

International law and war in the Middle East: Why criminal investigations are so important

The International Criminal Court must investigate potential war crimes. If it does not do so, the West risks a loss of legitimacy.

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In calamitous times, the advocates of simple recipes for solutions cannot be allowed to have the law – especially international law – at their disposal. As with the German asylum and migration debates, this bears repeating in light of the war in Gaza.

Respect for human rights and international humanitarian law should be the guiding principles of German foreign and domestic policy, as well as continue to be the minimum consensus upon which German policy is based.

Israel has the right defend itself against the attacks by Hamas – but like all states, it must do so within the parameters of international law. All responses to the grave crimes of 7 October must therefore comply with the Geneva Conventions and international law, in order to protect the Palestinian civilian population.

The role of law in times of dire emergency

If this line is crossed, which multiple international institutions and legal experts believe to be the case, criminal investigations by national and international bodies are called for.

Both Israeli and Palestinian human rights organizations have argued for this for years – and it was recently confirmed yet again by the British Chief Prosecutor of the International Criminal Court in The Hague, Karim Khan, when he visited the Egyptian border to Gaza.

He described the attacks by Hamas from almost four weeks ago as “abhorrent crimes.” At the same time, he stressed Israel’s legal obligations under the Rome Statute to protect civilians – the statute which laid the foundation of the International Criminal Court 25 years ago, with the aim of bringing grave human rights violations to justice.

Khan also emphasized the particularly critical task of law in times of dire urgency: “People must see that the law has an impact on their lives,” said the Chief

Prosecutor. “And this law, this justice, must be directed towards those most vulnerable.”

Double standards in international law can therefore no longer be tolerated. The efforts of the prosecution in The Hague concerning the Gaza war should be based on the standards it set itself in Ukraine: shortly after the start of the Russian war of aggression, specialists from The Hague began investigating alleged war crimes on the ground.

Investigating allegations of international crimes

The International Criminal Court has had jurisdiction over the situation in Israel and Palestine since June 2014 and, two and a half years ago, opened investigations. But since then, too little has been done.

Western States Parties, in particular, need to provide the court with material support, so that it may conduct complex and resource-intensive investigations in an independent fashion. This is precisely what Karim Khan had already insisted upon before the start of the current war.

These Parties are also politically responsible for investigating allegations of international crimes – not only when committed by their political opponents, such as Russia or Hamas, but also by allies like Israel.

Otherwise, international law and the West will suffer a loss of legitimacy similar to what happened after the attacks of 11 September 2001. For far too long, political considerations led to silence on both the war of aggression in Iraq, which violated international law, and on torture in Guantánamo. The international crimes committed in both contexts remain unpunished.

German politics must face this uncomfortable truth – while managing not to forget Auschwitz for even a second. To contend with this in the midst of the current situation is neither anti-Israeli nor anti-Semitic – also in part because Jewish peace activists in the US and Europe, as well as Israeli human rights organizations, stand side by side with their Palestinian comrades.

75 years after the adoption of the Universal Declaration of Human Rights, universalism must be revived in a reflective and self-critical manner – and not allow itself to be appropriated either by irrational politics or identity politics.