

The United Nations and the Question of Palestine by Ardi Imseis: A Review

An Appreciation of Ardi Imseis' *The United Nations and the Question of Palestine*

By: Michael Lynk

The following is based upon remarks that I delivered in January 2024 at the Faculty of Law, Queen's University during the book launch of *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge University Press, 2023)

I was first introduced to the issue of Palestine and Israel in the spring of 1981, when I skipped my law school graduation to spent six weeks in the region, taking hikes through the rocky hillsides of the West Bank and the Galilee while immersing myself in the legal and political questions related to the seismic events of 1948 and 1967, and the rippling impacts of their aftermath in that tormented land. I was

instantly hooked. In the decades since, I have worked for and with the United Nations in several capacities regarding the Question of Palestine, all the while witnessing the severe stress test that the Israeli occupation was causing for the effectiveness of international law in the modern world.

As I became more deeply involved with the Question of Palestine over the years, I had the great good fortune to come across Ardi Imseis, who is now creating his own lasting accomplishments as an international law professor at Queen's Law. Given the topic of his brilliant new book on the United Nations and the Question of Palestine, it seems entirely fated that we would have first met each other at the United Nations in New York in the late 1990s. We met again in Jerusalem when he was working for the UN in the 2000s. And our latest collaboration has been, over the past several years, to successfully advocate for the UN General Assembly to seek an advisory opinion from the International Court of Justice in The Hague as to whether the 56 year-old Israeli occupation of the Palestinian territory has become illegal under international law. (The arguments at the ICJ took place in February 2024, and the Court issued a seminal advisory opinion in July 2024, holding that the prolonged Israeli occupation is unlawful and must be ended "as rapidly as possible". Both Ardi and I actively participated in the proceedings at the ICJ.)

In the many years that I have been immersed in reading the ever-growing literature on international law and the fate of Israel and Palestine, I could not help but notice that there was a significant gap in our intellectual understanding of the issue. No one had written a book-length study focused specifically on the integral role played by the United Nations over the past 80 years in shaping the Question of Palestine. No one has been able to persuasively explain in depth why the UN has been so woefully unable to resolve the oldest major item on its agenda. And no one has attempted to scrutinize this monumental political failure by the United Nations through the lens of a critical reading of international law.

Until now.

Ardi's new book - *The United Nations and the Question of Palestine* - is a wonderful intellectual achievement and deserves to be widely read by anyone working in the field of public international law, by anyone interested in understanding how the United Nations works within the sphere of international relations and by anyone curious about the origins of the Question of Palestine and why it remains at the very top of our international agenda today.

This book is a major accomplishment for a number of reasons, which would include its academic rigour and the quality of its writing and its insights. I especially want to salute the book's excavation of the historical record on the United Nations and Palestine, which has decisively contributed to the horrors that we are witnessing today. This exemplifies the classic remark by William Faulkner that:

"The past is not dead. It is not even past."

I want to remark on three particular contributions that the book makes to the fields of public international law, the United Nations and the Question of Palestine.

First, this book makes an exemplary contribution to the inter-related fields of international law and international diplomacy through its treatment of the Question of Palestine. After all, Palestine was first placed on the agenda of the United Nations in April 1947, and it remains there today, 77 years later, as combustible as ever. As Kofi Annan, the 6th United Nations Secretary-General, said in his elegant 2012 memoir:

> *The failure to achieve an Arab-Israeli peace…remains for the UN a deep internal wound as old as the organization itself, given that the Arab-Israeli conflict began at the very inception of the UN – a painful and festering sore consequently felt in almost every intergovernmental organ and Secretariat body.*

> *As I told the Security Council before I left office in 2006, the Israeli-Palestinian conflict is not simply one unresolved problem among many. No other issue carries such a powerful symbolic and emotional charge affecting people far from the zone of conflict.*[1]

Ardi's early chapters in the book on the origins of the Question of Palestine on the international scene are a rich exploration of international legal history. He surveys the League of Nations grant of the Palestine Mandate to the United Kingdom in the 1920s, with all of the inequities of the Balfour Declaration intact. The book then masterfully explains the fateful decision by the United Nations General Assembly in late 1947 to partition Palestine into two states against the fervent wishes of the indigenous majority population: the Palestinians. From there, the book provides a consummate overview of the inevitable collusion between the colonial empires in the mid-20th century and the rising anti-colonial movements in the Global South, and how that played out through the international organizations that had been created to manage the changing world for the Global North.

The second important contribution made by Ardi's book is the artful legal and theoretical framework that he has adopted and applied to buttress his account of the UN's failures on the Question of Palestine. I confess: I am not much of a theory person, but, in Ardi's hands, he cogently explains the concepts of the *rule **of** law* that virtually everyone in the room understands and lives by, and the *rule **by** law* that he argues so convincingly has ensured that the promise of international law would be withheld from the Palestinians over the past eight decades. This is why the phrase in the subtitle of the book - the international legal subalternity - so aptly explains how:

> *…the promise of justice for the Palestinians is repeatedly proffered under the cloak of political legitimacy furnished by the international community, but its realization has been interminably withheld.*

[2]

This is a wonderfully prescient insight offered by Ardi that applies to many places throughout the often anguished relationship between the Global North and the Global South over the past century and more. He explains astutely how our modern system of international law has assumed the stance of the universal application of rights and freedoms for all. But, in practice, he argues that it is still crippled by its inability to curb the political power of powerful nation-states - many of whom are in the Global North - that still exercise the ability to decide which laws to obey, and which to ignore. International Law for Thee, but Not for Me.

And this is nowhere more visible than with the Question of Palestine. The international community - speaking through the various legislative bodies of the United Nations - has established the widely accepted rights-based framework for the supervision and cessation of the Israeli occupation of Palestine. These resolutions have repeatedly said that: The protracted Israeli occupation must completely end. Both the Palestinians and Israelis are entitled to live in peace and security and enjoy the right to self-determination, including sovereign, secure and viable states, within the boundaries of Mandate Palestine, based on the 1967 border. Annexation of occupied territory is illegal. All of the more than 300 Israeli settlements in East Jerusalem and the West Bank are a flagrant violation under international law. East Jerusalem has been illegally annexed by Israel and remains occupied territory. The Palestinian refugees from the 1948 and 1967 wars have the right to choose to return to their homeland. And Gaza is an integral part of Palestine, it remains occupied, and the Israeli blockade is a prohibited form of collective punishment.

All of this is part of the contemporary record. And, as Ardi so eloquently reminds us, international law only works well when it is combined with international resolve. And with one superpower willing to use its diplomatic might, and its Security Council veto, to shield Israel from the consequences of its defiance of UN resolutions, Palestine has remained the political orphan of the international order.

And the third of the invaluable contributions of Ardi's book that I wish to remark upon today is his insistence that Palestine is the litmus test for the efficacy of modern public law. He very effectively argues that international law is indispensable to the making of a better world, and the very best of international law reflects the very best of our humanity. It sets strong rules for state and organizational behaviour, particularly in times of war and conflict, in times of oppression and the denial of rights, but also in times of hope and possibility. When international law works, it creates an indelible path towards justice, as the Irish poet and Nobel Laureate Seamus Heaney tells us:

History says, Don't hope

On this side of the grave.

But then, once in a lifetime

The longed-for tidal wave

Of justice can rise up

And hope and history rhyme.

Ardi's thesis is that if we are not to lose the aspirations of international law to cynicism and despair - because the promise of freedom in the acute case of Palestine is so distant from its actual performance that many have abandoned law, politics and diplomacy for the gun - we need to demonstrate, emphatically and purposively, that progress and accountability are achievable on this front. In this regard, we have to remind ourselves of the preamble to the 1948 Universal Declaration of Human Rights, which codifies the age-old lesson that:

> *…it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law…*

The sad paradox - a constant thread running throughout this book - is that the United Nations has been both indispensable to the quest of the Palestinians for justice and self-determination and, at the very same time, entirely ineffectual in achieving these fundamental aspirations. As long as the UN fails to equitably resolve the Question of Palestine in all its features, then - as this book so cogently argues - the credibility of international law and the international system as a whole will be indelibly stained.

[1] Annan, Kofi. *Interventions: A Life in War and Peace* (New York: Penguin Books, 2012), at 254.

[2] Imseis, Ardi. *The United Nations and the Question of Palestine: Rule by Law and the Structure of International Legal Subalternity* (Cambridge: Cambridge University Press, 2023), at 2.

Citation: Michael Lynk “An Appreciation of Ardi Imseis’ *The United Nations and the Question of Palestine*” (2025), 9 PKI Global Justice Journal 1

About the Author:

Michael LynkMichael Lynk is Professor Emeritus of Law, Western University, where he taught labour law, constitutional law and human rights law between 1999 and 2022. He is an alumni of Queen’s Law, where he was awarded an LLM in 2001. Asked about his time at Queen’s, he said that: “I have very fond memories of working under Don Carter and Bernie Adell, two of the intellectual giants of Canadian labour law. Queen’s Law is, and has been for a very long time, the academic ground zero for the study of Canadian labour law, and I remain very proud of my association with its many traditions and lasting accomplishments.”

Professor Lynk was appointed in 2016 by the United Nations Human Rights Council to serve a six-year term as the Special Rapporteur for human rights in the occupied Palestinian territory (OPT), where he delivered regular reports to the Council and to the UN General Assembly on human rights trends in the OPT.