

For Crisis, and in Crisis?: An Origin Story of International Law

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International Law can be said to be a tool forged in the flames of crisis, based on a heroic tale in which the international legal order rises from the ashes of the greatest horrors seen by humankind and paves the way towards a better world: that is its origin story. This story is contrasted against another, in which international law is a facilitator of settler colonial expansion and imperialism, inseparable from its colonial past. The stark contrast illustrated by this second narrative cautions against over-mythologisation and questions the role of international law in the face of crisis. This piece proposes both the removal of international law from its pedestal and simultaneously questions the expectations that that pedestal created, asking what role international law realistically plays in the face of unfolding crises.

Epigraph

This piece was written in early 2024, shortly after the International Court of Justice (ICJ) considered South Africa's request for provisional measures concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip but before it delivered its Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. It was written at a time when the Gaza death toll was significantly lower. However, the trends remain consistent. The hostilities have continued, the resulting questioning of international law has continued, and the handwringing over the future of international law has only increased.

In mid-September 2025, the annual conference of the European Society of International Law (ESIL) was held in Berlin with the theme 'Reconstructing International Law'. The conference opened with the statement: 'We are grappling with a crisis'.¹ It was preceded by an exposition painting a potential future in which 'international law dies', reflecting political patterns of the 1930s into the 2030s.² The speaker described how, in our effort to reshape international law to prevent what had happened then, certain elements were overlooked, leaving an international law that internalised certain legitimacy flaws, by 'locking out alternative visions' and 'carrying colonial imperialising vision', which now 'threaten to pull down the architecture

¹ Gleider Hernández, ESIL President, 'Opening Address' (20th Annual Conference of the European Society of International Law 11-13 September 2025 at Freie Universität Berlin)

² Prof. Dr. Heike Krieger, 'Opening Address' (20th Annual Conference of the European Society of International Law 11-13 September 2025 at Freie Universität Berlin)

today'.³ Both opening speakers presented a call to 'begin the process of reconstruction',⁴ arguing that international law is worth the effort to 'keep it alive'.⁵ This theme carried through the multiple days of the conference, with speakers either embracing the crisis narrative or explicitly disputing it. I cite this as an illustration that, despite the time that has passed since its initial authorship, the moment for this paper has not passed, and the narrative theme that places 'crisis' both at the heart of international law and looming over it as a potential spectre of destruction, is as pervasive as ever.

In the first plenary panel of the ESIL conference, mention was made of the unprecedented interest in international law held by the public at large, paired with a comment that 'international lawyers must be honest about the limits of international instruments'.⁶ The current piece was written as a think piece rather than an academic article, and it has this wider audience of international law in mind. The responsibility of the international lawyer to think critically and communicate honestly about their views on nature, failures, and limits of this discipline, particularly in a time of increased public interest, was at the forefront of the author's mind in writing it. It is written for the Limina audience, being both a general audience and academic audiences in fields other than law, such as history and cultural studies, and, as such, much of the theory of law literature has been left to one side.

³ Ibid.

⁴ Gleider Hernández (n 1).

⁵ Prof. Dr. Heike Krieger (n 2).

⁶ Professor Astrid Kjeldgaard-Pedersen, 'Opening Panel' (20th Annual Conference of the European Society of International Law 11-13 September 2025 at Freie Universität Berlin)

Introduction

International Law can be said to be a tool forged in the flames of crisis, based on a heroic tale in which the international legal order rises from the ashes of the greatest horrors seen by humankind and paves the way towards a better world. There exists an anthology of stories depicting slightly different versions of this narrative throughout international legal discourse. In some ways, crisis is part of our origin story.⁷ As international lawyers, ‘crisis’ has been characterised as our identity⁸ or lifeblood,⁹ something we are obsessed with;¹⁰ that we perennially experience;¹¹ that dominates our imagination;¹² and forms a precursor to the need for our profession.¹³ Judge Hillary Charlesworth once called us a ‘discipline of crisis’.¹⁴ However, the story of the forging of international law is a story, and like all stories, it is incomplete – because a story cannot maintain its appeal or its narrative power if it continually fragments, in the hands of multiple narrators, into diverging and contradictory branches laced with nearly incomprehensible complexity. The ‘crisis’ narrative at its heart plays into a mythology of international law, which paints an institution as a heroic character.

Today, a different tale is told: one in which international law is completely impotent in the face of ever-multiplying crises, particularly as horrors unfold unabated in both Ukraine and Gaza. This tale builds on the first, it assumes that the tool of international law was intended to, and capable of, teaching us the lessons of history and preventing future crises; protecting humanity from the scourge that went

⁷ ‘Origin story’ here is defined simply as a story that accounts for the character of a group of people (or here, a thing or system) and explains why they are either protagonists or agonists. In this way it is viewed as a subcategory of the etiological myths, being those that give explanations for why something is the way that it is (or the ‘Just So Stories’ described by Rudyard Kipling). It is also used in a manner comparable to a ‘founding myth’ which may be adopted in a heroic model to create a national original myth by groups (cities, civilisations, kingdoms, even religions or specific traditions, or the ethnogenesis of a group).

⁸ Hilary Charlesworth, ‘International Law: A Discipline of Crisis’ (2002) 65 *The Modern Law Review* 377.

⁹ Philippe Sands, ‘Crisis and Its Curators’: in Makane Moïse Mbengue and Jean D’Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022).

¹⁰ See, for example, Charlesworth (n 8) 384; James Crawford, ‘Reflections on Crises and International Law’ in James Crawford, *How International Law Works in Times of Crisis* (Oxford University Press 2019); Makane Moïse Mbengue and Jean D’Aspremont, ‘Introduction’ in Makane Moïse Mbengue and Jean D’Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022); Sands (n 9); Jean D’Aspremont, ‘International Law as a Crisis Discourse: The Peril of Wordlessness’ in Jean D’Aspremont and Makane Moïse Mbengue, *Crisis Narratives in International Law* (Brill 2022); Jan Klabbers, ‘The Love of Crisis’ in Makane Moïse Mbengue and Jean D’Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022); Philippa Webb, ‘From Crisis to Epoch: How to Understand This Era of International Law?’ (2024) 25 *Melbourne Journal of International Law* 1.

¹¹ Klabbers (n 10) 10.

¹² Charlesworth (n 8) 382.

¹³ Crawford (n 10) 10; Sands (n 9); D’Aspremont (n 10) 74.

¹⁴ Charlesworth (n 8).

before.¹⁵ This story tells us, then, that international law has failed, or is failing. International law is falling short of its promise, failing to fill the enormous, hero-laced shoes set out for it. But this story, too, is incomplete—lacking the nuance and complexity of the real world—while following the narrative structure set out by a heroising mythology.

This piece examines international law's obsession with crisis as the central mobilisation theme of its 'origin story'. It interrogates the above tale, from international law's rise in the flames of crisis to the 'fall' that some believe they are witnessing today. In so doing, this piece touches on two different types of crises: external crises for which international law is sought as a potential solution, and crises of the international legal order itself.¹⁶ These two types of crises are understood as interdependent: the failure to act in the face of an external crisis is seen as triggering a crisis of the system itself and the questioning of whether international law is fit for purpose. However, it argues that the current moment of crisis experienced by the field is not necessarily, or solely, the result of some inherent characteristic of the system. It is also a result of our use of simplified stories and unnuanced narratives. The piece examines the power of the narratives we use by placing two narratives side by side: one in which international law is painted as an almost hero-like character, liable to fall from grace when those expectations are not reached; and another in which international law is almost villainous from the outset, serving at the right hand of imperialism, colonialism, and oppression. While there is truth to both, the final section discusses how we can perceive of international law less as a 'character', imbuing it with good or evil and playing into the narrative extremes, and more as an instrument.

Moment of Crisis for International Law?

The notion of 'crisis' seems everywhere in the field and beyond. The *Limina* issue which prompted this piece was themed 'crisis'. The Australian and New Zealand Society of International Law has themed their conference 'International Law: Crisis, Conflict and Cooperation'.¹⁷ At the Hague Academy of International law has themed the Centre for Studies and Research on 'International Institutions in the Face of International Crises'.¹⁸ A book was published containing pieces by 20 of the 'big fish'

¹⁵ To use the language of the UN Charter: *Charter of the United Nations 1945* (1 UNTS XVI) Preamble.

¹⁶ On 'Exogenous' and 'Endogenous' crises, see: M. Reisman, A. R. Willard (eds.), *International Incidents: The Law That Counts in World Politics* (Princeton University Press 1988); G. Guillaume, *Les grandes crises internationales et le droit* (Paris, Editions du Seuil, 1994). For applied distinctions between 'exogenous' and 'endogenous' crisis see Jean-Marc Sauvé, 'Jean-Marc Sauvé, 'Reflections: How International Law Functions in Times of Crisis' in George Ulrich and Ineta Ziemele (eds), *How International Law Works in Times of Crisis* (1st edn, Oxford University Press 2019).

¹⁷ '31st ANZSIL Annual Conference' <<https://anzsil.org.au/page-18089>> accessed 17 March 2024.

¹⁸ '2024 Centre' (*The Hague Academy of International Law*) <<https://www.hagueacademy.nl/2024-centre/>> accessed 18 March 2024.

of international law titled ‘Crisis Narratives in International Law’.¹⁹ There are webinars, conferences, talks, blogs, news pieces, publications, and even podcasts all invoking the term or the sentiment.²⁰ Their focuses range from Climate Change and environmental devastation to wars in Ukraine and Gaza, to health and the COVID pandemic, being of the kind of crises that are external or exogenous and facing the globe at large.²¹ Alongside consideration of those external crises, the flurry of

¹⁹ Makane Moïse Mbengue and Jean D’Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022).

²⁰ See, for example, *International Law After Gaza: Crisis of Rules or System Breakdown?* (Directed by Institute for Peace & Diplomacy, 2024) <<https://www.youtube.com/watch?v=5fuotirr72U>> accessed 24 August 2025; ‘Full Programme | Boğaziçi University International Law Conference’ <<https://bilc.bogazici.edu.tr/full-programme>> accessed 24 August 2025; ‘International Law after Gaza’ <<https://www.graduateinstitute.ch/communications/events/international-law-after-gaza>> accessed 24 August 2025; ‘2022 Symposium – Lessons Learned: Perspectives on Law and Policy From the War in Ukraine’ <<https://lawreview.syr.edu/2022-symposium-lessons-learned-perspectives-on-law-and-policy-from-the-war-in-ukraine/>> accessed 22 March 2024; Fuad Zarbiyev, ‘Damaged Beyond Repair? International Law after Gaza’ (*EJIL: Talk!*, 26 March 2024) <<https://www.ejiltalk.org/damaged-beyond-repair-international-law-after-gaza/>> accessed 11 April 2024; Fuad Zarbiyev, ‘Did the International Community Die in Gaza? | IHEID’ <<https://www.graduateinstitute.ch/communications/news/international-community-gaza>> accessed 11 April 2024; Nico Krisch, ‘After Hegemony: The Law on the Use of Force and the Ukraine Crisis’ (*EJIL: Talk!*, 2 March 2022) <<https://www.ejiltalk.org/after-hegemony-the-law-on-the-use-of-force-and-the-ukraine-crisis/>> accessed 24 August 2025; Marko Milanovic, ‘Dystopian International Law’ (2025) <<https://www.ssrn.com/abstract=5446315>> accessed 1 October 2025; Philippa Webb, ‘Six Viewpoints on the Future of the International Legal Order and the Role of International Courts’ (*EJIL: Talk!*, 20 August 2025) <<https://www.ejiltalk.org/six-viewpoints-on-the-future-of-the-international-legal-order-and-the-role-of-international-courts/>> accessed 1 October 2025; ‘Will the War in Gaza Become a Breaking Point for the Rules-Based International Order? | Chatham House – International Affairs Think Tank’ (25 January 2024) <<https://www.chathamhouse.org/2024/01/will-war-gaza-become-breaking-point-rules-based-international-order>> accessed 22 March 2024; ‘The Future of International Law in Light of the Russian-Ukraine Conflict – The Leaflet’ (13 December 2022) <<https://theleaflet.in/the-future-of-international-law-in-light-of-the-russian-ukraine-conflict/>> accessed 22 March 2024; ‘The Fall and Fall of International Law: A Chronicle from Covid to Palestine – The Leaflet’ (1 December 2023) <<https://theleaflet.in/the-fall-and-fall-of-international-law-a-chronicle-from-covid-to-palestine/>> accessed 12 March 2024; ‘What Palestine Teaches Teachers of Politics and Law – The Leaflet’ (29 October 2023) <<https://theleaflet.in/what-palestine-teaches-teachers-of-politics-and-law/>> accessed 12 March 2024; Wesam Ahmad, ‘The Mask Is off: Gaza Has Exposed the Hypocrisy of International Law’ (*Al Jazeera*) <<https://www.aljazeera.com/opinions/2023/10/17/the-mask-is-off-gaza-has-exposed-the-hypocrisy-of-international-law>> accessed 23 March 2024; ‘What International Law Can – and Can’t Achieve – in Gaza’ (*TIME*, 26 January 2024) <<https://time.com/6588977/international-law-israel-gaza-ukraine-russia/>> accessed 16 March 2024; Yves Daudet, ‘“Never Let a Good Crisis Go to Waste”: Can International Law Seize the Advantage?’ (2021) 115 *Proceedings of the ASIL Annual Meeting* 129; Ntina Tzouvala, ‘International Law as a Discipline in Crisis’ (2025) 79 *Australian Journal of International Affairs* 71; Rouven Diekjobst and Daniela Rau, ‘#50: Eine Disziplin (in) Der Krise?’ [2025] *Völkerrechtsblog* <<https://voelkerrechtsblog.org/50-eine-disziplin-in-der-krise/>> accessed 6 August 2025.

²¹ See, for example, Catherine Kessedjian, ‘International Law and Crisis Narratives after the COVID-19 Pandemic’ in Makane Moïse Mbengue and Jean D’Aspremont (eds), *Crisis Narratives in*

discussions also invokes internal crises affecting specific regimes of international law, the institutions of International Law, or multilateralism itself.²² Ntina Tzouvala has turned the criticism on ourselves, explaining how the manner in which we as a discipline discuss the situation in Gaza renders us not only a discipline of crisis, but also a discipline in crisis.²³ Given this context, it certainly feels like a time of reckoning for the field. That moment of reckoning reaches the level of the personal. Even those experienced mentors that we look up to, or go to for perspective, are authoring personal pieces about the current moment in which the word crisis is often used.²⁴ Even this article is written from the UN offices in Geneva, where the escalators stand still and staff work from home due to an oft-invoked, 'liquidity crisis' in which even cuts to the electricity bill have been deemed necessary given the financial situation facing the organisation - an occupational hazard for an organisation that relies on the political will of States for funds.²⁵ It seems, from a relative newcomer, that things really might be 'that bad'.

International Law (Brill 2022); Frédéric Mégret, 'COVID and the Crisis Mode in International Legal Scholarship' in Makane Moïse Mbengue and Jean D'Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022); Anne Peters, 'COVID-19 as a Catalyst for the (Re-) Constitutionalisation of International Law': in Makane Moïse Mbengue and Jean D'Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022); Yuval Shany, 'The COVID-19 Pandemic Crisis and International Law': in Makane Moïse Mbengue and Jean D'Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022); 'The War in Ukraine and the Future of International Law | IHEID'

<<https://www.graduateinstitute.ch/communications/events/war-ukraine-and-future-international-law>> accessed 22 March 2024; 'The Future of International Law in Light of the Russian-Ukraine Conflict – The Leaflet' (n 23); Tomer Broude, 'Warming to Crisis: The Climate Change Law of Unintended Opportunity' in Mielle K Bulterman and Willem JM van Genugten (eds), *Crisis and International Law: Decoy or Catalyst?* (TMC Asser Press 2014); Webb (n 10); D'Aspremont (n 10).

²² The crisis of multilateralism refers to the tendency of States to move away from international cooperation as a solution to their global concerns, or an unwillingness of States to create or sign on to new legal instruments. See: Jutta Brunnée, 'Multilateralism in Crisis' (2018) 112 *Proceedings of the Annual Meeting (American Society of International Law)* 335; Maria Varaki, 'Revisiting the "Crisis" of International Law' in Lukasz Gruszczynski and others, *The Crisis of Multilateral Legal Order* (1st edn, Routledge 2022); BS Chimni, 'Crisis and International Law': in Makane Moïse Mbengue and Jean D'Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022); Lukasz Gruszczynski and others, *The Crisis of Multilateral Legal Order: Causes, Dynamics and Implications* (1st edn, Routledge 2022). Cf Guilbaud, Petiteville, and Ramel who emphasise that 'crises of multilateralism' are ever present in the development of international law, and not new or unique: Auriane Guilbaud, Franck Petiteville and Frédéric Ramel, 'Introduction: Crisis as the Matrix of Multilateralism', *Crisis of Multilateralism? Challenges and Resilience* (Palgrave Macmillan 2023).

²³ Tzouvala (n 25).

²⁴ Most Recently at the time of writing, Marcelo Kohén, 'International Legality in the 21st Century' (Parc Mon Repos, 19 February 2024)

<<https://www.graduateinstitute.ch/communications/events/international-legality-21st-century>>.

²⁵ His Excellency António Guterres, Secretary General of the United Nations, 'Accelerating Liquidity Crisis' (25 January 2024) <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.un.org/pgawp-content/uploads/sites/108/2024/01/SG-Letter-on-Liquidity-Crisis.pdf>> accessed 14 March 2024; 'UN's Cash Crisis May Force Hiring Freeze, Limit Official Travel & Curtail Expenses System-Wide' (16

While the notion of ‘crisis’ is at the forefront of many minds, it’s a term not always consistently defined. Charting its shifting meaning from the Greek Κρίσις to its adoption in German, English and French, Koselleck warns that it is a term that experienced “an enormous quantitative expansion in the variety of meanings attached [...], but few corresponding gains in either clarity or precision”²⁶. An element of the definition of ‘crisis’ that has remained consistent is the notion of a ‘turning point’, ‘change in the course of things’ or ‘critical juncture’. The Greek Κρίσις invokes a decision that would ‘tip the scales’,²⁷ while ‘crisis’ in Latin referred to the observation of a condition or diagnosis, and the moment of change in the course of an illness.²⁸ In Chinese it can be read as both ‘opportunity’ and ‘crucial point’.²⁹ That term, while initially often used in a medical sense, experienced a “metaphorical expansion into social and political language”³⁰ to describe “that point in time at which a decision is due but has not yet been rendered”.³¹ In this form, ‘crisis’ was adopted into English, German and French and applied to the body politic.³² The term today is usually externally orientated, referring to a social or political diagnosis of a problem or criterion for action (particularly political or military action) in the form of a threat that originates from outside but spells potential demise for the body politic.³³ It can also, however, be internal, referring to a structural revision.³⁴ That is to say, crisis is a term that can be used in many different ways, indicating both threats from the outside and those that originate within, but largely invoking a time of uncertainty and potential destruction or reform. In the field of international law, the term ‘crisis’ is also invoked in many ways, sometimes as a call to reform, and others as a description of the inevitable state of things. Given its current invocation, the next section explores one way in which ‘crisis’ has appeared or been invoked in narratives around the formation of international law.

February 2024) <<https://www.globalissues.org/news/2024/02/16/36006>> accessed 12 March 2024; ‘Without Faster Collection Rate of Unpaid Assessments, United Nations Liquidity Crisis Risks Worsening in 2024, Management Chief Warns Fifth Committee | Meetings Coverage and Press Releases’ <<https://press.un.org/en/2023/gaab4428.doc.htm>> accessed 15 March 2024.

²⁶ Reinhart Koselleck and Michaela Richter, ‘Crisis’ (2006) 67 *Journal of the History of Ideas* 357, 397 <<https://muse.jhu.edu/article/198076>> accessed 4 September 2024.

²⁷ Ibid, 358.

²⁸ Ibid, 361.

²⁹ Matthew Seeger and Timothy Sellnow, *Narratives of Crisis: Telling Stories of Ruin and Renewal* (Stanford Business Books, an imprint of Stanford University Press 2016) 10.

³⁰ Koselleck and Richter (n 32) 361.

³¹ Ibid.

³² Ibid 369.

³³ Ibid.

³⁴ Ibid, 362.

The Origin Story: Crisis as a Mobilising Force

The ‘origin story’ of international law tells us that, at the start of it all, the Peace of Westphalia was signed in 1648 to put an end to the Thirty Years’ War. Considered one of the longest and most destructive wars in European history, this moment can unequivocally be considered a ‘crisis’. The Westphalian treaties created the building blocks for an international legal system: the ‘sovereign nation-state’, the subject of international law, without which the legal order we know today could not exist. That narrative is one repeated so often that it forms part of the central narrative of the field. The fact that ‘crisis’ often exerts a generative force on international law is often discussed,³⁵ including as a catalyst, facilitating the development of international law.³⁶ ‘Crisis’ thus becomes the threads from which the fabric of international law is woven,³⁷ or the engine of its development.³⁸

This simple narrative could be viewed as an ‘origin story’ for international law, here referring to a story that accounts for the character of an individual or group (or here, a thing or system) and explains why they/it is either protagonist or agonist in the narrative to come. Like an origin story, this tale, which centres on crisis and repeats over and over in the history of international law, connects the numerous legacies of past crises to today’s international rules or institutions, explaining their existence, purpose or nature. For example, the ‘laws of war’ were (allegedly, and somewhat hagiographically) forged in 1859 at the battle of Solferino, when a bystander named Henry Dunant assisted the wounded and was so struck by the horror that he swore to limit the cost of conflict, establishing the International Committee of the Red Cross (ICRC).³⁹ Today, this organisation is the ‘guardian of international humanitarian

³⁵ Iain Scobbie, ‘Crisis? What Damned Crisis?’ in Makane Moïse Mbengue and Jean D’Aspremont (eds), *Crisis Narratives in International Law* (Brill 2022) 22. These generative moments of crisis are sometimes referred to as ‘Grotian moments’ Michael P Scharf, *Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments* (CUP 2013) 5.

³⁶ Benjamin Authers and Hilary Charlesworth, ‘The Crisis and the Quotidian in International Human Rights Law’ in Mielle K Bulterman and Willem JM van Genugten (eds), *Netherlands Yearbook of International Law 2013: Crisis and International Law: Decoy or Catalyst?* (TMC Asser Press 2014) 20, 25, 28; Chimni (n 28) 42.

³⁷ Varaki (n 28) 62.

³⁸ Charlesworth (n 8) 391.

³⁹ Or so the story goes. Henry Dunant’s experience and call for the founding of such an organisation is described in: Henry Dunant, *Un Souvenir de Solferino* (Jules Fick 1862). This story, and the ‘heroic’ mythology around the founding of the Red Cross, has become commonplace, though it is a contested one: John Hutchinson, ‘Rethinking the Origins of the Red Cross’ (1989) 63 *Bulletin of the History of Medicine* 557. See, for example, pointing to the pre-existence of these ideas before Dunant: David P Forsythe, *The Contemporary International Committee of the Red Cross: Challenges, Changes, Controversies* (First edition, Cambridge University Press 2024) 43; François Bugnion, ‘From Solferino to the Birth of Contemporary International Humanitarian Law’ 14–15 <<https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/solferino-bugnion-icrc.pdf>>; Hutchinson 562–563. See also Costas Constantinou who points out the uncritical repetition of the romantic story of the Red Cross’s origins, and draws attention to the colonial nuances of Dunant’s

law',⁴⁰ and its creation and the ongoing work of Dunant and others led to the Geneva Conventions that continue to operate. The flames of the First World War were doused at the Paris Peace Conference in 1920, where the Treaty of Versailles closed a bloody chapter. Here, the desire to see global peace crystallised into the League of Nations⁴¹ – the first worldwide intergovernmental organisation and precursor to the United Nations (UN).⁴² It also prompted the creation of the Permanent Court of International Justice, which is the predecessor to today's International Court of Justice (ICJ). The Hague Peace Conferences, which hoped to “prevent the calamities which threaten the entire world”,⁴³ led to, among other outcomes, the Permanent Court of Arbitration. The ‘crisis of peace’ that was the Second World War marked the failure of the legal

humanitarianism: Costas Constantinou, ‘Humanitarian Diplomacy as Moral History’ (2023) 11 *Peacebuilding* 1, 6–10. See particularly the detailed biography by Chaponnière: Corinne Chaponnière, *Henry Dunant: La Croix d'un Homme* (Perrin 2010). This biography has been positively reviewed for avoiding the ‘hagiographical’ portrait sometimes made of Dunant and thus for presenting “portrait of a man, not of the monument that some hagiographers saw fit to build, in spite of the documents and sometimes in spite of Dunant's own testimony”: François Bugnion, ‘Henry Dunant: La Croix d'un Homme. by Corinne Chaponnière Éditions Perrin, Paris, 2010.’ (2012) 94 *International Review of the Red Cross* 1563 and for stripping the story of its usual hagiographical trappings and acknowledging his colonial ventures: Marian Moser Jones, ‘Review of Chaponnière, Corinne, Henry Dunant: The Man of the Red Cross’.

⁴⁰ Julie Billaud, ‘Masters of Disorder: Rituals of Communication and Monitoring at the International Committee of the Red Cross’ (2020) 28 *Social Anthropology* 96, 97.

⁴¹ The Covenant, which was integrated into the Treaty of Versailles and all other peace settlements signed in Paris after World War I, opens with “THE HIGH CONTRACTING PARTIES, In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another, Agree to this Covenant of the League of Nations”: *Covenant of the League of Nations 1919* (108 LNTS 188), Preamble.

⁴² “The United Nations was created in 1945, following the devastation of the Second World War, with one central mission: the maintenance of international peace and security”: United Nations, ‘Maintain International Peace and Security’ (*United Nations*) <<https://www.un.org/en/our-work/maintain-international-peace-and-security>> accessed 15 August 2025. “As World War II was about to end in 1945, nations were in ruins, and the world wanted peace. Representatives of 50 countries gathered at the United Nations Conference on International Organisation in San Francisco, California, from 25 April to 26 June 1945. For the next two months, they proceeded to draft and then sign the UN Charter, which created a new international organisation, the United Nations, which, it was hoped, would prevent another world war like the one they had just lived through”: United Nations, ‘History of the United Nations’ (*United Nations*) <<https://www.un.org/en/about-us/history-of-the-un>> accessed 15 August 2025.

⁴³ Opening statement of the first Hague Peace Conference “His Majesty proposed to all the Governments whose representatives are here assembled that meeting of a Conference which should endeavour to discover a way to halt these never-ending armaments and to prevent the calamities which threaten the entire world”: *The Proceedings of the Hague Peace Conferences: Translations of the Official Texts*, vol Prepared in the Division of International Law of the Carnegie Endowment for International Peace under the supervision of James Brown Scott 1920 (2nd Edition, Martinus Nijhoff 1907) 14.

structures just created and prompted the reformation of those organisations into their current forms, what we often call the 'Post-World War II International Order'. The 'crisis of humanity' that occurred when we collectively attempted to reckon with the horrors of the holocaust led to the establishment of International Criminal Law – through which the international community said 'never again' to acts that were classified into the newly formulated international crimes: genocide, crimes against humanity, war crimes, and crimes against peace.⁴⁴ Continuing atrocities throughout the Far East, the former Yugoslavia, Rwanda, Cambodia, and Sierra Leone moved our treatment of those so-called 'atrocities crimes' from *ad hoc*, specially created tribunals to the permanent forum of the International Criminal Court ('ICC') that exists today.⁴⁵ In other words, the stories tell us that the international instruments and institutions that exist today were produced as a response to crises.

While these stories all describe historical occurrences, often in a dramatised fashion, the legacy and continued presence of that narrative is seen in the instruments themselves, in the rhetoric of international organisations that administer them, and in the perspectives and imaginings of many practitioners.⁴⁶ In many of those instances, 'international law', in the form of the institutions or instruments so created, gain a 'hero' like protagonism. The United Nations Charter opens with "We the Peoples of the United Nations Determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind".⁴⁷ The 1929 Geneva Convention opens with "animated by the desire to lessen, so far as lies in their power, the evils inseparable from war".⁴⁸ The preamble to the Universal Declaration of Human Rights reminds us that a failure to uphold human rights led to "barbarous acts which have outraged the conscience of mankind".⁴⁹ The preamble of the Rome Statute, the foundational document of the ICC, follows up with accountability where these may fail, it states that "[m]indful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the

⁴⁴ See, for example, on the history of genocide: Raphael Lemkin, 'Genocide' (1946) 15 *American Scholar* 227; Itai Sneh, 'History of Genocide' in Mangai Natarajan (ed), *International Crime and Justice* (1st edn, Cambridge University Press 2010)

<https://www.cambridge.org/core/product/identifier/CBO9780511762116A055/type/book_part> accessed 7 October 2025. On the crime of Genocide. And the Nuremberg Charter on the early definitions of crimes against peace, crimes against humanity, and war crimes United Kingdom of Great Britain and Northern Ireland, United States of America, France and Union of Soviet Socialist Republics, *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement")*, 8 August 1945.

⁴⁵ Suzanne Katzenstein, 'In the Shadow of Crisis: The Creation of International Courts in the Twentieth Century' 55 *Harvard International Law Journal*.

⁴⁶ On the tendency of some to join the field motivated by a crisis, see Crawford (n 10); Sands (n 9).

⁴⁷ *Charter of the United Nations Preamble*.

⁴⁸ *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949* (75 UNTS 31), Preamble.

⁴⁹ *Universal Declaration of Human Rights 1948*, adopted by UNGA Resolution 217 A (III), 10 December 1948, Preamble.

conscience of humanity” and “[d]etermined to put an end to impunity for the perpetrators of these crimes”.⁵⁰ Organisations like the ICRC have similarly crisis-orientated missions and rhetoric, “to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance”⁵¹ and to “prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles”⁵² or, for the UN Refugee Agency, “saving lives, protecting rights and building a better future for people forced to flee their homes because of conflict and persecution”.⁵³

The lofty aims and the stories around the development of the institutions and instruments of international law can come across as hero-*esque* in the sense that they arose out of crisis or hardship, represent the good and the noble, and are to be celebrated as a force making the world a better place. Consider the narrative summary:

Once upon a time, a strong, attractive hero lost one or both of his parents. He then overcame a series of obstacles and faced off against a monster that had terrorised his community. The hero vanquished the monster and was celebrated.⁵⁴

This is how Singh characterises the ubiquitous ‘sympathetic plot’ associated with the tale of the ‘hero’, which he describes as one that will ‘twiddle psychological mechanisms’ to feel sympathetic joy towards the main character.⁵⁵ Common themes in these plots⁵⁶ include that the protagonist is appealing (strong, clever, humble, skilful, attractive, generous, or considerate) and the opponents are recalcitrant and formidable,⁵⁷ and they also tend to follow similar patterns known as the ‘hero’s journey’ narratives.⁵⁸ The ‘hero’ tends to have similar origin stories, characteristics, and journeys, as well as a tendency to be celebrated and the ability to ‘bestow boons on his fellow man’ upon his return from the hero’s quest.⁵⁹ If we were to replace ‘monster’ with “the scourge of war”, for example, and ‘his community’ with ‘the

⁵⁰ *Rome Statute of the International Criminal Court 2002* (2187 UNTS 3), Preamble.

⁵¹ ‘The ICRC’s Mandate and Mission | International Committee of the Red Cross’ <<https://www.icrc.org/en/mandate-and-mission>> accessed 17 March 2024.

⁵² *Ibid.*

⁵³ ‘About UNHCR’ (*UNHCR US*) <<https://www.unhcr.org/us/about-unhcr>> accessed 17 March 2024.

⁵⁴ Manvir Singh, ‘The Sympathetic Plot, Its Psychological Origins, and Implications for the Evolution of Fiction’ (2021) 13 *Emotion Review* 183.

⁵⁵ *Ibid.*, 193.

⁵⁶ Though being secondary features, *ibid.* 184.

⁵⁷ *Ibid.*

⁵⁸ See, for example, Joseph Campbell, *The Hero with a Thousand Faces* (Third edition, New World Library 2008); Otto Rank, *The Myth of the Birth of the Hero: A Psychological Exploration of Myth* (EJ Lieberman and GC Richter trs, Expanded Edition, Johns Hopkins University Press 2004); Nancy Gordon Seif, ‘Otto Rank: On the Nature of the Hero’ (1984) 41 *American Imago* 373.

⁵⁹ Campbell (n 64).

international community', we could cast the international institutions and instruments in this mould, invoking the assumption that they are imbued with 'good' and 'noble' characteristics, and can deliver the international community from the hardships that they vanquished.

Failure to Prevent Crisis as Evidence of the Fall of International Law

This piece argues that the narratives we tell influence how we, both as practitioners and lay people, conceive of the role of international law, however subtly and however unconsciously. In this example, the institutions and instruments so created, and painted with the above narrative, become something designed 'for crisis'. International law becomes a field of law that is designed to come to our aid when crisis strikes. This is reflected in the way international law is sometimes described. It has been said that international law "is the tool which is summoned whenever a phenomenon deemed to be outside normality is experienced"⁶⁰ and "can be seen as a discursive tool that is on standby, charging in the garage, until it is fired up by international lawyers (and their associates) to tackle any new crisis appearing on their horizon."⁶¹ However, such an expectation shapes, in turn, the perception of what a 'failure' of international law looks like. This section introduces a second, corollary, narrative about the 'fall', 'death', 'failure', or 'crisis' of international law that appears to be a current preoccupation both within the field and beyond.

While the 'origin story' and the hero narratives built a certain type of protagonist, other classic narratives describe such a protagonist's fall from grace, sometimes even into villainy, becoming the very thing the 'hero' sought to combat. The fall of the hero, either into villainy or simply back into humanity by revealing the hero's universal flaws, can also be reflected in responses to a flawed international legal system, which seems an inevitable consequence of the pedestalling that places any person, or thing, into the realm of the idealised.

If international instruments and institutions are painted as arising from crisis, vanquishing the horrors of those crises, and bestowing a future free of those vanquished hardships, the continued occurrence and existence of crises, especially ones that international law is powerless to resolve, can appear as failures. Even if we consider ourselves immune to this fantastical narrative, the idea that international law is something shaped by crisis and intended for use when a crisis emerges or, better yet, use in preventing a crisis from emerging, is infectious. International law's failure in the face of crisis, then, casts doubts on its usefulness at all – it brings down the illusion. Given the pervasiveness of this 'origin story' and elements of the hero narrative, one can be forgiven for entering an existential questioning about the health of the institution in such instances. Indeed, since the Russian aggression in Ukraine,

⁶⁰ Jean D'Aspremont, 'International Law as a Crisis Discourse': in Jean D'Aspremont and Makane Moïse Mbengue (eds), *Crisis Narratives in International Law* (Brill, 2022) 72.

⁶¹ Ibid.

and now in relation to Gaza, the ‘death’⁶² or ‘fall’⁶³ of international law has been often invoked.⁶⁴ To explore the ‘fall of the hero’ narrative, we will see how it could play out in relation to Gaza.

The Fall of the Hero Narrative Realised

In the hero’s fall narrative as it plays out in relation to Gaza, international law is presented as having tried many times and failed to gain traction, culminating in the current devastating crisis in Gaza and an associated internal crisis of faith in international law and international institutions. While this depiction of events is far from the only narrative, it is an important one that often arises in the context of the above ‘origin story’ of international law and the resulting disappointment in its inability to perform when crisis strikes. It can be seen playing out in both academic, professional and public spaces alike.

After decades of narrative competition, any description regarding Israel and Palestine is challenging. Almost any account can be criticised as lacking context, and that would be true in almost any case, as describing this context in sufficient detail would require multiple volumes. However, the fact that what we see today is a humanitarian crisis is undisputed. To paint it very briefly, and in a manner that serves this dominant narrative, the facts could be described as follows.

Israel declared independence on 15 May 1948, a date that now officially marks for Palestinians ‘the Nakba’ (النكبة) meaning ‘The Catastrophe’. Since that time, Israel has been condemned in 45 resolutions of the UN Human Rights Council, comprising nearly half (around 45%) of all resolutions by the UN organ since its creation in 2006. The UN Security Council has adopted 131 resolutions concerning the conflict, and the US has vetoed 45 Resolutions of the Council that were critical of Israel. Several of these resolutions adopted called for ceasefires.⁶⁵ There have been 185 UN General Assembly

⁶² See, from an Israeli, Clifford D May, ‘Is International Law Dead?’ (*JNS.org*, 15 June 2022) <<https://www.jns.org/is-international-law-dead/>> accessed 22 March 2024; *Is International Law Dead?* (2024) <<https://www.youtube.com/watch?v=0fYk6VHadKI>> accessed 11 August 2024. And, from a Palestinian, ‘International Law Is Dead – TWAILR’ <<https://twailr.com/international-law-is-dead/>> accessed 22 March 2024.

⁶³ ‘The Fall and Fall of International Law: A Chronicle from Covid to Palestine – The Leaflet’ (n 23).

⁶⁴ See, for example, ‘What International Law Can—and Can’t Achieve—in Gaza’ (n 24); ‘What Palestine Teaches Teachers of Politics and Law – The Leaflet’ (n 23); ‘Will the War in Gaza Become a Breaking Point for the Rules-Based International Order? | Chatham House – International Affairs Think Tank’ (n 23). As well as various panel discussion such as ‘Events and Announcements: 28 March 2022’ (*Opinio Juris*, 28 March 2022) <<https://opiniojuris.org/2022/03/28/events-and-announcements-28-march-2022/>> accessed 22 March 2024; ‘The War in Ukraine and the Future of International Law | IHEID’ (n 27); ‘2022 Symposium – Lessons Learned: Perspectives on Law and Policy From the War in Ukraine’ (n 22); ‘International Law and the War on Ukraine - A Panel Discussion’ (*Institute for International Law and Justice*) <<https://www.iilj.org/events/international-law-and-the-war-on-ukraine-a-panel-discussion/>> accessed 22 March 2024.

⁶⁵ See, for example, UNSC Res. 1860 of 8 January 2009, UN Doc. S/RES/1860; UNSC Res. 338 of 22 October 1973, UN Doc. S/RES/338.

Resolutions concerning the situation in Palestine, from 1947 when the partition of the land into Arab and Jewish states was recommended,⁶⁶ to 2023 with Resolution ES-10/21 regarding the protection of civilians in the so-called 'Israel-Hamas war' through a humanitarian truce.⁶⁷ A pivotal example is General Assembly Resolution 194 calling for refugees to be allowed to return to Palestine.⁶⁸ '194' has come to symbolise the right of Palestinian Refugees to return and can be seen on artwork and protest signs both within and beyond the borders of Palestine to this day. There is an open case before the International Criminal Court concerning events occurring since 2014, including multiple military operations in Gaza and the issue of illegal settlements in the West Bank, as well as extending "to the escalation of hostilities and violence since the attacks that took place on 7 October 2023".⁶⁹ There have also been multiple cases before the ICJ. In 2004, the International Court of Justice weighed in on a border wall that Israel had constructed along, and in many places slightly inside, the 1967 'green line' dividing Israel from the West Bank. The advisory opinion declared this construction by Israel as illegal and in an act "tantamount to de facto annexation" of Palestinian territory.⁷⁰

In 2024, the ICJ further ordered provisional measures based on a finding that a breach of the Genocide Convention in Gaza was plausible.⁷¹ A further case has been brought against Germany for aiding in the Israeli bombardment of Gaza, arguing that Germany:

...has contributed to the commission of genocide in violation of the Convention on the Prevention and Punishment of the Crime of Genocide" and has "failed to comply with other peremptory norms of general international law in particular by rendering aid or assistance in maintaining the illegal situation of the continued military occupation of Palestine including its ongoing, unlawful attack in Gaza [...] [and] by rendering aid or assistance and not preventing the illegal regime of apartheid and the negation of the right of self-determination of the Palestinian people."⁷²

⁶⁶ UNGA Res. 181(II) of 29 November 1947, UN Doc. A/RES/181(II).

⁶⁷ UNGA Res. ES-10/21 of 27 October 2023, UN Doc. A/ES-10/21.

⁶⁸ GA Res. 194 of 11 December 1948, UN Doc A/RES/194(III).

⁶⁹ 'State of Palestine | International Criminal Court' <<https://www.icc-cpi.int/palestine>> accessed 19 March 2024.

⁷⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* [2004] ICJ Rep 136.

⁷¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024*, [2024] ICJ Rep 1

⁷² *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*. See also, *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory, Advisory Opinion*, requested only after the date of writing.

In these facts, the institution of international law, that is the different organs of the UN, including the General Assembly, the ICJ and the (not quite but somewhat associated) ICC, have repeatedly attempted to prevent and lessen the humanitarian harm. They have advocated for the good, the realisation of human rights and the continuation of peace, but have ultimately faced a challenge which they are powerless to resolve. The narrative goes that, despite all the best efforts, a humanitarian catastrophe in Gaza has unfolded unabated. 'International law' tried but was unable to prevent the situation, illustrating that the system, the system that is meant to act in situations like this, is failing, has no enforceability, and is in crisis. This series of events understandably leads Palestinians and non-Palestinians alike to the conclusion that international law, the law *for* crisis, serves very little purpose. That sentiment is expressed in academic spaces, with many writing about their despondence regarding international law, and in public spaces. Others make cases for international law's continued relevance, expressing sentiments about why 'international law is as important as ever' despite its seeming lack of relevance, and explaining the usefulness of the system despite its seeming failure. This narrative failure, it is argued, is a natural corollary to one that paints international law as the hero arising from crisis. Similar to the fall of a hero, through their corruption and the realisation of their humanity, the narrative 'fall' of international law comes into play as soon as it is revealed to be fallible or powerless in the face of a crisis. However, the next section explores alternative narratives that paint international law in an entirely different light. If this version of international law were to be narrativised as it was in the origin story, it would come out looking akin to a villainess rather than a heroic character.

An Alternative 'Origin'

Far from the image of international law as a humanitarian hero swooping in to address crisis, there exists an alternative narrative that contests the 'origin story' of international law. This narrative is taken, largely, from the discipline known as 'TWAIL': Third World Approaches to International Law. In this field, the world-making power of international law is viewed through a very different lens, and the origin story is questioned to reveal an international law that serves at the right-hand of imperialism and colonial expansion throughout its history. In this version, crises can be viewed not as a failure of the international law project, but as evidence of its continued service and success.

In discussing the TWAIL approach as applied to Palestine, Mohsan al Attar reflects on the notion of origin stories, stating that:

Origin stories are always more fiction than fact, more myth than reality. At times, origin stories serve to redeem a dubious past, while at others they enable us to justify an unwelcoming present; sometimes, they do both. Mythology possesses symbolic and material power, shaping how we see the world and, crucially, how we teach others to see it. Throughout, we fix

our gaze on the future, relying on mythology to guide our course along preferred paths.⁷³

Regarding the origin story of international law, he argues that “TWAIL’s intervention exposed this hagiographical narrative as a self-serving myth, crafting a fresh origin story to account for those brutalised by the regime”.⁷⁴ It is his argument that, in the case of Palestine, such examination of the origin stories of the field illustrates “how international law, rather than acting as an impartial arbiter, has bolstered Israeli settler-colonialism”⁷⁵ and explains why, “throughout the course of the Palestinian struggle for freedom, international law has seemed futile, if not irrelevant.”⁷⁶

The author’s first exposure to TWAIL was through Antony Anghie and his book “Imperialism, Sovereignty and the Making of International Law” in which he unpacks the origins of international law through the writings of its earliest architects and their service to imperial colonial expansion.⁷⁷ In an early chapter of the book, Anghie explores the Mandate system of the League of Nations, a mechanism through which post-colonial territories were placed under the responsibility of another State, the ‘mandatory power’, charged with their transition towards full independence through a system of ‘international tutelage’.⁷⁸ This system is of great relevance to Palestine, which was under a British Mandate from 1922 until 1948. Because this piece is far too short to allow an in-depth engagement of the extent and complexity of the role of International Law in the question of Palestine from a TWAIL perspective, it rather introduces only a TWAIL perspective on the mandate system which, it is argued by many, had a huge impact in the founding of the State of Israel, and the shaping of the international legal treatment of Palestine today.

The mandate system was, on its face, decolonial as it attempted to “promote self-government and [...] to integrate previously colonized and dependent peoples into the international system as sovereign, independent nation-states”⁷⁹ which “generated a debate among international lawyers on the role of their discipline in legitimising colonial conquest”.⁸⁰ On the other hand, the mandate system represents the moment in which we may see the transition from colonialism to neo-colonialism⁸¹ as the “transference of sovereignty to non-European peoples [...] was simultaneous with, and indeed inseparable from, the creation of new systems of subordination and

⁷³ ‘Reimagining Palestine in TWAIL Scholarship’ (*Opinio Juris*, 10 October 2023)

<<https://opiniojuris.org/2023/10/10/reimagining-palestine-in-twail-scholarship-a-conversation-with-noura-erakat/>> accessed 23 March 2024.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford University Press 2019) 15.

⁷⁷ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (1st ed, Cambridge University Press 2005).

⁷⁸ Ibid, 115.

⁷⁹ Ibid, 116.

⁸⁰ Ibid, 137.

⁸¹ Ibid, 194.

control administered by international institutions".⁸² Under the mandate system, the populations concerned had very little control over the shape that their future independent State would take, which was created in the image desired by the mandatory powers and often operated in economic service of them. The mandate territories were, for example, financially responsible for the creation of infrastructure designed to extract resources for the benefit of the mandatory powers, such that they were paying for their own exploitation and conquest⁸³ and created structures that continued to benefit former mandatory powers even after independence.⁸⁴ In the context of Palestine, it is argued that "France and Great Britain were intent on gaining control over the oil resources in their Middle Eastern mandates and went so far as to redraw the boundaries of the mandate territories of Palestine, Mesopotamia and Syria in order to enable a more efficient exploitation of their oil reserves",⁸⁵ a set of priorities argued to be a factor in the present day events in Gaza,⁸⁶ and an aim facilitated through the mandate power.

The 'natives' of the mandate territories were spoken for by the mandatory powers, as the peoples of the mandate territories had no avenue through which to communicate with the Permanent Mandate Commission.⁸⁷ That lack of an avenue was sometimes justified "on account of the backwardness of the peoples concerned".⁸⁸ Such images of backwardness were rooted in the colonial origins of international law through which the rights of Indigenous nations were made contingent on their societies' resemblance to European society.⁸⁹ These systems tended to give violent conquest the veneer of objective legality.⁹⁰ As such, the only way to express native discontent was through rebellion, the significance of which was to be interpreted by the Commission or the League.⁹¹ Noura Erakat's book titled "Justice of Some: Law and the Question of Palestine" traces the legal mechanisms active in Palestine, from 1917 to the present day, in terms of their use in disenfranchising the Palestinian people and serving a colonial agenda.⁹² Her arguments serve to illustrate a version of the TWAIL approach's view on international law as it is linked to the mandate system and to Palestine. She characterises the situation as one in which "Palestinian protest against Britain's colonial decision became a struggle against established international law and

⁸² Ibid, 179.

⁸³ Ibid, 172.

⁸⁴ Anghie provides the example of Nauru.

⁸⁵ Anghie (n 83), 144.

⁸⁶ Ahmad (n 24).

⁸⁷ Anghie (n 83) 175.

⁸⁸ Ibid, 176.

⁸⁹ Erakat (n 82) 23; Anghie (n 83) ch 1.

⁹⁰ Erakat (n 82) 23; Anghie (n 83) ch 1.

⁹¹ Anghie (n 83) 176.

⁹² Erakat (n 82).

the international community seeking to uphold it",⁹³ rather than against an expansion of colonial interests.

TWAIL provides not only an alternative narrative relating to Palestine, but also to the notion of crisis itself, and the concept of international legal inaction. Chimni, a leading TWAIL scholar, argues that "[i]n so far as TWAIL is concerned the crisis of modern international law is originary, deep and enduring and can be traced to its roots in colonialism."⁹⁴ Regarding the inaction or impotence of international law in the face of crisis, Chimni offers the following:

There is something about modern international law that it facilitates and tolerates inhumane outcomes. [...] It would appear that the haunting realities of the contemporary world which tolerates endless violence on people is still not a sufficiently grave crisis for the mainstream practitioners of the discipline to call for the overhaul of international law and institutions.⁹⁵

In this version, the inaction of international law in the face of certain external crises does not constitute an internal crisis. It is rather viewed as part and parcel of the character of international law.

The presentation of this alternative narrative on international law and Palestine, whether the reader agrees with it or not, serves to illustrate a vast departure from the 'origin story' of international law. It is a narrative gap so huge that it can seem challenging to understand these two stories as describing the same institution, and one that renders the challenge of holding these two narratives simultaneously a mind-boggling one. However, these narratives are far from the only two that exist. There exists a plurality of narratives on almost every aspect of this situation, with various levels of crossover and commonality. Another somewhat villainising narrative, for example, is one in which the same antisemitism pervasive throughout Europe, leading to the horrors of the holocaust among other devastating events, also exists within international institutions and agendas that demonise and attack Israel. That attack is evidenced by the vast number of UN actions concerning the State,⁹⁶ the same documents used in the earlier narrative to illustrate international law's well-

⁹³ Ibid, 42.

⁹⁴ Chimni (n 28) 40.

⁹⁵ Ibid, 49.

⁹⁶ See, for example, Hillel Neuer, 'Antisemitism and Discrimination Against Israel at the United Nations: Written Testimony by Hillel C. Neuer Executive Director of United Nations Watch' (The House Committee on Foreign Affairs Subcommittee on Global Health, Global Human Rights, and International Organizations 2023); May (n 68); 'USUN: Engaging the United Nations in the Fight Against Antisemitism' (*United States Department of State*) <<https://www.state.gov/usun-engaging-the-united-nations-in-the-fight-against-antisemitism/>> accessed 22 March 2024; 'Anti-Semitism in the United Nations' <<https://www.jewishvirtuallibrary.org/anti-semitism-in-the-united-nations>> accessed 22 March 2024.

meaning and powerless nature. As such, international institutions are considered to be, on the whole, antagonistic both to Jews and the State of Israel, casting them out of the humanitarianism narrative altogether. This, still, is but one of the available narrative arrays.

Beyond the Narrative

In conclusion, this piece explores three ways in which we can go beyond the 'origin story' narrative, both by addressing the narrative element itself and by questioning the pedestalling that it has produced.

International Law as a Tool: an Instrumentalist View

The 'origin story' of international law, and the hero-esque narrative that it produces, falls into the trap of rendering 'international law' as a character, imbued with agency, intention, and traits like 'goodness'. It is something that some counternarratives also do when responding to or countering the origin story. But it is otherwise a very strange habit. If one were to characterise domestic law in the same terms, it would probably appear as such. It would likely sound very odd if someone were to talk about the traffic code and the magistrate's court that implements it as having arisen in a time of reckless driving to free the world of the scourge of road accidents, and then to declare it 'dead' if certain road users flouted the rules. It would also appear odd to cast these instruments as inherently 'good'. This section considers the way that the use of these narratives shapes our perception of a body of law, by instead talking about the same body of law instrumentally – that is, as a tool that is used by various different agents for various different purposes, thus bringing it more in line with how we would talk about other bodies of law. In this view, while international law may be a tool forged in the flames of crisis, it is still simply a tool: flawed as any man-made construction and subservient to the will and intention of those who wield it.

Any tool, including that of international law, is neither inherently good nor inherently malign in an instrumental view. While the origin story presented above contains an implied virtue to the hero-like instrument, that version of the myth is not universally shared. However, and perhaps as a result of the narratives we use, there is a tendency for international lawyers to view themselves as heroes on the side of the good and the just, and "[t]he use of crises as the crucible of international law encourages international lawyers to cast ourselves grandly in a heroic mould".⁹⁷ As observed by Jan Klabbers:

Multilateralism, cooperation, and international law are neither inherently good nor bad. [...] The mistake is understandable though: generations of international lawyers have told themselves and their students (and

⁹⁷ Charlesworth (n 8) 387. Citing Anne Orford, 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism' (1999) 10 *European Journal of International Law* 679, 699.

whoever wanted to listen) that international law is inherently a force for good [...] And if you are often enough told that international law is inherently benign, then sooner or later this becomes its own truth.⁹⁸

That tendency, however, can be dangerous and is particularly prominent in crisis narratives. Klabbers further observes that a diagnosis of crisis “typically depends on one’s underlying set of values and is often based on underlying and unspoken epistemic assumptions, such as the mistaken idea that international law is by definition a force for good”.⁹⁹ Indeed, we see this concern played out in the example presented in this piece. Suppose one assumes that international law is inherently a force for good. In that case, the narrative in which it has failed repeatedly to have any impact in preventing a crisis appears as a crisis in and of itself, an inability of ‘the good’ to prevail. However, suppose you were to view the same instrument as a neutral tool that can be used for a range of purposes. In that case, this series of events appears as flawed in either the tool’s effectiveness, or even in the motivating values of those using it, but would likely result in a call for the reassessment or re-evaluation of the instrument or its use, rather than as a declaration of its ‘fall’, ‘failure’ or ‘death’.

The narrative in which the ‘character’ of ‘international law’ is imbued with some kind of ‘good’ also invites the binary narrative that international law is inherently malign: a direct contestation of the first assumption. And yet, that opposite contestation often shocks the same people who would freely use the former. Suppose anything can be taken from the existence of such starkly different narratives about the nature of international law. In that case, it should surely be that the operation of this system is too various and complex for one to always understand whether it ‘acts’ for good or ill in any given instance, let alone to assign any inherent quality to the system. An instrumental, and non-mythologised, view of international law would render the ‘tool’ capable of creating an array of outcomes, both good and bad. Put differently, one could take the image painted by Noura Erakat of:

...law as a sail, politics are the forceful winds that mobilize change and the law can be used in the service of those efforts; raise the sail when useful, drop it when harmful, and stitch together a new one when possible.¹⁰⁰

In this articulation, international law is, as all law is, viewed as operated by actors with an array of objectives and aims who can use and adapt it to serve various positions.

Another way to conceptualise the same notion is to view the operation of international law in society as a story, where its shape reveals more about the society in which it is told than about the story itself. In this view, international law is again neither inherently good nor malign. Rather, it is a story that, at one point, took on the hope that international society held for it, and at another point took on the full weight of international society’s effort to come to terms with wrongs done.

⁹⁸ Klabbers (n 10) 12.

⁹⁹ Ibid, 12.

¹⁰⁰ Erakat (n 82) 48.

Demythologising: Lowering the Expectations

The mythologising of international law through the ‘origin story’ also creates an expectation of what international law can accomplish; it puts it on a pedestal as the law capable of resolving crises. Thus, in the narrative of the origin story presented above, a lack of enforceability seems to spell a failure of the system, despite this system being characterised by its lack of coercive power. This piece thus questions the metric with which we measure ‘failure’. It is argued that the perceived impotence of international law in the face of a crisis should not be the sole arbiter of a failed project.

The question, of enforcement, or ‘coercion’, vs ‘cooperation’ is a longstanding debate in the theory concerning the foundation of international law. Some argue that a legal system is only law if it is backed by coercive power capable of enforcing those laws.¹⁰¹ This is the kind of thinking implied by the narrative of the ‘death’ or ‘fall’ of international law. The idea is expressed that insufficient coercive strength in the international system, as evidenced by its failures to prevent or halt crises through declarations of unlawfulness, spells a failure. Others disagree with that premise, arguing instead that law is not necessarily obeyed due to coercive power, meaning that such coercive power is not a necessary pre-condition for law to be law or for a legal system to exist.¹⁰² Under this line of thinking, international law is characterised as operating through cooperation rather than coercion,¹⁰³ a factor that distinguishes it from domestic systems.¹⁰⁴ For some, it is considered a ‘success’ of the system that we have a language to describe international wrongdoing, and a conception that some things are not permissible even for states. Still others take a dual approach, seeing international law as a system of “both cooperation *and* conflict simultaneously”.¹⁰⁵ A proponent of such an approach is the Finnish Legal Theorist Martti Koskenniemi who, in responding to the question “what is international law for?”, battles between the idealist notions that it serves peace, harmony and human rights, and the realist notion that international law is about power.¹⁰⁶ Thus, the marker of enforceability in isolation does not fully capture the field, falling into the trap of expecting it to operate as a domestic system does, and plays into a somewhat unrealistic myth about what international law was, is, or can be.

Demythologising international law may involve moving away from the high expectations of what it can do and allowing it to be judged on a different metric, such

¹⁰¹ John Austin, *Austin: The Province of Jurisprudence Determined* (Wilfrid E Rumble ed, Cambridge University Press 1995); Hans Kelsen, *Pure Theory of Law* (translation from the second edition (revised and enlarged) German Edition by Max Knight, University of California Press 1967) 6.

¹⁰² Mehrdad Payandeh, ‘The Concept of International Law in the Jurisprudence of H.L.A. Hart’ (2010) 21 *European Journal of International Law* 967, 967–995.

¹⁰³ Martti Koskenniemi, ‘What Is International Law For?’ in Malcolm Evans (ed), *International Law* (Oxford University Press 2010) 363–372, 32.

¹⁰⁴ Payandeh (n 108), 967–995; Kelsen (n 107), 70–81, 6.

¹⁰⁵ Koskenniemi (n 109), 363–372, 34.

¹⁰⁶ *Ibid*, 363–372.

as the many ways it regulates, interacts with, shapes, and impacts international discourse. Jan Klabbers weighs in on this, pointing out that “legal rules have rarely, if ever, stopped atrocities, as the citizens of Rwanda know all too well”¹⁰⁷ and tells us “that might be a useful thing to realize”.¹⁰⁸ He argues that, rather than accountability, the purpose of international law is the “weaving the fabric of international society”, just as the rules of the road are not intended to punish those who disobey but rather to prevent chaos.¹⁰⁹

A shifting set of expectations also allows space for the ebb and flow of power held by international law at a given time. As seen in this piece, the creation of unattainable expectations has a narrative downside with real-world implications. However, when working with a system that is stronger at some moments than at others, realistic expectations are also a moving target. For example, take an international organisation that engenders one of these ‘hero’ narratives in its Statute, but is suffering a crisis in State support and no longer has the funding required to fulfil that narrative. The same applies to rules and principles themselves, which also exist in an interdependent ecosystem in which their power ebbs and flows in relation to external factors.

Moving Away from ‘Crisis’

One final observation on the origin story narrative is taken from Hillary Charlesworth, a renowned Australian lawyer and Judge of the International Court of Justice who wrote a well-known piece in 2002 titled ‘International Law: A Discipline of Crisis’, cited frequently throughout this contribution.¹¹⁰ This piece rarely goes without mention in any international legal discourse on crisis. In it she argued that while “[i]nternational lawyers revel in a good crisis”, this focus on crisis simplifies and shallows the analysis offered and “shackles international law to a static and unproductive rhetoric”.¹¹¹ Her criticisms of the crisis narrative include that the crisis orientation promotes a narrow agenda in which “we focus on a snapshot in time of long-simmering disputes”.¹¹² This focus leads to an analysis that can be as simple as “good or bad, right or wrong, justifiable or unjustifiable”¹¹³ and steers us away from a “clear of analysis of longer-term trends and structural problems”.¹¹⁴ Charlesworth is not alone in her concerns. Jean D’Aspremont, editor of the book ‘Crisis Narratives in International Law’, shares the concern that “international law’s revelling in crises may

¹⁰⁷ Klabbers (n 10) 19.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, 14.

¹¹⁰ Charlesworth (n 8).

¹¹¹ Ibid, 377.

¹¹² Ibid, 386.

¹¹³ Ibid.

¹¹⁴ Ibid, 389.

prove to be, within a few decades, the very cause of international law's self-debilitation, self-exhaustion, and self-depletion".¹¹⁵

While the origin story of international law stresses the moments of crisis, a more tempered understanding of international law may be able to link these crises together and view international law from a long-term vantage point. An attempt to "refocus international law on issues of structural justice that underpin everyday life"¹¹⁶ requiring a "methodology to consider the perspectives of non-elite groups"¹¹⁷ to end with "a much more contradictory, complex and confusing account"¹¹⁸ of a given doctrine. It is the author's position that we can only address, remedy, and continually reform a version of international law that remains relevant if we embrace such a complex and confusing account. From this vantage point, the 'complex and confusing account' allows the space for doubt and questioning of the underlying values being promoted, the structures, and the failings of the institution, revealing the sites of reform that allow the tool of international law to be shaped and to adapt. However, such a confusing account is at odds with the somewhat simplistic 'origin story' portrayed above.

Conclusion

The current moment is characterised by a preoccupation with the idea of crisis, and potentially constitutes a moment of reckoning for international law. However, this is not the first time that has happened in this field. In 1970, just 25 years after the signing of the Charter of the UN, Franck posed the question "Who Killed Article 2(4)?"¹¹⁹ referring to the UN Charter's most significant provision and cornerstone of International Law, the prohibition on the use of force. Henkin responded, with a nod to Mark Twain, that "The Reports of the Death of Article 2(4) Are Greatly Exaggerated".¹²⁰ More than 50 years on, the matter remains unresolved.¹²¹ Like now,

¹¹⁵ D'Aspremont (n 66), 70.

¹¹⁶ Charlesworth (n 8), 391.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Thomas Franck, 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States' (1970) 64 *The American Journal of International Law* 809.

¹²⁰ Louis Henkin, 'The Reports of the Death of Article 2(4) Are Greatly Exaggerated' (1971) 65 *The American Journal of International Law* 544.

¹²¹ See, for example, John Becker, 'The Continuing Relevance of Article 2(4): A Consideration of the Status of the UN Charter's Limitations of the Use of Force' (2004) 32 *Denver Journal of International Law and Policy* 583; David Wippman, 'The Nine Lives of Article 2(4)' (2007) 16 *Minnesota Journal of International Law* 387; Thilo Marauhn, 'How Many Deaths Can Article 2(4) UN Charter Die?' in Lothar Brock and Hendrik Simon (eds), *The Justification of War and International Order* (1st ed, Oxford University Press Oxford 2021); Jan-Phillip Graf, 'The Death of the Prohibition on the Use of Force: An Attempt at Reimagination' [2022] *Völkerrechtsblog* <<https://voelkerrechtsblog.org/an-attempt-at-reimagination/>> accessed 22 March 2024; Graham Melling, 'Has Russia Killed Article 2(4)? Evaluating the Effectiveness of the Prohibition of the Use of Force in the Conduct of International Affairs' (2024) 25 *San Diego International Law Journal*.

past moments have prompted internal questioning regarding the role of international law in the face of external crises, and the future will likely continue to deliver. As long as it does, the failure of the law to live up to unrealistic expectations will likely also re-occur for as long as those expectations exist.

This piece counsels against simplified stories, especially those that paint international law as a character imbued with particular traits. It counsels against both the unbridled hope and faith that some wish to place in an ultimately man-made tool, and attempts to draw attention to the way in which the central narratives we have of the field influence our expectations of it. It's not time, yet, to hold a funeral for international law. But it is high time we take it off its pedestal, question the mythology, and take a more critical stock of what it is, what it has been, and what it could be in the future. This piece attempts to hold multiple narratives simultaneously as one embraces the challenge of wielding an imperfect tool in the face of yet another crisis. It argues that an ability to do so, with nuance and complexity, might just be the path out of the 'crisis of the international legal order' in which we find ourselves, at least to the extent that that crisis is based on disenfranchisement at the realisation that the law cannot achieve all that many had hoped, or live up to a narrative that has shaped our perception of what this instrument can do.