

Treaty of Rome non-signor status should not make Israel immune to the Universal Jurisdiction of the ICC

Inability to prosecute Israel for war crimes at the ICC, on account of it being a non-signor to the Rome Treaty, is a conundrum creating the very 'climate of impunity' necessitating that Israelis be tried there

Op/Ed

By Edward Campbell

Missoula, Feb. 3 (Al-Masakin)—Israel, by asserting that since they are non-signors to the Rome Treaty, and therefore cannot be tried in the International

Criminal Court (ICC), is advancing the paradox that makes the trial of Israeli officials there necessary.

The legal doctrine of Universal Jurisdiction, in the past, has raised the objection of a so-called 'spatial fix.' That is, to say it has raised the question as to whether or not a trial of state officials in an international court violates the sovereignty of their country of origin for that official, because it tries criminals in a geographic space different from where those crimes were committed.

The ICC, however, claims to have jurisdiction over crimes of such great importance that they can be prosecuted



anywhere, not just in the countries where those crimes were committed.

The ICC prosecutes crimes which it says are of 'international concern' in three categories: genocide, crimes against humanity and war crimes, with the aim of fighting 'local impunity' on account of a local crisis of jurisdiction.

The jurisdiction of the ICC applies where local jurisdiction does not. In other words, the ICC claims to have jurisdiction over crimes of international concern where a sovereign national court is unable or unwilling to prosecute.

This is precisely the situation with respect to recent Israeli war crimes in Gaza. Israel refuses to recognize the legitimacy of the ICC out of fear for its leadership. But since there is no indication by Israel that war criminals on its own territory will be prosecuted in an Israeli court, universal jurisdiction must apply.

The question raised by the doctrine of universal jurisdiction was very different when applied to, for instance, the case of Saddam Hussein. For although Saddam Hussein was a war criminal, there was a sovereign national court to try him in, thus removing him from Iraqi jurisdiction, to be tried under universal jurisdiction at the ICC, would have been inappropriate for there was no 'crisis of impunity' in Iraq.

But there is in Israel, since refuses to recognize the legitimacy of the ICC at the

Hague out of the fear that its leadership may be prosecuted there; though it has supported universal jurisdiction in past when applied to other sovereign entities. The fact that Israel has not agreed to be tried in an international criminal court under universal jurisdiction does not prove that it cannot be tied in one, for that fact that Israeli war criminals cannot be tried in Israeli proves local impunity exists, and ought to necessitate the jurisdiction of a court like the ICC.

Therefore the doctrine of Universal Jurisdiction should apply, for the crisis of impunity indeed exists. Unless, of course, Israel were now to show its willingness to try its own citizens for war crimes on its own territory and in its own courts, for that war crimes were committed is already in evidence *prima facie*.

The question which has been raised as to whether or not Palestine has legal standing to advance its cause in a court such as the ICC, because it is not recognized as a sovereign state, is rather absurd since criminal courts are finders of fact as to whether or not a lawful person committed a crime at law.

To say that Palestine has no standing in these courts is to insinuate that the persons against whom these crimes were committed are not really persons with respect to the law and therefore crimes committed against them would not truly be crimes but merely Torts. That is absurd. For even if the Palestinian people were not to be considered a lawful people, the ICC still has jurisdiction over property crimes which would amount to war crimes. For crimes against property crimes do remain.

Asserting that Palestinians are not people, but in fact are property, which can be destroyed at will, and that Israel cannot be

tried for that, is to say not only are the Palestinian people not a people, but that as a people are not only property, but that they are Israeli property. That is absurd, for Israel is both a criminal and a tortfeasor.

Therefore universal jurisdiction must apply, for the Palestinian people are a lawful people precisely through the fact that they are not the property of Israel, but neither is their property safe from Israel. As a people neither they nor their property is under Israeli jurisdiction, but neither is the Israeli leadership.

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