

PEACE & SECURITY

PAIX ET SÉCURITÉ INTERNATIONALES



12

2024



EUROMEDITERRANEAN JOURNAL OF INTERNATIONAL LAW
AND INTERNATIONAL RELATIONS



ISSN 2341-0868

DOI: http://dx.doi.org/10.25267/Paix_secur_int.2024.112

Citation: PONS RAFOLS, X., “The war in Gaza and the Israeli-Palestinian conflict: A turning point in the midst of an endless cycle of violence”, *Peace & Security – Paix et Sécurité Internationales*, No 12, 2024.

Received: 8 January 2024.

Accepted: 16 January 2024.

THE WAR IN GAZA AND THE ISRAELI-PALESTINIAN CONFLICT: A TURNING POINT IN THE MIDST OF AN ENDLESS CYCLE OF VIOLENCE

XAVIER PONS RAFOLS¹

I. INTRODUCTION - II. THE IMPACT OF THE WAR AND THE INCREASE IN INTERNATIONAL TENSIONS - III. THE FIGHT AGAINST TERRORISM IN INTERNATIONAL LAW - IV. SELF-DEFENCE IN INTERNATIONAL LAW - V. CONDITIONS FOR THE EXERCISE OF SELF-DEFENCE IN INTERNATIONAL LAW - VI. THE PLAUSIBLE VIOLATION OF INTERNATIONAL HUMANITARIAN LAW - VII. HUMANITARIAN NORMS AND THE OBLIGATIONS OF THE OCCUPYING POWER - VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY AND ACTION BY THE INTERNATIONAL CRIMINAL COURT - IX. THE INSUFFICIENT ACTION OF THE SECURITY COUNCIL ON THE WAR IN GAZA - X. THE ACTION OF THE GENERAL ASSEMBLY ON THE WAR IN GAZA - XI. HUMANITARIAN APPEALS BY THE UNITED NATIONS SECRETARY-GENERAL - XII. THE HISTORICAL-POLITICAL CONTEXT OF THE ISRAELI-PALESTINIAN CONFLICT - XIII. THE GENERAL ASSEMBLY'S POSITION ON THE OCCUPIED PALESTINIAN TERRITORIES - XIV. THE UNITED NATIONS, HUMAN RIGHTS AND THE OCCUPIED PALESTINIAN TERRITORIES - XV. THE SECURITY COUNCIL, THE OCCUPIED PALESTINIAN TERRITORIES AND PEACE INITIATIVES - XVI. CONCLUDING REMARKS - XVII. EPILOGUE: FOR A VIABLE PEACE AND A BASIC HUMANITARIAN PREMISE

¹ Full Professor of Public International Law at the Universitat de Barcelona. E-mail: xpons@ub.edu. ORCID ID: <https://orcid.org/0000-0003-0856-8947>. This work has been closed on 8 January 2024 with an analysis of the events and international reactions that have taken place up to 31 December 2023. All the resolutions and documents of the various United Nations bodies mentioned are available in open access on the UN website (<https://www.un.org/>) and, in particular, on the Official Document System ODS (<https://documents.un.org/prod/ods.nsf/home.xsp>). The jurisprudence and documents of the International Court of Justice and the International Criminal Court are also available on their respective websites (<https://www.icj-cij.org/home> and <https://www.icc-cpi.int/> respectively). All of the above websites were last consulted on 8 January 2024.

ABSTRACT: The purpose of this essay/editorial - closed on 8 January 2024 - is to formulate as fully as possible, although necessarily provisional, an approach from the perspective of International Law to the war in Gaza that began a little over three months ago, and more generally to the Israeli-Palestinian conflict that has lasted at least seventy-five years, with the creation of the state of Israel, the first Arab-Israeli war and the *Nakba* to which the Palestinian people have been condemned. In other words, this is a brief international legal approach to a moment of crisis and intensification of a historic conflict that, in these months, has been a real turning point in the endless cycle of violence that has plagued the region for decades.

To this end, this essay addresses various issues of international legal relevance in relation to the current war in Gaza, such as the conceptualisation of international terrorism; the justification of legitimate self-defence used by Israel and, in particular, the conditions required by International Law for its exercise; as well as the possible commission of serious crimes of international concern - war crimes, crimes against humanity and genocide -, the applicability of International Humanitarian Law and the call for individual criminal responsibility in this context.

This essay also analyses the response of the international community organized in the United Nations to the current war in Gaza, highlighting the insufficient action of the Security Council during these months of acute crisis, the majority reaction of the General Assembly calling for a cessation of hostilities, and the repeated and futile humanitarian appeals made by its Secretary-General.

In order to place the current crisis in the perspective of the Palestinian-Israeli conflict, there are also briefly discussed the historical and political context, in particular the results of the occupation of territories in the Six-Day War of 1967, the consistent position of the General Assembly on the Palestinian question, the United Nations action on human rights in the Occupied Palestinian Territories, as well as the Security Council's action on these Territories and the proposed peace initiatives, in particular with regard to the two-State solution.

The essay concludes with concluding remarks and an epilogue where, in view of the current humanitarian catastrophe and the protracted nature of the conflict, calling for an immediate cessation of hostilities and the release of hostages, and for the current phase of the conflict to become a genuine turning point that can be grasped as an opportunity for peace in the region.

KEYWORDS: Gaza war, International Law, Palestinian issue, International terrorism, Self-defence, International Humanitarian Law, Individual criminal responsibility, United Nations, Security Council, General Assembly, Secretary-General, Occupied Palestinian Territories, Human rights, International peace and security.

LA GUERRA EN GAZA Y EL CONFLICTO PALESTINO-ISRAELÍ: UN PUNTO DE INFLEXIÓN EN MEDIO DE UN CICLO SIN FIN DE VIOLENCIA

RESUMEN: El objeto de este ensayo/editorial -que se ha cerrado el 8 de enero de 2024- es el de formular de la manera más completa posible -aunque resulte necesariamente provisional- una aproximación desde la perspectiva del Derecho Internacional a la guerra en Gaza iniciada hace poco más de tres meses y, en general, al conflicto palestino-israelí que perdura, como mínimo, desde hace más de setenta y cinco años, con la creación del Estado de Israel, la primera guerra árabe-israelí y la *Nakba* a la que fue abocado el pueblo palestino. Es decir, se trata de una somera aproximación jurídico-internacional a un momento de crisis y de agudización de un conflicto histórico, que configura en estos meses un auténtico punto de inflexión en el ciclo sin fin de violencia que asola la región desde hace décadas.

A estos efectos, en este ensayo se abordan diversas cuestiones de relevancia jurídico-internacional en relación con la actual guerra en Gaza, como la conceptualización del terrorismo internacional;

la justificación de la legítima defensa usada por Israel y, en especial, las condiciones que exige el Derecho Internacional para su ejercicio; así como la posible comisión de graves crímenes de trascendencia internacional -crímenes de guerra, crímenes contra la humanidad y genocidio-, la aplicabilidad del Derecho Internacional Humanitario y la exigencia de responsabilidad penal individual en este contexto.

También se analiza en este ensayo la reacción de la comunidad internacional organizada en las Naciones Unidas ante la actual guerra en Gaza y, por tanto, se presenta la insuficiente actuación del Consejo de Seguridad a lo largo de estos meses de crisis aguda, la mayoritaria reacción de la Asamblea General pidiendo un cese de las hostilidades y los llamamientos humanitarios formulados vana y reiteradamente por su Secretario General.

Para situar la fase actual de crisis en la perspectiva del conflicto palestino-israelí se aborda asimismo, sumariamente, su contexto histórico-político, en particular con los resultados de la ocupación de territorios en la guerra de los Seis Días de 1967; la constante posición de la Asamblea General sobre la cuestión Palestina; la acción de las Naciones Unidas en relación con los derechos humanos en los Territorios Palestinos Ocupados; así como la actuación del Consejo de Seguridad respecto de estos Territorios y las iniciativas de paz propuestas especialmente en relación con la solución biestatal.

Por último, se formulan unas consideraciones finales y un epílogo en el que, atendiendo a la actual catástrofe humanitaria y a la perdurabilidad del conflicto, se formula un llamamiento para el cese inmediato de las hostilidades y la liberación de los rehenes y para que la actual fase del conflicto se convierta en un genuino punto de inflexión que pueda propiciar una oportunidad para la paz en la región.

PALABRAS CLAVE: Guerra en Gaza, Derecho Internacional, Cuestión Palestina, Terrorismo Internacional, Legítima Defensa, Derecho Internacional Humanitario, Responsabilidad Penal Individual, Naciones Unidas, Consejo de Seguridad, Asamblea General, Secretario General, Territorios Palestinos Ocupados, Derechos Humanos, Paz y Seguridad Internacionales.

LA GUERRE À GAZA ET LE CONFLIT PALESTINO-ISRAËLIEN : UN TOURNANT AU MILIEU D'UN CYCLE DE VIOLENCE SANS FIN

RÉSUMÉ : Le but de cet essai/éditorial - qui s'est achevé le 8 janvier 2024 - est de formuler aussi complètement que possible - bien qu'il soit nécessairement provisoire - une approche du point de vue du Droit International de la guerre à Gaza qui a commencé il y a un peu plus de trois mois et, en général, du conflit palestino-israélien qui dure depuis au moins soixante-quinze ans, avec la création de l'État d'Israël, la première guerre israélo-arabe et la *Nakba* à laquelle le peuple palestinien a été contraint. En d'autres termes, il s'agit d'une brève approche juridico-internationale d'un moment de crise et de l'intensification d'un conflit historique qui, en ces mois, constitue un véritable tournant dans le cycle sans fin de la violence qui sévit dans la région depuis des décennies.

À cette fin, cet essai aborde diverses questions de Droit International en rapport avec la guerre actuelle à Gaza, telles que la conceptualisation du terrorisme international, la justification de la légitime défense utilisée par Israël et, en particulier, les conditions requises par le Droit International pour son exercice, ainsi que la commission éventuelle de crimes graves de portée internationale - crimes de guerre, crimes contre l'humanité et génocide -, l'applicabilité du Droit International Humanitaire et l'exigence de responsabilité pénale individuelle dans ce contexte.

Cet essai analyse également la réaction de la communauté internationale organisée au sein des Nations unies à la guerre actuelle à Gaza et présente donc l'action insuffisante du Conseil de sécurité tout au long de ces mois de crise aiguë, la réaction majoritaire de l'Assemblée générale appelant

à la cessation des hostilités et les appels humanitaires lancés à maintes reprises et en vain par son secrétaire général.

Afin de replacer la phase de crise actuelle dans la perspective du conflit palestino-israélien, sont également brièvement évoqués le contexte historico-politique, en particulier les résultats de l'occupation des territoires lors de la guerre des six jours de 1967, la position constante de l'Assemblée générale sur la question palestinienne, l'action des Nations unies en matière de droits de l'homme dans les Territoires Palestiniens Occupés, ainsi que l'action du Conseil de sécurité sur ces Territoires et les initiatives de paix proposées, notamment en ce qui concerne la solution à deux États.

L'essai se termine par quelques considérations finales et par un épilogue dans lequel, compte tenu de la catastrophe humanitaire actuelle et de la durée du conflit, un appel est lancé en faveur d'une cessation immédiate des hostilités et de la libération des otages, et pour que la phase actuelle du conflit devienne un véritable tournant qui pourrait offrir une occasion de paix dans la région.

MOTS CLÉS : Guerre à Gaza, Droit International, Question palestinienne, Terrorisme international, Légitime défense, Droit International Humanitaire, Responsabilité pénale individuelle, Nations unies, Conseil de sécurité, Assemblée générale, Secrétaire général, Territoires Palestiniens Occupés, Droits de l'homme, Paix et sécurité internationales.

I. INTRODUCTION

Last year, 2023, seventy-five years after the creation of the State of Israel, the first Arab-Israeli war (1948-1949) and the *Nakba* to which the Palestinian people were then condemned, all the demons of violence and terror were unleashed - in the last quarter of the year - first in the Israeli kibbutzim and areas near the Gaza Strip, then in Gaza as a whole. A storm of anger and violence that reminded the international community that the Israeli-Palestinian conflict, and by extension the Middle East conflict, remains unresolved and, with all its intensity and global consequences, still lies at the centre of the international geopolitical stage. The year 2023 also marked the seventy-fifth anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly. Despite this anniversary, millions of people in many parts of the world continue to see this Declaration as a promise of a better life, i.e. as something far from their reach, as they continue to live in poverty or in a climate of violence. This is also the case in the Occupied Palestinian Territories.

The savage, merciless and totally unacceptable attack perpetrated by the Palestinian militia Hamas - specifically its armed wing, the Izz al-Din al-Qassam Brigades - and other Islamist or jihadist militias in the early hours of 7 October resulted in the deaths of more than twelve hundred Israeli and

foreign citizens, as well as of members of their armed forces, and dozens were injured. It was an attack that is generally described as a terrorist attack - and because of its brutality against the civilian population, I believe it should be understood as such - although from some Palestinian and Arab quarters it has also been seen as a legitimate act of resistance. In any case, the armed incursion, accompanied by the firing of dozens of rockets, resulted in this high number of victims, killed in many cases with barbarity and inhuman cruelty, including children, with burnt houses and corpses, and in some cases with evidence of rape and sexual abuse. Images taken by the attackers themselves and from security cameras, as well as direct testimony, clearly show that there was cruel and brutal violence against the residents of the kibbutzim in the area and against the young participants in an electronic music festival that was taking place near the Gaza Strip. As a result of the attack, more than two hundred people, including Israeli and other soldiers and civilians, were also kidnapped and held hostage in the Gaza tunnels.

The indiscriminate massacre - the worst attack in Israel's seventy-five-year history - provoked a kind of collective traumatic shock and an unprecedented political and social reaction in Israel, as did the scale of the brutal, fanatical and violent attack, which instantly shattered the Israeli public's perception of its security, of Israel's military and technological superiority in the entire region, and of the myth of its intelligence services (Shin Bet and Mossad). The immediate incorporation of other political forces into the right-wing government of Prime Minister Benjamin Netanyahu and a certain closure of the Israeli ranks in the face of the magnitude of what had happened subsequently led to the complete demobilisation of the broad protests by Israeli citizens who had been clamouring for months against the illiberal shifts of the government that emerged from the parliamentary elections of November 2022, the most right-wing in Israel's recent history. The return to power of the Likud party, led by Netanyahu, was the result of a coalition with various ultra-right, ultra-nationalist and ultra-orthodox parties, forming a very right-wing and extremist government. A government that, in addition to ruling out any negotiation or future political solution to the conflict with the Palestinians, promoted measures that could call into question the independence of the judiciary and that could, to a large extent, serve to protect Netanyahu himself from the judicial proceedings for corruption that had been initiated against him.

The deadly Israeli military response - angry and vengeful - included rocket fire and massive bombardment of the entire Gaza Strip and, shortly afterwards - starting on 27 October - a ground incursion by the Israeli Defence Forces (IDF) - known as Tsahal - which, with a fragile six-day ceasefire for the exchange of a few dozen hostages - mainly women and children - for Palestinian prisoners, has continued with no end in sight. The intensity of the Israeli siege of the entire Gaza Strip and the deadly Israeli air and ground assault to end Hamas - politically and militarily - and the chances of a future repetition of the 7 October attack have caused utter devastation, an absolutely intolerable number of Palestinian civilian casualties - more than twenty-one thousand so far, including more than eight thousand children -, thousands injured, with hundreds or thousands of corpses still under the rubble, as well as the destruction of hospital facilities and the total blockade of a narrow territory of barely 365 square kilometres, where more than two million two hundred thousand people lived as if in an open-air prison. With an absolutely dehumanising perspective, an Israeli authority described the Palestinians as human animals, which indicates the tenor of the response and the mood.

In this respect, it seems clear to me that the objective of putting an end to the political and military power of Hamas, which is responsible for the barbaric attack carried out, cannot in any way and under any circumstances justify a humanitarian catastrophe such as that suffered by the people of Gaza. Moreover, despite what the Israeli authorities say, the continued lethal military action is hampering the chances of negotiations to free the hostages and putting their lives at risk. In addition, in the rest of the Palestinian territories occupied by Israel in 1967 - the West Bank and East Jerusalem - Israeli military control and violent repression of the Palestinian population is intensifying, with dozens of deaths, in some cases directly caused by the fanatical settlers of Israeli settlements and Jewish extremists. In addition, more than 200,000 Palestinian workers in the West Bank have been denied daily access to Israel and the settlements, which has also had a profound impact on the ailing Palestinian economy. In short, the high pre-war tensions in Israel and the Palestinian cities of the West Bank are growing day by day in a diabolical and inexorable spiral of action/reaction that has been going on for decades in the Occupied Palestinian Territories.

From the north to the south of the Gaza Strip - from Gaza City and the Jabaila refugee camp to the towns of Khan Younis and Rafah - the Israeli armed action has also led to the forced displacement of hundreds of thousands of Gazans - a new and ominous *Nakba*, for the time being inside the Gaza Strip, for more than 85% of the population - the collapse of the health system in Gaza and the blockade of supplies and international aid, which has further deteriorated the already deplorable living conditions of the Gazans and caused an enormous humanitarian tragedy. As a result, no one is safe and there is now nowhere in Gaza that is safe, either for Gazans or for international humanitarian organisations. This situation has had a particular impact on the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), its facilities and its staff, especially local staff.

I have no doubt that if the attack carried out by Hamas and other Islamist militias demonstrated the will to annihilate and dehumanise Jews on the part of the Palestinian and Islamist groups responsible for the attack, the Israeli armed action is also characterised by this dehumanisation of the Gazans and, by extension, of the entire Palestinian people. A dehumanisation which, in both cases, is absolutely condemnable and reprehensible.

If these, in a nutshell, are the facts that triggered the 2023 crisis in the already almost perpetual Israeli-Palestinian conflict, it is now appropriate to make a legal assessment in terms of International Law and to place these facts - the heinous acts committed by Hamas and the devastation of the Gaza Strip caused by the Israeli armed forces - in their context as accurately as possible. It is true that the situation in Israel and Palestine since 1948 - and the different interpretations that can be derived from it - offers a complex factual and legal landscape, which may in part make it difficult to apply international norms to the case, but I understand that there is no doubt about their applicability in their essential parameters. To this end, I will also address the current reaction of the international community and the basic legal principles established in international institutions in relation to the Israeli-Palestinian conflict.

It is also true that for seventy-five years there has been a wealth of international legal doctrine devoted to the so-called Palestine question, as well as a multitude of resolutions, decisions and reports by international organisations, especially the United Nations, and even international jurisprudence on the subject. All this demonstrates the enormous complexity and the many facets

of a conflict as multifaceted as the one we are dealing with. In this sense, the aim of these lines must necessarily be much more limited - due to the vastness of the subject and in order to be consistent with the limited purpose of this already extensive editorial note - and, although I draw on many of these sources of knowledge, I only intend to briefly approach a moment of crisis and worsening conflict - which must end immediately - that constitutes a turning point in the endless cycle of violence that is devastating the region. In doing so, I agree with the condemnation of the situation in Gaza and the demand for an immediate and unconditional ceasefire contained in the [Declaration of Professors of International Law and International Relations on the Situation in Gaza of 2 November 2023](#), supported by the Spanish Association of Professors of International Law and International Relations (AEPDIRI) and signed by dozens of its members.

II. THE IMPACT OF THE WAR AND THE INCREASE IN INTERNATIONAL TENSIONS

Even the administration of the United States - Israel's traditional ally and constant military supporter - has called on the Israeli government to be more restrained in its armed response and to protect civilians, while continuing to supply arms and, above all, to offer Israel political and diplomatic support. In doing so, the United States is reminding itself that a violent, vindictive and disproportionate response is never the right way forward, as its experience in Afghanistan after the 9/11 attack made clear. What is certain, however, is that this crisis has also deepened political division and polarisation in the United States, also with a view to the presidential elections in November 2024, particularly affecting President Joe Biden's Democratic Party, which is losing strength and support.

In the European Union, which is equally divided, after the immediate solidarity with Israel as a result of the attack, the devastating images of the Israeli military action in the Gaza Strip have led some governments and a large part of public opinion to increasingly question the Israeli reaction - which has thus lost its narrative - and to call for an end to this terrible, endless violence against the Palestinians. Faced with these difficulties stemming from the different political positions present, the European Council itself, at its meeting on 26 October ([Conclusions, document EUCO 14/23](#)), expressed "its gravest concern for the deteriorating humanitarian situation in Gaza and

calls for continued, rapid, safe and unhindered humanitarian access and aid to reach those in need through all necessary measures including humanitarian corridors and pauses for humanitarian needs”. However, at its next meeting on 15 December, the European Council, demonstrating these major internal disagreements, was unable to reiterate its call for humanitarian pauses or, moreover, for an immediate and unconditional ceasefire, and confined itself to holding an in-depth strategic debate on the Middle East, as the final declaration succinctly states ([Conclusions, document EUCO 20/23](#)).

Many countries in the so-called Global South have also condemned the humanitarian situation in Gaza and called for humanitarian truces or ceasefires. Other countries, such as Russia and China, while insisting on this perspective, are trying to play their trump cards in favour of their geopolitical and global interests by presenting themselves as reliable partners of the Arab world, with some ambiguous positions. These states are doing this by questioning the now classic Western double standards, taking into account the West’s reaction to the war in Ukraine. Moreover, Russia has so far benefited from the crisis by diverting attention and ensuring that the war in Gaza continues to overshadow its invasion of Ukraine and further divide international aid and arms supplies to Ukraine. Additionally, in some places, such as the United States and Europe, the crisis has also led to a rise in both anti-Semitic and Islamophobic acts, in a political context where far-right forces have gained support in several recent elections.

Moreover, the possibility of a contagion effect in the region and the crisis spreading across the Middle East in a dramatic spiral of violence remains ever present. On the Lebanese border, there have been several armed clashes with casualties between the Israeli army and Hizbollah, the Iranian-backed Islamist militia - like Hamas - that controls southern Lebanon. From Yemen, the Houthi rebel movement - also backed by Iran - has fired rockets at Israel, harassed Israeli cargo ships in the Bab-el-Mandeb Strait, seized a merchant ship belonging to Israeli shipowners and held its crew hostage, and put international shipping and trade at high risk by forcing shipping companies to change their routes. As a result, the United States - which, in recent days and in this context, is already fighting the Houthis - is trying to push for an international military mission to protect naval traffic in the Red Sea.

Tensions are high throughout the region and protests against the brutality of the Israeli offensive are ongoing. Hence the fear of an unpredictable escalation of the conflict, in a context in which the US-sponsored process of the so-called Abraham Accords to normalise Israel's relations with various Arab countries - including Saudi Arabia - has come to a screeching halt. This was a process of political normalisation which certainly blurred Palestinian claims and which Hamas, with Iranian support, also sought to torpedo with its attacks.

III. THE FIGHT AGAINST TERRORISM IN INTERNATIONAL LAW

No one doubts that the state of Israel has every right to defend itself in the face of the appalling attacks of 7 October. Indeed, it is the responsibility of all governments - in fact, it is an obligation or duty rather than a right - to ensure the security of their citizens and to protect them from threats and attacks such as these, which the Israeli government and many other governments describe as terrorist attacks. In this sense, Israel, as well as the European Union, the United States and other states, consider Hamas to be a terrorist group, even though, as a political and social movement, as well as an armed group, it has been the *de facto* governing authority in the Gaza Strip since 2007. It should also be noted that in recent years the Israeli political management of the conflict has tolerated external funding for Hamas and used the militia's leadership in Gaza to divide the Palestinians and further discredit the more moderate Palestinian National Authority (PNA). This means that even with the intra-Palestinian political dispute between the different factions - Hamas in Gaza and Al-Fatah, the main component of the Palestine Liberation Organisation (PLO) in the West Bank, which maintains control of the PNA - the Islamist militia could also be seen as a legitimate representative of the Palestinian people, and many Palestinians and Arab countries take this position.

In this sense, I believe that states should use appropriate police, intelligence, financial and judicial mechanisms to defend themselves against terrorist attacks, including potentially the armed forces in support and surveillance functions when the threat level is very high. At all times, they must respect the human rights enshrined in domestic and International Law and apply the appropriate criminal judicial procedures. This has been and is being done in Spain and in other European countries with institutional normality. Moreover, in addition

to the constant and unequivocal international condemnation of terrorist acts, there is broad international cooperation in the fight against terrorism, which is enshrined in international legal instruments - universal and regional -, as well as in various strategies and numerous political declarations.

The truth is, however, that there is no international consensus on the concept of international terrorism itself, as this depends on the political positions of different states, political instrumentalisation and the interests involved. Depending on the political interpretations that are made, those who are freedom fighters for some are terrorists for others; or even, over time, depending on one or the other, those who were freedom fighters can end up as terrorists or vice versa. There is no doubt in my mind that the unresolved Middle East conflict and the situation of the Palestinian people play an important role in this contradiction of political positions on the very notion of international terrorism. All this has led to the fact that the Sixth Committee of the General Assembly of the United Nations is still working - with little prospect of success otherwise - on completing the process of drafting a comprehensive convention on international terrorism and convening a high-level conference under the auspices of the United Nations, an item that has been on the agenda of the General Assembly since the end of the 1990s.

Some of these legal instruments and political strategies against international terrorism emerged directly in the 1970s as a reaction to the armed struggle of various Palestinian armed groups, with such actions that resonated in the media as the hostage-taking and break-in at the Munich Olympics in 1972, the hijacking of various aircraft and attacks on diplomatic missions. Whatever the case, the phenomenon of international terrorism has continued to multiply since then, and the attacks of September 11 in the United States and March 11 in Spain are two tragic embodiments of its scale. Thus, even in the absence of a comprehensive definition of international terrorism, the causes and effects of the terrorist phenomenon are manifold and go far beyond the Palestinian question, although the latter is still very much present in this context.

In the aftermath of the 7 October attacks, the Israeli government has repeatedly stated that its armed action is intended to wipe out Hamas once and for all, both politically and militarily, but as I believe history has amply demonstrated, this is unlikely to happen. The war on terror launched by the United States in 2001, after 9/11, has convulsed Afghanistan, Iraq and the

entire Middle East, and has neither brought stability, democracy and progress, nor succeeded in eradicating terrorism. In my opinion, every Israeli massacre in the Gaza Strip is also an incentive to strengthen armed groups of Palestinian fighters or other Islamist fundamentalist groups, both in Gaza and elsewhere in the Middle East. In this sense, it seems obvious to me that the last thing the fight against terrorism should do is fuel more possible future terrorism. In other words, it is a clear and pertinent axiom that violence always breeds more violence, and although this is unfortunately where we are now, I believe it is necessary to put an end to this infernal dynamic.

In my opinion, rather than a war on terrorism, the fight against international terrorism should be based, on the one hand, on strengthening cooperation between States in the police, judicial, financial and intelligence fields, without calling into question human rights and fundamental freedoms. On the other hand, the fight against international terrorism should also have broad international political support and should be placed under the auspices of international organisations such as the United Nations and even its Security Council, insofar as terrorist acts constitute a threat to international peace and security. Last but not least, the fight against international terrorism should also be a fight that addresses its root and underlying causes, i.e. that involves the resolution of major political problems, such as the Israeli-Palestinian conflict, and that also addresses major economic and social problems in a world with huge pockets of poverty and misery.

This is essentially the perspective of the United Nations in its Global Counter-Terrorism Strategy, adopted in 2006 (General Assembly resolution 60/288 of 20 September 2006) and reviewed by the General Assembly every two years. In its latest and most recent update (General Assembly resolution 77/298 of 22 June 2023), the General Assembly, on the one hand, reaffirmed the four pillars of this strategy, which should be implemented in an integrated and balanced manner. These pillars are: measures to address conditions conducive to terrorism; measures to prevent and combat terrorism; measures to build the capacity of States to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. On the other hand, the General Assembly also underlined, among other things, the “significance of

a sustained and comprehensive approach, including through stronger efforts, where necessary, to address conditions conducive to the spread of terrorism, bearing in mind that terrorism will not be defeated by military force, law enforcement measures and intelligence operations alone”.

In the light of this international approach, it is abundantly clear that the harsh and deadly Israeli armed offensive against Gaza is not only completely inconsistent with the parameters of the UN Global Counter-Terrorism Strategy, but also, in my view, unlikely to achieve its objectives. Moreover, it will in all likelihood lead to greater instability in the entire region, will not guarantee the security of the State of Israel and will inevitably exacerbate threats to international peace and security.

IV. SELF-DEFENCE IN INTERNATIONAL LAW

Israel's self-defence argument, which is also supported by International Law, deserves at least a brief consideration. The right of self-defence, whether individual or collective, exists in international law and is explicitly enshrined in Article 51 of the United Nations Charter. It is an inherent right of states which applies in the event of an armed attack - i.e. aggression - against a state by another state.

With regard to aggression - although this is also a concept on which it is difficult to reach consensus - the General Assembly in 1974 defined aggression as the use of armed force against the sovereignty, territorial integrity or political independence of other states, clearly adding that the being the first to use such armed force constitutes *prima facie* evidence of an act of aggression (General Assembly resolution 3314 (XXIX) of 14 December 1974). The definition also included what might be called indirect aggression, that is, the sending by a state or on its behalf of armed bands, irregular groups or mercenaries to commit acts of armed force against another state.

Although Israel and many governments of other states have regarded the Hamas attacks of 7 October as acts of terrorism, they could perhaps - given the scale of the attacks and the large number of victims - be regarded as an armed attack within the meaning of Article 51 of the Charter. This is what the same states have done by supporting Israel's action on the basis of legitimate self-defence, which, as I shall show immediately, is ultimately contradictory. This was also the case - although also very controversial - with the attacks of

9/11, which were considered armed attacks within the meaning of Article 51 of the Charter. In this context, the Security Council itself reaffirmed, through Resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, the inherent right of individual or collective self-defence recognised in the Charter of the United Nations.

Even accepting the argument of an armed attack, I do not think it is at all clear that this armed attack - alleged or not - can be attributed to a state. The Palestinian armed groups responsible for the attack came from the Gaza Strip, which itself is part of the Occupied Palestinian Territories, seized by Israel in 1967 and partially under the control of the PNA since the Oslo Accords of 1993. It is true, however, that since the Palestinian elections of January 2006, since 2007 the Hamas-led Gaza Strip has ultimately bypassed the governmental supervision of this Authority, which is based in Ramallah, the Palestinian administrative capital in the West Bank, and is led by Al-Fatah.

At all events - even with the legal status of the Occupied Palestinian Territories, in accordance with International Law -, I understand that this is a state, Palestine, which is recognised as such by many other states - some 140 states - and which has been recognised as a non-member observer state at the United Nations since 2012 (General Assembly resolution 67/19 of 29 November 2012), but which is not recognised as such by Israel, the state that was the victim of the armed attack of 7 October. This context and the legal status of the Occupied Palestinian Territories make it very difficult, in my opinion, to consider Hamas and the other Islamist militias responsible for the armed attack as irregular groups sent by or on behalf of another state, which would internationally justify armed action on the grounds of self-defence.

In other words, the armed attack cannot be attributed to a particular state unless the Gaza Strip is considered a state or autonomous entity distinct from the state of Palestine and these acts could be internationally attributed to it, which is not the case. Moreover, although Israel completed the withdrawal of its settlers and armed forces from the Gaza Strip in August 2005, Israeli forces have continued to besiege and fully control Gaza's borders since then - as indeed they have continued to do throughout the Occupied Palestinian Territories since 1967 - and have now taken direct control of the Strip with their deadly ground offensive.

In this vein, if the actions of Hamas and other Palestinian militias are classified as acts of terrorism and cannot be attributed to a particular state, it is also questionable whether the use of force can be justified by the institution of the inherent right of states to legitimate self-defence. On the one hand, because this right is triggered, as I have indicated, by an armed attack coming directly or indirectly from another state. On the other hand, as I have also indicated, because other measures must be taken by states - police, judicial, intelligence and financial measures - to combat terrorism in their own territory or in territories under their effective control, as in this case. Finally, it should also be noted that it is the people under foreign occupation who, in accordance with international law, have the right to resist occupation in order to exercise their right to self-determination.

The International Court of Justice (ICJ) ruled along these lines in its 2004 Advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory. The ICJ held at that time that if the threat for the construction of the wall came from within the Occupied Palestinian Territory - and not from outside this territory - the argument of legitimate self-defence for such construction could not be justified, as Israel claimed (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004*, p. 136, para. 139). It is true that the current situation is different from that which arose in 2004 with regard to the wall, since Israel withdrew its permanent presence from the Gaza Strip in 2005, which was not the case in the rest of the Occupied Palestinian Territory, the West Bank and East Jerusalem. But the argument of the irrelevance of self-defence in this case is also supported by the control and blockade that Israel has maintained over the territory of the Gaza Strip since its occupation.

V. CONDITIONS FOR THE EXERCISE OF SELF-DEFENCE IN INTERNATIONAL LAW

In any case, in International Law, self-defence is essentially the right of a state to use the necessary force to repel an armed attack by another state, for the duration of the attack and by means proportionate to the attack. In other words, self-defence must be necessary, immediate and proportionate. Necessary and immediate in the sense that, given the attack suffered, the use of force is necessary precisely to stop and repel the aggression of which one is the victim, but only to this extent. In my opinion, it must be understood

that the Israeli armed response to the aggression suffered was necessary and immediate in the sense of containing, suppressing and expelling the aggressors from their territory. That is to say, during the moments of the attack and until the expulsion of the attackers from Israeli territory was completed, as long as this was carried out with due respect for humanitarian and human rights norms.

What is beyond doubt, in my view, is that even with full awareness of the scale and violence of the attacks by Hamas and the other Islamist militias on 7 October, the subsequent deadly and prolonged Israeli armed response in the Gaza Strip does not fit within any acceptable parameters of proportionality. The necessary proportionality in the form and intensity of the self-defence action, i.e. the defensive response, cannot in any way be reconciled with the three months - so far - of massive, indiscriminate attacks on the Gaza Strip, causing its total devastation. Not only because of the magnitude and absolute disproportion of the number of victims and the damage to infrastructure, buildings and civilian facilities, but also because it was a full-scale invasion of a territory that, although occupied by Israel in 1967 and still besieged and controlled by it, as well as under its surveillance, was not and is not part of the territory of the internationally recognised state of Israel.

What is happening in Gaza - and statements by Israeli leaders, starting with its President and Prime Minister, have repeatedly confirmed this - looks more like an act of armed reprisal - an act of pure revenge - for the attack and the consequent number of victims. In this sense, and as I have already indicated, I believe that history clearly demonstrates that reprisals - or collective punishment - is not only profoundly unjust because it affects innocent people, but that it is also totally ineffective, beyond satisfying the thirst for revenge.

In the same vein, it should also be pointed out that, from the point of view of International Law, legitimate self-defence cannot, under any circumstances, include the right to exercise armed reprisals. Indeed, one of the integral elements of the principle of International Law that establishes the prohibition of the use or threat of force is precisely the prohibition of armed reprisals. This is stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970) when, in developing the principle of the prohibition of the

threat or use of force, it states that “States have a duty to refrain from acts of reprisal involving the use of force”.

By the same token, it is clear to me that, even if one accepts the arguable justification of self-defence, the exercise of self-defence must be governed by proportionality and cannot under any circumstances be unrestricted in International Law. Thus, when the draft articles on the international responsibility of States for internationally wrongful acts (annexed to General Assembly resolution 56/83 of 12 December 2001) provide for self-defence as one of the grounds for excluding wrongfulness, they also establish its limits. In addition to stating that it must be “a lawful measure of self-defence taken in conformity with the Charter of the United Nations” (Article 21), Article 26 of the draft states that the wrongfulness of “any act of a state which is not in conformity with an obligation arising under a peremptory norm of general international law” cannot be excluded, which, as we shall see, is the case with respect to the fundamental rules of International Humanitarian Law.

Similarly, the same draft articles provide that states may take countermeasures to exercise responsibility for wrongful acts of other states, but Article 50(1) provides that countermeasures shall not affect: “(a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations; (b) Obligations for the protection of fundamental human rights; (c) Obligations of a humanitarian character prohibiting reprisals; (d) Other obligations under peremptory norms of general international law”. In the light of what is happening in the Gaza Strip, it seems that none of these limitations - which, although they refer to countermeasures, can be understood as being of a general or fundamental nature - have been taken into account in the Israeli armed response to the attacks of 7 October.

Finally, self-defence within the meaning of Article 51 of the Charter should also be characterised by its limited nature, since measures taken in self-defence must be immediately communicated to the Security Council. As this Article 51 makes clear, action taken in self-defence in no way affects the authority and responsibility of the Security Council to take at any time such action as it deems it necessary to maintain or restore international peace and security. However, as we will see below, attention should be drawn to the inaction and deadlock of the Security Council, which has once again failed to act on the situation and has so far only been able to adopt two insufficient resolutions on

the humanitarian crisis in Gaza, calling for a humanitarian truce and requesting access for humanitarian aid.

VI. THE PLAUSIBLE VIOLATION OF INTERNATIONAL HUMANITARIAN LAW

The attacks carried out by Hamas, in addition to targeting Israeli military units, were primarily directed against the civilian population in the areas surrounding the Gaza Strip and, as I have said, were characterised by their brutality and violence and clearly constituted violations of International Humanitarian Law and International Human Rights Law. The indiscriminate killing of men, women and children, the storming of homes, the killing and harassment of survivors of the music festival, the torture and ill-treatment, the rape and sexual abuse, and the taking of hostages - in this dramatic situation for three months now - are clearly unlawful acts under all domestic and International Law, whether or not there is an armed conflict. The very images captured by the assailants and their fervour and enthusiasm in committing the crimes and taking the hostages are sufficient evidence of the magnitude and seriousness of the acts committed. Consequently, those responsible, both the direct perpetrators and the masterminds, will inevitably have to answer for their crimes before national or international courts.

As I have already indicated, the Israeli armed response during these three months with no end in sight - at the time of closing these pages - has included the indiscriminate bombardment of the Gaza Strip and the refugee camps there, the massive destruction of residential buildings and all kinds of civilian facilities and infrastructure, including attacks, bombings and forced evacuations of health centres, with more than twenty-one thousand deaths to date. The civilian population has been forced - bordering on ethnic cleansing at the very least - into massive displacement into southern Gaza, again without any security guarantees, and left to die of hunger and thirst as the entry of food and humanitarian aid has been restricted. Militarily, the IDF has deliberately pursued a strategy of risk transfer, avoiding casualties in its own ranks - although there have been some - and inflicting disproportionate casualties on Gaza's civilian population. In this context, the casualties among Hamas militiamen and the destruction of their tunnels and support structures represent a minority of military actions alongside the scale of humanitarian devastation. Moreover, the humiliating treatment of the hundreds of Palestinians detained by the

Israeli army does not seem to respect the humanity and dignity with which detainees should be treated in the framework of a democratic internal order or prisoners in the context of an armed conflict.

This brief - and by no means exhaustive - overview of events in both Israel and Gaza is, in my view, sufficient to allow me to conclude that serious war crimes and crimes against humanity have been committed in Israel and Gaza in recent months. They can be considered war crimes because the actions described in summary form clearly constitute violations of the rules of International Humanitarian Law on the conduct that should govern both the armed forces of a state and irregular armed groups in the context of armed conflict. They must be considered crimes against humanity because the widespread, systematic, large-scale and continuous targeting of civilians, whether at the kibbutzim and the music festival or later throughout the Gaza Strip, constitutes the essential core of this crime, and the evidence speaks for itself.

Although it is more difficult to prove, one could plausibly even speak of genocide or genocidal intent, both in the sense that the actions of Hamas and the Palestinian armed militias were aimed at the annihilation of Jews simply because they are Jews, and in the sense that the lethal actions of the Israeli forces - despite some statements that they had tried to avoid civilian casualties - demonstrated a desire to exterminate all or part of the Palestinian population of Gaza. The forced eviction of the Gazan population or their hypothetical expulsion from the Gaza Strip are also clear aspects in this regard. This could also be inferred from the deliberate and dehumanising nature of the statements and policies of Hamas, as well as the statements of many Israeli politicians, one of whom went so far as to speak of dropping an atomic bomb on Gaza.

This was certainly the understanding of the Republic of South Africa, which on 29 December 2023, in connection with the ongoing events in the Gaza Strip, filed before the ICJ an Application instituting proceedings against Israel for alleged violations by Israel of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide (*UNTS*, Vol. 278, 1951, I-1021). In its Application, South Africa was of the view that, in particular, since 7 October 2023, Israel had failed to prevent genocide and had failed to prosecute direct and public incitement to genocide, and had engaged in, is engaging in and risks further engaging in genocidal acts against the

Palestinian people in Gaza Strip. The application, based on Article IX of the Genocide Convention - to which both Israel and South Africa are parties - also included a request for provisional measures to “protect against further, severe and irreparable harm to the rights of the Palestinian people” and to “to ensure Israel’s compliance with its obligations under the Genocide Convention not to engage in genocide, and to prevent and to punish genocide”. I understand that if the ICJ were to rule on provisional measures in the coming days or weeks - as it did, albeit without practical effect, in 2022 in relation to Ukraine’s claim against Russia - the impact on Israel’s reputation and international image would be disastrous, especially and paradoxically given the recent history of the Jewish people.

VII. HUMANITARIAN NORMS AND THE OBLIGATIONS OF THE OCCUPYING POWER

In this context, additionally, there is also no doubt that we are facing an armed conflict that should be considered an international armed conflict, since Article 1.4 of the Additional Protocol I to the 1949 Geneva Conventions of 8 June 1977 (*UNTS*, Vol. 1125, 1979, I. Nos. 17512-17513) states that armed conflicts in which peoples are fighting against colonial domination, foreign occupation or racist regimes are to be considered international conflicts. Thus, at least since 1967, there has been a situation of foreign occupation of the Palestinian Territories, which is completely illegal from the point of view of International Law and which determines the existence of an international armed conflict.

Moreover, even before the adoption of the four Geneva Conventions of 1949 (*UNTS*, Vol. 75, 1950, I. Nos. 970-973), the application of the so-called *si omnes* clause, which constituted a clear limitation of humanitarian rules in the sense that they would only apply if all belligerent parties were also parties to the relevant conventions, had already been terminated. For almost one hundred years, the general principle of International Humanitarian Law has been that humanitarian rules apply “in all circumstances”, whether or not the parties are parties to the conventions. It should be noted that while both Israel (since 1951) and Palestine (since 2014) are parties to the Four Geneva Conventions of 12 August 1949, only Palestine is a party to the Additional Protocols I and II of 1977 (since 2014 and 2015 respectively). In other words, no matter how cruel, savage and ruthless the attacks by Hamas and other Islamist militias have

been, Israel remains internationally bound and should also abide by the norms of International Humanitarian Law in all cases and circumstances. Indeed, a basic premise of this area of International Law is that the war crimes of one side do not, under any circumstances, justify those of the other.

In essence, these humanitarian norms - and in particular Article 3 common to the four 1949 Conventions - also establish general principles that are fundamental to limiting the impact of armed conflict. These basic principles can be summarised as the principles of distinction, precaution and proportionality. That is, the principle of distinction between civilians and combatants, and between civilian objects and military objectives; the precautionary principle to minimise the loss of civilian life; and the principle of proportionality and military necessity, from which derives the prohibition of unnecessary damage and suffering, i.e. without military justification. All this is also part - and can be summarised - of what has been known since 1899 as the Martens Clause, in the sense that both the civilian population and the belligerents must at all times remain under the safeguard and rule of the principles of the law of nations, as arises from the established customs between civilised nations, from the laws of humanity and from the dictates of public conscience.

In other words, the main purpose of the Geneva Conventions is to protect, in the context of armed conflict, the weakest members of society: children, the elderly and the sick, civilian men and women, wounded combatants and prisoners of war. This is a demand on all parties to the conflict and, particularly in the light of what is currently happening in Gaza, a peremptory demand that must be addressed to Israel. It seems clear that neither the incursion by Hamas and other Islamist militias nor the Israeli attacks on Gaza appear to have respected these elementary considerations of humanity, this necessary distinction between civilians and combatants, or the prohibition of superfluous or unnecessary harm. As the ICJ pointed out in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, all states must comply with these fundamental norms - these elementary principles of humanity - “because they constitute intransgressible principles of international customary law” (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996*, p. 226, para. 79).

Furthermore, as an occupying power, Israel has a special responsibility to comply with international humanitarian law in the Occupied Palestinian

Territory, in particular with regard to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949. Although Israel has consistently maintained that this Convention is not applicable *de jure* in these territories because they were not previously under Jordanian sovereignty, the ICJ in 2004 strongly considered the applicability of this Convention to all Palestinian territories located east of the Green Line prior to the 1967 conflict, and assumed that it also applies to the Gaza Strip (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports* 2004, p. 136, para. 101).

According to the Convention, Palestinians living in the Occupied Palestinian Territory are protected persons and the occupying power - Israel - must in all circumstances ensure the protection, security and well-being of the population living under occupation. In this sense, despite occupation and war, the Convention requires that the civilian population be protected from all forms of violence and be able to live as normal a life as possible in accordance with their own laws, culture and traditions. Until 7 October, Israel had to comply with these obligations to the extent that it at least had absolute control over access to the territory of the Gaza Strip, and since the start of the armed ground action it has to continue to comply with them because it has effective direct control over the territory.

Moreover, under International Law, even in the event of armed conflict, the general protection afforded by human rights conventions, many of which Israel is a party to, does not cease. It is therefore clear that the mass forced exodus of Gazans, the indiscriminate bombardments and attacks, the blockade of international aid and, in general, the current catastrophic humanitarian situation in Gaza are in no way consistent with the proper fulfilment of the international obligations of Israel, the occupying power.

In short, I do not think it is necessary to go into any further detail to show the clear contradiction between these humanitarian legal requirements and what has been happening in Gaza over the last three months. Suffice it to point out that these violations of international obligations entail the international responsibility of the state to which they can be attributed. In this case, insofar as they are currently being committed by the IDF, which is an organ of the state, the state of Israel is internationally responsible for these internationally

wrongful acts, over and above the continuing violation which constitutes the maintenance of the situation of occupation.

Moreover, as grave breaches - by their flagrant or systematic disregard - of obligations under peremptory norms of general International Law, they give rise to a regime of aggravated international responsibility, in which - in accordance with Article 41 of the aforementioned draft articles on the international responsibility of states for internationally wrongful acts - all states must cooperate to put an end to these breaches, and no state may recognise as lawful a situation created by these grave breaches, nor provide aid or assistance to maintain that situation. This is an international obligation which, I insist, applies not only to Israel but to all states. Be that as it may, the undeniable fact that it is difficult to make this international responsibility of states effective does not mean that it should cease to be noted and demanded.

VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY AND ACTION BY THE INTERNATIONAL CRIMINAL COURT

In any case, and in connection with all this, it should also be pointed out that for all these crimes under International Law, the perpetrators, i.e. the persons who commit them and the persons who order and tolerate them, whether civilian or military, are individually criminally responsible, without any distinction based on their official position. This individual criminal responsibility may be exercised in accordance with national criminal law or within the framework of international bodies. In the latter sense, as is well known, the Rome Statute establishing the International Criminal Court (ICC) entered into force in 2002 (*UNTS*, Vol. 2187, 2004, I-38544), to which important and relevant states, such as the United States, Russia, China and India, are still not parties, nor is the State of Israel. However, after some earlier and controversial recognitions of the ICC's jurisdiction, the State of Palestine finally acceded to the Rome Statute on 2 January 2015, explicitly stating in its declaration the date of 13 June 2014 as the date from which it accepts the Court's jurisdiction.

Thus, with the entry into force of the Rome Statute for Palestine on 1 April 2015, the ICC acquired jurisdiction over the crimes defined in Articles 6, 7 and 8 of the Statute - genocide, crimes against humanity and war crimes - committed in whole or in part on the territory of the new state party - in this

case, Palestine - and over these crimes when committed by nationals of that state party - in this case, Palestinians.

In other words, and in accordance with Article 25 of the Rome Statute, this means that the Court - even if it is complementary to national criminal jurisdictions - may have jurisdiction over possible crimes committed by Israeli soldiers or civilians, and by Palestinian combatants and civilians, on the territory of Palestine, on the one hand, either because they committed these crimes alone, with others or through others, or because they ordered, proposed or induced the commission of these crimes, whether completed or attempted, or because they were accomplices or accessories or participated in the commission or attempted commission of these crimes in any manner, including by providing the means for their commission. On the other hand, and in the same vein, I emphasise that this means that the Court may also have jurisdiction over possible crimes committed in the territory of Israel - for example, on 7 October - by Palestinian militants, combatants and civilians, or by the Palestinian leaders who ordered or induced them, or by those who acted as accomplices or accessories or who in any way participated in the commission or attempted commission of the crimes. In any event, obviously, provided that there is evidence and proof of the individual guilt of the indicted persons in a full, lawful trial before a court of law.

The applicability of the Rome Statute is therefore undisputed and, as a result, the Office of the Prosecutor was able to initiate the opening of a preliminary examination on 16 January 2015. Furthermore, the Decision of Pre-Trial Chamber I on the “Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine”, of 5 February 2021 (ICC-01/18-143) confirmed that the ICC can exercise its criminal jurisdiction over the situation in the State of Palestine and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.

With this statement, which was the same response that Palestine had originally requested from the Office of the Prosecutor, the ICC also indicated, with regard to territory, that the determination of territorial jurisdiction was for purely criminal purposes and had no bearing on the determination of the territorial scope of Palestine. In other words, the Chamber was being pragmatic and avoiding other problems that may arise in the future when the ICC will no longer have to examine a situation in general, but rather a specific case and

specific alleged perpetrators. Similarly, with regard to the same determination of the statehood of Palestine, the Chamber limited itself to considering that Palestine had been recognised by the UN General Assembly as a non-member observer state, that it had acceded to the Rome Statute and that it had actively participated in the work of its Assembly of States Parties, which was sufficient to confirm the Court's territorial jurisdiction in the general examination of the situation of Palestine.

Accordingly, the Office of the Prosecutor is conducting an investigation into the situation in the State of Palestine, which began on 3 March 2021 and covers conduct that may constitute crimes under the Rome Statute committed in Gaza and the West Bank, including East Jerusalem, since 13 June 2014. The investigation is ongoing and has been expanded to cover the escalation of hostilities and violence since the attacks of 7 October 2023. The Prosecutor of the Court, Karim A.A. Khan, has repeatedly stressed since that date that the ongoing investigation is very important and is being conducted as effectively as possible. In addition, five States (South Africa, Bangladesh, Bolivia, Djibouti and Comoros) have referred the situation in Gaza to the Office of the Prosecutor under Articles 13(a) and 14(1) of the Rome Statute, as they consider that one or more crimes within the jurisdiction of the Court may have been committed.

In parallel, the same Pre-Trial Chamber I, in its Decision on Information and Outreach for the Victims of the Situation, of 13 July 2018 (ICC-01/18-2), had agreed that the Registry should submit regular quarterly reports on the progress of its activities related to information and outreach to victims and affected communities in the situation in the State of Palestine. In the latest publicly redacted version of these confidential reports, dated 13 November 2023 (ICC-01/18-157-Red), the Registry reported on the numerous calls, submissions and comments received by the Victims Participation and Reparations Section (VPRS) since 7 October in relation to the situation in Palestine. The report thus reflects that interlocutors and legal representatives of victims mentioned that “at this desperate time, Palestinians do not expect the Court to resolve their situation, but they do expect it to do its job”. Some interlocutors and witnesses added, according to the report, that even before the current crisis, they were deeply disappointed by the total absence of the Court, even though they knew it should be conducting its investigations.

Whatever the case, the immediate swift reaction of the Office of the Prosecutor of the ICC in relation to the crimes committed in the aftermath of the invasion of Ukraine in February 2022 should be highlighted by way of comparison. The comparison can also be extended to the number of states that referred the Ukrainian case to the Office of the Prosecutor and have since cooperated with the Ukrainian authorities and the Office of the Prosecutor of the Court in the investigation and determination of the crimes committed in Ukraine and the identification of those allegedly responsible. In this regard, I believe there is an urgent need to record and collect as much testimony and evidence as possible, as soon as possible, in relation to possible crimes within the jurisdiction of the ICC, in order to be able to determine individual criminal responsibility in the future. However, it seems clear that the investigation of the situation in Gaza needs more and stronger impetus, both from the Office of the Prosecutor and from the cooperation of states parties to the Rome Statute in the investigation and collection of evidence. I understand that confidence in the ICC is also at stake here, because ultimately the success of the Court depends entirely on its credibility in the eyes of the victims and in relation to all cases under its jurisdiction.

IX. THE INSUFFICIENT ACTION OF THE SECURITY COUNCIL ON THE WAR IN GAZA

The Geneva Conventions of 1949 (Article 1 common to all four Conventions) require all states - all 194 states parties to these Conventions - to “respect and to ensure respect” of humanitarian norms in all circumstances. In other words, it is not only the states directly involved in the armed conflict - and the irregular armed groups involved - that are obliged to comply with them, but all states are legally bound to comply with their obligations and therefore to take all necessary measures to prevent violations of humanitarian norms and to put an end to such violations when they occur.

Moreover, the situation in Gaza continues to constitute a threat to international peace and security and, as I have indicated, an armed conflict of an international character. On both of these premises - the obligation to uphold humanitarian norms and the threat to international peace and security - one would have expected a stronger and more decisive international response to the humanitarian catastrophe unfolding in Gaza. However, apart from clear statements of condemnation by many leaders - including the Spanish Prime

Minister - there has been no strong institutional response to slow down or try to stop the violence unleashed in Gaza three months ago, in the place where it should take place and where all states should feel called to act. That is to say the United Nations, and in particular the Security Council, which has primary responsibility for the maintenance of international peace and security.

As on so many other occasions, particularly in the context of the Middle East conflict, the Security Council has once again demonstrated its ineffectiveness and paralysis when a situation threatening international peace and security affects either directly or the interests of one of the permanent members, be it the United States or Russia and China in particular. In the context of the Israeli-Palestinian conflict, it has historically been the United States that has vetoed every possible Security Council resolution contrary to Israeli interests, and only on rare occasions has it allowed the adoption of resolutions partially unfavourable to the Israeli position, such as the historic Resolutions 242 (1967) and 338 (1973), adopted in the aftermath of the Six-Day War in 1967 and the Yom Kippur War in 1973, respectively, to which I will return later. The last three months have been no exception to the deadlock and paralysis of the Council and to the traditional US performance in this body.

In fact, since 7 October 2023, the Security Council has addressed the situation in the Middle East, including the Palestinian question, on several occasions, but so far it has only been able to adopt two insufficient resolutions with minimal devalued content. Throughout this period, various draft resolutions on the subject have been put to the vote without being adopted, in some cases because they lacked the necessary nine votes in favour and in others because of the exercise of the veto by one of the permanent members. Thus, to give a first example, at the session of 18 October 2023, the United States vetoed a resolution tabled by Brazil - a well-considered, balanced resolution, in my opinion - on the grounds that it wanted to allow time for diplomatic efforts and regretted that the resolution did not mention Israel's right to legitimate self-defence (S/PV.9442, 18 October 2023). On the other hand, at the 25 October session, it was Russia and China who vetoed the adoption of a draft resolution presented by the United States, considering it to be totally politicised - with double standards and a selective application of International Law, according to their representatives - and which did not contain either a

call for a ceasefire or a condemnation of the indiscriminate attacks against civilians and civilian objects in Gaza (S/PV.9453, 25 October 2023).

On 15 November 2023, five weeks after the beginning of the crisis, Resolution 2712 (2023) was adopted without any permanent member of the Security Council exercising its veto, although three of them abstained (the United States, Russia and the United Kingdom). In this resolution, the Council, *inter alia*, “Demands that all parties comply with their obligations under international law, including international humanitarian law, notably with regard to the protection of civilians, especially children”. In addition, the Council “Calls for urgent and extended humanitarian pauses and corridors throughout the Gaza Strip for a sufficient number of days to enable, consistent with international humanitarian law, the full, rapid, safe, and unhindered humanitarian access for United Nations humanitarian agencies and their implementing partners” and “Calls for the immediate and unconditional release of all hostages held by Hamas and other groups, especially children, as well as ensuring immediate humanitarian access”. Calls that proved fruitless and continue to this day without effective results. It should be noted that, following this Council resolution, the negotiations that took place in Qatar, as I have indicated, led to a fragile and limited ceasefire at the end of November 2023, which allowed the release of a few dozen hostages in exchange for the release of Palestinian prisoners.

At all events, three weeks after the adoption of this resolution, on 8 December, the United States’ veto again prevented the adoption of another Security Council resolution that would have called for an immediate ceasefire in Gaza, at the request of Secretary-General António Guterres. In this case, the draft resolution received 13 votes in favour, with the United Kingdom abstaining and one permanent member of the Council voting against, resulting in its non-adoption. The United States argued that the draft resolution was poorly balanced, divorced from reality and would not have made a difference on the ground, and condemned the failure to include in the text either a condemnation of the horrific terrorist attack by Hamas or recognition of Israel’s right to defend itself against terrorism in accordance with International Law (S/PV.9499, 8 December 2002).

Finally, on 22 December 2023, after several days of meetings to agree on a new text based on a draft resolution submitted by the United Arab Emirates,

the Security Council adopted Resolution 2720 (2023), with only the United States and Russia abstaining. The original proposal called for an immediate cessation of hostilities and for humanitarian aid to Gaza to be under United Nations control, but the United States opposed both demands. As a result, the text that was finally adopted was significantly watered down, limiting itself to reaffirming the parties' obligations under International Humanitarian Law and calling on them to "allow, facilitate and enable the immediate, safe and unhindered delivery of humanitarian assistance at scale directly to the Palestinian civilian population throughout the Gaza Strip, and in this regard calls for urgent steps to immediately allow safe, unhindered, and expanded humanitarian access and to create the conditions for a sustainable cessation of hostilities". In other words, instead of a ceasefire, the parties were only asked to "allow, facilitate and enable" the immediate, safe and unhindered delivery of humanitarian aid and to "create conditions" for a cessation of hostilities. Even a final Russian oral amendment calling for a cessation of hostilities failed to pass due to a United States veto (S/PV.9520).

In any case, the Council also asked the Secretary-General to appoint a Senior Humanitarian and Reconstruction Coordinator to "facilitate, coordinate, monitor and verify" the humanitarian nature of all aid deliveries to Gaza by non-party states. On 26 December, the Secretary-General announced the appointment of former Dutch Foreign Minister Sigrid Kaag to this post. This Security Council Resolution 2720 (2023) was undoubtedly a positive step in terms of the possibilities - yet to be seen - for the immediate, safe and unhindered delivery of humanitarian aid to Gaza, but it was clearly insufficient and in no way responded to the urgent needs of the moment and the call - already expressed by the General Assembly, as we will see below - for an immediate ceasefire.

This brief review of the Security Council's action - or rather inaction - unfortunately shows that, despite the scale of the humanitarian tragedy, there is nothing new about a politicised body like the Council and the actions of its permanent members, in this case in relation to the Israeli-Palestinian conflict. In this respect, it is also true that the Security Council was not effective - in this case because of the Russian veto - when Russia invaded Ukraine in February 2022, or when, years earlier, in 2014, it promoted the annexation of Crimea and supported the armed revolt of the pro-Russian separatists of the

Donetsk and Luhansk oblasts in eastern Ukraine. All this shows, in my view, that the existing international mechanisms for ensuring international peace and security - mainly based on the United Nations collective security system - are still too weak, asymmetric and unrepresentative.

X. THE ACTION OF GENERAL ASSEMBLY ON THE WAR IN GAZA

As in the situation that arose with the war in Ukraine in 2022, the paralysis of the Security Council in the face of the dramatic situation in the Gaza Strip led to action by the General Assembly and the reactivation of the Tenth Special Emergency Session of the General Assembly on “Illegal Israeli Actions in Occupied East Jerusalem and the Rest of the Occupied Palestinian Territory”, which had begun in 1997. Within this framework, the General Assembly has so far been able to adopt two resolutions which, although they do not have the binding nature of Security Council resolutions, clearly express the general feeling of the international community as a whole, since in both cases they were supported by a majority of the Member States of the United Nations. Be that as it may, and just to provide another element of context, I would like to point out here that in the vote on these two General Assembly resolutions, the twenty-seven Member States of the European Union shamelessly displayed their differences and divisions by dividing their votes between votes in favour, votes against and abstentions.

The first General Assembly resolution, entitled “Protection of civilians and upholding legal and humanitarian obligations” (Resolution A/RES/ES-10/21), was adopted on 27 October 2002. In this resolution, the General Assembly called, *inter alia*, for “an immediate, durable and sustained humanitarian truce leading to a cessation of hostilities” and “Demands that all parties immediately and fully comply with their obligations under international law, including international humanitarian law and international human rights law”. The resolution calling for this humanitarian ceasefire and respect for humanitarian norms was adopted by 120 votes in favour, 14 against and 45 abstentions. I must point out that it was symptomatic - and, in my view, highly reprehensible - that an amendment proposed by Canada, rejecting and unequivocally condemning the terrorist attacks and hostage-taking carried out by Hamas in Israel since 7 October, was not adopted because it did not receive the necessary two-thirds majority.

The second General Assembly resolution was adopted on 12 December 2023 following the failed vote in the Security Council on 8 December. In this resolution, A/RES/ES-10/22, also entitled “Protection of civilians and upholding legal and humanitarian obligations”, the General Assembly went beyond the call for a humanitarian truce and called for an immediate humanitarian ceasefire and for all parties to respect their obligations under International Law, in particular with regard to the protection of civilians, the immediate and unconditional release of all hostages and the guarantee of humanitarian access. This second resolution - which, as I said, called for an immediate ceasefire rather than a humanitarian truce, given the persistence and deterioration of the situation - received strong support, with 153 votes in favour, 10 against and 23 abstentions, surpassing the support for the previous Assembly resolution. Among those voting against, in addition to two European Union Member States (Austria and the Czech Republic), was the United States, which regretted that, as on 27 October, an amendment, in this case tabled by the United States, rejecting and unequivocally condemning the atrocious Hamas terrorist attacks in Israel on 7 October and the taking of hostages, had been rejected.

The problem is that despite this broad international support for General Assembly resolutions, the war continues and the institutional means to end it are very limited and largely in the hands of the same states that veto resolutions in the Security Council. It is these permanent members who remain unwilling to strengthen the Security Council and make it enforceable in the sense that its binding decisions are truly effective and properly implemented. Arguably, at least the work of the General Assembly contributes to broader political consensus-building and, at least in part, to the eternal search for more effective institutionalised mechanisms, as well as to the formation of public opinion on the Israeli-Palestinian conflict. But they lack effectiveness on the ground.

XI. HUMANITARIAN APPEALS BY THE UNITED NATIONS SECRETARY-GENERAL

Finally, in the same vein, I believe it is worth mentioning the numerous statements made in recent months by Secretary-General António Guterres, who has so often cried in the wilderness, on the situation in Gaza. His denunciation of violations of International Humanitarian Law and human rights has brought him unprecedented and aggressive attacks from Israel,

which has gone so far as to call for his immediate resignation. Although his public statements are numerous, because of his tenacity and forcefulness, I would like to refer briefly to two of his oral interventions before the Security Council - which I would like to reproduce in part because they summarise the concerns that overwhelm me and the basic arguments of these pages - and his decision to activate Article 99 of the Charter on 6 December to try to get the Security Council to approve the demand to Israel for an immediate ceasefire.

Thus, at the Security Council meeting of 24 October 2023 (S/PV.9451), the Secretary-General stated “I have condemned unequivocally the horrifying and unprecedented 7 October acts of terror by Hamas in Israel. Nothing can justify the deliberate killing, injuring and kidnapping of civilians, or the launching of rockets against civilian targets. All hostages must be treated humanely and released immediately and without conditions (../..) It is important to also recognize that the attacks by Hamas did not happen in a vacuum. The Palestinian people have been subjected to 56 years of suffocating occupation. They have seen their land steadily devoured by settlements and plagued by violence, their economy stifled, their people displaced and their homes demolished. Their hopes for a political solution to their plight have been vanishing. But the grievances of the Palestinian people cannot justify the appalling attacks by Hamas. And those appalling attacks cannot justify the collective punishment of the Palestinian people. Even war has rules”.

At the meeting on 8 December 2023 (S/PV.9498), the Secretary-General ended his statement by saying “The people of Gaza are looking into the abyss. The international community must do everything possible to end their ordeal. I urge the Council to spare no effort to push for an immediate humanitarian ceasefire, for the protection of civilians and for the urgent delivery of life-saving aid. While we deal with the current crisis, we cannot lose sight of the only viable possibility for a peaceful future: a two-State solution, on the basis of United Nations resolutions and international law, with Israel and Palestine living side-by side in peace and security. This is vital for Israelis, Palestinians and for international peace and security. The eyes of the world - and the eyes of history - are watching. It is time to act”.

This call to action was implemented by the Secretary-General himself when he addressed the Security Council on 6 December (document S/2023/962), invoking Article 99 of the UN Charter. This rarely used Article 99, which

Guterres had never invoked before, empowers the Secretary-General to bring to the attention of the Security Council any matter which, in his opinion, might endanger the maintenance of international peace and security. It is a provision that reinforces the political nature of the post of Secretary-General, “the most impossible job on this earth”, as the first Secretary-General, Trygve Lie, is said to have described it when he handed over to his successor, Dag Hammarskjöld, in 1953.

As I have indicated, Guterres’ appeal was unsuccessful because the United States vetoed a proposed resolution calling for an immediate ceasefire, but this has not stopped Guterres from continuing to work in this direction. As he said in his letter (document S/2023/962), he is convinced that “We are facing a severe risk of collapse of the humanitarian system. The situation is fast deteriorating into a catastrophe with potentially irreversible implications for Palestinians as a whole and for peace and security in the region. Such an outcome must be avoided at all costs”. Indeed, in the interests of everyone, Gazans and all Palestinians, Israelis and the whole world, a catastrophic outcome must be avoided no matter what it takes, and this situation must be brought to an immediate end.

XII. THE HISTORICAL-POLITICAL CONTEXT OF THE ISRAELI-PALESTINIAN CONFLICT

Whatever the case, despite calls from the General Assembly for humanitarian truces or pauses and an immediate ceasefire, the war and devastation in Gaza continues as these pages go to press. It is a boundless, catastrophic devastation that is stretching the already strained international system to the breaking point. This is happening now, but, as António Guterres said, this grave crisis is not happening in a vacuum, and the Israeli-Palestinian conflict has been going on for more than seventy-five years.

The proclamation of the birth of the state of Israel on 14 May 1948 was made possible by the approval, a few months earlier, by the United Nations General Assembly of the Plan for the partition of Palestine, which was under British Mandate [Resolution 181 (II) of 29 November 1947]. In other words, the United Nations now so reviled by Israel is the same United Nations that made the creation of the state of Israel possible. The Plan provided for the creation of two states, one Arab-Palestinian and the other Jewish - with

43% and 56% of the territory respectively - while leaving Jerusalem and its surroundings under an international regime. The rejection by Arab countries led to the first Arab-Israeli war of 1948-1949, the armistice agreement of which established a demarcation line - the Green Line - that allowed Israel to expand its territory, plunging the Palestinians into the *Nakba*.

Then, in 1967, the Six-Day War ended with Israel's occupation of the Sinai Peninsula and the Gaza Strip, East Jerusalem and the West Bank, and the Golan Heights. It should be noted that after the end of the war, the Security Council, in its historic – in the light of what has become customary - Resolution 242 (1967) of 22 November 1967, insisted on the inadmissibility of the acquisition of territory by war and reaffirmed the need to respect the principles of the UN Charter, including the “withdrawal of Israel armed forces from territories occupied in the recent conflict”. At the same time, the Council considered that these principles also implied the termination “of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force”.

Subsequently, the 1973 Yom Kippur War was the most militarily dangerous conflict for the State of Israel, although it managed to maintain its dominance over these territories and did not evacuate them, despite the Security Council's calls for the implementation of Resolution 242 (1967), formulated in the - also historic - Resolution 338 (1973) of 22 October 1973. Years later, as is well known, diplomatic reconciliation was initiated with some Arab countries, which made it possible to agree on the Israeli withdrawal from the Sinai Peninsula following the Egyptian-Israeli treaty of 1979.

In parallel, Israel began to implement an annexationist policy and practice involving the establishment of settlements in the Occupied Palestinian Territories, also in violation of the provisions of the aforementioned Fourth Geneva Convention of 1949. As reported in the United Nations reports to which I will refer later, these Israeli annexationist policies and practices have created a regime of institutionalised oppression and domination against the Palestinian people, fragmenting and segregating Palestinian citizens of Israel, the resident population of the Occupied Palestinian Territories and Palestinian refugees who have been denied the right of return. In addition, military

incursions with excessive use of force, including alleged extrajudicial killings, and other cruel and inhumane acts, such as massive confiscation of land and property, reprisals through house demolitions, serious injuries, torture and ill-treatment, forced evictions and transfers, arbitrary restrictions on freedom of movement, administrative detention without limit or judicial review, detention of minors and denials of nationality, among other reprehensible acts, have become systematic. These are practices which, in addition to being violations of the Fourth Geneva Convention, directly affect and violate the human rights of the Palestinian people and can be considered, as suggested in these reports, as apartheid practices. The direct perpetrators of all these acts, as well as their commanders and instigators, have generally enjoyed absolute impunity.

In this context, tensions between Israelis and Palestinians have always been high, and in 1987 the first intifada, the Palestinian uprising against the Israeli occupying forces, broke out. A few years later, in 1991, the Madrid Peace Conference was held, which allowed the Palestinians, under the leadership of Yasser Arafat, and the Israelis, under the leadership of Yitzhak Rabin, to reach an agreement in Oslo in 1993, more than thirty years ago, on Palestinian autonomy in a territory that was much smaller than the historical territory or the territory of the partition Plan, subdivided, with little continuity between its constituent parts and full of illegal Israeli settlements. In spite of this, the conflict continues, and the last thirty years have seen different initiatives, processes, roadmaps and peace proposals, none of which, unfortunately, have made any substantial progress towards resolving the conflict, either due to a lack of political will or to the reluctance of one side or the other.

The limited progress made by this Palestinian National Authority in resolving the conflict led to a second intifada in 2000 and the Israeli response by completing a barrier around the Gaza Strip and beginning the construction of a wall to separate Israel from the Palestinian West Bank. This wall, which, as I have said, was declared illegal by the ICJ in 2004, incorporated dozens of Israeli settlements in the occupied West Bank into Israel. Nor did the construction of the wall imply the abandonment of the Israeli military presence in the area, except in the so-called Area A, which, as a result of the Oslo and subsequent agreements, remained under the control of the PNA, with sporadic armed Israeli incursions. On the other hand, as I have also indicated, Israel would eventually withdraw its civilian - the settlers and their settlements

- and military presence from Gaza in 2005, while maintaining absolute control over its borders, coastline and airspace since then.

At all events, in addition to the despicable Israeli practices and policies towards the Palestinian people and their human rights, which can be described as apartheid, it should also be noted that throughout these years there have been attacks against the Israeli civilian population by Palestinian armed groups or by lone suicide bombers, as well as other terrorist incidents stemming from Jewish extremism, such as the assassination of Yitzhak Rabin or the Hebron massacre in 1994. Similarly, on the Palestinian side, differences between Palestinian factions in both Gaza and the West Bank have led to allegations of human rights violations, sometimes indiscriminate violence against civilians, torture and extrajudicial killings, as well as police abuses and other arbitrariness on the part of some Palestinian authorities. All this, too, with general impunity for those responsible.

We thus find ourselves in a general context in which, with constant ups and downs, we have witnessed periodic outbreaks of violence, with rocket launches and attacks by Palestinian groups, and the development of air and land incursions in Israeli retaliation, some of which have been particularly notable for their intensity. In addition to the conflicts with Hizbollah on the Lebanese border and the Palestinian attacks in Israel and the continuing repressive military actions in the West Bank, the armed episodes with intense Israeli bombardment in the Gaza Strip between December 2008 and January 2009, in November 2012, between July and August 2014 and in May 2021 are particularly noteworthy. In other words, for many years there has been a succession of armed conflict, indiscriminate violence and repression in Israel and Palestine, including Israeli military offensives in Gaza. But the number of victims of these episodes - all of them deplorable - cannot be compared to the gravity of what has been happening since 7 October.

XIII. THE GENERAL ASSEMBLY'S POSITION ON THE OCCUPIED PALESTINIAN TERRITORIES

Throughout this period, especially since 1967, the UN General Assembly has reiterated its position on the Palestinian question, even inviting PLO leader Yasser Arafat to address the General Assembly in 1974 (A/PV.2282, 29 September 1974). With the iconic image of an olive branch in his hands

and a pistol in his holster, Arafat stated that the PLO was ready to negotiate with Israel and accept a peaceful solution to the Israeli-Palestinian conflict, but also defended the right of the Palestinians to armed resistance and struggle against the occupation. A few days after Arafat's speech, the General Assembly adopted a resolution reaffirming the inalienable rights of the Palestinian people in Palestine, including both the right to self-determination without outside interference and the right to national independence and sovereignty, and granting the PLO observer status in the General Assembly (General Assembly resolution 3236 (XXIX) of 22 November 1974). In this way, the General Assembly recognised the PLO, as well as other National Liberation Movements, as the sole and legitimate representative of the Palestinian people.

Since these almost pristine declarations, the General Assembly has consistently reaffirmed the rights of the Palestinian people and consequently condemned the existence and continuation of the occupation in the Occupied Palestinian Territories. It has thus reaffirmed the illegality of the occupation in accordance with existing norms of International Law, including the principle of the self-determination of peoples, and reiterated the Security Council's demand - through the aforementioned resolution 242 (1967) - for Israeli withdrawal from these territories. At the same time, the General Assembly has repeatedly condemned Israeli policies and practices that violate human rights and has supported the two-state solution to the Israeli-Palestinian conflict.

To illustrate this consistent practice, it is sufficient to cite the most recent resolution adopted by the General Assembly last December on "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan" (General Assembly resolution 78/78 of 7 December 2023). In this resolution, the General Assembly reaffirmed the inadmissibility of the acquisition of territory by force and reiterated that the transfer by the occupying power of parts of its own civilian population to the territory it occupies constitutes a violation of the Fourth Geneva Convention, and again condemned Israel's settlement activities in the Occupied Palestinian Territory. In conclusion, the General Assembly reiterated its unequivocal position that Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, are illegal and constitute an obstacle to peace and economic and social development. It therefore reiterated its call on Israel to accept the *de jure* applicability of the

Fourth Geneva Convention and to put an immediate and complete end to all its settlement activities throughout the Occupied Palestinian Territory.

This consistent approach of the General Assembly to the illegality of the occupation and the settlements is also consistently accompanied by the denunciation that these illegal Israeli activities and practices affect the human rights of the Palestinian people, as I have already indicated, based on the conviction that the occupation itself constitutes a grave violation of human rights (General Assembly resolution 78/76 of 7 December 2023). The mandate of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, established by the General Assembly in 1968 (General Assembly resolution 2443 (XXIII) of 19 December 1968), is thus reaffirmed on an annual basis.

The Committee reports to the General Assembly in detail annually on the policies and practices of the Government of Israel in the Occupied Territories, in their historical and political context, and also documents the increasingly pernicious influence of Israeli settlers on the human rights situation in the Occupied Territories (latest report in document A/78/553 of 28 October 2023). Similarly, pursuant to various General Assembly resolutions, the Secretary-General reports on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem (latest report in document A/78/502 of 2 October 2023) and on Israeli settlements in the Occupied Palestinian Territory (latest report in document A/78/554 of 25 October 2023).

XIV. THE UNITED NATIONS, THE HUMAN RIGHTS AND THE OCCUPIED PALESTINIAN TERRITORIES

In the same perspective, the work of the Human Rights Council and its rapporteurs and international fact-finding missions should also be appreciated. Since its creation in 2006, the Human Rights Council has consistently kept the human rights situation in the Occupied Palestinian Territories on its agenda, adopting resolutions on this issue, on the right of the Palestinian people to self-determination, and on Israeli settlements in these territories. The most recent resolutions adopted on these issues were resolution 52/3 of 3 April 2023, resolution 52/34 of 4 April 2023 and resolution 52/35 of 4 April 2023.

Be that as it may, I think it should be pointed out at the outset that the current seriousness of the human rights situation in Gaza would have merited at the very least the immediate convening of a Special session of the Human Rights Council, which has not taken place despite the fact that its convening requires only the request of one third of its forty-seven Member States. By way of comparison, in the case of Ukraine, a Special session was convened in response to the deterioration of the human rights situation in Ukraine as a result of the Russian aggression, although this Special session did not take place until 12 May 2022, almost three months after the invasion began.

On the other hand, with a mandate deriving from a resolution of the then Commission on Human Rights in 1993, there is the figure of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, currently Francesca Albanese, who regularly reports to the Human Rights Council on the human rights situation in these territories (latest report in document A/HRC/53/59 of 28 August 2023). The mandate of the Special Rapporteur essentially requires her to investigate violations by Israel of the principles and rules of International Law, International Humanitarian Law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War in the Palestinian territories occupied by Israel since 1967. Although the rapporteur has not yet been able to access Gaza or other parts of the Occupied Palestinian Territories, her forthcoming report, based on testimony and reliable sources, could prove devastating for Israel.

Similarly, in 2009, the President of the Human Rights Council established a United Nations Fact-Finding Mission on the Gaza Conflict, which, under the chairmanship of South African Judge Richard Goldstone, issued a comprehensive and damning report on the war in Gaza between December 2008 and January 2009 - during the so-called “Operation Cast Lead” - which held both the IDF and the Israeli and Palestinian authorities responsible for serious human rights violations and war crimes (report in document A/HRC/12/48 of 25 September 2009).

Subsequently, in 2012, the Human Rights Council decided to establish another independent international Fact-Finding Mission to investigate the impact of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. In its report, published the following year,

the Mission called on Israel, in accordance with the Fourth Geneva Convention, to cease all settlement activities without preconditions and to initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory in order to end the human rights violations associated with the presence of settlements. The Mission also urged Israel, *inter alia*, to put an end to the arbitrary arrest and detention of Palestinians, in particular children, and to respect the prohibition on the transfer of prisoners from the Occupied Palestinian Territory to Israeli territory, in accordance with the Geneva Convention (Mission report in document A/HRC/22/63 of 7 February 2013).

In the same line of action, in 2014 the Human Rights Council decided to urgently dispatch an Independent International Commission of Inquiry to investigate all violations of International Humanitarian Law and International Human Rights Law in the Occupied Palestinian Territory, including East Jerusalem, in particular in the occupied Gaza Strip, in the context of the military operations carried out since 13 June 2014, the so-called “Operation Protective Edge”. Although the International Commission of Inquiry was also unable to obtain cooperation from Israel, it was able to gather a wealth of information indicating that serious violations of International Humanitarian Law and International Human Rights Law had been committed by both the IDF and Palestinian armed groups, expressed grave concern at the widespread impunity for these violations and called for the perpetrators to be held accountable (report in document A/HRC/29/52).

Similarly, in 2018, the Human Rights Council established another Independent International Commission of Inquiry to investigate the demonstrations that took place in Gaza between 30 March and 31 December 2018, the response of the Israeli security forces to those demonstrations, and the impact on civilians in Gaza and Israel. The Commission, which was mandated to focus on accountability and the identification of those responsible for violations of International Human Rights Law and International Humanitarian Law, found in its report that there are reasonable grounds to believe that some violations may amount to international crimes (report in document A/HRC/40/74 of 6 March 2019).

Finally, with the same perspective, the Human Rights Council, at its last special session devoted to the grave human rights situation in the Occupied Palestinian Territory, including East Jerusalem, decided, *inter alia*, in its resolution

S/30-1 of 27 May 2021, “to urgently establish an ongoing independent, international commission of inquiry, to be appointed by the President of the Human Rights Council, to investigate in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021, and all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity”.

This Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, submitted its latest report to the General Assembly and the Human Rights Council on 5 September 2023 (report in document A/78/198 of 5 September 2023) and, as its mandate remains in force, it continues and will continue to investigate the current situation in the Occupied Palestinian Territory, in particular in the Gaza Strip. Indeed, the Commission has invited all states and interested individuals, groups and organisations to provide it with information on possible crimes committed by all armed actors, both state and non-state, as of 7 October 2023. The Commission will thus be able to continue its investigation into international crimes and violations of international human rights law committed in both Israel and the Occupied Palestinian Territory from that date, and to present its findings in its next report to the Human Rights Council, expected at its 56th session in June 2024.

This brief and non-exhaustive review of the actions of the United Nations human rights bodies with regard to the situation in the Occupied Palestinian Territories shows, in my view, on the one hand the continued activity of these bodies, but also their limited effectiveness. In fact, apart from noting violations of human rights and international humanitarian law, this continued activity has not succeeded in putting an end to them or ensuring that the perpetrators of these violations are held criminally accountable, given the general climate of impunity to which I have already referred, both with regard to members of the IDF and the Israeli authorities and with regard to members of the Palestinian militias and armed groups and their leaders. On the other hand, reading the reports of the Special Rapporteur and of the various international fact-finding Missions and Commissions of enquiry is absolutely heart-rending and clearly

expresses, in particular, the tragic situation in which the Palestinian people have been living since 1948 and especially since 1967. Unfortunately, the forthcoming reports of the Special Rapporteur and the current International Independent Commission of Inquiry will undoubtedly add to the drama, with thousands of civilian victims in the last three months, both Israeli and, above all, Palestinian.

XV. THE SECURITY COUNCIL, THE OCCUPIED PALESTINIAN TERRITORIES AND PEACE INITIATIVES

In this review of the international perspective and International Law on the Israeli-Palestinian conflict, it is worth mentioning the few occasions on which the Security Council has adopted resolutions on the Palestinian question, both because they come from the body from which they originate and because of their legally binding nature. Although, as I have already indicated, the United States, with its traditional policy of unconditional diplomatic support for Israel, has in many cases vetoed the adoption of resolutions that were contrary to Israeli interests, there are some particularly noteworthy resolutions in the history and archives of the Council which, if complied with by all states, could perhaps provide guidance for the future resolution of the Israeli-Palestinian conflict.

I have already pointed out, first of all, the crucial importance of Resolution 242 (1967), by which the Security Council, after the Six Day War, stressed the need for the withdrawal of Israeli forces from the occupied territories and the right of all states in the region to live in peace within secure and recognised borders. Similarly, after the Yom Kippur War in 1973, the Council, in resolution 338 (1973), urged the parties concerned to comply with resolution 242 (1967) in all its parts. In 1973, the Security Council also decided that “immediately and concurrently with the cease-fire, negotiations shall start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East”. These two resolutions remain key, in my view, in relation to the conflict.

Beyond these two historic resolutions, there have been numerous occasions in these more than fifty years when use of the veto, mainly by the United States, has blocked the adoption of new measures by the Security Council. In any case, since the Oslo Accords, a hopeful initiative that has not come to

fruition, at least six noteworthy resolutions have been adopted which, as I have said, could guide the future resolution of the Israeli-Palestinian conflict. It is true that in many cases there has been deadlock and that very often political tensions have paralysed the Council - as has been the case to a large extent in recent months - but if, at certain historic moments, it has been possible to adopt resolutions supporting peace initiatives, proposing and endorsing the two-State solution or calling on Israel to end its settlement policy in the Occupied Palestinian Territories, it should be possible, sooner rather than later, for the Security Council to regain its consensus and assume the highest level of responsibilities that it has. Above all, however, it is essential that the measures adopted by the Council are respected by all states and parties concerned and that their implementation is internationally guaranteed.

Thus, in Resolution 904 (1994) of 18 March 1994, after condemning the Hebron mosque massacre perpetrated by a Jewish fundamentalist, the Security Council reaffirmed its support for the peace process launched in Oslo and reaffirmed the applicability of the Fourth Geneva Convention to the territories occupied by Israel in June 1967, with all the responsibilities that this entailed for the occupying power. Years later, with the peace process at a standstill and in the context of the second intifada, the Security Council, in its Resolution 1397 (2002) of 12 March 2002, clearly endorsed the concept of a region in which two states, Israel and Palestine, would live side by side within secure and recognised borders, and called for the collaboration of the parties involved in the implementation of the Telnet roadmap and the recommendations of the Mitchell Report, two peace initiatives that were also ultimately frustrated.

The Security Council adopted the same line in its Resolution 1515 (2003) of 19 November 2003, in which it endorsed the Road Map based on a permanent two-state solution to the Israeli-Palestinian conflict, proposed by the so-called Quartet, composed of representatives of the United States, the European Union, the Russian Federation and the United Nations. This Road Map, proposed in several stages, was perhaps the peace initiative with the greatest international support and the most realistic prospects, although it left the more difficult agreements, such as the agreement on the status of Jerusalem and the articulation of the right of return for Palestinian refugees, for later stages. At all events, the Quartet's Road Map has been around for a long time and continues to inspire - as do the proposals of the Geneva Initiative, also dating

from 2003 - even though it has not been possible to implement it. On the one hand, because of the intransigence of the Israeli Likud government, then led by Ariel Sharon, and Jewish ultra-nationalist groups towards any concessions; on the other hand, because of the official Palestinian perspective, which saw it as an excessively protracted process that would only serve as a manoeuvre for Israel to gain more time without any effective compromise, and because of the implacable opposition of Hamas and other jihadist militias.

A parallel effort came in the form of the 2002 Arab Peace Initiative, in which Arab states agreed to recognise Israel if Israel withdrew from Palestinian territory to the pre-1967 lines, including from southern Lebanon; if the Palestinian refugee problem was resolved; and if a Palestinian state was established that included all of the West Bank and Gaza, with East Jerusalem as its capital. But there was no progress on this Initiative either.

The Road Map proposed by the Quartet was to be followed by the negotiations that began in Annapolis (Maryland) in 2007, to which the Security Council gave its full support in Resolution 1850 (2008) of 16 December 2008, which also failed to bring these bilateral negotiations, sponsored by the United States, to a successful conclusion. In the latter resolution, the Council continued to reaffirm the vision of a region with two states living side by side in peace with secure and recognised borders, with a substantial qualitative element of differentiation, as the Council reiterated its vision of two “democratic” states.

Be that as it may, a few days after the adoption of resolution 1850 (2008), war broke out in Gaza with the so-called “Operation Cast Lead”, which provoked a new humanitarian crisis in the Gaza Strip. Consequently, in its resolution 1860 (2009) of 8 January 2009, the Security Council stressed the urgency of the situation and called for an immediate, durable and fully respected ceasefire leading to the full withdrawal of Israeli forces from Gaza. Those weeks of intense conflict then resulted in fourteen Israeli deaths and some 1,400 Palestinian casualties, the consequence of both shelling and urban fighting, hundreds of them Palestinian civilians. What I would like to point out now is that if the Security Council was able to demand a ceasefire and the withdrawal of Israeli forces from Gaza despite the heat of the battle, it is incomprehensible that fourteen years later, in a similar but far more serious situation, political paralysis should make it impossible for the Council to act.

However, it is also true that on the occasion of what was known as “Operation Protective Edge” between July and August 2014 - which resulted in more than 2,300 Palestinian and more than 70 Israeli casualties - the Security Council, after several meetings, was unable to adopt a new resolution on the situation in Gaza. At that time, it limited itself to adopting a Presidential Statement (document S/PRST/2014/13 of 28 July 2014) expressing its grave concern, reiterating its resolutions 1850 (2008) and 1860 (2009), and expressing its “strong support for the call by international partners and the Secretary-General of the United Nations for an immediate and unconditional humanitarian ceasefire, allowing for the delivery of urgently needed assistance, and they urged all parties to accept and fully implement the humanitarian ceasefire”. The Council also called “on parties to engage in efforts to achieve a durable and fully respected ceasefire”. In other words, fine words, but at the end of the day diplomatic rhetoric without effective content in a document - a Presidential Statement - which, moreover, is not legally binding.

In this brief review, Security Council Resolution 2334 (2016) of 23 December 2016 should also be mentioned. This resolution is particularly noteworthy for its absolute strength - so unusual - in relation to Israeli settlements in the Occupied Palestinian Territory. The Council’s resolution condemned the construction and expansion of settlements, the transfer of Israeli settlers, the confiscation of land, the demolition of homes and the displacement of Palestinian civilians as measures aimed at altering the demographic composition, character and status of the Occupied Palestinian Territory in violation of the rules of International Humanitarian Law and jeopardising the viability of the two-state solution based on the 1967 borders.

However, the flagrant violation of international law constituted by the establishment of Israeli settlements in the Occupied Palestinian Territory, recognised as such by the Security Council in this 2016 resolution, has not led to the containment of their illegal expansion by Israel, nor to the closure and dismantling of the settlements. Whatever the case, despite the lack of implementation on the ground, I believe it is worth highlighting the strength of the condemnation and the demand made by the Security Council in this resolution, which was adopted without any votes against and with the abstention of the United States. This was a real wake-up call by the United

States to Israel - in the last weeks of Barak Obama's term in office - which has not yet been heard in the current crisis.

Finally, I must point out that in the aforementioned and insufficient Resolution 2720 (2023), adopted by the Security Council on 22 December, in addition to calling for respect for International Humanitarian Law and the need to allow, facilitate and enable the delivery of humanitarian assistance and to "create the conditions for a sustainable cessation of hostilities", the Security Council also reaffirmed some basic beliefs about the future resolution of the Palestinian-Israeli conflict. In this regard, the Security Council, while stressing that "the Gaza Strip constitutes an integral part of the territory occupied in 1967, and reiterating the vision of the two-State solution, with the Gaza Strip as part of the Palestinian State", explicitly reiterated in the operative part of the Resolution "its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with International Law and relevant UN resolutions, and in this regard stresses the importance of unifying the Gaza Strip with the West Bank under the Palestinian Authority". It remains to be seen whether this "unwavering commitment" of the Council can be translated into tangible facts and realities in the future.

XVI. CONCLUDING REMARKS

In these pages I have tried to provide an overview of the current war in Gaza and its context within the Israeli-Palestinian conflict from the perspective of International Law. I have focused on the responses of International Law and the applicable international norms, as well as the response of the international community organised in what remains - despite all its weaknesses - the universal forum par excellence, the United Nations. I have tried to ensure that this approach is well-balanced and considered and to listen to the reasons and justifications put forward by both sides, but the humanitarian tragedy that has been unfolding in the Gaza Strip for three months is in any case both unbearably painful and senseless, which is why there must be an immediate end to this massacre and, on the other hand, the immediate release of the surviving hostages and the delivery of the bodies of those who have died. As I have said before, however ruthless and reprehensible the attack by Hamas and other Islamist militias on 7 October was - and it certainly was in the extreme

- it does not justify the belligerent drift and the disproportionately lethal military response by Israel in the Gaza Strip. Similarly, as I have said before, the legitimacy of the Palestinian cause can in no way justify the violence and brutality of Hamas' attacks.

The definition of the 7 October attacks as acts of terrorism has, as I have said, its legal - and political - problems, as does the overall concept of international terrorism itself, a definition of which the international community has not yet agreed on. Whatever the case, in my opinion, the response to the attacks should have been different, because history has shown that wars against international terrorism, or angry and vengeful reactions and collective punishments, serve no purpose, needlessly harm innocent people, and in the long run generate more hatred and revenge, and also more terrorism. In these pages I have also discussed Israel's justification of self-defence and, while stressing Israel's right to defend itself against these attacks, I have noted the difficulty of justifying the institution of self-defence in International Law when the attacks come from the territory of the state itself or from a territory under that state's control, as in the case of the Occupied Palestinian Territories under Israeli control. In particular, I have insisted that in no way does what is happening in Gaza meet the essential parameter of proportionality that International Law requires in a case of legitimate self-defence. Moreover, International Law prohibits armed reprisals in all cases.

Both the ruthless attacks by Hamas and the brutal armed reprisal by Israel constitute, in my view, serious violations of International Humanitarian Law which can be qualified as war crimes and crimes against humanity. As I have indicated, one could even speak of the crime of genocide in this context. For all these crimes, International Law has established beyond doubt the individual criminal responsibility of the persons who committed or ordered their commission, either in national jurisdictions or, as a complementary character, in the International Criminal Court, to which Palestine is a state party. Thus, the ICC may have jurisdiction over war crimes and crimes against humanity committed on Palestinian territory or by Palestinian citizens. Therefore, in the current situation it is urgent that the Office of the Prosecutor, with the police and forensic cooperation of other states parties, promote appropriate investigations and the collection of evidence, testimony and proof in order to identify the persons, whether Israeli or Palestinian, allegedly directly and

individually responsible for these atrocities, so that they can be held accountable for their actions in the courts sooner rather than later.

It should also be emphasised, as the General Assembly and the Security Council have noted, that Israel's occupation of the Palestinian territories since 1967 is in itself a violation of International Law and therefore constitutes an internationally wrongful act, which gives rise to international responsibility on the part of the state committing the wrongful act. Moreover, Israel's brutal armed response to the 7 October attacks also constitutes a violation of essential obligations under peremptory norms of general International Law. There is also no doubt, as all these international bodies have established, that the occupying power is responsible for respecting humanitarian norms, in particular the Fourth Geneva Convention of 1949 relative to the protection of civilians in time of war, as well as the norms of International Human Rights Law. Israeli policies and practices in the Occupied Palestinian Territories and the expansion of settlements or the construction of the wall in the West Bank are in no way consistent with these norms. Their policies and practices also undermine the very viability of a Palestinian state.

In this regard, the illegality of the wall and the Israeli settlements in the Occupied Palestinian Territories was confirmed by the International Court of Justice in its advisory opinion of 2004, to which I have already referred. Now, almost twenty years later, the ICJ is faced with a new request for an advisory opinion on the Palestinian question. Specifically, on 31 December 2022, the General Assembly (Resolution 77/247) requested the Court to render an advisory opinion on the legal consequences of Israel's continued violation of the Palestinian people's right to self-determination, its prolonged occupation, settlement and annexation of the Occupied Palestinian Territory since 1967, and how these Israeli policies and practices affect the legal status of the occupation and the legal consequences of that status for all states and for the United Nations. It is a request that has certain parallels - and could have a similar impact - to the important Advisory Opinion delivered by the ICJ in 1971 at the then request of the Security Council on the legal consequences for States of the continued presence of South Africa in Namibia [*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, ICJ Reports 1971, p. 16].

I understand that we are faced with a new attempt for the highest international court to declare the relevance and application of International Law in relation to the Israeli occupation, but unfortunately this too has not shown any signs of effectiveness, and not only because advisory opinions do not have binding legal force. This is why South Africa's case against Israel under the Genocide Convention, which I mentioned earlier, is also important, following the example set by Gambia when it sued Myanmar for genocide against the Rohingya. In reality, even if a case could be brought against Israel on some conventional legal basis that would allow the ICJ's jurisdiction to be anchored in some compromise clause in relation to Israel's actions in the Occupied Palestinian Territories or its current military action in Gaza, the problem, in my view, is not one of determining the International Law applicable. That is a problem that has already been solved. The problem is the application of these rules, and therefore compliance with them by the states involved, especially Israel. In the same way as compliance with the binding decisions of the Security Council remains enforceable. In this respect, the continuation of this war in Gaza, in addition to the humanitarian catastrophe it represents, undermines, perhaps irreparably, the already damaged prestige of international legality and international institutions.

XVII. EPILOGUE: FOR A VIABLE PEACE AND A BASIC HUMANITARIAN PREMISE

The Security Council has so far been unable to call for an immediate cessation of hostilities and to condemn both the brutal Hamas attack and hostage-taking and the continuing deadly Israeli reprisal. Nor, in the more than fifty years since 1967, has the Council been able to implement its limited measures and bring peace to the now almost incessant Israeli-Palestinian conflict. Yet, as I have emphasised, there are enough Security Council resolutions recognising applicable International Law and setting out measures to implement the Security Council's vision of a two-state solution, living side by side with secure and recognised borders.

What is beyond doubt is that the gravity of this crisis will have a detrimental impact on the prospects for international efforts to promote a peace agreement. The resentment and hatred that the Hamas attacks of 7 October and the armed Israeli response have caused among both the Jewish and Palestinian people are wounds that will take a long time to heal. Both

sides see themselves as facing an existential threat that is being promoted by extremists and fundamentalists, both Jewish and Palestinian. In a sense, we are back to business as usual, in a continuing cycle of endless violence, but at a turning point that is its ultimate expression. It is quite possible that Israel's asymmetric military power, with the support of the United States, may now lead to a tactical victory in Gaza, which may, however, turn into a long-term strategic defeat by fomenting hatred and a desire for revenge with no limit and no way out of the spiral of violence.

It is therefore imperative, first and foremost, to put an end to the current violence and massacres by implementing an immediate, unconditional and definitive ceasefire as soon as possible and by immediately releasing all surviving hostages held by Hamas and the other Islamist militias. To this end, it is essential that the Security Council reaches the necessary consensus to demand a ceasefire and that pressure is brought to bear on the parties, especially Israel - but also Hamas - to this end. This is not easy as a consequence of the way the Security Council is set up. It never has been, and the fact is that in this case, and for the Israeli-Palestinian conflict, the role of a divided and misguided United States, facing a presidential election in a few months' time and increasingly isolated in its hitherto unqualified political and diplomatic support for Israel, is of paramount importance. But at other times of serious international crisis, the international community has managed to find a way out of the morass into which we are all sinking, especially the Palestinian people.

Secondly, the parties involved and the international community need to start thinking immediately about the post-war period. This has not yet happened, and a realistic plan for the day after the war is becoming increasingly important. Under no circumstances can Israel intend either to continue the war or to carry out a total occupation of the Gaza Strip or the expulsion of its inhabitants, at the risk of losing even more support than it has already lost in recent months and of becoming a real pariah in the international community. The end of the war should also mean changes in the Israeli political map and the political accountability and withdrawal of Prime Minister Benjamin Netanyahu and, perhaps, a new Israeli political leadership that does not depend on the support of ultra-orthodox and Jewish extremists and the settler lobby. As traumatic as the attacks of 7 October were, I believe that a leadership and political vision for the future requires Israel to understand that there will never

be peace without an end to the annexationist policy of the settlements and without recognition of the rights of the Palestinian people, who deserve a political prospect of hope. However painful this may be for the Israelis after what has happened.

For its part, the Palestinian Authority, weighed down by major deficits in democratic legitimacy - the last presidential elections were held in January 2005, after the death of Yasser Arafat, and the last legislative elections in January 2006 - and to a large extent by very large doses of inefficiency, discredit and corruption, must regenerate and renew itself. It must do so, moreover, with a very difficult agreement and some unity among the various Palestinian factions - including Hamas, which is gaining more and more supporters and political backing among the Palestinians - and by restoring governability to the West Bank, Gaza and East Jerusalem. While Palestinian despair at the occupation is palpable, I also understand that every effort must be made to contain radical Palestinian movements, eradicate terrorist attacks and dismantle irregular armed groups. I also understand - even if Hamas and its mentor Iran do not now accept it - that there will be no peace without recognition of the right of the State of Israel to exist without threats, which also deserves the prospect of security and stability. However painful this may be for the Palestinians in the light of recent events.

In other words, there will be no peace for either Israel or Palestine without genuine, open and effective political dialogue and negotiation, with a long-term approach, that includes Palestinian and Israeli rights. At all events, both Israel and Palestine will need the support and guidance of an increasingly heterogeneous international community. First of all, they need the accompaniment and support of the United Nations, with humanitarian and reconstruction aid and, above all, the political support of the Security Council for a genuine peace process, united in its willingness to impose its accompanying measures, including the possible establishment of special political missions and peacekeeping or mediation and monitoring missions. Secondly, from the European Union, which should regain a central role - which it has lost - in supporting dialogue between Palestinians and Israelis and in supporting Palestinian reconstruction and development, for which it must also develop and deepen its foreign and security policy and its strategic autonomy. Third, Arab countries should take up the 2002 Arab Peace Initiative

and make political normalisation with Israel through the so-called Abraham Accords conditional on Israel's effective recognition of the legitimate rights of the Palestinian people.

A special responsibility for supporting and backing a solution to this long-term conflict lies with those states that have power and influence over the embattled parties. On the one hand, there is undoubtedly the United States, which should put pressure on Israel to comply with and fully respect international norms, including the dismantling of settlements and the recognition of the rights of the Palestinian people. On the other hand, certain Arab countries, such as Egypt, Qatar and Saudi Arabia, and especially Iran, should put pressure on Hamas and other Palestinian militias and irregular armed groups to stop arming themselves and to recognise the right of the State of Israel to exist. With regard to Iran, of course, all this is much more difficult and would require, in its case, a broader and more multifactorial political operation, in which perhaps China could also play a relevant role, with this new friendly, pacifying and influential policy in international politics that led it to sponsor a certain reconciliation between Iran and Saudi Arabia in March 2023. It is true that there are many recommendations that would be difficult to achieve in all of the above and that the whole panorama is extremely complicated, but any possible solution to the Israeli-Palestinian conflict should, in my view, be along these lines.

It may seem illusory, but it is clear to me that this war must be stopped once and for all, and that the only possible and viable final solution, however difficult it may be and however distant it may now seem, is that of a state of Palestine alongside a state of Israel, with secure and recognised borders. In other words, a region, the Middle East, in which Israel can live side by side with Palestine and its other neighbours, in peace and security for all. I do not want to sound delusional, and I know that this is extraordinarily difficult and that there are too many geopolitical interests at stake, but I believe that there is no other possible alternative - at least not now - and that the world cannot be a place without hope. This is what I believe is right and what I believe should be, although perhaps it is not. In this sense, the turning point that the current war in Gaza represents should be immediately grasped as an opportunity for peace, for ending the endless cycle of violence.

Finally, in the context of the current humanitarian tragedy, I believe that all parties involved should start from the basic humanitarian premise that the life of a Palestinian is worth as much as the life of a Jew or, in other words, that the life of a Jew is worth as much as the life of a Palestinian.

TABLE OF CONTENTS / January-December 2024 / No 12

IN MEMORIAM

Miguel GARCÍA GARCÍA-REVILLO
Prof^a Dr^a Eva María Vázquez Gómez, In Memoriam
Xabier FERNÁNDEZ PONS
En recuerdo de la Dra. Marta Ortega Gómez

EDITORIAL

Xabier PONS RAFOLS
La guerra en Gaza y el conflicto palestino-israelí: Un punto de inflexión en medio de un ciclo sin fin de violencia
Xabier PONS RAFOLS
The war in Gaza and the Israeli-Palestinian conflict: A turning point in the midst of an endless cycle of violence
Gloria FERNÁNDEZ ARRIBAS
The war in Gaza and the Israeli-Palestinian conflict: A turning point in the midst of an endless cycle of violence

STUDIES

Gustavo DE LA ORDEN BOSCH
Pre-entry screening and border procedures as new detention landscape in the EU Pact on Migration and Asylum. The Spanish borders as a laboratory for immobility policies
Clara BOSCH MARCH
De Melilla a Estrasburgo: un análisis de la inspiración española en el giro del TEDH con respecto al Artículo 4 del Protocolo N.º 4 CEDH
Natalie ROS
What is Blue Colonialism?
Francesco SEATZU, Nicolás CARRILLO SANTARELLI
On the law, work and functioning of the EU agency for cybersecurity

NOTES

Ladislav NZE BEKALE
L'efficacité des instruments de gouvernance foncière de l'Union Africaine dans la prévention des conflits fonciers en Afrique : Quelles perspectives ?

AGORA

Juan SOROETA LICERAS
Las ocupaciones militares de Palestina y del Sahara Occidental por Israel y Marruecos, dos ejemplos jurídicamente equiparables de violación grave del derecho internacional
Paloma GONZÁLEZ GÓMEZ DEL NIÑO
La Rivalidad entre Argelia y Marruecos. Un análisis de la ruptura de relaciones diplomáticas de 2021 desde el Derecho Internacional y las Relaciones Internacionales
Miguel ACOSTA SÁNCHEZ
Sobre la frontera terrestre de Melilla y la demarcación en la zona del Barrio Chino: La aplicación del principio de territorialidad tras los sucesos de junio de 2022

HOMENAJE AL PROFESOR LIÑÁN NOGUERAS

Antonio SÁNCHEZ ORTEGA
Análisis y tipificación del Sistema Internacional Contemporáneo.
Una aproximación desde el realismo estructural y las teorías de sistemas

DOCUMENTATION

Documentación I. Statement by Professors of International Law and International Relations on the situation in Gaza - Declaración de Profesores/as de Derecho Internacional y Relaciones Internacionales sobre la situación en Gaza (versiones en inglés y español)
Documentación II. Gaza: Hamas and Israel war crimes- Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

ANNOTATED BIBLIOGRAPHY

ZABALA ROLDÁN, P., La diplomacia digital de la Unión Europea: pandemia y lucha contra la desinformación, Madrid, Reus, 2022, 180 pp. XVI Premio Andaluz de Investigación sobre Integración Europea. Por F. A. DOMÍNGUEZ DÍAZ
LÓPEZ ULLA, J. M., QUIÑONES ANDRADE, R. G., Niños, niñas y adolescentes migrantes no acompañados en Andalucía: un enfoque de derechos, Aranzadi, Cizur Menor, 2023, 135 pp. Por E. GIRÓN REGUERA
BLANC ALTEMIR, A. (Dir.), ORTIZ HERNÁNDEZ, E. (Coord.), COS SÁNCHEZ, P. (Coord.), The Trade Relations of the European Union with the Rest of the World: An Analysis after the Pandemic and the Russian Invasion of Ukraine, Aranzadi, Pamplona, 2023, 533 pp. By O. NIHREIEVA
CATALDI, G. - HILPOLD, P. (eds.), Migration and Asylum Policies System's National and Supranational Regimes, Napoli, Editoriale Scientifica, 2023, 283 pp. By M. PORCHIA

