Bin Laden in the mirror of Eichmann: impressions from Hannah Arendt’s *Eichmann in Jerusalem*

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Abstract

This paper aims to show how the operation that led to the killing of Osama Bin Laden, chief of the worldwide terrorist network al-Qaeda, can be justified in light of the reasons that Hannah Arendt deploys in her book *Eichmann in Jerusalem* with regards to the Israeli secret service’s secret kidnapping of Adolf Eichmann’s from Argentina. In arguing that the kidnapping was legitimate because the South American country refused to extradite him, she also points out that his death was a fair punishment because Eichmann became a *hosti humani generis*, an enemy of humankind. She depicts how Israeli forces took his ashes and scattered them in the Mediterranean Sea, outside Israel territorial waters.

The similarities with Bin Laden’s case are notorious. On May 2\(^{nd}\) 2011 he was surrounded in his Pakistani residential compound by US special forces and killed on the spot. This covert operation took place amidst feelings of distrust and diplomatic tension at the highest level between the American and Pakistani authorities. Bin Laden’s body was quickly buried in the North Arabian Sea.

Considering that Arendt would have preferred Eichmann to have been judged in an International Criminal Court instead of an Israeli tribunal, it is argued here that although she would certainly have endorsed Bin Laden’s death, she definitely wouldn’t have supported the circumstances in which his killing was consummated. Moreover, she would have also advocated the conducting of a fair trial where the accused had the right to defend himself. The paper will show the relevance of this comparison.

Key words: Eichmann, Arendt, Bin Laden, States, Sovereignty

I. The Eichmann Case

In her book *Eichmann in Jerusalem* the philosopher Hannah Arendt analysed the capture and trial of one of the most renowned German criminals during the Third Reich:

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Otto Adolf Eichmann. The defendant was in charge of the transportation of Jews from their place of residence to their final destination in the numerous labour and extermination camps Nazi Germany had in Central and Eastern Europe. By 1960, the year of his capture by the secret service of Israel, the Mossad, in the suburbs of the capitol city of Argentina, Buenos Aires, he was widely regarded as a human monster, as someone who committed the worst kind of actions a human being can do.

Beside this sort of considerations, Hannah Arendt justified Israel’s kidnapping of Eichmann. According to her perspective “Argentina had an impressive record for not extraditing Nazi criminals; even if there had been an extradition treaty between Israel and Argentina, an extradition request would almost certainly not have been honoured” (Arendt, 2006: 264).

Even leaving aside the bad precedents of Argentina regarding extraditions of World War II criminals, if its law was to be taken into account it would have also been impossible to hand over Eichmann: “…according to Argentine law, all offences connected with the last war had fallen under the statute of limitation fifteen years after the end of the war, so that after May 7, 1960, Eichmann could not have been legally extradited anyway. In short, the realm of legality offered no alternative to kidnapping” (Arendt, 2006: 264).

Therefore no window of opportunity was open for an extradition. There was no trust that could be held upon Argentinean authorities and neither upon its willingness to ignore their own legislation. Israel could not ask for cooperation from the Federal Republic of Germany as well in this matter, because initiatives from West Germany in the same sense with reference to other criminals (such as Karl Klingenfuss or Dr. Josef Mengele) were also unsuccessful (Arendt, 2006: 264).

As the relationship between Israel and Argentina did not allow cooperation or collaboration in such a sensible issue the former did not have other alternative but kidnapping. That is, for Arendt (2006: 264) “…the only, almost unprecedented feature in the whole Eichmann trial, and certainly it was the least entitled to become a valid precedent”.

Arendt rightfully sees the danger that exist in this type of action: “What are we going to say if tomorrow it occurs to some African state to send its agents into Mississippi and to kidnap one of the leaders of the segregationist movement there? And what are we going to reply if a court in Ghana or the Congo quotes the Eichmann case as a precedent?” (Arendt, 2006: 264).

The American thinker, born in Germany, is extremely aware of the importance of respecting international law in general and its agreements in particular. One of its pillars is the norm *pacta sunt servanda* (Kunz, 1945; Wehberg, 1959) which implies that treaties and promises formally framed must be honoured and respected. Acting otherwise would lead to the destruction of any shadow of permanence in interstate bonds.

Arendt herself is quite conscious of this fact. In her main work of political theory, *The Human Condition*, published in 1958, promises have a capital role, being entrusted with the maintenance and continuity of the public sphere (Arendt, 1998: 243-247). Without
them stability would be impossible to sustain and there would not be any chance to guarantee any fact in the future, either near or remote.

“The unpredictability which the act of making promises at least partially dispels is of a twofold nature: it arises simultaneously out of the “darkness of the human heart”, that is, the basic unreliability of men who can never guarantee today who they will be tomorrow, and out of the impossibility of foretelling the consequences of an act within a community of equals where everybody has the same capacity to act” (Arendt, 1998: 244).

These premises, valid for a shared public space where individuals regularly appear and take an active part, are nonetheless not completely appropriate for international relations. Indeed, between States capacities are not at all equal but crucially dissimilar, something ratified by theorists coming either from Realism (Waltz, 1979: 79), Constructivism (Wendt, 1992) and an array of diverse currents of International Relations Theory.

Therefore, bearing in mind this scenario, it is plainly clear that once a kidnapping was made beyond the awareness of a sovereign State, many more could eventually follow, no matter how inconvenient or unorthodox this action was and how many interstate promises (such as “you will not kidnap a person in my territory”) it breached. So the risks inherent to the operation of the Mossad were extremely high. At stake was, on the one hand, the possibility of never-ending infractions of international law by secret services or special task forces. On the other hand, there was the opportunity for any country to retroactively apply its normative in order to capture fugitives all over the world.

This was legal chaos in nuce. And because acting according to international law was so difficult and complex in the Eichmann case, Arendt (2006: 265) explored an exceedingly suggestive alternative:

“…instead of capturing Eichmann and flying him to Israel, the Israeli agents could have killed him right then and there, in the streets of Buenos Aires. This course of action was frequently mentioned in the debates on the case and, somewhat oddly, was recommended most fervently by those who were most shocked by the kidnapping. The notion was not without merit, because the facts of the case were beyond dispute, but those who proposed it forgot that he who takes the law into his own hands will render a service to justice only if he is willing to transform the situation in such a way that the law can again operate and his act can, at least posthumously, be validated.”

As it is plainly visible legalism was the only option available for the author of The Origins of Totalitarianism. The killing of Eichmann, anonymously celebrated in the streets of Buenos Aires, could not be a proper treatment of any suspect, even one whose case was “beyond dispute”. Arendt seems to acknowledge that there cannot be any chance of understanding any action outside legality because this one emanates from a political community that gives sense to every experience (Tassin, 1999: 499-507).

Accordingly the assassination of a murderer does not provide justice but revenge (Arendt, 1998: 236-243), and does not bring the outlaw into public light but condemns
him to remain forever outside human intelligibility and understanding. Furthermore, it decreases the opportunity humanity has in the long run to reconcile itself with law offenders, by not enabling it to codify, process and release a sentence in this particular event.

Arendt (2006: 265) proceeds to establish similarities with two cases occurred in the twenties, when a Jew, Shalom Schwartzbard, killed in Paris a responsible for the pogroms during the Russian civil war, Simon Petlyura, and when the Armenian Tehlirian shot to death Talaat Bey, responsible of the Armenian pogroms of 1915. Both Tehlirian and Schwartzbard “gave themselves up to the police and insisted on being tried” (Arendt, 2006: 265) because they knew that during the court procedures the crimes of Petlyura and Bey would be exposed and unanimously condemned.

But nevertheless she recognises that these schemes were done by persons who did not have their own state and legal systems, and who consequently could not have sought the prosecution from any tribunal, either national or international (Arendt, 2006: 266). She strongly rejects the hypothesis of a State developing such a plot: “…it is more than doubtful that this solution would have been justifiable in Eichmann’s case, and it is obvious that it would have been altogether unjustifiable if carried out by government agents” (Arendt, 2006: 266).

Why would have it been “altogether unjustifiable”? Because for Arendt nations are fully responsible and accountable of their decisions and should not operate in secrecy in their own territories and even more in foreign ones. Doing otherwise would imply a regression from a state where proceedings are publicly adopted in order to be known to the citizenship and to be held accountable for them to one where governmental discretion is hazardously enhanced.

But what would happen in a case where authorities considered that national security is at stake? What would Arendt say if, instead of prosecuting a criminal who does not represent a threat to public safety, the leader of a global terrorist agency could finally be exterminated? These queries will be explored in the next section of the paper.

What about the right of Israel to try the accused? As far as Arendt is concerned, Eichmann’s deeds were crimes against humanity, not only against the Jewish people, as the Israeli government and prosecution pretended them to be (Arendt, 2006: 268-269). Thus for her the only logical conclusion, one inspired by no other than her teacher and friend the German philosopher Karl Jaspers, would have been the establishment of an international tribunal like the one settled in Nuremberg after the war.

Because “…the legal nature of the crime in question was still open to dispute” (Arendt, 2006: 269), legitimacy of the trial would had been increased by transferring the case from an Israeli court to an international one. “Israel might then have had recourse to the United Nations and demonstrated, with all the evidence at hand, that the need for an international criminal court was imperative, in view of these new crimes committed against mankind as a whole” (Arendt, 2006: 270).

Since by then the UN had twice rejected proposals to consider the establishment of a permanent international criminal court (Arendt, 2006: 271) Israel had no other better choice but holding Eichmann prisoner until the UN created a special tribunal in order to
prosecute him. This would have required the setting of “…an international court in Jerusalem, with judges from each of the countries that had suffered under Nazi occupation. This would not have been enough […] but it would have been a practical step in the right direction” (Arendt, 2006: 271).

But when Israel rejected these and other proposals on the ground of, among others, political and historical reasons, related to their lack of a Jewish State for more than two millennia (Arendt, 2006: 271-272) the opportunity of a global recognition of a new criminal of an unprecedented crime went lost (Arendt, 2006: 273-274). Eichmann was tried under the frame of crimes against the Jewish people, sentenced to death, and hanged.

Was it the right class of punishment? Arendt strongly supports it. In a fictitious verdict she eloquently tells Eichmann

“…just as you supported and carried out a policy of not wanting to share the earth with the Jewish people and the people of a number of other nations – as though you and your superiors had any right to determine who should and who should not inhabit the world – we find that no one, that is, no member of the human race, can be expected to want to share the earth with you. This is the reason, and the only reason, you must hang” (Arendt, 2006: 279).

It clearly seems that for her an enemy of mankind cannot rightfully coexist with other human beings. Despite the possibility of sending him to life imprisonment and seclusion, and despite extenuating circumstances such as obedience to superior orders and the existence of the totalitarian Nazi dictatorship, the destiny of Eichmann could not be different than the one he sustained for all those he considered unworthy to live with.

II. The end of Bin Laden

Arendt did not pronounced extensively over terrorism and terrorists, so one can only attain some conclusions bearing in mind her position on the Eichmann case.

First of all, Arendt (2006: 276) labelled Eichmann hosti humanis generis, which literally means enemy of humankind and comes from legal definitions about pirates and piracy. Would it be possible to classify Bin Laden in the same way? Of course. He was the indisputable leader of an agency whose main purpose unfortunately still is the creation of chaos and destruction in countries and societies considered as enemies, and that in order to accomplish its goals kills innocent people all over the globe, disregarding age, sex, race or social class.

Like a pirate, his location was not fixed but ever changeable. Like a pirate he created terror wherever he acted. However, while piracy consists in looting and sacking countries, governments and populations all over the planet, in living from the works and efforts of others, al-Qaeda wants to harvest terror for the terror’s sake. Al-Qaeda wants to demoralise all sort of societies, Western and non-Western, by trying to prove they are right in the kind of life they have chosen, and that the others must change if they want to survive (Gray, 2003).
Regarding Eichmann’s kidnapping, which in the case of Bin Laden must translate into his localization and extermination in Pakistan, Arendt (2006: 273) was well aware that the risk inherent in an unprecedented action is its potential reappearance: “It is in the very nature of things human that every act that has once made its appearance and has been recorded in the history of mankind stays with mankind as a potentiality long after its actuality has become a thing of the past”.

Hence if she was worried only at the prospect of every country trying to repatriate criminals that left their soil (Arendt, 2006: 264), what would she say about a nation deploying a cover mission in a country that has made an agreement with the former one about joint actions in its territory? What would she say if the latter harbours a very dangerous man and shows a feeble will of tracking and capturing him?

This is undoubtedly the hardest point to clarify. Unlike Israel’s relationship with Argentina, the United States had an agreement with Pakistan that authorized some actions of the former in Pakistani soil under the presumption that they would be specifically directed against al-Qaeda’s deployment in some regions of Pakistan (Hussain, 2005; Kronstadt, 2003; Kronstadt, 2009; Obama 2011). However killing a foreign citizen in its territory while this operation is made public almost instantly throughout the world was an incident that could not be possibly foreseen in this cooperative framework.

Would this become a precedent for future analogue actions? Time can only answer this question. But from Hannah Arendt’s point of view it would have constituted a bad choice, certainly, but it also may have been the only one available. There was fear the information about Bin Laden’s location would reach one of his allies. And despite the declaration of the US President immediately after Bin Laden was shot to death (Obama, 2011), praising the cooperation and ratification of its action by the Pakistani President Zardari, there was also to consider the remote probability that his administration would have lingered on this question long enough to allow an escape of the prisoner or its rescue by the forces of the terrorist organization.

In this respect these are striking similarities with the situation Israel encountered itself regarding Argentina back in 1960. As a result the risk of not being able to capture and fully control Bin Laden if the formal and diplomatic channels were to be followed forced the US to operate on its own in this occasion.

On the subject of his trial and prosecution security matters would also be present. Given that al-Qaeda has universal presence, there would not have been any location that could be possibly considered as sufficiently secured. The court sessions would have probably taken many months, subsequently raising the risk of attacks.

Bin Laden was the charismatic leader of an international network, and he therefore enjoyed great popularity among thousands of people that identified with his cause and his modus operandi. He would certainly have had many volunteers at hand to organise kamikaze demonstrations either harming other innocents or not.

Eichmann, in contrast, was not a leader but a follower. Although he positively had a key function in the “Final Solution”, he did not take the decision to begin with the genocide.
And in 1960 only former and neo-Nazists would have felt some sympathy for his destiny, without possibly initiating any sort of disruption of the public order or any threat to human lives. Hence Bin Laden appears as a much more inconvenient prisoner than Eichmann.

Leaving aside security issues, supposing Bin Laden could have been safely captured and imprisoned, where would have been the best place to judge him? The United States would have wanted to do so in its own soil. Being the victim of the 9/11 attacks and of other terrorist acts against its personnel and facilities, it would certainly exhibit this precedents as a justification for holding Bin Laden in its own custody.

However, unlike 1960, today there is an International Criminal Court and, although its foundation is relatively recent, it has an impressive score regarding prosecution of dictators and genocide’s architects either within or without its reach (e.g. Slobodan Milosevic and Omer al-Bashir).

Would have been possible to transfer the case to the ICC? Certainly not. The US has not ratified the Statute of the Court, known as the Rome Statute, refusing the ICC jurisdiction over cases involving its nationals. Pakistan has not signed the Statute, although voting in its favour, due to some reservations (Akram, 2003). Thus none of the States involved in the question would have desired to subject themselves to the Court’s verdict.

What is more, the Government of Saudi Arabia, who also has not signed the Rome Statue, revoked Bin Laden’s nationality in 1994 (Ackman, 2001). So, supposing firstly that Saudi Arabia would have revoked its own revocation, and even if the ICC allow States that are not parties of its Statute to ask for an investigation, concerning crimes committed in their territories or by one of their nationals, it is very unlikely that also this State that is not involved with or have active participation within the Court would have accepted and even requested its intervention.

In relation to the nature of Bin Laden’s crimes there would not have been much controversy. The ICC has jurisdiction over genocide, crimes against humanity and war crimes, and can therefore prosecute acts of terrorism if they fall within any of these categories (Schabas, 2004). It can be certainly argued that Al-Qaeda’s actions constitute crimes against humanity, because for the Court they are deeds that represent a widespread or systematic attack directed against any civilian population, made by someone or something that is in full knowledge of them.

Accordingly the ICC would have been able to judge Bin Laden by its own Statute, but none of the States involved in his capture would have wanted its intervention. And bringing back security issues to the discussion, The Hague would have had an enormous degree of stress for having in custody such a problematic and perilous prisoner.

So like Eichmann, only one country mainly could have put Bin Laden on trial, i.e. the country that effectively wanted to capture him: the US. But unlike Israel, the US did not want to carry the costs and the incertitude of a trial at all costs. President Obama (2011) told Leon Panetta that he wanted either to kill or capture Bin Laden, and in that order.
Ben Gurion instructed only one of the options aforementioned, and that is what caused the difference in both cases. In favour of Obama’s dichotomy, it has to be said that Argentina in the sixties was a far more secure and stable country than nowadays Afghanistan, and Eichmann’s kidnapping would not be as risky and difficult as Bin Laden’s.

However, as Arendt pointed out in Eichmann’s case, here the law was not permitted to act, despite Obama’s intention of bringing “Bin Laden to justice” (Obama, 2011). Therefore a momentous chance to trial the foremost terrorist leader the world has ever known has been forever lost.

And one can also wonder what Hannah Arendt would have said about Bin Laden’s ending. Leaving aside the absence of a trial and a prosecution, she probably would have endorsed the death penalty as sentence. Her words, in parallel of those she uttered to justify Eichmann’s hanging, could have been written in this way:

“...just as you supported and carried out a policy of not wanting to share the earth with those you unfairly and unreasonably regarded as “infidels” – as though you and your terrorist organisation had any right to determine who should and who should not inhabit the world based on your fanatic and extremist interpretation of the Islamic creed – we find that no one, that is, no member of the human race, can be expected to want to share the earth with you. This is the reason, and the only reason, you must hang”.

III. Conclusion

The main purpose of this counterfactual comparison was to enlighten the circumstances in which Osama Bin Laden was killed, analysing them from the conceptual viewpoint Hannah Arendt developed in Eichmann in Jerusalem. In this respect it was clear that the spirit of the paper would be essentially speculative, arriving at conclusions about the present situation based in events of an entirely unrelated past.

Being this the basis of the previous reflections, their conclusions lead to reaffirm once more the importance of the international law and the supremacy of justice over violence.

Hannah Arendt had a sense for practicality. She neatly saw the advantages of killing on the spot of a problematic subject that was guilty beyond any doubt. Bin Laden’s case, as well as Eichmann’s, was far beyond dispute (Arendt, 2006: 265).

But even so she would have rejected such a dramatic initiative. She strived for a solution that would enable the law, abruptly disrupted by al-Qaeda’s terrorist schemes and deeds, to operate again (Arendt, 2006: 265). She would not have endorsed, consequently, an on-site extermination of Bin Laden, at least not by the forces entrusted with his capture.

It is difficult to determine what really happened in the firefight that lead to Bin Laden’s death. And it would be unfeasible to know what the orders of those Americans who were that night in Bin Laden’s Pakistani compound really expressed.
Those are the main limitations to this theoretical exercise. But what can be deducted from Bin Laden’s quick extermination, the lessons that can be learned from that fact are few when compared to those the Eichmann process left (leaving aside the gap of fifty years that exists between both facts) (Bilsky, 2012: 198-218).

Indeed, in the judgment celebrated in Jerusalem there were many issues at stake. How can a fugitive massive criminal be lawfully treated? How are the judges going to be selected? Will the prosecution behave in a fair way towards the defendant? Will he be allowed to display and defend his own case properly? Which facts would be considered as evidence and which would be discarded and deemed non relevant? Which sentence would be fair and appropriate to punish those kinds of crimes? Would the trial be respected by political, social and military powers?

The execution of Bin Laden left no place to these dilemmas. Al-Qaeda, among other defects, is possessed by a fanatical will and a supreme contempt for all those who do not share its values. This is a completely unreasonable and senseless attitude that can only be fought by furthering more understanding, tolerance and thinking. Therefore one can say that the event that took place last year, according to Eichmann in Jerusalem, is not helpful to promote this ideal.

Bibliography


