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Editorial

War crimes and crimes against humanity: Decolonizing discourses of international justice

Lily Hamourtziadou and Shehla Khan (editors)

The special issue on the themes of war crimes, crimes against humanity, genocide, and aggression, four areas that fall within the jurisdiction of the International Criminal Court, is governed by a series of interrelated concerns. First, it acknowledges critiques that assert the centrality of colonialism to the foundation of international law. These are evinced, for example, in Anghie's observation that international law "always been animated by the civilising mission, the project of governing and transforming non-European peoples" (2006). Secondly, it takes note of the recent initiatives undertaken by the ICC. These consist of the investigations it has launched into allegations of war crimes perpetrated by British and US forces in Afghanistan, and by the Israeli military in the occupied Palestinian territories. As such the Court has directed attention to some of the world's most powerful and seemingly unaccountable militaries representing states that are former imperial or contemporary settler colonial powers. Now approaching the 20th anniversary of its founding in 2002, the Court came into existence as a permanent body following the adoption of the Rome Statute of 1998 by 120 states. Its declared aim is to prosecute "the perpetrators of the most serious crimes committed" within the signatory states' territory or by their nationals "where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators". Thirdly, it considers the contention that states may weaponize international law. Finally, it incorporates the distinctions posited between exceptional and putatively transient violence and systemic violence that is institutionalized and normalized.

Using these observations as an entry point to the issue, we invited papers that bring *non-Eurocentric*, *decolonial* approaches to interrogate discourses of international law pertaining to violations that incur individual criminal responsibility. Such violations can occur during an armed conflict, but also in peacetime, notably genocide. Other examples of prohibited acts include: apartheid; murder; cruel treatment and torture; taking of hostages; intentionally directing attacks against the civilian population; intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historical monuments, or hospitals; pillaging; rape and any other form of sexual violence; conscripting or enlisting children into armed forces or groups or using them to participate actively in hostilities. The victims can be any civilian population, regardless of its affiliation or identity.

We invited contributions that question whether and how the discourses of criminality and the extant institutional mechanisms for their application inhibit or facilitate the pursuit of *decolonial* justice. We underscore the centrality of the question in the context of an international system of states marked by radical *injustice* reflected in acute political, socio-economic and military asymmetries that are frequently although not exclusively a manifestation of coloniality. Specifically, we welcome analyses that focus for example on civilian casualties, internment, forced expulsion, the impact of warfare, the concept of collateral damage, the possibility of reparations, and link these to questions of state power, foreign policy, neo-imperialism, and settler colonialism.

Colonialism persists in the form of imperialism or finance capital, and imperialism is stubbornly intolerant of decolonization (Agozino, 2018). Everything from academic disciplines to international law remains under the dominance of patriarchal white supremacist imperialist thought. Europeans, wrote Biko Agozino, like to talk about human rights while committing abominations against human beings wherever they were found (Agozino, 2018). Colonialism itself represents itself as a rule-governed system that was designed to civilize the colonized by replacing the supposedly existing “Asiatic despotism” with the rule of law. But colonialism was a system of barbarism that brazenly committed genocide, fraud, slavery, dispossession, expropriation, robbery, miseducation, and brigandage in the interest of the colonizer (Rodney, 1972; Nkrumah, 1965; Fanon, 1963).

Franz Fanon in *The Wretched of the Earth* explained why colonized people who were subjected to violent oppression eventually adopted the violent methods of the colonizers in the struggle for decolonization. The strategies of insurgency, terrorism, and guerrilla methods, all seen continuing into the 21st century, were then presented by the powerful imperialist powers as threats that needed to be eliminated; the insurgents as uncivilized, barbaric people that needed to be killed, defeated, silenced. Nowhere is this more evident than in the 21st-century use of drones.

Drones have become the signature tool of 21st-century warfare, particularly by US forces in the war on terror. The fundamental rationale for drone use relies on their “surgical precision,” supposedly saving civilian lives. Yet in Iraq, more than 13,000 civilians have been killed in coalition drone strikes since they resumed in 2014, when Islamic State (IS) captured areas of Iraq (they had ceased three years earlier with the withdrawal of US and UK troops). By 1 August 2019, in 1,773 days of 14,570 coalition drone strikes in Iraq and 19,785 in Syria, up to 13,000 civilians had been killed, of which 2,300 were children (Hamourtziadou, 2021).

The aim is to kill, not capture. Human beings are denied the right to surrender and are instead executed for being members of a group defined by the killers as evil. Drones are thought to appear in a sticky situation to swiftly reward the just and punish the unjust. Those executed are presumed “guilty,” without arrest, questioning, or subsequent conviction. Targeted killing becomes normalized, leading to increasing human rights abuses, all of which go unpunished, despite the fact that international law and the Geneva conventions state what is and what is not acceptable during war, regarding combatants and non-combatants, in line with the principles of Just War theory (Hamourtziadou, 2021).

In “Crimes of a ‘Benevolent’ Hegemony: Configurations of UK Power in Northern Ireland and Iraq” Hamourtziadou and O’Sullivan explore UK hegemony in Ireland and in Iraq, alone or as part of a hegemonic coalition that claims to be fighting a brutal, unjust, and uncivilized insurgency. They question the claimed “benevolence” of a hegemon that kills, tortures, enslaves and occupies, and investigate the exercise of power through military and political domination under the guise of a civilized protector, liberator, and the bearer of progress and order.

In “The International Criminal Court, Preliminary Examinations, and the Security Council: Kill or Cure?” Kuhrt and Kerr discuss the situations in UK-Iraq and Ukraine, setting the actions of the ICC Prosecutor and the responses of the P5 members involved in the context of the international and domestic politics of international justice. They argue that while PEs are highly significant for the future of the Court, they are not the cure to its current malaise.

“Orientalism and the Application of International Law in the 2003 Iraq War and Occupation,” by Nouri, contemplates the impact of orientalist discourse on the application of international law with a focus on the 2003 US occupation of Iraq. The emphasis of the paper is on how international law failed to protect Iraqis from imperial US decision-making, and served US elites to the detriment of Iraqis – something which international law specifically aims to prevent. Nouri argues that knowledge production in the form of orientalist discourse played a crucial role in legitimizing and expanding the meaning and application of regulations during the occupation of Iraq and led to regular violations of international law.

In “The Complexity of Investigating War Crimes” Winch and Jackson examine factors that influence the investigation into war crimes, such as cultural, social, and political interruptions, pointing out the difficulty of investigating such complex behaviors and bringing those responsible to justice.

Browne adopts a human security approach in “Human Security and Casualty Counting in Ulster: Towards a Peaceful and Just Solution,” analysing the theoretical aspects of casualty recording and arguing for the need to document human rights violations, including casualties and crimes against humanity, in Northern Ireland, in order to bring accountability and bridge the community divide.

In “Michael Collins: Founder of Modern Guerrilla Warfare Tactics” Lynch questions the term “terrorism”, when it comes to the Irish insurgency in the 20th century. His paper examines the foundations of contemporary guerrilla warfare tactics and associates them with the actions and operations of General Michael Collins and the Irish Volunteers throughout the War of Independence. Lynch draws comparisons with Vietnam (1955–75), Iraq (2003–11), and Afghanistan (2001–21), in the context of war against a strong hegemonic power.

Neal and Jackson in “Responding to War Crimes: Debating the Bombing of Auschwitz-Birkenau” look at the prevention, reaction, and prosecution of crimes against humanity, in the context of the historical debate over the Allied response to the most infamous of the Nazis “factories of death,” Auschwitz-Birkenau. They put forward arguments made both at the time and amongst contemporary scholars, as to whether the Allied nations should have used force to destroy the gas chambers and crematorium, when presented with credible intelligence, and what mitigating factors influenced their decision not to open the bomb bay doors.

Jackson, in “Victors Write the Rules: Hypocrisies and Legacies of the Nuremberg Trials,” argues that, as history is written by the victors, the methods used to achieve that success are often forgotten. The four victorious nations that came together in 1946 to form the charter of the International Military Tribunal, to charge Nazis with war crimes and crimes against humanity, were themselves guilty of such crimes.

Finally, in “Investigating War Crimes in Bosnia and Herzegovina” Turnbull provides a “Scotland Yard Detective’s Bosnia Tale.” He travelled to Bosnia and Herzegovina as an expert in evidence retrieval procedures acceptable in European courts, to aid them with prosecutions against those responsible for war crimes. His harrowing first-person account is the only paper in this collection that addresses a case where those responsible for crimes against humanity were held accountable and were successfully prosecuted and imprisoned.

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