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## The International Court of Justice ruling and the war in Palestine: An Afrikan lesson

By Masilo Lepuru



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The recent outcome of the International Court of Justice regarding the Israeli war against Palestine has taken international law to the center stage of world politics. There are legal scholars and political analysts who are of the opinion that the South African legal team was not successful. There are others who argue that from a moral perspective the team has won something. The South Africa political landscape has

recently been characterised by the dominance of lawfare. Lawfare in general entails the attempt to resolve fundamentally political problems through law. Resolving political issues by resorting to the courts is a growing tendency in South African politics. So, when the South African legal team decided to take the State of Israel to the ICJ, it was not a surprising move given the domestic political landscape in South Africa. This is not to argue that there is a deterministic causal relationship between lawfare in South Africa and the submission by the legal team to the ICJ. But it is to point out the fact that domestic lawfare is one of the variables that influenced the submission to the ICJ.

The distinction between law and politics has always been a thorny jurisprudential issue. There are legal scholars who argue that law is distinct from politics both in theory and practice. There are political commentators and scholars who argue on the other hand that law is fundamentally political. The political is of course about power and the basic distinction between a friend and enemy. Politics becomes in this sense an extension of war by other means. While there are several theories about the nature of international politics, the most convincing one especially in the current context of the global political dispensation is that which centres war as a norm of international relations. In terms of this “realistic”

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understanding of international relations, war is a continuation of politics by other means. In other words, the political at the international level is based on the antagonism between a friend and enemy. At the core of this friend and enemy antagonism is the exercise of power especially in its hard sense. Military power as informed by the desire to conquer and dominate is normal in European history and culture, making war the underlying instrument of politics. While conquest is no longer a legitimate mode of acquisition of territory in international law, those with the necessary hard power in the form of military power like the State of Israel can use it effectively and violate international law in the process. International law is Eurocentric anyway. It was created by European powers to regulate their struggle to dominate and control the world beginning with the so-called journeys of discovery. International law is nothing but the legalisation of European culture and history. European powers who were competing for outside territories which became colonies through conquest, created this law to curb their crude greed to accumulate material wealth and glory. The doctrine of discovery which is part of international law agreed upon by European powers is a good example. This doctrine authorised the invasion, conquest and occupation of lands not occupied by any European power, thus settler colonialism. This doctrine is foundational to the making of European-dominated international law and politics. It has a religious element of christianity which justified it through the blessing of several popes. The desire to conquer and control which are fundamental to European culture and thought are the core elements of international politics and law.

There is a long history of wars in Europe which bear out this factual assertion. The Westphalian nation-state model which is the norm of international politics and law was introduced to regulate the wars and violence which were tearing Europe apart. While there are other scholars and thinkers who believe that international politics is based on well-functioning institutions that can result in Kantian “perpetual peace”, the history of the European-dominated international world-system is about war as a form of politics. Those with power which is the core of European politics use war as an instrument to advance their national interests. The State of Israel is a good case in point. This explains why it has not complied with the ICJ ruling. Because power trumps law and the political precedes the legal, then it is pointless to use lawfare. Only equal power as opposed to the “rule of law” can resolve the political crisis in Palestine.

The war in Palestine of course involves genocide but it is in essence a question of power. To frame it as a question of law is to miss the point about the “realistic” nature of international relations and politics as dominated by European powers. Those nation-states like the United States and State of Israel with enough power can afford to ignore international law. Since war as an instrument of politics underlies the relations of nation-states at the international level, it is logical to conclude that there is no such thing as “international society”. War within European culture and thought is regarded as a motor of history. War gives the evolution of world history meaning and excitement. Otherwise, world politics will be dull. This European philosophy of history and existence is what undergirds international politics. The State of Israel is participating in this philosophy. In terms of its logic, international politics is reduced to “international state of nature” with exceptions of peace. The legal idealism which informs international law adjudication without this historical context of the nature of European culture and thought will always come up short. African nation-states and leaders must draw a lesson from the war in Palestine and be ready for anything in the near future. This is why Marcus

Garvey has taught us the significance of power as the Afrikan race.

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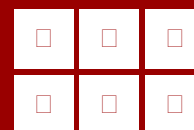
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