

The Right to Engage in Solidarity for Peace Expression

Cecilia M. Bailliet, UN Independent Expert on International Solidarity, paper presented at ICON- S annual conference “The Future of Public Law: Resilience, Sustainability, and Artificial Intelligence”, July 2024

I attended a fascinating session on palliative care approaches to international law, that struck me as timely given that International Law and its institutions appears to be in a state of chronic crisis as the system appears unable to maintain or restore peace in Gaza or Ukraine. I had one Palestinian student come to my office to tell me that she had switched from political science to law because she wanted to study something that had real impact, to her dismay the ICJ call for a cease fire has been ignored. The symptoms or consequence of the dysfunction of international law is that university students and other youths all over the world have engaged in solidarity marches and demonstrations calling for peace. Peace and Solidarity are universal principles and grundnorms within international law that both have the dual quality of being both means and ends within international law- we cannot achieve peace unless we pursue peaceful dispute resolution mechanisms, such as dialogue with mutual respect, We also cannot aspire to enjoy solidarity as the universal community of humanity unless we engage in the international expression of transformational solidarity to emancipate vulnerable persons who are deprived of the enjoyment of human rights due to oppression or exclusion, particularly salient in the context of armed conflict and ongoing atrocity crimes. This paper explains current protection challenges regarding solidarity for peace expression examining the case study of the university students.

The UN Declaration on the Right to Peace has in its preamble a call to stakeholders to engage in solidarity as a means to promote peace so that they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war. The Revised Draft Declaration on Human Rights and International Solidarity Article 3 sets forth that international solidarity has as an objective to create an enabling environment for peace. These standards underscore the salience of the right to engage in international solidarity in order to raise awareness of the violation of the right to peace in other countries.

The strongest challenge is that there is at present a universal phenomenon of frenzied polarization within almost all societies subject to disinformation within social media that has had the consequence of provoking retaliation against those persons engaging in solidarity for peace expressions and actions. One factor behind the retaliation is that social media and regular media have often portrayed solidarity for peace expressions in sensationalist manner as

promoting antisemitism or terrorism/extremism, joining them together with actual instances of antisemitism and islamophobia.

Within universities, the principle of academic freedom is fundamental for the maintenance of a faculty and student body that are able to tackle critical issues for discussion without penalization. In the context of Gaza, solidarity expressions often addressed the principle of humanity and the need for divestment and accountability from state, investors, and corporations (including universities) for supporting violations of humanitarian law and human rights, including genocide and the right to self-determination, often invoking the ICJ decisions calling for a cease-fire. However, the call for justice seemed to overshadow the call for peace, and the latter term became marginalized, as some solidarity student groups focused on ending a genocide as a priority, and other counter-solidarity students were convinced that there appeared to be little interest in the pressing need for accountability for the massacre of October 7th, or that they were being unfairly blamed for the policy of the Israeli government, as well as the fear that there was a risk that the solidarity for accountability and divestment movement was actually intended to bring about the end of Israel as a state. The narratives on both sides often appeared to lack the element of a networked bridging solidarity dimension that would recognize both Palestinians and Israelis as suffering trauma from war creating a space for peaceful dialogue and reconciliation.

Within US universities, students felt that their campus had become a hostile environment and that the university had failed to take action to protect them against the problem of real instances of antisemitic and/or Islamophobic discrimination, doxing, hate speech, intimidation, and harassment within social media and in the physical space of the campus. According to the UN Human Rights Committee, peaceful assembly is to be interpreted in relation to an aim of peace and non-discrimination they may not be used for propaganda for war (art. 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 (2)). Solidarity activists, counter- solidarity activists, and neutral students felt pained and traumatized by the polarized climate, in which chanting during solidarity encampments and counter messaging was in some cases described as intimidating.

It is important to note that unitary solidarity actions that are exclusionary, nativist, xenophobic, would not be recognized as pro homine international solidarity.

Many complaints were filed by lawyers working with Palestine Legal together with Center for Constitutional Rights with the US Department of Education,¹ claiming that several universities had failed to uphold their duty to take prompt and effective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring pursuant to Title VI of the Civil Rights Act of 1964.²

The Office for Civil Rights examined the context, nature, scope, frequency, duration, and location of the harassment, as well as the identity, number, and relationships of the persons involved.³

The Office for Civil Rights defines discrimination/harassment as having the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment or participation in a university activity.

The Department of Education investigated Stanford, UCLA, Harvard, Rutgers, Columbia University, Cornell, Cooper Union, Lafayette College, CUNY, University of Michigan, the New Jersey Institute of Technology to see whether they "have taken steps to assess whether incidents about which it had notice individually or cumulatively created a hostile environment for students, faculty, or staff, and, if so, to taken steps reasonably calculated to end the hostile environment, remedy its effects, and prevent its recurrence." The universities generally responded with initiatives to abide by the regulation and create a safe learning environment as well as the promotion of dialogue forums. For example, the University of Michigan agreed:

“. . . to administer a climate assessment, implement additional training, and revise its policies as necessary. It also agreed to monitoring by the Office of Civil Rights through

¹ [Center for Constitutional Rights \(ccrjustice.org\)](https://www.ccrjustice.org/); [NLG-KYR-Campus-Protest.pdf](#); [Template letter for students to send to universities — Palestine Legal](#); [Legal Resources for Activists Advocating for Palestine Across the U.S. — Palestine Legal](#); [U.S. Department of Education's Office for Civil Rights Announces Resolution of Nine Complaints Against CUNY Alleging Discrimination Based on National Origin, Including Antisemitic, Anti-Palestinian, Anti-Muslim, and Anti-Arab Harassment | U.S. Department of Education](#)

² Title VI), 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100.

³ This was done to determine whether the harassment was sufficiently severe or pervasive that it would have limited the ability of a reasonable person, of the same age and national origin as the victim, under the same circumstances, from participating in or benefiting from some aspect of the recipient's education program or activity, to find that a hostile environment existed.

the end of the 2026 school year, reporting its responses to future incidents of discrimination to the department.”⁴

However, there are many students who remain concerned that several universities adopted retaliatory policies that were disproportional and have not been remedied, such as denial of access of students to housing, food halls, the inviting police onto the campus who used excessive force in contraction of the recommendation by the UN Special Rapporteur on the right to freedom of peaceful assembly and of association for police to use “dialogue before and during the protest, using the least intrusive methods and respect for the principles of participation, accountability, non-discrimination, differentiation and attention to vulnerability and equality,”⁵ Students were suspended, their student groups were defunded, they were charged with criminal trespass, when students applied for alternative housing after finding out that they had been evicted or denied access to campus housing. Some students were encouraged to return to their home countries. Students alleged that those with minority ethnic backgrounds (Muslim, Latino, Black) were more likely to be subjected to criminal prosecution as opposed to civil or administrative processes. The administrative proceedings often referred to University student code of conduct norms and resulted in denial or delay of graduation. The denial or delay of the right to graduate and receive a degree is particularly problematic because it impacts the students’ life project- their ability to pursue personal and professional aspirations. Students are blocked from continuing to higher degree programs in other universities, they have had job and internships offers rescinded, and they have been fired from research positions. These students are in shock because they are idealists that believe in the principle of justice, as law students they underestimate power over law. The retaliation for their engagement has been comprehensive and severe. There is a lack of understanding of the pain, frustration, and disillusionment of the students in the dysfunctional international legal system, and their punishment could never be regarded as palliative care approaches to international law because of the lack of recognition of their vulnerability.

The price of this policy as that the academic environment and the climate around the world is even more polarized and reduces the chance of supporting a peace process in Gaza. Peace has been characterized as a notion which has been instrumentalized by the opposition and hence has been emptied of its universal status as a grundnorm of all peoples. As we seem to be

⁴ [UM, Education Department reach agreement over civil rights, hostile campus allegations \(michiganpublic.org\)](#)

⁵ [Practical toolkit for law enforcement officials to promote and protect human rights in the context of peaceful protests | OHCHR](#)

marching with eyes wide open towards an expansion of war there is an imperative need to return attention to the urgency of recognizing the right to peace and the right to engage in solidarity expression of the right to peace.