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"I Never Ever Want to Hear you Lecture us on Human Rights and International Law Again": International Tribunals in the Palestine-Israel Context

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Abstract: Despite growing critiques of their inability to ensure accountability, international tribunals remain a key arena for legal action in the Palestine-Israel context. This paper reflects on current debates linking Transitional Justice and international prosecution, focusing on recent developments at the ICC and ICJ. It explores the limitations and possibilities of these tribunals by analyzing: 1) how Global North and Global South states have positioned themselves; and 2) the main actors seeking justice for Palestine through these legal avenues.

Introduction

During the traditional Christmas prayer in Bethlehem, Palestinian Pastor Reverend Munther Isaac declared, "I never ever want to hear you lecture us on human rights and international law ever again" (Tape, 2023)[1]. I use this sentence as an introduction to the debate I am going to offer in this brief article: Is international law, and specifically international tribunals, a useful mechanism to provide substantial justice in the Palestine-Israel context?[2]

Two years into Israel's assault on Gaza—with over 60,000 Palestinian casualties, excluding those before October 7th, 2023—various actors have turned to international tribunals to address the crimes committed.

In March 2021, the International Criminal Court (ICC) opened an investigation into crimes committed in the occupied Palestinian Territory since June 13, 2014, following a 2021 ruling that its jurisdiction covers Gaza, the West Bank, and East Jerusalem.

On November 21st, 2024, the ICC issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and his former defense chief Yoav Gallant, as well as a Hamas leader, Ibrahim Al-Masri.

Meanwhile, the International Court of Justice (ICJ) is examining a case brought by South Africa against Israel on Genocide in Gaza and requested preventive measures on January 26th, 2024. The same Court, on July 19th, 2024, issued a landmark Advisory Opinion on "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" (ICJ, 2024a).

While the ICC targets individual accountability, the ICJ addresses state responsibility through advisory opinions and provisional measures. In efforts to hold Israel accountable, international prosecution is vital but not sufficient; a coordinated approach combining individual and state-level legal action is essential. Still, key questions remain: Have international courts produced tangible outcomes? Can prosecution truly deliver justice in this case?

It is key to analyze these legal arenas critically, observing 1) how Global North and Global South States situated themselves in the dispute and 2) which main actors are using these international tribunals as a venue for justice.

This paper examines the role of international prosecution in relation to transitional justice in the Palestine-Israel context. It analyzes how state and non-state actors engage with international law and judicial mechanisms concerning the Occupied Palestinian Territory. Finally, it reflects critically on the limited impact of court decisions, underscoring the need for a Transitional Justice framework aimed at ending settler colonialism, apartheid, and genocide.

Transitional Justice and International Prosecution in Palestine-Israel

International prosecution for atrocity crimes was established through the Nuremberg and Tokyo trials, which shaped the structure of later international and domestic accountability mechanisms. Holding perpetrators of Rome Statute crimes accountable is a key principle of Transitional Justice—an interdisciplinary field combining legal and non-legal approaches to addressing past human rights abuses in transitional societies.

There is no clear-cut definition of what Transitional Justice is, between approaches that underline the

1 To our European friends, I never ever want to hear you lecture us on human rights or international law ever again. And I mean that. We are not white, I guess, it does not apply to us according to your own logic."

2 Although it's difficult to empirically assess whether law in general—and international law in particular—is a "useful" tool in the Palestinian case, this brief piece aims to examine recent developments involving international tribunals (such as the ICC and ICJ), as well as the actions of both state and non-state actors engaging with international law. Echoing Erakat (2019): "While the imbrication of law and politics in the case of Palestine is exemplary of a global system, the sovereign exception that produced the question of Palestine demands particular attention to the potential risks, and benefits, of appealing to international law. In order to serve an emancipatory function, the law must be wielded in the sophisticated service of a political movement that can both give meaning to the law and also directly challenge the structure of power that has placed Palestinians outside the law." (p.4)

role of legal responses to past violence (Teitel, 2000) and others that widen the context of transitional justice by including practices, mechanisms, and concerns beyond the juridical, such as truth commissions and reparations (Roht Arriaza & Mariezcurrena, 2006).

The four classic pillars of transitional justice are criminal prosecutions, truth seeking, reparations, and various forms of reform and prevention, sometimes referred to as guarantees of non-repetition (Hayner, 2022, p. 5), while "memory" has been introduced as a 5th pillar in 2020 by UN Rapporteur Salvioli (2020).[3]

As previously argued (Bonfigli, 2024), various scholars have discussed the limitations of transitional justice, particularly in its narrow and depoliticized scope, which often privileges legal responses that tend to structure specific conceptions of violence and justice (Nagy, 2008). This "one-fits-all" liberal approach is not considered to be able to grasp and work with systemic and ongoing violence, like in the Palestine-Israel context, because "there has not been a formal transition, a shift either from authoritarian to democratic political forms or from conflict to post-conflict setting, transitional justice is presumably inapposite" (Sirleaf, 2024, p. 168).

Since 1948, with Israel's creation and the forced displacement of over 700,000 Palestinians barred from return, the Israeli occupation's large-scale abuses are not isolated events but an ongoing process, culminating in the current brutal attack on Gaza.

Khoury (2021) argues that in the case of Palestine-Israel, Transitional Justice faces the challenge of understanding what counts as historical injustice and how to transition in a context where violence has never stopped. There is, in the case of Palestine, a lack of formal transition: the occupation and settler colonialism[4] are still there. The author argues that transitions rely on two kinds of justice: retributive and restorative, both aiming at political reconciliation. In the case of Palestine-Israel, "reconciliation" has remained vague and confusing, especially given the reluctance of some peace negotiators in Oslo to deal with the historical roots of conflict (Khoury, 2021, p. 155), namely the Nakba (catastrophe) and the refugee issue: "The peace process was not meant to solve the refugee problem, but to dissolve it" (p. 156).

In this sense, the Palestinian refugee issue and the Right of Return in the framework of Transitional Justice should be at the core of transitional justice efforts embracing historical reparations (Peled & Rouhana 2004, Kapshuk, 2019).

This failure to confront settler colonialism is, according to Browne (2021), due to Israeli intransigence, international inertia, and a Western-sponsored peace-building agenda that describes the situation as a "conflict". Alternatively, some Israeli scholars (Dudai, 2007; Bracka, 2021) have also expressed criticism over the use of international tribunals. Dudai (2007) proposes a transitional justice model that would include "issues to be explored jointly by the two societies, such as refugees, prisoner release and compensation for victims of violence, there could also be internal truth and reconciliation processes within each society" (p. 250). Moreover, on international tribunals use, Jeremie Bracka (2021) questions the use of international prosecution in Israel/Palestine, considering especially the ICC intervention as possible "False Messiah": "Arguably, the ICC has made no positive imprint on the Middle East peace process, nor has it been capable of reducing ongoing hostilities or preventing human rights abuses." (p. 285).

Based on the different perspectives and standpoints mentioned, there seems to be quite a skeptical attitude toward the relevance of international law and international tribunals in the Palestine-Israel context. Despite these critiques, international tribunals are still used as an arena for legal action from a variety of different actors. International law is still mobilized in the quest for Justice: "Law has also ignited the Palestinian civic imagination and has led to bold and creative initiatives, including efforts to hold both states and (corporate) non-state actors accountable through legal and other means, and even to construct alternative models for nation building" (Bisharat et al., 2018, p. 1).
Next, I will briefly look at the current role played by the ICC and the ICJ, taking into consideration not only

3 For the purposes of this article, we will focus on the "Justice Pillar," examining how international courts, and how both state and non-state actors—have engaged with them and with international law in the context of Israel and Palestine.

4 Patrick Wolfe defines settler colonialism as a system rather than a historical event, that perpetuates the erasure and destruction of native people as a precondition for settler colonialism and expropriation of lands and resources (2006). Also see Augustine Park´s "Settler Colonialism, Decolonization and Radicalizing Transitional Justice" (2020).

their limitations, but also their role as legal-political arenas used by different actors.

Mobilizing International Law: Courts and Actors

ICC has long faced a crisis of credibility on charges of systemic racism and bias (Benyera, 2020, Schuerch, 2017, Sirleaf, 2024, Zolo, 2006). However, Palestinians have repeatedly pushed the ICC to invoke its jurisdiction over the crimes of the Israeli occupation (e.g. Al Haq NGO). Erakat (Erakat & Reynolds, 2019) mentions how Palestinians have used the law as a form of resistance, especially in the case of the PLO and its relationship with international law. Erakat explains how, in the 1970s, the PLO turned to international law and the UN, successfully securing favorable UNGA resolutions on the legal status of Palestinians (Resolutions 3236 and 3237, 1974); on Zionism as a form of racism and racial discrimination (UNGA Resolution 3379 in 1975); and on the inclusion of guerrilla warfare within ambit of legitimate violence (First and Second Additional Protocols to the Geneva Conventions in 1977) (p. 4).

The PLO's recourse to International Law hasn't been systematic but rather implemented in a strategic and pragmatic way: turning away from international law during the Oslo Peace process and its return to it after its collapse and the unilateral request for statehood recognition at the UN in 2011.

In 2018, Palestine was formally recognized and allowed to become a state party to the Rome Statute (ICC, 2018) and, in March 2021, the ICC finally opened an investigation respecting the Situation in Palestine for crimes committed since 13 June 2014 (Bensouda, 2021). In this context of addressing the ICC, Burgis-Kasthala, Nahed Samour, and Schwöbel-Patel (2023) emphasized how the legal tactics of a case before the ICC as "a real moment of possibility in which injustice can be highlighted, and in which oppressed voices can change legal analysis and action" (p. 3). These authors consider that the arguments based on the lack of Palestinian statehood and the political character of the Palestinian case at the ICC can be a litmus test for the court: "The ICC can demonstrate how it robustly negates political pressures and instead ensconces itself in carefully crafted justifications grounded firmly in the ICC Statute (p. 3).

The "map" of the actors mobilizing international law for accountability and social justice is a complex mosaic between state and non-state actors.

Since October 7th, 2023, several States and Human Rights organizations have filed complaints and referrals to the ICC, alleging that Israel is committing war crimes, crimes against humanity, apartheid, and genocide against the Palestinian people. It is worth noting how most of these complaints and referrals come from the "Global South": South Africa, Bangladesh, Bolivia, Comoros, and Djibouti (South Africa et al., 2024), Mexico and Chile (Mexico & Chile, 2024). Regarding Chile, a record number of 650 lawyers have referred to the ICC ("650 Chilean lawyers drag 'Israel' to ICC court for Gaza genocide", 2024), proving how diaspora communities play a fundamental role in legal action (Bartlett, 2024).[56]

At the ICJ, South Africa's 2024 genocide suit against Israel has drawn interventions[78] from numerous

5 Chile is home to the largest Palestinian community outside the Arab world, estimated at 500.000 people in 2023. Chilean-Palestinians have sustained deep cultural and political ties to Palestine through active networks, community institutions, and collective mobilizations. Their engagement has also significantly shaped Chile's foreign policy stance on Palestine and Israel. https://www.palquest.org/en/highlight/36894/palestinians-chile

6 As an example, in the group referral to the ICC (South Africa et al., 2024) the State parties are "gravely concerned about the escalation of violence, including against civilians" and request the Prosecutor to "vigorously investigate crimes under the jurisdiction of the court" (p. 3). The categories of crimes listed are: unlawful appropriation and destruction of public and private properties, forcible transfer of Palestinians, unlawful settlements, murder and attacks on civilians, torture, persecution, apartheid (p.4)

7 Under Art. 63 of the ICJ's Statute: "1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith. 2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it." (ICJ, 1945)

8 The latest Declaration of Intervention has been filed by Brazil: "Brazil further recalls that the determination of genocidal intent requires careful assessment of both direct and circumstantial evidence. Patterns of conduct, systematic nature of attacks, and public statements by State officials are all relevant indicators from which dolus specialis may be inferred. Taken together, the acts described meet the composite requirements of Article II of the Convention, including the presence of specific intent. Accordingly, all conditions established by the Convention for

Global South states—Bolivia, Libya, Chile, Mexico, Nicaragua, Turkey, Colombia, and others—while Germany has intervened on Israel's behalf (Fink, 2024). On July 19th, 2024, the ICJ issued a landmark Advisory Opinion on "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem", determining that Palestinian territories constitute one political unit and that Israel's occupation since 1967, and the subsequent creation of Israeli settlements and exploitation of natural resources, are illegal under international law. The court concluded that:

> Israel's continued presence in the Occupied Palestinian Territory is illegal […] Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible" (ICJ, 2024a, p. 73).

The court also included in its decision important obligations for other States:

> All States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory. (ICJ, 2024a, p. 74)

A record number of 52 States and 3 international organizations had expressed their intention to participate in the oral proceedings before the Court on February 9th (ICJ, 2024b). While the Global North/Global South divide is evident in the ICJ case *South Africa v. Israel* (2024) and ICC referrals, the ICJ advisory opinion shows a more nuanced picture, with some European countries (e.g., Belgium, Spain, Norway, Slovenia, and the EU) supporting the Court, while others (notably Germany) oppose it. Different positions within the Global North have been deepened by the Trump administration's hostility toward international justice. Some states, like Hungary and Greece, have also refused to enforce ICC arrest warrants for Israeli Prime Minister Netanyahu, reflecting selective engagement with international law.

In contrast, Global South solidarity is embodied by The Hague Group, a coalition led by Colombia and South Africa. In July 2025, it convened an emergency conference in Bogotá with 30 member states, agreeing on six coordinated legal, diplomatic, and economic actions to hold Israel accountable for its actions in the Occupied Palestinian Territories, including arms restrictions, maritime blocks, contract reviews, and support for universal jurisdiction (The Hague Group, Emergency Conference of States, July 2025).

Moreover, non-state actors play a key role in pursuing accountability for Israeli violations of international law. The BDS movement calls for an end to the occupation, equal rights for Palestinian citizens of Israel, and the right of return for Palestinian refugees, as outlined in UN Resolution 194. Additionally, international civil society organizations—such as Belgium's Hind Rajab Foundation—have leveraged universal jurisdiction to pursue legal action against perpetrators of violence against Palestinians. Notable cases include the July 2025 arrest of two IDF soldiers in Belgium (Hind Rajab Foundation, 2025a) and a December 2024 case filed in Brazil against IDF soldier Yuval Vagdani (Hind Rajab Foundation, 2025b).

Finally, in the last two years, there have been collective mobilizations of thousands of people across the world in solidarity with the Palestinian people (university encampments, protests, and rallies to blockades and strikes) and a growing number of grass-roots movements and collectives both in the Global North and South.

On November 21st, 2024, the International Criminal Court issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and his former defence chief Yoav Gallant, as well as a Hamas leader, Ibrahim Al-Masri, for alleged war crimes and crimes against humanity in the Gaza conflict.

The ICC judges said there were reasonable grounds to believe Netanyahu and Yoav Gallant were criminally responsible for acts including murder, persecution, and starvation as a weapon of war as part of a widespread and systematic attack against the civilian population of Gaza:

> Each bear criminal responsibility for the following crimes as co-perpetrators for committing the acts jointly with others: the war crime of starvation as a method of warfare; and the crimes against humanity of murder, persecution, and other inhumane acts (ICC Press Release, 2024, Warrants

the legal characterization of genocide are, in Brazil's submission, fulfilled." (ICJ, 2025, p. 27)

over Arrests section, para. 4).

On this matter, Israeli Prime Minister Netanyahu has immediately reacted, dismissing the warrants as "absurd and antisemitic": and the ICC as a "politically biased and discriminatory body," his office said (Al Lawati et al., 2024, para. 5-6).

ICC Member States have the legal obligation to cooperate fully with the ICC (art. 86 of the Rome Statute), including arresting individuals sought by the Court and surrendering them to its custody (art. 89) if they enter their territory. Hungary's blatant refusal to arrest Netanyahu on its territory, as well as Netanyahu's flight to Greece in June 2025, raise serious doubts about the warrants' effectiveness.

Conclusion

The "map" of legal actions and State positions before international courts in the Palestine-Israel context shows that international law remains a tool for accountability and social justice. However, the practical effects of court decisions remain uncertain. Some States have disregarded the ICC arrest warrant against Netanyahu, hosting him on their territory (e.g., Hungary, Greece), and have not halted political, diplomatic, or economic relations with Israel despite the 2024 ICJ advisory opinion. The genocide in Gaza continues, and Israel's deliberate starvation of Gazans remains unaddressed by major legal interventions. From the perspective of Universal Jurisdiction, the recent arrest and interrogation of Israeli soldiers in Belgium, following a complaint by the Hind Rajab Foundation, and the opening of an investigation, offer hope for further legal actions.

The landscape of actors engaged in legal prosecution is complex. The predominance of Global South states pursuing justice for Palestine at the ICC, highlighted by the "Hague Group", reflects shifting geopolitical dynamics, especially following the Trump administration's policies. The Global South/Global North divide is more nuanced at the ICJ, where some European states support decisions but fail to implement them. While the ICC focuses on individual accountability, the ICJ offers a broader justice framework: reparations, ending occupation, and dismantling apartheid. Non-state actors, including NGOs and grassroots movements, show growing solidarity with Palestinians and demand adherence to international law and accountability for Israel's actions.

Transitional justice should be a comprehensive framework that transcends the "conflict/post-conflict" narrative, aiming for accountability, reparations, and institutional reform beyond prosecutions. In Palestine, this includes dismantling settler colonialism and apartheid, with reparations and restitution for affected communities.

The ICC and ICJ face a pivotal moment to uphold universal human rights and ensure accountability for serious violations by the Israeli government. Meanwhile, Global North states must end selective applications of international law and apply consistent standards regarding Palestine.

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