

Humanity on trial – a weekly news review

This week, Israel has been on trial at the International Court of Justice, and the International Court has been on trial before the world. The case is of universal importance, including for the Kurds, who are threatened with being trapped in the centre of an expanding Middle East war, and who are suffering their own persecution at the hands of Turkey. Meanwhile, in contrast to the debates about genocide in the Hague, Selahattin Demirtaş finished his defence speech in Turkey by talking about peace and living together, and North and East Syria continues to try and work for a positive future despite growing frustrations with the role of the United States.

3:35 pm 13/01/2024



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Whatever happens in the international court case that began this week in the Hague – South Africa versus Israel – “Western civilisation” is already the loser. If the court follows the overwhelming evidence, and rules that there is a plausible claim that what Israel is doing is genocide, then all the Western countries that have provided Israel with arms or given Israel diplomatic cover could be seen as guilty of aiding and abetting genocide too. On the other hand, if a majority of judges are persuaded that their own country’s complicity in this or other genocides makes it politically inexpedient for them to support the South African case, then what message would this give about the old West-dominated “rules-based order” and the “Western values” that underly it? Israel is on trial before the court, and the United Nations’ International Court of Justice is on trial before the world.

This case is taking place at a time when the dynamics of world power are changing at an accelerating rate, and American dominance is being challenged. Of course, many of the powers challenging this dominance have their own cruel history when it comes to issues of human rights, but none can compete with the United States when it comes to foreign wars and bringing down foreign governments. South Africa taking on US-backed Israel is part of this challenge to the current order. Israel had very close relations with apartheid South Africa, and Nelson Mandela’s African National Congress trained with the PLO and identified with the Palestinian cause as a fraternal struggle. In taking up the baton for Palestine, South Africa is rekindling the spirit of the anti-apartheid movement and inspiring a new confidence in the peoples of the global south. South Africa points out that all states who have signed the United Nations Genocide Convention have a duty to prevent genocide, and they are simply carrying out their treaty obligation; but no other state had done this, though similarly obliged.

What happens in this case is of worldwide importance: for the course of Israel – and the West’s – ongoing war, for wider international relations, and for prospects of restraining genocide and other war crimes. For Kurds, who are threatened with being trapped in the centre of an expanded Middle East war, and who are suffering their own persecution at the hands of Turkey, these events have especial significance. [Nelson Mandela](#) was a strong supporter of the Kurds too.

The International Court of Justice

The United Nations' Genocide Convention was approved in 1948, the same year as the foundation of Israel. Both were reactions to the horror of the holocaust, but the birth of the Israeli state was accompanied by the first major assault in what has become a 75-year oppression of the Palestinians – oppression that has culminated in Israel's appearance before the international court to answer the charge of genocide.

The [International Court of Justice](#) rules on disputes between UN member states. It is a completely different institution from the International Criminal Court (ICC), which is also in the Hague but legally independent from the UN. The ICC judges individuals who are accused of a range of rights violations, including genocide, but its chief prosecutor, Karim Kahn, has demonstrated an extraordinary resistance to investigating the architects of Israel's war crimes. The International Court of Justice cannot examine other war crimes, only breaches of the Genocide Convention.

The case against Israel

At Thursday's opening session of the genocide case, South Africa's lawyers [described](#) the extreme violence being carried out by Israel today as part of a continuum of illegal acts that Israel has undertaken since 1948; and they made clear that, for the purpose of this case, whatever Hamas did on 7 October is irrelevant, since nothing justifies genocide.

Israel's crimes are of an unprecedented intensity in their brutality, and this, together with the brazen vindictiveness with which they are being implemented, is clearly and instantly visible all over the world. As lawyer Blinne Ní Ghrálaigh put it in her contribution to the South African case, this is "the first genocide in history where its victims are broadcasting their own destruction in real time in desperate, so far vain, hope that the world might do something." The lawyers' relentless accounts of the impacts of Israeli actions, which could not have been committed without the knowledge that they would kill and maim, were combined with examples from the many genocidal

statements that were made by leading figures and echoed by soldiers carrying out the destruction.

While the South African case made good use of United Nations reports and even Israeli sources, [Israel's defence](#), given yesterday, depended almost exclusively on their own accounts, many of which had already been publicly discredited. They have essentially asked the court to take their word that they are not carrying out genocide. Predictably, they argued that Hamas should have been on trial rather than them – though a Hamas genocide would not legitimate an Israeli one. (A rare external source produced as evidence was a tweet on atrocities attributed to Hamas posted by European Commissioner, Ursula Von der Leyen, who has been strongly criticised for using her unelected position to give Israel uncritical support.)

Equally predictably, Israel continued to maintain that every target they've hit, and especially schools and hospitals, was being used by Hamas, and that Israel has gone out of their way to protect civilians and provide humanitarian aid. Believe us because we tell you so – despite all evidence to the contrary. And they have attempted a technical argument that South Africa and Israel are not legally “in dispute”.

What next?

At this juncture, the court is not being asked to make a final ruling: that could take years. The court's purpose is not simply to punish a perpetrating country after the event, but to prevent genocide from happening. For the present, South Africa is asking the judges to find that there is a plausible case to answer that Israel could be committing genocide; and, on that basis, to impose provisional measures to prevent them from continuing their actions. With more people being killed every day, the court has promised a rapid decision, which means we could know the result of their deliberations by the end of the month.

Even if they do decide there is a plausible case that Israel is carrying out genocide, they may not agree on the provisional measures that South Africa has called for to prevent Israel from continuing its actions, especially the

primary demand for Israel to immediately suspend their military operations in and against Gaza. They might try and save face with an agreement that there is a case to answer, but let Israel off with a vague promise to obey international law. Any measures specified would have to be carefully defined to avoid leaving loopholes.

And then there is the difficulty of enforcing Israeli compliance with the measures imposed. Punishment for failure to comply should be possible through the General Assembly of the United Nations, since the US veto ensures nothing can be achieved through the Security Council, but this could be a protracted process.

The lawyers for the two sides made their cases not only to the judges of the international court, but also to the court of international public opinion, which can provide critical political pressure. However, in doing so they come up against the filter of the pro-Israeli mainstream media. In the UK, the BBC didn't show the South African case, but live-streamed the Israeli defence.

A Turkish case?

Despite the huge weight of evidence, and the huge public interest manifested on the world's streets, the case against Israel is having to overcome many political hurdles. Pursuing a case against Turkey, would be even more difficult. The United Nations defines genocide as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group". For a case to be considered in contravention of the Genocide Convention, it must be shown that there was genocidal intent, which is difficult to do.

Mere Crimes against Humanity cannot be considered by the International Court of Justice, but individuals can be tried at the International Criminal Court – or in special international tribunals or in national courts. As I [noted](#) when I

looked at Turkey's war crimes back in November, Turkey is not signed up to the International Criminal Court, and so could only be indicted if the alleged offence took place in a member state's territory, or if this is authorised by the United Nations' Security Council. Some high-profile cases have ensured that the International Criminal Court is well known, but the number of cases they hear is tiny.

Dermitaş' defence and the Kurdish Question

This week, Turkey witnessed another important judicial event – the final part of the defence statement of Selahattin Demirtaş, imprisoned former co-chair of the Peoples' Democratic Party (HDP). In contrast to the debates about genocide, Demirtaş spoke about making peace and living together. On Monday, he [stressed](#) again that *"We are being tried because we are Kurds and because we say Kurdistan"*. He explained that the problem lies in the thesis of the Turkish nation, which denies Kurdishness and claims that everyone is a Turk, and which suppresses Kurdish language and culture. And he stated again that Turkey's Kurdish Question cannot be addressed without meeting with Abdullah Öcalan. Demirtaş defended his description of Öcalan as *"the Kurdish people's leader"*, arguing that this is a point of fact; and he defended his use of the title *"Mr"* when referring to Öcalan, explaining that this is a common politeness that is also used by state officials. These forms of speech are not *"praising the crime and the criminal"*, as the prosecutor claims; and [saying](#) that the PKK is not a terrorist organisation is simply to state an opinion and should be protected by freedom of speech.

To reach peace, *"weapons must be silenced and disabled"*, with the state taking the first step; and *"radical democracy"* is an *"indispensable principle"* for avoiding violence. Peace would also bring an economic dividend.

Dermitaş [sets out](#) seven points for resolving the Kurdish Question: peace negotiations; removal of the obstacles to democratic politics; a new civilian constitution; cultural rights and the recognition of the right to self-determination; confronting past crimes; replacing official ideology with critical

pedagogy and scientific education; and releasing political prisoners, dropping ongoing court cases, and abolishing the Anti-Terror Law.

Dermitaş centres his arguments around the issue of Kurdish rights, but he claims that by solving the problems of identity and belief, Kurds and Turks will be able to work together in the class struggle against poverty and unemployment.

North and East Syria

In North and East Syria, where the Autonomous Administration has been attempting to put these ideas of radical democracy and cultural freedom into action, and even to promote them as the basis of a reformed Syrian federation, there has been growing frustration with the lack of support or strategy shown by the International Coalition against ISIS. The Coalition is dominated by the United States, who still maintain around 900 troops in the region. This frustration was recently [raised](#) by the Commander of the Syrian Democratic Forces, Mazloun Abdi, and has now been [discussed](#) by the former President of the Executive Committee of the Syrian Democratic Council, Ilhan Ahmed, in an article for the Kurdish Peace Institute. She writes: "We can describe the position of the Coalition forces in Northern and Eastern Syria as one of near-stagnation. They conduct operations against ISIS cells and activities within a routine framework, but have not demonstrated a strategy or practical mechanisms for eliminating the conditions that gave rise to ISIS and allowed its ideology to spread. They also do not appear to be planning for a sustainable post-ISIS future. While we think about political and social solutions to end the century of war and state oppression that has strangled our region, they are focused on narrow military goals with no end in sight."

Ahmed observes that, "we are a democracy that is accountable to the will of our people. They may rightly ask us, one day, why we collaborate with and make concessions on behalf of any state that does not reciprocate by helping us become more prosperous or more secure." And she notes that the situation is exacerbated by the Israeli war, which has further distracted the US, increased the likelihood of more military confrontations in the region, and

given Turkey more opportunity for attacks on North and East Syria's achievements and security.

But Ahmed is still determined to push for positive change: "Instead of trying to crush our model of self-administration, Turkey might be better off choosing to learn from it. Our model allows all people to speak their own language, practice their own faith, and take pride in their own identity. It decentralizes power to municipalities and cantons... If Turkey adopted models like these, their Kurdish problem would not exist. We truly hope that, one day, a democratic, multiethnic Syria and a democratic, multiethnic Turkey can be good neighbors and even good friends."

Demirtaş, too, called for improved relations between Turkey and North and East Syria's Democratic Union Party (PYD). He also [noted](#) that he is "not very happy with the Kurds establishing relations with America there", but he is aware that this provides some protection against Turkey's threats.

Friendship between Turkey and North and East Syria looks a long way off. There have been reports of significant counter-attacks carried out by the PKK against the Turkish army in Northern Iraq, where the Turks are bombing PKK bases. Turkey has [admitted](#) to nine soldiers dead and others wounded, and the PKK [claims](#) to have killed at least fourteen. In response, Turkey has again lashed out at the infrastructure of North and East Syria, which has nothing to do with these attacks. As I write, late Friday night, the [first reports](#) are coming in of attacks on oil facilities and a dam.

Israel and Turkey demonstrate the cruel results of encouraging ethnic prejudice and oppression. But South Africa shows the strength of solidarity in struggle, and the Kurdish Freedom Movement is attempting to create a multi-ethnic world while preserving Kurdish ethnic traditions.

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