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Palestine and the limits of international law

In the wake of Israel's most recent attacks on Gaza, international law took on renewed prominence in political discourse, with popular interest in international legal proceedings at a level seldom seen before. The article looks critically at the turn to international law and, in particular, at demands for the international criminal prosecution of Israel's leaders, setting these appeals within the longer history of international criminal law and its inability to grapple with the material structures and systemic logics out of which violence and atrocity arise. It then turns to recent proposals for a Gaza Tribunal, setting these against the history of similar peoples' tribunals. In framing the horror unleashed on Gaza in terms of (il)legality and looking to international legal institutions, formal and popular alike, to advance an emancipatory politics, the article warns, progressive political movements risk naturalising the very structures and logics undergirding the violence they seek to condemn.

Keywords: international criminal law; Palestine; peoples' tribunals; public interest.

Introduction

As the horrors of Israel's assault on Gaza stretch into a second year, the language of legality has emerged as the leading frame of political discourse and oppositional vocabularies (Krever et al., 2024). From states' formal political protests before the United Nations (UN) to UN Special Rapporteurs and non-governmental organisation reports to open letters and petitions to protest marches and student encampments on university campuses, international legal argument dominates. South Africa's case against Israel before the International Court of Justice (ICJ), alleging Israel has committed genocide against Palestinians in Gaza in contravention of the 1948 United Nations Genocide Convention, has attracted significant attention¹, as has the ICJ's recent Advisory Opinion, both invoked to condemn Israel's actions (International Court of Justice, 2024b). Indeed, public interest in the ICJ and its proceedings has reached a level perhaps seldom, if ever, seen before.

¹ See Orders of 26 January, 28 March and 24 May of 2024 at International Court of Justice (2024a).

This championing of international law and its institutions as the harbingers of justice has reached even critical legal scholars otherwise sceptical of any equation between international law and an emancipatory politics. Critical scholars have long warned against international law as a necessarily progressive force, stressing both its colonial past and ongoing imperial entanglements, relations of domination and exploitation no less entwined with international law today as in the age of classical imperialism (see Anghie, 2004). Yet, in the face of Israel's violence, many have shifted their stance, rehearsing paeans to the promise of international law and authoring or signing open letters invoking legal expertise, their erstwhile critiques of international law's indeterminacy giving way to a legal formalism that once more frames the horror unleashed on Gaza squarely in terms of illegality.²

In this article, I reflect not on the ICJ but rather on two further examples of this embrace of international law and legal institutions to mobilise and articulate political opposition to Israel's assault. First, I consider the turn to the ICJ's sister institution in The Hague, the International Criminal Court (ICC), and demands for the criminal prosecution of Israel's leaders. I set these appeals within the longer history of international criminal law (ICL) and its (in)ability to grapple with the material structures and systemic logics out of which violence and atrocity arise. Second, I look at a further, somewhat different mobilisation of international law in the form of a proposed Gaza Tribunal, setting this nascent institution against the history of similar peoples' tribunals. While the two institutions, international court and peoples' tribunal, at first appear fundamentally different, one a formal legal tribunal, the other an informal political mobilisation, I suggest that the two share important similarities. The latter, I argue, through its privileging of international law as its frame of analysis and condemnation, reproduces much the same myopia as ICL. Those seeking justice in Palestine, I conclude, should be cautious about investing in international law as a necessarily progressive force. In framing the horror unleashed on Gaza in terms of (il)legality and insisting on a false opposition between international law and domination, I warn, we risk naturalising structures and logics undergirding contemporary violence.

Netanyahu in the dock? The limits of international criminal law

Popular faith in international law's ability to restrain states' recourse to violence and mitigate its worst effects is nowhere as strong as in the field of ICL. Although its roots stretch back further, ICL emerged most prominently with the 1945-1946 Nuremberg and Tokyo trials of German and Japanese

² See both examples and criticism of this in Krever et al. (2024).

war-time officials, before taking further institutional shape with the ad hoc international criminal tribunals for Yugoslavia (ICTY) and Rwanda (ICTR) in the 1990s. With the establishment of the ICC in 2002, ICL was assured a cynosure in contemporary international law, the basis, as one commentator insisted, “for the now emergent global rule of law” (Teitel, 2002, p. 368). ICL and tribunals, another argued, had ushered in a “new world order based on the rule of international law” (Cassese, 1998a, p. 8).

An initially lacklustre record and charges of racial bias (Clarke, 2019, p. 244; López, 2023, p. 211) saw excitement for the ICC wane towards the end of last decade.³ In 2016, the African Union entertained recommending withdrawal from the Court (Human Rights Watch, 2016); Burundi did so in 2017 and the Philippines in 2019 (The Gambia and South Africa also announced plans to withdraw in 2016 but rescinded their respective decisions the following year). In recent years, however, enthusiasm for the power of ICL and the ICC to put the world to right has once more surged. In late February 2022, a few days after Russia’s invasion of Ukraine, ICC Prosecutor Karim Khan announced that his office would investigate potential crimes there (Khan, 2022), accompanied by calls for the establishment of a further, special international tribunal to prosecute specifically crimes of aggression committed against Ukraine (Sands, 2022). As Israel ramped up its onslaught on Gaza in late 2023, it was once more to the ICC that many critics turned to bring an end to the horrors inflicted on Palestinians (see, e.g., A11 et al., 2023; Al Mezan Center for Human Rights, 2023; Hassan, 2023; Marks, 2023).⁴ They demanded Khan apply for arrest warrants, contrasting his apparent caution with his earlier speed in indicting Putin, and went so far as to complain of his lack of impartiality to the ICC’s Assembly of States Parties (see, e.g., Sourani et al., 2023).

Underlying such demands and celebrations is a faith in ICL as the most suitable response and remedy to the major forms of violence and destruction that continue to plague the modern era.⁵ ICL’s perceived suitability as a response to violence and its presumed ability to deter future atrocity lies in its purported ability to identify, punish and end impunity for the authors of that violence (see, e.g., Cassese, 1998a; Moreno-Ocampo, 2009; Mullins & Rothe, 2010). Individuals now, and not just states as under classical international law, can be held liable for certain, serious legal infractions. ICL’s focus on the individual has been celebrated as contributing, along with the development of international human rights law, to the emergence of what Ruti Teitel (2011)

³ On the ICC’s first decade, see Krever (2014).

⁴ Although reaching new heights in 2023-2024, the turn to the ICC in pursuit of justice for Palestinians was already in full swing by 2015 (see Erakat, 2015).

⁵ I have discussed this trend at greater length in Krever (2013).

calls “Humanity’s Law” (see also Peters & Sparks, 2024; Trindade, 2020) – the regulation of war has evolved from primarily state-oriented obligations to an “individual-focused regime” (Blum, 2014, p. 48; see also Welsh et al., 2023). This is ICL’s great achievement, its boosters insist. The failure to hold the authors of atrocity accountable perpetuates further cycles of violence, giving “a nod and a wink” to future perpetrators (Cassese, 1998b, p. 2). Criminal prosecutions in tribunals such as the ICC, though, shine a light on individuals and (some of) their crimes; state sovereignty is no longer a shield behind which to hide. “By putting an end to impunity for the perpetrators of the most serious crimes”, the ICC’s first prosecutor insisted, that institution would “contribute to the prevention of such crimes” (Moreno-Ocampo, 2009, p. 5).

This view has echoes in the recent demands for, and then celebration of, the indictment by the ICC of Benjamin Netanyahu. Netanyahu’s potential trial before the ICC and subsequent carceral punishment is seen as both an appropriate comeuppance for the Israeli Prime Minister’s role in Israel’s onslaught and the means, or at least one means, to end the violence in Gaza. Both views not only assume but privilege Netanyahu’s causal role as architect and facilitator of that violence. Yet a focus on Netanyahu the individual – or Netanyahu along with his former Minister of Defense, Yoav Gallant, also indicted by the ICC, or even on the two Israelis along with three Hamas leaders, subsequently assassinated by Israel, who round out the indictment – abstracts from a broader context and constellation of forces which shape and overdetermine the policy choices of Netanyahu, Gallant or any other individuals.

This of course is true of ICL more generally and has been since its nascent forms. At the close of the First World War, some leaders of the victorious powers sought the arraignment and prosecution of the German Kaiser for his alleged criminal responsibility (Schabas, 2018). Although never followed through, the proposal was typical of subsequent efforts in ICL, from Nuremburg to the ICC’s indictment of Netanyahu, to attribute the authorship of crimes and responsibility for war to individual political leaders. The attribution of primary or even sole responsibility for the First World War to the Kaiser stands in sharp contrast with other analyses of the war even at the time. European Marxists, for example, saw the war not as the product of individual leaders’ nefarious plotting but as emerging from the concrete political-economic forces that prevailed at that juncture (see Day & Gaido, 2011). The focus of their analyses was not on the Kaiser or any other individual “criminal”, but on the economic forces and imperial rivalries that propelled Europe to war. Lenin, for example, dismissed as “childish” any attempt to “hold individual persons guilty for the inception of the war” (Lenin, 1942, p. 4). “It is a mistake”, he insisted, “to accuse kings and czars of having created the present war. The

war was made by capital” (Lenin, 1942, p. 4). Specifically, Lenin argued, the war was the outcome of competition between rival monopoly combines, the inevitable product of monopoly capitalism (Lenin, 1975).

This is not the place for an extended analysis of the economic propulsions to war: the point is that an insistence on the Kaiser or any other individual leader’s sole responsibility forecloses any such analysis, extended or otherwise. Such assignment of responsibility places political-economic considerations out of sight, as they were likewise at Nuremberg almost three decades later. “Crimes against international law are committed by men, not by abstract entities”, the International Military Tribunal (1946, p. 55) declared. The origins of the Second World War, according to the Tribunal, lay in a conspiracy hatched by Hitler and other Nazi leaders, a view which once more elided any sophisticated understanding of the war’s causes or the structural forces in which its numerous atrocities were rooted. Like the First World War, the Second has been understood by some analyses not as the product of individuals and their machinations, but rather as shaped by world-systemic forces. Ernest Mandel, for example, argued that both were driven by the struggle over the world market between rival imperialist powers (Mandel, 1986; see also Neumann, 1942).

Importantly, the recognition that phenomena such as war and atrocity have their roots in systemic political-economic forces is in no way to deny the relative autonomy of political or military leaders. Nor is it a rejection of their individual responsibility. But the myopic focus of ICL advocates on individual responsibility, encouraged by the very legal form, all too often pushes from sight the material context in which individuals and groups acted. Such elision by ICL was perhaps not always inevitable. Immediately following the war, there was widespread recognition that economic imperialism was an important catalyst for the conflict, with US political leaders condemning the role played in particular by German industrial combines in promoting an aggressive expansionary policy seeking markets and resources in Germany’s periphery (Baars, 2019, pp. 148–149; Taylor, 1992, p. 81). German industry was also, at least initially, in prosecutors’ sights at Nuremberg. The chief US prosecutor, Robert Jackson, felt that the International Military Tribunal should prosecute not only government and military figures but also those industrialists central to “the financial, industrial and economic life in Germany” (Baars, 2019, p. 148). Already within a few years, however, US foreign policy priorities had shifted. An economically rebuilt and politically rehabilitated Germany was central to American designs for Europe, while industrialists back home needed reassurance that their own role as the engine of US aggression in Korea and other Cold War theatres would not attract any criminal prosecution. The lesson of

Nuremburg would remain one of individual culpability; capitalism's agents, let alone its structural logics, would remain off stage.

In the decades immediately following Nuremburg dominated by Cold War rivalries, ICL remained dormant. In the post-Cold War 1990s, however, the ad hoc tribunals for Yugoslavia and Rwanda thrust it once more into the spotlight. Once more, though, these tribunals elided any scrutiny of the political economy of conflict and atrocity. The violent disintegration of Yugoslavia, for example, was the product of atavistic ethnic hatred, then-Chief Prosecutor Carla Del Ponte told the ICTY, nurtured and manipulated by Slobodan Milošević (International Criminal Tribunal for the Former Yugoslavia, 2002). Yugoslavia, she insisted, was destroyed “by a relatively small number of men”, Milošević prominent amongst them (Del Ponte, 2009, p. 37).

From where did these men emerge? What social dynamics and political economic conditions allowed them to hold sway and author the catalogue of atrocity with which the Yugoslav war became synonymous? How were ethnic prejudices so easily mobilised by Milošević and other individual leaders in the 1990s, yet had fomented no large-scale violence in Tito's Yugoslavia? ICL could not answer these questions – indeed, it was fundamentally uninterested in them insofar as they directed attention away from the individual criminal responsibility of indictees. Nonetheless, a voluminous extra-legal literature now makes clear that violence and war in the Balkans cannot be understood narrowly in terms of individual political leaders' culpability. The intervention of international institutions, for example, and their manipulation of Yugoslavia's political economy, feature prominently in this literature. The neoliberal programme of economic liberalisation and restructuring of the Yugoslav state prescribed by the World Bank and International Monetary Fund was particularly significant. Domestic elites including Milošević were often enthusiastic in implementing that programme, one that fuelled nationalist tendencies, regional rivalries, and the breakup of a once-stable political formation. It hardly needs saying that none of this denies or excuses the agency and responsibility of Milošević and other individual leaders for fomenting, directing and participating in the violence that followed. But no sophisticated understanding of the actions of such individuals can ignore the forces that shaped and overdetermined them.⁶

Yugoslavia is only one example of violence and conflict emerging from environments shaped and exacerbated by systemic political-economic forces and interventions. A similar pattern can be seen in, say, Rwanda in the 1990s or Sierra Leone in the 2000s, both wracked by atrocity. In all of these examples, the attempt to rapidly introduce capitalist social relations

⁶ For a detailed discussion, see Krever (2013).

created an environment conducive to, and undermined the social institutions and relations that might have provided a bulwark against, outbreaks of dramatic violence. This would have hardly surprised the earlier generation of Marxist theorists debating the origins of the First and Second World Wars. The “inequality, exclusion, dispossession, alienation, disempowerment and humiliation” (Orford, 2003, p. 106) that has inevitably accompanied capitalist transformation and neoliberal political-economic interventions are at best of marginal interest to ICL and its institutions. ICL is concerned foremost with establishing individual criminal responsibility for that violence.

There is little wrong, *per se*, in such an aspiration. But far greater claims are regularly made of ICL and its institutions. “By pinning prime responsibility on Milošević and disclosing the way the Yugoslav people were manipulated by their leaders into committing acts of savagery on a mass scale”, Michael Scharf writes, the ICTY helped “break the cycle of violence that has long plagued the Balkans” (Scharf, 2003, p. 916). More recently, in the context of Russia’s invasion of Ukraine, advocates of international criminal prosecutions insist that these will “help beat back [Russian president Vladimir Putin’s] heinous attempts to destroy peace in Europe” (Brown et al., 2022). With such discourses so prominent, it was hardly surprising that some Palestinians, in response to the indictment of Netanyahu and Gallant by the ICC, expressed “hope it would help end the violence” (van den Berg & Al-Mughrabi, 2024). But what of the broader context in which such leaders act? Structures and systemic forces – imperialism, the political economy of late capitalism, and, in the case of Israel in particular, a settler colonialism shaped by both – is central to a nuanced understanding of violence. Uncritically embracing ICL as the response to Israeli policy simply further mystifies the structural determinants of that policy.

If Putin or Netanyahu do, in fact, one day face trial in The Hague, what narratives of violence and atrocity will emerge? In evaluating their individual criminal responsibility, it is unlikely that the ICC will, or can, engage in an analysis, let alone condemnation, of the political economy of inter-imperial rivalry or settler colonialism. Systematic violence of the sort we are seeing in Palestine is composed not of “spectacular individual acts” but “a cumulative result of ongoing practices” embedded in the political economy of contemporary capitalism (Knox & Whyte, 2025). And any attempt to reckon with that violence will have to tackle that broader structure. The celebration of ICL, with its focus on the individual, as the solution to violence and destruction places the broader context of that violence and destruction out of sight, obfuscating its social and political-economic character. With an end to individual impunity assured, we need not worry about the responsibility of political-economic

structures and interests or world-systemic forces. Such concerns not only disappear, but risk being absolved.

A Gaza Tribunal? Peoples' tribunals and the juridification of resistance

So far, I have argued that there is a misplaced faith or investment in international law in the shape of ICL and hope for the international criminal prosecution of the individual political leaders deemed responsible for Israel's violence in Gaza. I now want to turn to a related but somewhat different form of popular legal mobilisation, that of people's tribunals. In November 2024, various academics, intellectuals, human rights advocates, and civil society organisation representatives announced they were launching a "Gaza Tribunal" to serve as a "court of humanity and conscience" (Gaza Tribunal, 2024a). The goal, the Tribunal's organisers state, is "to assist in bringing the tragic events to an end as soon as possible and to hold the perpetrators accountable in the public conscience" (Gaza Tribunal, 2024b). This is not, then, a formal legal proceeding and it does not seek to hold perpetrators criminally or legally accountable; it is, to be sure, not the ICC. Indeed, its organisers say it reflects "growing frustration with the perceived constraints and delays in formal international justice systems [...] where cases regarding the Israeli-Palestinian conflict have been slow to make progress" (Gaza Tribunal, 2024a).

At the time of writing, the Tribunal is at an early stage of development, and its exact contours and institutional form, and the extent to which it roots itself in an international legal framework, remain to be seen. On the one hand, the Tribunal states that its aim is to issue a judgment that is not narrowly legal in nature but that is "grounded in humanity's intellectual and moral values" (Gaza Tribunal, 2024b). On the other hand, its statements to date indicate that it seeks to ape the form and language of a legal tribunal. It will be organised, as with formal international courts, around "Chambers", including prominently an "International Law Chamber", with witness testimony and evidence solicited and evaluated to create "a contemporary and historical record of crimes committed against Palestinians". That record is to be created and evaluated, the Tribunal states, "through the lens of [...] international legal frameworks" based on both treaty and customary international law including the Genocide and Apartheid Conventions, the Geneva and Hague Conventions, international humanitarian law, and the law of belligerent occupation (Gaza Tribunal, 2024c). "Significant attention" is to be paid to "the failure to apply international law norms to Palestinians" and "the complicity of certain states with the commission of massive human and humanitarian law crimes" (Gaza Tribunal, 2024c).

International law is not the sole lens through which Israeli's actions are to be evaluated. A further "International Relations and World Order Chamber"

will evaluate “the international geopolitical and power relationships that have obstructed a just, durable and compassionate resolution of the Question of Palestine” (Gaza Tribunal, 2024d), while a “History, Ethics, and Philosophy Chamber” will consider the “conflicting interpretations of the ethical, historical and philosophical concepts of our shared humanity” that underpin contrasting responses to the situation in Gaza (Gaza Tribunal, 2024e). Nonetheless, it is clear that international law will serve as one, if not the only, privileged frame for evaluating and condemning Israeli policy and actions.

In foregrounding legality and illegality as the language of condemnation, the Tribunal follows a pattern established by other peoples’ tribunals. In 1966, the philosopher and anti-war activist Bertrand Russell established an International War Crimes Tribunal for Vietnam to “investigate and assess the character of the United States’ war in Vietnam” (Russell, 1971, p. 57). Over the course of two hearings, one in Stockholm and the other in Roskilde, a jury of prominent figures, including Jean-Paul Sartre, Vladimir Dedijer, Simone de Beauvoir, Lelio Basso, James Baldwin, Lawrence Daly, and others heard from witnesses on the atrocities perpetrated on and in Vietnam. At the close of the Stockholm session, the Tribunal issued a verdict finding that the US had committed “acts of aggression against Vietnam under the terms of international law” and that its “deliberate, systematic and large-scale bombardment of civilian targets” amounted to war crimes (Sartre, 1971, p. 185). Similarly, following its Roskilde session, the Tribunal found the US guilty under international law of using illegal weapons, maltreatment of prisoners of war and civilians, and genocide.

Other peoples’ tribunals on the model of this original Russell Tribunal followed, focusing on issues ranging from the repression and violence perpetrated by military juntas across Latin America (in 1973), rights violations in West Germany (1978-1979) and, with respect to native Americans, in the United States (in 1980), and responsibility of Japanese political and military authorities for sexual slavery and rampant sexual violence in Asia and the Pacific during the 1930s and 1940s (in 2000). Similar tribunals have been organized on issues ranging from the 1965 Indonesian politicicide to the invasion of Iraq.⁷

The closest antecedent to the Gaza Tribunal is the Russell Tribunal on Palestine, launched in the wake of Israel’s 2009 assault on Gaza. Like its namesake, it gathered a jury of eminent personalities, political figures, and lawyers and held, from 2010 to 2014, sessions in Barcelona, London, Cape Town, New York, and Brussels. And like its namesake, it privileged international

⁷ On peoples’ tribunals generally, see Byrnes and Simm (2018), and Klinghoffer and Klinghoffer (2002).

law, illegality, and complicity with illegality as its guiding concerns. Indeed, its official aim was “to examine the violations of international law, of which the Palestinians are victims, and that prevent the Palestinian People from exercising its rights to a sovereign State” (Russell Tribunal on Palestine, 2019). As Frank Barat and Daniel Machover, respectively an organizer of and a legal adviser to the tribunal, put it, the tribunal’s very *raison d’être* was a commitment to legality, the institution “fulfill[ing] a real legal function by promoting and stimulating the implementation of the rule of law. It does not compete with other jurisdictions (domestic or international), but works in complementarity with them to enforce the law in Palestine” (Barat & Machover, 2012, p. 531).

The organisers of both Vietnam and Palestine tribunals were clearly also concerned with broader issues of US imperialism and Israeli settler colonialism and Vietnamese and Palestinian liberation, as were they also engaged in various forms of extra-legal action. Indeed, many saw the respective tribunals and their invocation of international law as the means to spur further political mobilization. For Sartre, for example, the use of legalism was tactical. “It is by means of legalism”, he explained, that the otherwise apolitical “petit bourgeois masses” might be “aroused and shaken” and their opposition to the war mobilized (Sartre, 1967, p. 7). Political action might be spurred on by international law and its violation, but the goal of that action, Sartre was clear, was not to be found on any legal terrain. Determining that the US was violating international law or even stopping its violations would not affect the systemic logic of imperialism undergirding those violations.

While skepticism about the power of international law was certainly shared by some of the Palestine tribunal’s organizers, they were not nearly as forthright in their public statements. In fact, in sharp contrast, the later tribunal insisted on “the supremacy of international law as the basis for a solution to the Israeli Palestinian conflict” (Russell Tribunal, 2019). International law and the question of legality or illegality was foregrounded as the central frame of analysis. While it heard from witnesses and experts who spoke to extra-legal issues, including the systemic issues of settler colonialism and imperialism, the tribunal’s published textual record is far narrower. Israel’s settlements are deemed illegal; likewise its annexation of East Jerusalem. War crimes are identified in Israel’s Cast Lead assault on Gaza. Multinational corporations are condemned for complicity in Israel’s violations of international law. But there the analysis ends. Such crimes and other unlawful acts are abstracted from their context and the structural logics that produce those acts and complicity – settler colonialism, imperialism, capitalism. The tribunal’s participants were hardly indifferent to these deeper issues, but they chose to frame its findings squarely in terms of international legal conclusions – to frame Israel’s aggression in Gaza, and the

dispossession and oppression of the Palestinians more generally, as foremost a spectacular violation of international law, and one to be opposed as such.

The pattern here – one that is likely to be reproduced by the new Gaza Tribunal – is one of activists choosing to frame and analyse instances of injustice and oppression – US imperialism and its manifestation in Vietnam; Israeli settler colonialism and its continuing violence in Palestine – specifically in terms of international law. Both sets chose to use the juridical form and procedures of the tribunal to publicize and condemn it: US policy and actions in Vietnam violated international law, likewise Israeli policy and actions in Palestine. In focusing on the violence produced by the systemic logics of imperialism and settler colonialism as foremost issues of (il)legality, moreover, peoples' tribunals abstract specific instances of violence and atrocity from those logics. In focusing on Israeli policies and practices as foremost an issue of *illegality*, for example, the Palestine tribunal's published record reproduced a narrow analytical frame that risks obscuring or even foreclosing a deeper inquiry into the conditions and political-economic forces that lie behind, and provide the context for, unlawful acts. At its Cape Town session, for example, the tribunal considered carefully the definition of apartheid in international law and interpretation of the 1973 UN Convention on the Suppression and Punishment of the Crime of Apartheid. Its conclusions offer a careful legal analysis of the Convention and its application to Israeli policies and practices vis-à-vis the Palestinian people and leave little doubt that "Israel subjects the Palestinian people to an institutionalized regime of domination amounting to apartheid as defined under international law" (Russell Tribunal on Palestine, 2011, p. 21). But the tribunal's conclusions offer no insights into why an apartheid regime exists in Palestine. For anyone reading the tribunal's published conclusions, the settler-colonial, imperialist, political-economic, or other drivers of Israeli apartheid disappear from view; Israeli apartheid is a crime without cause or context.

Conclusion: from ICL to people's tribunals

Peoples' tribunals are, of course, political interventions that seek to mobilize opposition through publicizing injustice and atrocity. Headlines, not nuanced scholarly analysis, are their aim. But the headlines and public awareness generated by these tribunals are largely headlines and awareness about the illegality of Israeli policy, reproducing once more, now in the popular consciousness, the myopia of the international legal frame. By focusing attention on questions of law and legality, and specific instances of illegality – apartheid, occupation, war crimes, and today genocide – the resulting discourse deflects attention from, or even risks erasing, Israel as a colonial project. Despite their differences,

then, both formal institutions of ICL such as the ICC, and informal peoples' tribunals, ultimately contribute to the same ideological obfuscation. Both reproduce what Hilary Charlesworth has described as international law's tendency to focus attention on particular incidents and outbreaks of violence without ever systematically engaging with underlying structural forces. Legal analysis, she suggests, "concentrate[s] on a single event or series of events", but in doing so "miss[es] the larger picture" (Charlesworth, 2002, p. 384). In the case of ICL, the concern remains the abnormality of specific instances of violence, while the normality of the undergirding structures escape scrutiny. The latter is at best obscured or at worst naturalised as an unassailable feature of the contemporary world.

Today's popular appeals to international law and its institutions, and the framing of oppositional politics in international legal terms, also reproduces the tendency, noted by Noura Erakat, to "attribute injustice to a failure of law or to its nonexistence and thus prescribe more law, better law, and/or stricter adherence to law as the requisite corrective" (2019, p. 9). Palestinian suffering, for example, is framed as a failure to enforce international law. If only Netanyahu could be brought to The Hague, if only international law were enforced adequately and Israel's international legal violations ended, all would be well. Yet as several generations of critical scholars have shown, there is no inherent opposition between international law and domination (see, e.g., Anghie, 2004; Bedjaoui, 1979; Chimni, 2017; Gathii, 2000; Knox, 2016; Krever, 2025; Miéville, 2006; Rajagopal, 2003; Umozurik, 1979). International law's historical and contemporary entanglements with imperialism and neo-colonial relations of domination and exploitation are today a commonplace amongst critical legal scholars and hardly need rehearsing here. Military conflict, David Kennedy has written, is today a thoroughly legal animal, with "targets poured over by lawyers and belligerents on all sides legitimating their cause and denouncing their adversaries in legal terms" (2016, p. 5). In Palestine, too, international law has long been the language of legitimation as much as condemnation (see Perugini & Gordon, 2015), mobilized even today in support of Israel's relentless assault on Gaza.

If international law is not inherently aligned with an emancipatory politics, might it still be a useful tool for those struggling for Palestinian liberation? What is gained and what is lost in the juridification of justice struggles? A full balance sheet remains to be drawn. Certainly, even amongst critical legal scholars, the wisdom and precise contours of tactical engagements with international law remain the subject of much debate (Krever et al., 2024). What is clear, as I have argued here, is that appeals to international law and its institutions, and the articulation of one's political demands in the language

of international law, is fraught with danger. What alternatives might we look to? Anti-imperialism once offered a different vocabulary, exploitation and oppression to be ended not with appeals to international law or the ICC but through political organising and revolutionary struggle to overturn the international system that produces such ills. Little of the mass anti-imperialist movements of the 1960s and early 1970s, which united and mobilised activists and revolutionary masses in Global North and South alike, remains today (Mohendesi, 2023). Political mobilisation increasingly depends on appeals to the depoliticised masses of late capitalist society made, as Sartre already saw in the 1960s, in the language of legality and international law. But when such appeals are now divorced from any mass anti-imperial movement, legality increasingly risks becoming itself the horizon of political resistance.

The evident danger of this was already apparent with the Russell Tribunal on Palestine. What was the tribunal's prescription for findings of illegality? More law. The tribunal urged, for example, the prosecutor of the ICC to "initiate an investigation [...] into international crimes" in Palestine (Russell Tribunal on Palestine, 2011, p. 35), while the UN General Assembly should request an advisory opinion from the ICJ on the occupation and apartheid. Fourteen years later, both demands now realized, the oppression of Palestinians has only increased. Might it be time for those seeking justice in Palestine to look elsewhere?

Edited by Alina Timóteo

Conflicts of Interest Statement

The author declares that there are no conflicts of interest to disclose.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.

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Received on 31.01.2025

Accepted for publication on 08.04.2025

<https://doi.org/10.4000/14y4p>



Palestina e os limites do direito internacional

Na sequência dos mais recentes ataques de Israel a Gaza, o direito internacional assumiu uma proeminência renovada no discurso político, com o interesse popular em processos jurídicos internacionais a atingir um nível raramente visto antes. O artigo analisa criticamente o recurso ao direito internacional e, em particular, as exigências de responsabilização penal internacional dos líderes israelitas, enquadrando estas reivindicações na história mais longa do direito penal internacional e na sua incapacidade de lidar com as estruturas materiais e lógicas sistémicas de onde surgem a violência e as atrocidades. De seguida, aborda as propostas recentes de um Tribunal para Gaza, confrontando-as com a história de tribunais populares semelhantes. Ao enquadrar o horror desencadeado em Gaza em termos de (i)legalidade e ao se recorrer a instituições jurídicas internacionais, tanto formais como populares, para fazer avançar uma política emancipatória, o artigo adverte que os movimentos políticos progressistas correm o risco de naturalizar as mesmas estruturas e lógicas que reforçam a violência que procuram condenar.

Palavras-chave: direito penal internacional; interesse público; Palestina; tribunais populares.

La Palestine et les limites du droit international

À la suite des attaques les plus récentes d'Israël contre Gaza, le droit international a retrouvé une place de premier plan dans le discours politique, suscitant un intérêt populaire pour les procédures juridiques internationales à un niveau rarement atteint auparavant. Cet article examine de manière critique le recours au droit international et, en particulier, les appels à la poursuite pénale internationale des dirigeants israéliens, en replaçant ces revendications dans l'histoire plus longue du droit pénal international et de son incapacité à appréhender les structures matérielles et les logiques systémiques à l'origine de la violence et des atrocités. Il se penche ensuite sur les propositions récentes d'un Tribunal pour Gaza, en les confrontant à l'histoire d'autres tribunaux populaires similaires. En encadrant l'horreur déclenchée à Gaza en termes de (il)légalité et en se tournant vers les institutions juridiques internationales, qu'elles soient officielles ou populaires, pour promouvoir une politique émancipatrice, l'article avertit que les mouvements politiques progressistes risquent de naturaliser les structures mêmes et les logiques qui soutiennent la violence qu'ils cherchent à condamner.

Mots-clés: droit pénal international; intérêt public; Palestine; tribunaux populaires.