

Focus: Issues in International Law as Seen in the Israel-Palestine Conflict (Summary)

Essay: What Can International Law Do about the Israel-Palestine Conflict?

Shuichi Furuya (Professor, School of Law, Waseda University)

In the military conflict in Gaza, we can see the strategic use of international law in “lawfare”. Israel claims it has the right to self-defense, while Hamas claims it is resisting an illegal occupation, and both sides are complicating the conflict by framing the situation in ways advantageous to themselves. On the other hand, legal proceedings through the International Court of Justice and the International Criminal Court, as attempts to hold people responsible for genocide and war crimes, show that international law can also function in armed conflicts. That international law can be used as a tool for political bargaining is a fact, but it is also evident that countries recognize the significance of relying on international law. Accordingly, it is important to strengthen the function of international law to discipline politics by interpreting and applying international law from the perspective of the victims. The simple sense that attacks on civilians are unacceptable is a perspective that provides objective and equal standards, and firmly maintaining this stance will reduce arbitrariness in the interpretation of international law and enhance its power to discipline politics.

1 The Gaza Invasion by Israel and Jus ad Bellum

Shin Kawagishi (Professor, Faculty of Humanities and Social Sciences, Department of Law, Shizuoka University)

The recent invasion of Gaza by Israel has once again raised the question of whether the right of self-defense can be exercised against non-state actors. In this regard, the issue revolves around “armed attack” as a requirement for the right of self-defense, and the position that armed attacks can only be carried out by states (the state-only argument) conflicts with the position that armed attacks can also be carried out by non-state actors (the non-state actor permissibility argument). This paper evaluates the Israeli invasion of Gaza using the International Court of Justice’s ruling as a reference and concludes that, although the International Court of Justice’s ruling is not free from ambiguity, it relies on the application of the state-only argument and, to the extent it does so, the Israeli invasion of Gaza cannot be justified. However, international law is not determined solely by International Court of Justice rulings, and state practice must also be considered. In future, an approach of carefully considering state practice will be required.

2 Problems of International Humanitarian Law Raised by the Israeli Invasion of Gaza

Kyo Arai (Professor, Faculty of Law, Doshisha University)

The Israeli invasion of Gaza since 2023 has revealed serious problems concerning international humanitarian law, which may underlie the unprecedented and disastrous damage to the civilian population. This paper examines two of them: the ambiguity of the definition of civilians in non-international armed conflicts (NIAC) and the legal consequences of the use of civilians as “human shields”. Israel has expanded the scope of legal human targets by defining “Hamas military personnel” in a vague way and by broadly interpreting the direct participation in hostilities by civilians. It has also attempted to justify incidental civilian harm from attacks as the consequence of Hamas

using human shield tactics, going far beyond the proper interpretation of the principle of proportionality. This paper examines these practices, noting the difficulties in applying the principle of distinction and the precautionary principle to prevent civilian casualties in situations where military targets and civilians are mixed in urban warfare and in asymmetric armed conflicts more broadly, pointing out the future problems that international humanitarian law may face.

3 The Palestine Conflict and the International Court of Justice: The Significance of the Litigation against Israel

Dai Tamada (Professor, Graduate School of Law, Kyoto University)

On December 29, 2023, as the Israeli invasion of Gaza was intensifying, South Africa brought a case against Israel at the International Court of Justice (ICJ). Accusing Israel of violating the Convention on the Prevention and Punishment of the Crime of Genocide, South Africa requested provisional measures ordering an immediate halt to the military operation. In its first and second Orders, the ICJ ordered Israel to take measures to prevent genocide and, in its third Order, it finally ordered a halt to the military offensive. This case involves several procedural law issues (among them being the grounds for the South African lawsuit, the standing of South Africa, and the intervention of other parties in the proceedings). The most important issue is the significance and effect of the ICJ's dispute settlement procedures in relation to issues of common concern to the international community such as genocide. When looking at this case, it is necessary to adopt a multilateral perspective rather than a bilateral perspective of "South Africa v. Israel". This paper provides an overview of the proceedings of this case (Part 2), and then analyzes the issues in procedural law (Part 3) and examines their significance (Part 4).

4 Legal Issues Concerning International Criminal Court (ICC) Arrest Warrant Requests for Israeli and Hamas Leaders: Current Laws and Tenets Concerning Jurisdiction and the Complementarity System

Megumi Ochi (Associate Professor, Graduate School of International Relations, College of International Relations, Ritsumeikan University)

On May 20, 2024, the Prosecutor of the International Criminal Court (ICC) requested arrest warrants for the prime minister and defense minister of Israel as well as for three Hamas leaders. This paper confirms current law with respect to the two legal issues raised in the application submitted by Israel – the jurisdiction of the ICC and the principle of complementarity – and examines the main issues of the ICC's principles and the systems designed to realize them. The issue in question regarding the ICC's jurisdiction was whether Palestine is a "state" under international law. After introducing the ICC's February 5, 2021 decision on jurisdiction in this case, this paper touches on the fundamental issues concerning the ICC's jurisdiction. Regarding the principle of complementarity, the author introduces its theoretical basis and then clarifies the increasingly refined criteria used by the ICC in assessing the admissibility of cases. Based on the examination, this paper discusses the relationship between peace and justice, i.e., the balancing of measures taken for the sake of peace with measures taken in the pursuit of justice, as well as the principles and systems that the ICC has established based on these ideas.

Independent Articles:

1 The Right to Defend Vessels from Attacks: Assessments of Measures taken in response to the Red Sea Crisis

Yurika Ishii (Associate Professor, Department of International Relations, National Defense Academy of Japan)

Since October 2023, Yemen's Houthi rebels have persistently targeted commercial vessels sailing in the Red Sea. This paper examines effective measures that Japan and other states can lawfully take to protect their vessels from attacks. Section 2 outlines the background and context of the Red Sea crisis. Section 3 assesses the scope and implications of law enforcement and self-defence measures on the high seas and in exclusive economic zones. Section 4 discusses the legality of the United States and the United Kingdom's strikes against Houthi bases on Yemeni territory under Article 51 of the United Nations Charter, in the light of the jurisprudence of the International Court of Justice and scholarly works. Section 5 examines the capabilities and limitations of maritime security and anti-piracy operations conducted by the Japanese Self-Defense Forces under Japanese law.

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