given the ongoing violence perpetrated by Israel throughout the OPT.

In the following essay, it is submitted that it is high time for the international community to pursue the expulsion of Israel from the UN. Expulsion is warranted not merely because of Israel’s blatant disregard of the international legal standards the UN exists to uphold, but is also an essential act to maintain the integrity of the organisation as a whole.

Israeli Defiance of the UN and Obligations under the UN Charter

The UN is facing a crisis: a rogue member state brazenly thumbing its nose at the organisation, as well as the international order which has the organisation at its core. Israeli political and military leaders openly express contempt for the UN. Far from affording the UN cooperation, Israel has, in particular since 7 October 2023, targeted UN facilities and UN humanitarian convoys for attack, with the UN Relief and Works Agency (which exists to provide assistance to Palestinian refugees) bearing the brunt of the violence. As of 23 September³ 2024, Israel has attacked UNRWA staff and facilities on at least 464 instances, killing at least 224 staff.

Though Israeli violence against UNRWA has accelerated since 7 October 2023, Israeli vitriol targeting the agency is nothing new.

³ ‘UNRWA Situation Report #139 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem’ (UNRWA) <<https://www.unrwa.org/resources/reports/unrwa-situation-report-139-situation-gaza-strip-and-west-bank-including-east-jerusalem>> accessed 5 May 2025.

For years⁴ Israel has campaigned to shut down UNRWA, advancing unsubstantiated claims that the agency incites hatred against Israel and supports terrorism. Indeed, a bill⁵ currently in the Israeli parliament would officially designate UNRWA a terrorist organisation and cut ties with the agency. As a rule, Israel also refuses⁶ to co-operate with human rights procedures and investigations of the UN Human Rights Council, and regularly accuses⁷ mandate holders of anti-Israeli bias. Despite Israel's clear and longstanding defiance of the UN, the organisation has refrained from holding Israel accountable in any meaningful way.

More importantly for the purpose of the current paper, Israel has refused to carry out the Charter obligations of all UN member states to abide by resolutions of the UN Security Council (UNSC). Article 4 of the UN Charter states that membership is open to all “peace loving states which accept the obligations” in the Charter. Included amongst those obligations is the obligation, stipulated in Article 25 of the Charter, to “accept and carry out” the decisions of the Security Council.

Article 6 of the Charter states that a member state that “has persistently violated the Principles contained in the present Charter may be expelled ... by the General Assembly upon the recommendation of the Security Council”. There is no explicit text in Article 6 limiting its application to violations of Article 25, and it is certainly arguable that Israel's long-standing violations of the principles of the UN, in particular the “principle of equal rights and self-determination” (Charter Article 1.2, enumerating the purposes of the organisation) of the Palestinian people, already provide

⁴ Parastou Hassouri, ‘The Campaign against UNRWA: Israel's Attempt to Erase Palestinians’ (*Mada Masr*, 7 March 2024) <<https://www.madamasr.com/en/2024/03/07/opinion/politics/the-campaign-against-unrwa-israels-attempt-to-erase-palestinians/>> accessed 5 May 2025.

⁵ Sam Sokol You will receive email alerts from this author Manage alert preferences on your profile page You will no longer receive email alerts from this author Manage alert preferences on your profile page, ‘Knesset Committee Discusses Trio of Bills Aimed at Shutting down UNRWA’ <<https://www.timesofisrael.com/knesset-committee-discusses-trio-of-bills-aimed-at-shutting-down-unrwa/>> accessed 5 May 2025.

⁶ Jamey Keaten and Josey Federman, ‘Israel, Citing “bias,” Won't Cooperate with UN Rights Team’ (*AP News*) <<https://apnews.com/article/europe-middle-east-israel-geneva-race-and-ethnicity-d71a6a9692959a73806c8356cd7bf2dd>> accessed 5 May 2025.

⁷ Defence for Children, ‘Joint Statement: Condemning Israel's Targeted Smear Campaign Against Respected UN Special Rapporteur, Francesca Albanese’ (*Defence for Children*, 30 January 2023) <<https://defenceforchildren.org/joint-statement-condemning-israels-targeted-smear-campaign-against-respected-un-special-rapporteur-francesca-albanese/>> accessed 5 May 2025.

ample grounds for expulsion under Article 6. Nevertheless, Article 25 provides more clear reasoning for the UN must act.

Israel has for decades serially violated UNSC resolutions. Even putting aside the UNSC resolutions adopted since 7 October 2023, Israel has refused to comply with more than two dozen UNSC resolutions on OPT since 1967. The relentless Israeli colonisation of the West Bank, for example, violates numerous UNSC resolutions, including Resolution 242 (1967), which “[emphasises] the inadmissibility of the acquisition of territory by war”; language which, by and large, is repeated in numerous further resolutions (see e.g. 252 (1968); 267 (1969); 271 (1969); 298 (1971); 478 (1980); 681 (1990); and 2324 (2016). Likewise, Israel’s unilateral annexation of East Jerusalem openly violates numerous UNSC Resolutions, such as Resolution 252 (1968); 267 (1969); 271 (1969); 298 (1971); 476 (1980); 478 (1980); 672 (1990) and 2324 (2016). Resolution 252 states in no unclear terms that “all legislative and administrative measures taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”. Resolution 446 states that “establishing settlements in the Palestinian ... territories occupied since 1967 have no legal validity”, language that was repeated by the UNSC most recently in Resolution 2334 (2016).

Israel has, of course, not even pretended to comply with these resolutions. At the UNSC in 2016, the Israeli ambassador called⁸ Resolution 2334:

“...the peak of hypocrisy. The Council had wasted time to condemn Israel for building homes in the Jewish people’s historic homeland. ... Asking every voting member who had given them the right to issue such a decree, denying ‘our eternal rights in Jerusalem’, [the Israeli Ambassador] expressed full confidence in the justice of Israel’s cause and the righteousness of its path.”

Indeed, with every new resolution, Israel accelerates the colonisation of the West Bank (including East Jerusalem), and government ministers have openly stated that Israel should create colonial settlements in Gaza after the military offensive is over.

⁸ ‘Israel’s Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms | Meetings Coverage and Press Releases’ <<https://press.un.org/en/2016/sc12657.doc.htm>> accessed 5 May 2025.

Other UNSC Resolutions Israel has flouted without consequence demand compliance by Israel with standards of international humanitarian law, in particular the Fourth Geneva Convention applicable in situations of occupation (See Resolutions 446 (1979); 468 (1980); 468 (1980); 471 (1980); 478 (1980); 484 (1980); 592 (1986); 605 ((1987); 607 (1988); 636 (1989); 672 (1990); 673 (1990); 681 (1990); 694 (1991); 726 (1992); 799 (1992); 904 (1994); 1322 (2000);, 1544 (2004); and 2334 (2016)) as well as protection for Palestinian civilians (See Resolutions 607 (1986); 636 (1989); 681 (1990); 694 (1991); 726 (1992); 799 (1992); 904 (1994); 1073 (1996); and 1322 (2000)).

Though some have argued that UNSC Resolutions are only binding if they are adopted under Chapter VII of the Charter (an argument seemingly advanced recently by the United States, in attempting to shield Israel⁹ from international criticism), that is patently not the case. In 1970, the UNGA requested the ICJ for an Advisory Opinion on the legal consequences of Namibia's continuing occupation by apartheid South Africa. In its Opinion¹⁰, the ICJ struck down the notion that adoption under Chapter VII was necessary for binding effect, stating succinctly: "when the Security Council adopts a decision ... it is for Member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council. To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter."

The Court then went on:

A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence. Once the Court is faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon Members of the United Nations, to bring that situation to an end.

⁹ Turan, 'US Says UN Security Council Resolution Demanding Gaza Cease-Fire "Non-Binding"' (*Anadolu Agency*, 25 March 2024) <<https://www.aa.com.tr/en/americas/us-says-un-security-council-resolution-demanding-gaza-cease-fire-non-binding/3174746>> accessed 5 May 2025.

¹⁰ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16.

The Court did find that an assessment of the language of a particular resolution was necessary to ascertain its binding nature and suggested that the Security Council's specific mention of Article 25 was key in its determination that the relevant resolutions created legal obligations. However, it is submitted that the strong language used in UNSC resolutions on Israel is in the overwhelming majority of cases equally unambiguous and is clearly meant to impose an obligation to act on the offending state – in this case, Israel.

Expulsion in the South Africa Case

No member state has ever been expelled from the UN. However, the organisation came very close in the case of South Africa – a case with obvious parallels to that of Israel. The direct trigger for the debate at the UN regarding the expulsion of South Africa was not only the growing international opprobrium towards South African apartheid, but also its continuing occupation of Namibia – an occupation recognised by the ICJ as unlawful, as in the case of the Israeli occupation of the OPT.

In 1969, the Security Council adopted Resolution 269, stating in its preamble that it was “[m]indful of its responsibility to take necessary action to secure strict compliance with the obligations entered into by States Members of the United Nations under the provisions of Article 25 of the Charter”. The Council went on to “[condemn] the Government of South Africa for its refusal to comply with [the UNSC] and for its *persistence defiance of the authority of the United Nations*” (emphasis added), and “[decided] that the *continued occupation of the Territory of Namibia constitutes an aggressive encroachment on the authority of the United Nations*, a violation of the territorial sovereignty and denial of the political integrity of the people of Namibia” (emphasis added). The Council then stated that, should South Africa refuse to comply, the UNSC would “meet immediately to determine upon effective measures” to be taken. It is noteworthy that the UNSC condemned South Africa not only for the country's noncompliance with its resolutions, but for its lack of respect for the authority of the organisation – an issue clearly relevant in the case of Israel.

Eventually, South Africa was not expelled from the UN: the three Western Permanent Members of the UNSC – the US, the UK, and France – vetoed UNSC action, making expulsion under Article 6 impossible.

Faced with UNSC inaction, in 1974 the UNGA voted¹¹ to refuse to recognise the credentials of the South African delegation, on the basis that the delegation of the apartheid government was not representative of the entirety of the country's population. That action, which barred South Africa from participation in the UNGA, was not based on the Charter, but on the UNGA Rules of Procedure, specifically the Credentials Committee of that body. The UNGA therefore maneuvered around the Charter requirement of an UNSC recommendation.

Conclusion

There is a pressing need to hold Israel accountable, not only for its longstanding violations of international law, but specifically for its longstanding refusal to abide by its Charter obligations. In the face of this recalcitrance, the UN must move towards expelling Israel from the organisation, not only because the UN exists to uphold international law, but also to maintain the UN's integrity as an organisation. The persistent, open violations by Israel of binding UNSC resolutions cannot go unpunished. The current situation, where Israel openly accuses the UN of bias, refuses to cooperate with the organisation on multitude levels, defies binding orders of the ICJ, physically attacks UN premises and staff, and even moves towards designating a UN agency as a terrorist organisation, is a clear threat to the authority of the UN – an issue which the UNSC raised explicitly in the case of South Africa. To allow the situation to continue would show that international legal norms, and rules of the UN binding member states, are applied on the basis of double standards: specifically, that states allied to powerful Western countries are afforded impunity.

Given the protection afforded to Israel in the UNSC by the United States, the path to expulsion would appear daunting. The approach taken by the UNGA in the South African case, i.e. exclusion of Israel on the basis of the accreditation process, may be a practical step forward on an interim basis. Whichever path is taken, it is paramount that states hold Israel responsible for its international crimes in a meaningful manner.

¹¹ Farrokh Jhabvala, 'The Credentials Approach to Representation Questions in the U.N. General Assembly' (1977) 7 *California Western International Law Journal* <<https://scholarlycommons.law.cwsl.edu/cwilj/vol7/iss3/10>>.

Rethinking International Law After Gaza Symposium: The Double-Edged Sword of Humanitarianism - UNRWA and Struggle for Palestinian Agency in the Colonial Context*

Hasan Basri Bülbül^a, Hüseyin Dişli^b

^aHasan Basri Bülbül works as an Assistant Professor of Public International Law at Boğaziçi University Faculty of Law in Istanbul, Türkiye.

^bHüseyin Dişli is a PhD candidate at the University of Kent and convening Legal History and Legal Philosophy modules at Boğaziçi University Faculty of Law. He serves as a legal counsel to the Freedom Flotilla Coalition (FFC).

Since its establishment, the United Nations has played a pivotal role in enabling Palestinian suffering. As an extension of the British colonial project aimed at creating a homeland for the Jewish people on the homes and lands of others, the UN General Assembly Resolution 181 adopted the partition of Palestine between Arabs and Jews in an unjust manner, which starkly contradicted the realities on the ground, particularly regarding the population distribution and land ownership of the respective communities. This was the first-ever UN resolution on the question of Palestine, the original sin that created a built-in injustice within the entire framework. It was the start of a chain of mistakes that have yet to be undone. Subsequent efforts to alleviate Palestinian suffering have been doomed to be merely palliative within the UN's overtly colonial framework.

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The Colonial Genesis of UNRWA

Predictably, the resolution for partition only increased tension in the region in 1947, bolstering Zionist ambitions for more land and escalating the conflict between communities, ultimately creating conditions for the ethnic cleansing of Palestinians. Between 750,000 and 900,000 Palestinians were forcibly displaced by Zionist militias, later reincarnated as the Israeli army. Rather than stopping the violence and ethnic cleansing, the UN chose to recognise Israel by admitting it as a member, while creating *the United Nations Conciliation Commission for Palestine* (UNCCP) and *the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (UNRWA) for the displaced Palestinians. The UN effectively endorsed sovereignty for Israelis, and a “humanitarian administration”¹ for Palestinians. One was deemed worthy of being an agent entitled to exercise all rights and obligations in the international realm, the other was to be a subject, a perpetual victim dependent on humanitarian enterprise for survival.

As Ghassan Kanafani explains in ‘On Zionist Literature’, the Zionist entity mastered the art of distorting realities effectively by deploying the language of democracy and international law. This process of distortion indeed started much earlier, notably with the motto of the “land without people for the people without land”, reminiscent of the concept of *terra nullius* which justified European colonial expansion. The violence it spread gained an automatic presumption of legality under the guise of self-defence, while Palestinian resistance was demonised through the prism of counter-terrorism laws. The right to return became the right of Jewish people who have no connection to Palestinian land to return to Palestine while Palestinians who were recently displaced had no right to return as they “voluntarily” left their homes. Distortion of realities to justify stripping Palestinians of their rights has become the everyday practice of the Zionist state. Recently, the made-up story of “forty beheaded babies” enabled Israel to kill more than fourteen thousand children in Gaza.

¹ Linda Tabar, ‘Disrupting Development, Reclaiming Solidarity: The Anti-Politics of Humanitarianism’ (2016) 45 *Journal of Palestine Studies* 16.

Evolving Role of UNRWA

“I often think of the Palestine-Israeli conflict as the fault line of world’s conflicts and the Palestinian refugee situation as the fault line of Palestinian-Israeli conflict”, Susan Akram contends.² In many contexts, forced displacement is often regarded as one of the unintended consequences of armed conflicts. In Palestine, however, it is the ultimate aim of the settler-colonial state of Israel. ‘The return of Palestinian refugees’ is indeed the fault line of the conflict as these five words pose an existential threat to Zionist agenda of ethnic cleansing. Nevertheless, this fact was effectively ignored during the establishment of UNRWA. UNRWA was established temporarily to provide humanitarian assistance and services to Palestinian refugees. In most refugee cases, the moment when people are exiled from their homes, the international community is eager to regard those people as passive victims with no political agency. This was what happened with the establishment of UNRWA and the collapse of UNCCP which was originally mandated for the protection and return of Palestinian refugees.

This indicated that UNRWA would emerge as the only actor in the field for the assistance of Palestinian refugees but with no mandate for protection or advocacy. Accordingly, UNRWA has been providing fundamental services such as education, health, work, development, and others to Palestinians. Over time, UNRWA has turned into an organisation which provides almost all social services traditionally offered by a state—reflecting an unintended transformation that speaks to both its strengths and inherent constraints. As Bocco³ puts it, the agency functions as a quasi-state in “a non-territorial administration without coercive power.” This means that UNRWA has become essential in the public life of Palestinians.

Among others, two things appear to be particularly noteworthy in terms of the roles that UNRWA plays. First, UNRWA is fundamental to the self-determination of the Palestinian people by supporting the preservation of Palestinian national identity through widespread education programs. It also serves as a unifying entity for all Palestinian

² Susan Akram - Russell Tribunal on Palestine - New York (2013) <<https://www.youtube.com/watch?v=HHWVezJUZ7U>> accessed 4 May 2025.

³ Riccardo Bocco (Guest Editor), ‘UNRWA and the Palestinian Refugees: A History within History’ (2009) 28 *Refugee Survey Quarterly* 229.

refugees regardless of whether they live in Jordan, Lebanon, Syria, West Bank, or Gaza. It creates a sense of unity among forcibly fragmented Palestinian communities. Second, registration with UNRWA ensures that refugee status is passed on to future generations, preventing Israel from claiming that the Palestinian refugee issue is no longer relevant. This function of UNRWA acts as a form of resistance, ensuring continuity of the struggle for recognition and the right of return, despite international attempts to marginalise Palestinian claims. Maintaining the connection of the people with their land, UNRWA is a significant actor in terms of achieving Palestinian self-determination.

We add a caveat before we proceed: this essay in no way seeks to condemn UNRWA. As we recognised above, it is vital to the survival of the Palestinian population and has had to operate under dire conditions, with Israel, the US, and, recently, much of the West seeking to decapitate it. It may even need to expand its mandate to other places, including Egypt, where approximately 150,000 Gazans have been forcibly displaced and are living under extremely perilous conditions, deprived of all of their basic rights. Rather than having an issue with UNRWA's preservation at the time, our essay seeks to illuminate how UNRWA's activities and potential are constrained by colonial frameworks and external pressures by the Zionist state and its Western collaborators.

Colonial Structures and the Humanitarian Trap

Considering the overall colonial legal framework within the UN, UNRWA was intended to ensure that Palestinians remain passive victims—recipients of international humanitarian aid and obedient to donor requirements to continue benefiting from UNRWA's assistance. In exchange for food, they were expected to surrender any political agency for their liberation from colonisation. The “humanitarian administration” was designed as part of the benevolent colonial legal framework that prevented Palestinian self-determination. As Palestinians often say, “*the UN gave Palestine to Israel and UNRWA to Palestinians*”. Nevertheless, UNRWA has transformed from this original design into a platform where Palestinians can assert some political agency for return and self-determination, albeit still constrained by colonial structures.

Yet, Zionism cannot tolerate even the slightest form of Palestinian self-awareness and expression. While resistance to colonialism, in the

context of the right to self-determination, is recognised [even as a *jus cogens* norm]⁴ by UN bodies—including the International Court of Justice (ICJ) and the General Assembly, which created UNRWA—when Palestinians dare to exercise this right, they immediately lose the assistance or protection of the UN agency. As Linda Tabar⁵ puts it, “the minute the colonised step outside this [passive victim] role and exercise their right to resist colonialism they are “disqualified,” indeed penalised”. In those moments, Israel targets the agency with endless creative distortions to ensure Western donors cut their funding to UNRWA. It labels UNRWA as an obstacle to progress for the resolution of the conflict or as the “UN branch of Hamas.”

To satisfy Israel’s demands, Western donors quickly fall in line, threatening to defund UNRWA, which has always depended on voluntary contributions, constantly hovering near financial collapse. They threaten to cut funding to the agency, which is dependent on voluntary contributions and is constantly facing financial instability and impose conditions that define the recipients of assistance as either “good” or “bad” Palestinians. There is compassion for good Palestinians as long as they choose to present themselves as victims⁶, neutral, dependent, obedient, and apolitical. As Ilana Feldman underscores, “humanitarian compassion seems increasingly reserved for those who only suffer but do not act.” Compassion is immediately lost when Palestinians begin resisting colonial structures. This was the case, as Feldman observes, in the election of Hamas in 2006.

Further, in 2018, the US pressured UNRWA to amend its definition of a Palestinian refugee to limit the Palestinian right of return: “an alien who was firmly resettled in any country is not eligible to retain refugee status.” In August 2018, the US government decided to completely defund UNRWA, which coincided with the time when Palestinians in Gaza began peaceful demonstrations called the “Great March of Return”. Later in 2020, as part of Trump’s “Deal of the Century”, the US demanded: “Palestinian refugee status will cease to exist, and UNRWA

⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024] <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf> accessed 05.05.2025.including East Jerusalem} [2024] Advis Opin (ICJ)

⁵ Tabar (n 1).

⁶ *ibid.*

will be terminated, with its responsibilities transitioned to the relevant governments.”

In 2021, the USA-UNRWA Framework Agreement was concluded. In order to proceed with funding, the US made the following condition: “[n]o contributions by the United States shall be made to UNRWA except on the condition that UNRWA take all possible measures to assure that no part of the United States contribution shall be used to furnish assistance to any refugee who is receiving military training as a member of the so-called Palestinian Liberation army or any other guerilla-type organised or who has engaged in any act of terrorism.” It is remarkable that the condition is not only about the organisations that the US has designated as terrorist organisations but any other Palestinian resistance movement⁷, “which contradicts the right of Palestinian people to struggle for self-determination.” Conditioning aid on the exclusion of any resistance-affiliated Palestinians from support—contradicts the *jus cogens* right of a Palestinian people to resist colonial domination and alien subjugation.

This pattern of disciplining Palestinians through humanitarian assistance reemerged in February 2024, when Western powers decided to defund UNRWA amidst an ongoing genocide, following allegations by the Israeli intelligence service that some UNRWA personnel were involved in the assault on 7 October 2023. The allegations emerged as yet another distortion and manipulation tactic by Israel immediately after the ICJ ruling on provisional measures, finding that there is a plausible risk of genocide being created in Gaza due to Israeli actions. The Court ordered Israel to⁸ “take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip” The Israeli response was to ask its Western friends to cut funds to UNRWA.

The desire to discipline the colonised was never alleviated even when they were actively experiencing genocidal conditions. Major Western powers almost unconditionally proceeded with the Israeli demands. While one of the key ways to prevent genocide in Gaza was to ensure

⁷ Nadin Rabee and others, ‘USA-UNRWA Framework Agreement: Assistance or Securitization?’ [2022] BADIL Working Paper No. 29 <https://badil.org/cached_uploads/view/2022/02/21/wp-29-unrwa-eng-1645448404.pdf> accessed 04 May 2025.

⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Order) (26 January 2024) <https://www.icj-cij.org/case/192> accessed 4 May 2025.

the delivery of humanitarian assistance for basic needs, Western powers instead targeted UNRWA—the linchpin humanitarian organisation and the backbone of the humanitarian system in Gaza. While 2 million Gazans were under an ongoing risk of genocide, Western powers were more concerned with the “alleged” involvement of 12 UNRWA personnel out of 13,000 staff in Gaza, which posed no imminent security threat for Israel at the time of the decision for funding cuts.

Indeed, this event simply demonstrates the racial hierarchy that Western powers impose on Palestinian and Israeli lives: Israelis deserve life, even when there was no risk posed to their lives by UNRWA personnel. At the same time, Palestinians deserve to starve merely based on “allegations” that a few individuals might have engaged in legitimate armed resistance. Collective punishment is alive and well in the Western psyche, even after the World Court cautioned against a plausible risk of genocide for the Palestinian people.

Immediate Legal Consequences of the Potential Collapse of UNRWA for Refugees

Israeli attacks on UNRWA, together with its Western allies’ threats, have brought the agency to the brink of collapse in Gaza. Phillip Lazzarini, the President of UNRWA, sent a letter⁹ to the UN, stating that: “In my 35 years of work in complex emergencies, I would never have expected to write such a letter, predicting the killing of my staff and the collapse of the mandate I am expected to fulfil.” The collapse of UNRWA has consequences from an international refugee law perspective as well.

Article 1D of the 1951 Refugee Convention excludes Palestinian refugees from its scope, as they receive assistance or protection from UNRWA. However, the second paragraph of the same article states that under certain conditions, Palestinians will once again fall within the scope of the Convention. Accordingly, if UNRWA’s assistance or protection ends, Palestinian refugees automatically become entitled to the protection provided by the Convention. In other words, if a Palestinian refugee seeks asylum outside of the UNRWA region, and this request arises

⁹ ‘Letter from UNRWA Commissioner-General Philippe Lazzarini to the UN General Assembly President Mr. Dennis Francis’ (*UNRWA*) <<https://www.unrwa.org/resources/un-unrwa/letter-unrwa-commissioner-general-philippe-lazzarini-un-general-assembly>> accessed 4 May 2025.

due to circumstances beyond their control¹⁰, the asylum claim must be automatically accepted. This also applies to Western states that cut their funding to UNRWA.

Western states, blindly following Israeli demands, seem unconcerned that Israel aims to shift the Palestinian refugee issue from an Israeli problem into an international one.¹¹ Perhaps they are not concerned because Palestinians are currently unable to leave Gaza to make their way to Europe and the US. If there were even the slightest possibility that Gazans could reach European borders, those European states would surely pour huge funds into organisations solely to prevent their arrival. Since Palestinians cannot make it to Europe, they are once again denied agency and left to endure genocidal conditions as passive victims with no sympathy this time, a situation facilitated by defunding.

Conclusion

In reconsidering UNRWA, we must recognise that it is a product of the colonial framework established by the UN—a framework that perpetuates Palestinian dependency. The agency, in its current form, exists as both a lifeline and a limitation; it provides vital services that sustain the Palestinian population but is structurally constrained by colonial biases that deny true political agency. Moving forward, it is crucial to recalibrate UNRWA, transforming it from an instrument of humanitarian pacification to one that actively empowers Palestinian self-determination. This recalibration must reject the perpetual passive victimhood imposed by international donors and foster a proactive stance towards Palestinian liberation—advocating for rights, unity, and political agency.

Ultimately, the need for UNRWA must be viewed as temporary. When full Palestinian liberation has been achieved—including the right to return, land/property reclamation, reparations, and accountability—

¹⁰ *Mostafa Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal* [2012] ECJ Case C-364/11. "authority": "ECJ", "language": "ga", "number": "Case C-364/11", "title": "Mostafa Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal", "URL": "https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62011CJ0364", "accessed": {"date-parts": [{"2025", 5, 5}], "issued": {"date-parts": [{"2012", 12, 19]}}}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"

¹¹ Hasan Basri Bülbül, 'Defunding Unrwa: With This Act, Western Powers Are Likely Complicit in Genocide' (*Middle East Eye*, 29 January 2024) <<https://www.middleeasteye.net/opinion/gaza-war-defunding-unrwa-western-countries-complicity-genocide>> accessed 5 May 2025.

UNRWA will no longer be necessary since its preservation should be contingent upon¹² supporting the broader struggle for Palestinian self-determination. Until then, it must be transformed into an entity that not only sustains life but also actively contributes to the dismantling of the colonial structures that perpetuate Palestinian suffering. This is the essence of what we must rethink: the transition of UNRWA from a humanitarian agency rooted in colonial management to a pillar of empowerment, ultimately serving the broader aspiration for decolonisation and self-determination in Palestine.

This transformation will not truly happen as long as UNRWA remains financially dependent on Western powers. Therefore, UNRWA must diversify its donor base, possibly through an international coalition of the Global South, comprising both states and civil society, investing in UNRWA to leverage its potential for empowerment.

¹² *Israeli Actions Sow Seeds for Hate or Possible Extremism for Future: UNRWA Chief* | Dawn News English (2024) <<https://www.youtube.com/watch?v=6Po9ct9EPDQ>> accessed 5 May 2025.

Rethinking International Law After Gaza Symposium: International Law Beneath the Rubble – Academic Complicity in Gaza Genocide*

Bana Abu Zuluf

Bana Abu Zuluf is a Palestinian PhD researcher in International Law at Maynooth University, Ireland.

In Gaza, the sky continues to rain fire as international law remains paralyzed. The scholars and institutions that uphold its legitimacy—those who claim to champion justice—are biding their time. They await the ICJ’s judgment as though a ruling from the Hague could stop the Gaza omnicide as if calling genocide by its rightful name requires a court’s permission. But the violence in Gaza, Lebanon, and beyond isn’t waiting; it is active, unrelenting, and intensifying. As we speak, Gaza’s children are buried under the rubble of homes bombed by a military that operates with impunity. The massacre stretches far beyond the ‘borders’ of the Strip—its reach now extends to Beirut and Jnoub, where Israeli airstrikes have claimed many more lives. While scholars wait, the bodies pile up.

This inaction is not coincidental; it is the outworking of the colonial logic underpinning the international legal system, its norms, and its operations. International law is inseparable from the colonial projects that birthed it, and any attempt to engage with it without acknowledging this character is an exercise in deceit. The disillusionment with international

* This contribution, edited by Mohsen al Attar, M. Beheşti Aydoğan and Hasan Basri Bülbül, was originally published as part of the *Opinio Juris* symposium “Rethinking International Law After Gaza,” which followed the Boğaziçi University International Law Conference (BILC) 2024. We thank *Opinio Juris* and the author for their kind permission to include it in this volume. <https://opiniojuris.org/2024/10/10/rethinking-international-law-after-gaza-symposium-international-law-beneath-the-rubble-academic-complicity-in-gaza-genocide/>

law is not new. What is new, however, is the growing recognition that international law—often touted as horizontal and objective—is a tool wielded by powerful states vertically and subjectively, principally to perpetuate global inequities.

International law in the age of neoliberalism presents itself as ahistorical, denying its attachment to power, racism¹, and colonial theft². Borrowing the words of Issa Shivji³, ‘The contemporary neo-liberal discourse has one fundamental blind spot. It treats the present as if the present has had no history.’ This is particularly true in the case of Palestine, where the erasure of history is central to the perpetuation of colonial narratives diluting the demarcation between coloniser and colonised in international law. The obsessive focus on 7 October 2023 as the genesis of all evils is an example of this ahistorical practice. By decontextualising Palestinian resistance and framing Israeli settler colonialism as a ‘conflict’ between two equal sides, and by insisting on legal neutrality and individual criminal responsibility, legal institutions effectively erase the settler-colonial context in which this violence occurs: Mainly, that the ethnic cleansing of Palestinians began with the Nakba and accelerated with the current genocide as the logic underpinning the creation of the ‘Israeli’ settler colony and its maturation.

We are now faced with the stark realisation that international law is not merely impotent in the face of genocide; it is complicit in its continuation. As Palestinian bodies are obliterated, academic institutions and legal scholars continue to debate⁴ and deliberate, not merely in ignorance but in complicity—entangled in the very machinery of violence that is shredding the lives of the people they claim to defend.

¹ Natsu Taylor Saito, ‘Settler Colonialism, Structural Racism, and the Law’ (*TWAILR*, 29 March 2021) <<https://twailr.com/settler-colonialism-structural-racism-and-the-law/>> accessed 4 May 2025.

² Shahd Hammouri, ‘“How Many Martyrs Left until Liberation?” Mass Atrocity as International Law’s Price for Emancipation’ (*TWAILR*, 20 February 2024) <<https://twailr.com/how-many-martyrs-left-until-liberation-mass-atrocity-as-international-laws-price-for-emancipation/>> accessed 4 May 2025.

³ Issa Shivji, ‘The Struggle for Democracy’ <<https://www.marxists.org/subject/africa/shivji/struggle-democracy.htm>> accessed 4 May 2025.

⁴ Alene Bouranova, ‘Is Israel Committing Genocide in Gaza? New Report from BU School of Law’s International Human Rights Clinic Lays Out Case’ (*Boston University*, 6 June 2024) <<https://www.bu.edu/articles/2024/is-israel-committing-genocide-in-gaza/>> accessed 4 May 2025.

Disregarding international law when it comes to Israel and the dehumanisation of Palestinians enduring genocide allows international academic institutions to speak on Palestine with both Palestinians and international law in absentia. Meanwhile, international legal scholars, working within these institutions and tasked with interpreting these events, often fail to grasp the unrelenting nature of Zionism—a force indifferent to permission, unburdened by moral reckoning, and free from the institutionalised barriers that restrain others, mainly the victims of it.

Despite the absence of a bona fide material threat, Zionism feeds off a manufactured existential threat arising from antisemitism to justify eliminatory violence against its enemies. We see how institutions attach great significance to this manufactured fear, whether through adopting the IHRA definition of antisemitism, defunding UNRWA, or supporting material existential threats against Palestinians. This is how liberal institutions become hubs of anti-Palestinian racism decorated in ‘concern’⁵ for the well-being of Zionist feelings.

How many institutions conditioned Palestinian participation on a pledge to condemn Hamas⁶ at least as much as they condemn Zionist afflicted genocide? How many institutional pseudo-declarations of Palestinian humanity were steeped in Islamophobia? An Oxford University website⁷ page regularly updates its statements reflecting the university’s stance:

In light of the appalling human consequences of the Hamas attack of 7 October 2023, its hostage-taking and Israel’s subsequent military action, we express our profound sympathy for those currently suffering in Israel, Gaza, the West Bank and Lebanon.

The university’s vocabulary is anything but neutral, naming a single ‘appalling’ attack while Palestinians and now Lebanese experience a ‘subsequent military action’. Epistemic violence and necropolitics, visible

⁵ ‘Statement from Columbia University President Minouche Shafik | Office of the President’ <<https://president.columbia.edu/news/statement-columbia-university-president-minouche-shafik-4-29>> accessed 4 May 2025.

⁶ Josh Moody, ‘Analysis Finds Colleges Fumbled Oct. 7 Statements’ (*Inside Higher Ed*, 11 November 2024) <<https://www.insidehighered.com/news/quick-takes/2024/04/11/analysis-finds-colleges-fumbled-oct-7-statements>> accessed 4 May 2025.

⁷ ‘University Response to Recent Events in Israel, Gaza and the Middle East | University of Oxford’ (29 January 2025) <<https://www.ox.ac.uk/about/organisation/global-crises/university-response-israel-gaza-middle-east>> accessed 4 May 2025.

in these instances, are practiced through the normalisation of Zionist colonial violence against Palestinians by circumventing institutional accountability. Through their neoliberal modus operandi, Western academic institutions not only normalise anti-Palestinian racism but actively contribute to the systems that sustain it. Take Jewish birthright trips, facilitated by academic institutions. Not only do they whitewash Zionism but they promote future settlement and the continuation of Zionist settler colonialism.

Western academia has perfected the art of deploying the language of inclusivity, diversity, and equity to preserve the sanctity of its role in the imperialist world order. The academic-industrial complex—an intricate web of institutions, scholars, and funding mechanisms—sustains an order that is as violent as it is polished. This same order that promotes these liberal values of inclusion, actively indulges itself, so openly, with anti-Palestinian racism. An example of enshrined institutional anti-Palestinian racism is, the International Holocaust Remembrance Alliance (IHRA)⁸ definition of antisemitism which acts as a strategic barrier in Western academia, framing critiques of Israel and Zionism as antisemitic while censoring Palestinian narratives.

By codifying this narrow understanding into institutional policies, universities effectively silence dissenting voices and further entrench anti-Palestinian racism, creating an atmosphere where solidarity with Palestinian rights is criminalised. In this context, the IHRA not only perpetuates a culture of fear but also highlights academia's complicity in the ongoing erasure of Palestinian suffering. Palestinian scholars of international law, working within this framework, are caught in a dilemma that simultaneously demands their participation in that same violent order while erasing their agency. In other words, Palestinian IL scholars are asked to normalise Zionism, adhere to institutional respectability politics, and distance themselves from the Palestinian struggle for decolonisation, all in the name of protecting 'free speech' or 'academic freedom'.

The silencing, though, is not a mere exercise of power and an exertion of institutional coloniality, it is also an act of intentional muddying of institutional agency and complicity. *We have no position on the*

⁸ 'What Is Antisemitism?' (IHRA) <<https://holocaustremembrance.com/resources/working-definition-antisemitism>> accessed 4 May 2025.

'matter' even if the matter is outright genocide in violation of international law, *therefore we are innocent bystanders*. A requirement of this type of 'non-position' is direct repression of solidarity with Palestinians. *We condemn all violence*; coexists with *we condemn protests* against genocidal violence. By promoting this cynical logic, academic institutions maintain that support for Palestine constitutes a negation of one's civility and belongingness to these institutions. It is not an exaggeration to say that the treatment of pro-Palestine activists today is that of outlaws.⁹

Exclusion Through Faux Inclusion

Palestinian scholars of international law are particularly vulnerable to the sharp end of this colonial enterprise, facing a paradoxical relationship with these institutions that is deeply troubling. On one hand, Palestinian scholars are courted as symbols of diversity, incorporated into identity reductionism¹⁰ to give a veneer of legitimacy to these institutions. In the rare instances they are invited, they are courted to conferences, given platforms, and presented as evidence of institutional commitment to 'global' and 'inclusive' legal scholarship. On the other hand, their capacity to influence or reshape the debate—especially when it comes to the colonial legacies of international law—remains severely limited. These scholars are encouraged to theorise Palestinian suffering, but only in ways that conform to the sanitised frameworks of international law that depoliticise and abstract the very colonial violence from which that suffering emerges: mainly Zionist genocidal settler colonialism.

Take, for instance, the IL scholar's acknowledgment of the Palestinian right of return¹¹, which, though crucial, dodges the fundamental question: where exactly do uprooted Palestinians return to? To the land they were violently uprooted from? To a Bantustan?

⁹ Carrie Zaremba, 'U.S. Universities Spent the Summer Strategizing to Suppress Student Activism. Here Is Their Plan.' (*Mondoweiss*, 2 September 2024) <<https://mondoweiss.net/2024/09/u-s-universities-spent-the-summer-strategizing-to-suppress-student-activism-here-is-their-plan/>> accessed 4 May 2025.

¹⁰ Ramzy Baroud, 'Nothing about Us without Us: The Token Palestinian and Authentic Narrative' (*Middle East Eye*, 13 February 2015) <<https://www.middleeasteye.net/opinion/nothing-about-us-without-us-token-palestinian-and-authentic-narrative>> accessed 4 May 2025.

¹¹ Shahd Hammouri, 'A Forgotten Detail: The Right of Return Was a Condition of the Establishment of the State of Israel' (*Opinio Juris*, 11 March 2024) <<https://opiniojuris.org/2024/03/11/a-forgotten-detail-the-right-of-return-was-a-condition-of-the-establishment-of-the-state-of-israel/>> accessed 4 May 2025.

Or, worse still, to an imagined state confined within the 1967 borders? This avoidance reflects a lack of political reflexivity, obscuring the harsh truths of Zionist settler colonialism while maintaining the illusion of engagement with the Palestinian plight.

During the Gaza Genocide, the pro-Palestine movement lost various ‘reputable’ scholars to think tanks and liberal formations proving how distant their once decolonial and hopeful works are from their careerist calculations. Neoliberal identity politics is what has paved the way for Achille Mbembe¹² to utilise his identity -as an imagined ‘decolonial’ scholar- to argue that the context of Zionist settler colonialism has become too much of a zero-sum game for his liking.

Therefore, hoping and wishing to speak or, borrowing from Edward Said¹³, to ‘narrate’ from and within these violent and racist institutions will eat away the significance of any Global South scholar’s work. It is because these institutions act as fodder between the scholar and real material change acting as tools of containment and counterinsurgency. The result is a pernicious form of racism that is deeply embedded within the structures of academic discourse. This racism is not always overt, but it is no less destructive for its subtlety. It operates through the exclusion of Palestinian voices from certain conversations, the silencing of radical critiques, and the persistent pressure to conform to institutional expectations. This is how anti-Palestinian racism¹⁴ becomes normalised: not through outright denial, but through the managed inclusion of Palestinian scholars in ways that neutralise their political agency.

The Legal Façade: Appealing to Western Morality While Genocide Persists

Even with the *South Africa v. Israel* ICJ case now open and ICC arrest warrants in place, neoliberal institutions remain wilfully blind.

¹² ‘AGD - African Global Dialogue’ (*AGD - African Global Dialogue*) <<https://africanglobaldialogue.org/>> accessed 4 May 2025.

¹³ Edward Said, ‘Permission to Narrate’ (1984) 06 *London Review of Books* <<https://www.lrb.co.uk/the-paper/v06/n03/edward-said/permission-to-narrate>> accessed 4 May 2025.

¹⁴ Abigail B Bakan and Yasmeen Abu-Laban, ‘Anti-Palestinian Racism, Antisemitism, and Solidarity: Considerations towards an Analytic of Praxis’ (2024) 105 *Studies in Political Economy / Recherches en économie politique* 107.

International legal bodies, like the ICJ, delay any definite recognition of the genocide unfolding in Palestine, citing the sanctity of ‘legal procedures.’ Despite the overwhelming evidence, they choose the path of ruse processes over urgency, as if the machinery of genocide pauses for court rulings. Legal scholars and institutions stand idle, waiting for formal declarations, as though the weight of a legal verdict could undo the slaughter that happens in real-time. But this waiting, this fixation on the process, becomes its own violence—enabling institutions to mask their complicity behind the facade of law, all while the massacre continues without pause.

This legal inertia serves as a form of anti-Palestinian racism by positioning Palestinians in a perpetual state of ‘waiting’—waiting for international law to catch up, waiting for courts to acknowledge their suffering—while they endure ongoing violence. In contrast, Israel’s actions are granted immediate legal¹⁵ and diplomatic¹⁶ validation, often framed as necessary measures to protect its ‘sovereignty’. This historical disparity in legal responses enshrines Palestinian dispossession and erasure within international law itself.

And so, we wait. We wait for the ICJ to finally recognise genocide, for the UN to muster the political will to isolate Israel, for academic institutions to divest from complicit military industry. But the truth, as we now must admit, is that international law and appeal to Western sensibilities will not stop the genocide. The ICJ, the ICC, and the entire infrastructure of international law were never designed to protect the colonised or the oppressed. As Mohsen al Attar¹⁷ aptly describes, we must scrutinise the role international law plays not just as a flawed system, but as ‘a system designed to fail the colonised’.

¹⁵ ‘Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for Arrest Warrants in the Situation in the State of Palestine | International Criminal Court’ (20 May 2024) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>> accessed 4 May 2025.

¹⁶ ‘Speech by President von Der Leyen at the EP Plenary Debate on the Despicable Terrorist Attacks by Hamas against Israel, Israel’s Right to Defend Itself in Line with Humanitarian and International Law and the Humanitarian Situation in Gaza’ (*European Commission*, 18 October 2023) <https://ec.europa.eu/commission/presscorner/detail/en/speech_23_5069> accessed 4 May 2025.

¹⁷ Mohsen Attar, ‘The Necessity of Imagination: Using The Counterfactual Method to Overcome International Law’s Epistemological Limitations’ (2021) 33 *National Law School of India Review* 125.

The ‘Iron Wall’ of Western Academia

The response of universities to protests, encampments, and direct action was to mimic Jabotinsky’s *Iron Wall* by isolating and criminalizing further the Palestinian movement through hate speech and anti-protest policies, developing counterinsurgency measures together with state forces, and suspending¹⁸ students and staff for demanding an end to institutional complicity in genocide. A clear example of that is the threat of deportation of Mamdou Tal¹⁹ from Cornell for protesting against the hosting of weapons manufacturer Boeing and L3Harris’s presence at the university’s career fair. Both companies are involved in the creation of weapons components used and tested by Israel on Palestinians. In a world where the massacring of tens of thousands of brown people matters, protesting the military industry should not be controversial. However, Cornell, like other institutions dependent on the military industry, promotes a career fair as the ‘free’ marketplace, and pro-Palestine activists’ disruption of capital warrants Mccarthyism²⁰.

This is not a glitch in the system of international law or academia. It is the system. The Iron Wall doctrine, which argued for an unyielding Zionism military defence against any Palestinian resistance, has extended itself into the intellectual sphere. The Iron Wall is not just a military strategy but an intellectual fortress, erected to protect Zionism from critique. And it is the Western academy, alongside Israel’s most prominent universities, that maintains this wall. These institutions ensure that criticism of Zionism remains sanitised, stripped of its potency, hidden behind euphemisms of ‘conflict’ and ‘security.’

¹⁸ Sarah Huddleston, ‘Columbia Begins to Suspend Students in “Gaza Solidarity Encampment,” University Spokesperson Says’ (*Columbia Daily Spectator*, 30 April 2024) <<https://www.columbiaspectator.com/news/2024/04/29/columbia-begins-to-suspend-students-in-gaza-solidarity-encampment-university-spokesperson-says/>> accessed 4 May 2025.

¹⁹ Aaron Fernando, ‘A Cornell Graduate Student Faces Deportation After a Pro-Palestine Action | The Nation’ (25 September 2024) <<https://www.thenation.com/article/society/cornell-graduate-student-deportation-palestine-protest/>> accessed 4 May 2025.

²⁰ Shadi Hamid, Brett Max Kaufman and Yousef Munayyer, ‘Is a New McCarthyism Punishing Pro-Palestine Speech at US Universities? Our Panel Reacts’ *The Guardian* (3 December 2023) <<https://www.theguardian.com/commentisfree/2023/dec/13/israel-gaza-us-universities-free-speech>> accessed 4 May 2025.

The refusal²¹ to call what is happening in Gaza, genocide, is not an oversight or an adherence to ‘objective’ legal processes. It is a defence mechanism, built into the very fabric of academic discourse. International law scholars²² in the global north, far from being neutral observers, become gatekeepers, enforcing the walls of Jabotinsky’s intellectual fortress. By refusing to name Israel’s crimes for what they are, these scholars ensure that Zionism remains beyond reproach, cocooned in a protective layer of legalistic debate and academic obfuscation.

Therefore, the assumption that the veneer of liberalism and tolerance or the promise of ‘constitutional’ right of free expression lacing these institutions should warrant a different, more lenient response against critiques of Zionism, is naive about the historical evils of the liberal tolerance of fascism and the violent status quo, an inquiry way beyond the scope of this piece. The liberal facade of the institutional Iron Wall as a bastion of academic freedom mirrors the casuistic reasoning used to defend Israel’s colonial iron wall, under the guise of safeguarding Israel’s ‘democracy’.

Neoliberalism’s Colonial Heartbeat: Protecting the Status Quo

Neoliberalism, as practiced in the academy, operates on the assumption that all voices can be incorporated into the fold, so long as they abide by the rules of the game set forth by the Western ruling class. In this case, the ruling class upholds Zionism, whether through IHRA, the university board statement, or the academic-military-research pipeline. Samir Amin²³ describes this cabal as a ‘clergy’, an academic clergy, devised to give a semblance of legitimacy to the ruling class through intellectual levers of power. The neoliberal veneer of inclusivity is not a commitment to justice, but a strategic mechanism designed to maintain power,

²¹ Johann Soufi, “Qualifying the Acts Committed in Gaza, Particularly Whether They Constitute Genocide, Is a Complex Task That Will Occupy International Lawyers for Years to Come” *Le Monde* (21 March 2024) <https://www.lemonde.fr/en/opinion/article/2024/05/21/qualifying-the-acts-committed-in-gaza-particularly-whether-they-constitute-genocide-is-a-complex-task-that-will-occupy-international-lawyers-for-years-to-come_6672144_23.html> accessed 4 May 2025.

²² *ibid.*

²³ Samir Amin, “The Implosion of Global Capitalism: The Challenge for the Radical Left” <https://www.networkideas.org/wp-content/uploads/2016/08/Implosion_Global_Capitalism.pdf> accessed 4 May 2025.

manage dissent, and counterinsurgency. It co-opts Palestinian scholars and activists, incorporating them into the very institutions that continue to actively participate in their oppression whether by virtue of their entanglement with the military industry or through advancing Western imperialist propaganda.

The fact is that advocating for Palestine within a neoliberal institutional setting requires us to recognise that neoliberalism turns human rights into anti-rights and human beings to Orwellian ‘unpersons’ if it serves the ruling class. The difficult truth is that Palestinians cannot appeal to the sensibilities of the Western ruling class even with the tools of international law simply because the ruling class’s *raison d’être* is to maintain this coercive hierarchy. For Palestinians, the very tools of international law are blunt instruments in the face of occupation and genocide. Perhaps, just as the notion of ‘academic freedom’ in academic institutions was never intended to safeguard pro-Palestinian voices, international law was never designed to protect Palestinians. Undeniably, anti-Palestinian racism is a shared element in both frameworks.

Conceding Palestine: The Nihilism of Palestinian international law scholars

Palestinian IL scholars, who hold on to the promises of IL, face a conundrum in that they support Israel’s Western allies in their argument that the Palestinians have a moral obligation to follow IHL, but they neglect to acknowledge that Israel is not and will not be under the same obligation due to its status as an imperial outpost. Effectively, by highlighting Israel’s impunity, these same scholars fail to materially change the equation beyond the liberal tool of critique. Their vilification of resistance as contrary to IL along with their condemnation of Israel functions along the line of liberal counterinsurgency. In this instance, to believe in international law despite its visible foundational and procedural failures in Palestine is a form of nihilism. Conceding Palestine’s liberation from the genocidal Zionist entity at the altar of Western pseudo-morality should not be the job description of Palestinian scholars in Western institutions.

Nihilism is defined by its goal of demise. Therefore, justifying international law’s incompetence or advocating its potential during uninterrupted massacres is a wilful participation in nihilism. Palestinian scholars must demand better than ‘legal recognition of genocide’, a

ceasefire, or Western declarations of Palestinian humanity. Instead of being glued to the pledge of accountability through the complicit global north international community, we must remember that the parent of a martyr, the child trapped under the rubble and the displaced family deserve nothing less than an immediate end to the genocide instead of the promise of pseudo-justice.

What is the virtue of an ICJ finding that Israel has committed genocide, years after the fact? In Palestine, we have a saying that ‘those with their hands in cold water are not like those with their hands in the fire’. Demanding patience²⁴ from Palestinians is nihilistic violence. The flaws of international criminal law mechanisms are many but worse of all is its inability to put a halt to the worst of crimes. For a movement for Palestinian liberation that is full of hope, international law is hopeless.

Beyond Epistemic Justice: The Need for Vigilant Anti-Zionism

What, then, is the way forward? To address anti-Palestinian racism, we must go beyond simply granting Palestinians space to speak. The goal cannot be mere participation in a system that perpetuates colonial erasure. It must be the dismantling of that violent system altogether. To ask Palestinians to ‘wait’ longer under the rubble, to tolerate Zionism and its ‘sword on the neck’ borrowing from Ghassan Kanafani, and to coexist with the system that aided and abetted their genocide is indefensible.

If Palestinians are to move beyond the suffocating confines of international law, they must reframe their struggle not through the lens of legality, but through the moral compass of anti-Zionism²⁵. The right of return, the dismantling of Zionism, and the end of the settler-colonial state are not legal claims—they are moral imperatives grounded in the historical injustices committed against the Palestinian people. It is in the reorganisation of the world, and the reimagining of a decolonised future, that Palestinian emancipation lies.

²⁴ ‘Your Crisis of Faith Is Not My Concern (There’s a Genocide Going On)’ (*Steve Salaita*, 25 September 2024) <<https://stevesalaita.com/your-crisis-of-faith-is-not-my-concern-theres-a-genocide-going-on/>> accessed 4 May 2025.

²⁵ United Nations, ‘World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance’ (*United Nations*) <<https://www.un.org/en/conferences/racism/durban2001>> accessed 4 May 2025.

Rethinking International Law After Gaza Symposium: A Thought Experiment – What if We Tried to Organise the “Rethinking International Law After Gaza” Conference in the UK?*

Victor Kattan

Victor Kattan is Assistant Professor in Public International Law at the University of Nottingham School of Law.

The conference “Rethinking International Law After Gaza”¹ held at Boğaziçi University’s Faculty of Law in Istanbul in early August marked a significant engagement by Türkiye with the Question of Palestine. The conference was noteworthy for bringing together distinguished scholars² from the Global South and Global North – including many Palestinian and Arab speakers. It also coincided with Türkiye’s announcement³ that it intended to submit a statement⁴ in

¹ ‘BILC 2024 | Boğaziçi University International Law Conference’ <<https://bilc.bogazici.edu.tr/bilc-2024>> accessed 4 May 2025.

² ‘Confirmed Speakers 2024 | Boğaziçi University International Law Conference’ <https://bilc.bogazici.edu.tr/confirmed_speakers> accessed 4 May 2025.

³ ‘Turkey to Submit Bid to Join South Africa ICJ Genocide Case against Israel’ (*Al Jazeera*, 5 August 2024) <<https://www.aljazeera.com/news/2024/8/5/turkey-to-submit-bid-to-join-south-africa-icj-genocide-case-against-israel>> accessed 4 May 2025.

⁴ ‘Türkiye Files a Declaration of Intervention in the Proceedings under Article 63 of the Statute | INTERNATIONAL COURT OF JUSTICE’ <<https://www.icj-cij.org/node/204213>> accessed 4 May 2025.

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support of South Africa’s case against Israel at the International Court of Justice under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Whether such a conference could have been held in the United Kingdom (UK) is the topic of this post. In this thought experiment, I propose to contrast the experience of hosting events on Palestine at institutions I have worked at in the past, including in Southeast Asia where I spent a considerable part of my career and where there are statutory restrictions on free speech. Türkiye also has its sensitivities, and it is worth mentioning at the outset that it would have been very difficult to organise events in Turkish universities on certain ‘sensitive’ political issues.

And yet, it is still worth asking what would happen if we tried to organise a two-day conference on the Question of Palestine in the UK, along the lines of the conference at Boğaziçi University, which addressed various topics including the occupation, resistance, apartheid, Zionism, and the right of return. What institutional obstacles might arise, and could such an event even take place?

In the following post, I describe the institutional requirements that would need to be met before such a conference could be held in those universities that have adopted the International Holocaust Remembrance Association’s definition of Antisemitism⁵, whose list of examples of antisemitism include strident criticisms of the policies of a nation state (Israel, as opposed to hatred towards Jews because they are Jews). In addition, conference organisers would need to factor in the UK’s counterterrorism legislation and the Prevent duty⁶ if speakers plan to address the right to resistance of national liberation movements classified as proscribed organisations. I then explain that despite the adoption of the IHRA definition of antisemitism by many British universities in 2020, organising events on the conflict in Palestine that predated the adoption of the IHRA definition was already fraught with difficulties, as demonstrated by the cancellation of a conference at the School of Law at the University of Southampton almost a decade ago.

⁵ ‘What Is Antisemitism?’ (IHRA) <<https://holocaustremembrance.com/resources/working-definition-antisemitism>> accessed 4 May 2025.

⁶ ‘Counter-Terrorism - the Prevent Duty - Office for Students’ (28 February 2018) <<https://www.officeforstudents.org.uk/>> accessed 4 May 2025.

I end by suggesting that the situation in the UK is in some ways worse when organising events on the Question of Palestine than those countries with statutory restrictions on free speech that I have worked and organised events at in the past (see here⁷, here⁸, and here⁹). I am aware this is quite an indictment. As I explain below, the ‘adoption’ of the IHRA definition of antisemitism by many British universities was ideologically driven by the previous Conservative government which threatened financial sanctions against those institutions that refused to adopt it or raised concerns about free speech and academic freedom. The result has been a serious deterioration of academic freedom in British universities in organising events on Palestine especially if they stray from “safe topics” like peacebuilding and people-to-people programmes to discuss the rights and wrongs of the conflict and/or its root causes.

There is a danger that if the current situation continues, we may lose sight of the very purpose of a university, which is not just to prepare students for the market, but to stimulate critical thinking and critical dialogue, and to expose students to a diversity of views, not just the echo chambers of social and legacy media. As Paulo Freire (1921-1997), the Brazilian educator and advocate of critical pedagogy, argued in *Education for Critical Consciousness*¹⁰, students should be able to discuss the “problems of their country, of their continent, of the world” – for ultimately, “education is an act of love, and thus an act of courage”. The fact that tens of thousands of students are protesting the current wars in the Middle East on campuses across the Global North demonstrates that these are issues they care deeply about.

⁷ ‘Reflections on the Partitions of India and Palestine after 70 Years – NUS – Middle East Institute’ <https://mei.nus.edu.sg/think_in/5593-2/> accessed 4 May 2025.

⁸ ‘[Transsystemic Law] The Vietnam and Arab-Israeli Conflicts: International Legal Migrations, Comparisons, and Connections – NUS – Middle East Institute’ <<https://mei.nus.edu.sg/event/transsystemic-law-the-indochina-and-arab-israeli-conflicts-international-legal-migrations-comparisons-and-connections-1961-1973/>> accessed 4 May 2025.

⁹ ‘[Transsystemic Law] The Contested City: Jerusalem 1917-2017 – NUS – Middle East Institute’ <https://mei.nus.edu.sg/mei_media/transsystemic-law-the-contested-city-jerusalem-1917-2017/> accessed 4 May 2025.

¹⁰ Paulo Freire, *Education for Critical Consciousness* (Continuum International Publishing Group 2005).

The Institutional Framework for Holding Events in the UK

The UK prides itself on being an “open society” and academic comment receives a high level of protection¹¹ in the law. Despite this, the previous government acknowledged that many scholars were self-censoring on a range of topics and that something needed to be done. This was one of the reasons Parliament passed the Higher Education (Freedom of Speech) Act 2023, which, *inter alia*, created a new statutory tort that would allow students, academics and visiting speakers to bring civil proceedings against higher education providers for any loss they suffered from being “cancelled” or “no-platformed”. (This would have allowed me, and other speakers, to bring a claim against the University of Southampton for the financial losses we sustained, when a conference we were due to speak at was cancelled, as I explain below).

The Act also established a Director for Freedom of Speech and Academic Freedom with a mandate to champion freedom of speech on campuses with responsibilities for investigating alleged infringements of freedom of speech duties in higher education. Professor Arif Ahmed of Cambridge University was appointed to this post – prior to his appointment he had publicly criticised the IHRA definition of antisemitism by describing it as obstructing¹² ‘perfectly legitimate defence of Palestinian rights’.

The Act was supposed to enter into force on 1 August 2024 and would only apply to English universities. However, in July 2024, the Secretary of State for Education of the incoming Labour government announced a postponement, and that options were being considered going forward, which could include the amendment or repeal of the Act, a delay that was notably welcomed by the Russell Group of Universities. The delay was also welcomed by the Union of Jewish Students who complained

¹¹ Dominic McGoldrick, ‘Freedom of Speech and Academic Freedom in Higher Education in England’ (2024) 46 Human Rights Quarterly 287.

¹² Arif Ahmad, ‘Response to the New Announcements on Free Speech and Academic Freedom’ (HEPI, 17 February 2021) <<https://www.hepi.ac.uk/2021/02/17/response-to-the-announcement-on-free-speech-and-academic-freedom-by-dr-arif-ahmed/>> accessed 4 May 2025.

that the new Act would have required¹³ ‘the removal of the International Holocaust Remembrance Alliance definition [of antisemitism]’.

Accordingly, as things stand, organising conferences in the UK remains subject to existing rules and regulations, which are described below. The focus of this post is on the processes that an academic would likely have to undertake (depending on the institutional requirements of that particular university) before they could even contemplate organising a conference like the one held at Boğaziçi.

To begin, any proposal for a conference like Boğaziçi’s would likely be flagged by the relevant university faculty, department, or school, for raising controversial issues of a social, political, or religious nature, pursuant to the university’s code of practice for hosting events. Depending on your university’s policy, the university’s executive – the VC and the registrar – may then be informed of the proposed conference. The academic in question might then be asked to fill in an equality, impact and assessment (EIA) form. This form would require the academic to consider several issues such as the topic, timing, diversity of speakers, and potential impact of the event on individuals, staff, and students. Other university policies would also intervene. In the UK, these usually take the form of “codes of practice and rules” to provide guidance on “good practice”. Most UK universities have codes on the Prevent duty, antisemitism, islamophobia, dignity, and freedom of expression. In the process of reading through these policies it may become apparent that the code on freedom of expression conflicts with certain other codes.

The most problematic of these codes when hosting events on Palestine on UK campuses is without doubt the IHRA definition of antisemitism. While most universities initially refused to adopt the IHRA definition, claiming that it was contrary to academic freedom, the tide turned when Robert Jenrick MP¹⁴ and Gavin Williamson MP¹⁵, who both held

¹³ Felix Pope, ‘Jewish Student Leaders Hail Move to Scrap “Car Crash” Free Speech Bill’ (*The Jewish Chronicle*, 2 August 2024) <<https://www.thejc.com/community/jewish-student-leaders-hail-move-to-scrap-car-crash-free-speech-bill-uzvty510>> accessed 4 May 2025.

¹⁴ Lee Harpin, ‘Jenrick “Extremely Disappointed” after UJS Survey Shows 80 per Cent of Universities Have Not Adopted IHRA Definition’ (*The Jewish Chronicle*, 30 September 2020) <<https://www.thejc.com/news/jenrick-extremely-disappointed-after-ujs-survey-shows-80-per-cent-of-universities-have-not-adopted-ihra-t8dlqcz>> accessed 4 May 2025.

¹⁵ ‘Gavin Williamson: Universities Face Cuts If They Don’t Adopt IHRA Definition’ (*Jewish News*, 9 October 2020) <<https://www.jewishnews.co.uk/gavin-williamson-universities-face-cuts-if-they-dont-adopt-ihra-definition/>> accessed 4 May 2025.

ministerial posts in the previous Conservative government, threatened financial sanctions against those universities that did not adopt the definition, which was made clear in this 9 October 2020 letter addressed to vice-chancellors.

If your university surrendered to government diktat and adopted the IHRA definition of antisemitism, following your submission of the EIA form, you may be asked to consider and cross reference that definition to the topics at issue at the conference, including the examples given on the webpage. Although the IHRA definition is not legally binding, it is university policy, after all. As Rebecca Gould has argued¹⁶, despite it being described as a “non-legally binding working definition”, as reiterated on its website, the IHRA definition functions as “quasi-law” in that it has acquired “the *de facto* authority of the law, without having acquired legal legitimacy”. In other words, the definition is not law, but it is treated as such by universities that oblige academics to take the code into account when organising events and disciplining students.

The same logic may apply to the universities’ codes on Prevent Duty, which is a statutory requirement in the UK that aims to prevent people from becoming terrorists or supporting terrorism. Accordingly, you would have difficulty inviting speakers, for example, that plan to address the right of Hamas – an Islamic liberation movement – to resist Israel’s occupation, because both its wings (armed and political) have been proscribed¹⁷ as an international terrorist group in the UK since November 2021. (Lebanon’s Hizbollah is as well¹⁸).

At this point, organising an event like the one held at Boğaziçi might place you in a quandary – even if you were to dispense with a panel on the right of resistance. The conference clearly raises controversial topics and may conflict with codes on antisemitism because the examples given on the IHRA website include: ‘Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour’. This example could cause difficulties for

¹⁶ Rebecca Ruth Gould, ‘Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech’ (2022) 18 *Law, Culture and the Humanities* 153.

¹⁷ Explanatory Memorandum to The Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2021, SI 2021/XXX.

¹⁸ ‘Proscribed Terrorist Groups or Organisations’ (*GOV.UK*) <<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version>> accessed 4 May 2025.

scholars who want to organise a panel, for example, on systemic racial discrimination in Israel and the West Bank – even though this was addressed at length by the International Court of Justice, the principal judicial organ of the United Nations, in its latest advisory opinion¹⁹. At this point, you might consider giving up or making it a closed “Chatham House rule”²⁰ conference, by invitation only. Presumably, in making this assessment, a lot might depend on whether invitations have been sent, and money has been spent.

Should you consider pressing ahead with hosting the conference on university premises, and decide to make it open to the public, you may also have to persuade the university that mitigations have been put in place to ensure respect for lawful speech by informing them of the content of university codes, for example, which would include the IHRA definition. Only then may they give you permission to host the conference. But your problems are likely just beginning. First, informing the speakers of the university’s policies would likely provoke a backlash from speakers claiming that it infringes academic freedom. You may find yourself caught in the crossfire – between the university administrators whose role is to “protect the reputation of the institution” and the speakers whose role is to “educate and debate”. Second, as I explain in the next section, you will have to carefully consider how, where, and when to advertise the event.

You’re Being Watched! The Pernicious Influence of Social Media

In states with strong media regulations, you do not have to worry about private interest groups or lobbies harassing you – for they simply do not exist. (You have other factors to consider – namely, the government, but you quickly learn what you can and cannot say and do). While private interest groups/lobbies can have a positive role to play in any democratic society, they can also exert a negative influence, especially if their modus operandi is to stoke fear. This is especially the case with well-

¹⁹ *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (Advisory Opinion) <<https://www.icj-cij.org/case/186>> accessed 4 May 2025. Including East Jerusalem (Advisory Opinion)

²⁰ ‘Chatham House Rule | Chatham House – International Affairs Think Tank’ (26 August 2022) <<https://www.chathamhouse.org/about-us/chatham-house-rule>> accessed 4 May 2025.

funded groups that employ armies of lawyers to send threatening letters to university administrators. While American readers of this blog will be familiar with Campus Watch²¹, in Britain the equivalent is UK Lawyers for Israel²².

In the UK, advertising an event like that at Boğaziçi would have to be given careful consideration (presuming it was given approval). How far in advance should you circulate the event? Should you share the full programme? Should you mention it on social media, and if so, which platforms? Have you invited experienced chairs? Is there a balance of viewpoints? Do speakers require registration and ticketing? What about security? If there is a problem, can you delay the event or advertising? What if you have already sent the invitations?

These are the sorts of questions most likely going through university administrator’s heads when contemplating how to promote an event like the one held at Boğaziçi. What if a university, school, or research centre is criticised on social media, or worse, in the mainstream media? What if a pro-Israel group gets wind of the event and complains? These issues are likely to give colleagues with particularly sensitive dispositions sleepless nights. Any whiff of controversy is to be avoided at all costs. It would be better not to host these kinds of events at all. And *there* is the problem.

The irony is that it is in the West that these problems principally arise. University administrators are asking themselves these questions on the *supposition* that someone will complain (which may, or may not, transpire). The scenario reminds me of Foucault’s “Panopticism”²³ (named after Jeremy Bentham’s panopticon prison design²⁴) in *Discipline and Punish: The Birth of the Prison* (1975). People behave in certain ways because they fear certain consequences for their own reputation or the reputation of an institution. Bentham’s panopticon (as illustrated by Foucault) is not just a physical structure – it is being wired into people’s minds. In other words, you do not need to lock people up physically

²¹ ‘Campus Watch’ (*Middle East Forum*) <<https://www.meforum.org/campus-watch>> accessed 4 May 2025.

²² ‘STUDENTS’ (*UK LAWYERS FOR ISRAEL*) <<https://www.uklfi.com/students>> accessed 4 May 2025.

²³ Michel Foucault, “Panopticism” from “Discipline & Punish: The Birth of the Prison” (2008) 2 *Race/Ethnicity: Multidisciplinary Global Contexts* 1.

²⁴ UCL, ‘The Panopticon’ (*Bentham Project*, 17 May 2018) <<https://www.ucl.ac.uk/bentham-project/about-jeremy-bentham/panopticon>> accessed 4 May 2025.

anymore and monitor them from a watchtower, you just need to make them think they are being continuously monitored online, and they will fall into line. That is what groups like Campus Watch and UK Lawyers for Israel seek to do: to scare university administrators into silence.

If you think this scenario is fantastical, think again. Just under a decade ago, a conference on “International Law and the State of Israel: Legitimacy, Responsibility and Exceptionalism” scheduled to take place at the University of Southampton’s School of Law was cancelled following a social media campaign. I mention this example because it was widely reported in the press and affected me personally.

The University of Southampton

In the summer of 2014, I recall seeing notice for a conference at the University of Southampton School of Law scheduled for April 2015. The conference was the brainchild of Oren Ben-Dor, an Israeli law professor based at Southampton University and was co-organised with George Bisharat, a Palestinian-American law professor based at the University of California Hastings College of the Law. (Coincidentally, George is also a contributor to this symposium).

The call for papers was considered controversial at the time because it did not limit its analysis of Israeli violations of international law to East Jerusalem, the West Bank, and Gaza, the so-called “occupied territories.” It also included Israel, with a special focus on “the Jewish nature of the state” and how that state “has profoundly affected the economic, constitutional, political and social life of those non-Jewish Arabs who were allowed to stay” following the traumatic events of the 1947-1948 Palestinian Nakba. The call for papers additionally sought those that explored “linked reflections on the relationship between international law and: identity and injustice; violence and morality; nationality and citizenship; self-determination and legitimacy, responsibility and exceptionalism”. It explained that the conference and the book of its proceedings would be dedicated to Henry Cattán (1906-1992),²⁵ a leading Palestinian international lawyer.

²⁵ ‘Henry Cattán’ (22 March 2022) <<https://www.jerusalemstory.com/en/bio/henry-cattan>> accessed 4 May 2025.

When the call for papers was released, the working definition of antisemitism had yet to be adopted by the IHRA, nor by any British university. UK Lawyers for Israel did not exist. But this made little difference to the firestorm that followed (see here²⁶, here²⁷, and here²⁸). A petition²⁹ organised by the Zionist Federation UK (ZF) claimed that the conference went “beyond being an academic discussion” because it blamed the “suffering and injustice in Palestine” on “Israel’s creation and continued presence”. The petition garnered 6,400 signatures. Sussex Friends of Israel said they would protest the event. The Board of Deputies of British Jews and Conservative government ministers – including Michael Gove and Eric Pickles – waded into the fray, with Pickles calling it³⁰ a ‘one-sided diatribe’ and Gove describing it³¹ as an ‘anti-Israel hatefest’. The University of Southampton could not withstand the pressure and folded. It withdrew permission to hold the three-day conference allegedly on “security grounds”. Attempts to challenge the decision through judicial review came to naught.

The cancellation of the conference and the furore that followed was quite a spectacle. At the time, I was watching events from afar, as I was working at the National University of Singapore and was scheduled to speak at the conference. Due to the time difference between London and Singapore, I did not find out that the conference had been cancelled until I landed at Heathrow.

Reading the call for papers now, almost ten years later, is a quaint experience. It is difficult to understand what the controversy was all about, especially given all the developments that have since transpired: the annexation of the West Bank, apartheid, and allegations of genocide.

²⁶ Haroon Siddique, ‘University Event Questioning Israel’s Right to Exist Is Cancelled’ *The Guardian* (31 March 2015) <<https://www.theguardian.com/uk-news/2015/mar/31/southampton-university-cancels-event-questioning-israel-existence>> accessed 4 May 2025.

²⁷ Ali Abunimah, ‘Univ. of Southampton Cancels Conference after Government, Israel Lobby Pressure’ (*The Electronic Intifada*, 31 March 2015) <<https://electronicintifada.net/blogs/ali-abunimah/univ-southampton-cancels-conference-after-government-israel-lobby-pressure>> accessed 4 May 2025.

²⁸ Naomi Firsht, ‘Southampton University Cancels Anti-Israel Conference over “Safety Concerns”’ (*The Jewish Chronicle*, 2 April 2015) <<https://www.thejc.com/news/southampton-university-cancels-anti-israel-conference-over-safety-concerns-eb5u713a>> accessed 4 May 2025.

²⁹ ‘Cancel Your Upcoming Anti-Israel Conference’ (*Change.org*) <<https://www.change.org/p/university-of-southampton-cancel-your-upcoming-anti-israel-conference>> accessed 4 May 2025.

³⁰ Firsht (n 28).

³¹ *ibid.*

In many ways, the conference organisers were visionary, if not prophetic. They recognised that the violence and racism of the consecutive Israeli governments was not ephemeral but part of the foundational features of the State of Israel, a repetitive pattern or policy of a state that was manifestly *not* established for all its citizens, as Netanyahu proudly told the world on Instagram³². It is a state that, as a matter of law, accords more rights to its Jewish citizens than to the indigenous Palestinians who were uprooted to establish it. In the words of the Nation State Law³³: “The exercise of the right to national self-determination in the State of Israel is *exclusive* to the Jewish people”. And as the current government’s coalition agreement³⁴ makes clear, “the Land of Israel” includes “Judea and Samaria” (the West Bank).

The Palestine Exception

It seems to me that the UK never recovered from the Southampton debacle—a situation that has worsened following 7 October 2023 (see here³⁵). Watching the events in Southampton from a country with strict limits on freedom of expression³⁶ (including the enforcement of criminal libel laws to limit expression and serious restrictions on internet freedom) was something to behold. To be clear, I am not suggesting that the situation in the UK is comparable to these countries with strict controls on the freedom of expression, except when it comes to organising events on Palestine. It is clear that the IHRA definition, and its examples, have been designed by its authors and promoters to prevent and stifle any discussion of the root causes of the longstanding conflict between Israel and Palestine.

³² Agence France-Presse, ‘Benjamin Netanyahu Says Israel Is “Not a State of All Its Citizens”’ *The Guardian* (10 March 2019) <<https://www.theguardian.com/world/2019/mar/10/benjamin-netanyahu-says-israel-is-not-a-state-of-all-its-citizens>> accessed 4 May 2025.

³³ Raoul Woodliff, ‘Full Text of MK Avi Dichter’s 2017 “Jewish State” Bill’ <<http://www.timesofisrael.com/full-text-of-mk-avi-dichters-2017-jewish-state-bill/>> accessed 4 May 2025.

³⁴ Carrie Keller-Lynn, ‘Judicial Reform, Boosting Jewish Identity: The New Coalition’s Policy Guidelines’ <<https://www.timesofisrael.com/judicial-reform-boosting-jewish-identity-the-new-coalitions-policy-guidelines/>> accessed 4 May 2025.

³⁵ ‘Committee on Academic Freedom’ (*BRISMES*) <<https://www.brismes.ac.uk/advocacy/committee-on-academic-freedom>> accessed 4 May 2025.

³⁶ US Department of State, *2022 Country Reports on Human Rights Practices: Singapore* (20 March 2023) <<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/singapore/>> accessed 4 May 2025.

To answer the question, I posed at the start: it is highly doubtful that permission would be given to host an event like the one at Boğaziçi University in a British university unless the event was a closed, “by invitation only” workshop, with detrimental impact on student engagement and public participation. The current situation is lamentable because the ongoing conflicts in Gaza, Lebanon, and beyond, are important matters of international concern that affect all of us—for what happens in the Middle East rarely stays there (and could have implications for trade, the environment, immigration, security, etc. not to mention human rights). But more to the point, academic freedom is a foundational right in itself and is essential to education and scholarship. To abandon the defence of academic freedom ‘or to tolerate tamperings with any of its foundations’, warned Edward Said in his 1993 BBC Radio Four Reith Lectures³⁷, would be to ‘betray the intellectual’s calling’. Scholars and subject experts need to be able to discuss what is happening – freely – without fear, above all in universities, and this may involve addressing “controversial topics” or, quite simply, talking about Palestinian liberation and self-determination.

³⁷ Edward Said, ‘Representation of the Intellectual, Speaking Truth To Power’ (21 July 1993) <<https://www.bbc.co.uk/programmes/p00gxqyb>> accessed 4 May 2025.

Rethinking International Law After Gaza Symposium: Containing Liberation – The Transitional Justice Industrial Complex in Palestine*

Brendan Ciarán Browne

Brendan Ciarán Browne is an Assistant Professor Conflict Resolution and Fellow of Trinity College Dublin.

Introduction

At this time of ongoing ‘scholasticide’¹ against our colleagues in the Gaza Strip, resulting in the destruction of all 12 universities, the murder of thousands of university staff and students, and with restrictions placed on access to campuses across the West Bank, the need to speak up and out for Palestine, with moral clarity and steadfast conviction, has never been so pressing. Yet, for many in the academy, silence(ing)² has been the order of the day, demonstrating once again the liberal proclivity towards academic selectivity—all lives are equal until a Palestinian enters the room.

¹ Khalid Dader and others, ‘Topologies of Scholasticide in Gaza: Education in Spaces of Elimination’ (2024) 202 *Fennia - International Journal of Geography* 1.

² Daily Sabah with AA, ‘Germany’s Max Planck Censors Professor Critical of Israel’ (*Daily Sabah*, 8 February 2024) <<https://www.dailysabah.com/world/mid-east/germanys-max-planck-censors-professor-critical-of-israel>> accessed 4 May 2025.

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For the best part of a decade, my scholarly work and pedagogy has focused on issues related to post-conflict ‘justice’. I have been particularly interested in the praxis of transitional justice (TJ), critiquing its suitability in addressing the legacy of colonial violence, either in spaces where such violence lingers under the surface, as is the case in the north of Ireland, or remains catastrophically and asymmetrically omnipresent, as in Israel-Palestine. I admit, until now, I have been reluctant to fully disassociate from what I believe(d) is TJ’s potential, being convinced that, in *certain* contexts, it remains a fruitful and worthwhile endeavour. I have seen and experienced first-hand how a limited application of TJ has been helpful in facilitating difficult and painful conversations around reconciliation in the context of the north of Ireland, particularly when such conversations are grassroots, and community driven.

However, in the case of Palestine, where there has been a steady, albeit incremental increase in scholarly and practitioner interest in TJ, I have remained sceptical. In previous articles, and a recent book³, I argued that if it truly wishes to address justice issues that are at the heart of the ‘conflict’ being waged on Palestine, TJ work must speak without obfuscation. Its aim must be to spotlight Zionism’s ongoing western sponsored settler colonial aim, a process that has reached its brutal genocidal zenith, rather than call for limited ‘justice’ interventions that are devoid of context. In retaining some hope, and avoiding throwing the baby out with the bathwater, I previously called for a radicalisation of the sub-discipline lest it be relegated to liberal interventionist irrelevance. Although shirking a description on what amounts to a ‘radicalised’ TJ, I argued that those wedded to the sub-discipline’s potential must consider a TJ language and praxis that fundamentally departs from the decades long peacebuilding approaches that were only ever interested in approaches of containment and management of the Palestinian people.

As I pen this essay Gaza continues to be subjected to the first live-streamed genocide in history. Ethnic cleansing and extreme settler violence ratchets up across the West Bank and Lebanon is once again being indiscriminately bombed. In considering how any academic can teach international law and TJ with a straight face, I am transported back to my classroom at the Al Quds University, occupied Jerusalem, where I

³ Brendan Ciarán Browne, *Transitional (in)Justice and Enforcing the Peace on Palestine* (Springer International Publishing 2023).

spent several semesters in 2015 and 2020. I recall, with a mix of nostalgia and acute embarrassment, one particular interaction with a student, as I set about introducing our weekly discussion on ‘truth recovery as justice’. As I began to teach, I noticed she was visibly distressed, and so I stopped to enquire if she was alright:

‘Professor, what is the point in any of this? They killed my cousin Hasan last night. The noise you hear outside is the students gathering to remember him. There is no such thing as justice in Palestine.’

Ever since, I have methodically considered this basic but primordial question: ‘What is the point?’ Or, to put this another way, who is it that really benefits from the ‘new science’⁴ of TJ and in whose interests does it really serve?

Palestinian scholar Nadim Khoury has argued that before adopting TJ we must ask: ‘whose justice, what transition?’⁵ What happens when the language and praxis of TJ is pressed into service in sites of ongoing settler-colonial conflict, as is the case in Palestine? As an academic sub-discipline of the law, TJ has become safely and carefully subsumed within the bosom of the Israeli academy, inoculated through international scholastic engagement and the involvement of ‘useful cheerleaders’, discussed and debated in classroom and conference spaces that remain off-limits to most Palestinians. It is thus prudent to query what form of ‘justice’ is really being proposed. When TJ interventions in the region are being vociferously promoted and funded by European and American partners, those whose governments are the primary sponsors of Israel’s ongoing genocide of the Palestinian people, their claim of suitability in providing some form of meaningful redress must be consistently and vociferously called out.

Deafening Silence

For decades, Palestine and the Palestinians have had their legitimate demands for liberation, self-determination, and justice curated and subjected to academic scrutiny, a point that Edward Said (1984)

⁴ Ronald Suresh Roberts, ‘How “Transitional Justice” Colonized South Africa’s TRC’ (2020) 0 Modern Languages Open <<https://modernlanguagesopen.org/articles/10.3828/mlo.v0i0.318>> accessed 4 May 2025.

⁵ Nadim Khoury, ‘Transitional Justice in Palestine/Israel: Whose Justice? Which Transition?’ in Leila Farsakh (ed), *Rethinking Statehood in Palestine* (University of California Press 2021).

highlighted in his famous treatise ‘permission to narrate,’ the theme that sets the parameters of this symposium. Richard Falk⁶, former UN Special Rapporteur, noted that: ‘Part of the Palestinian tragedy... is that others have again and again presumed to talk on behalf of the Palestinian people... these alien voices have consistently overridden Palestinian voices on the basis of geopolitical calculations and Orientalist thinking’. With its ‘fundamentally liberal... origins’⁷ (p. 265) TJ provides the perfect linguistic apparatus of colonial control and containment.

Although there has been a burgeoning interest amongst scholars, TJ in Israel-Palestine has been operating for some time, hidden in plain sight. A wide range of actors, including grassroots organisations and international NGOs have proposed specific interventions related to, *inter alia*, ‘truth recovery’⁸, the promotion of people-to-people⁹ ‘reconciliation’ programmes, and other forms of unhelpful, surface level interventions, those that squash asymmetries, individualise perpetrators and culpability, and avoid having hard conversations around ‘land back’ or decolonisation. Conversations around reconciliation are quickly reduced to calls for collective amnesia, the right of return becomes dismissed as wistful sentiment, and reparations are presented as implausible and impractical. The collective demand is indigenous concession rather than settler accountability.

If we consider various grassroots attempts at ‘truth recovery’, such efforts can simply facilitate the platforming of settler guilt, allowing for ‘tears after the fact’ rather than enforcing accountability and implementing redress. In borrowing from Abushama¹⁰, TJ interventions that seek to uncover the ‘truth’ about the past amidst ongoing settler colonial erasure in historic Palestine ‘...are reflective of the wider settler colonial power

⁶ Richard Falk, *Palestine’s Horizon: Toward a Just Peace* (Pluto Press 2017).

⁷ Augustine SJ Park, ‘Settler Colonialism, Decolonization and Radicalizing Transitional Justice’ (2020) 14 *International Journal of Transitional Justice* 260.

⁸ Brendan Ciarán Browne, ‘Special Edition: Chasing Truth and (Re)Conciliation: Navigating Contexts, Tensions, Limits and Possibilities “Reclaiming Truth Recovery against the Backdrop of Ongoing Zionist Settler Colonialism in Palestine”’ (2023) 43 *Equality, Diversity and Inclusion: An International Journal* 1038.

⁹ Yara Hawari, ‘The Revival of People-to-People Projects: Relinquishing Israeli Accountability’ (*Al-Shabaka*, 6 April 2021) <<https://al-shabaka.org/briefs/the-revival-of-people-to-people-projects-relinquishing-israeli-accountability/>> accessed 4 May 2025.

¹⁰ Hashem Abushama, ‘According to Whose Archives?: The Tantura Massacre and Revisionist Israeli Historiography’ (*Institute for Palestine Studies*, 30 January 2022) <<https://www.palestine-studies.org/en/node/1652421>> accessed 4 May 2025.

relations that determine *who* remembers, *how* they remember, and according to *whose* archives'. After all, as Madlingozi (2010) reminds us: 'Speaking for and about victims perpetuates their disempowerment and marginality'. A similar critique can be levied against selective engagement in 'international criminal justice', the scapegoating of a few bad apples, rather than holding the entire rotten racist applecart of a colonial state to account.

TJ and the Israeli Academy

As a constituent element in the maintenance of the occupation of Palestine, the Israeli academy provides the intellectual scaffolding for the architecture of the apartheid regime and has long been an enabler of anti-Palestinian racism. During the genocide, we have seen this play out on a number of occasions, from banning Palestinian student protests¹¹, to arresting Palestinian academic staff¹². It is into this environment that TJ has found fertile terrain and taken root. The growth of TJ programmes in the Israeli academy is evident through the emergence of educational programs, at both undergraduate and postgraduate level, the establishment of centres of 'excellence', the forging of international partnerships between Israeli institutions and universities in the West, particularly through law schools, and by hosting international conferences that bring 'experts' to Israel to discuss justice for Palestine (in the absence of Palestinians). The vast majority of these activities are funnelled through Israel's most prominent universities—Tel Aviv University and the Hebrew University in Jerusalem—spaces that are inaccessible to most Palestinians, including all who live in the West Bank, Gaza Strip, and wider diaspora, those who are refused the requisite 'permission' from the Israeli authorities to enter Jerusalem. New academic courses and colloquia on TJ have been created, including a full master's degree on 'Human Rights and Transitional Justice', and several undergraduate courses, benefitting from endorsements from, and participation of, founding voices in the field.

¹¹ 'Palestinians Banned from Remembering Nakba at Tel Aviv Uni' (<https://www.newarab.com/>, 10 May 2024) <<https://www.newarab.com/news/palestinians-banned-remembering-nakba-tel-aviv-uni>> accessed 4 May 2025.

¹² 'Israeli Police Arrest Hebrew University Professor' (21 April 2024) <<https://www.jerusalemstory.com/en/article/historic-first-police-arrest-palestinian-professor-suspicion-incitement-based-academic-work>> accessed 4 May 2025.

A sizable chunk of the work is funded by The Minerva Stiftung¹³, a German organisation whose stated aim is establishing German Israeli cooperation, with financial support from the German Federal Ministry for Education and Research (BMBF). Funding provided helped to establish the Minerva Centre for Human Rights, a joint Tel Aviv/Hebrew University in Jerusalem, designed to ‘promote interest in human rights issues in the academic community and at large’, within which is embedded a dedicated TJ unit. A separate Minerva postdoctoral fellowship in transitional justice has been created, allowing the successful candidate to be based at the Hebrew University in Jerusalem, whilst also offering the recipient the chance to enjoy a short research stay at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg—an Institute operated by the Max Planck Society, which silenced an Australian scholar based at the Max Planck Institute of Social Anthropology in Halle who spoke up¹⁴ against the Israeli government’s ongoing genocide.

When we consider that academic work in every society drives policy decisions and helps embed a dominant narrative, the result is the fostering of an orthodoxy around TJ that replicates, consolidates, and delineates specific values, views, and positions around what amounts to ‘transition’ and ‘justice’ in and for Palestine and Palestinians. Being rooted in and led by institutions that benefit from their position as emanations of colonial power means that TJ is more than simply an academic exercise. Moreover, when you consider the almost ‘complete hegemonic coalescence between the liberal Western view of things and the Zionist—Israeli view’ to borrow from Edward Said, and when set alongside the utterly destructive outworking of the liberal peacebuilding framework that has been enforced on the Palestinian people, the wider academic support for TJ in Israel is far from surprising. Embedding TJ in spaces where the coloniser has a monopoly over the language, discourse, and framing of issues that have direct implications for the colonised—and by availing of the support of powerful experts who have not heeded the PACBI call to boycott—speaks volumes about the sub-disciplines guiding, liberal values.

¹³ ‘Minerva Stiftung’ <<https://www.minerva.mpg.de/>> accessed 4 May 2025.

¹⁴ ‘German Research Institute Sacks Professor over Criticism of Israel’ (*Middle East Eye*, 9 February 2024) <<https://www.middleeasteye.net/news/war-gaza-german-research-institute-sacks-professor-over-criticism-israel>> accessed 4 May 2025.

Conclusion

When the inevitable, yet still painfully distant, ceasefire arrives those silent ‘experts’ who found speaking up and out for Palestine such a moral quandary, will no doubt find their voice, providing intellectual ‘hot takes’ on how to engage in ‘post-conflict’ reconstruction, how to platform difficult conversations around truth recovery, how to engage in ‘institutional reform’, whilst simultaneously avoiding an awkward engagement with the settler colonial elephant in the room. Speaking out after the fact will be the order of the day for many and their interventions will mirror other bastard versions of liberal peacebuilding, those that have consistently been weaponised and imposed upon a Palestinian population for whom the very concept of ‘peace’ has long been elusive. As Rabea Eghbariah¹⁵ observed: ‘Scholars tend to sharpen their pens after the smell of death has dissipated and moral clarity is no longer urgent’. The ‘transitional justice entrepreneur’¹⁶ (p. 211) stands poised, waiting in the wings to apply for that research grant, to launch that ‘new’ international symposium, to ask ‘why can’t they all just get along?’ The Israeli academy, with their useful European and American allies, those who claim to be convinced that the purported last bastion of Israeli ‘liberalism’ remains—despite a genocide to the contrary—will provide the requisite academic infrastructure¹⁷.

It is the words of Palestinian intellectual Ghassan Kanafani that best sum up the sheer folly of this entire enterprise: ‘They steal your bread then give you a crumb of it... then they demand you thank them for their generosity... O their audacity’. Scholars truly committed to a justice oriented, decolonial future in and for Palestine cannot seek to ‘radicalise’ a discipline that has revealed itself to be a supreme liberal tool routinely pressed into service for settler colonial conquest. We must avoid engaging in fragmented and tokenistic approaches to colonial peacebuilding, those that seek to isolate, contain, and ultimately silence legitimate and

¹⁵ Rabea Eghbariah, ‘The “Harvard Law Review” Refused to Run This Piece About Genocide in Gaza’ <<https://www.thenation.com/article/archive/harvard-law-review-gaza-israel-genocide/>> accessed 4 May 2025.

¹⁶ Tshepo Madlingozi, ‘On Transitional Justice Entrepreneurs and the Production of Victims’ (2010) 2 *Journal of Human Rights Practice* 208.

¹⁷ Maya Wind, *Towers of Ivory and Steel: How Israeli Universities Deny Palestinian Freedom* (Verso 2024).

necessary demands for a justice oriented Palestinian liberation. ‘When the contours of Palestine are being redrawn in blood,¹⁸ and when unconscionable images of starving, injured, and dead children, women, and men have become our daily breakfast’, how can any serious legal scholar give oxygen to a liberal TJ industrial complex that is less focused on a decolonial and liberated Palestine (*justice*) and more interested in smoothing over a difficult and tricky imagined future (*transition*).

It was Malcolm X who once opined: ‘If you stick a knife in my back nine inches and pull it out six inches, there is no progress. If you pull it all the way out that is not progress. Progress is healing the wound that the blow made’. TJ interventions in Palestine, if they are to have any semblance of relevance, must consider directly the wounds inflicted by Zionism and its relentless attempt to erase the Palestinian people. Without this, TJ in and on Palestine is little more than pseudo-intellectual gaslighting or a sick joke.

¹⁸ Omar Jabary Salamanca, Punam Khosla and Natasha Aruri, ‘Intervention — “It’s Been 164 Days and a Long Century: Notes on Genocide, Solidarity, and Liberation”’ (*Antipode Online*, 11 April 2024) <<https://antipodeonline.org/2024/04/11/notes-on-genocide-solidarity-and-liberation/>> accessed 4 May 2025.

Rethinking International Law After Gaza Symposium: Trade, Resistance and International Law – Responding to Atrocities*

M. Beheşti Aydoğan^a, Ömer Erkut Bulut^b

^aM. Beheşti Aydoğan holds a PhD from the University of Warwick's School of Law and is a member of the Istanbul Bar Association.

^bÖmer Erkut Bulut is an Assistant Professor at Boğaziçi University Faculty of Law in Istanbul, Türkiye.

It is common to hear claims about trade's value in preventing conflicts. It is a central notion of liberal theories of international relations: from Kant's commercial republics to Friedman's McDonald's hypothesis, trade and commerce are represented as a requisite for peace. The least bold account of this claim is that the world becomes a 'better' place with international trade (IMF¹).

Yet, there appears to be a disturbing contrast when atrocities are committed. In those instances, international trade is reduced to either a neutral element run through private contracts, or a liberal restriction applied to arms deals between buyer third world states and manufacturer first world states. In the former, trade appears redundant in the prevention of conflicts. In the latter, trade reinforces a value hierarchy in the international system. This hierarchy runs on a familiar narrative: while 'villainous' and 'backward' third world states violate human rights,

¹ Brad McDonald, 'International Trade: Commerce among Nations' (*IMF*) <<https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Trade>> accessed 4 May 2025.

* This contribution, edited by Mohsen al Attar and Hasan Basri Bülbül, was originally published as part of the *Opinio Juris* symposium "Rethinking International Law After Gaza," which followed the Boğaziçi University International Law Conference (BILC) 2024. We thank *Opinio Juris* and the authors for their kind permission to include it in this volume. <https://opiniojuris.org/2024/10/11/rethinking-international-law-after-gaza-symposium-trade-resistance-and-international-law-responding-to-atrocities/>

rule-of-law-abiding weapons manufacturers in the first world respond to the conscience of humanity by adhering to their extraterritorial² human rights obligations (see, EU Criterion Two³). However, when benevolent and civilised states commit atrocities, these actions are often dismissed as the unfortunate consequences of war. The suspension of arms trade is not even considered until⁴ the scale of the atrocities becomes too significant to ignore. When it is raining bombs, trade becomes a passive factor against carnages and barbarisms of weapon-yielding entities, states or non-state entities or institutions. Suspension of arms trade is either not considered or considered too late and at an insufficient scale. The larger question of international trade remains off-topic.

Deploying *a contrario* reasoning, resistance movements regard trade as a potential intervention against states constantly exerting violent control and routinely killing people. Israeli violence in Palestine has also provoked the pursuit of trade as a resistance strategy in the form of a boycott (which has been running at different levels and degrees). For instance, many people avoid using products and companies supportive of the Israeli occupation in Palestine.

Boycott can also take the form of a government policy as a cut-off in trade relations. Today, many states have sought to disrupt trade with Israel, and many are under pressure to do more. The Arab League issued⁵ its first formal boycott of Zionist commerce in 1945 and reiterated this in 1948. In the recent war on Gaza, Malaysia has completely cut off trade with Israel, citing trade's role in contributing violence in Gaza. In a similar fashion, despite retaining a considerable surplus in the bilateral trade, the Turkish Government also heeded the public calls for cutting off trade with Israel. Hence, there is a communal belief in the utility and power of trade against violent repressive actors.

² 'Germany Halts All Arms Exports to Countries Bombing Yemen' (*Middle East Eye*, 22 January 2018) <<https://www.middleeasteye.net/news/germany-halts-all-arms-exports-countries-bombing-yemen>> accessed 4 May 2025.

³ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment [2008] OJ L335/99.

⁴ 'Macron Calls for Halt to Arms Deliveries to Israel' (*Yahoo News*, 5 October 2024) <<https://www.yahoo.com/news/macron-calls-halt-arms-deliveries-164830646.html>> accessed 4 May 2025.

⁵ Lorenzo Rotunno and Pierre-Louis Vézina, 'Israel's Open-Secret Trade' (2016) HAL Working Paper 2016-38, 8 <<https://shs.hal.science/halshs-01384373/document>> accessed 4 May 2025.

However, this communal belief is distinct from claims about the inherent value of trade in promoting peace and safety of people. Boycotts are run on a presumption that applying economic pressure might constrict the abilities of a violent regime. A trading nation, on the other hand, is expected to be peaceful. Yet, as colonial history reveals, trade can be a violent practice in itself, as exemplified by the Spanish trade in gold from the Americas or the British opium trade in China. US neocolonial practices in the petrodollar economy showcased similar degrees of violence in Iraq in the postmodern period.

The contrast between trade's role in peaceful relations and its subsequent use as a preventative measure in conflicts and atrocities indicates a paradox. The contrast appears in the inherent capacity of trade to streamline peace and its subsequent use to curb states' capacity to commit atrocities. Hence, we are left to ask whether the law has anything to offer or if it is complicit in furthering violence and deprecation. Does international economic law govern this paradoxical relationship between trade and peace in cases of atrocities?

At first glance, one can casually conclude that the law does not seem to enable or oblige the subject of international law to explicitly denounce violent repressive regimes that commit genocidal actions. The Israeli violence in Gaza continues and has spilled over to other territories recently, especially Lebanon but also Yemen. But from a trade law point of view, another important element is the role played by peripheral states to circumvent even the limited legal restrictions that economic law has to offer. An example is the use of Southern Cyprus as a transition point for weapon deliveries to Israel from western states. But international trade extends beyond arms and international trade law could enable states and companies to disassociate themselves from atrocities. The ideal disassociation takes place not by being neutral about an ongoing genocide, but proactively invalidating sales and shipping contracts, preventing third party sales to genocidal entities. All these require a legal assurance of these private and public entities.

Regular Routes: Arms Trade Restrictions

Common⁶ human rights law and humanitarian law approaches present a soft narrative that generates prolonged debates and procedures when compared to the speed and vigour of atrocities such as genocide and ethnic cleansing.

Yet, the present state of the law produces comical irregularities. For instance, Germany is allegedly slowing the approval of new arms exports to Israel. However, the government spokesperson emphasises⁷: ‘There is no German arms export boycott against Israel’. Combined with Germany’s reluctance to acknowledge the ongoing genocide, this generates potential for double standards. More importantly, it indicates that the present law, as it is applied in the European domestic context (as weapon exporters), does not enable a prompt response to atrocities via trade.

Likewise, the 2013 Arms Trade Treaty has also proven to be unfruitful despite its 113 parties, including European weapon exporters. The gap between legal risk assessment procedures on human rights and humanitarian law and the reality of an ongoing genocide is vast. Compare, for instance, the dire situation in Gaza and the German argument on ‘the risk prognoses required by international law’ before the ICJ which did not authorise provisional measures in *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*⁸ (emphasis added):

39. Our four-tiered legal and political control regime of exports of arms and military goods is robust. It is democratic, as transparent as possible given the sensitivity of the material involved, and it is subject to parliamentary and, to some extent, judicial oversight.

40. *Nicaragua has provided no evidence whatsoever that the German licensing policy is not appropriate for conducting the risk prognoses required by international law.* By contrast, the German legal framework provides

⁶ ‘Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria – a Practical Guide | International Committee of the Red Cross’ (12 September 2017) <<https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>> accessed 4 May 2025.

⁷ Riham Alkousaa, ‘Germany Has Stopped Approving War Weapons Exports to Israel, Source Says’ *Reuters* (19 September 2024) <<https://www.reuters.com/world/germany-has-stopped-approving-war-weapons-exports-israel-source-says-2024-09-18/>> accessed 4 May 2025.

⁸ *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v Germany)* (Order) [2024]

for constant reassessment in the light of highly dynamic situations on the ground.

The potential of arms trade routes is limited to a risk-based analysis that fails to correspond to ongoing urgent situations in practice. The larger system of international trade seems to follow suit as we discuss below.

Economic Institutions, Free Trade and Countering Atrocities

The post-WWII international economic order is also rooted in the Bretton Woods Agreements in 1944. Reasoning that the barriers to free trade and investment exacerbated the economic problems, fuelling extremist and fascist movements in Europe and eventually leading to a destructive war, the victors of WWII created mechanisms to facilitate free trade and investment. They also established the IMF and World Bank Group to provide the necessary funding to nations for development projects. A form of liberal institutionalism took the lead in the design of the economic order. The mentality set out in the Bretton Woods Agreement has remained dominant in international economic relations which narrated that fewer barriers to trade and investment would always be positive, prompting prosperity, creating jobs, transferring knowledge, and even preventing wars by deepening the economic connections between nations. Theories of economic interdependence tell a similar story about the value of trade for peace.

While the mentality is subject to criticism in different aspects, international economic law focuses almost exclusively on facilitating trade and investment more and more. This ethos is reflected in its institutions and principles. International trade, investment, financial agreements and monetary organisations adhere to the opinion that⁹:

‘[p]rivate international capital flows, particularly foreign direct investment, along with international financial stability, are vital complements to national and international development efforts. Foreign direct investment contributes toward financing sustained economic

⁹ ‘Global Compact for Safe, Orderly and Regular Migration’ Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration (Marrakesh 10–11 December 2018) (19 December 2018) UN Doc A/CONF.198/11.

growth over the long term. It is especially important for its potential to transfer knowledge and technology, create jobs, boost overall productivity, enhance competitiveness and entrepreneurship, and ultimately eradicate poverty through economic growth and development.’

Therefore, international economic law is mainly focused on eliminating barriers to investment and trade no matter what. But what about when those barriers are justified? Or when do we set up barriers to trade that exacerbates atrocities?

There are areas where international economic law permits action to limit trade, investment and finance from and/or to other state(s). Under the General Agreement on Tariffs and Trade (GATT) Article XXI, member states may impose trade restrictions or other measures necessary for protecting their essential security interests. On the other hand, the security exceptions cover scenarios where the contracting party is involved in the conflict, rather than providing a treaty exception on humanitarian grounds. In addition, GATT provides general exceptions allowing members to take measures that would otherwise violate WTO obligations if they are necessary to protect public morals (Article XX(a)) or human life and health (Article XX(b)). Yet, the scope of application of the protection of public morals and human life exception is unclear. Consequently, international trade law mostly allows for the restriction of trade in a case of self-interest. This self-interest could be extended to the collective interest. Apart from formal participation in a conflict, states could respond to oppressive violent activities through economic action. An exception could be extended as a countermeasure against states committing atrocities.

The recent practice in trade agreements also increasingly adopts human rights clauses which recognise exceptions to treaty obligations, including those of the EU and the US. The exceptions or carve-outs in international investment agreements (IIAs) are also adopted more and more by contracting states. The carve-outs which emphasise a state’s right to regulate or police powers are specifically invoked on the grounds of national security, environmental protection, and public health. Public order, public morals, taxation, and labour rights are other valid grounds in IIAs¹⁰. International monetary organisations, primarily

¹⁰ Omer Erkut Bulut, ‘Drawing Boundaries of Police Powers Doctrine: A Balanced Framework for Investors and States’ (2022) 13 *Journal of International Dispute Settlement* 583.

the IMF and World Bank Group, also have the so-called safeguarding policies and guidelines in order to prevent funding entities and projects which cause harm to people and environment, such as the World Bank's Environmental and Social Framework (ESF).

Institutions and principles of international economic law seem to care about upholding human rights and dignity when striving for increased economic cooperation and development. While there is no direct reference to armed conflict and atrocities (except when the host state is part of it), the measures can be justified by interpretation when the violations of the peremptory norms of international law are concerned, as we are witnessing in Gaza. Yet, carve-outs and safeguarding policies become redundant given the political alignment of western states and western-oriented institutions especially in the Gazan context where they actively support Israel. This is also exemplified in the context of arms trade as discussed above about Germany. The political positionality of the actors taking action in cases of atrocities are also important for the practice of law.

The question one might ask is why international economic and financial institutions are indifferent to Israel's ongoing atrocities? Immediate memory shows that those institutions can act. When Russia launched its invasion of Ukraine in February 2022, western led international community was *swift* to exclude Russia from many international economic institutions. Within a week, the World Bank announced¹¹ that it had halted all cooperation programs with Russia (and also Belarus for its support to Russia in its special military operation). Draconian economic sanctions were brought against the Russian Federation and few in the circles of international economic law protested. There were reports indicating "U.S. and the European allies examining ways to suspend Russia's 'most favoured nation' trade status in WTO"¹². The IMF promptly convened a meeting within a week to provide 1.4 billion USD emergency financing to Ukraine, while Canada advocated expelling "arsonist Russia" from the IMF even though the Articles of Agreement of IMF did not have any provision on the impact

¹¹ 'Overview' (*World Bank*) <<https://www.worldbank.org/en/country/russia/overview>> accessed 4 May 2025.

¹² 'Explainer: Ousting Russia from WTO, IMF Would Mark End of an Era | Reuters' <<https://www.reuters.com/markets/asia/ousting-russia-wto-imf-would-mark-end-an-era-2022-03-09/>> accessed 4 May 2025.

of the armed conflict and aggression by a member state. While the omission of the outcome of the violations of the peremptory norms of international law by a member state is admittedly a shortcoming of IMF's structure, it is also striking that, a year later, we have not had a simple debate regarding the repercussions of Israel's atrocities.

Trade, Peace and Genocide – What Next?

Atrocities such as the ongoing genocide in Gaza are true tests of the value of trade for peace and security of people. The same is true of the international law on trade and economic relations. The current role of IEL in responding to atrocities is barely positive. Its privileged use in certain cases such as Russia also adds another dimension to the questions around the international and universal character of international law. IEL is both insufficient and selective. The selectiveness indicates double standards while insufficiency works in favour of those carrying out atrocities. This effectively falsifies the premises of international free trade on peace.

Reinvigorating the law in favour of those who are suffering and want to proactively disassociate themselves from atrocities requires a broader understanding of the role of trade to develop prompt and adequate responses to atrocities. States, general public, private entities should be empowered to use trade in cases of atrocities and International law should protect those taking action against the oppressor actor from economic consequences of their actions. Currently, IEL does not have sufficient mechanisms and principles regarding how to counter atrocities. The disregard of responding to atrocities in the regulation of international trade and economic relations is one of the significant shortcomings of the current international economic order.

Rethinking International Law After Gaza Symposium: Unlawful Occupation as Ongoing Aggression – Rethinking Legal Responses in the Context of Palestine*

Ihsan Adel

Ihsan Adel is the Founder and Chair of Law for Palestine and an international lawyer currently pursuing a PhD in Germany.

Israeli occupation of Palestine has long tested the limits and efficacy of international law. However, recent legal developments, particularly the ICJ's advisory opinion¹, have intensified the call to recognise this occupation not only as an illegal act but as an outright form of aggression. This marks a significant turning point. The prohibition of aggression lies at the core of the international legal order established after the World Wars; committing it constitutes² one of the most egregious violations of the global order, threatening international peace and security, and bringing with it individual criminal responsibility. As such, international law demands an immediate, collective, and decisive response. Yet, despite overwhelming evidence of Israeli aggression, the international legal community has been slow -dangerously so- to recognise and act upon this crime.

¹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024].

² International Criminal Court, *Resolution RC/Res.6, The crime of aggression* (11 June 2010).

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This delay has had catastrophic consequences. The ongoing occupation, now extending over decades, has not only inflicted immense suffering but has also repeatedly undermined international peace and security. The recent conflagration in Gaza and the wider region is a direct outcome of this failure. Had the international community acted decisively, applying international law effectively and with urgency, much of the bloodshed could have been prevented. Tragically, this failure persists, even two months after the ICJ's advisory opinion. As 39 UN experts have warned³, "the edifice of international law stands upon a knife's edge". Reinvigorating international law -and critically rethinking its application- must be at the heart of our discourse. This rethinking must extend beyond legal interpretation to encompass the mechanisms and processes used to enforce international law.

The Nexus Between Unlawful Israeli Occupation and Aggression: Revisiting the ICJ's Findings

The ICJ's advisory opinion on the unlawfulness of Israeli occupation of Palestine presents a compelling case for recognising this occupation as an act of aggression. The Court emphasised⁴ that occupation inherently involves the continuous use of force in foreign territory, governed by *jus ad bellum*-the body of international law that governs the legality of the use of force. This conclusion is critical. Under the United Nations General Assembly's (UNGA) definition of aggression⁵ and Article 8 bis of the Rome Statute⁶, any unlawful use of force, including illegal occupation and annexation, constitutes aggression.

The ICJ unequivocally stated that any exercise of effective control by an occupying power must adhere to the prohibition on the use or threat of force. A breach of this principle constitutes an act of aggression. According to the Court, Israel's ongoing annexation of Palestinian territory, its assertion of permanent control, and its obstruction of

³ UN Office of the High Commissioner for Human Rights (OHCHR), 'UN Experts Warn International Order on Knife's Edge, Urge States to Comply with International Law' (5 September 2024) <<https://www.ohchr.org/en/statements-and-speeches/2024/09/un-experts-warn-international-order-knifes-edge-urge-states-comply>> accessed 3 May 2025.

⁴ ICJ, *Legal Consequences (n 1)*.

⁵ UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314(XXIX).

⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

Palestinian self-determination violate fundamental tenets of international law, exceeding the bounds of mere occupation, rendering Israel's presence in Palestine unlawful. The ICJ also concluded that these actions contravene the prohibition on the use of force in international relations and the principle of non-acquisition of territory by force. Such violations directly breach Article 2(4) of the United Nations Charter, which explicitly prohibits the threat or use of force against the territorial integrity or political independence of any state. Although the Court refrained from explicitly labelling the Israeli occupation as aggression, its conclusions on the illegal occupation align with the legal definition of aggression under international law.

Why Has the ICJ Avoided the Term 'Aggression'?

The implicit indication of Israel's actions constituting aggression is a label the Court and other UN bodies have long been reluctant to adopt, largely due to the significant political ramifications. However, numerous states and organisations -including Namibia, the League of Arab States, Lebanon, Algeria, and Palestine- have argued in their submissions⁷ to the Court that the ongoing Israeli occupation constitutes a form of aggression. Additionally, UN Special Rapporteur Francesca Albanese has called⁸ for a 'paradigm shift,' asserting⁹ that the occupation is 'an intentionally acquisitive' endeavour, entailing an unlawful use of force, and can thus be seen as an act of aggression.

The ICJ's cautious approach is not unprecedented. Despite the clear parallels between illegal occupation and aggression, the Court has consistently been cautious in applying the term "aggression" in its rulings. To date, it has never explicitly used the term to describe the actions of

⁷ *Legal Consequences (n 1)*.

⁸ Hassan Ben Imran and Ihsan Adel, 'An International Paradigm Shift Recognising the Root Causes of Palestine's Struggle? Reflection on the UN SR's Report and Recent Developments in the Discourse on Palestine/Israel' (Law for Palestine, 21 December 2022) <<https://law4palestine.org/an-international-paradigm-shift-recognising-the-root-causes-of-palestines-struggle-reflection-on-the-un-srs-report-and-recent-developments-in-the-discourse-on-palestine-israel/>> accessed 3 May 2025.

⁹ UNGA, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem* (77th sess, 21 September 2022) UN Doc A/77/356.

any state. This reluctance likely stems¹⁰ from the Court’s traditional role in adjudicating state disputes, thus avoiding the need to engage with the definition and criteria of aggression, which ultimately leads to individual criminal responsibility. Moreover, it may reflect the principle of judicial economy, as the legal framework governing the use of force -enshrined in Article 2(4) and Article 51 of the UN Charter- and the *jus cogens* norms of international law, are more firmly established.

Nevertheless, the ICJ has often invoked the concepts of unlawful “use of force” and “aggression” interchangeably in its opinions, frequently referencing General Assembly Resolution 3314 on the Definition of Aggression and other key legal instruments to guide its judgments. For instance, in the case¹¹ of Uganda’s occupation of parts of the Democratic Republic of Congo (DRC), the ICJ avoided directly labelling Uganda’s actions as aggression. However, it extensively cited the definition of aggression to describe Uganda’s violation of international law, particularly its infringement on the DRC’s territorial integrity and its unlawful use of force during the occupation of Ituri. Several judges, in their separate opinions¹², explicitly characterised Uganda’s actions as aggression, underscoring the legal connection between illegal occupation and aggression.

The ICJ tends to frame violations of sovereignty and the illegal use of force in broader terms, avoiding direct references to the crime of aggression. However, this cautious approach is becoming increasingly unsustainable in light of the situation in Palestine, where the international legal system’s failure to act decisively risks rendering its principles meaningless.

The UN Security Council and General Assembly’s Approach to Aggression

Notably, the Security Council has similarly been reluctant to invoke the term “aggression” in certain contexts. For instance, during Uganda’s

¹⁰ Dapo Akande and Antonios Tzanakopoulos, ‘The Crime of Aggression before the International Criminal Court: Introducing a Coherence-Based Analysis’ (2015) SSRN <<https://papers.ssrn.com/abstract=2587722>> accessed 3 May 2025.

¹¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2005] ICJ Rep 168.

¹² *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgment) [2005] ICJ Rep 168, 306 (Separate Opinion of Judge Simma).

occupation of the DRC, the Council copied the definition of aggression when condemning¹³ Uganda's unlawful occupation and its illegal use of force but refrained from explicitly labelling it aggression. By contrast, in South Africa's 1976 invasion of Angola, the Security Council swiftly identified¹⁴ the violation of sovereignty and territorial integrity as an act of aggression, underscoring the political factors that influence the use of this term in international discourse.

In contrast, the General Assembly has often been more assertive in its application of the term. It designated several occupations, including South Africa's occupation of Namibia, Portugal's occupation of Guinea-Bissau, and the Russian invasion of Ukraine, as acts of aggression. Notably, during the 1980s, the General Assembly condemned¹⁵ Israel's occupation of Arab territories as aggression, demanding Israel's immediate and unconditional withdrawal (a categorisation that has not been used in the context of Palestine since, particularly following the initiation of the so-called peace process, which has failed dramatically).

Based on previous General Assembly resolutions, three conditions can be identified for determining when an occupation constitutes aggression:

1. Violation of Territorial Integrity and Sovereignty: The occupation must breach the territorial integrity, political independence, and sovereignty of the occupied state.
2. Denial of Self-Determination: The occupation must deny or obstruct the right to self-determination of the people under occupation.
3. Hostile and Unprovoked Nature: The scale and severity of the ongoing presence in the occupied territory are both hostile and unprovoked, marked by, for instance, claims of a permanent foreign occupation, widespread loss of life, extensive destruction of property, or the displacement of vast numbers of refugees.

These conditions are clearly fulfilled in the case of Israel's occupation of Palestine, since its inception and perhaps now more than ever. The ICJ's advisory opinion recognised the violation of Palestinian sovereignty, the denial of their right to self-determination, and the ongoing annexation of Palestinian land -acts that fulfil the criteria for aggression under the

¹³ UNSC Res 1341 (22 February 2001) UN Doc S/RES/1341.

¹⁴ UNSC Res 387 (31 March 1976) UN Doc S/RES/387.

¹⁵ UNGA Res 41/128 (4 December 1986) UN Doc A/RES/41/128, 'Situation in the Middle East'.

General Assembly's definition (Even if the initial occupation in 1967 was allegedly legitimate as a response to a security threat, its continued nature, in violation of international law and Palestinian self-determination, as the ICJ concluded, now constitutes¹⁶ illegal use of force, i.e. aggression).

The Critical Need for Timely Legal Action

The failure of the international legal system, especially states at the UNSC and the UNGA, to acknowledge this as an on-going aggression and enforce the rule of law has allowed the aggression to fester. Decades of inaction have allowed Israel to further entrench its occupation, solidify its control over Palestinian land, and systematically violate the Palestinian people's right to self-determination. The ICJ's advisory opinion on Palestine, while cautious, points towards the Israeli occupation as a form of aggression and this characterisation has far-reaching implications. Under international law, aggression is a breach of the core principle on which the post-World War II legal order rests and hence cannot be justified by security concerns. It constitutes an illegitimate and unjustified use of force, and the global community must recognise this legal reality and respond accordingly. If this situation continues, particularly in light of the ICJ's advisory opinion and the UNGA Resolution, it poses a threat not only to the Palestinian people but also to the foundations and integrity of the international legal system itself.

Today, the international community's failure to act swiftly and decisively against the occupation has allowed the conflict to evolve into a broader regional crisis. The ongoing violence across the Middle East can be traced directly to this initial failure to confront Israeli aggression with the response it necessitates as per international law. Furthermore, the states parties' inactions have eroded democratic values, as the growing divide¹⁷ between public opinion and government policy, along with the suppression of dissenting voices, becomes ever more apparent on the streets and university campuses of Europe and the United States. Had the international legal community acted when it was supposed to, much

¹⁶ Ralph Wilde, 'Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation' (2021) 22(1) *The Palestine Yearbook of International Law Online* 1 <https://doi.org/10.1163/22116141_022010_002> accessed 4 May 2025.

¹⁷ 'Public Opinion Poll: How 5 European Countries See Palestinian Issues - PIPD' (15 April 2024) <<https://www.thepipd.com/resources/polling-2024/>> accessed 4 May 2025.

of the violence, including the recent Gaza genocide, could have been prevented. This represents not merely a theoretical failure of international law but a practical failure to apply the law effectively and in a timely manner.

When the General Assembly acknowledged this legal and factual reality in the 1980s, recognising the Israeli occupation as an act of aggression, it had significant implications -albeit largely theoretical at the time- when it followed this classification with a call for action. In Resolution 38/180A (1983)¹⁸, the Assembly condemned any political, economic, or military support that enabled Israel to perpetuate its occupation and acts of aggression. The resolution called for the suspension of military assistance to Israel and the severance of diplomatic, economic, cultural, and technological relations. Today, thirty years later, in light of the ICJ's advisory opinion, the international community has reiterated these recommendations through a new UNGA resolution¹⁹, demanding measures to halt the illegal occupation, which is, in essence, an act of aggression, albeit without explicitly labelling it as such. The mistakes of non-compliance must not be repeated, and the stalemate that has persisted since the 1980s, in light of ongoing aggression, must not be allowed to resurface.

Rethinking International Law: A Call for Action

This brings us to a crucial juncture: the urgent need to rethink the application of international law in cases of aggression and illegal occupation. It should not require decades or the immense loss of life for acts of aggression to be recognised and addressed. The Israeli occupation has endured for far too long, shielded by a legal framework that is wilfully slow to act and hesitant to confront powerful actors.

To address this, the international community must develop mechanisms that ensure a more rapid and decisive response to aggression. First, the legal community must adopt a proactive stance, recognising prolonged occupation as aggression, especially when it entails systematic violations of sovereignty and self-determination. Second, international

¹⁸ UNGA Res 38/180 (19 December 1983) UN Doc A/RES/38/180, 'Situation in the Middle East'.

¹⁹ UNGA Res A/ES-10/L.31/Rev.1 (18 September 2024) UN Doc A/ES-10/L.31/Rev.1.

bodies such as the General Assembly -while acknowledging the limitations of the Security Council due to its self-imposed veto- must take swift and decisive action in such circumstances, holding aggressor states accountable without undue delay, including through the ICJ, as evidenced by its recent advisory opinion. International legal proceedings should no longer be impeded by geopolitical concerns.

In addition to recognising the status of an unlawful occupier as an aggressor, it is imperative to acknowledge that the struggle and resistance of the people under this occupation, insofar as it adheres to the applicable rules of international law, is legitimate. The persecution of such resistance by the occupying forces must be unequivocally rejected -as the General Assembly affirmed²⁰ in the 1970s²¹ and 1980s. Moreover, issuing illusory calls for negotiations between the parties only serves²² to legitimise the illegal aggression. Instead, the focus must be on the immediate withdrawal and the unequivocal end of the aggression and illegal occupation.

Under the ICJ advisory opinion²³ (para. 274) and the rules²⁴ of the Responsibility of States for Internationally Wrongful Acts, the unlawful use of force constitutes a violation *erga omnes*, signifying that states bear an obligation to act, including unilaterally and through regional groups and institutions, to prevent the continuation of aggression. This necessitates concrete measures, *inter alia*, the imposition of targeted sanctions, the severance of diplomatic relations, and the invocation of universal jurisdiction for crimes of aggression, ensuring that states cannot evade accountability through political influence. Furthermore, states must ensure accountability at the national level, holding their citizens and businesses responsible for aiding aggression, whether by serving in the occupying army or engaging in activities that enable the continuation of the illegal occupation. This obligation aligns with the UN General Assembly's recent resolution²⁵ on Palestine, which rightly recommended such measures to halt the ongoing aggression.

²⁰ UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625 (XXV).

²¹ UNGA Res 2787 (XXVI) (6 December 1971) UN Doc A/RES/2787 (XXVI).

²² Ardi Imseis, 'Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020' (2020) 31 *European Journal of International Law* 1055.

²³ ICJ, *Legal Consequences* (n 1).

²⁴ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10 (A/56/10), Chapter IV.E.1 (2001).

²⁵ UNGA Res A/ES-10/L.31/Rev.1 (n 1).

The role of local, regional, and international civil society and academic institutes is vital in this regard. As Richard Falk aptly described²⁶, there is a need for a “militant form of solidarity” or “militant activism” to cultivate the political will among nations to mount an effective challenge.

Conclusion

The Israeli occupation of Palestine stands as one of the most egregious examples of prolonged aggression in modern history. The ICJ’s advisory opinion brings us closer to recognising this occupation for what it is, a continuous act of aggression, but the international legal community must go further. We need a rethinking of international law that prioritises timely responses to aggression, ensuring that no state, no matter how powerful, can commit acts of aggression without facing legal consequences.

The lesson from Gaza and the broader region is clear: delayed justice is no justice at all. The failure to halt Israeli aggression in Palestine has not only prolonged the suffering of the Palestinian people but has also sown the seeds of destruction for the entire international legal order. The time for rethinking, and indeed, for decisive action, is now.

²⁶ ‘Full Transcript: Palestine in the UN: The Consent and the Variable, the Present and the Future’ (*Law for Palestine*, 21 March 2023) <<https://law4palestine.org/full-transcript-palestine-in-the-un-the-consent-and-the-variable-the-present-and-the-future-with-the-special-rapporteurs/>> accessed 4 May 2025.

PART FOUR

Rethinking International Law After Gaza BILC 2024: Summary and Declaration*

Hüseyin Dişli^a, Ömer Erkut Bulut^b, Hasan Basri Bülbül^c,
M. Beheşti Aydoğan^d

^aHüseyin Dişli is a PhD candidate at the University of Kent and convening Legal History and Legal Philosophy modules at Boğaziçi University Faculty of Law. He serves as a legal counsel to the Freedom Flotilla Coalition (FFC).

^bÖmer Erkut Bulut is an Assistant Professor at Boğaziçi University Faculty of Law in Istanbul, Türkiye.

^cHasan Basri Bülbül works as an Assistant Professor of Public International Law at Boğaziçi University Faculty of Law in Istanbul, Türkiye.

^dM. Beheşti Aydoğan holds a PhD from the University of Warwick's School of Law and is a member of the Istanbul Bar Association.

On 3-4 August 2024, over 100 international lawyers from across the world gathered at Boğaziçi University¹ in Istanbul to act on our shared outrage at the ongoing Israeli genocide in Gaza, 76 years of Nakba, apartheid, dispossession, and denial of basic rights/freedoms. At the “Rethinking International Law After Gaza” conference, participants considered how international law might and/or should look in a world that cannot – and must not – forget the atrocities currently underway.

This declaration summarises the findings of BILC 2024 and puts forward a declaration of action.

Conference Summary

During the BILC 2024 conference, international law specialists from a variety of perspectives presented their reflections on Israel's actions. The

¹ ‘Welcome to Boğaziçi University International Law Conference | Boğaziçi University International Law Conference’ <<https://biloc.bogazici.edu.tr/>> accessed 3 May 2025.

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genocide in Gaza cannot be divorced from the systematic oppression and periodic massacres endured by the Palestinian people since 1948. As many BILC 2024 speakers addressed, colonialism is not merely a backdrop, but rather a central force shaping the very foundations of international law and influencing its application today. Given that international law's structures reflect colonial violence and hierarchies, is international law capable of supporting Palestinians in their quest for justice and freedom?

The conference presentations are summarised under the following themes:

I. International Law in Gaza

Speakers explored whether international law has provided sufficient redress for the Palestinians amidst the ongoing genocide, noting that it has been unable to stop it. They discussed the *prima facie* nature of the genocide in Gaza amidst mass deliberate killings, torture, the elimination of critical infrastructure, a total siege that prevents adequate humanitarian aid, food and water from reaching the population, domicile, mass displacement, deliberately imposed starvation, and a total obliteration of the healthcare system. International law provides a technical language for evaluating genocidal acts but, when accounting for Israel's behaviour these past months, that language was found to be incomplete.

II. The International Court of Justice's Advisory Opinion

ICJ Advisory Opinion (AO) of 19 July 2024 is an authoritative statement of relevant law. The AO has declared Israel's occupation of the Palestinian territories as illegal, mandated Israel to end it, dismantle all settlements, provide full reparations to Palestinian victims and facilitate the return of those displaced.

Speakers emphasised the four main findings of the AO and their implications.

First, the ICJ observes that Israel violates the *jus cogens* and *erga omnes* obligation to respect the right to self-determination for the Palestinian people as well as the obligation arising from the prohibition of the use of force to acquire territory. The ICJ underscores the obligation of all states to cooperate in ending Israel's illegal occupation and ensuring the full realisation of Palestinian self-determination, including the territorial integrity of the OPT. The Court gives the task to the UN General

Assembly and the UN Security Council of pronouncing on the modalities while all states have an obligation to cooperate with the UN in putting these modalities into effect.

All States are also under an obligation not to recognise any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967. All states are further under an obligation not to render aid or assistance in maintaining the current situation; to ensure that the impediment to the exercise of the Palestinian people's right to self-determination is brought to an end, and to ensure that Israel complies with international humanitarian law. The AO calls on third states to actively support the Palestinian struggle by providing material and moral support while avoiding complicity in Israel's violations.

Second, as to the right to return, the AO explicitly recognises the right to return of Palestinians who were displaced after the Israeli occupation of Palestinian territories in 1967. The Court does not expressly address 1948 displacement due to the narrow framing of the question by the General Assembly, which only referred to the Israeli policies and practices after the occupation in the OPT. As the speakers noted, however, the right to return is not confined to post-1967 displacements but includes earlier forced expulsions which started even before 1948. This is customary international law as reflected by several UNGA Resolutions, primarily Resolution 194 (III) of 1948, which explicitly affirms the right of Palestinian refugees to return to their homes including to territories of what is now Israel today.

Third, the AO acknowledges that Gaza is occupied territory as Israel continues to exercise effective control over Gaza's land, sea, and air borders, which affects the movement of people and goods. Israel's obligations as the occupying power correspond to its level of control. Israel's policies, -including the blockade- obstruct the realisation of the Palestinians' right to self-determination. Speakers concluded that by inference, the naval blockade, the siege of Gaza, the Israeli control of the Rafah borders and its operations in Gaza are unlawful.

Fourth, the AO confirms the existence of apartheid in everything but name. While there was a reluctance by a segment of the Court to use the term apartheid, the longest segment of the AO is dedicated to the issue of discrimination and a breach is found in this regard of the UN Charter, the International Convention on Civil and Political Rights and

the Convention on the Elimination of Racial Discrimination. Speakers considered that the description of the discrimination also constitutes the crime of apartheid and called for the revival of the Apartheid Convention's monitoring body.

III. Inequality in the International Legal System

Speakers emphasised how the events in Gaza have highlighted the inadequacies, *and systematic failures*, of existing legal frameworks and the need for transformative approaches that integrate marginalised perspectives and challenge insufficient, even unjust norms. The normative and practical capacity *limitations* of international law raise significant questions regarding its integrity and applicability, leading to a 'crisis of implementation' where equal parties are treated unequally. Specifically, power has historically been leveraged to reshape legal norms – this being a practice that aligns with Israel's ongoing efforts to cater international law to its advantage.

IV. Decolonising International Law

Speakers deconstructed how legacy of colonialism manifests itself in the methodologies, ontologies, and epistemologies employed in the study and practice of international law. The need to decolonise international law is more urgent now than ever. Decolonial approaches, including epistemological pluriversalism, can contribute to decolonising- legal and otherwise- knowledge production more holistically, reflecting the lived realities of marginalised communities. The purported universality of international law often masks deep-seated (colonial & post-colonial) biases, while the genocide in Gaza has made it more impossible than ever to ignore the need for a legal order that genuinely reflects the rights and aspirations of all peoples—not just the global North. Attempts to decolonise international law are one key route to recalibrating international law away from its colonial legacy and towards an order that both perceives and treats equals equally.

V. Legal Strategies and Coordination for Palestinian Liberation

During the conference, the necessity of cohesive legal strategies and coordinated efforts for Palestinian liberation emerged as a recurrent theme across multiple discussions. Speakers underscored that those

within the legal profession bear a unique responsibility to act in solidarity with the oppressed, advocating for justice irrespective of creed, language, or ethnicity. This solidarity, however, must be renewed on more deliberate and studied terms, with clearly defined goals and coordinated strategies that genuinely reflect the aspirations of the Palestinian people for self-determination and liberation. Participants reflected on the troubling tendency within legal circles to view Palestinians merely as subjects or objects of charity, rather than as pivotal agents of legal and political transformation. This reductionist view neglects the rich diversity of perspectives and the innovative potential that Palestinians bring to their own struggle. It is imperative, therefore, to recognise that legal advocacy for Palestine must extend beyond traditional litigation, embracing a broader spectrum of legal and political tools to advance the cause of liberation. In synthesising these discussions, several key areas of focus were identified as critical to advancing a more effective legal strategy for Palestinian liberation. There is an urgent need for better coordination across different legal jurisdictions to ensure a unified approach that can effectively challenge Israel's actions on multiple fronts. Legal protections must be strengthened to safeguard Palestinians and their advocates from reprisals and legal persecution, ensuring they can continue their work without fear of retribution. Several discussions emphasised the importance of establishing robust legal frameworks that uphold the right to resist Zionist racism and settler-colonialism, recognising this resistance as a legitimate response to systemic oppression and apartheid. It is imperative to enhance the collection of evidence, improve case coordination, and sharpen prosecutorial strategies to hold perpetrators accountable and advance the cause of justice for the Palestinian people.

Declaration of Action

BILC 2024 participants join the following call for action to achieve justice for Palestinians:

- **Re-Prioritise UN Resolution 194:** Building on the ICJ Advisory Opinion affirming the Palestinian right to self-determination, particularly the right of return and reparations, efforts should focus on re-prioritising UN Resolution 194 and the mandate that Palestinians must be allowed to return to their original homes and lands. This resolution, which addresses the right of return and reparations for

Palestinian refugees, must be upheld as a central mechanism for achieving justice for Palestinians.

- **Shift to Justice-Centric Frameworks:** The international community must transition from state-centric approaches to justice-centric frameworks in addressing and seeking resolution to Palestinian conditions. This shift should emphasise prioritising human rights, accountability, and justice for Palestinians over purely diplomatic, political, or state-focused resolutions.
- **Reinstate UNGA Resolution 3379:** Advocate for the reinstatement of UNGA Resolution 3379, which equated Zionism with racism, and push for its enforcement. This should be coupled with efforts to frame Zionism under the same international legal standards applied to other ideologies promoting racial superiority, such as those condemned by UN General Assembly Resolution 68/150, which was passed on 18 December 2013 and is entitled, “Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance”.
- **Recognise the Nakba as an Ongoing Crime:** Recognise the earliest Zionist colonial massacres, rapes, destruction of villages and the ethnic cleansing and displacement of the native population (known in Arabic as the Nakba) not merely as a historical event, but as an ongoing crime of expanding apartheid and settler colonialism. Zionist colonisation *should be conceived of, and addressed,* as an internationally coordinated criminal operation.
- **Strengthen South-South Cooperation:** Develop and formalise institutional relationships and coalitions between global South institutions, inspired by conferences and initiatives like BILC 2024. Such partnerships should focus on mutual support, information exchange, and coordinated action to dismantle colonialism and support Palestinian rights.
- **Leverage International Economic Law:** Leverage international economic and trade law to protect Palestinian national and personal economic interests and challenge the legitimacy of Zionist economic activities in occupied territories. Furthermore, the mechanisms of international economic law, and particularly investment treaty law, can be used to hold Israel responsible for the material destruction and deprivation of property in the occupied territories.

- **Utilise Universal Jurisdiction:** Effective use of universal jurisdiction to hold Israeli officials accountable for crimes committed in Gaza is crucial. Identify countries with favourable laws and collaborate with local legal teams to initiate cases, coordinating with international human rights organisations to support these legal actions.
- **Educate Globally:** Focus on educating the global community, especially youth, on international law and the Palestinian cause. Develop and implement educational programs, workshops, and seminars in universities worldwide, collaborating with academic institutions to integrate these topics into their curricula.
- **Leverage the ICJ Advisory Opinion:** Develop strategies to leverage the ICJ Advisory Opinion on Palestine by emphasising its findings in international legal forums and political advocacy. Use the opinion to support legal actions, shape diplomatic strategies, pursue corporate accountability, and pressure states to adhere to its conclusions.
- **Strengthen Legal Actions at the ICJ and ICC:** Intensify efforts to bring Israeli actions before the ICJ and ICC, focusing on the genocidal aspects of their policies. Compile and present comprehensive legal documentation to support claims and mobilise international legal experts to ensure a robust presentation of the Palestinian case.
- **Revive the Apartheid Convention's Monitoring Body:** Call for the convening of a meeting and revival of the Apartheid Convention's monitoring body which has been suspended in 1995, rendering the Convention *de facto* dormant.
- **Impose a Military Embargo:** Support and amplify international efforts to impose a military embargo on Israel in light of the ICJ Advisory Opinion. Advocate for halting the sale, transfer, and use of weapons, military equipment, and dual-use technology to Israel, pressuring governments and corporations to cease military collaborations.
- **Advocate for Trade Sanctions:** Advocate for trade sanctions against Israel and all businesses that support Israel's occupation. Pressure governments to implement these sanctions and target companies complicit in violating Palestinian rights.
- **Suspend Israel from International Events:** Campaign for the suspension of Israel from international sports and cultural events. Encourage cultural institutions and workers to boycott collaborations with Israeli entities to undermine the normalisation of apartheid.

- **Boycott Israeli Academic Institutions:** Advocate for a comprehensive boycott of Israeli academic institutions. Support Palestinian educators and students by refusing to engage in collaborations with Israeli-linked entities and promoting alternative educational partnerships.
- **Raise Awareness of Reproductive Genocide:** Raise global awareness of Israel's policies amounting to reproductive genocide against Palestinians. Advocate for policy changes to address this issue and support affected communities through international campaigns.
- **Support Expanding List of International Crimes:** Include concepts such as "ecocide" and "domicide" to the list of international crimes to reflect the large-scale intentional destruction of the environment and peoples' homes exceeding military necessity.
- **Mobilise Climate Justice Organisations:** Mobilise climate justice organisations to expose Israel's environmental destruction in Gaza as ecocide. Challenge Israel's greenwashing efforts and advocate for the ecological restoration of Gaza.
- **Amplify Palestinian Voices:** Amplify Palestinian voices to counter Zionist propaganda and promote the legitimacy of Palestinian resistance. Educate global audiences about the historical and ongoing injustices faced by Palestinians, shifting the public narrative to one of support for Palestinian rights and liberation.

RETHINKING INTERNATIONAL

LAW AFTER GAZA

Rethinking International Law After Gaza presents contributions delivered at the first International Law Conference (BILC 2024) organized by the Boğaziçi University Faculty of Law. Held in Istanbul, the conference set out to critically reassess the role and limits of international law in the face of contemporary crises. At a time when the genocide in Gaza continued to be met with silence, the conference emerged as an attempt to break this silence, rendering unavoidable a renewed interrogation of international law's claims to universality, legitimacy, and justice.

The chapters collected in this volume examine the colonial legacies, structural inequalities, and normative contradictions embedded within the international legal order from a range of perspectives. Spanning debates on decolonisation, the relationship between law, war, and violence, these contributions engage with ongoing discussions on the future of the discipline. This volume aims to provide a critical perspective on the existing international legal order while contributing to broader scholarly debates.



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