

UNDER THE SHADOW OF ‘THE BULLET’: TWAIL REFLECTIONS ON THE ‘WORTH’ OF WAR AND PEACE

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This essay offers some brief reflections, from a Third World Approaches to International Law (‘TWAIL’) vantage point, on the ways in which the global arms trade, symbolised by the ‘bullet’, is fundamentally embedded within the international legal regulation of war and peace. In mainstream international law, war is cast as a crisis and as a necessary response to threats to security; bringing about peace through the cessation of war is presented as the prime responsibility of the international community. This essay traces the influence of these two fundamentals of international law in relation to contemporary events, specifically in relation to the genocide in Palestine. In this arena, the ‘worth’ of war and peace is measured not in terms of protecting and supporting the already acutely dispossessed targets of the ‘bullet’, but in terms of protecting, supporting and systematically enriching those who produce and deploy it. A TWAIL analysis exposes the imperialist logic of those who benefit in different ways all along the collusive chains of arms-trade – chains that bind perpetrators to victims – and the role of the international legal order, including human rights, in ensuring that both remain entangled with one another in a corrosive carceral relationship. The essay concludes with ways to navigate this coercive and violent order both within and beyond international law and human rights.

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“There’s something happening here
But what it is ain’t exactly clear
There’s a man with a gun over there
Telling me I got to beware...

There’s battle lines being drawn
Nobody’s right if everybody’s wrong
Young people speaking their mind
Getting so much resistance from behind...

Paranoia strikes deep
Into your life it will creep

It starts when you're always afraid
Step out of line the men come take you away...

It's time we stop
Hey what's that sound
Everybody look what's going down..."

— Buffalo Springfield, *For What It's Worth* (1966)

I. INTRODUCTION

The plot of the Hollywood film *Lord of War* (2005) delineates a lucrative clandestine arms trade against a backdrop of the material production and lifecycle of a bullet. The film's opening sequence traces the bullet's journey from its point of origin as mined ore to its manufacture, packaging, transportation, stockpiling and distribution; it being loaded into a gun; and its targeted discharge, trajectory, and detonation upon successfully reaching its final goal — the forehead of a young black boy in an unnamed conflict zone of Africa. The lethal object thus fulfils its destiny, accompanied by an iconic background score: the countercultural classic *For What It's Worth* (1966) by the rock band Buffalo Springfield.¹

Today, two decades after this fictional murder shown in granular detail, the sinister arena of the unconscionable and all-too-real political economy of war, and the multiple traumas, untold sufferings and spectacular 'collateral damage' it generates and perpetuates, continue to expand, abetted by the current incarnation of international law ('IL') and human rights. In parallel, we see the expansion of the distorted logic that the multi-billion-dollar global arms trade is essential for "protecting liberal democracy" from the threat of terrorism, *jihad* and other forms of violent assault on sovereign nations by their enemies. Advocates routinely argue that external arms transfers are necessary to bolster state- or democracy-building efforts — providing governments with 'democratic police and armed forces' capable of warding off Afghanistan and Iraq.² From this vantage, some sales are deemed legitimate to the extent that they quell internal armed conflicts and pave the way for democratic governance.

The theme of law-as-violence, a central and recurring one in critical legal theory, is a major focus for scholars associated with Third World Approaches to International Law ('TWAAIL'), a collaborative international project committed to rewriting IL and human rights from the perspective of the Global South.³ The hope underlying such critique is that it might actively influence the fraught and failing existent international legal order governing the

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¹ LORD OF WAR (Saturn Films, United States of America, 2005).

² Pavel Dufek & Michal Mocht'ak, *A Case for Global Democracy? Arms Exports and Conflicting Goals in Democracy Promotion*, Vol. 22(3) JOURNAL OF INTERNATIONAL RELATIONS AND DEVELOPMENT 5 (2019).

³ See, e.g., Luis Eslava et al., BANDUNG, GLOBAL HISTORY, AND INTERNATIONAL LAW: CRITICAL PASTS AND PENDING FUTURES (Cambridge University Press, 2017); Antony Anghie et al., RESEARCH HANDBOOK ON THIRD WORLD APPROACHES TO INTERNATIONAL LAW (unpublished manuscript, on file with author); See generally, Edward Said, IMPERIALISM (Vintage, 2003).

diverse armed conflicts being instigated, stoked and executed by multiple militarised state and civil actors across the globe.

TWAIL emerges from the Global South and brings forward work by scholars from the Global South and scholars engaged with IL and human rights involving the Global South, as well as the pockets of the Global South within the Global North.⁴ It is not a membership-oriented movement, nor does it have a headquarters or institutional centre. This conscious distance from the institutional politics and bureaucracies that inevitably enmesh, asphyxiate and depoliticise even the most radical critical projects has enabled TWAIL to operate as a dynamic project that maps new discursive terrain. Critical engagement with subaltern histories and epistemologies, life-worlds and locations — ‘Other’ ways of being, living, seeing — challenges the positivist, universalist content of Eurocentric IL. TWAIL exposes how IL and human rights erase difference and its trumpeted claims to be a progressive endeavour with the potential to liberate the West’s regressed and regressive ‘Others’. While TWAIL builds on the existing body of critical international legal scholarship, it also subverts the dominant discourse via a new trajectory: the conscious provincialising of dominant IL and human rights law, and the expansion of theoretical frameworks through the inclusion and inscription of subaltern alterity and ‘Other’ forms of knowledge.⁵

These articulations thoroughly refute the idea of the ‘Other’ as ‘history-less’ and awaiting rescue by the liberal Western/white saviour.⁶ Instead, they offer a subaltern historiography that includes restoring and rethinking neglected or dismissed works, events and interventions that are part of the Global South’s experiences. TWAIL counter-narratives emphasise historical materialism. They reveal how international legal edifices and instruments, and modern discourses of security and self-defence, are based on the colonial/settler colonial encounters, the slave trade, and extractive racial capitalism. These are coupled with hegemonic liberal assumptions about European/white civilisational superiority over the gendered, racialised, religious ‘Other’.⁷ Some groups are negated through being portrayed as subhuman, bestial, sinister and incomprehensible, undeserving of legal protections and rights because they

⁴ James Gathii, *TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography*, Vol. 3(1), TRADE L. & DEV., 26, 28 (2011); Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, Vol. 34(1), EUR. J. INT’L L., 7 (2023).

⁵ See, e.g., James Gathii, *The Promise of International Law: A Third World View*, Vol. 36(3), AUILR, 377 (2021); Mohsen al Atar, *Subverting Eurocentric Epistemology: The Value of Nonsense When Designing Counterfactuals* in CONTINGENCY IN INTERNATIONAL LAW: ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES, 145 (Oxford University Press, 2021); Luis Eslava & Sundhya Pahuja, *Beyond the (Post) Colonial: TWAIL and the Everyday Life of International Law*, Vol. 45 (2), VERFASSUNG UND RECHT IN ÜBERSEE/L. & POL. IN AFR., ASIA AND LATIN AM., 195 (2012).; E. Tendayi Achiume & Devon W. Carbado, *Critical Race Theory meets Third World Approaches to International Law*, Vol. 67, UCLA L. REV., 1462 (2021); Rohini Sen, *Feminisms* in RESEARCH HANDBOOK ON THIRD WORLD APPROACHES TO INTERNATIONAL LAW (unpublished manuscript, on file with author); Vanja Hamzić, *Queer Theory* in RESEARCH HANDBOOK ON THIRD WORLD APPROACHES TO INTERNATIONAL LAW (unpublished manuscript, on file with author); Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, Vol. 5, SOC. & LEG. STUD., 337 (1996).

⁶ Ranajit Guha, HISTORY AT THE LIMIT OF WORLD-HISTORY, 48-49 (Columbia University Press, 2002); Dipesh Chakrabarty, PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE, 7 (Princeton University Press, 2000). For an explanation of “the Other” see Said, *supra* note 3; Frantz Fanon, THE WRETCHED OF THE EARTH, 195 (*Translated by Constance Farrington*, Grove, 1963).

⁷ See, e.g., Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, Vol. 16, WISC. J. INT’L L., 406 (1998).

lack human qualities.⁸ These groups are treated within IL as ‘legitimate targets’, that is, ‘legally’ killable due to being projected as a perennial threat to the security of powerful states, to global market processes and to the stability of the weapons industry. Dehumanising and disempowering this ever-suspect ‘Other’ through violent and extreme abjection remains central to preserving the intimate and profitable relationship between war and commerce within IL.⁹

In this Article, I offer some brief reflections, from a TWAIL vantage point, on the ways in which the global arms trade, symbolised by the ‘bullet’, is fundamentally embedded within the international legal regulation of war and peace. In the second part of this article, I unpack the meaning of war and peace in mainstream IL, where war is cast as a crisis and as a necessary response to threats to security; and bringing about peace through the cessation of war is presented as the prime responsibility of the international community. I trace the influence of these two fundamentals of IL in relation to contemporary events, specifically in relation to the genocide in Palestine. In this arena, the ‘worth’ of war and peace is measured not in terms of protecting/supporting the already acutely dispossessed targets of the ‘bullet’, but in terms of protecting/supporting — and systematically enriching — those who produce and deploy it.¹⁰ I also underscore, in broader terms, the imperialist logic of those who benefit in different ways all along the collusive chains of arms-trade blood money — chains that bind perpetrators to victims, ensuring that both are fated to remain entangled with one another in an ongoing corrosive carceral relationship. In the third part of this article, I trace the different ways in which TWAIL negotiates the ideas of war and peace and the productive possibilities that the critique opens up. The fourth part of the paper concludes the discussion.

II. THE ‘WORTH’ OF WAR AND PEACE UNDER THE SHADOW OF ‘THE BULLET’

Lord of War features Hollywood actor Nicolas Cage playing Yuri Orlov, a Ukrainian refugee in Brooklyn, who passes as Jewish.¹¹ Yuri becomes a powerful international arms dealer, getting his big break into the trade through a contract to sell Israeli-made Uzi submachine guns to both sides in the 1982 Lebanon War. Thereafter, business booms for Yuri, through similar successes in Liberia, Sierra Leone, and the chaotic breakup of the Soviet Union, amongst others. Legitimate and illegitimate institutions must work together to facilitate arms production and distribution. Freelancers in the dangerous game provide mercenaries who become the face of armed intervention/invasion in conflict zones, so that “The Boss”, Yuri’s

⁸Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, Vol. 27(5), T.W.Q., 743-744 (2006); Achille Mbembe, *NECROPOLITICS (THEORY IN FORMS)*, 66-92 (Duke University Press Books, 2019).

⁹ See James Gathii, *WAR, COMMERCE AND INTERNATIONAL LAW*, 157-163 (Oxford University Press, 2010) (discussing the military invasion of Iraq).

¹⁰ See, e.g., Office of the High Commissioner for Human Rights, *Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem and Israel*, U.N. Doc. A/79/232, (September 11, 2024); Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese - Genocide as Colonial Erasure*, UN Doc. A/79/384 (October 1, 2024); AMNESTY INTERNATIONAL, *You Feel Like You are Subhuman’: Israel’s Genocide Against Palestinians in Gaza*, December 5, 2024, Report No. MDE 15/8668/2024, available at <https://www.amnesty.org/en/documents/mde15/8668/2024/en/> (Last visited on February 23, 2025); *Francesca Albanese, From Economy of Occupation to Economy of Genocide*, UN Doc. A/HRC/59/23 (June 16, 2025); Lee Mordechai, *Bearing Witness to the Israel-Gaza War*, December 5, 2024, available at <https://witnessing-the-gaza-war.com/wp-content/uploads/2024/12/Bearing-witness-to-the-Israel-Gaza-War-v6.5.5-5.12.24.pdf> (Last visited on February 23, 2025).

¹¹ LORD OF WAR, *supra* note 1.

appellation for the United States' ('US') president, cannot be identified as the heart of this lethal ecosystem.

Everything is relative within this seductive ideology of absolute profit that sells to all sides of the conflict to ensure continuous demand. There is no ethically 'right' position in the 'business' of war. As Yuri declares in the opening sequence of the film, "There are over 550 million firearms in worldwide circulation. That's one firearm for every twelve people on the planet. The only question is — how do we arm the other eleven?" The answer to this question is embedded in the international legal regulation of war and peace.

A. WAR

As mentioned earlier, in mainstream IL, war is cast as a crisis and IL's interventions as redemptive. Achieving the cessation of war, establishing peace among nations, and freedom from violence are presented as the ultimate objectives of these interventions. However, rather than continuing to frame these issues in terms of crisis and spectacular violence, TWAIL adopts a historical and structural lens. Through this lens, TWAIL scrutinises how the regulation and management of war is intimately and organically tethered to the imperatives of state security, settler colonialism, and profiteering by a spectrum of non-State actors in amoral collusion with unjust global governance regimes.¹² All these entities complicit in the 'business' of war are invested in its continuance, and it is these entities who decide when war can be brought to the particular end shaped by their profiteering agenda.¹³

The way the 'bullet' generates enormous business for 'lords of war' and their political enablers is starkly evident in the context of the Gaza genocide. This aspect is captured in two significant statements regarding Palestine in the days following the October 7, 2023, attacks on Israel by Hamas militants based across the border. The first is by 'Boss' Joe Biden when he addressed the nation on October 18, 2023, seeking Congressional sanction for a 100-billion USD aid package for both Israel and Ukraine to shore up their military capabilities. He linked the survival of both states to the survival of democracy itself: "Just as in WW II, today patriotic American workers are building the arsenal of democracy and serving the cause of freedom".¹⁴ The 'Boss' went on to talk about how military aid and thriving arms sales benefited the US economy and American workers. Yet, in the first weeks of the war the US government repeatedly stated that it stood with the civilians of Gaza — a stunning double standard so brazen that it compelled the second significant statement by Nada Abu Tarbush, Palestine's United Nations ('UN') Representative who publicly asked how this claim of support could possibly be trusted when the US was simultaneously preparing a 14.5-billion-USD military aid package, including precision bombs, for Israel 'as it commits genocide'.¹⁵

¹² Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, Vol. 34(1), EUR. J. INT'L L., 50 (2023); Albanese, *supra* note 10.

¹³ See, e.g., Mark Duffield, GLOBAL GOVERNANCE AND THE NEW WARS 192 (2001); Albanese, *supra* note 10.

¹⁴ Biden invoked Franklin D. Roosevelt's use of this phrase at the beginning of WWII. In the contemporary context, it is used to enable a genocide, see FRANKLIN D. ROOSEVELT, former US President, *Arsenal of Democracy Address* (Fireside Chat Radio Broadcast, December 29, 1940); Michael D. Shear, *Biden Lays Out Stakes for America as He Seeks Aid for Israel and Ukraine*, THE NEW YORK TIMES, October 19, 2023 available at <https://www.nytimes.com/2023/10/19/us/politics/biden-speech-israel-ukraine.html> (Last visited on July 1, 2025).

¹⁵ *Exclusive: Palestinian Diplomat who went Viral for U.N. Speech says Israel and U.S. are Isolated on Gaza*, DEMOCRACY NOW, December 13, 2023 available at https://www.democracynow.org/2023/12/13/nada_tarbush_un_palestine_israel_gaza (Last visited on July 1, 2025); NADA ABU TARBUSH, Palestinian Representative to the U.N., *Condemnation of Israel's Justification for Killings in Gaza* (5th meeting of the High Contracting Parties, November 17, 2023, Geneva) (Last visited on March 21, 2025).

These statements must be read against the historical continuities of violence, in particular colonial violence that, contingent on one's subject position, influence one's understanding of contemporary events. For instance, for many people across the world, the experience of witnessing the mass slaughter of Palestinians and the destruction of Gaza live-streamed was so shocking as to seem apocalyptic. However, for TWAIL scholars, amongst others, these scenes of devastation were not an aberration; rather, they felt all too familiar.

The examples of historical violence perpetrated upon the Global South are numerous and illustrate the dominant settler-colonial mentality that has underpinned many genocides, including Gaza. For example, in 1904, responding to a 'native' rebellion that killed over 100 German settlers in Namibia, the colonial regime retaliated by killing thousands and interning as many in concentration camps of the Herero.¹⁶ In 1945, thousands of Algerians were massacred in Sétif and Guelma by French colonial authorities in retaliation for the killing of over 100 French settlers.¹⁷ In 1953, the British colonial regime in Kenya enacted a policy of mass detention, torture and killing of thousands of Mau Mau rebels, with the stated aim of restoring colonial authority and reinstating the civilising mission.¹⁸

The sadism, collective punishment and impunity of the colonial powers in these instances were considered forms of necessary violence and linked to the mandate of the Empire that violently brought 'primitive Others' under control. The exploitation of 'Other' bodies and the rich natural resources of 'Other' territories was a steady source of profit, and the manufacture and supply of arms, land appropriations, and unwavering racial loyalties were linked to white civilising imperatives that characterised the racial 'Other' as a threatening sub-human/non-human, irrational, primitive, bestial.¹⁹ As witnessed in the current moment, this thinking has not changed.

Expanding the realm of violence through IL is to permit deadly force to be used with new and sophisticated justifications.²⁰ These techniques today operate alongside a neocolonial necropolitics that continues to disqualify various 'primitive' and unintelligible 'Others' from rights and protections because they are insufficiently human and/or threaten liberal concepts of what constitutes the human.²¹ What is taking place today in Palestine and Lebanon, and earlier took place in Libya, Iraq and Afghanistan, directly leans back into and is a neocolonial iteration of the colonial violence perpetrated in and through the "rule of law" upon the unruly 'Others' of the Global South, as well as within the Global South.

¹⁶ See, e.g., Vasuki Nesiah, *Concerning Genocide*, Centre for Law and Social Change, City University, YOUTUBE, March 13, 2024, available at <https://www.youtube.com/watch?v=2ietVCbc8Sg> (Last visited February 23, 2025); Vasuki Nesiah, *German Colonialism, Reparations and International Law*, VÖLKERRECHTSBLOG: INTERNATIONAL LAW AND INTERNATIONAL LEGAL THOUGHT, November 21, 2019, available at <https://voelkerrechtsblog.org/german-colonialism-reparations-and-international-law/> (Last visited on February 23, 2025); See generally Mathias Häusler, *THE HERERO GENOCIDE: WAR, EMOTION, AND EXTREME VIOLENCE IN COLONIAL NAMIBIA* (translated by Elizabeth Janik, Cambridge University Press, 2022).

¹⁷ See, e.g., Jean-Pierre Peyroulou, *Setif and Guelma (May 1945)* SCIENCESPO, March 26, 2008, available at <https://www.sciencespo.fr/mass-violence-war-massacre-resistance/en/document/setif-and-guelma-may-1945.html> (Last visited on February 23, 2025); Manfred Halpern, *The Algerian Uprising of 1945*, Vol. 2(2), MIDDLE EAST JOURNAL, 191 (1948).

¹⁸ See, e.g., Martin Crook, *The Mau Mau Genocide: A Lemkinian Analysis*, Vol.1(1), JHRC, 31-35 (2013).

¹⁹ See also Priya Satiya, *THE EMPIRE OF GUNS: THE VIOLENT MAKING OF THE INDUSTRIAL REVOLUTION*, 275 (Stanford University Press, 2018); Darry Li, *Imperialism's Shell Game*, LPE PROJECT, April 29, 2024 available at <https://lpeproject.org/blog/imperialisms-shell-game/> (Last visited on February 23, 2025).

²⁰ Anghie, *supra* note 8, 746.

²¹ Mbembe, *supra* note 8, 78.

And in the context of the complete demolition of the Gaza Strip and mass murder of its inhabitants, the atrocity cannot be attributed to the settler-colonial state of Israel alone. It has been continuously abetted by Western liberal democratic states and draws upon the colonial legacies from which these democracies have partly derived their authority as well together with the complicity of multinational corporation.²² The plan of the current ‘Boss’ for the permanent takeover and ownership of Gaza, and to then transform it from an uninhabitable ‘hell hole’ to a lucrative and luxurious American ‘waterfront property’ that would be ‘the Riviera of the Middle East’ was immediately applauded/accepted by Israel as a real option.²³ Most nations condemned his utterance or dismissed it as deluded braggadocio, in the mode of his expressed desire to buy Greenland, control the Panama Canal, and assimilate Canada as an American state.²⁴ The utter hubris and casual cruelty of his suggestion that Israel should “just clear out the whole strip” and unilaterally distribute the entire surviving population of Gaza to neighbouring Arab countries is yet another confirmation of the settler-colonial view of the ‘Other’ as without roots, affect, history or humanity, undeserving of dignity, respect and rights.²⁵ Significantly, this articulation vis-à-vis the acquisition of ‘Other’ territory through invasion/occupation/ethnic cleansing and/or coercive purchase and forced mass resettlement has historical legal precedent — in the colonial doctrine of *terra nullius* (meaning ‘unoccupied land’) that is now a part of the contemporary IL lexicon. In reality, the land was not void of human presence but inhabited by diverse self-determining, self-regulating, socially organised indigenous communities, almost all destined to be subjugated or slaughtered by the colonists. *Terra nullius* was successfully deployed to legitimise imperialism, in particular settler colonialism, and to justify conquest, dispossession, land grab, forced labour and enslavement, extraction of natural resources, and other forms of colonial brutalisation and profiteering across the non-European world.²⁶

As Antony Anghie argues, different modes of killing have evolved along with the constant changing of principles of war and use of force by powerful states since the time of Francisco de Vitoria, the 16th century Spanish theologian and jurist. These changes are used to normalise endless war and extraordinary violence, to justify the conquest and dispossession of non-European people, despite the formulators constantly calling for proportionality and moderation.²⁷ The laws of war are based partly on protecting investment in militarism and the production of global violence. State security, with or without the assistance of mercenaries and militias, operates to ensure the continuous demand for/supply of weapons partly through the rearranging, reordering and supplementing of the laws of war. These include the right to use

²² Albanese, (2025), *supra* note 10.

²³ *Trump: US Will ‘Take Over, Level’ ‘Hellhole’ Gaza and Create ‘Riviera of the Middle East’*, TIMES OF ISRAEL, February 5, 2025, available at <https://www.timesofisrael.com/trump-us-will-take-over-gaza-level-it-and-create-riviera-of-the-middle-east/> (Last visited on July 1, 2025).

²⁴ *Trump Calls to Buy Greenland after Eyeing Canada and the Panama Canal*, ASSOCIATED PRESS, December 23, 2024, available at <https://apnews.com/article/trump-greenland-norway-panama-canal-canada-a52858e3075f9b5ad95e78753293fc1f> (Last visited on July 1, 2025); *Global Reaction to Trump's Gaza Strip Takeover Proposal*, REUTERS, February 5, 2025, available at <https://www.reuters.com/world/trumps-call-us-take-over-gaza-draws-criticism-2025-02-05> (Last visited on July 1, 2025).

²⁵ See Alice Cuddy & Jon Donnison, *Trump Wants Neighbours to take in Palestinians to ‘Clean Out’ Gaza*, BBC NEWS JERUSALEM, January 26, 2025 available at <https://www.bbc.com/news/articles/c07kpjygzllo> (Last visited February 23, 2025) (He goes on to say “You’re talking about probably a million and a half people... and we just clean the whole thing out and say ‘you know it’s over’”; “‘The Boss’ has also declared that the Palestinians will be denied the right to return to Gaza once it comes under American ownership.”).

²⁶ See, e.g., Gabriele Wadlig, *The International Law of Land (Grabbing): Human Rights and Development in the Context of Racial Capitalism*, 25(2) CHI. J. INT’L L., 491-496 (2025).

²⁷ Antony Anghie, *Francisco De Vitoria and the Colonial Origins of International Law*, Vol. 5(3), SOC. LEG., 321 (1996).

force if the right to travel and trade is hindered;²⁸ the invention of the ‘unable and unwilling doctrine’ to justify the use of force in Iraq in 2003 by the ‘coalition of the willing’ without Security Council approval;²⁹ the redefining of terms such as ‘security threat’ based on the threatened states’ perception (for example, the illusory ‘weapons of mass destruction’ supposedly stockpiled in Iraq);³⁰ and casting the right to self-defence as an inherent right largely resting with settler-colonial powers and occupiers. Language too becomes a strategic instrument of war. For example, the endlessly expanding definition of ‘terrorist’, today driven by Islamophobia, and the West’s unending ‘War on Terror’, profiles, categorises and relentlessly demonises its ‘legitimate targets’ and justifies its murder of innocent people around the world.³¹ For those perpetrating the violence, ‘legitimate targets’ are not treated as humans but as objects that may be ‘legally’ destroyed.³² This partly illuminates why the provisional measures of the International Court of Justice (‘ICJ’) have gained little traction in relation to Gaza.³³ The logical extreme of this argument is that purposive dehumanisation-objectification converts people into things; things do not feel; thus, things may be destroyed without compunction or remorse; and once destroyed, need not be mourned or missed. Thus, for the US and its acolytes, the ‘worth’ of the surviving population of Gaza is equal to the ‘worth’ of the rubble of Gaza. Living people and corpse-freighted rubble — both should simply be ‘cleared out’ so that, in effect, the Palestinian homeland becomes *terra nullius* and can be redeveloped as beautiful, profitable American real estate ‘worth’ billions of dollars. This blueprint for ‘legal’ ethnic cleansing recalls Judith Butler’s assertion that “war is framed in certain ways to control and heighten affect in relation to the differential grievability of lives”,³⁴ and that “[o]nly under conditions in which the loss would matter does the value of the life appear.”³⁵

B. PEACE

Peace in the hands of the powerful takes the form of sanctions on the less powerful and is presented as the alternative to war. Sanctions are aggressively deployed as a tool of economic coercion by the global north, led by the US, against the weaker states of the Global South.³⁶ Sanctions have played a role in the colonial encounter, helping to establish the

²⁸ *Id.*, 326.

²⁹ For a critically reflective reading, see Ntina Tzouvala, *TWAIL and the ‘Unwilling or Unable’ Doctrine: Continuities and Ruptures*, Vol. 109, AJIL UNBOUND (2015).

³⁰ *The National Security Strategy of the United States of America*, WHITE HOUSE, September 2002, available at <https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/> (Last visited February 23, 2025).

³¹ See, e.g., Jothie Rajah, *DISCOUNTING LIFE: NECROPOLITICAL LAW, CULTURE, AND THE LONG WAR ON TERROR*, 145-147 (Cambridge University Press, 2023).

³² Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied since 1967 to the Human Rights Council, *Anatomy of a Genocide*, ¶94, U.N. Doc. A/HRC/55/73 (March 24, 2024).

³³ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Indication of Provisional Measures, Order, January 26 2024, I.C.J. Rep 79, ¶221; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Indication of Additional Provisional Measures and Modification of the 26 January 2024 Order, Order, March 28, 2024, I.C.J. Rep 79, ¶226; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the Modification of the 28 March 2024 Order, Order, May 24, 2024, I.C.J. Rep 79, ¶230.

³⁴ Judith Butler, *FRAMES OF WAR: WHEN IS LIFE GRIEVABLE?* 26 (Verso, 2009).

³⁵ *Id.*, 14.

³⁶ Aslı Ü. Bâli, *Weapons Against the Weak*, YALE J. INT’L L., June 29, 2023, available at <https://yjil.yale.edu/posts/2023-06-29-weapons-against-the-weak> (Last visited February 23, 2025); Joy Gordon, *The Brutal Impact of Sanctions on the Global South*, YALE J. INT’L L., June 28, 2023, available at <https://yjil.yale.edu/posts/2023-06-28-the-brutal-impact-of-sanctions-on-the-global-south> (Last visited on February 23, 2025).

imperial geopolitical order in the past, and are now used unilaterally by the US.³⁷ There is a large body of existing scholarship on the ineffectiveness of sanctions and their humanitarian consequences, as exemplified in the case of Iraq.³⁸ Once again, the veto-holding powers of the UN Security Council and their allies are precluded from any exposure to sanctions, the measure being governed by Chapter VII, Article 41, of the UN Charter. Given the devastating impact of economic coercion through the sanctions regime, these measures have produced consequences ‘equal to a genocidal war’.³⁹ In fact, the UN Security Council, the main body responsible for maintaining international peace and security, presents the sanctions regime as a humane alternative to actual peace, obscuring its own investments in perpetuating violence. The Council consists of five veto-holding powers, including liberal democracies dominated by the US and authoritarian states, which are also the largest arms suppliers around the globe.⁴⁰ Their top five importing clients include countries not in conflict, where stockpiles ensure a competitive edge; and countries from the Global South — India being the largest importer of military hardware in the world, including from Israel.⁴¹

Peace talks, negotiated ceasefires, political opposition, anti-war protests, anti-war journalism, rights activism and other forms of public dissent may temporarily place themselves to disrupt the path of the ‘bullet’. Yet, these instruments of resistance may themselves be disrupted through being linked by the state to its security concerns, and progressive ideologies may be directly co-opted into official policy. Take, for example, the use of women’s rights by some feminists to bring international and institutional attention to sexual violence.⁴² This focus served in part to justify the 2001 US invasion and twenty year occupation of Afghanistan. Additionally, armed with the goal of instilling gender equality and countering sexual violence and backed by the UN Security Council resolutions on women, peace and security,⁴³ the US military intervention was saturated with the rhetoric of gender liberation. The intervention was thus presented as a gentle, reformist and civilising mission, and a better option for the natives than submission to Taliban rule that would leave the country, in particular its minorities and women, worse off.

³⁷ See, e.g., Jeena Shah, *The Imperialist Anatomy of Sanctions*, Vol. 46 (1), U.P.A. J.INT’L L., 65, 78-85 (2024).

³⁸ See, e.g., YALE JOURNAL OF INTERNATIONAL LAW, *TWAIL and Economic Sanctions*, available at <https://campuspress.yale.edu/yjil/category/symposium/twail-economic-sanctions/> (Last visited on March 8, 2025); Joy Gordon, *INVISIBLE WAR: THE UNITED STATES AND THE IRAQ SANCTIONS*, 140, 142 (Harvard University Press, 2012).

³⁹ Vasuki Nesiah, *The Fog of Peace: Who Profits from Economic Sanctions?*, YALE J. INT.L L. (2023) available at <https://yjil.yale.edu/posts/2023-06-27-the-fog-of-peace-who-profits-from-economic-sanctions> (Last visited on February 23, 2025); See also Asli Ü. Bâli & Aziz Rana, *Sanctions Are Inhumane—Now, and Always*, BOSTON REVIEW, March 26, 2020, available at <https://www.bostonreview.net/articles/aziz-rana-asli-u-bali-sanctions-are-inhumane-now-and-always> (Last visited on February 23, 2025).

⁴⁰ STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, *SIPRI Arms Transfer Database*, available at <https://armstransfers.sipri.org> (Last visited on March 2, 2025).

⁴¹ Harsh V. Pant & Ambuj Sahu, *Israel’s Arms Sales to India: Bedrock of a Strategic Partnership*, OBSERVER RESEARCH FOUNDATION, September 4, 2019, available at <https://www.orfonline.org/research/israel-s-arms-sales-to-india-bedrock-of-a-strategic-partnership> (Last visited on February 23, 2025).

⁴² Vasuki Nesiah, *INTERNATIONAL CONFLICT FEMINISM: THEORY, PRACTICE, CHALLENGES* (Pennsylvania University Press, 2024).

⁴³ The first UN Security Council Resolution 1325 (2000) was followed by 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) and 2493 (2019), see PEACEWOMAN, *The Resolutions*, available at <https://www.peacewomen.org/why-WPS/solutions/resolutions> (Last visited on February 28, 2025); DEPARTMENT OF PEACE OPERATIONS, *Gender Equality and Women, Peace and Security*, available at https://peacekeeping.un.org/sites/default/files/gewps19_respack_v7_eng_digital.pdf (Last visited on February 28, 2025).

Feminism is no stranger to the project of empire building, and in this instance, it lent support to the invasion specifically to rescue Afghan women from the violent and misogynistic Taliban rule, including its *burqa* mandates. The formal processes of IL and military occupation marched in lockstep with feminist activism, including what Vasuki Nesiah describes as “international conflict feminism”, where the liberation of the ‘Other’ woman as an abject victim entails rescuing her from the ‘Other’ man, even if it involves eliminating him.⁴⁴ War was justified as necessary to the benevolent goal of bringing Afghans peace, economic development and infrastructure reform. This was a lucrative proposition, and deflected attention from the structural, racial and geopolitical agendas that informed the military intervention and occupation. The highly public crusade to liberate Afghan women, under the rubric of gender equality, from centuries of oppression within Islamic and tribal culture, occluded the deep and disturbing geopolitical complicity of the US in creating abject living conditions for Afghans. It also occluded war crimes by US troops, and the brutality of the US military bombing campaign waged against ‘terrorists’ and to liberate women.⁴⁵ There is no mention of how this mass assault severely restricted the delivery of food aid and thus intensified the already present widespread famine resulting from years of drought in Afghanistan.⁴⁶ In August, 2021, after the chaotic and dramatic withdrawal of US-led coalition forces, the Taliban regime was back in full force, as was the *burqa* — and the legacy of violence continues.

The pursuit of peace invariably feeds into the pursuit of war. TWAIL raises concerns about how further engagement with the international legal apparatus in the pursuit of peace at one level either fails to eliminate war and at times sustains or feeds it or orbits it in recursive futility.⁴⁷ At the same time, we often find ourselves cheering those who keep faith in and resort to international legal institutions in the pursuit of peace. Palestinians are at the forefront of IL and are actively engaging a host of UN platforms responsible for bringing about peace.⁴⁸ These include the United Nations General Assembly (‘UNGA’), the International Criminal Court (‘ICC’), the ICJ, Special Procedures and the extensive use of special rapporteur documentation. There is no naïveté in these engagements — no expectation that justice will be done, that the problem will be solved, that the genocide will end, or that peace will prevail from engagement with the institutional apparatus that has been structured around civilisational and racial hierarchies and stark inequality. The interventions/use of international legal institutions are not directed at winning or losing, but at generating debate and awareness through these platforms, while simultaneously creating an archive of the atrocities and collecting testimonials and evidence of genocide. These public engagements in the pursuit of peace are also of strategic importance, since each intervention, most prominently the ICJ case, attracts a global audience. The performance is directed at this audience, and not necessarily the bureaucrats, technocrats and ‘expert’ mouthpieces in the room whose attention has remained focussed on humanitarian

⁴⁴ Nesiah, *supra* note 42, 13-19; Saba Mahmood, *Feminism, Democracy, and Empire: Islam and the War of Terror* in *WOMEN’S STUDIES ON THE EDGE*, 81, 89, 102-103 (Joan Wallach Scott ed., Duke University Press, 2008).

⁴⁵ AMNESTY INTERNATIONAL, *Afghanistan: Government collapse marked by ‘repeated war crimes and relentless bloodshed’ – new report*, December 15, 2021, available at <https://www.amnesty.org/en/latest/news/2021/12/afghanistan-government-collapse-marked-by-repeated-war-crimes-and-relentless-bloodshed-new-report/> (Last visited on July 1, 2025).

⁴⁶ Rory McCarthy & Sarah Boseley, *UN aid moves again as millions face threat of war - and famine*, THE GUARDIAN, September 26, 2001, available at <https://www.theguardian.com/world/2001/sep/26/afghanistan.famine> (Last visited on July 1, 2025).

⁴⁷ See, e.g., Nora Jaber, *The Biggest Lie Known to History*, Vol. 12(2), LOND. REV. INT. LAW, 16 (2024); Atar R. Hindi, *International Law is Dead*, TWAIL Rev. (2023) available at <https://twailr.com/international-law-is-dead/> (Last visited on March 12, 2025).

⁴⁸ See Nahed Samour, *From the Humanitarian, to the Diplomatic to the Judicial*, Vol. 12(2), LOND. REV. INT. LAW, 82 (2024).

pause or ceasefire. The engagement with the ICJ is not about the belief in its legal and ethical credibility and ability to bring about peace. It is about amplifying the subaltern voice and the iniquitous, discriminatory system that structures IL and human rights.⁴⁹

While the ICJ's provisional measures, wherein South Africa sought an immediate ceasefire to hostilities, enhance a growing recognition of the reality of Israeli apartheid and its entrenched settler-colonial position, there is also an increased realisation of a brazen impunity starkly evident in the context of Gaza. The lack of legal accountability and impunity has enabled the consolidation of apartheid and the settler-colonial governance of Israel over Palestine, right from the post-World War II inception of the state of Israel.⁵⁰ The ongoing decimation of survivors amidst the thousands of murdered Palestinian civilians buried under the debris of their homes is public evidence to regimes around the world that it is possible, justifiable and profitable under IL for a state to voraciously destroy defenceless civilians and civilian infrastructure, including targeted attacks on unarmed starving civilians, hospitals and other healthcare facilities, in the name of its own 'self-defence'.

The pursuit of peace is partly short-circuited by the international complicity in the aggressor's disregard for the juridical and humanitarian-aid apparatus of the UN and other global bodies; for international opposition and condemnation; and for internal protest by that state's own citizens. Omar Barghouti, founding committee member of Boycott Disinvestment and Sanctions ('BDS') campaign has stated that,

“Ending international complicity in Israel's regime of oppression, not only serves the struggle for Palestinian liberation, it also serves global struggles for racial, economic, social gender and climate justice as well. Israel, after all, is a key partner of far-right groups in the West, most of whom are anti-Semitic to the core”.⁵¹

Barghouti's warning is unequivocal: “If they get away with this, no one is safe. Black Lives Matter, trade unions, LGBT, the women's movement. No one is safe... Who knows who will be next”.⁵²

III. STOPPING THE 'BULLET': WITHIN, BEYOND, AND BESIDE INTERNATIONAL LAW

As a critical project, TWAIL accommodates diverse positions on whether, how and when to engage with IL and its utility. One strand of the scholarship supports calls for the

⁴⁹ Krever et al, *On international law and Gaza*, Vol. 12(2), LOND. REV. INT. LAW, 255 (2024); See Ardi Imseis, *Palestine, the UN and International Legal Subalternity*, TWAIL REV., (2023) available at <https://twail.com/wp-content/uploads/2023/11/Third-World-Approaches-to-International-Law-Writings-on-Palestine-2019-2023.pdf> (Last visited on February 23, 2025) (on how Palestinians have been reduced to a “seemingly permanent state of deprivation and disenfranchisement in the international legal order”); See also AMNESTY INTERNATIONAL, *Israel/Occupied Palestine Territory: 'You Feel Like You are Subhuman': Israel's Genocide Against Palestinians in Gaza*, December 5, 2024, available at <https://www.amnesty.org/en/documents/mde15/8668/2024/en/> (Last visited on February 23, 2025)

⁵⁰ See Nimer Sultany, *The Question of Palestine as a Litmus Test: On Human Rights and Root Causes*, Vol. 23(1), PALYIL, 1-49 (2022); Emilio Dabed, *Palestinian Legal Activism, between Liberation and the 'Desire' for Statehood*, THE NAKBA FILES, February 23, 2017, available at <https://nakbafiles.org/2017/02/23/palestinian-legal-activism-between-liberation-and-the-desire-of-statehood/> (Last visited on February 23, 2025).

⁵¹ OMAR BARGHOUTI, Co-founder, BDS movement for Palestinian rights, *Carnage in Palestine: Oppression, Complicity and Ethical Responsibility* (Online webinar, Queen Mary University of London, co-hosted by the International State Crime Initiative and the School of Political and International Relations, November 7, 2023).

⁵² *Id.*

tearing down of the anachronistic and arthritic international legal order.⁵³ Ironically, this revolutionary call risks becoming indistinguishable from war perpetrators' call for this very action, via aggressive declarations that the UN system is biased or unfairly targeting them. For example, Israel's ambassador to the United Nations accused the UNGA of being anti-Semitic, and shredded a copy of the UN Charter in the chamber just before a vote on a resolution granting Palestine full membership, after the Security Council had already vetoed the same.⁵⁴ Another strand of scholarship supports the idea of overhauling IL, while also protecting human rights as a moral, political and social good that can empower and emancipate. Any ceding of the terrain of rights is freighted with huge risks, conceptually, materially, normatively, politically and epistemologically. As we are always living inside the problem, we have to generate and navigate solutions from 'within' the exigencies of the current crisis —⁵⁵ while at the same time, we must actively seek out and draw on resources 'beyond' the existing structures of IL.

A. WITHIN IL

How do we re-script the use of existing juridical resources and institutions such as the UNGA, ICJ, ICC, special rapporteurs and the discourse of human rights in a counter-hegemonic move? The subaltern voice seeks out and finds expression both within the fissures of the UN and IL, as well as beyond it, to subvert the discriminatory fundamentals of liberal legal structures. In terms of institutional engagement with the ICJ, the Palestinian pushback against the historical narrative used as a bludgeon by Israel for the past eight decades has certainly brought about some change — most significantly, an end to that state's reliance on Holocaust exceptionalism.⁵⁶ In addition, the Court's rulings on provisional measures are significant, achieved through referencing a host of UN mechanisms and reports that make visible the sustained carceral erasure, constriction and decimation of the Palestinian people.⁵⁷ The settler-colonial denial of the Palestinian right to self-determination, including land rights and the right of return, lies at the heart of their struggle for statehood.⁵⁸ Drawing on the histories of the colonial encounters and settler colonialism in the Global South, South Africa has pushed the court to expand the definition of genocide under the genocide convention to include reading genocide through land appropriation and displacement.⁵⁹

⁵³ Jaber, *supra* note 47, 14.

⁵⁴ BBC NEWS, *Israel Ambassador shreds UN Charter with a tiny shredder*, May 10, 2024, available at <https://www.bbc.com/news/av/world-us-canada-68994032> (Last visited on March 8, 2025); Press Release, GENERAL ASSEMBLY, *Security Council Fails to Recommend Full United Nations Membership for State of Palestine, Owing to Veto Cast by United States*, U. N. Press Release SC/15670, April 18, 2024, available at <https://press.un.org/en/2024/sc15670.doc.htm> (Last visited on February 28, 2025); Admission of new Members to the United Nations, G. A. Res. ES-10/23, U.N. Doc. A/RES/ES-10/23 (May 10, 2024).

⁵⁵ Laurent Berlant, *ON THE INCONVENIENCE OF OTHER PEOPLE* (Duke University Press, 2022).

⁵⁶ Mohammed Nijim, *Genocide in Palestine: Gaza as a Case Study*, Vol. 27(1), INTL. J. HUM. RTS., 191 (2022).

⁵⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, Order, January 26 2024, I.C.J. Rep 79, ¶221; U.N Human Rights Council, *"More than a human can bear": Israel's systematic use of sexual, reproductive and other forms of gender-based violence since 7 October 2023*, U. N. Doc. A/HRC/58/CRP.6 (March 13, 2025); OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, *Occupied Palestinian Territory*, available at <https://www.ochaopt.org/country/opt> (Last visited on July 10, 2025).

⁵⁸ Sultany, *supra* note 50, 15-17; Dabed, *supra* note 50.

⁵⁹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Application Instituting Proceedings and Request for the Indication of Provisional Measures, 192-20231228-APP-01-00-EN, December 28, 2023, ¶4; Ntina Tzouvala, *Genocide and Political*

Ntina Tzouvala argues that, within this frame, the pleadings urge the court to consider an expanded understanding of Article II, para (c) of the Genocide Convention, which involves the deliberate infliction “on the group conditions of life calculated to bring about its physical destruction” in whole or in part, that has taken place since October 7, 2023.⁶⁰ These conditions of life include the mass expulsion from and destruction of homes and refugee camps, destruction of food systems and the deprivation of food, clean water, adequate clothing, shelter, sanitation and medical facilities.⁶¹ The destruction of hospitals, legal and educational infrastructure, including the deliberate killing of medical staff, students and university professors, is all included within the — legalised — annihilation of Palestinians.⁶²

The arguments that delineate the shift of focus from crisis and spectacular violence to ‘slow-motion genocide’ do not draw on the legacy of the Holocaust, but on South Africa’s own history of settler colonialism and apartheid, and the moral authority of Nelson Mandela.

By publicly presenting the litany of reprehensible descriptors — Palestinians as ‘monsters’, ‘human animals’, etc. — that spewed from the mouths of Israel’s representatives, South Africa deftly turned Israel’s phobic gaze back upon itself.⁶³ Israel’s paranoia extends to the labelling of all Palestinians/Palestine supporters in its literal and discursive crosshairs — including noncombatants, incubated babies, BDS campaigners, journalists and activists — as ‘terrorists’ who are a violent threat to the very existence of the Israeli state.⁶⁴ The phobia is coupled with increasingly repressive state action that includes, for example, censorship and legal suppression of free speech, through measures that range from the banning of public protest to raids on bookshops.⁶⁵ Prior to the ICJ’s first ruling on provisional measures calling for an immediate ceasefire, it was nearly impossible to speak about the atrocities in Gaza without consequences. To even utter the words ‘genocide’ and ‘Israel’ together was to risk being accused of being anti-Semitic and anti-Israel; any support for Palestine was equated with supporting terrorism or terrorists.⁶⁶ Academic supporters in particular immediately faced a

Economy: Reconstructing the Relationship, LAW AND POLITICAL ECONOMY, June 24, 2024, available at <https://lpeproject.org/blog/genocide-and-political-economy-reconstructing-the-relationship/> (Last visited on July 10, 2025).

⁶⁰ Ntina Tzouvala, *Genocide and Political Economy: Reconstructing the Relationship*, LAW & POLITICAL ECONOMY PROJECT BLOG, June 24, 2024, available at <https://lpeproject.org/blog/genocide-and-political-economy-reconstructing-the-relationship/> (Last visited on July 1, 2025).

⁶¹ HUMAN RIGHTS WATCH, *Extermination and Acts of Genocide: Israel Deliberately Depriving Palestinians in Gaza of Water*, December 19, 2024, available at https://media.business-humanrights.org/media/documents/gaza1224web_bpTeaZa.pdf (Last visited on July 1, 2025).

⁶² *Id.*

⁶³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Request for the Indication of Provisional Measures, Order, January 26 2024, I.C.J. Rep 79, ¶221.

⁶⁴ Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Global Threats to Freedom of Expression Arising from the Conflict in Gaza*, U.N. Doc. A/79/319 (August 23, 2024).

⁶⁵ Mahmoud Illean & Natalie Melzer, *Israeli police raid Palestinian bookshop in east Jerusalem and seize books they say incite violence*, THE ASSOCIATED PRESS, February 11, 2025, available at <https://apnews.com/article/israel-palestinians-police-jerusalem-bookstore-raid-rights-af721d98f55ec3103c2f90cf6013263f> (Last visited on July 1, 2025); Sam McNeil, *Israel cracks down on Palestinian citizens who speak out against the war in Gaza*, THE ASSOCIATED PRESS, November 24, 2024, available at <https://apnews.com/article/israel-gaza-war-palestinians-dissent-protest-849cc9250534b5bae98cea89e6f4d35e> (Last visited on July 1, 2025).

⁶⁶ 118TH CONGRESS 1ST SESSION, *Strongly condemning and denouncing the drastic rise of antisemitism in the United States and around the world*, November 28, 2023, available at <https://www.congress.gov/bill/118th-congress/house-resolution/894> (Last visited on July 10, 2025); Kanishka Singh, *Pro-Palestinian foreigners in US*

wave of reprisals, including retaliations that took the form of university disciplinary hearings, censorship, blacklisting, intimidation, and even death threats.⁶⁷ These reprisals were not confined to countries in the Global North or outside Israel.⁶⁸ Such repression has historically served as a necessary complement to genocide.⁶⁹ While there is a continuing refutation of the hegemonic narrative of Israel's right to self-defence, the censorship and intimidation are ongoing and unrelenting.⁷⁰ Yet, during the war, Israel “destroyed every university in Gaza, in addition to killing at least 5,800 students, 261 teachers and ninety five university professors, according to an April 2024 report from the UN, which has condemned Israel's actions as ‘scholasticide’”.⁷¹

who were arrested by Trump administration and ordered to be released, REUTERS, June 20, 2025, available at <https://www.reuters.com/legal/government/pro-palestinian-foreigners-us-arrested-by-trump-administration-ordered-be-2025-06-20/> (Last visited on July 1, 2025).

⁶⁷ Tariq Habash, *American Higher Education Law and the Repression of Pro-Peace Speech on Palestine*, INSTITUTE FOR MIDDLE EAST UNDERSTANDING POLICY PROJECT, September 9, 2024, available at <https://www.imeupolicyproject.org/papers/american-higher-education-law-propeace-speech> (Last visited on February 28, 2025); Samera Esmeir, *To Say and Think a Life Beyond What Settler Colonialism has Made*, MADA MASR, October 14, 2023, available at <https://www.madamasr.com/en/2023/10/14/opinion/u-to-say-and-think-a-life-beyond-what-settler-colonialism-has-made/> (Last visited on February 23, 2025) (argues that the signs of obliteration were evident at the outset in the language of liberals, international organisations and US university presidents and donor alike who participated in this discourse); Azad Essa, *At US universities, free speech isn't free for pro-Palestine activists*, MIDDLE EAST EYE, November 1, 2023, available at <https://www.middleeasteye.net/big-story/israel-palestine-war-us-universities-free-speech> (Last visited on February 23, 2025); James FitzGerald & Bernd Debusmann Jr, *Mass arrests made as US campus protests over Gaza spread*, BBC NEWS, April 23, 2024, available at <https://www.bbc.com/news/world-us-canada-68873825> (Last visited on February 23, 2025); Natasha Lennard, *Harvard Law Review Editors Vote to Kill Article About Genocide*, THE INTERCEPT, November 21, 2023, available at <https://theintercept.com/2023/11/21/harvard-law-review-gaza-israel/> (Last visited on February 23, 2025); Ryan Quinn, *“Unprecedented Steps”: Board Pulls Plug on Columbia Law Review Website*, INSIDE HIGHER ED, June 6, 2024, available at <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/06/06/unprecedented-board-shutters-columbia-law-review> (Last visited on February 23, 2025).

⁶⁸ INDIAN EXPRESS, *“Irresponsible”: Jindal University Asks Achin Vanaik to Express Regret over Israel-Palestine Lecture*, November 19, 2023 available at <https://indianexpress.com/article/cities/delhi/jindal-university-achin-vanaik-israel-palestine-lecture-9033189/> (Last visited on February 23, 2025); See also Moad Musbahi, *The Academy as a Space of Life: An Interview with Dr. Naderaa Shalhoub-Kevorkian*, ANTHROPOLOGY@PRINCETON, December 23, 2024, available at <https://anthropology.princeton.edu/news/academy-space-life-interview-dr-nadera-shalhoub-kevorkian> (Last visited on February 24, 2025).

⁶⁹ Somdeep Sen, *Censorship is a crucial complement to Genocide*, AL JAZEERA, April 17, 2024, available at <https://www.aljazeera.com/opinions/2024/3/20/censorship-is-a-crucial-complement-of-genocide> (Last visited on March 8, 2025).

⁷⁰ College campuses in the US, see Elon Gilad, *Crackdowns on Pro-Palestinian Protests Across US Campuses: Why Are They Significant?*, MID.EAST JOURNAL, April 21, 2025, available at <https://www.mideastjournal.org/post/crackdowns-on-pro-palestinian-protests-across-us-campuses> (Last visited on July 10, 2025); THE BERLINER, *‘From the River to the Sea’: Berlin Court Convicts Activist Over Chant*, August 7, 2024, available at <https://www.the-berliner.com/english-news-berlin/from-the-river-to-the-sea-palestine-israel-berlin-court-convicts-activist-over-chant/> (Last visited on March 8, 2025) (where the use of the chant was held to be an incitement to hatred); Press release, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *Special Procedures: ‘USA: Free Speech on Campus needs to be protected, not attacked, say experts*, July 25, 2024, available at <https://www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts> (Last visited on March 8, 2025); Jonny Walfisz, *German architecture prize rescinded over artist signing Israel boycott letter*, EURO NEWS, November 19, 2024, available at <https://www.euronews.com/culture/2024/11/19/german-architecture-prize-rescinded-over-artist-signing-israel-boycott-letter> (Last visited on March 8, 2025).

⁷¹ Press Release, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *UN Experts Deeply concerned over “Scholasticide” in Gaza*, April 18, 2024, available at <https://www.ohchr.org/en/press-releases/2024/04/un-experts-deeply-concerned-over-scholasticide-gaza> (Last visited on March 8, 2025) (“Scholasticide”).

As TWAAIL scholars have noted, the responses to the ICJ case filed by South Africa have exposed the ideological hypocrisies of liberal IL. They are so entrenched and intractable that the liberal order and liberal democracies are willing to let IL die, “to give up on the very idea of international law before they will give up on Israel’s horrifying use of force and violence”.⁷² There is an urgent need for a radical reorientation of perspectives on IL, human rights and international legal mechanisms — their relevance, efficacy and futurity. Such a reorientation would mean far more than reformulating legal and political mechanisms through which to address human rights violations, dismantle the apartheid structure, end occupation, and ensure statehood. It would involve parochialising the dominant trajectory of IL, and working through its productive possibilities in everyday and quotidian enactments, rather than focusing on the dramatic and eventful.⁷³ It would also involve foregrounding and fostering the affective dimension, and non-teleological, non-liberal, non-violent ‘Other’ epistemologies and ‘Other’ practices of world-making that challenge a core aspect of IL and human rights — the intractable, fatally flawed liberal illusion that only it can deliver ‘progress’ and propel us into an ever-improving collective future.⁷⁴

B. BEYOND AND BESIDE IL

While it may be possible to assess the actual monetary ‘worth’ of the global arms trade, the psychic costs of genocide, the ‘collateral damage’ and suffering, are both indescribable and incalculable. However, in the context of Gaza, varied oppositional legal strategies have at least ruptured the illusion of unqualified support for the Israeli state and the avid censorship that has accompanied the genocide.⁷⁵ These strategies include the categorisation of resistance against an illegal occupying power as legitimate under the terms of the UN Charter.⁷⁶

⁷² *Panel Discussion with Katherine Franke et al. THIRD WORLD APPROACHES TO INTERNATIONAL LAW REVIEW, Part Two: The Role of Law – The Legacies of Edward W Said: Academic Praxis and the Question of Palestine*, December 15, 2023, available at <https://twailr.com/part-two-the-role-of-law-the-legacies-of-edward-w-said-academic-praxis-and-the-question-of-palestine/> (Last visited on March 8, 2025).

⁷³ Eslava & Pahuja, *supra* note 5.

⁷⁴ See e.g., Ratna Kapur, *GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL* (Edward Elgar Publishers, 2018); Vanja Hamzic, *After Homo Narrans: Botany, International Law and Senegambia in Early Racial Capitalist Worldmaking* in *INTERNATIONAL LAW AND POSTHUMAN THEORY*, 180 (Routledge, 2024); Adil Hasan Khan, *Receiving Traditions of Civility, Remaking Conditions of Cohabitation: A Genealogy of Politics, Law and Piety in South Asia* in *ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW AND HUMANITIES*, 45 (Routledge, 2021); Shaimaa Abdelkarim, *Space-making ‘After Rights’: Carcerality, Rights-Claims and the Practice of Freedom*, Vol. 28(8-9), *INTL. J. HUM. RTS.*, 1394 (2024); Sumi Madhok, *VERNACULAR RIGHTS CULTURES: THE POLITICS OF ORIGINS, HUMAN RIGHTS AND GENDERED STRUGGLES FOR JUSTICE* (Cambridge University Press, 2022); Nora Jabar, *Beyond International Human Rights: Islamic Feminism as Alternative Rights Practice*, *FEM LEG STUD* (2025) available at <https://doi.org/10.1007/s10691-025-09577-0> (Last visited on XX).

⁷⁵ Di Stefano, *Silencing Palestinian voices: On freedom of expression and Gaza*, Vol. 43(1), *NETH. Q. HUM. RIGHTS*, 3-11 (2025).

⁷⁶ The UN General Assembly affirmed the right of self-determination, freedom, and independence for all “peoples under colonial and racist regimes or other forms of alien domination,” and the “right of these peoples to struggle to that end and to seek and receive support.”: Article 7, *see* Definition of Aggression, G. A. Res. 3314 (XXIX), U.N. Doc. A/RES/3314(XXIX) (December 14, 1974); The UN General Assembly reaffirmed the “inalienable right” of the Palestinian people “and all peoples under foreign and colonial domination” to self-determination. It also reaffirmed the legitimacy of “the struggle of peoples for [...] liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle.”: Articles 2 and 4, *see* Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, G. A. Res. 37/43, U.N. Doc. A/RES/37/43 (December 3, 1982).

The Gaza carnage is the single most documented genocide in world history, and it is through speaking out that its survivors have fought back against Israel's effort to violently obliterate them. In this ethos of annihilation, their heroic refusal to be silenced, or to be visible only as "archival footnotes",⁷⁷ has taken the form of diary entries and other texts — daily writings posted online to bear witness, archive the mass atrocity, and share the horror with a paralysed world, through their own efforts and those of activists, lawyers, alternative forums and progressive media platforms.⁷⁸ This evidentiary dimension is also true of the powerful artwork and photographs emerging from the ruins of Gaza.⁷⁹ As with the textual accounts, the true 'worth' of these visual testimonials is beyond measure. They create and confront us with a sublimely courageous counter-narrative to what Ariella Azoulay describes as the ruthless "weaponization of images" by Israel's "propaganda machine" that, from the start of the war, focused on widely disseminating vistas of demolished Gaza as evidence of continued military success and the ultimate 'solution' to the Palestinian 'problem'.⁸⁰ As we struggle with the impulse to avert our gaze from these apocalyptic scenes, we would do well to remember Azoulay's powerful observation that "genocide is not a visible object.The moral obligation, thus, is not to look at images but rather to refuse the narratives provided by those who perpetrate the genocide about the meanings of the actions of their violence".⁸¹

Against this 'moral obligation', how should we assess the 'worth' of a recent visualisation of 'redeveloped' Palestine, shared without comment by 'The Boss' on Truth Social, his own digital platform that functions as another powerful 'propaganda machine' in our post-truth age? Titled, "Gaza 2025...What's Next?",⁸² the video projects a post-genocide, Palestinian-free *terra nullius* Gaza Strip "transformed into a Dubai-style resort with skyscrapers and luxury yachts. Children play on the beach as money rains down and bearded belly dancers gyrate on the sand".⁸³ The bare-chested 'Boss', sipping cocktails by the pool with

⁷⁷ Abdaljawad Omar, *Hopeful Pathologies in the War for Palestine: A Reply to Adam Shatz*, MONDWEISS: NEWS & OPINION ABOUT PALESTINE, ISRAEL & THE UNITED STATES, November 8, 2023, available at <https://mondoweiss.net/2023/11/hopeful-pathologies-in-the-war-for-palestine-a-reply-to-adam-shatz/> (Last visited on February 24, 2025).

⁷⁸ See e.g., Heba Al-Agha, *Gaza Diaries: "We Left Our Souls at Home"*, LITERARY HUB, July 3, 2024, available at <https://lithub.com/gaza-diaries-we-left-our-souls-at-home/> (Last visited on July 1, 2025); Malak Hijazi, *Gaza Diary: The Privilege of Survival*, INSTITUTE FOR PALESTINE STUDIES, December 11, 2024, available at <https://www.palestine-studies.org/en/node/1656565> (Last visited on July 1, 2025); Ziad, *Gaza Diary*, THE GUARDIAN, 13 October 2023 to 6 March 2024, available at <https://www.theguardian.com/global-development/series/gaza-diary> (Last visited on July 10, 2025).

⁷⁹ Maisara Baroud, *"Instead of a Scream": The Palestinian Artist Who Does a Gaza Drawing Everyday*, THE GUARDIAN, May 14, 2024, available at <https://www.theguardian.com/world/article/2024/may/14/scream-palestinian-artist-gaza-venice-maisara-baroud> (Last visited on February 24, 2025); Ziad, *Gaza Diary*, THE GUARDIAN, November 23, 2023 to March 6, 2024, available at <https://www.theguardian.com/global-development/series/gaza-diary> (Last visited on February 24, 2025); See generally GAZA UNSILENCED (Refaat Alareer & Laila El-Haddad eds., Just World Books, 2015).

⁸⁰ Ariella Azoulay, *Seeing Genocide*, BOSTON REVIEW, December 8, 2023, available at <https://www.bostonreview.net/articles/seeing-genocide> (Last visited on March 8, 2025).

⁸¹ Ariella Aïsha Azoulay and Angela Dimitrakaki, *Gaza, Truth and the Anti-Colonial Injunction: An Interview with Ariella Aïsha Azoulay*, THIRD TEXT: CRITICAL PERSPECTIVES ON CONTEMPORARY ART AND CULTURE, March 1, 2024, available at <http://www.thirdtext.org/thinkinggaza-azoulay> (Last visited on March 8, 2025).

⁸² Donald J. Trump, (@realDonaldTrump), TRUTH SOCIAL, February 26, 2025, available at <https://truthsocial.com/@realDonaldTrump/posts/114068387897265338> (Last visited on July 3, 2025); Ben Goggin, *'Trump Gaza' video shared by president originated from pro-Israel accounts that have embraced AI*, NBC NEWS, February 27, 2025, available at <https://www.nbcnews.com/tech/internet/trump-gaza-video-shared-president-originated-israel-accounts-embraced-rcna193891> (Last visited on July 1, 2025).

⁸³ Oliver Holmes & Paul Owen, *Trump faces Truth Social backlash over AI video of Gaza with topless Netanyahu and bearded bellydancers*, THE GUARDIAN, February 26, 2025, available at <https://www.theguardian.com/us-news/2025/feb/26/backlash-trump-shares-ai-created-video-reimagined-gaza> (Last visited on July 10, 2025).

the bare-chested Israeli prime minister, is elsewhere featured “as a revered icon... A boy walks along holding a golden balloon of the president’s head and a towering, dictator-style statue of Trump overlooks a city street. Elon Musk, Trump’s billionaire backer, appears several times, eating flatbread and later dancing as dollar bills fall from the sky. Musk’s Tesla electric cars cruise through the glossy streets”.⁸⁴ The hallucinatory footage is set to background lyrics presumably generated by AI: “Donald’s coming to set you free...bringing the light for all to see...no more tunnels, no more fear...Trump Gaza’s finally here...Trump Gaza’s shining bright...golden future, a brand new life...Feast and dance the deal is done...Trump Gaza number one”.⁸⁵

IV. CONCLUSION

I conclude by returning to this article’s epigraph: the excerpted lyrics from Buffalo Springfield’s ‘For What It’s Worth’. Ironically, while the song found place as a prominent anthem in protest movements against the Vietnam War, it did not, in fact, originate in that context. It was composed in response to a crackdown by riot police on large crowds defying anti-loitering ordinances and night curfews in Los Angeles on the Sunset Strip.⁸⁶

Six decades on, these potent lyrics are just as applicable to another context of police violence—brutalisation of the many brave students on US and United Kingdom/European university campuses who, for many weeks, passionately demonstrated against the Gaza genocide, resisting administrative and municipal bans on public pro-Palestinian support.⁸⁷ Most of these clashes ended with protestors beaten, arrested and detained, and their ‘illegal’ encampments bulldozed: “There’s battle lines being drawn... Nobody’s right if everybody’s wrong... Young people speaking their mind... Getting so much resistance from behind”.⁸⁸

Perhaps the most hopeful, helpful fact that asserts itself again and again, amidst the devastating legal and material truth of law as violence in different contexts, including the international legal regulation of war and peace, is that there always remain those who will bear individual and collective witness to violent atrocity and its aftermath. Like the survivors of Gaza, they will urge us to not look away from ‘what’s going down’ as we listen to ‘that sound’ — namely, the deafening ‘arsenal of democracy’, its exploding bombs, shells, rockets, chemical weapons...and millions of bullets leaving the chambers of millions of guns bought and sold by politically enabled, legally protected, profiteering ‘lords of war’.

⁸⁴ *Id.*

⁸⁵ *Id.*; Donald J. Trump, (@realDonaldTrump), TRUTH SOCIAL, February 26, 2025, available at <https://truthsocial.com/@realDonaldTrump/posts/114068387897265338> (Last visited on July 3, 2025).

⁸⁶ Cillea Houghton, *Meaning Behind Buffalo Springfield’s Protest Anthem ‘For What It’s Worth’*, AMERICAN SONGWRITER, May 2, 2023, available at <https://americansongwriter.com/meaning-behind-buffalo-springfields-protest-anthem-for-what-its-worth/> (Last visited on July 1, 2025).

⁸⁷ Scholasticide, *supra* note 72.

⁸⁸ Buffalo Springfield, *For What It’s Worth*, (SPOTIFY), available at <https://open.spotify.com/track/1qRA5BS78u3gME0loMI9AA> (Last visited July 10, 2025).