EDITORIAL

An International Economic Law Perspective of the Israel/Palestine 23/24 War?

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For days, weeks, months - nay an immense black hole time of infinity, but certainly a life time of a memory - indelibly imprinted in the international community that has a conscience, the unceasing blood bath of our times in Palestine. What level of blood for a nation to exist, what level of blood for a people to have statehood? Is there a level of blood spilling when it no longer is feasible to persist in the defence of a continued Statehood, when it is no longer worth fulfilling a dream of Statehood? This is of course at some level a profound existentialist question that appeals to our sense of humanity, our sense of propriety, our moral conscience. We must surely ask this threshold question if only to remind ourselves that there are limits at a moral level to any existential stance.[1] At a superficial level, this is also a cost benefit approach that economists deploy in their economic analysis of law.

From the perspective of international law, we must posit and address further the question whether a permanent member of the UN Security Council (UNSC) has an absolute right to veto a resolution proposed to bring an immediate halt to serious violations of peremptory norms of international law, in circumstances wherein the resolution proposed is the only expedient available course of action available to the international community. It is a poor argument to assert that diplomacy should be given more time when it is precisely the function of the UNSC to act upon the failure of diplomacy and to act decisively. And ancillary to this the question is whether that veto can be vitiated through a determination in the International Court of Justice (ICJ).

And what of international economic law (IEL)? It is not devoid of humanity. Indeed, it serves its very advancement. In addition to its core transactional focus on

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1 The ambiguity on the use of a nuclear weapon to address an existential threat in the International Court of Justice in the Legality of the Threat or Use of Nuclear Weapons ICJ: Advisory Opinion of July 8, 1996 on this question was unfortunate.

international investment and trade, it has an important underbelly concerned with international development law (the welfare branch of IEL) - in particular the right to development[2] including sustainable development. There are accordingly legitimate concerns that IEL scholars can engage with in their reflection of the Israeli/Hamas War. Indeed, the recent ICJ Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,[3] confirms the role and relevance of IEL providing specifically important insights into the economic rights and obligations as it concerns an occupied territory, i.e., the right to permanent sovereignty over natural resources, the prohibition on confiscation of property and expropriation without compensation, and the economic right to self-determination. In sum, this war is not just about the international law on the use of force, humanitarian law, the UN system of peaceful settlement of disputes, and the UNSC role in the prevention of breaches of international peace and security.

Moreover, there are two ways in particular that IEL could provide a practical basis for the enforcement of gross violations of international humanitarian law/international criminal law - essentially by mainstreaming them into IEL - just as it has done, and moving further towards doing so, in the spheres of gender equality and the environment/climate change. Thus, there is discourse in international environmental law for the inclusion of the crime of 'ecocide' in Article 5 of the Rome Statute.[4] By analogy, it is proposed here that international trade that directly facilitates the commission of such violations, namely to coin an acronym, the crime of 'Itocide,' should be mainstreamed in the practice of IEL. Whilst 'Itocide' embracing gross violations of international humanitarian/international criminal law may be said to exist in the form of the crime of "aiding and abetting" such violations, the purpose of re-packaging it into IEL serves to: (1) mainstream it into IEL more effectively; and (2) and enables the scope of the violations to be accommodated and further enhanced within the corpus of IEL. In passing, such a move forward could also facilitate a greater harmonisation of the growing range of national export controls that are informed by security concerns. Furthermore, surveillance exercises under Article IV of the Articles of Agreement of the IMF, of members of the Fund, already focus on climate change and gender issues. The scope of these consultations should be extended to Itocide as such acts have an impact on the international economy. In the same vein, the WTO

2 See UN Declaration of the Right to Development 1986. G.A. Res 41/128, pmbl. & art. 1.

3 July 2024.

4 R.C. Andrade, *The Time to Criminalize Ecocide is Here, But a Fifth International Crime Could Hurt the Very System From Which it Draws Power and Legitimacy*, Opinio Juris (Sept. 6, 2024), https://opiniojuris.org/2024/09/06/the-time-to-criminalize-ecocide-is-here-but-a-fifth-international-crime-could-hurt-the-very-system-from-which-it-draws-power-and-legitimacy.

trade policy reviews should touch upon Itocide. The WTO after all is the premier international trade institute and its mandate focuses both on imports and exports in international trade.

In sum, international economic scholars have a *locus standi* to interject in this conflict not only with respect to the immediate parties, but also those who are complicit in it. Here are substantive international economic issues, as there are systemic questions, that need to be discussed. Indeed, there is complicity in the silence.