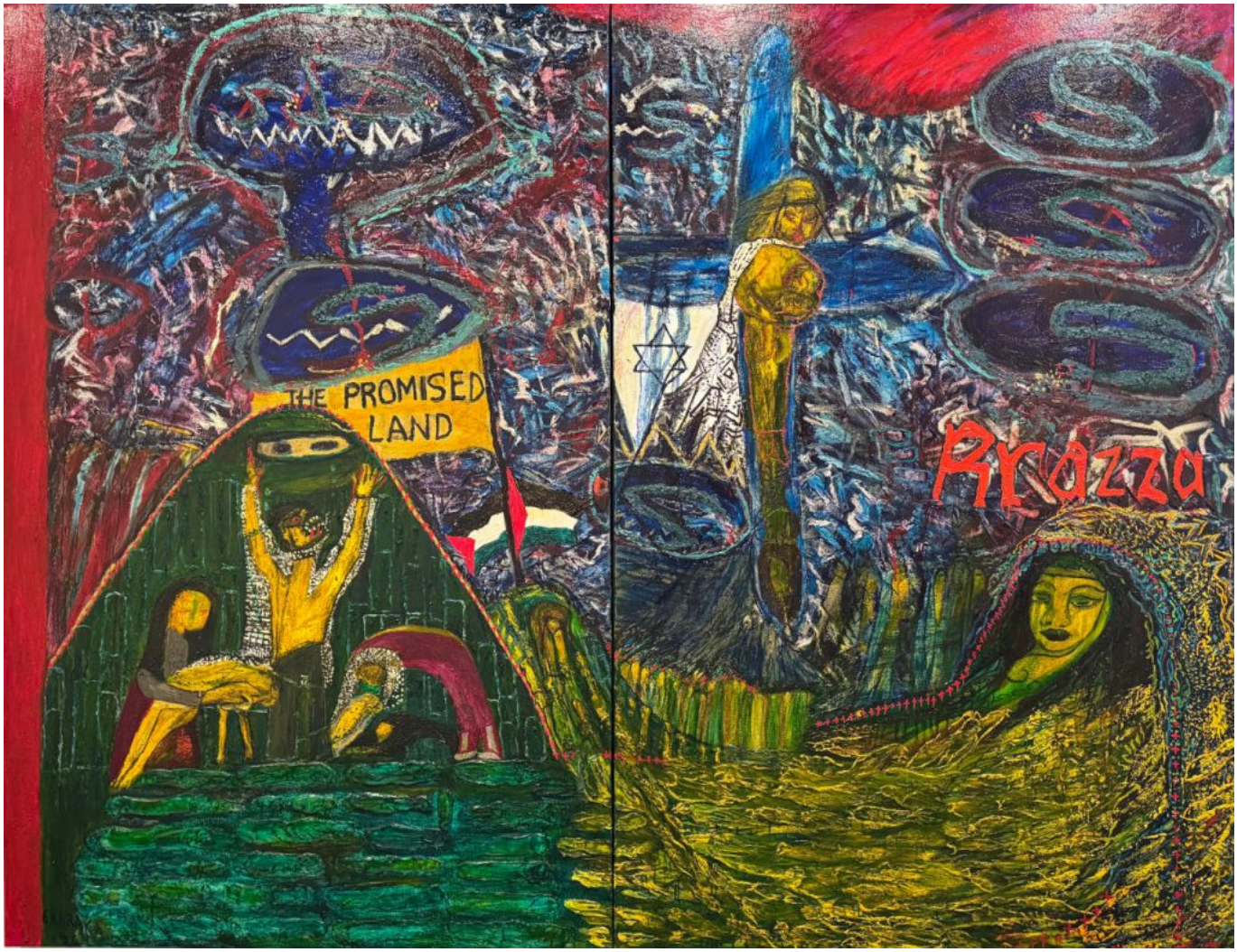
The United States Raises a Middle Finger to the International Criminal Court: The Forty-Eighth Newsletter (2024)



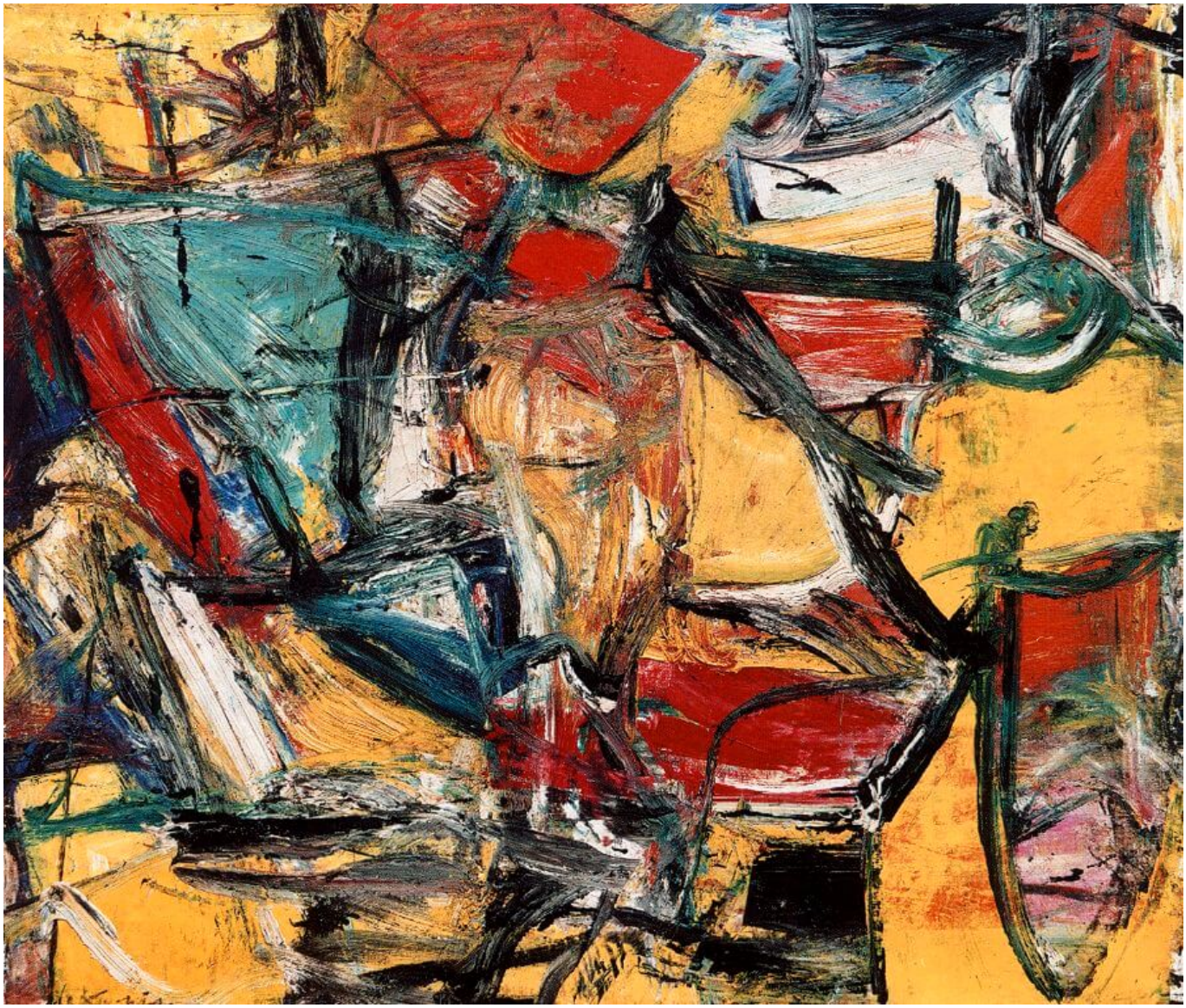
Emily Karaka (Aotearoa), *Parallel Process: Palestinian Horizon*, 2024. Commissioned by Sharjah Art Foundation. Installation view: *Ka Awatea, A New Dawn*, Al Mureijah Square, Sharjah, 2024.

Dear friends,

Greetings from the desk of **Tricontinental: Institute for Social Research**.

Finally, before history ends, the International Criminal Court (ICC) **issued** arrest warrants for Israel's Prime Minister Benjamin Netanyahu and his former Defence Minister Yoav Gallant for war crimes and crimes against humanity. The indictment stated that there 'are reasonable grounds to believe that both individuals intentionally and knowingly deprived the civilian population in Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity'. The court found sufficient reasons to believe that the two men 'bear criminal responsibility' for the war crime of starvation as a method of warfare, the crimes against humanity of murder, persecution, and other inhumane acts, and the war crime of intentionally directing an attack against a civilian population. Almost immediately, US President Joe Biden condemned the court's actions, stating that the 'ICC issuance of arrest warrants against Israeli leaders is outrageous'. The United States, Biden **said**, 'will always stand with Israel'.

A short walk from Biden's White House sits Freedom House, an institution set up in 1941 and predominantly funded by the US State Department. Each year, Freedom House releases its *Freedom in the World* index, which uses various data points to adjudge whether a country is 'free', 'partly free', or 'not free'. Adversaries of the United States – such as China, Cuba, Iran, North Korea, and Russia – are consistently found to be 'not free', even if they have electoral processes and legislative bodies of various kinds (in Iran's 2024 legislative elections, for example, 15,200 candidates ran for 290 seats in the Consultative Assembly; while last year in Cuba, the 470 seats in the National Assembly of People's Power were elected by 75.87% of eligible voters). Meanwhile, the 2024 index accords Israel with a 'global freedom score' of 74/100 and proclaims it to be the only 'free' state in the region, despite the authors **noting** that in Israel 'the political leadership and many in society have discriminated against Arab and other ethnic or religious minority populations, resulting in systemic disparities in areas including infrastructure, criminal justice, education, and economic opportunity'. According to the measurements of this US State Department-funded index, which is routinely used to disparage countries around the world that it deems unfree, an apartheid system built on occupation and now genocide is considered an exemplary democracy.



Willem de Kooning (Netherlands), *Police Gazette*, 1955.

Indices, such as the one from Freedom House, are not as innocent as they may appear. The design of the index – built on the subjective assessments of analysts and advisors selected from the world of Western establishment think tanks – produces outcomes that are often prescribed. While Freedom House claims to draw from the **International Covenant on Civil and Political Rights** (1966), it ignores the **International Covenant on Economic, Social and Cultural Rights** (1966). The latter would necessitate understanding democracy in a far more capacious way than the mere holding of elections and existence of multiple political parties. Article 11 of the second covenant, alone, would expand the idea of democracy to include the right to housing and the right to be free from hunger. As Article 4 notes, the purpose of the Covenant on Economic, Social and Cultural Rights is to promote 'the general welfare in a democratic society'. Democracy here is used with the broadest understanding, extending far beyond simple electoralism. And even with regard to electoralism, there is scant concern in the Freedom House index for the high rates of **abstention** across liberal democracies and for the **collapse** of a vibrant media culture to hold political parties and leaders to account.

But then, what do those behind such indices care? They think themselves masters of the universe. The reactions to the ICC indictment from the United States and Germany – the two countries with the **largest** arms transfers to Israel during this genocide – have been expected, but nonetheless shocking. Biden's cavalier reaction confirms that the United States either does not understand or does not care about the gravity of its callousness and that the United States fails to grasp that its rejection of the ICC warrants is the final nail in the coffin of the US's '**rules-based international order**'. On the issue of callousness: ahead of the 2024 US presidential election the Biden administration **said** that Israel had to allow aid into Gaza within thirty days or it would face a weapons' freeze, but this deadline came and went without much concern. The 'rules-based international order' was always a bit of a farce. In 2002, during the US-driven War on Terror, the US Congress debated the possibility that a US soldier or CIA agent could be charged with a war crime. To immunise that soldier or agent, the US Congress passed the American Servicemembers' Protection Act, which has been widely called the 'Hague Invasion Act'. Although the act does not say that the US can invade the Netherlands to free its personnel from the ICC, it does **say** that the US president 'is authorised to use all means necessary and appropriate to bring about the release of any person… who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court'. Around the time of the passage of this act, the United States formally **withdrew** from the Rome Statute (1998) that set up the ICC.



Peterson Kamwathi (Kenya), *Untitled – Electoral Charge of Kenya*, 2008–09.

Both US Senators **Tom Cotton** and **Lindsey Graham** have invoked the Hague Invasion Act in response to the ICC's issuance of arrest warrants for Netanyahu and Gallant, with Graham going so far as to say that the US Senate should place sanctions, even on allies such as Canada, for having the temerity to suggest that they would uphold the warrants. If the US throws the ICC warrants to the winds, then it has told the world with

finality that it does not believe in the rules, or that the rules are only made to discipline others and not itself. It is remarkable to see the list of international treaties that the United States either never signed or never ratified. A few examples are sufficient to make the case about its disregard for a genuine rules-based international order:

1. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949, never signed).
2. Convention Relating to the Status of Refugees (1951, never signed).
3. Convention Against Discrimination in Education (1960, never signed).
4. Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962, signed but never ratified).
5. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968, never signed).
6. United Nations Convention on the Law of the Sea (1982, never signed).
7. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989, signed but never ratified).
8. Convention on the Rights of Persons with Disabilities (2006, signed but never ratified).

Even more horrifying are the arms control conventions that the United States has either refused to sign or from which it has unilaterally withdrawn:

1. Anti-Ballistic Missile (ABM) Treaty (1972, withdrew in 2002).
2. Intermediate-Range Nuclear Forces (INF) Treaty (1987, withdrew in 2019).
3. Mine Ban Treaty (1997, never signed).
4. Convention on Cluster Munitions (2008, never signed).
5. Arms Trade Treaty (2013, signed but withdrew in 2019).

It is because the US unilaterally left the ABM Treaty and the INF Treaty that the conflict over Ukraine has become so inflamed. Russia had made it clear on several occasions that the absence of any arms control regime regarding mid-range nuclear missiles would pose a threat to its major cities, were its neighbours to join the North Atlantic Treaty Organisation (NATO). On 18 November, in a provocative and dangerous move, Biden allowed Ukraine to use intermediate-range missiles to strike Russian territory, which drew a powerful response from Russia against Ukraine. If Russia had decided to fire one of those missiles at a US base in Germany in retaliation, for instance, we might already be in midst of a nuclear winter. The US disregard for the arms control regime is only part of its absolute disregard for any international law, sealed in place by its raised middle finger to the ICC.



William Kentridge (South Africa), *Drawing from the film Other Faces*, 2011.

In 1982, the South African freedom fighter and poet Mongane Wally Serote (born in 1944), who lived in Botswana and worked with the Medu Art Ensemble (about which we wrote a **dossier** last year), published 'Time has run out' in his epic book *The Night Keeps Winking*. '[M]any of us have gone mad', he wrote, because 'we are human and this is our land'. Serote was writing of South Africa, but we can expand his vision now to Palestine, and indeed to the entire earth. And then Serote writes:

> Too much blood has been spilled
> Please my countrymen, can someone say a word of wisdom …
> Ah, we've become familiar with horror
> the heart of our country
> when it makes its pulse
> ticking time
> wounds us
> My countrymen, can someone who understands that it is now too late
> who knows that exploitation and oppression are brains which being
> insane only know violence
> can someone teach us how to mount the wounds and fight.

It is time to revisit the 'great wound', as Frantz Fanon **wrote** in 1959, to ride the wound and fight.


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نبت
الصبر
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Ibraheem Mohana (Palestine), *Untitled*, 2024.

Earlier this year, Serote wrote a **poem** for Palestine, part of which I reproduce for the International Day in Solidarity with Palestine (29 November); for this day, we at Tricontinental are organising an exhibition featuring the artwork of Palestinian artist Ibraheem Mohana and twenty children who he has been teaching art to in Gaza in the midst of Israel's genocide.

> We hear in our eyes the sounds of the siren and of the explosion
> As it blasts our eye and hearing
> and the red fire
> flares its coming in the air with the power of a storm
> The red-hot fire holds human flesh in its red-hot dance
> It was preceded by a thick black smoke
> Which bellows and rages
> On
> Oh
> Human race

And then it ends…

> Ah Palestine!
> Be.

Warmly,

Vijay