

Irene Sotiropoulou* International law: A legal
system like no other and its
restitution in Palestine

ABSTRACT

The article investigates international law as a legal system that is decentralised, has been co-opted by colonial powers but it now sheds the co-optation institutions and rhetoric, because the resistance in Palestine and their allies followed the structure of this law in order to be enforced.

The article uses basic law theory to explain how a legal system without established enforcement works and why the failure of the UN's system to prevent the genocide in Palestine was an in-built characteristic of the organisation but not of the legal system. The study focuses on resistance and its function in international law and how the rules concerning resistance not only provide pathways for success to the oppressed but also support the legal rules to be truly implemented. Resistance in the Eastern Mediterranean separated the legal system from its co-opted representations and offered a material chance of restoring it.

KEYWORDS

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Old ideas have a capacity for revival in new guises.
Muthucumaraswamy Sornarajah, 2006

INTRODUCTION

One of the major gifts to the oppressed of this world by the Palestinian people and their resistance has been the restitution of what we call international law¹ to a state of existence that it had decades if not centuries to see. Despite some statements that international law is dead², it is alive and kicking even by the most conservative understanding of it. Or, when someone says that international law is a fraud³ that we should better forget about, one can also observe that still for a (supposedly) imperial fraud, this legal system does not stop being in the thoughts and comments of many.

In this study I explore some basics about this legal system and its functions concerning resistance to occupation and colonialism and how the resistance in Palestine and its allies created a historical breakthrough, a once-in-a-thousand-years legal possibility to get rid of several serious co-optations this legal system suffered from lately⁴.

This study is written from the perspective of the Mediterranean tradition but that does not mean this tradition is the only one. That western European colonials were mostly familiar with it and co-opted and misused this tradition does not make it better and by no means did this co-optation help it to evolve. The effort by the Global South to establish some universality of international law from the point of view of the oppressed⁵ reflects more variability in legal traditions than the Eurocentric universality we see in mainstream legal discourse.

Section two explains some basic notions and section three deals with international law as a decentralised legal system. Section four discusses how co-optation by centralisation failed and section five presents some basics about the right of resistance. Section six discusses how international law returns to its original decentralised design. Conclusions are presented in section seven.

2. SOME BASIC NOTIONS

When we talk about law, we mean rules or demands by a collective that are obligatory and enforceable and the collective thinks of them as important enough to be enforceable. If there are laws, we mean that if someone does not want to abide by it, we have

means, but also entitlement, to make that person abide by the rules. Or, at least, to make all others abide by the law, even if one person broke it.

Enforcement means violence, but it does not necessarily mean physical violence although in most sets of legal rules there is this threat, even if symbolic. Depending on the seriousness of the rule that is broken, a certain type of violence is ascribed to be used. The use of extensive violence for the implementation of a rule also goes in the reverse direction; if the punishment is seen as severe, this gives information to the collective about the priorities of the legal system – what the rules protect most.

Very often we see critiques about international law that it is impossible to be implemented⁶. In other cases, we see it be conflated with soft law, i.e. a set of rules that are adopted and implemented for political purposes by the legal subjects on their own initiative. There is soft law in international law and its importance is extensive because a lot of norms are adopted on an experimental or trial-and-error basis before becoming accepted as binding rules⁷. Soft law in the international realm can emerge because states don't want to relinquish sovereignty; because some international actors want to become role models or build reputation by using cultural or economic power to contrast with the states that prefer not to have any rules about an activity; or because there is pressure by social movements and the states offer a compromise, i.e. to recognise the legal good that needs to be protected but assign no obligatory rules to that protection. Still, soft law can become very much implemented and well enforced when power relations are such that those who have an interest in a soft rule can impose repercussions to those who don't abide by it.

However, when we talk about human lives, we have no luxury to have soft law about it. We cannot say and literally no one ever said "oh, we have a soft law that it is better not to commit genocide and it depends on each state's good will to abide with it". In legal terms, we have obligatory law, *ius cogens*⁸, which is customary and inescapable, i.e. no one can say "I did not agree to this rule, so I am not obliged to respect it".

What is the use of having obligatory rules if they are not respected? This is a crucial debate of legal theory and holds for all legal systems. It is interesting to see statements of the logic "if rules are violated in international law, it does not exist" while no one would dare to say about national legal systems that if someone violates the prohibition of murder, the legal system and the prohibition don't exist⁹. Therefore, we both have law on an international level and all the important rules of it are obligatory.

1 This study is about public international law, i.e. the international law referring to sovereignty, governance, human rights, war and peace, diplomacy and international agreements, use of common resources, law of the sea, international trade. The private international law, that deals with issues and disputes between individuals or between states acting as individuals and refers to cases that have more than one jurisdiction involved is still international law but deals with private matters, or public issues that appear as private matters in legal terms, e.g. private property of a state in another country.

2 Hindi, Ata R. International Law is Dead. Third World Approaches to International Law Review – Extra, 20.11.2023, accessible at <https://twailr.com/international-law-is-dead/>; Kinstler, Linda. Are we witnessing the death of international law?, The Guardian, 26.7.2025, accessible at <https://www.theguardian.com/law/2025/jun/26/are-we-witnessing-the-death-of-international-law>

3 Le Boeuf, Romain. Of Doubts and Confusions, European Journal of International Law, 32 (4), pp. 1361–1363.

4 When I say lately, I mean the last 500 years at least, but in terms of this legal system's (known) history, it is really a recent time (Neff, 2003; Koskeniemi, 2011; Onuma, 2000; Koh, 1996).

5 Eslava, Luis & Pahuja, Sundhya. Between resistance and reform: TWAIL and the universality of international law. Trade, law and development, 3(1), 2011, pp. 103–130; Rajagopal, Balakrishnan. International law and the development encounter: Violence and resistance at the margins. In Proceedings of the ASIL Annual Meeting vol 93. Cambridge University Press, 1999, pp. 16–27.

6 Goldsmith, Jack L. & Posner, Eric A. The Limits of International Law Fifteen Years Later, Chicago Journal of International Law, 22(1), 2021, Article 10; Goldsmith, Jack L., & Eric A. Posner. The limits of international law. Oxford University Press, 2005. Guzman, Andrew T. & Timothy L. Meyer. International soft law. Journal of Legal Analysis, 2 (1), 2010, pp. 171–225.

7 Koh, Harold Hongju. Why Do Nations Obey International Law?, Yale Law Journal, 106, 1996, pp. 2599–2659; Guzman, Andrew T. & Timothy L. Meyer. International soft law. Journal of Legal Analysis, 2 (1), 2010, pp. 171–225; Shelton, Dinah L. Soft Law, in Handbook of International Law. Routledge Press, 2009, pp. 68–80.

8 In Latin it means the law that drives or keeps in the right path, the law that constrains.

9 D' Amato, Anthony. Is international law really law. Northwestern University Law Review, 79, 1984, pp. 1293.

Before discussing enforcement and compliance we need to clarify that 'nation' in the 'international' word is a quite modern notion, going together with the rise and establishment of nation states in Europe. I often use the term 'intercommunity law' which is more accurate because it shows that this legal system does not necessarily presuppose states. It also shows that this legal system understands that a conflict between two communities in the same territory cannot be hidden under the label of the nation (state). This is why we have international legislation about protection of minorities and of Indigenous communities. That 'nation' is often thought of as not encompassing minorities or Indigenous peoples¹⁰, shows how problematic the 'international' term is. This discussion, however, would deserve a separate study and I will keep using the term 'international' here for the sake of communication.

In usual international law theory, the state as subject of the legal system is accepted to be the default. Yet, if one examines the rules of international law as such, one sees that groups (communities) or individuals are also subjects of international law. When for example, we talk about law of war or the prohibition of genocide, or of the law of the sea, private individuals, enterprises, and groups have an obligation to implement international law. In many cases, this functions as an obligation imposed by international law against rules or orders that the individuals and groups might receive by their employer, supervising officer or state.

Another example is the right of resistance: in practice it exists only for humans¹¹, but not for states although we might say for example, "Iraq resisted USA aggression". The statement is still good enough and does not make the resistance less legal or the legality untrue. If we want to be absolutely precise, we say that states have a right to defence. They can also support their people to wage resistance. Still, resistance is conceptualised as a collective human right, not a right of institutions¹². The centrality of resistance in international law proves how much the subjectivity of states is not the default. That in public discourse this legal system is being presented as state-induced, managed and controlled, has more a political and historical explanation rather than an actual structural basis in the legal system itself and its rules.

3. A DECENTRALISED LEGAL SYSTEM

International law is structured to not be dependent on states because it is decentralised by design. That makes it function in a very different way to how most national legal systems work. A decentralised legal system is one that does not assign mo-

nopoly of violence for legal enforcement to a central authority. In most national legal systems this role is undertaken by states with their judiciary, policing and punishment implementation institutions, like jails, fines, or deprivation of certain rights.

Decentralised systems don't usually have any permanent service for law implementation. Nevertheless, just like any legal system, they have people who develop legal expertise that can be used, paid or unpaid, in dispute resolution (professional job or unremunerated community service) when needed. What is missing is the permanent institutionalisation of the roles.

If one looks into the decentralised structure of international law, one will see that in some analyses this decentralisation is often accompanied by the label "primitive"¹³ or "anarchy"¹⁴ with a negative meaning for both words. This negative depiction would be enough to set off the alarm that there is something in this structure that does not fit the needs of colonialism.

Colonial perceptions of law 'see' legal systems that are written, centralised and hierarchical. Hence, when a legal system is oral, decentralised and without a pyramidal structure of legal implementation, those same colonial perceptions don't see the legal system as such. In that way, many extremely old, complex and effective legal systems of Indigenous peoples are erased as inexistent even if they very much exist¹⁵. When colonial perceptions - whether they come from an empire or from its poor cousin, the nation state - cannot get rid of those legal systems by erasure or destruction, they impose rules to eradicate the material basis of the local legal system, and they do a good deal of propaganda against it.

This does not mean that survivors of colonialism and postcolonial arrangements do not also express local and regional legal thought or that legal systems in the Global South do not contain the results of successful social and anticolonial struggles in the legal realm. However, one thing is the agency and brilliance of those who resisted colonial legal systems and another thing is the core structure of a legal system that is the default in a state territory. To that one could add epistemological colonialism and the dilemmas scholars have to make when they learn a field and when they try to develop it. That the crime-against-humanity of colonialism led to hybrid legal systems today in both Global South and Global North should be very carefully taken into account. Colonial legal systems¹⁶ have been very pervasive and in combination with economic and political power are still affecting the lives of most people today because they tend to be the legal systems that are taken as templates for constructing official legal orders, even if the rules received pressures to

10 Smith, Andrea. Against the Law: Indigenous Feminism and the Nation-State. In G.Coulthard, J.Lasky, A.Lewis, & V.Watts (Eds.). *Affinities: A Journal of Radical Theory, Culture, and Action* 5(1) Special Issue on Anarch@Indigenism, 2011, pp. 56-69.

11 Depending on the cosmology or legal tradition one uses as a basis to read international law, the right of resistance might exist for non-human living creatures too.

12 Blunt, Gwyllim David. Is there a human right to resistance? *Human Rights Quarterly*, 39 (4), 2017, pp. 860-881; Buchanan, Ruth. Writing Resistance into International Law. *International Community Law Review*, 10 (4), 2008, pp. 445-454; Chimni, Bhupinder S. Third World Approaches to International Law: A Manifesto. *International Community Law Review*, 8, 2006, pp. 3-27; Acquaviva, Guido. Subjects of International Law: A Power-Based Analysis. *Vanderbilt Journal of Transnational Law*, 38 (2), 2005, pp. 345 - 396; Menon, Phillip K. The International Personality of Individuals in International Law: A Broadening of the Traditional Doctrine. *Florida State University Journal of Transnational Law & Policy*, 1 (1), 1992, pp. 151-182; United Nations. United Nations Charter. 1945. Accessible at <https://www.un.org/en/about-us/un-charter/full-text>

13 Watanuki, Ryo. Interdependency between 'Primitiveness' and 'Change' in International Law: International Law of Self-Defence and the Overuse of 'Exception' after September 11. *The Journal of Social Science*, 80, 2015, pp.37-65.

14 Erakat, Noura. Justice for some - Law and the question of Palestine. Stanford: Stanford University Press, 2019, pp. 11-20; Helal, Mohamed. Anarchy, Ordering Principles, and the Constitutive Regime of the International System. *Global Constitutionalism*, 8 (3), 2019, pp. 470-505; D' Amato, Anthony. Is international law really law. *Northwestern University Law Review*, 79, 1984, pp. 1293.

15 De Vos, Hugo, Boelens, Rutgerd & Bustamante, Rocio. Formal Law and Local Water Control in the Andean Region: A Fiercely Contested Field. *Water Resources Development*, 22 (1 - March), 2006, pp. 37-48.

16 When I say colonial law I mean the law of the colonisers. I cannot blame the colonised and their scholars who in order to survive have to negotiate with the coloniser in legal terms. This creates the peculiar situation in which everyone contributes to the colonial law (the colonised more than anyone, with land, resources, legal thought and their mere work that is appropriated by the colonisers) but it still remains a legal system that reproduces the coloniser at the expense of the colonised.

improve. That other legal systems survived in parallel to those, whether recognised by states or not, does not change the fact of colonial legal rules persisting as well¹⁷.

International law is one among many decentralised, oral, customary legal systems but it is quite different because it does not have rules to interfere with everyday life of families, production, businesses, or administration of a community. For example, it does not have any obligatory rules about marriage and divorce or whether the productive enterprise should be owned by its workers or by a capitalist.

As a consequence, international law does not have a preference for a certain social, economic or political system, although we can detect propensities. However, we should bear in mind that if genocide is prohibited, then ecocide is prohibited too. If human rights are *ius cogens* then the treatment of workers in the companies that don't pay them enough to survive or don't have adequate health and safety measures is obviously and undisputedly illegal, irrespective of the claim by the local state or the powerful transnational corporation that 'have their own rules'.

So international law makes it acceptable to have almost any system, provided that you abide with *ius cogens*¹⁸. It also makes it clear that you cannot hide behind an ideologically progressive label and violate *ius cogens* because you are supposedly progressive and your victims are conservative. The freedom of any community to arrange for its affairs has limitations set by international law itself.

4. THE ATTEMPT TO CENTRALISE A DECENTRALISED LEGAL SYSTEM

Given that in decentralised legal systems there are no specialised groups who implement the law, everybody is obliged and entitled to implement the law. This means that the victims of a crime are not seen as unable to understand justice or too emotional to make decisions about it. Not only the victims but everyone has an obligation to implement the law and make others implement it. Some approaches, especially the ones that see decentralised systems as primitive, declare that this arrangement brings too much violence and makes violence an endless cycle¹⁹. They say that centralising the implementation of law leads to less violence and better law implementation, given the specialisation of the people who work in the entire law enforcement system²⁰. Obviously, anyone can reflect on the centralised legal system they know, and decide whether it brings less violence and more objective legal implementation.

I will use the example of international law, which, despite being decentralised, was submitted to centralisation in the last one and a half centuries or so. That the centralisation failed again and again did not persuade many theorists, let alone politicians to admit the failure and ask for organising the legal system as it is structured, i.e. in a decentralised manner²¹.

Apart from the failure of the centralising effort however, that same effort has been an insidious co-optation of the legal system.

As any first-year law student learns, law is an education tool. Hence, the creation of the United Nations (and of the League of Nations before it) was used to educate that instead of the disorganised (or "disorganised") world we had some centuries ago, we now have a centralised institution with the Security Council leading and thanks to it we now have less violence on international level.

The reality is very different and needs no explanation, especially after the last 24 months. But even much earlier than that, we could see why the UN was not able to prevent any genocide. Instead, it was the UN that gave some appearance of legality to the colonisation of Palestine and the genocide of the Palestinian people²².

Despite the practical and theoretical efforts to centralise international law, it was impossible to erase, distort or ban the basic principles of it, which literally allow wronged peoples to turn against their oppressors and resist the injustice and oppression inflicted upon them. The rights to defence and to resistance were not touched, with the great support and persistence of the anticolonial movements of the Global South. It also helped that no empire could deal with the right to resist oppression, occupation and colonisation because you cannot ban a customary right at will²³.

What western colonialism tried to do was to create a parallel legal system that was as the colonial powers liked it: centralised, written and in appearances too sophisticated for everyday people to understand, so that they could be easily silenced about it by experts and "experts".

The other thing the colonials did was to transfer the focus on that co-optation system and forget conveniently that the decentralised, oral and customary legal system never ceased to exist, nor any empire ever had the power to make it disappear. The discussion of turning an oral law into written law is huge and goes beyond the scope of this study but the main idea is that nation states tried to ban customary laws by issuing laws like "all

17 Bazán, Cesar. Decolonising legal theory: The rule of law and the legalisation of legal pluralism, *Via Iuris*, 36, 2024, pp. 37 – 67; Davies, Margaret. Decolonising (and) legal pluralism. *Journal of Law and Society*, 2025; Himonga, Chuma & Diallo Fatimata. Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law *Potchefstroom Electronic Law Journal – Potchefstroomse Elektroniese Regsblad*, 2017, 20 (1); Krishnan, Eesvan. Decolonising the Common Law: Reflections on Meaning and Method. *Auckland University Law Review* Vol 26, 2020, pp. 37-53; Malkani, Bharat. Legal pluralism, decolonisation and socio-legal studies. *Journal of Law and Society* (2025); Monaghan, Osca. Indigenous lawyering – Colonial Legal Formations and Decolonial Manoeuvres. In N.Watson & H.Douglas (eds), *Legal education through an Indigenous lens*, 2024, Routledge, pp. 23-38; Ruska, Pekeri & Nielsen, Jennifer. Decolonizing the common law - Beyond Colonial Thinking. In N.Watson & H.Douglas (eds), *Legal education through an Indigenous lens*, 2024, Routledge, pp. 151-168.

18 That we could and should have a debate about intercommunity law in times of climate crisis and collapsing capitalism and whether some economic practices must be prohibited just like slavery is prohibited (although as a practice it is very extensive) is something that I support but goes beyond the scope of this study.

19 D' Amato, Anthony. Is international law really law. *Northwestern University Law Review*, 79, 1984, pp. 1293.

20 McCrary, Justin & Premkumar, Deepak. Why We Need Police, in T.R.Lave & E.J.Miller (eds) *The Cambridge Handbook of Policing in the United States*, Cambridge University Press (2019); Miller, Eric J. The concept of the police. *Criminal Law & Philosophy* (2023) 17, pp. 573–595.

21 Rostow, Nicholas. International Law and the Use of Force: A Plea for Realism. *The Yale Journal of International Law*, 34, 2009, pp. 549-557.

22 Foda, Ezzeldin. Israeli belligerent occupation and Palestinian resistance in international law. Beirut: PLO Research Center, 1970, pp. 25-30; Sayegh, Fayez A. *The United Nations and the Palestine Question*. Beirut: PLO Research Center, 1996.

23 Wood, Michael. International law and the use of force: What happens in practice? *Indian Journal of International Law*, 53, 2013, pp. 345 – 367.

customs that go against this law are now void". This was impossible and rather unthinkable concerning international law. One reason is that the Global South would not accept it, although the anticolonial movements were those that persisted in the written recording of the law of war, particularly with the protocols of Geneva of 1977²⁴.

The oppressed understand that writing the laws makes them accessible but also they did not want to limit the protection international law gives to the oppressed and the vulnerable²⁵. Example: the definition of genocide in the Geneva Convention on the Prevention and Punishment of the Crime of Genocide (1948)²⁶ is the minimum limited definition that does not preclude more protection from customary law. Methods of genocide not mentioned in the Convention are very much covered by the oral customary prohibition of genocide no matter how the crime is committed, e.g. with cultural destruction²⁷, with ecocide or with artificial intelligence tools killing the political, academic and cultural leaders of a people. The oral prohibition covers what the written convention does not cover and what any future better conventions will not be possible to cover and predict.

In the same way the decentralisation in resistance was not changed in legal terms, although in practical terms it depends on the resources of the oppressed and on their ability to form alliances, as we learned at the law school. Yet, the colonial west and its theorists tried to muddy the waters by conflating the legal term of resistance with the political term of terrorism²⁸. However, it was not easy to change the fact that bombing and occupying another country is aggression prohibited by both unwritten and written international law. This is why most imperial aggressions since 1945 did not have any sanction or cover by the UN.

That misinformation through political discourse, mass media and the arts can create false perceptions about a legal system means that many people might think they know how it works while they don't. This holds for both supporters and haters of international law and for both supporters of the oppressed and of the oppressors.

However, there is a category of people who cannot afford not to know international law very well: the oppressed²⁹. If you are oppressed and your life and the lives of your community are in danger, you cannot afford to take any propaganda about international law at face value. You need to resist oppression, so you know that you need a legal framework that will ensure that your resistance is not futile.

Resistance is a means, a tool, that will enable you and your effort to have the result you need: become free from oppression. The

question is not whether resistance is legal but whether people will be able to liberate themselves and not be forced to live in resistance for ever. The oppressors try to present their violence as legitimate so that the resistance violence is presented as prohibited and the oppression is normalised. The question is how to implement a legal system, so that the oppressed don't live anymore in this situation, i.e. how to denormalise oppression and how resistance will be successful³⁰.

International law is exactly the legal framework that understands the need of the oppressed to stop oppression.

In all societies or communities we have laws to stabilise an arrangement without resorting to violence all the time. This is why when a legal system normalises oppression as legal we talk about systemic violence because everything seems non-violent to all observers unless you are the oppressed.

The supporters of centralised systems often tell us that if we don't centralise the legal system the powerful will always try to use violence to oppress the weak. What they don't want to discuss is that centralised legal institutions are very easy to be controlled and co-opted by the powerful. By centralising law enforcement, the oppression can very easily be legitimised by the very people who are supposed to stop it.

The situation with international law right now is a burning example of the centralised UN institutions that don't really want to stop genocides: a paralysed General Assembly that hides behind a colonial Security Council and does not call for a general mobilisation to protect people in Palestine and Sudan; international judges who delay investigations, warrants, rulings for years while the genociders kill hundreds every day; and politicians and experts who explain that this is the procedure, this is the legal system and we have to wait.

International law is saying, do what you can to stop the massacres as soon as possible. Use any means, economic or even military, to deter the genociders, stop supplying them with weapons and fuel, use universal jurisdiction to persecute war criminals, seize the assets of those who participate in the crime, deprive the criminals of their means of destruction.

Decentralising judiciary procedures is the default in this legal system but we don't discuss this enough and even less do we discuss the rationale of the decentralisation. How possible is it to blackmail, threaten, or buy out a dozen of judges in an international court and how possible is it to do the same with all judges everywhere?

24 Alexander, Amanda. *Revolutionary War and the Development of International Humanitarian Law*. In B.Cuddy & V.Kattan (eds) *Making endless war: The Vietnam and Arab-Israeli conflicts in the history of international law*. Ann Arbor: University of Michigan Press, 2023, pp. 112-144; Erakat, Noura. *Justice for some – Law and the question of Palestine*. Stanford: Stanford University Press, 2019, pp. 107-117; see also Additional Protocol (I) to the Geneva Conventions, 1977, relating to the protection of victims of international armed conflicts. 8 June 1977. Accessible at https://www.icrc.org/en/doc/assets/files/other/ihc_002_0321.pdf

Additional Protocol (II) to the Geneva Conventions, 1977, relating to the protection of victims of non-international armed conflicts. 8 June 1977. Accessible at https://www.icrc.org/en/doc/assets/files/other/ihc_002_0321.pdf

25 King, Charles R. *Revolutionary War, Guerilla Warfare, and International Law*. *Case Western Reserve Journal of International Law*, 4, 1972, pp. 91-123.

26 Geneva Convention on the Prevention and Punishment of the Crime of Genocide, 1948. Accessible at https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

27 Novic, Elisa. *The concept of cultural genocide – An International Law Perspective*. Oxford: Oxford University Press, 2016.

28 DeFabo, Vincent. *Terrorist or Revolutionary: The Development of the Political Offender Exception and Its Effects on Defining Terrorism in International Law*. *American University National Security Law Brief*, 2 (2), 2012; Marsavelski, Aleksandar. *The crime of terrorism and the right of revolution in international law*. *Connecticut Journal of International Law*, 28, 2013, pp. 241-295.

29 Kearney, Michael. *Lawfare, legitimacy and resistance: The weak and the law*. *The Palestine Yearbook of International Law*, 16, 2010, pp. 79-130; Sornarajah, Muthucumaraswamy. *Power and justice: Third World resistance in international law*. *Singapore Year Book of International Law*, 10, 2006, pp. 19-57.

30 Brett, Peter. *Revolutionary legality and the Burkinabé insurrection*. *Journal of Modern African Studies*, 59 (3), 2021, pp. 273-294.

Decentralising legal action also allows citizens to try to stop the genocide their governments commit, by using legal procedures, protests or direct action permitted or even demanded by international law. In a sense, the decentralisation means that if corruption exists among the elite of governance and judiciary, the resources of the powerful will never be enough not only to buy out but not even to predict where resistance and justice will emerge.

Lack of predictive capacity for the oppressors is really the basis of their demise. No centralised system will ever allow us to deprive them of their knowledge about who will be the dishonest law implementer. The genociders' rage against Yemen or against students in the USA universities shows exactly how much they could not anticipate who will take a stance.

Think about the most striking example the last two years: Yemen is a master teacher and executive of international law because Yemen understands how it works. The Yemeni people, survivors of genocide themselves, understand they don't need anyone's permission to stop a genocide or to defend their community.

5. THE RIGHT TO RESISTANCE IN A DECENTRALISED LEGAL SYSTEM

First, one doesn't need anyone's permission, approval or legitimisation statement to resist oppression, whether it is by one's own state, or by an invader, temporary or coloniser. Even if the entire world supports one's oppressor, legally one doesn't need anyone's permission to resist. The law gives it to the oppressed. In practice, it is important to build coalitions, given that the obligation of other people, groups and states to support a resisting people is as much enshrined in international law as the right of resistance itself³¹. But coalitions don't create the right to resist. The alliances make the right to resistance easier to use, but the right will exist whether you have allies or not and whether your resistance succeeds or not. The right will especially exist if your resistance does not immediately succeed, hence you need to try once more.

Second, the decentralisation of implementation legitimises the alliances of the subalterns. So, if the Lebanese people want to support the Palestinian resistance, they don't need permission from anyone (unless the Palestinian resistance refuses the help) to provide support. Neither the Lebanese state, nor the UN nor anybody else can delegitimise the alliance with the colonised people of Palestine who resist.

In other words, international law, by legitimising the enforcement of law by everyone, essentially says 'alright, maybe the subalterns have less power, but legally they have enough rights so that they resist in an organised manner'. The perception that we cannot do anything until the police and the judge take over does not exist in a decentralised system.

This is also the big vulnerability or weakness of the decentralised system, just like it is its strength. If the people who share a common legal system³² do not want to get busy with tackling injustice there is no one to help the oppressed. The legal system exposes the decision of the community members to stop or not stop a crime by seeing their action or inaction as their legal position because they don't depend on the decision of a court to do the right thing.

Third, the structure of distributing rights of violence like this means that the powerful cannot ever be sure that what they see as submission and paralysis is the real situation. Legally the oppressed can wage resistance, even armed resistance, to injustice any time. If there is no required procedure for them to wage resistance or form alliances, it means that all oppressions are not only illegal but also politically precarious. It is a huge service to liberation that the international law builds in its system the unpredictability and independence of resistance. Without needing any country, organisation or tribunal to confirm that one's resistance is legitimate, the oppressors cannot control legitimisation of resistance.

In practice the oppressors can do that to some extent, with the resources, propaganda, blackmails and allies they (oppressors) accumulate. Still, it is one thing to persuade the world to believe that the Palestinians need anyone's approval to wage resistance and another thing to make the approval legally necessary. The perception of so many progressives in the West since October 2023 that the resistance must be of certain ideology, must write texts appealing to the cultural needs of the West, or that it must follow a certain pathway to get legitimisation is not supported by international law.

Fourth, some people, including experts³³, even supporters of Palestine, see resistance as an exception in international law and to the general ban on aggression. They copy for this, the legal construction of self-defence in national laws and even the delimited character of the right of resistance when it is integrated in national legal systems. However, even the national patriarchal, capitalist, centralised, hierarchical legal systems needed to copy rules from the decentralised ones, in order to avoid absurdities in legal structure but also in order to prevent social unrest. Unfortunately, it is more possible to see police brutality or domestic violence be acquitted as self-defence than acquit protesters or domestic violence victims for their actual self-defence.

International law gives the right to self-defence to everyone who is aggressed and the right to resistance to everyone who is oppressed **without any prerequisite** of exhausting other legal means or of fulfilling any terms and conditions when and how and under which banner the resistance will be waged³⁴. Therefore, the Palestinians did not need to exhaust peaceful means of dispute resolution in order to be legal in their resistance, while their people were and are killed. That they indeed used all means

31 Ghasemi, Golamali. The Palestinian People's Right to Armed Resistance from the Perspective of International Law. *Iranian Journal of International and Comparative Law*, 2 (1), 2024, pp. 6-22; Sornarajah, Muthucumaraswamy. Power and justice: Third World resistance in international law. *Singapore Year Book of International Law*, 10, 2006, pp. 19-57.

32 I could not find any good translation in English for "κοινωνική δικαιοσύνη", as we say in Greek legal theory. The phrase means the people who share the same law, the same legal system and/or the same perception of justice or at least the understanding that their quest of justice is common and shared among them. In practice it is the members of the same community but in this phrase the community is made or perceived through the shared perception of what is right and what is wrong or what the aims of justice are.

33 See Razmetaeva, Yulia. The right to resist and the right to rebellion. *Jurisprudence*, 21(3), 2014, pp. 758-784. See also a brief history of the debate in Roberts, Adam. Resistance to military occupation: An enduring problem in international law. *American Journal of International Law*, 111, Symposium on revisiting Israel's settlements, 2017, pp. 45-50.

34 See also Caney, Simon. Responding to Global Injustice: On the Right of Resistance. *Social Philosophy and Policy*, 32 (1), 2015, pp. 51-73; Rostow, Nicholas. International Law and the Use of Force: A Plea for Realism. *The Yale Journal of International Law*, 34, 2009, pp. 549-557.

of peaceful protest³⁵ was their political choice and not a legal requirement.

In practice resistance is peaceful and a cornerstone of peace even if it is armed and uses violence. Why? Because there is no peace when there is oppression, occupation or colonisation. Restoring freedom and justice is the only pathway to peace. Resistance, armed or unarmed, is a legal tool to restore peace and maintain it³⁶.

Fifth, that many oppressors, occupations and empires do use the rules of self-defence to claim legitimacy for their crimes does not make the resistance an exception to the rule of no aggression. Quite the opposite, it exposes all those who in front of the public acts and crimes don't take an equally public and clear stance. All those who claimed and still claim that the occupation in Palestine has a right to self-defence against the local people who live in a cage fool themselves if they think that the more they say it the more the facts will change. In October 2023 all permanent members of the UN Security Council said the same outrageous legal misinformation that the occupation has a right to self-defence against the people it occupies. Yet, this statement of the UNSC members³⁷ did not change neither the rules of international law³⁸, nor the character of the occupation nor the fact that public crimes can be examined and named by everyone irrespective of what the most powerful say.

Therefore, the public character of international law and of the facts it deals with do not leave many margins for legal manipulation³⁹. That in political or discursive terms many try to muddy the waters and create scripts that present a legal system in ways it is not⁴⁰ shows exactly the clarity of the law and how much for important issues it does not assign permission to anyone to doubt what rule applies once the facts are established.

Sixth, the resistance of a people does not need to fulfil the political, ideological, metaphysical or practical aspirations of any outsider. Outsiders don't have a say whether the resistance must be secular or religious, leftist or right wing, affine to one's favourite political group or not. The fact that there is oppression and there are outsiders who stand by instead of stopping it makes them unable to have an opinion about the resistance of a people or about the legitimization of that resistance.

That obviously people and governments around the world might have a preference for a type of resistance or for a specific resist-

ance group does not mean that international law can be inferred based on political, ideological, or opportunist sympathies and antipathies. International law does not distinguish between bad and good resistance, much less based on western political criteria⁴¹.

The only obligation the resistance has is to not commit war crimes. This practically says that fascists and nazis are not legitimate resistances, as you cannot plan, implement or promote genocides and be expected to be legal and legitimate.

Therefore, not all ideologies have a pass, and not all actions have a pass once some group self-defines as resistance or defence force. There are many historical examples in which the oppressors pretend to be victims or use the rules of self-defence to commit more aggression. Hence, international law looks at facts in order to decide who is who and who does what. You cannot have a people to whom self-determination is publicly and continuously denied and pretend that their colonisers are the victims in this situation⁴².

Seventh, law of war, i.e. one of the oldest and core sets of rules of international law, is clearly in favour of occupied peoples, especially in favour of resistance as action and resistance as people who try to keep their community alive and free. So, international law is not neutral at all. For international law the aggressor is already at fault and the entire legal system is structured to create a situation in which the aggressor is treated as such.

This is evident if we look at how international law treats occupying powers and resistance to them. For example, in terms of war crimes, the resistance can continue even if some combatants are brought to justice for war crimes because the right to resistance belongs to the occupied population and in all cases. In contrast, the occupation is not made legal and will never be legitimate to continue even if the occupying force complies with the law of war in running the occupied territories. That is, international law gives the right to resistance even if the occupying force is good in following the law of war. Because it is already an international crime to rule another society and possess their territories.

Moreover, resistance fighters and revolutionary movement combatants have permissions by international law that no other combatant enjoys⁴³. The favourable treatment of resistance fighters by the law of war proves that the legal system recognises the imbalance of power between the two combating sides and tries to balance the deprived side with legal privileges that no regular army ever has.

35 National Lawyers Guild. Treatment of Palestinians in Israeli Occupied West Bank and Gaza. Report of the National Lawyers Guild 1977 Middle East Delegation. New York, 1978.

36 Quigley, John. The case for Palestine. Durham & London: Duke University Press, 2006, pp. 187-197; United Nations General Assembly. Definition of aggression. Resolution 3314. 14 December 1974.

37 China is until the moment the only permanent UN Security Council member that revised its position about the situation in Palestine and since January 2024 recognised the Palestinian resistance as legal.

38 Wilde, Ralph. Israel's war in Gaza is not a valid act of self-defence in international law. *Opinio Juris*, 9 November 2023. Accessible at <https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/>

39 The discussion however concerning revolution as such, i.e. resistance against a people's own rulers is not so definitive. There is no-one to deny that there is a right of resistance to invaders and colonisers, but concerning revolution the opinions differ (Keenan, 2011; Khan, 1987). However, saying that the right to resist oppression by own rulers does not exist brings all other international law basic rules in contradiction. For example, if a people cannot revolt against oppression, are they really sovereign? Why do they lose sovereignty if they have rulers? Why are their rulers the only sovereign in the country? and other contradictions that require a separate study to investigate.

40 Kumar, Vidya. On Scripts and Sensibility: Cold War International Law and Revolutionary Caribbean Subjects. *German Law Journal*, 21, 2020, pp. 1541-1569; Rajagopal, Balakrishnan. International law and the development encounter: Violence and resistance at the margins. In Proceedings of the ASIL Annual Meeting vol 93. Cambridge University Press, 1999, pp. 16-27; Sornarajah, Muthucumaraswamy. Power and justice: Third World resistance in international law. Singapore Year Book of International Law, 10, 2006, pp. 19-57.

41 See article 4 Geneva Convention IV relative to the protection of civilian persons in time of war, 12 August 1949. Accessible at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf> and <https://ihl-databases.icrc.org/assets/treaties/380-GC-IV-EN.pdf>; and the Additional Protocol I to the Geneva Conventions, 1977, relating to the protection of victims of international armed conflicts. 8 June 1977. Accessible at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

42 Falk, Richard. International Law and the United States Role in Viet Nam: A Response to Professor Moore. *Yale Law Journal*, 75, 1966, pp. 1122-1159; Quigley, John. Self-determination in the Palestine context. In S.M.Akram, M.Dumper, M.Lynk & I.Scobbie (eds) *International law and the Israeli - Palestinian conflict - A rights-based approach to Middle-East peace*. London & New York: Routledge, 2011, pp. 209-228.

43 King, Charles R. Revolutionary War, Guerilla Warfare, and International Law. *Case Western Reserve Journal of International Law*, 4, 1972, pp. 91-123; Foda, Ezzeldin. Israeli belligerent occupation and Palestinian resistance in international law. Beirut: PLO Research Center, 1970, pp. 101-148.

Additionally, the invader or occupying force has an entire set of obligations to protect the occupied population, irrespective of whether there is resistance or not, irrespective if there is armed resistance and irrespective if the armed resistance is popular among the local population. The occupied population has no obligation to side with the occupier to have their lives and rights protected. As a sovereign people, they can both resist and support the resistance and still claim their rights to safety, freedom, justice and access to all goods and services they would have from their own state if it was not under occupation⁴⁴. International law recognises that even if everyone supports the resistance there are by default population groups that cannot undertake combat, like the children, the elderly, people with disabilities and people who might have no training to do that.

By the way, throwing stones to the occupier's tanks is not combat, just like undertaking of civil protests of any type is not combat. When we talk about combatants, we talk about people who have access and proper training to use weapons according to the technological situation of the era and place.

Moreover, the civilians who might have weapons when allowed by international law to protect themselves, are still not combatants. For example, the personnel of healthcare facilities may have weapons for their own protection, because the occupying forces might attack a medical unit, even if the attack is prohibited by international law⁴⁵.

It is virtually impossible to attack a hospital or medical vehicles legally because the prerequisites for such an attack are very strict and when the question is raised about an occupation attacking medical units, the question would rather be "why is the occupation there in the first place?". If there is no clear evidence, in advance, of the extensive military function of a medical unit, the unit is assumed to be a medical one, virtually saying that all attacks to medical units are war crimes at least (ar. 52 par 3 of Additional Protocol I 1977 to the Geneva Conventions).

To make sure that politicians, mass media or imperial experts don't bothside an occupation, international law systematically shifts the burden of proof on the attacker and if this is an occupier, then all the obligations to prove what is happening and who does what, are on the occupying force's side. This means that all war or civilian crimes against the population under occupation are assumed to be the responsibility of the occupier, unless proven otherwise. The occupier is also responsible for whatever happens to its own citizens or unarmed people they brought to live in the occupied territory, irrespective if they are settlers or are there for any other reason.

The occupying force is responsible to provide policing and judiciary services that will abide with human rights legislation, local and international. So, if an occupying force is detaining members of the population under occupation without a proper judiciary process or if it arms or weaponises common criminals to steal aid from the occupied population, these are all war crimes⁴⁶.

6. RESISTANCE MOVEMENTS AS LAW MAKERS AND RESTORERS OF INTERNATIONAL LAW

If international law has such rules and structure, it then makes sense that so many people took to the streets everywhere and persist still in protesting for Palestine. It is interesting to observe not only the protests, the boycotts and the symbolic incursions on weapons factories, but also how on the internet everyday people know international law much better than their governments, academics, politicians and mass media personas. Palestine, its people, their resistance and their allies forced everyone to take a stance or at least become exposed for not taking one, but they also forced everyone to learn history and law.

We would need a separate study to discuss why worker classes know better international law than the elites⁴⁷. Here we need to point out that the most oppressed, the wretched of the earth, not only know international law better than anyone else but they also teach it, especially the last 24 months in ways that surpassed any other academic text or expert analysis.

It is also interesting to see that despite the justified, grounded critique to international law by the Palestinians, their resistance and their allies, they carefully rebuild it the way it is supposed to be. There is a significant amount of theory in the statements of the Palestinian resistance and of their allies, in the statements of people in Gaza writing on social media, in the statements of all the oppressed trying to understand whether there is hope that the massacres will stop and how. And there are loads of theory in the praxis of the oppressed, which is literally what constitutes the rules of international law.

You might say that international law does not exist, and you might sit on your sofa whining why the world is like that, then continue not supporting the people in your community who block ports to stop arms trade. Or, you might say that international law does not exist but if you take it to the occupation with your bare hands and feet, you are the person who makes the legal system exist and be implemented. Resisting is what makes international law work, whether you like this legal system or not, whether you believe it exists or not.

44 Ford, W.J. Resistance movements and international law. *International Review of the Red Cross* (1961-1997), 7, 1967, pp. 515-531; Yahia, Faris. The Palestine Question and international law. Beirut: PLO Research Center, 1970, pp. 179-186; Foda, Ezzeldin. Israeli belligerent occupation and Palestinian resistance in international law. Beirut: PLO Research Center, 1970, pp. 55-100; See also Geneva Convention IV relative to the protection of civilian persons in time of war, 12 August 1949. Accessible at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf> and <https://ihl-databases.icrc.org/assets/treaties/380-GC-IV-EN.pdf>

45 See the Additional Protocol I 1977, article 52 and first chapters, especially articles 12-15. Additional Protocol (I) to the Geneva Conventions, 1977, relating to the protection of victims of international armed conflicts. 8 June 1977. Accessible at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

46 See Geneva Convention IV relative to the protection of civilian persons in time of war, 12 August 1949. Accessible at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf> and <https://ihl-databases.icrc.org/assets/treaties/380-GC-IV-EN.pdf>; Additional Protocol (I) to the Geneva Conventions, 1977, relating to the protection of victims of international armed conflicts. 8 June 1977. Accessible at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf;

Additional Protocol (II) to the Geneva Conventions, 1977, relating to the protection of victims of non-international armed conflicts. 8 June 1977. Accessible at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf; Quigley, John. The case for Palestine. Durham & London: Duke University Press, 2006, pp. 198-205; Human Sciences Research Council. Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law. Middle East Project, Cape Town, 2009; Foda, Ezzeldin. Israeli belligerent occupation and Palestinian resistance in international law. Beirut: PLO Research Center, 1970, pp. 55-148.

47 Hammoudi, Ali. The conjunctural in international law: the revolutionary struggle against semi-peripheral sovereignty in Iraq. *Third World Quarterly*, 37 (11), 2016, pp. 2028-2046; Hinely, Susan. The Global "Parliament of Mothers": History, the Revolutionary Tradition, and International Law in the Pre-War Women's Movement. *Chicago-Kent Law Review*, 87, 2012, 439-461; Kearney, Michael. Lawfare, legitimacy and resistance: The weak and the law. *The Palestine Yearbook of International Law*, 16, 2010, pp. 79-130; Sornarajah, Muthucumaraswamy. Power and justice: Third World resistance in international law. *Singapore Year Book of International Law*, 10, 2006, pp. 19-57.

A decentralised legal system based on material action could only suffocate in the UN system and in public statements that try to persuade workers they don't know enough and have to wait until some court somewhere tells them if a genocide is genocide and if a resistance is resistance. Workers know they don't have so much time as the Yemeni people proved.

That most countries in the world and most people still don't follow the example and teaching of the Palestinian and Yemeni and Lebanese and Iraqi people is indeed a failure but also two years ago everyone thought that international law is a joke. Now most people recognise the role of Yemen in its implementation, because they saw it with their own eyes. Two years ago, people thought that international law was made by the colonial powers and now they watch in real time the supposed creators of this legal system to be unable to destroy it, delete it from our thoughts or even explain it in a way that would delegitimise the resistance in Palestine. That oppression in the western colonial countries intensifies is because there is no argument to persuade the workers that international law is what the empire says and not what the resistance in Palestine says.

No matter how much the international courts delay their verdicts and irrespective of what the verdicts say, most people know to recognise a genocide, their own obligations, the obligations of their governments, the rights of the oppressed and the legal urgency to implement those rights. It is indeed a matter of resources and organising when the law will be implemented for good and the violence will stop. It is amazing that the more the colonials try to destroy international law the more people take a more radical stance about it and about what needs to be done in the case of Palestine, i.e. that the full sovereignty of Palestinian people must be restored, something that was not widely mentioned two years ago.

7. INSTEAD OF CONCLUSIONS: A COLLECTIVE DISCUSSION ABOUT INTERCOMMUNITY LAW

Restoring a legal system to function properly is not an easy task and it should not fall on the oppressed. It was and is the responsibility of all the rest to make the law work. International law has mechanisms of accountability that have many forms⁴⁸ that I could not present in this study. However, it also "knows"⁴⁹ that most people, when not harmed personally, will not resist the oppression of others, so the legal system has a structure in which those who make the law are those who resist. Those who resist are always the oppressed and among them the most oppressed are those who know that they have to implement the law or they are doomed.

Free Palestine is a legal claim, now seen everywhere, exactly because it encompasses the return to people's sovereignty, the claim for land back and the demand to implement the law of war. Palestinian people with their resistance, just like any other resistance and anticolonial movement in the past, showed how international law works and how legal systems work in general. It is not easy to go back now for example in the West, in a time

when the responsibility for colonial crimes was only a theoretical discussion. International law is now clearly in conflict with many national legal systems that persecute those who try to stop a genocide. The right to resist became again a central political issue⁵⁰ on international, transnational, national and intracommunity levels drawing rules, principles and examples from international law, because in some cases it is the only legal system available to resolve legal contradictions while a genocide is unfolding. The restoration of such a legal system is happening on so many levels that even the most optimist could not anticipate two years ago. It shows that we have a legal system that depends on the oppressed rather than the elites. Which means that academics, lawyers, and any other experts can only help but cannot lead the restoration of the legal system. That said, we need more collective action in international law rather than theory. When we take into account the decentralised character of the legal system, the decentralised character of theorising about it becomes clear. We should prioritise action if we are serious about upholding, learning and developing it ■

48 See for example, King, Charles R. *Revolutionary War, Guerilla Warfare, and International Law*. Case Western Reserve Journal of International Law, 4, 1972, pp. 91-123; Or, Helmick, Raymond G. *Negotiating outside the law – Why Camp David failed*. London & Ann Arbor: Pluto Press, 2004.

49 I use international law as a subject in sentences but indeed I follow the usual understanding that if not stated otherwise a legal system is a collective creation. Especially about international law and its old core sections like law of war or law of the sea, we don't know when and who came up with the idea to create it. So after so many centuries of existence, violations and restorations, we can say that these old parts of this legal system contain some material knowledge, probably collective, stemming from the historical experience the rules encode. It does not mean that the knowledge is perfect, value free or not expressing a certain social antagonism.

50 Young, Robert J.C.. The right to resist. In A.Oboe & S.Bassi (eds) *Experiences of Freedom in Postcolonial Literatures and Cultures*. Routledge – Taylor & Francis Group, 2011, pp. 43-58.

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