


## Replacing the Words "Palestinian Support" with "Criminal Justice for Palestine", Which Shifts the Meaning from Mere Diplomatic Political Support to Demands for Substantial Criminal Law Enforcement

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 <https://doi.org/10.31004/jerkin.v4i4.7197>

### ARTICLE INFO

#### Article history

Received: 05 June 2026

Revised: 18 June 2026

Accepted: 30 June 2026

#### Kata Kunci:

Solidaritas Palestina,  
Keadilan Pidana, Hukum  
Pidana Internasional,  
Mahkamah Pidana  
Internasional, Penegakan  
Hukum yang  
Substansial.

#### Keywords:

*Palestinian Solidarity,  
Criminal Justice,  
International Criminal  
Law, International  
Criminal Court,  
Substantial Law  
Enforcement.*



### ABSTRACT

Dukungan internasional untuk perjuangan kemerdekaan Palestina selama beberapa dekade didominasi oleh retorika diplomatik-politik dan resolusi yang tidak mengikat yang gagal menghentikan impunitas dan pelanggaran hukum internasional. Studi ini bertujuan untuk meneliti pergeseran paradigma dalam dukungan global dari sekadar keselarasan diplomatik formal menjadi tuntutan penegakan hukum pidana yang substansial melalui mekanisme peradilan pidana. Dengan menggunakan metode penelitian hukum normatif dengan pendekatan konseptual, hukum perundang-undangan, dan komparatif, artikel ini menganalisis urgensi pengaktifan yurisdiksi Mahkamah Pidana Internasional (ICC) dan penerapan yurisdiksi universal oleh negara-negara ketiga untuk menuntut kejahatan perang, kejahatan terhadap kemanusiaan, dan genosida di wilayah Palestina. Temuan studi menunjukkan bahwa pendekatan diplomatik konvensional telah mencapai titik jenuh karena kekuatan veto geopolitik Dewan Keamanan PBB. Sebaliknya, mengartikulasikan dukungan dalam bentuk penegakan hukum pidana substantif menawarkan jalan objektif menuju akuntabilitas hukum, menggeser status Palestina dari objek negosiasi politik menjadi subjek hukum yang berhak atas keadilan retributif dan reparasi yang nyata.

*International support for the Palestinian struggle for independence has for decades been dominated by diplomatic-political rhetoric and non-binding resolutions that have failed to halt impunity and violations of international law. This study aims to examine the paradigmatic shift in global support from mere formal diplomatic alignment to demands for substantial criminal law enforcement through criminal justice mechanisms. Using normative legal research methods with conceptual, statutory, and comparative approaches, this article analyzes the urgency of activating the jurisdiction of the International Criminal Court (ICC) and the application of universal jurisdiction by third countries to prosecute war crimes, crimes against humanity, and genocide in the Palestinian territories. The study's findings indicate that conventional diplomatic approaches have reached saturation point due to the geopolitical veto power of the UN Security Council. Conversely, articulating support in the form of substantive criminal law enforcement offers an objective path to legal accountability, shifting Palestine's status from an object of political negotiation to a legal subject entitled to retributive justice and genuine reparations.*



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**How to Cite:** Ely Sukmana (2026). Replacing the Words "Palestinian Support" with "Criminal Justice for Palestine", Which Shifts the Meaning from Mere Diplomatic Political Support to Demands for Substantial Criminal Law Enforcement, 4(4) 28548-28554. <https://doi.org/10.31004/jerkin.v4i4.7197>

## INTRODUCTION

I The Israeli-Palestinian conflict has long been a severe test of the effectiveness of international law and modern global governance structures. For more than seven decades, the international community's articulation of support for the Palestinian people's right to self-determination has been dominated by conventional diplomatic-political alignment mechanisms (Quigley, 2010). This support generally manifests itself in the adoption of United Nations (UN) General Assembly resolutions, rhetorical condemnation in multilateral fora, and the delivery of palliative humanitarian aid (Falk, 2014). While these diplomatic instruments have important symbolic value in maintaining the visibility of the Palestinian issue on the world stage, the empirical reality on the ground demonstrates a systemic failure to halt the expansion of illegal settlements, the economic blockade, and the prolonged cycle of military violence. This powerlessness is rooted in geopolitical power asymmetries, where international political mechanisms are often held hostage by the veto power of Israel's close allies in the UN Security Council, effectively paralyzing the collective law enforcement function (Thakur, 2006).

The chronic failure of this purely political approach has triggered a collective saturation point in global legal consciousness, which has led to a paradigmatic shift in the meaning of solidarity with Palestine. International solidarity is now undergoing a radical transformation, moving away from the confines of compromising diplomacy towards demands for substantial criminal law enforcement through the doctrine of criminal justice (Cassese, 2008). This shift no longer views the Palestinian crisis merely as a territorial dispute or bilateral border conflict to be resolved through asymmetric political negotiations, but rather as a situation of gross violation of the norms of international law (*jus cogens*). By reconstructing the narrative of political support into demands for criminal accountability, the international community fundamentally changes Palestine's position from a weak object of political bargaining to a subject of international criminal law with an absolute right to retributive justice (Schabas, 2012).

The legal basis underlying the urgency of enforcing substantive criminal law stems from the codification of international crimes stipulated in the 1998 Rome Statute of the International Criminal Court (ICC). Documentary evidence gathered by various UN bodies and independent human rights organizations consistently points to strong allegations of war crimes, crimes against humanity, apartheid, and even genocide in the occupied Palestinian territories (Dugard, 2013). Actions such as the widespread destruction of civilian infrastructure, the forced displacement of populations, and collective punishment are no longer merely violations of political commitments, but rather material elements of criminal crimes (*actus reus*) that demand individual criminal responsibility from the military and political actors involved (Cryer et al., 2019). Therefore, strengthening criminal justice jurisdiction acts as an antithesis to the impunity currently enjoyed by perpetrators of violations of international law in the region.

This substantial criminal law momentum gained crucial formal ground when Palestine formally ratified the Rome Statute and was recognized as a State Party to the ICC in 2015. The ICC Pre-Trial Chamber's 2021 decision declaring the Court's territorial jurisdiction over the territories occupied since 1967 including the West Bank, East Jerusalem, and the Gaza Strip was a milestone confirming the transition from political diplomacy to substantive law enforcement (Bensouda, 2021). This judicial step validated the view that the enforcement of international criminal law should not be hampered by domestic political calculations or foreign diplomatic pressure (Sands, 2016). Through the ICC's formal investigative process, solidarity with Palestine gained an objective institutional instrument to examine evidence of crimes under strict and impartial standards of criminal evidence.

However, relying on the ICC as the sole axis of international criminal justice faces significant structural challenges, given the court's limited resources and the potential for political intervention from powerful non-party states. To achieve comprehensive enforcement of substantive criminal law, this shift in the meaning of support must include the activation of the principle of universal jurisdiction by domestic courts in third countries (Reydams, 2003). Based on the doctrine of international criminal law, crimes such as genocide and crimes against humanity are violations against all humanity (*hostis humani generis*), so that any state has the legal right and obligation to arrest, try, and punish the perpetrators regardless of the place of the crime or the perpetrator's nationality (Bassioni, 2001). Optimizing universal jurisdiction by states committed to the upholding of substantive justice will create a dense global law enforcement network, limit the freedom of movement of perpetrators of international crimes, and send a clear message that criminal law cannot be negotiated for diplomatic convenience.

In addition to the criminal prosecution of individuals, the public dimension of international law is also strengthened through interstate lawsuits before the International Court of Justice (ICJ), as demonstrated by South Africa's legal initiative alleging violations of the 1948 Genocide Convention (ICJ, 2024). Although the ICJ focuses on state responsibility rather than individual criminal law, its interlocutory decisions and legal opinions have significant probative value, which can be used by prosecutors in criminal courts (Brownlie, 2008). The synergy between interstate civil international justice and individual international criminal justice emphasizes that support for Palestine has shifted into the binding judicial arena. This bypasses the bureaucratic red tape of international politics that often fails to produce concrete legal sanctions for violations of international law.

Theoretically, this shift from diplomatic support to substantive criminal law enforcement aligns with legal realism and critical positivism, which argue that international law will only have true meaning if it is backed by justly enforceable criminal sanctions (Kelsen, 1952). Solidarity that manifests itself only at the political negotiating table often produces a false peace that sacrifices substantial justice for victims of war crimes (Mani, 2002). Conversely, a criminal justice approach rejects political compromise that sacrifices the victims' basic legal rights. Substantive criminal law enforcement views retributive justice and judicial recognition of victims' suffering as absolute conditions (*conditio sine qua non*) for achieving a just and lasting peace in the Middle East.

Based on these legal dynamics and global sociopolitical developments, there is an urgent need for a comprehensive theoretical and practical study of the internationalization of criminal justice for Palestine. Previous studies often separate the political dimension of diplomacy from the technical legal dimension, or view international law enforcement as a secondary instrument subject to political realism. There is a significant academic research gap that clearly maps how international political support can be effectively converted into concrete, substantive criminal law enforcement pressure at the global and domestic levels. Therefore, this scientific article is written to analyze the urgency of this paradigmatic transition, formulate the legal obstacles faced, and offer a strategic framework for the international community to uphold substantive criminal justice for the sake of upholding humanity and international law in Palestine.

## **METHOD**

This study uses a normative or doctrinal legal research method with a focus on the analysis of public international law and international criminal law. In accordance with the characteristics of normative legal research, this study bases its analysis on a comprehensive examination of legal norms, legal principles, and juridical doctrines relevant to the enforcement of international criminal law in the Palestinian territories (Hutchinson & Duncan, 2012). The approaches used in this study include a conceptual approach to dissect the paradigm shift in international support, a statutory approach to analyze the provisions of the 1998 Rome Statute, and a case approach through a review of judicial decisions and legal opinions from international judicial institutions (McConville & Chui, 2017).

The data used in this study is secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include binding international legal instruments, such as the 1998 Rome Statute, the 1948 Genocide Convention, decisions of the Pre-Trial Chamber of the International Criminal Court (ICC), and interlocutory decisions of the International Court of Justice (ICJ) (Cryer et al., 2019). Secondary legal materials were obtained from reputable academic literature, international law journals, official reports from special commissions of the United Nations (UN), and publications of independent human rights organizations (Snyder, 2019). All legal materials were collected through digital document studies utilizing international judicial databases and global journal indexes such as Scopus and HeinOnline.

The legal material analysis technique was conducted qualitatively using the syllogistic method through deductive reasoning and theoretical content analysis. The analysis stage began by classifying the legal material based on hierarchy and problem relevance, followed by systematic and teleological legal interpretation (Miles et al., 2014). The researchers confronted the normative data with criminal justice theory, the concept of retributive justice, and the doctrine of universal jurisdiction to test the effectiveness of substantive criminal law enforcement compared to traditional political diplomacy (Cassese, 2008). The results of the analysis were synthesized narratively and analytically to produce a

robust conceptual framework regarding the internationalization of substantive criminal law enforcement in Palestine.

## RESULTS AND DISCUSSION

### *The Deadline of Conventional Political Diplomacy and Structural Systemic Obstacles*

A thorough analysis of the history of international diplomacy shows that conflict resolution in Palestine has experienced chronic stagnation due to an over-reliance on multilateral political forums. For decades, international support manifested in the form of UN General Assembly resolutions or bilateral peace mediation has always resulted in political compromises that ignore aspects of legal justice (Quigley, 2010). This conventional political approach is inherently asymmetrical because it places the occupied entity and the occupying power on a presumed equal footing at the negotiating table, an assumption rejected by legal realism (Falk, 2014). As a result, public international law is often reduced to a mere rhetorical instrument without real enforcement power.

The main structural obstacle crippling the effectiveness of this diplomatic path is the institutional design of the UN Security Council, which places the veto power of the five permanent member states above the interests of global law enforcement. The consistent use of the veto power by Israel's main allies has blocked any attempt by the Security Council to impose economic sanctions, humanitarian intervention, or formal referral of the Palestinian situation to the International Criminal Court (ICC) (Thakur, 2006). This extreme politicization of international law creates a permanent zone of impunity for human rights violators in the occupied territories. This phenomenon proves that leaving the resolution of serious legal violations (*jus cogens*) to the discretion of political-geopolitical actors is a systemic flaw that actually prolongs the suffering of victims (Cassese, 2008).

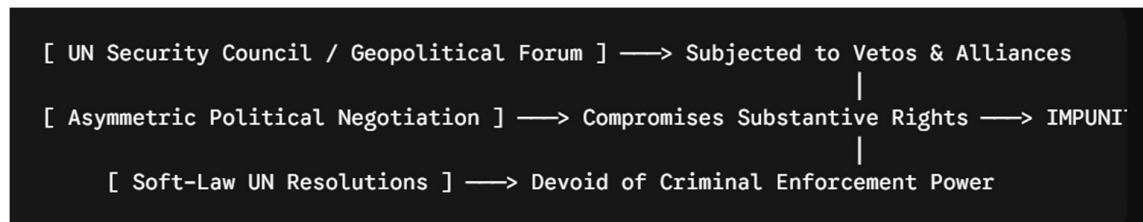


Figure 1. The Structural Deficiencies and Impunity Loop of Traditional Diplomatic-Political Mechanisms

Furthermore, global humanitarian aid sent by countries supporting Palestine often acts as a palliative measure that distracts the world from the root causes of international criminality. When international solidarity is channeled purely in the form of financial and logistical donors without any demand for the dismantling of the criminal structure of occupation, the international community indirectly funds and perpetuates the status quo of these violations of law (Dugard, 2013). This aid paradox emphasizes the urgency of a paradigm shift, from initially viewing the Palestinian crisis as a humanitarian-political crisis requiring charity, to a situation of organized mass crime that requires material criminal law intervention through criminal justice instruments.

### ***The Activation of the International Criminal Court (ICC) and the Legal Construction of International Crimes in Palestine***

The shift towards substantial criminal law enforcement gained a solid jurisdictional footing since Palestine formally acceded to the Rome Statute in 2015. Palestine's recognition as a State Party under Article 12(3) of the Rome Statute undermined the legal argument that Palestine lacked the sovereign capacity to trigger the court's jurisdiction (Bensouda, 2021). The historic 2021 decision of the ICC Pre-Trial Chamber, which established the territorial boundaries of the ICC's jurisdiction to include the West Bank, East Jerusalem, and the Gaza Strip, officially moved the Palestinian issue from the fluid domain of international politics into the rigid and binding corridor of international criminal law (Schabas, 2012).

Under the Rome Statute framework, military actions and demographic policies in the Palestinian territories can be constructed into clear material elements of criminal crimes (*actus reus*). The transfer of civilians from the occupying power to the occupied territory, as well as the expansion of illegal settlements, qualify as war crimes under Article 8(2)(b)(viii) of the Rome Statute (Cryer et al., 2019). Furthermore, the long-term blockade, systematic destruction of civilian means of life, and

disproportionate airstrikes provide sufficient preliminary evidence of the existence of specific intent (mens rea) to commit crimes against humanity (Article 7) and genocide (Article 6) as defined in substantive international criminal law (Sands, 2016).



Figure 2. The Judicial Architecture of the International Criminal Court (ICC) in Processing the Situation in Palestine

The transformation from political offenses to individual criminal responsibility played a crucial role in changing the course of the conflict. Unlike traditional public international law, which holds only states accountable, international criminal law pursues military commanders, ministers, and heads of government personally through the doctrine of command responsibility under Article 28 of the Rome Statute (Bassioni, 2001). With the issuance of arrest warrants by the ICC prosecutor against high-ranking officials, the meaning of support for Palestine changed substantively: it was no longer a negotiable political alliance, but rather an international legal obligation for the 124 ICC member states to arrest suspects for the sake of criminal justice (Sands, 2016).

### *The Application of Universal Jurisdiction by Third States as a Safety Net of Justice*

Considering that the ICC often faces institutional efficiency constraints and political pressure from non-member superpowers such as the United States, the fulfillment of substantive criminal justice should not be solely dependent on the court in The Hague. The results of this study indicate that the activation of the principle of universal jurisdiction by third countries acts as an absolutely necessary legal safety net (Reydams, 2003). Universal jurisdiction authorizes domestic courts in any country to prosecute perpetrators of the most serious international crimes, regardless of the place of the crime, the nationality of the perpetrator, or the nationality of the victim, because these crimes violate the moral conscience of all humanity (*hostis humani generis*) (Bassiouni, 2001).

The practical application of universal jurisdiction in the Palestinian context allows states strongly committed to substantive justice such as some European countries and South Africa—to use their domestic criminal laws to investigate and prosecute war criminals traveling abroad (Cassese, 2008). Through this doctrine, national courts can issue international arrest warrants and freeze the assets of violators, bypassing the geopolitical barriers that typically entrench them in the UN Security Council. This domestic judicial action transforms political solidarity with Palestine into decentralized but aggressive substantive law enforcement, creating increasingly limited room for international criminals worldwide (Reydams, 2003).

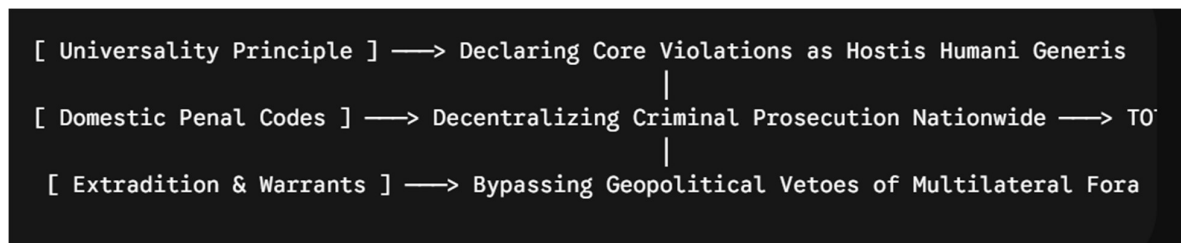


Figure 3. The Decentralized Enforcement Mechanism of Third-State Universal Jurisdiction

This synergy of criminal law is also strengthened by advisory opinions and interlocutory decisions of the International Court of Justice (ICJ) regarding violations of the 1948 Genocide Convention (ICJ, 2024). Although the ICJ handles disputes between states and does not impose prison sentences on individuals, its findings of fact have a very high probative value in criminal trials (Brownlie, 2008). These ICJ legal documents can be directly adopted by domestic judges adjudicating cases based on

universal jurisdiction, thereby accelerating the process of proving material crimes and minimizing the gaps in technical defenses often raised by the defendant's legal team.

***Reconstructing the Meaning of Solidarity: Retributive Justice as an Absolute Condition for Peace***

The conceptual shift from diplomatic support to substantive criminal law enforcement fundamentally redefines the nature of peace itself in the Middle East. During the heyday of political diplomacy, peace was often misinterpreted as the temporary absence of physical conflict (negative peace), achieved by forcing the Palestinians to sacrifice their legal rights for the sake of regional geopolitical stability (Mani, 2002). In contrast, the international criminal justice framework asserts that true peace can only arise from substantive justice (positive peace), in which the restoration of victims' rights and the punishment of perpetrators through retributive justice are non-negotiable costs (Kelsen, 1952).

From an international criminology perspective, demanding substantial criminal law enforcement for Palestine has a crucial deterrent effect in preventing similar violations in the future by other global actors. When the world allows international crimes to continue without criminal sanctions purely for the convenience of diplomatic relations, the international community is actually undermining the authority of international law as a whole and legitimizing the use of raw military force above the rule of law (Schabas, 2012). Therefore, the "Criminal Justice for Palestine" movement restores the dignity of international law to its original purpose: protecting humanity from the cruelty of tyranny through firm, objective, and impartial criminal law sanctions.

## CONCLUSION

This study concludes that conventional political diplomacy mechanisms and multilateral forums merely produce non-inclusive resolutions without material coercive power. This chronic stagnation stems from the structural flaws of the UN Security Council, where the use of veto power by allied occupying states consistently obscures the enforcement of justice for geopolitical interests. This systemic failure proves that traditional political-diplomatic approaches are no longer adaptive in resolving serious violations of international law (*jus cogens*), thus requiring a complete paradigm shift toward substantive criminal law instruments that have genuine, binding, and legally certain criminal sanctions.

The activation of the International Criminal Court (ICC) through its territorial jurisdiction over the Gaza Strip, the West Bank, and East Jerusalem has become a key pillar in the reconstruction of international support policies for Palestine. The framework of the 1998 Rome Statute successfully transformed asymmetric political violations into rigid individual criminal charges—such as war crimes, crimes against humanity, and genocide—through the prosecution of personal command responsibility (individual criminal responsibility). Furthermore, the activation of the doctrine of universal jurisdiction by domestic courts of third countries acts as an effective decentralized legal safety net that transcends global geopolitical barriers to pursue perpetrators of international crimes universally.

Ultimately, the reconstruction of the meaning of solidarity from a political-diplomatic alliance to the "Criminal Justice for Palestine" movement establishes retributive justice as an absolute prerequisite for the creation of true peace (positive peace). The shift in strategy from mere lobbying in the UN corridors to concrete legal action in the form of collecting forensic evidence, filing national criminal complaints, and executing international arrest warrants is a manifestation of the highest support that rejects the double standards of global law enforcement. Through this synergy of international criminal justice, the Palestinian struggle is no longer seen as a passive humanitarian crisis, but rather a crucial instrument in saving the dignity and authority of international criminal law in the eyes of human civilization.

## ACKNOWLEDGMENTS

The researcher would like to express his gratitude to those who have contributed to the implementation of the research and the preparation of this article.

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