

Israel's Case at the ICJ: An Armed Conflict Where Only One Side Is Allowed to Fight

It was quite something to be in the court to witness Israel's nonsensical claim that this is an 'armed conflict' at the same time as denying the legitimacy of any armed resistance to it

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I was the only journalist inside the courtroom at the [International Court of Justice](#) for [South Africa's genocide case](#) against [Israel](#). Thirty accredited journalists were in a press room in another wing of the building, watching what the director showed them on a screen. Rather more journalists waited outside the building.

I got into the courtroom by sleeping on the pavement in the sub-zero temperatures of the Hague, in the queue for one of the 14 seats available in the public gallery. You can't beat being in the court – the interactions between the delegations, the body language and expressions of the judges in response to particular arguments. If you were not there, you are not really covering the case.

It has taken a week for my body to fully recover and about the same period for my mind to sift the drama and tension of the court from the actual arguments advanced.

The most striking thing was, of course, the highly belligerent attitudes of the opposing sides, with South Africa talking of [the Nakba](#) and [75 years of apartheid](#) in Israel, while the Israeli side responded by accusing South Africa of complicity in genocide themselves through support of Hamas.

The total dissonance of alleged facts was also truly remarkable. Israel simply denied responsibility for the destruction of infrastructure and housing – which they blamed on over 2,000 Hamas missile misfires and Hamas' booby-trapping of buildings. Israel claimed that more food per day now entered Gaza than before 7 October.

Israel also stated explicitly that every single hospital in Gaza was “a military base”.

Findings of fact would be established by evidence at a substantive hearing of the ICJ, probably in around two years’ time. What we had now was a request for provisional measures, where argument, probability and procedure were being considered, not evidence weighed.

I want to look now at some aspects of the argument that seem to me insufficiently considered elsewhere.

‘Unispute’

Israel’s base argument was that this was an [“armed conflict”](#), not a genocide. They used the term repeatedly.

In an armed conflict, there are inevitably civilian casualties. These might be “horrible”, but are always there, and are worse in urban warfare. Hamas was responsible for the civilian casualties by embedding its forces within civilian populations and structures.

Israel stated explicitly that Hamas operations were centred in hospitals, schools, water treatment and electricity generation facilities, and United Nations facilities. Civilian casualties in such places in armed conflict were therefore both inevitable and the fault of Hamas.

The difficulty here is that Israel both claimed that what is happening is “armed conflict”, and denied the legitimacy of any armed resistance to it.

In attempting to have the ICJ dismiss the case on procedural grounds, Malcolm Shaw KC said that South Africa had no right to bring the case as it had no dispute with Israel at the time of filing. It was not, he said, a dispute but a [“unispute”](#).

On a similar logic, Israel’s position depends on it being in “armed conflict” but denies there are two legitimate parties to the armed conflict. Israel stated in terms that it must not stop its operations because Hamas continues to fire on Israeli forces and launch rockets into Israel.

It is a strange armed conflict where one side is not allowed to fire. If Israel claims it is in armed conflict, it must acknowledge the legitimacy of the arms of those it is fighting. It cannot use “armed conflict” as an excuse for over 25,000 dead but then also claim it is not an armed conflict but some kind of limited anti-terrorism operation.

In short, if this is an armed conflict, the Palestinians have a right to fight back. Which of course they do. There is no doubt in international law that a people under occupation have the right to armed resistance. I don’t think anybody disputes that, not even the British or US governments.

Legal Nonsense

The key question here is: have the Palestinians no right to resist a genocidal attack because it is Hamas – designated by the West as a proscribed terrorist organisation – doing the resisting? This, in my opinion, is massive hypocrisy. The appalling consequences of branding

a de facto government simply as “terrorist” are playing out in the violent killing of hundreds of children every day.

The Hague has to pick its way through the legal nonsense of an “armed conflict” in which only one side is allowed to fight and in which the large majority of casualties are entirely innocent women and children, a distressing proportion of them infants; in which one side has every weapon of the most modern and expensive of armies and massive air power it uses to kill indiscriminately on an industrial scale, and the other side has a few light arms and improvised rockets.

In the West, we have painted ourselves into a similarly ridiculous legal position. Some protesters have now been [arrested](#) in the UK for opposing this genocide. I have personally been [forced to flee](#) the country while the police puzzle over whether supporting the Palestinian right in international law to armed resistance is “terrorism” or not.

On 20 January, Joe Biden and Benjamin Netanyahu had a conversation [about Palestinian statehood](#), which again confirmed the US view of a Palestinian state which would be an utter sham.

In particular, it would be permitted no arms or military forces and would not have control of its own borders or foreign policy. Israel would have power over both goods and people entering this “state”, which would be territorially fragmented and powerless in every way.

This, of course, is the ultimate culmination of the apartheid Israel scheme. Time passes, and people mostly do not know how much the vaunted “two-state solution” mirrors the planned apotheosis of apartheid. I had the South Africa desk in the UK Foreign and Commonwealth Office in the mid-1980s, and I can tell you.

The Black population of South Africa was to be confined to a number of “homelands”. These were to become “independent states”. One of them, [Bophuthatswana](#), was actually declared as independent.

Their “sovereignty” was to be limited in exactly the ways Biden and Netanyahu think may make a puppet Palestinian state possible. Ultimately, over 80 percent of Black South Africans were planned in these “independent” states, removing the Black majority from South Africa, for which they would function as a permanent pool of cheap labour with no rights.

Colonial Propaganda

Palestinians had, even before the current hostilities, been ethnically cleansed from 85 percent of their land. A “two-state solution” which cements that and leaves them under permanent Israeli military dominance will not solve this conflict, the answer to which is not the effective entrenchment of the status quo.

The desire to deny the Palestinians the right of a people to self-defence is bolstered by the endlessly recycled atrocity stories of 7 October. Now, I do not doubt that some crimes were committed by Palestinians on that day. They must be thoroughly investigated and if possible perpetrators punished – though strangely it is almost never possible to punish western military perpetrators of crimes in lands they have occupied.

I also do not doubt that Israel's version of the 7 October attacks has been amplified by the media, although the reality is far more [complex and troubling](#). Strangely, this has been much more openly admitted and discussed in Israeli rather than western media.

But there is of course a point to the systematic and sustained hype over the 7 October atrocities. It portrays the Palestinians as barbarians who should not ever have the right to bear arms or defend their homes and families.

This is a well-recognised pattern of colonial propaganda. Sustained occupation and deprivation of an occupied people leads to occasional frenzied outbursts of resistance, and unconventional warfare due to a disparity of arms.

Such outbreaks always contain atrocities that mirror the sustained violence to which the occupied people have been subjected. Those atrocities are then endlessly retold and amplified by the colonisers. The Black Hole of Calcutta or the stories of Mau Mau rape and murder are good examples.

These are, always, characterised as examples of the "bestiality" of the occupied and colonised, and proof of the validity of the civilising mission, and evidence of the moral superiority of the coloniser. There then follows more repression.

It is astonishing to me that postcolonial studies is now such a well-established discipline but that almost none of its core insights have fed through into public, and particularly media, discourse. What is happening in Palestine is perfectly plain.

The tragedy is that the western powers seek to abet it rather than stop it.

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