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

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

I

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

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

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

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

II

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

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

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

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

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

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

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

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

III

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

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

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

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

IV

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

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

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

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

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

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

INTERNATIONAL LAW IN THE ASHES OF GAZA

John Quigley

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

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