



A Palestinian Perspective on Teaching International Law

*Ata R. Hindi**

This reflection is about teaching international law in Palestine, to Palestinians. I reflect on the challenges of international law teaching in the Palestinian context. I will also reflect upon international law teaching to non-Palestinians, although that is not the focus of this essay.

Overall, this short article attempts to highlight the challenges that Palestinian teachers and students of international law encounter in their studies and beyond. While there is much work to be done, teaching and learning international law must, as a baseline, provide students the ability to operate as “textbook” international lawyers, while also fostering the capacity and ability to critique – especially where international law ignores the Palestinian people.

First, I will examine the implications of international law teaching in Palestine and to Palestinians. *Second*, I will discuss the mechanics of teaching international law both “inside” and “outside” of the classroom in Palestine. *Third*, I will explore the “positivist” and “critical” aspects of international law teaching. *Finally*, I will consider the importance of fostering critique and providing more space to critical legal voices in the classroom.

International Law Teaching in Palestine, to Palestinians

In this essay, I refer to both “Palestine” and to “Palestinians” as a means to recognize the unfortunate reality faced by the state of Palestine and the Palestinian people. This unfortunate reality is premised on the fragmentation of, and between, the Palestinian people and their homeland as a consequence of colonization and occupation by Israel. Within the occupied State of Palestine (*i.e.* “1967” Palestine), the Palestinian population is currently estimated to be just over 5 million.¹ In 2017, the Palestinian population in “1948” Palestine minus “1967” Palestine (*i.e.* what became Israel) was estimated to be close to 1.5 million.² The 2017 estimate of Palestinian refugees is nearly 5.9 million, including over 3.4 million in Jordan, Lebanon, and Syria.³ These figures do not fully account for the vast Palestinian diaspora population, for example those in living in the Americas.

*Ata R. Hindi is Research Fellow in International Law, Institute of Law at Birzeit University.

¹ State of Palestine, Palestinian Central Bureau of Statistics, ‘Estimated Population in Palestine Mid-Year by Governorate, 1997-2001’ <http://www.pcbs.gov.ps/Portals/Rainbow/Documents/-2097%20انجليزى20%المحافظات2017.html> (accessed 14 February 2021).

² State of Palestine, Palestinian Central Bureau of Statistics, ‘Number of Palestinians in the Occupied Palestinian Territory in 1948 for Selected Years, End Year’ <http://www.pcbs.gov.ps/Portals/Rainbow/Documents/Number-of-Palestinians-in-Occupied-Palestinian-Territory-in-1948-Selected-Years-ee.html> (accessed 14 February 2021).

³ State of Palestine, Palestinian Central Bureau of Statistics, ‘Number of Registered Palestinian Refugees by Country, January 2017’ <http://www.pcbs.gov.ps/Portals/Rainbow/Documents/Registered-Refugees-by-Country-Diaspora-E-2017.html> (accessed 14 February 2021). In 2017, Palestinian refugees within the State of Palestine number over 2.4 million.

Palestinians, then, might learn international law “at home” or abroad, each with different and unique educational experiences in regard to language, methods, theories, approaches, politics, etc. This unfortunate reality is why teaching international law “at home” in Palestine and to Palestinians is so crucial. At home, Palestinians can learn international law free of the antagonistic politics, and with a focus on those areas relevant to their struggle.

This unfortunate reality is also why the Palestinian Boycott, Divestment, and Sanctions movement (BDS) is so important to Palestinians. The BDS movement calls for Israel’s compliance of the following demands based on international law: “1. Ending its occupation and colonization of all Arab lands and dismantling the Wall; 2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and 3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194.”⁴ Teaching international law in Palestine and to Palestinians requires engaging with the law underlying these demands, for instance the rights of Arab-Palestinian citizens of Israel under international human rights law, or the law of state responsibility vis-à-vis the Wall. I would approach international law teaching the way that the movement does, sewing together various areas of international law relevant to the Palestinian experience, and including the plight of *all* Palestinians, regardless of where they may be.

For Palestinians, the implications of teaching international law’s rules, interpretation, and application are not imaginary, moot court exercises – they are real. These issues are at the heart of their collective and individual rights at stake. It is then unsurprising that Palestinian students have felt principled and dedicated to their cause and struggle in their studies of international law. For example, I have seen students refrain from employing arguments that, in one way or another, would comply with Israeli positions, such as arguing against extraterritorial human rights obligations or against the right of return for refugees. Likewise, in keeping with the BDS principles, students that I have trained for moot courts have refrained from competing against Israeli universities. On one particular occasion, these students were reprimanded by the organizers of a prominent international law moot court competition for doing so. The students were told that they undermined the spirit and purpose of the competition, and that the competition was not about advancing political positions or pre-judging individuals due to where they originate. Of course, reiterating the fact that the institutions, rather than individuals, are the subject of their protest, is like talking to a wall.⁵

The underlying fact within these examples is that there seems to be more concern for the reputation of Israel’s higher education institutions than the everyday experience of Palestinian students. Palestinian students do not benefit from solidarity from institutions like those that organize prominent international law moot court competitions, let alone enjoy equal opportunities. The exception here includes Palestinian citizens of Israel or Jerusalem ID holders, who may be able to attend the higher education institutions in Israel but must expose themselves to positions in the classroom that are hostile to their individual and collective rights.

International Law “Inside” and “Outside” the Classroom

⁴ BDS, ‘Palestinian Civil Society Call for BDS’ (July 9, 2005) <https://bdsmovement.net/call> (accessed 14 February 2021).

⁵ BDS, ‘PACBI Guidelines for the International Academic Boycott of Israel’ (July 9, 2014) <https://bdsmovement.net/pacbi/academic-boycott-guidelines> (accessed 14 February 2021).

Given these realities is why ownership over teaching international law is so important for Palestinians. At home, in the classroom, Palestinian exposure to international law teaching is somewhat limited. At the university level in Palestine, international law may be offered as a course during a Bachelor's of Law. More specialized courses have been offered at some Palestinian universities over the years, such as international human rights law, international humanitarian law, international organizations, or international refugee law. These courses may even find their way into a Master's program, such as Birzeit University's interdisciplinary Master's Program in Democracy and Human Rights.⁶ However, there is little investment beyond these course offerings by the few experts who teach them and the basics these courses cover. Furthermore, Palestinian universities do not benefit from international law centres and institutes similar to their counterparts elsewhere.

Beyond issues of capacity, Palestinian universities suffer from a lack of resources. This is especially the case with regards to books and electronic resources, which are, for the most part, too expensive to subscribe to. There are only a handful of Arabic international law textbooks and some of these resources are somewhat underdeveloped. Instructors try to find other means to access materials for their students. For example, on one occasion, I snuck into an Israeli university in order to scan pages of several international textbooks from the library, so that the Palestinian students could use them. This reality is often unappreciated by scholars in the Global North. I recall one particular Facebook group where one participant from a Western country criticized fellow participants for asking for resources. It is perhaps inconceivable to the privileged – and this is certainly a manifestation of privilege – that there is really no alternative to crowdsourcing in countries that cannot access many of those resources otherwise. Further, whatever materials are available through crowdsourcing moreover is, unsurprisingly in English.

For advanced studies in international law, such as an LLM or a PhD, Palestinians have no choice but to go abroad, mainly the Global North. The decision to study abroad has its own set of challenges. Some of these challenges include: lack of funds and scholarships; travel and visa restrictions by Israel (especially for students from the Gaza Strip); having to significantly self-improve foreign (particularly English) language skills; or being denied visas to study abroad (by the United States for example). With respect to the last example, on one particular occasion, my students, having won the regional rounds in a prominent international law moot court, were denied visas to participate in the international rounds in the United Kingdom. In another instance, a number of my students had to withdraw from university offers because they just could not afford the cost of studying overseas. For those that are able to somehow overcome these hurdles, many elect to study in the United States and a handful of European countries (like the United Kingdom, Ireland, and The Netherlands). Of course, depending on the institution, Palestinian students have different experiences, and may be exposed to problematic positions on issues related to Palestine, and the Arab World generally, especially in for example US law schools.⁷ For many of these students, they attain whatever knowledge and expertise they can, and return home to work in both the private and the public sectors.

Shifting away from formal higher educational institutions, “teaching” does not necessarily take place in the university classroom. Many Palestinians supplement teaching by “training” in international law through various programs and projects hosted by civil society. Over the years, national and international non-governmental organizations (NGO) in Palestine have conducted various ongoing

⁶ Birzeit University, ‘Democracy and Human Rights’ <https://www.birzeit.edu/en/study/programs/dmhr> (accessed 14 February 2021).

⁷ Palestine Legal, *The Palestine Exception*, <https://palestinelegal.org/the-palestine-exception> (accessed 14 February 2021).

and ad-hoc trainings to a wide and diverse range of stakeholders such as law students, students in various disciplines, as well as foreign diplomats, government officials, NGO workers, journalists, and others. These trainings usually deal with the “basics” and apply international law to the situation in Palestine with the typical focus on international human rights law, international humanitarian law, international criminal law, state responsibility, and self-determination. For example, in my past work, I have conducted trainings in various international law topics applicable to the Palestinian context to build awareness and strengthen legal advocacy at the national and international levels.

On another note, for those from abroad (including those from the Palestinian diaspora), Al-Haq’s International Law Summer School Program brings together students and practitioners from all over the world interested in learning international law *in* Palestine.⁸ Many people may sign up for the program, risking the possibility of being denied entry by the Israeli Government. In delivering these types of courses, there are other challenges that may arise. Some active civil donors may want to be involved and may attempt to dictate the topics that are selected and taught.

Whether inside or outside of the classroom, there is a delicate balance to be had about what the law says and what the law does. In my experience, students have often questioned the relevance of international law. What they learn may work elsewhere, but not in Palestine. The students err on the side of caution in thinking that international law can achieve justice and accountability, let alone Palestinian liberation. While the “textbook” version of international law may provide the groundwork for operating professionally as international lawyers, teachers should welcome discussion on the critique.

Between “Positivism” and Critique

The endeavour of teaching international law, both within the classroom and to broader audiences, entails both “positivist” and “critical” approaches. Of course, the reality of teaching is much more complex. The presumption is that there are two competing forces: a “positivist” international law that is doctrinal and black-letter and a critical international law, where international law’s flaws are displayed. Paraphrasing a fellow colleague, he found it difficult to understand how an international lawyer can make positivist doctrinal arguments before international courts and tribunals but simultaneously write in the most critical of terms. Yet, if both sides of an adjudication are deploying positivist claims, then either one side is completely deviating from the doctrinal, black-letter rules, or positivism is a fallacy. Irrespective of this much broader question, for Palestinians, part of the answer is about survival and the immediacy of their claims.

The student is expected to “adapt” – like preparing for a moot court. This is not much different from what Mari Mastuda described as “multiple consciousness as a jurisprudential method.”⁹ Matsuda’s student shifts “back and forth between her consciousness as a Third World Person and the white consciousness required for survival in elite education institutions.”¹⁰ I will add that this reaches far beyond elite education institutions, and to the majority of international law’s establishments. While the culture is changing to embrace diversity and inclusion of people and ideas, students will find

⁸ Al-Haq, ‘Al-Haq International Law Summer School program 2020’ (February 17, 2020) <http://www.alhaq.org/alhaq-center/16499.html> (accessed 14 February 2021).

⁹ Mari J. Mastuda, ‘When the First Quail Calls: Multiple Consciousness as a Jurisprudential Method’ (1989) 11;7 Women’s Rights Law Reporter 7.

¹⁰ *Ibid*, 8.

themselves shifting into survival mode by operating within *their* understanding of international law, as if it came right out of the textbook.

Once the classroom experience is over, operating as if the law is doctrinal and black-letter then goes to the immediacy of claims for Palestinians, no matter how critical we may be. For one, we keep up with the step-by-step process of “filing suits” before the International Criminal Court (ICC), but many are wary of its history and approach to the situation in Palestine, much like other situations.¹¹ We may be critical that the ICC has largely targeted non-Western States, particularly in Africa, but that should not negate Palestinians the opportunity to engage the ICC as a mechanism towards achieving justice and accountability. The issue of statehood before the ICC may lead to various interpretations for which there is no actual standard, no matter what the international law textbooks may say. We argue for and against statehood on whatever possible sources we can gather and dispute the weight of those sources.¹² Palestinians have learned to reckon with the readings of competing “positivists” with different politics. One part of the world largely recognizes Palestine as a State, while another largely refuses to do so on the basis of various doctrinal arguments about the meaning of statehood. The part of the world that largely refuses to recognize Palestine hosts the world’s prominent international law spaces (schools, centers, organizations and so on). Palestinians then are forced to argue in these spaces and within the confines of the two-State solution, accepting the injustices of the United Nations Partition Plan and the events thereafter. As such, while being critical of the Plan, Palestinians explore its margins and other areas of international law to find some kind of justice and accountability and perhaps even emancipation, in a language that that part of the world might find acceptable. We cannot argue beyond the confines of the two-state solution and against the colonization of historic Palestine as a whole.

One can appreciate that there is in fact room within positivism. Law is a process of rule deduction and application that can lead to fundamentally different results. The point of all this is to say that teachers should prepare students to *consciously* shift between multiple consciousness. They can strive by mastering a textbook understanding, while being able to critically engage the rules, interpretation and application. Students need not shy away from critically engaging the State interests and politics that have exercised dominion over the process at the expense of Palestine and the Palestinian people.

Fostering Critique & Identity

When a Palestinian student – like other students with similar experiences – is learning international law in colonial and imperial spaces, they are bound to face Western interpretations and application. Sometimes, these interpretations can be outright insulting (*e.g.*, Palestine is not occupied, it is not a State, etc.). It is difficult, in a setting like Palestine, to avoid the history and politics of international law. International law is, inherently, colonial and imperial.¹³ Yet much has changed over time – a decolonized and decolonizing world has worked, and continues to work, in tandem as part of the de-

¹¹ See, *e.g.* Jon Reynolds and Sujith Xavier, *The Dark Corners of the World: TWAIL and International Criminal Justice*, 14 J. Int’l Crim. Justice 959 (2016); Ardi Imseis, *Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020*, 31 Eur. J. Int’l L 1055 (2020).

¹² UNISPAL, ‘Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations’ U.N. Doc. S/2011/705 (11 November, 2001) <https://unispal.un.org/DPA/DPR/unispal.nsf/28ead5e67368b9ea852579180070e4d6/097acc6ffff29d5785257949005d2a63?OpenDocument> (accessed 14 February 2021).

¹³ See generally Anthony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005).

colonizing and de-imperializing project. More and more, these spaces have allowed for greater diversity and critique. However, there is still much more to be done.

The international law textbook is a prime example of this. Most teachers base the learning experience on one of the more commonly used textbooks. These textbooks also originate from colonial and imperial spaces. While I was personally taught with Malcolm Shaw's text through my studies as an Advanced LLM student at Leiden University, I was hesitant to use it in Palestine, particularly due to Shaw's questionable positions on Palestine both within the text, and elsewhere, such as his submissions to the ICC.¹⁴ Shaw has clearly advanced a position that "Palestine is not a state under international law as it does not conform with the internationally recognised Montevideo criteria."¹⁵ Brownlie's *Principles of Public International Law*, and its current author, James Crawford, are conversative. When compared to Shaw however, Crawford is more nuanced.¹⁶ Nonetheless, the textbooks generally do not foster critique. Moreover, as I have set out earlier, accessing English-language textbooks is an issue.

Overall, the burden is on the teacher to provide the student with the capacity and resources to operate as international lawyers and foster the student's ability to critique. As international law teaching develops in Palestine (and elsewhere for the matter), students should be expected to critically engage the law, its interpretation, and subsequent application. The endeavour requires due consideration from critical legal studies and voices emanating from Third World Approaches to International Law (TWAAIL). From my experience as an academic and a practitioner in Palestine, Palestinian international lawyers and jurists have been highly influenced by TWAAIL. For example, at the Palestine Yearbook of International Law, which is hosted by the Institute of Law at Birzeit University, we have a keen interest in publishing TWAAIL voices. Our recent call for papers has also invited scholars of Critical Race Theory, which I believe is an underutilized framework in international law. Over time, I believe it is also necessary to engage our students in other critical approaches, such as Marxist, feminist, and others, as a way towards "liberating" the curriculum. Students should also be critical of those aspects as well. For example, it is fascinating to appreciate Marxist approaches to international law in practice, scholarship, and teaching,¹⁷ while also being cognizant of Marx's underlying Eurocentric and racial undertones (although this is a debatable opinion).¹⁸

Finally, there is something to be said about narrative. Whether through Edward Said's writings, or Mahmoud Darwish's poetry – amongst other brilliant Palestinian artists and thinkers – their platforms were made to share the Palestinian experience; narratives woven in their skills and trade to share a unique and extraordinary history. There is pride in being Palestinian that never wavers – harnessed in Said's writings and Darwish's poetry, amongst others, and should similarly be harnessed by Palestinian international lawyers. US, UK, and other lawyers don't shy away from taking pride in their nation's contributions to international law. On one occasion, one international law professor told me that I should *not* discuss Palestine and Palestinian-related legal issues because I am Palestinian. This type of biased outlook, of course, would not be expected of other lawyers (*e.g.* US lawyers discussing issues

¹⁴ See Malcolm Shaw, *International Law, Eighth Edition* (Cambridge India, 2018) 186-187.

¹⁵ See ICC-CPI, 'Submission of Observations to the Pre-Trial Chamber Pursuant to Rule 103, Professor Malcolm N Shaw QC' (16 March 2020) https://www.icc-cpi.int/CourtRecords/CR2020_01017.PDF (accessed 14 February 2021).

¹⁶ James Crawford, *Brownlie's Principles of Public International Law*, Ninth Edition (Oxford University Press, 2019).

¹⁷ See Susan Marks (ed.), *International Law on the Left* (Cambridge University Press., 2009). For an interesting counter to this assertion, see Robert Knox, 'Valuing race? Stretched Marxism and the logic of imperialism' (2016) 4:1 London Review of International Law 81.

¹⁸ See this critique of Marx in Edward Said, *Orientalism* (Pantheon Books, 1978).

like the *jus ad bellum* or British lawyers discussing issues related to arms sales). Palestinian international lawyers must outright reject these notions. The Palestinian international law narrative is rich and should, similarly, be embraced for its exceptional and formidable contributions.

Concluding Remarks

In this essay, I have jumped between discussing the current state of international law teaching in Palestine and current and future considerations in that regard. There is much more work to be done on the ground in terms of developing international law. Capacity and resources are a real issue and there is no easy answer to correcting those deficits. Nevertheless, the objective should be teaching to create the best possible standard of Palestinian international lawyers. In that process, I submit that it is important to be able to teach students a “textbook” version of international law while also being able to develop student abilities to genuinely critique the law and its contemporary interpretation and application. This is especially the case with respect to those areas of international law most relevant to Palestinians – that have seen the rules, interpretations, and subsequent application miss them entirely. There is much more to offer, and ownership is crucial. In that process, Palestinian international law students and lawyers can claim our own narrative, without the need to feel like we need to belong to other narratives.