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# “INTERNATIONAL CRIMINAL JUSTICE AND PALESTINE”

## AN INTRODUCTION

M. Cherif Bassiouni\*

The *Palestine Yearbook of International Law* has, since its inception, been a widely-read scholarly journal. The contributions made to its eleven prior volumes, as well as to this twelfth volume, are by highly renowned experts whose works have been published in many countries.

The selection of articles in this volume, as well as in prior volumes, evidences the particular interest of the *Yearbook* in international legal issues relevant to the Palestinian conflict, which tragically and regrettably has been ongoing for over half a century. This volume, in particular, addresses a number of issues relevant to international criminal justice.

Professor William Schabas, a world-renowned scholar and Director of the Irish Centre for Human Rights at the National University of Ireland – Galway, who has written extensively on international criminal justice and who is the author of a major book on genocide, has contributed a significant and thoughtful article on crimes against humanity. The subject of crimes against humanity is of interest to the international community, and his article focuses on the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”). The article provides a very useful synthesis of the two tribunals’ jurisprudence. It also highlights some of the difficulties that these tribunals faced in identifying the legal elements of “crimes against humanity” (which are defined differently in the two tribunals’ statutes). That jurisprudence also shows the ICTY’s confusion in distinguishing between the “policy” element and the “widespread” or “systematic” nature of the practices directed against the civilian population. Professor Schabas’ article is of great usefulness to students of the subject and of the tribunals’ jurisprudence.

I have contributed an article on the February 14, 2002 decision of the International Court of Justice (“ICJ”) in the *Case Concerning the Arrest Warrant*

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of 11 April 2000 (Democratic Republic of the Congo v. Belgium). The decision represents a significant ruling on temporal immunity from prosecution for sitting heads of state, holding that such temporal immunities are recognized by conventional and customary international law. The majority opinion can be viewed as a cautious one, as evidenced by several concurring opinions and more so by the courageous dissenting opinion. At a time when international criminal justice is in search of new ways to combat impunity and to reinforce accountability, the ICJ might have taken this opportunity to contribute to these goals.

Mr. Steven Becker is an attorney with the Illinois Public Defender's program who is also a research fellow at the International Human Rights Law Institute, DePaul University. His article on universal jurisdiction lays an important foundation for understanding the issues raised by several other articles in the volume, namely those by Professor Eric David, Professor Chemillier-Gendreau, and William Bourdon. Mr. Becker is well-placed to write this exposition of the status of universal jurisdiction in international law and practice since he was the *rapporteur* at the Princeton Conference which produced the Princeton Principles on Universal Jurisdiction, which have received a great deal of international acceptance. In an objective manner, Mr. Becker describes the range of positions on universal jurisdiction. This range extends from strong advocates of human rights on the one hand, who advocate universal jurisdiction for *jus cogens* international crimes without any restrictions or qualitative legal criteria, to international lawyers and political scientists of the "realist" school on the other hand, who deny altogether that there exists a valid theory of jurisdiction that allows universality. He argues for a wise "middle" position, whereby universal jurisdiction is recognized and applied subject to certain guidelines, much along the lines expressed in the Princeton Principles. He concludes that universal jurisdiction is necessary as an *ultima ratio* but that it cannot be allowed to operate in a way that causes disruption of world order by allowing for the politically motivated exercise of such jurisdiction.

Professor Eric David, a scholar and long-time human rights defender, is a professor at the Free University of Brussels. His article addresses the issue of Belgium's universal jurisdiction regime. Since 1993, Belgium is the only country in the world to have adopted clear and unambiguous universal jurisdiction for war crimes, crimes against humanity and genocide. One of its early exercises of such jurisdiction, without any connection ("nexus") between the accused and Belgium, was brought in Belgium against the then incumbent Minister of Foreign Affairs of the Congo. Congo responded by filing an action before the ICJ, which is the *Case Concerning the Arrest Warrant of 11 April 2000*, discussed above. The ICJ held that Belgium's arrest warrant against then Minister Yerodia was in violation of international law. As a result of that decision, as well as political pressure by the United States, amendments to Belgium's 1993/1999 "universal jurisdiction" law were tabled in 2002, two amendments were promulgated in April 2003, and

another amendment to further restrict its application is under consideration as of this writing. While the U.S. conducted a major pressure campaign against Belgium's government to amend its law, it was really the impetus of Israel that brought the most pressure on the Belgium government. The reason for that is the complaint brought under Belgium's 1993/1999 law against Ariel Sharon, the incumbent Prime Minister of Israel, for his responsibility in the 1982 Sabra and Shatila massacres in Lebanon at the time he was minister of defense. An Israeli commission of inquiry found some responsibility on the part of Mr. Sharon and recommended that he be stripped of his right to command troops in the field. As a result, he was forced to resign as minister of defense. The complaint by the Sabra and Shatila survivors was for charges of international crimes. Professor David's article takes us through the history and application of Belgium's "universal jurisdiction" law, clearly evidencing its importance in the enforcement of international criminal law.

Professor Monique Chemillier-Gendreau, Professor of International Law at the University of Paris VII, reviews in her article legal violations committed by Israel against the Palestinians, with particular emphasis on the period 1947-1949. This is, indeed, a period on which little has been written from the legal perspective, and few of the facts are well known by the general public, as they do not reflect well upon Israel. More particularly, this article highlights the expulsion of Palestinians during the 1948 war and the creation of conditions rendering it impossible for them to return. The article also sheds light on the tragic events at Deir Yassin, where an extremist Zionist group killed some 256 men, women and children in a pre-dawn raid on the unarmed village. The author applies international legal standards to the facts that occurred at the time and determines that they were in violation of international law, highlighting the nonapplicability of statutes of limitations to such crimes.

Professor John Quigley, of Ohio State University College of Law, has been a long-standing advocate in the United States of Palestinian legal rights. He has written many scholarly articles on various aspects of the Palestinian-Israeli and the Arab-Israeli conflict. His article in this volume on the United Nations' response to Israel's seizure of the Gaza Strip and the West Bank in 1967 reveal once again the demise of international law when it faces the unbridled power of certain states. Throughout its history, Israel has been successful, as the late Moshe Dayan once said, "in creating facts." But it has also been successful, essentially due to U.S. support, at avoiding, save for a few occasions, condemnation of its practices of belligerent occupation which violate international law. In short, Israel has historically benefited from a dual legal standard under international law, and the United Nations has historically been unable to unequivocally condemn Israel for its violations of international law. Professor Quigley demonstrates that in connection with his analysis of the occupation of the West Bank and Gaza Strip in the military action of 1967. The article reviews claims of self-defense.

## *AN INTRODUCTION*

Mr. William Bourdon, a well-known human rights attorney and President of SHERPA NGO, contributes an article raising the question of whether the International Criminal Court ("ICC") can be seized with any crimes committed in the Occupied Palestinian Territories after July 1, 2002, when the Rome Statute for the ICC entered into force. He addresses the issues of war crimes under the Rome Statute's Article 8 and crimes against humanity under the Rome Statute's Article 7. The article describes how a complaint can be brought before the ICC.

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