

Executive Report

Israel's Military Offensive against the people of Gaza and the abrogation of International Humanitarian Law.

On October 7, the Islamic militant political administrative group Hamas in the Palestinian strip engaged in Acts of Aggression (as defined in UN Res.3314, UN-1979) by surprise attacking a total of 1400 civilians in Israel including women and children, many of them they were living in their homes. The attack occurred after breaking through the separation fence with the West Bank in Palestine. From that date to the present, the state of Israel has made use of its inalienable right of collective self-defence as stipulated in the International Humanitarian Law Act 1993, and the exception approved in the UN Charter Art. 51, c. VII, of the right of defence with military character in cases of armed attack. The objective of the State of Israel is to protect civilians and to recover civilian hostages.

In civilised societies no war or military attack is desired, however, given the circumstances, the duty of international justice must be to seek the restoration of peace and ceasefire through the use and criticism based on the instruments and statutes of International Humanitarian Law which seeks to balance military necessity with the principles of humanity. However, there is firstly an undeniable breach of the principle of proportionality (as defined in Article 51.5 b of Protocol I), as Israel's retaliation against the people of Palestine appears to be immeasurable. The military offensive does not appear to have a defined target but to be operating at random causing high collateral damage in pursuit of Hamas militants. In a country as densely populated as Palestine, collateral damage to civilians is alarming. There has been a breach of the principles of international custom and of the general principles of international law of nations derived from the principles of humanity and the dictates of public conscience. Secondly, there has been a violation of the principle of non-discrimination in the protection of civilians as indicated in the Geneva 1949 treaties, Art. 50.1, 50.2 and ICRC, and of preferential protection for women, children and the sick, since hospitals and schools have also been affected as military targets. It should be noted that IHL, as defined by international law, has the function of regulating the modalities of warfare, or humanisation, which focuses attention on all its principles aimed at the protection of civilians and in particular the sick.

Therefore, considering Hamas's attack and Israel's retaliation, it can be deduced that the main juncture lies in the observed doubling of IHL in this case. It is difficult to have an exact definition of the symmetry of the parties to the conflict and their militancy, of the aggressor/aggrieved party relationship, and of the timeline in terms of incidents that can be categorised as a provocation to violence in reference to the problem of Israel's occupation of Palestine. The exceptional right to military defence legitimately accorded to the state of Israel (UN Charter, VII art. 51, 39) is not a constraint on applying due diligence in consideration of the protection of civilians and establishment of safe havens. Data observed in the media also suggests that the confrontation between Jews and Palestinians is not only based on a history of occupation and systematic

deprivation of human rights, but also an existing racism in society where ethnic elimination is considered, yet the Hamas attack is not justified in its entirety. Through this fact it can be estimated that the Israeli parliament and government would have considered absolute military retaliation in the first instance and also planned communication strategies in order to deliberately attempt against the lives of civilians and prevent publication. This is considered a violation of the principles of transparency in communication by suggesting that Palestinians are recruited in the so-called open prisons or cross the tunnels connecting them to the country of Egypt and then become part of military targets, is a violation of international law. For this reason, the war crime of genocide (as defined in Art. 7(1) of the Rome Statute, and in regulation n. 156 of the customary rules of IHL, ICRC) can also be presumed. It should be noted that the inalienable right of self-defence as defined under Art 5(2) of the UN Charter is de facto applicable when states are victims of unprovoked attacks. Nevertheless, Israel's occupation of the North-West Palestinian strip can be considered a provocation of violence under international law, which makes the war contradictory.

However, Israeli Prime Minister Benjamin Netanyahu has recently claimed to be acting against international terrorism, and in an attempt to justify his grand military strategy, as well as against the likelihood of terrorist spread. Indeed, Hamas is not a peaceful group, and if it were not the military target, it would certainly be the population of Israel that would be exposed. The government of Israel is therefore legitimate in its right to provide for its civilian security, as the loss of Israeli lives forced as hostages, including children under the age of five, and the elderly, also constitutes a grave breach of the third Geneva Convention 1929, 1949.

As of 07.11.2023, an estimated 10,000 Palestinian civilian casualties, whose bodies are found gassed or dismembered after being attacked with long-range missiles, make the violation of the principle of proportionality even more visible. Moreover, the allegation against Israel of the use of chemical bombs (white phosphorus), banned since 1997, suggests a failure of the Hague regulations, *ius in bello*, and the Geneva Conventions of 1925 and 1972.

In detail, Israel is attacking the Principle of Distinction (Art. 52.1 of Protocol I), between military targets and civilian objects. Part of the Israeli strategy to demoralise the Palestinian people has also consisted of cutting off water, energy and telecommunications supplies. This last strategy must be added to the list of collateral damage as it is encouraging the spread of disease and/or causing death to the most vulnerable civilians such as children, women and the sick, contrary to the fundamental rights of the child (article 77 of Additional Protocol I), recognised in the Acts and treaties of war of the principle of International Customary Law, the preamble to the Hague Convention IV of 1907, and the Law of Nations of civilised peoples.

Furthermore, the mutilated and gassed bodies pollute the sea coast and water reservoirs for human consumption, acidify the soil and chemical weapons pollute the environment, the latter of which will have a global impact on climate change. This is contrary to the Geneva Convention on the Protection of the Environment, Art. 35.3 and Art. 55, 1949, 1977. Furthermore, in the use of chemical weapons according to the St. Petersburg Declaration of 1868 and Protocol III of the 1980 Convention.

The failed peace treaty between Palestine and Israel could not be implemented, mainly because of the Israeli resistance to the occupation of Palestine and the refusal to recognise its sovereignty. To this

This is coupled with the empowering support of supreme countries in the world order such as the US, UK and Russia, as well as the consensual vote that the UN Security Council has taken in recent days. The disappointment came from the US vote which went against at least twice to pass a resolution at level VI of the UN Charter to call a war truce and provide humanitarian assistance to the people of the Palestinian strip. This indicates a poor awareness of IHL. Today 07.11.2023 there is still no progress on this proposal for the third time, as the UN Security Council could not approve the communiqué to Israel which has made it clear that it will not abide by such a measure. This is not to mention that time is an important factor in terms of saving human lives.

While the ongoing war in Palestine is regrettable, ironically, it can be an opportunity to raise the discussion of the basis of the conflict at an international level and on that basis develop and implement international law and IHL if it is conducive, as the Martens Clause and its principles of humanity and jurisdictional development allow.

The following are the most critical points of the armed conflict,

- There is no symmetry in the war between Israel and Hamas (Hamas, one of the two major political parties in Palestine that are said to govern approximately two million of the population, is known for its militancy against the Israeli state and civilians, has won prescription as a 'terrorist group' by the international community and has been on the rise since last October).) While Israeli militancy is legitimate and justified, the collateral damage has exceeded tolerable limits in the first instance.
- There is a perceived oppression of the people of Palestine by international powers when there are clearly certain aspects that can be considered breaches of IHL treaties by Israel.
- Prolonged war between Islamic countries may lead to the splitting of militancy and the further emergence of international terrorism, or create proxies.
- This could lead to complications and migration crises in the Middle East and Europe in particular.

Proposed Solutions,

- Creation of Constitutional Criminal War Courts in the region including specialised trials for breaches of IHL and environmental damage, conditioned for immediate use.

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- The formation of a military commission of inquiry with international transparency to collect evidence of war crimes for immediate operation.
- Coordinate a UN Joint Communiqué to the state of Israel warning that charges of genocide or indiscriminate attack could be brought, given that the last two days have seen a list of 450 military targets mostly accomplished.
- That there being sufficient definitive evidence of facts and acts described in the statutes of IHL in its two principles of the Geneva Treaties 1977 protocol I and II, either the existing International Court of Justice or the European Court of Justice, or the International Court of Yugoslavia, has the power to initiate judicial proceedings against Hamas and the State of Israel on the following charges mainly:

1.

Against Hamas (whose recognised leader is Ismael Hamiya)... Who are the leaders of Hamas? france24.com), for the Crime of Aggression against the State of Israel in accordance with Art. 5(2) of the Rome Statute, once the crime is defined in order statutes 121 and 123, 'which provision shall be consistent with the relevant provisions of the Charter of the United Nations' (repealed from Art. 8 bis of the Rome Statute). In reference to the attacks of October 6, 2023. Also for went against the 3rd and 4th conventions of the Geneva Convention 1949, relating to the treatment of prisoners of war, and the protection of civilians respectively.

2.

Against the State of Israel for going against the 4th treaty of the Geneva Convention 1949 in relation to the protection of civilians in time of war.

Against the State of Israel in accordance with the Hague Convention and ius in bello.

Against the State of Israel for the crime of Aggression against the Palestinian strip as defined in the UN General Assembly n. 3314 (XXIX), 14.12.1974, which states that any invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, even temporary, resulting from such invasion or attack, or any annexation, by the use of force, of the territory of another State or part thereof, is considered an act of aggression. In reference to Israel's military occupation of Palestine.

- International political assistance to resume the peace treaty between Israel and the Palestinian strip.
- Develop a better description of IHL on the principle of non-discrimination of civilians and areas of attack. So many hospitals in Palestine were targeted in military attacks under the presumption of being Hamas military concentration points that they lost treaty protection. However, the State of Israel and its military intelligence should provide the

international community with the substantiation of this allegation, otherwise, it will expedite the process of bringing charges against the State of Israel as mentioned above.

- Develop greater constitutional protection for so-called truces of war for humanitarian assistance which should not be subject to unanimous approval by the UN Security Council (P5), but instead subject to approval by a majority vote in the General Assembly. It should be noted that IHL can be said to crystallise in the formation of the ICRC in 1963, Geneva, following the initiative of Henry Dunant who perceived the need for war relief societies in 1957. To date, the definition of IHL includes calls for the creation of humanitarian corridors and temporary ceasefires to provide humanitarian assistance, which derives from international law, and should not be subject to the present system of UN Security Council consensus, as mentioned in the context.
- Increased constitutional protection for the Red Cross and medical personnel without contemplation of any kind.
- Increased strategic support with Israeli police and military to identify, track and capture Hamas terrorists who intervened in civilians on 07 October 2023. The world witnessed the capture of Osama Bin Laden who was captured after the hard and specialised work of US intelligence during the Barack Obama administration. It would be in the best interest of the state and civilians alike to have better and more constant intelligence to crack down on Islamic terrorism.
- Begin programmes of social structuring and assistance, including physical and mental health and political education for the war-affected in Palestine as a matter of urgency. To prevent extremism, criminal terrorist ideology, and future retaliatory extremist militancy.
- To improve entry points for humanitarian assistance such as transportation of medicines and basic subsistence goods.

The importance of this plan is primarily to promote awareness of IHL to the point of collaboration, or a path that could lead to de-escalation of the conflict, by offering international legal support. Initiating reprisals against these two belligerents for charges related to their operations could pave the way for an international peace treaty and opt for extensive collaboration at the regional level as an immediate response. While, as a matter of urgency, it should also allow for the