

COMMENTARIES ON CURRENT AFFAIRS

Gaza vs Libya: Mission Impossible for Norway's Commitment to International Law

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Abstract

This article discusses the US historical relation to international law and the dilemma for a small NATO-country like Norway to uphold it's tradition to the commitment to the UN, charter and at the same time be a loyal ally to US. With the ongoing war on Gaza and the bombing of Libya in 2011 the author argues that Norway in all practical terms violates international law when being loyal to NATO's out-of area policy.

Keywords

International law, NATO, Norwegian Security policy, US foreign policy

Introduction

The purpose of this commentary is to look closer at the challenge for a small NATO member like Norway to in practice live up to its declared commitment to international law. The alliance with the US and the bilateral intelligence and

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security cooperation is a challenge when US, in all practical terms, lack willingness to respect international law.² This became once again evident when US refused to seriously interfere in the ongoing Israeli attack in Gaza. Norway has been a loyal NATO member since 1949. After Russia's full scale invasion of Ukraine, in February 2022, the dependence on US has increased and Norway has left its previous policy of not allowing US bases on Norwegian soil. A new bilateral agreement between US and Norway in all practical terms will become US bases on eight selected areas³

Philippe Sands shows, in the book *East West Street*, how the USA was central to the creation of the Nuremberg Tribunal, which convicted the Nazis of war crimes during the Second World War.⁴ In his follow-up book *The Last Colony*, Sands also shows that the USA was the driving force in the creation of the UN and the use of the UN to liquidate Western countries' colonies. The turning point came when the superpower's own interests were challenged and a common front between the US and Great Britain in the UN collided with the former colonies' struggle for decolonisation. Another turning point was when the USA was convicted, in 1986 at the International Court of Justice in The Hague, for its support to the 'Contras' who fought militarily against the Sandinista regime in Nicaragua. The US refused to accept the verdict by not respecting the ruling and

² Bård Wormdal, *Spionkrigen – det hemmelige spionsamarbeide mellom Norge og USA* (Oslo: Aschehoug forlag, 2023).

³ Rune Ottosen, 'Svalbard under press – det vi snakker lite om'. (2021) *Forsvarets Forum* 5. mai <https://www.forsvaretsforum.no/kronikk-nordomradene-papirdebatt/svalbard-under-press--det-vi-snakker-lite-om/185686?noLog=1> (downloaded 1 March 2024).

⁴ Phillippe Sands, *East West Street* (London: London: Weidenfeld & Nicolson, 2016).

paying compensation to Nicaragua, and has since opposed joining the International Criminal Court.⁵

In their book *Manufacturing Consent*, Noam Chomsky and Edward Herman introduced the terms ‘worthy and unworthy’ victims.⁶ The term characterizes the double-standard approach US showed when treating victims of war differently, depending on who was the perpetrator. I was struck by the relevance of this approach during the Hamas terrorist attack of 7 October 2023, when huge war crimes were revealed, and 1300 Israeli civilians were killed. Through reports in the media, we developed empathy with the victims. Israel struck back with a strong military force. By the end of February 2024, Gaza health authorities claim that more than 30000 Palestinians had been killed by Israeli military in Gaza. This is an average of 300 fatalities per day. The World Health Organization’s regional emergency director Richard Brennan, says he considers these casualty figures trustworthy. (BBC, December 2023). The world has been astonished by the brutality of Israel’s use of force. One example was when Israel army (IDF), on 29 February, attacked a group of civilians lining up for food supplies north of Gaza. 112 civilians died and 750 were wounded when the air force attacked with planes and IDF force opened fire with machine guns, in what Al Jazeera named the ‘the flour massacre’ (Al Jazeera, 29 February 2024). US vetoed a resolution proposed in the UN Security Council, that included criticism for Israel.

⁵ Phillippe Sands, *The Last Colony - A Tale of Exile, Justice and Britain’s Colonial Legacy* (London: Blackwell, 2023).

⁶ Edward Herman and Noam Chomsky, *Manufacturing Consent. The Political Economy of Mass Media* (New York: Pantheon Books, 2022).

1. History of US Double Standards

US officials act quite differently when worthy victims are attacked by ‘the enemy’ compared to atrocities committed by their ‘friends’ (like Israel). When the editorial office of the satirical magazine *Charlie Hebdo* was attacked, in 2015, President Barack Obama condemned it and called it a ‘horrific’ violation of international law and offered France his warm support.⁷ According to the Committee to Protect Journalists (CPJ), as of January 29 2024, at least 93 journalists and media workers were among the the around 30000 killed by Israel in Gaza. This was justified by Israel as a response to the terrorist attack by Hamas on Israel, on 7 October. News organisations and journalist organizations, in a letter, have expressed solidarity with Palestinian journalists (CPJ, 3March 2024). Deputy spokeswoman of Pentagon, Sabrina Singh, said the following in response to a question regarding the journalists killed in Israeli airstrikes: ‘We continue to urge Israel to uphold protection of innocent civilians, which includes members of the press’.⁸ This carefully worded request (no condemnation) is a sign of the double standard and an example of the ‘worthy’ French journalists and the ‘unworthy’ Palestinian journalists. These examples of double standards must be seen as part of a bigger picture.

Through our international research project ‘Journalism in the New World Order’, my Swedish colleague Stig A. Nohrstedt compared war coverage in

⁷ White House, ‘President Obama Responds to the Attack in France’, 2015, available at <https://obamawhitehouse.archives.gov/blog/2015/01/07/president-obama-responds-attack-> (last accessed 15 February 2024).

⁸ Anadolu Ajansi, ‘US urges Israel to protect civilians, including journalists’, 2023, available at <https://www.aa.com.tr/en/world/us-continues-to-urge-israel-to-protect-civilians-including-journalists/3076561> (last accessed 15 February 2023).

several countries for 25 years, starting with the Gulf War, in 1991.⁹ The main finding was that there is a correlation between war coverage in a given country and the security policy orientation in that country. Another finding is the underreporting of legal issues in the mainstream media.¹⁰ In practical terms, this implies too little focus on violation of international law when countries allied with the USA are involved.

In a small NATO countries like Norway, the policy position of the government and the mainstream media is colored by the relations to our allies when legal issues are addressed.¹¹ The Norwegian government officially has a foreign policy based on respect for international law. At the same time loyalty to its closest ally the US is a cornerstone. This represents a constant and ongoing dilemma, which, in all practical terms, makes it impossible to uphold respect for international law.

2. The Quest for Regional Power

The challenge for Norway as a small NATO country is that the US, in return for guaranteeing the safety of Norway, expects respect to its superpower ambitions. Norway has no national interest in the Middle East, but to deserve the loyalty of ‘big brother’, my country must adapt to US strategic interests. In the aftermath of the Gulf War, in 1991, US developed a new strategy in the Middle East. Ola Tunander, in his research, sees control of the Persian Gulf as vital for the control

⁹ Stig A. Nohrstedt and Rune Ottosen, *Journalism in the New World. Gulf War, National News Discourses and Globalization* (Gothenburg: Nordicom, 2000).

¹⁰ Stig A. Nohrstedt and Rune Ottosen, *New Wars, New Media and New War Journalism* (Gøteborg: Nordicom, 2014), 160.

¹¹ Stig A. Nohrstedt and Rune Ottosen (eds), *Global War – Local News. Media Images of the Iraq War*. (Gøteborg: Nordicom, 2005).

of the oil flow to China, Europe, and Japan, and, at the same time, prevents them from developing into rival powers to the United States. In order to control the Middle East, it was vital to act unilaterally ‘when collective action cannot be orchestrated’. Admiral William Crowe, Chairman of the Joint Chiefs of Staff, in a policy document in 1992, presented a new strategic concept. Crowe was replaced by General Colin Powell, who adapted the same policy. He said: ‘We no longer have the luxury of having a threat to plan for. What we plan for is that we are a superpower. We are the major player on the world stage with responsibility around the world, with interests around the world.’¹² As a result, the US Special Forces conducted 2000-3000 deployments since the mid-1990s. It was impossible to achieve this strategy within the framework of international law. US support for Israel’s attack on Gaza must be seen in the bigger context. This is important since most foreign policy experts agree that US is the only power with the capacity to stop Israeli warfare.

The US legal approach to the war against Libya in 2011 and Israel’s attack on Gaza in 2024 reveals the double standards of the regional policy. US officials usually avoid references to international law, when their own interest is at stake. The term ‘US exceptionalism’ is used to explain why one set of rules counts for the USA and another applies for the rest of the world. As a term in social sciences, ‘American exceptionalism’ refers to the United States’ status as a global outlier.¹³ As a part of the pattern, US spokesmen tend to talk about ‘rules-based international

¹² Ola Tunander, ‘An emerging multipolar world order’, *Ola’s substack*, 2024, available at <https://olatunander.substack.com/p/2024-an-emerging-multipolar-world> (last accessed 1 March 2024).

¹³ Ari Hooenboom, ‘American Exceptionalism Republicanism as Ideology’, in Elisabeth Gläser, Hermann Wellenreuther (eds) *Bridging the Atlantic: the question of American exceptionalism in perspective* (Cambridge: Cambridge University Press, 2002).

order’ rather than vocabulary used in text explaining conditions for international law. Caitlin Johnstone, in an essay, explains with irony: ‘The “rules-based international order” has allowed the incineration of Gaza, and the bombing of Yemeni forces who are trying to stop it. The “rules-based international order” allowed hundreds of thousands of people to be killed by western-backed Saudi atrocities in Yemen.’¹⁴ And now US is faced with the challenge to justify killing thousands of Palestinians as part of the ‘rule-based order’.

3. The Court Case against Israel

The proceedings instituted by South Africa against Israel, on 29 December 2023, before the International Court of Justice (ICJ) are officially referred to as *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*.

South Africa alleges that Israel is violating the Genocide Convention and asks ICJ to issue an order to Israel to immediately suspend its military operations in and against Gaza. The Court issued an Order in relation to the provisional measures request, on 26 January 2024, in which it ordered Israel to take all measures to prevent any acts that could be considered genocidal according to the Geneva Convention. The investigation on alleged genocide continues, as this is written in late February 2024. It is increasingly difficult for US to combine ‘the rule based’ understanding of the conflict with the unconditional support for Israel. The court case has become a legal scene where lawyers talk based on the

¹⁴ Caitlin Johnstone, ‘The rules based international order’ (2024) *Caitlin Johnstone’s Webpage*, available at <https://caitlinjohnstone.com.au/2024/01/16/the-rules-based-international-order/> (last accessed 1 March 2024).

vocabulary of law. One example was the common lawyer for The Arab League explaining the ongoing war on Gaza as a direct result of the illegal occupation since 1948. The court has also rejected the Israeli arguments for self-defense since the brutal attack of 7 October, since an occupier has no right to self-defense in the occupied territory (Al Jazeera 26, 2024).

UN General Secretary Antonio Guterres, in a statement, made it clear that the conflict did not start with the attack by Hamas on 7 October: ‘The Palestinian people have been subjected to 56 years of suffocating occupation. They have seen their land consumed by settlements and plagued by violence, the economy stifled, the people displaced and their homes demolished. They have lost hope of a political solution.’ (ABC news 25.10.2023)

The reality on the ground must be explained with a rhetoric outside the framework of traditional international law. US officials try to avoid references to the ongoing court case, dismissed by Israel’s Foreign Minister as ‘baseless’ (Reuters, 27 January). Since 1967, Israel’s armed forces IDF have maintained a close security relationship with the United States and Israel is dependent on military support and financial assistance from the US. Thus, the US has the power to put pressure on Israel. On 20 February 2024, the US ambassador to the UN, Linda Thomas-Greenfield, was given the task of vetoing the resolution on a ceasefire in Gaza, which was put forward by Algeria. 27 of the 33 vetoes the US has put down since 1988 have been in defense of Israel’s actions towards the Palestinians. Since 7 October, the United States has vetoed three UN resolutions to compel Israel to stop its war crimes (18 October 2023, 8 December 2023, and 20 February 2024).¹⁵

¹⁵ Vijay Prashad, Internasjonal demokrati, *Klassekampen* 5 March 2024.

4. Norway's Challenge

South Africa's case against Israel was welcomed by the Norwegian government and media. It fits the official Norwegian foreign policy strategy committing Norway to the UN Charter and opposing military operation without a mandate from the UN Security Council.¹⁶ Norway asked early on for a ceasefire in Gaza and supported the UN quest for protection of civilian lives. The Norwegian government has, during the war in Gaza, been clear in its rhetoric in defense of international law. The Deputy Foreign Minister Andreas Motzfeldt Kravik, in the Norwegian newspaper *Klassekampen* on 26 February 2024, wrote an article with the headline 'The Significance of a Principle'. This can be read as indirect criticism of the USA and Israel for ignoring international law and not showing respect in the ongoing ICJ case South Africa vs. Israel, Kravik writes:

The war in Gaza has created an international and national debate about so-called double standards" and Western double moral. The background is the claim that western countries such as Norway are only concerned with international law when it serves us.

The argument is not very apt for Norway. It is an important matter for Norway to preserve international law regardless of who violates it. Whether it concerns the ongoing war in Gaza, conflicts in Africa, Israel's illegal occupation, Britain's violation of international law on the Chagos Islands or Russia's illegal war of aggression against Ukraine, Norway has been principled and clear. We have criticized all these violations of international law, regardless of who commits them.

¹⁶ Rune Ottosen, 'Journalistenes konfliktfylte lojalitet. Et historisk perspektiv på krigsdekning i norske medier' (2001) i: Eide, Martin. *Til Dagsorden* Gyldendal Norsk Forlag.

Interestingly enough, Kravik is not referring to any violation of international law by the US. He ignores criticism from this author and others for giving support to US in ‘out of area’ operations in NATO, in the so-called global war on terror since 1999.¹⁷ When he talks about Norway’s military operations in positive terms he leaves the legal framing when he claims:

Norway was one of the founders of NATO and we have close political and military defense cooperation with our allies. And we have made significant contributions to NATO operations in Kosovo, Libya and Afghanistan. No ally doubts Norway’s loyalty to NATO.

To use Bourdieu’s term ‘doxa’, Kravik’s doxa (the question you never ask because the answer is self-evident) that Norway by definition always acts within international law, is not challenged.¹⁸

5. Norwegian Illegal Wars

In my earlier research I have looked at the media coverage of all the wars Norway has taken part in since the Gulf War. I have read what independent experts on international law, like the late Professor Ståle Eskeland and Professor Geir Ulfstein, have written about these wars and whether the legal issues are discussed

¹⁷ Rune Ottosen, ‘Fra kald krig til out of area. Mediene og dekningen av NATOs ny kriger 1999-2018’. *Norsk mediehistorisk tidsskrift* nr. 2 2019

¹⁸ Stig A. Nohrstedt and Rune Ottosen, *New Wars, New Media and New War Journalism* (Göteborg: Nordicom, 2014).

by the media..¹⁹ Here is a short summary of the conclusion on cases where Norway was responsible or co-responsible for violating international law:

In the book *The most Serious Crime*, late professor of law, Ståle Eskeland, made a critical evaluation of the participation of Norwegian forces in NATO out of area operations such as Yugoslavia in 1999, Afghanistan in 2001 and Iraq in 2003. He claimed that all these military actions were unconstitutional and contrary to international law. With strict legal argumentation, he describes a picture that cuts across the Norwegian media coverage and the political elite's self-understanding and argument about Norway's role in Yugoslavia 1999, Afghanistan and Libya.²⁰ Norway took part with support functions in the bombing of Belgrade and other parts of former Yugoslavia in 1999 without a UN mandate. An important additional point is that Norway participated in the US Operation Enduring Freedom (OEF) in Afghanistan from the very beginning without a sufficient UN mandate. NATO's ISAF forces received a UN mandate from 2003 to protect the civilian population in and around Kabul and only in 2006 was the OEF included in the UN mandate. Eskeland's conclusion is that under-reporting of the international law issues turns out to be an ongoing sin of omission in the media coverage of Norway's new wars. Another professor of law, Geir Ulfstein, claims that the Norwegian government used UN Security Council Resolution 1368 as justification to participate in the NATO force (ISAF) warfare in Afghanistan. Ulfstein warned against interpreting resolution 1368 as justification for a

¹⁹ Rune Ottosen 'Mediene må lære av sine feil i Libya-dekningen' in Tormod Heier, Rune Ottosen and Terje Tvedt (eds), *Libya: Krigens uutholdelige letthet* (Oslo: Cappelen akademiske, 2019).

²⁰ Ståle Eskeland, *Den mest alvorlige forbrytelse*. Oslo: Universitetsforlaget 130-140

permanent military presence in Afghanistan.²¹ Although the resolution refers to the states' right to self-defense, it does not state that these actions against the United States give the right to prolonged warfare. It is worth noting here that Norwegian politicians on a number of occasions, without receiving critical follow-up questions from the journalists, precisely used resolution 1368 in the way that Ulfstein warns against.²² When NATO forces left Afghanistan and Taliban took over, in autumn 2022, the failed 'humanitarian intervention' was evident for everyone to see.

6. The Bombing of Libya

The legal basis for the bombing of Libya, in March 2011, was justified through UN Security Council Resolution 1973. The resolution was adopted to introduce a no-fly zone following an alleged threat that Gaddafi would attack the civilian population in Benghazi. This was marketed as the real test case for the principle of Responsibility to Protect (R2P). Berit von der Lippe shows how Norwegian politicians argued for this principle of 'humanitarian intervention' by pointing to Rwanda and other examples where the international community has not intervened to stop abuses. At the same time, she shows that in reality the military attack on Libya helped protect those responsible for an illegal warfare. Resolution 1973 stated that no regime change should be allowed. In fact, NATO immediately hijacked the operation, started bombing and eventually allowed Gaddafi to be killed by a mob in October 2011. All political parties in the parliament agreed to Norwegian participation. Norway dropped 588 bombs on Libya. One of the bombs

²¹ Geir Ulfstein, 'Terror og folkerett' *Lov og Rett* nr. 2 2003.

²² Ottosen (no 17)

hit the Gaddafi living compound and killed one of his grandchildren. This misuse of the R2P concept based on propaganda and disinformation has made it impossible to launch similar interventions, because the Arab world, China and Russia felt cheated and abused by abstaining from voting for resolution 1973.²³ One could ask if R2P with military intervention against Israel now could have been relevant. In 2016, the Foreign Affairs Committee of the British Parliament concluded in its investigation that the attack on Libya was launched due to a faulty decision-making basis, insufficient intelligence, and an exaggerated threat image. In retrospect, we know, according to the British evaluation report, that there was no real threat of a military attack by Gaddafi against the civilian population of Benghazi in March 2011. A commission evaluating the Norwegian military participating in Libya, with former prime minister Jan Petersen as chair, freed Norway of any wrongdoing since Norwegian planes left Libya before the regime change.²⁴ Professor Geir Ulfstein evaluated the legal aspects of Norwegian participation in the warfare in Libya. In a book I coedited with Tormod Heier and Terje Tvedt, the title of Ulfstein's chapter is: 'Norway Broke International Law in Libya'.²⁵ Norway refused to take responsibility for the bombing of Libya. Libya was left behind as a failed state by the Mediterranean Sea, not far from Gaza. When Norwegian politicians now claim respect for international law in Gaza, the Norwegian media fail in challenging the double standard. Partly because they themselves, with a few exceptions, had supported the bombing and the making of

²³ von der Lippe, 'Beskyttelse av hva og for hvem -hvordan og når. Da en retorisk situasjon med en R2P situasjon' in Tormod Heier, Rune Ottosen and Terje Tvedt (eds), *Libya: Krigens uutholdelige letthet* (Oslo: Cappelen akademiske, 2019).

²⁴ Geir Ulfstein, 'Norge brøt folkeretten' in Tormod Heier, Rune Ottosen and Terje Tvedt (eds), *Libya: Krigens uutholdelige letthet* (Oslo: Cappelen akademiske, 2019).

²⁵ Ulfstein (no 24)

a failed state in Libya.²⁶ The hope now is that the International Criminal Court continue their job and come up with a verdict. The issue of international law is too important to be left to the world's most powerful superpower and their hypocritical allies like Norway.

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²⁶ Ottosen (no 17)

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