



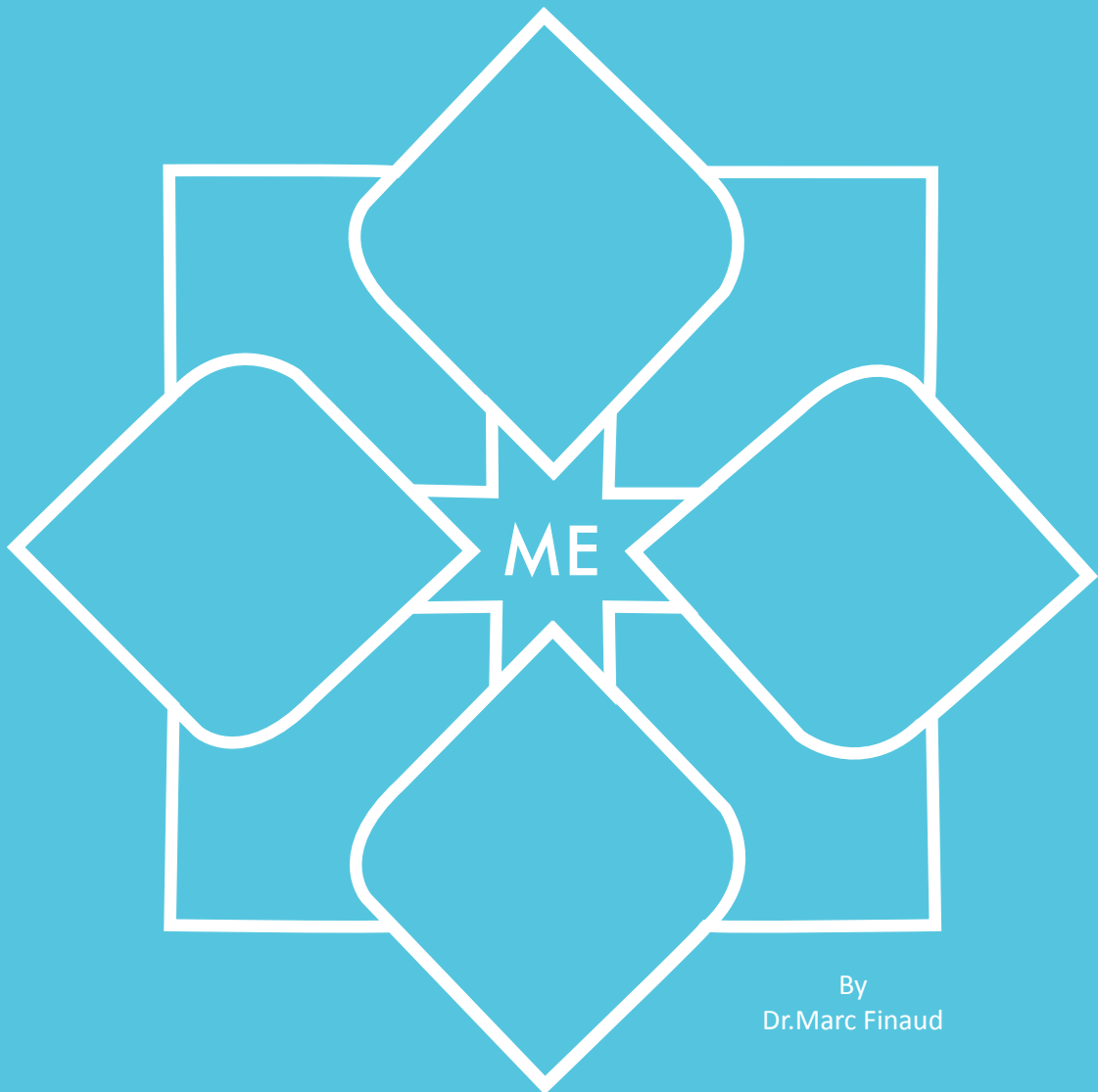
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## COMPARING THE UKRAINE AND THE GAZA WARS: THE FORCE OF LAW AND THE LAW OF FORCE



By  
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# COMPARING THE UKRAINE AND THE GAZA WARS: THE FORCE OF LAW AND THE LAW OF FORCE

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## Executive Summary

As the French saying goes, “*comparison is not reason*”, meaning that one shouldn’t compare things that are not comparable to avoid the risk of false equivalence. The conflicts in Ukraine and in Gaza that currently attract world attention (perhaps at the expense of other humanitarian crises in Yemen, Sudan, Syria, the DRC, Ethiopia, Haiti, Myanmar, Afghanistan, etc.) are evidently specific, resulting from different causes, and occurring either between states or between a state and a non-state actor. However, when scrutinized, a number of characteristics of these wars cannot escape the conclusion that many similarities exist between them: (1) the instrumentalization of history, (2) the dehumanization of the enemy, (3) gross violations of international law including collective punishment, (4) the asymmetry leading to massive civilian casualties (5) impact on regional and global security, and (6) failure of efforts to find just and lasting resolution. Disregarding these considerations and condemning one perpetrator while supporting the other can lead to the perception of double standards and deep divisions within the international community. These can affect its capacity to restore peace and security and prevent dangerous precedents.

## Key takeaways

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- The armed conflicts resulting from Russia's invasion of Ukraine and Israel's military response to Hamas' 7<sup>th</sup> October attack are different because their historical causes are specific, and one opposes two states while the other is occurring between a state and a non-state actor.
- However, in both cases, history is instrumentalised to justify the hostilities: by the Russian leadership that denies the right of Ukraine to exist as an independent state, and by the Israeli government who seeks to keep the West Bank and Gaza under occupation, rejecting a Palestinian State as part of the solution to the conflict.
- In both conflicts, polarization of the confrontation leads to dehumanization of the enemy, from denial of its very existence to calls for its elimination, close to ethnic cleansing or genocide, and aggravates extremism and divisions throughout the world.
- Both in Ukraine and in Gaza, apart from breaches of *jus ad bellum* (prohibition of the use of force to settle disputes), mass violations of human rights and international humanitarian law are perpetrated, making civilians the main victims of the conflicts.
- Both conflicts have had serious regional and global consequences affecting the world's economy, mainly developing countries.
- The efforts of the international community to help with the resolution of the conflicts have failed so far, although some mediation could lead to limited agreements among the parties such as prisoner exchanges, the Black Sea Grain Initiative, or short-term humanitarian truces.
- Just and sustainable peace solutions to both conflicts can only be based on the cardinal principle of "inadmissibility of acquisition of territory by force" and the other international legal norms that constitute the heritage of humanity.

## I) How history is instrumentalized to justify the conflicts

Both conflicts are perceived by their protagonists as having roots in ancient history. In the case of Ukraine, one cannot ignore the many statements by president Putin, including his latest interview with Tucker Carlson, denying Ukraine the right to exist as an independent state (*"Ukraine is an artificial state that was shaped at Stalin's will"* <sup>1</sup>) and arguing that Russia has legitimate historic claims at least to the eastern regions that it had invaded in February 2022. Often distorting fact-based history, <sup>2</sup> Moscow's revisionist propaganda continues to justify the invasion of Ukraine by the will to "de-nazify" that country, an accusation qualified as *"factually wrong, morally repugnant and deeply offensive"* by a group of scholars from many countries. <sup>3</sup> Also invoking the "enlargement of NATO" as a threat to Russia to explain why Moscow needed to annex first Crimea in 2014 and then the eastern provinces of Ukraine (Donetsk, Kherson, Luhansk, and Zaporizhzhia) in 2022 could easily be reversed: it was out of the fear of Russian aggression that its former allies or Soviet republics decided to join the Atlantic Alliance for protection. <sup>4</sup> Ironically, Russia's aggression against Ukraine officially designed to keep NATO away from Russian borders led to the admission of two neutral neighbouring countries, Finland and Sweden, thus more than doubling NATO's land border with Russia. <sup>5</sup>

The Ukrainians are also attached to their historical narrative and often point to the fact that their country has existed long before Russia, <sup>6</sup> but their main insistence since 2014 has been on the fact that, when the Soviet Union was dissolved in 1991, Russia, its successor state, formally recognized Ukraine as an independent state and even concluded in 1997 with Kiev a bilateral Treaty on Friendship, Cooperation, and Partnership that recognized the inviolability of existing borders.

In the case of the war between Israel and Hamas or the Israeli-Palestinian conflict, resort to historical claims has even been more systematic. Since the unilateral declaration of independence of Israel in 1948, as a result of the United Nations (UN) partition plan between a Jewish State and an Arab State in 1947, Israelis have been invoking a return to the biblical "Promised Land" after their exile into the Diaspora following the Roman destruction of the Jewish temple in Jerusalem in 70 AD, while the Palestinians argue about their presence in that land for thousands of years as members of the Muslim, Christian, and Jewish religions but inhabitants of Palestine. As always, the nationalist narrative often twists actual historical facts. Experts from the new school of Israeli historians such as Ilan Pappé <sup>7</sup> or Shlomo Zand <sup>8</sup> have demonstrated that the creation of Israel was based on myths such as the exile of the Diaspora and the return to *"a land without a people for a people without a land"*. The Israeli settlements built in the West Bank under occupation since 1967 have been justified by successive Israeli governments as legitimate because the lands of "Judea" and "Samaria" belonged to

the Israelite kingdoms some 3,000 years ago. Regarding the Gaza Strip, it was part of the British Mandate of Palestine, administered by Egypt after the 1948 war, taken by Israel in 1967, and occupied militarily with civilian settlements until 2005, after which it was kept under “closure”, “siege” or “blockade” by Israel invoking the threat from the Hamas Islamist movement. The Israeli extreme right opposed that withdrawal, claiming that the Gaza Strip was part and parcel of Israel’s ancestral land. After the Israeli massive retaliation to the October 7<sup>th</sup> attack from Hamas, new Israeli claims of possession of the whole Gaza Strip for both historical reasons and security considerations inevitably fuelled accusations of ethnic cleansing or genocide against the Gaza population.<sup>9</sup>

On their part, the Palestinians also often refer to history to justify their rights to remain within the limits of Mandatory Palestine resulting from the collapse of the Ottoman Empire. While the Palestine Liberation Organization (PLO) and its main component *Fatah* accepted to share the land with Israel in the Oslo Accords of 1993, Hamas has continued to include in its Covenant the “liberation” of Palestine “from the [Jordan] river to the [Mediterranean] sea”, meaning the disappearance of Israel. However, in 2017, it conceded that a Palestinian State could be temporarily separate from Israel and that Hamas was not fighting the Jews but the “Zionist project”.<sup>10</sup>

Interestingly, recent scientific discoveries based on genetics contradict both the myth that the Palestinians are outsiders who arrived with the Arab Conquests of the 6<sup>th</sup> century AD, and that Israeli Jews have no roots in the land. Both groups have very strong connections to the DNA from the Bronze Age sites in the region. Israel/Palestine is the home of two closely related peoples.<sup>11</sup>

In neither conflict, of course, leaders acknowledge the imperial or colonial legacy that has forged present history. In the case of Ukraine, Putin’s references going back to the 9<sup>th</sup> century denote his nostalgia for the greatness of the Russian empire expanded over centuries by the forcible absorption of dozens of nations. In the case of the Israeli-Palestinian conflict, no one can deny the historic responsibilities of former colonial powers (the Arab empire, the Ottoman Empire, France, and the United Kingdom). However, in both cases, although there may be value in better knowing the past to understand the present, it makes no sense to refer to it to justify current policy decisions based on a dream to return to a distant past. Indeed, where is the limit? How far back do you go in history? If all currently international borders were questioned out of historical and/or religious considerations, the world would become chaos. Legitimacy lies not in history but in respect for international law. The “distant past” stops with our current international legal system, which started to take shape in the 19<sup>th</sup> century with the Vienna Congress that established national sovereignty and territorial integrity – later enshrined in the Covenant of the League of Nations and the UN Charter – as the foundations of the international order along with the Hague Conventions that contained the initial law of

occupation. All current nation-states are expected to abide by such rules. Even African countries whose borders have been imposed by the colonial powers, have accepted them in full respect with the UN Charter, as recalled by the Kenyan Representative to the UN Security Council on 21 February 2021 in response to Russia's argument about the invasion of Ukraine.<sup>12</sup>

## II) Dehumanization of the enemy and polarization of confrontation

According to the saying attributed to Aeschylus, the father of Greek tragedy, *"in war, truth is the first casualty."* Indeed, every conflict is fuelled by the public discourse about the enemy, and words are not chosen by accident but with a purpose: to mobilize the population, to galvanize a spirit of resistance or revenge, to minimize the human dimension of the casualties on the enemy side. This is what is happening to an increasing and concerning extent in both conflicts, and is aggravated by the biases of mainstream media plus the devastating impact of conspiracy theories, manipulated social media and fake news.

The Russian discourse, as we have seen, not only denies Ukrainians the right to exist as an independent state but it accuses the "Kiev regime" of being run by "nazis" or being "colonised" by the United States or the West, who have allegedly orchestrated the Maidan Revolution (presented as a "coup") in 2013.<sup>13</sup> Whenever civilian casualties are deplored on the Russian side, the Russian authorities and media, ignoring the Ukrainian civilian losses caused by Russia, blame it on Ukrainian "terrorists".<sup>14</sup> For his part, Ukrainian president Volodymyr Zelensky regularly describes Russia as a "terrorist country".<sup>15</sup>

The dehumanization of the enemy and polarization of hostile perceptions has been rampant in the Israeli-Palestinian conflict for a long time but has escalated to unprecedented levels of extremism since the October 7<sup>th</sup> Hamas terrorist attack and the Israeli military response. On 9 October 2023, in retaliation against the unprecedented and horrendous killings of civilians perpetrated by Hamas operatives on Israeli soil, that resulted in some 1,139 fatalities<sup>16</sup> and the taking of some 250 mostly civilian hostages, Israeli Defence Minister Yoav Gallant announced a "complete siege" on Gaza and stated: *"We are fighting against human animals"*.<sup>17</sup> Prime Minister Benjamin Netanyahu made a statement referring to Amalek, the biblical enemy of the Israelites, widely interpreted as a genocidal call to wipe out Gaza.<sup>18</sup> Moshe Feiglin, the founder of the Zehut Party and former member of parliament, called for Gaza's complete *"destruction like what happened in Dresden and Hiroshima, without nuclear weapons"* while Heritage Minister Amichai Eliyahu said in a radio interview, *"we'd drop what amounts to some kind of a nuclear bomb on all of Gaza, flattening them, eliminating*

*everybody there.*"<sup>19</sup> Later, the Israeli Minister for Settlement and National Missions, Orit Strook, denied the existence of the Palestinian people, claiming, "*There is no such thing as a Palestinian people,*" and adding, "*this land is ours, for the Israeli people and only for us.*"<sup>20</sup>

Of course, the accusation of "terrorism" against Palestinians has been constant throughout the conflict and, unfortunately, has often been justified by some actual terrorist acts against Israeli civilians. But equating a whole people with the charge of terrorism is the sign of a form of extremism that could legitimize any blind attack on any Palestinian civilian, as this has been happening increasingly in the West Bank on the part of Israeli settlers. After hundreds of such settler vigilantes attacked the West Bank village of Huwara, torched houses and cars, and killed a Palestinian on 26 February 2023, the Israeli extreme-right Finance Minister, Bezalel Smotrich, called for the state of Israel to "*wipe Huwara off the map*".<sup>21</sup> Such cases are far from being isolated and can take the form of roadblocks or demonstrations by groups of Israeli settlers preventing physical access of humanitarian aid through Israel to the starving Gaza population under the allegation that "*all the people in Gaza are terrorists*"<sup>22</sup>, insensitive statements in Israeli media mocking the deaths of Palestinians<sup>23</sup> or, worse, videos of Israeli soldiers bragging about their exactions.<sup>24</sup>

On the Palestinian side, the rhetoric has also been playing an important role to forge the national narrative. When Israelis talk about their declaration of independence, Palestinians call it "Nakba" (the catastrophe), marked by mass deportation. Although, historically, the Zionist movement, launched in 1897 in Basel with the aim of promoting a Jewish homeland in Palestine, achieved its goal with the creation of the state of Israel, many Palestinians or Arabs (and Iranians) still reject this reality and nowadays only refer to the "Zionist regime" or simply the "Zionists" to encompass all Israelis if not all Jews in an offensive way. Of course, criticizing the "Zionist project" or the Israeli government cannot in any way be assimilated to antisemitism, which is hostility towards the whole Jewish people. It is true that some nationalist-religious groups in Israel consider that their country is entitled (by God?) to possess the whole of the former Mandatory Palestine ("Greater Israel" or *Eretz Israel*), but they are mirrored by the same extremists on the Palestinian side who, like Hamas, want to liberate Palestine "from the river to the sea" and deny the right of Israelis to live peacefully within their own state. One influential Sunni Muslim scholar, Sheikh Yusuf Al-Qaradhwai, has even claimed that, in Israel, there can be no civilian victims of "martyrdom operations" (suicide bombings) because all Israelis (including women, children and unborn babies) are potentially serving in the armed forces.<sup>25</sup> This is mirrored by a statement by the head of an Israeli religious school, Rabbi Eliyahu Mali, justifying the killing of Palestinian children, women and the elderly: "*Today's terrorists are the children of the previous operation that you kept alive, and the women are actually the ones who create the terrorists... There*

*are no innocents: even an old man is capable of picking up a rifle and shooting... Today he is a baby, he is a child, tomorrow he is a fighter.”<sup>26</sup>*

Such approaches are evidently mutually exclusive and may serve as an ideological basis for extermination of the enemy tantamount to ethnic cleansing or genocide. The future resolution of the conflict may someday include a jointly negotiated single state in which Israelis and Palestinians would coexist with equal civil and political rights. But, at this stage, the logic of the 1947 UN Partition Plan, including an international status for Jerusalem, remains the basis of the two-state solution implying mutual acceptance and sharing of the land, despite the blows it suffered from the failure of the Oslo Accords to the recent escalation of violence.

### **III) A massive blow to international law and humanitarian principles**

Both conflicts have been characterized by an unprecedented level of violations of norms of international law. If we consider *jus ad bellum*, i.e. the law regarding the right to use force, in the case of Ukraine like in the Israeli-Palestinian conflict, we are facing longstanding disputes that the UN Charter makes it an obligation to resolve peacefully (art. 33 to 38). After the illicit 2014 annexation of Crimea by Russia, there were attempts of negotiations that led to the Minsk I and Minsk II agreements, but those failed to be implemented. By invading an independent state whose borders it had recognized upon proclamation of its independence in 1991, Russia violated the fundamental obligation, contained in art. 2 para. 4 of the UN Charter, to *“refrain from the threat or use of force against the territorial integrity or political independence of any State”*. As has been recognized by the UN General Assembly in its resolution ES 11/1 of 18 March 2022, this attack can be qualified as an *“act of aggression”*. As a consequence, individual leaders who planned, prepared, initiated or executed such an act can be prosecuted for the international *“crime of aggression”* under art. 8 bis of the Rome Statute of the International Criminal Court (ICC).

Officially, Moscow did not call this invasion a war but a *“special military operation”*, but, according to Common Article 2 of the Geneva Conventions of 1949, an international armed conflict exists in *“all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”* The principles of peaceful settlement of disputes, non-use of force, inviolability of borders, clearly violated by Russia, are also contained in the 1975 Helsinki Final Act and the 1990 Paris Charter as well as in the 1994 Budapest Memorandum between Russia, Ukraine, the United Kingdom, and the United States, and in the 1997 bilateral treaty between Russia and Ukraine.



Once the armed conflict has started, all parties are obligated to comply with international humanitarian law (IHL) or the laws of armed conflict (*jus in bello*) irrespective of whether the conflict is justified or not under *jus ad bellum*. Both Ukraine and Russia are states parties of the 1949 Geneva Conventions and the two 1977 Additional Protocols and the conflict between them is regulated as an international (or inter-state) armed conflict, mainly by the four 1949 Geneva Conventions and Additional Protocol I of 1977. One main characteristic of IHL, often ignored, is that, unlike the rest of conventional law, it cannot be based on reciprocity: non-compliance with IHL by one party cannot be invoked by another party to justify its own violations of IHL, that must be complied with “in all circumstances”.<sup>27</sup>

The legal framework of the Israeli-Palestinian conflict is slightly different. Israel is an independent state established in 1948 on the basis of a decision of the UN and a full member of that organization; it has diplomatic relations with 165 states (85% of the UN membership). However, its borders have not been recognized and what most people call the “1967 borders”, existing prior to the 1967 Six-Day War and occupation of the West Bank and Gaza, are in fact the 1949 armistice lines temporarily agreed upon between Israel, Jordan, Egypt, Lebanon, and Syria that put an end to the hostilities started in 1948.<sup>28</sup>

The State of Palestine has been proclaimed in 1988 by the Palestine Liberation Organization (PLO) that claims the West Bank and the Gaza Strip as its territory; it has been recognized by the UN General Assembly in 2012 as a non-member observer state; the vote in favour of that resolution by 139 states (72% of the UN membership) confers the State of Palestine some legal authority but, of course, this status, even qualified as “proto-state” or “quasi-state”, is opposed by Israel and most Western countries for whom their recognition of a Palestinian state is conditioned to direct negotiations between Israel and the Palestinian Authority. However, as recalled by the lawyer representing the State of Palestine at the International Court of Justice (ICJ) February 2024 hearings on “Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem”, “*Palestinian statehood is not dependent on the approval of Israel. The Occupying Power does not have, and cannot have, a right of veto over the right of self-determination of the Palestinian people.*”<sup>29</sup> As a result of the situation, several Western countries have decided full recognition of the State of Palestine (Spain, Ireland, Norway, etc.) and the UN General Assembly, while unable to accept Palestine as a full member because of the veto of the United States in the Security Council, upgraded Palestine’s status as an observer state in its resolution ES-10/23 of 10 May 2024.<sup>30</sup>

Regarding the applicability of IHL to the conflict, Israel argues that the Palestinian territories are “disputed land”<sup>31</sup> while the vast majority of the international community and the International Committee of the Red Cross (ICRC)<sup>32</sup> consider that the West Bank and the Gaza Strip are still under occupation despite the partial withdrawals resulting from the Oslo Accords and the 2005 unilateral “disengagement” from Gaza. Occupation is defined in art. 42 of the Hague Regulations of 1907, which states that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” According to Common Art. 2 of the Geneva Conventions, “[t]he Convention[s] shall [...] apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”

Some legal experts argue that Israel has been able to use force and exercise effective control, by imposing authority and preventing local authorities from exercising control, without a military presence in the Gaza Strip.<sup>33</sup> Moreover, Israel has maintained

*“control exercised over, inter alia, [Gaza’s] airspace and territorial waters, land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry.”*<sup>34</sup>

As a result, the law of occupation applies, particularly the Hague Regulations of 1907 (considered as customary law) and the Fourth Geneva Convention of 1949 (to which Israel is a party but that it only accepts *de facto* as applicable to the Palestinian territories<sup>35</sup>). That Convention particularly requires that the occupying power ensures “the food and medical supplies of the population” as well as maintains “the medical and hospital establishments and services, public health and hygiene.”<sup>36</sup>

Some other experts argue that Hamas is a non-state actor accused of terrorist acts, which would make the conflict a non-international one and lead to application of the relevant norms (mainly Common Article 3 of the Geneva Conventions and Additional Protocol II of 1977). While Israel is not a party to either of the Additional Protocols, the State of Palestine has ratified Additional Protocol II applicable to non-international armed conflicts, and Hamas, that claims to be a resistance organization, may seem to satisfy the required criteria (control of territory, sustained and concerted military operations, responsible command). In that case, it would then seem safe to regulate the conflict by Common Article 3 of the 1949 Geneva Conventions between the two parties in conflict.<sup>37</sup>

In this respect, another contentious issue, related not to IHL but to *jus ad bellum*, is whether Israel, as the occupying power, benefits from the right of legitimate self-defence in accordance with art. 51 of the UN Charter. The latter applies in case of an “armed attack”, not necessarily by a state. Moreover,

the definition of occupation would require Israel to have exerted actual control of the whole Gaza Strip when Hamas launched its attack onto Israeli territory. Some experts conclude that Israel does have the right to self-defence but must exercise it in full respect of international law, particularly the principles of distinction and proportionality.<sup>38</sup> However, the ICJ ruled in its 2004 Advisory Opinion on “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” that Israel could not invoke Article 51 against a threat coming from an occupied territory over which it had control but that it had the right to respond with actions in conformity with applicable international law.<sup>39</sup>

Among many other prohibitions, the norms of IHL prohibit attacks against civilians and civilian objects such as housing units, schools, hospitals, ambulances, religious buildings, infrastructure containing dangerous forces such as dams, dikes and nuclear power plants, violence and reprisals against captured protected persons as well as torture, cruel, inhuman, or degrading treatment or punishment against protected persons as well as collective punishment. Protected persons include medical personnel, journalists, and humanitarian workers who became deliberate targets or collateral victims in both conflicts. Those rules have been massively violated by all parties to both conflicts in Ukraine and Gaza. In the latter case, a report by the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel stated on 12 June 2024 that Israeli authorities are responsible for war crimes and crimes against humanity committed during the military operations and attacks in Gaza since 7 October 2023 and that Palestinian armed groups are responsible for war crimes committed in Israel.<sup>40</sup>

The parties to any armed conflict do not have an unlimited choice of methods and means of warfare, and must at all time apply the principles of distinction, precaution and proportionality. The principle of distinction requires distinguishing at all times between enemy combatants and protected persons such as civilians and wounded or captured fighters, and between military objectives and civilian objects such as homes, hospitals and infrastructure providing services essential to the survival of the civilian population. Unfortunately, as is being regularly reported, the aggression perpetrated by Russia against Ukraine and the Israeli military response against Gaza are characterized by a massive if not systematic violation of such prohibitions. Asymmetry in both cases will be addressed below, and it is true that the Russia-Ukraine war opposes two state armies on battlefields while the Israel-Gaza war is occurring between the most powerful army in the region and guerrilla forces. However, whether they are “collateral damage” or part of a deliberate strategy, the extensive civilian casualties and widespread destructions in both cases can in no way be justified. As a result mainly of both conflicts, according to the UN High Commissioner for Human Rights, the number of civilian deaths in armed conflict globally soared by 72 per cent in 2023 compared with the previous year. The data

indicated that the proportion of women killed in 2023 doubled and that of children tripled, compared to the year prior.<sup>41</sup>

Both Russia and Ukraine as well as Israel are party to many international treaties regulating or prohibiting the use of specific means of warfare. This is the case for the 1980 Convention on “Certain Conventional Weapons” (CCW) although Israel is not party to its Protocol III on incendiary weapons. There have been accusations of use of white phosphorus as an incendiary weapon against civilian targets by Russia<sup>42</sup> and Israel<sup>43</sup>. As any direct attack against civilians, such use is absolutely prohibited by IHL even for states outside the Protocol.<sup>44</sup> Also, the use of thermobaric weapons (or vacuum bombs), not illicit *per se*, by Russia against civilian objects, especially in urban areas, is considered a serious violation of IHL.<sup>45</sup> While only Ukraine and the State of Palestine, contrary to Russia and Israel, are party to the Antipersonnel Landmine Ban, but all except the State of Palestine are party to Amended Protocol II of the CCW on “mines, booby traps and other devices”, a widespread use of mines, explosive weapons, and explosive improvised devices by all parties, including against civilians, has been reported in both conflicts.<sup>46</sup> Antipersonnel and anti-vehicle mines are governed by specific treaty rules while explosive weapons and improvised explosive devices are regulated by the general rules of IHL (distinction, precaution, proportionality).

As regularly reported by media and social media, the wars in Ukraine and Gaza are characterized by mass violations of the rules and principles of IHL that may constitute international crimes as defined by the Rome Statute of the ICC (war crimes, crimes against humanity, genocide, and the crime of aggression). Criminal investigations to prosecute such crimes perpetrated by individuals are under way in several countries (especially those applying universal jurisdiction) and by the ICC.<sup>47</sup> On 17 March 2023, the ICC has already launched an international arrest warrant against Vladimir Putin and Maria Lvova-Belova, Russia’s Commissioner for Children, under the charge of *“the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation”*.<sup>48</sup> Later, on 5 March 2024, the Court issued arrest warrants against two Russian high-ranking officers, Sergei Kobylash, Commander of the Long-Range Aviation of the Aerospace Force, and Viktor Sokolov, Commander of the Black Sea Fleet, for the war crimes of directing attacks at civilian objects and causing excessive incidental harm to civilians or damage to civilian objects, and the crime against humanity of inhumane acts.<sup>49</sup> Regarding Israel and Palestine, the Prosecutor of the ICC filed requests for arrest warrants against Israel Prime Minister Benjamin Netanyahu and Defence Minister Yoav Gallant as well as against three Hamas leaders for alleged war crimes and crimes against humanity.<sup>50</sup>

Regarding the responsibility of states for violations of *jus ad bellum* or other relevant norms, such as the 1948 Genocide Convention, one should mention two sets of important decisions by the International Court of Justice (ICJ). The crime of genocide has been raised in relation to both conflicts. This international crime is defined in art. II of the Genocide Convention and art. 6 of the Rome Statute of the ICC as

*“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.”*

One decision is the judgement of the ICJ of 2 February 2024 on “Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)”: in response to the Russian accusation that Ukraine carried out a genocide against the peoples of Donbass and Luhansk to justify its invasion of Ukraine, the ICJ rejects the Russian objections to its jurisdiction and judges that it has jurisdiction. As a result, the ICJ will allow Ukraine’s request for the Court to rule that there was no *“credible evidence that Ukraine is committing genocide in violation of the Genocide Convention”*.<sup>51</sup> Previously, on 16 March 2022, the Court had ruled that Russia must *“immediately suspend the military operations”* it had commenced on 24 February 2022 in Ukraine and called for *“[b]oth Parties [to] refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”*<sup>52</sup>

The other important decision is the order of the ICJ of 26 January 2024 at the request of South Africa on “Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)”: without prejudice to the examination of the accusations of violations of the Genocide Convention by Israel in its war against Gaza, the Court agreed that the risk to *“the right of the Palestinians in Gaza to be protected from acts of genocide”* is *“plausible”*, and provisionally ordered Israel to *“take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention”*, to *“ensure with immediate effect that its military does not commit [such] acts,”* to *“take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip”*, and *“take immediate and effective measures to enable the provision of urgently needed basic services and humanitarian assistance to address the adverse conditions of life faced by Palestinians in the Gaza Strip.”*<sup>53</sup>

In response to the Israeli Prime Minister's decision on 9 February to launch an offensive on the Rafah area, where most of the Gaza population has been forced to be concentrated, South Africa filed a request for additional emergency provisional measures on 12 February 2024.<sup>54</sup> The ICJ did not agree that new measures were needed but judged that *"[t]his perilous situation demands immediate and effective implementation of the provisional measures indicated by the Court in its Order of 26 January 2024, which are applicable throughout the Gaza Strip, including in Rafah"*.<sup>55</sup> However, after South Africa had requested new urgent measures, the Court admitted on 28 March 2024 that the situation in Gaza had aggravated (*"famine is setting in"*), which required new measures by Israel such as allowing unhindered access of humanitarian aid and preventing military acts preventing such access.<sup>56</sup> Moreover, on 24 May 2024, the Court ordered Israel to *"[i]mmediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part"* and *"maintain open the Rafah crossing for unhindered provision at scale of urgently needed basic services and humanitarian assistance."*<sup>57</sup>

The fact that the highest international court has had to judge accusations of the most horrible crime, the crime of genocide, demonstrates how both conflicts have reached unprecedented levels of violence.

In addition, one should not forget that international human rights law applies all the time: both in peacetime and in armed conflict. As international legal expert Andrew Clapham underlined, *"it seemed inconceivable that unconscionable violence, destruction, massive mobilisations and bombardment in the context of wars such as those in Ukraine and Gaza would not attract scrutiny from the UN's human rights machinery."*<sup>58</sup> This explains why the UN Human Rights Council, on 4 March 2022, has established an Independent International Commission of Enquiry on Ukraine to *"investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes"* that released several reports.<sup>59</sup> Similarly, the Human Rights Council had already decided on 27 May 2021 to establish an Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel that has yet to publish a report on the Gaza war but that has issued several press releases, one of them on 27 October 2023 considering that *"grave violence in Israel and Gaza has outraged the conscience of humanity."*<sup>60</sup>

However, accusations of double standards against the West have not been toned down at the March 2024 session of the Human Rights Council. One expert considers that

*“[i]f double standards are as pronounced [...], the ones to reap the benefits are Russia, China, Saudi Arabia and others who believe that the international human rights system is a strategic threat to their own interests and want to see it destroyed, while those countries or citizens around the world who actually believe in the rule of law and human rights will lose.”<sup>61</sup>*

#### IV) Asymmetric conflict and mass civilian casualties

Most conflicts oppose enemies with differences in military capacities, population size, economic strength, etc. The Ukraine war and the Gaza war may in this respect appear as examples of profound asymmetry. The former opposes Russia, a country of 143 million people, a GDP of \$1,900 billion, with a military budget of some \$87 billion in 2022, to Ukraine, a country of 44 million people, a GDP of around \$200 billion, with a military budget of some \$6 billion in 2021 that increased to \$40 billion in 2022. In terms of military capacities, here is a table of how the two countries compared in November 2022:

Forces	RUSSIA	UKRAINE
Personnel	1,190,00 (active) 1,500,000 (reserve)	688,000 (active) 400,000 (reserve)
Battle tanks	12,009	3,177
Artillery	4,458	1,536
Aircraft	1,153 (air force) 207 (navy)	79 (air force) 4 (navy)
Surface ships	483	21

Table 1. Comparison of military capacities between Russia and Ukraine before the Russian invasion  
(Source: *Defense News*<sup>62</sup>)

In the case of the Israeli-Gaza conflict, the asymmetry is even more dramatic. Israel has a population of almost 10 million people, a GDP of \$521 billion in 2023 (\$53,195 per capita), and a military budget of \$23.6 billion. The Gaza Strip’s population was estimated at 2.23 million in 2023, its nominal GDP at around \$27.7 billion in 2021 (\$5,600 per capita). According to the 1993 Oslo Accord, the Palestinian Authority is not allowed to have military forces, only police/security forces. The military wing of Hamas — the Izz ad-Din al-Qassam Brigades, often referred to as al-Qassam Brigades — does not

publish the exact number of its fighters. Various sources have cited figures ranging from 7,000 to 50,000 troops. Reuters reported that the group had a military academy that offered specialized training, including in cybersecurity, and a 40,000-member military wing with a naval commando unit. The brigades are known to possess a substantial inventory of light weapons, including thousands of improvised rockets (which they have been firing against Israeli territory), mortars and other explosives as well as anti-tank guided missiles and shoulder-launched anti-aircraft missiles (MANPADS), which places it among the world's best-equipped guerrilla armies.<sup>63</sup>

Facing Hamas, however, is the most powerful army in the Middle East: Israeli Defence Forces (IDF) have 169,500 active troops and 360,000 reservists; Israel's air force is composed of 684 aircraft (including American F-16s and F-35s); the IDF's and Navy's arsenal also includes advanced missile boats, tanks, attack helicopters and a large drone fleet.<sup>64</sup>

In both conflicts, we thus witness a huge disproportion of military capacities on the battlefield, largely composed of urban setting areas. Instead of redoubling efforts to avoid civilian casualties by using their precision-guided weapons capable of distinction between civilian and military targets, the more powerful actors, Russia and Israel, through the widely reported images of their military operations, can only fuel the suspicion of a strategy of indiscriminate or deliberate destruction of infrastructure, including housing units, industry, energy generation, hospitals, schools, etc. This looks very similar to what was described during World War II as "scorched earth" policy (*"destroying everything that enables the enemy to wage war, including crops, livestock, buildings, and infrastructure [...] to punish resistance and reduce enemy capability or [...] to leave nothing of military value to the opposing force"*)<sup>65</sup> or "strategic bombing" (*"either harm enemy civilians in order to decrease morale and motivate them to force their governments to end the war, or to damage an enemy's war economy to the point that sufficient production cannot be maintained to continue the war successfully"*).<sup>66</sup>

Due to the lack of accurate and independent recording, and also because countries in conflict tend to minimise their own military casualties and maximise those of the enemy, it is of course extremely difficult to come up with reliable numbers of both military and civilian casualties in both conflicts. In November 2023, less than two years after the Russian invasion of Ukraine, the UN estimated the number of Ukrainian civilians killed to some 10,000 and the number of the injured to 18,500 since the invasion while warning that the actual figure may be significantly higher given the challenges and time required for verification.<sup>67</sup> Estimates of losses of Ukrainian forces as of December 2023 varied between 10,000 killed-15,000 missing (Ukrainian authorities) to a total of 383,000 killed and wounded since the beginning of the war (Russian Ministry of Defence<sup>68</sup>). Estimates of Russian



military losses as of January 2024 were between 86,000 killed (BBC News) and 150,000 killed (Ukrainian Armed Forces).<sup>69</sup> On 25 February 2024, president Zelensky announced the official figure of 31,000 confirmed Ukrainian military deaths and put the number of Russian military deaths at 180,000.<sup>70</sup> Thus, depending on the sources, the ratio between Ukrainian civilian and military deaths could be of 1 civilian to 3 military.<sup>71</sup>

	UKRAINE		RUSSIA	
Military Casualties	Deaths	Injuries	Deaths	Injuries
	31,000 confirmed (Ukrainian President, Feb. 2024)	N/A	180,000 (Ukrainian President, Feb. 2024)	229,820 (Ukrainian Armed Forces, Jan. 2024)
	70,000 (US, Aug. 2023)	100,000-120,000 (US, Aug. 2023)	211,334 incl. PSCs (BBC, Jan. 2024)	244,000 incl. PSCs (BBC, Feb. 2024)
	383,000 (Russian MOD, Dec, 2023)		113,200 (BBC, Feb. 2024)	214,000 (BBC, Feb. 2024)
Civilian Casualties	Deaths	Injuries	Deaths	Injuries
Data (Source – Date)	10,582 (UN, Nov. 2023)	19,875 (UN, Feb. 2024)	58 (UN, June 2023)	229 (UN, June 2023)

Table 2: Comparison of military and civilian casualties between Russia and Ukraine since 24 February 2022 (Sources: diverse)

In the case of the war between Israel and Hamas, the disproportion between civilian and military victims and Palestinian vs. Israeli victims is much higher. As of 10 June 2024, nine months since the start of the war, the toll of Palestinians in Gaza reached 37,124 killed (a majority of women and children) and over 84,712 wounded according to the UN citing Gaza Health Ministry sources<sup>72</sup> (that even Israeli intelligence considers as reliable<sup>73</sup>), in addition to around 1,000 Palestinians killed (presumably Hamas fighters) by Israel during the October 7<sup>th</sup> attack on Israeli soil as well as an unknown number of victims under the rubble of destroyed buildings. According to the UN, the number of children reported killed in just over four months in Gaza is higher than the number of children killed in four years of wars around the world combined.<sup>74</sup> On the Gaza Strip, over 60% of housing units are completely destroyed or damaged; out of 36 hospitals, only 10 are partially functioning; 75% of a population of 2.3 million are considered as internally displaced.<sup>75</sup> Using publicly available data, Oxfam calculated in January 2024 that the number of average deaths per day for Gaza (250) was higher than any recent major armed conflict including Syria (96.5 deaths per day), Sudan (51.6), Iraq (50.8), Ukraine (43.9) Afghanistan (23.8) and Yemen (15.8).<sup>76</sup>

On the Israeli side, there are some 1,200 reported fatalities and some 5,400 reported injuries, in addition to the 134 remaining hostages detained in Gaza.<sup>77</sup> Gaza Health Ministry sources do not distinguish between combatant and civilian casualties in their reports but distinguish according to sex and age, which gives an indication since most women and children are civilians. Israeli officials claim, without hard evidence, that Israel killed some 10,000 Hamas fighters as of 1 February 2024,<sup>78</sup> but some experts consider this number exaggerated.<sup>79</sup> It is compared with the 30,000 Hamas combatants estimated by the Israeli armed forces before the October 7<sup>th</sup> attack.<sup>80</sup>

Both the Ukraine and Gaza wars are comparable in that most of the civilian casualties result from warfare (particularly the use of explosive weapons<sup>81</sup>) in an urban environment and densely populated areas. However, the size and the conditions of the fighting differ from each other: Ukraine is a vast territory (over 603,000 km<sup>2</sup> i.e. 2.5 times the size of the UK), with large cities (Kiev: ca. 3 million; Kharkiv: ca. 1.5 million; Odessa: over 1 million) but also large rural areas and a country density of only 63 people per km<sup>2</sup>. In contrast, the surface of the Gaza Strip is only 365 km<sup>2</sup> (one quarter the size of London); its population exceeds 2.1 million people (half of whom are descendants of the 1948 war refugees), and its density reaches 5,500 people per km<sup>2</sup>, one of the highest in the world. But it is considered as a fenced camp or an open-air prison since its borders with Israel and Egypt are practically sealed – with exceptions – and Israel controls its sea and air space. This explains the unprecedented level of civilian casualties among a population that has nowhere to go to escape the bombings and shelling.

The Ukraine war has led to the internal displacement of some 3.6 million people and the displacement abroad of some 6.2 million<sup>82</sup> (out of a population of 44 million). The Gaza war has provoked a massive internal displacement of some 1.9 million people or 85% of the Gaza Strip population, but almost no displacement abroad, restricted by Israel, apart from some foreigners and a few wounded people.<sup>83</sup>

## **V) Regional and global impact of the conflicts**

The consequences of Ukraine's invasion by Russia and the war between Israel and Hamas could not remain local wars in a globalized and interdependent world, especially considering the role and responsibilities of great powers involved one way or another in the conflicts.

The crises caused by the aggression against Ukraine have been or are still global:

- **The food crisis:** before the war, Ukraine was the world's largest exporter of sunflower oil (50%), the third largest one of barley (18%), the fourth largest one of maize (16%) and the fifth largest one of wheat (12%). Asian and African countries received 92% of Ukrainian wheat. The war led to a drop of 29% in production of grain in 2022-2023. Wheat exports, prevented by a Russian blockage of Black Sea ports, fell from 4.4 million t per month to zero and only resumed after the "Black Sea Grain" Initiative in July 2022, but only up to 1.9 million t per month and were further reduced after Russia withdrew from the "Black Sea Grain" deal.<sup>84</sup> As a result, in 2022, the Food Price Index of the UN's Food and Agriculture Organization reached its highest annual level since 2005, rising more than 14%, and the number of people suffering from "acute food insecurity" in the world went from 135 million in 2019 to 345 million.<sup>85</sup> In East Africa, the price of imported wheat alone had increased by more than 58 percent. The crisis has also affected the delivery of humanitarian aid, with the operating costs of the World Food Programme increasing by 44 percent since 2019 because of the increase in the price of fuel and food.<sup>86</sup>
- **The energy crisis:** in response to western sanctions against Russia following its invasion of Ukraine, Moscow drastically cut its natural gas exports particularly to the European Union (EU): from 40% in 2021, Russia's share of EU gas fell to 10% in 2023.<sup>87</sup> Globally, total energy costs (direct and indirect) for households have increased by at least 63% and possibly more than doubled. This contributes to an increase in global household expenditure of between 2.7% and 4.8%. In some countries in sub-Saharan Africa, household energy costs increased by up to three times the global average.<sup>88</sup>
- **The economic crisis:** as a result from increases in food and energy prices, the UN Development Programme estimated in July 2022 that up to 71 million people could have already been pushed into poverty in the three months since the start of the war, with hotspots in the Balkans, Caspian Sea region and sub-Saharan Africa, particularly the Sahel.<sup>89</sup> According to the International Monetary Fund in 2022, not only were 60 per cent of low-income countries in debt distress or facing a high risk of debt distress, but so also were 30 per cent of middle-income countries.<sup>90</sup> Even after global commodity prices went down to pre-war levels, rises in the costs of inputs, such as fertilizer and labour, as well as in transport, processes, and trade do not show signs of slowing down. Regarding global financial markets, the European Central Bank stress index remains higher than historical levels.<sup>91</sup>
- **The migration crisis:** the above-mentioned 6.2 million Ukrainian refugees flooded mostly European countries (Russia: 1.2 million; Germany: 1 million; Poland: 0.96 million; Czechia: 0.36 million; UK: 0.21 million).<sup>92</sup> The UN High Commissioner for Refugees called "*the rate of this exodus [...] quite phenomenal*".<sup>93</sup> It shouldn't be surprising that Russia, like Belarus, appears as a host country: in the emergency of a shifting frontline, neighbouring countries can sometimes be the only recourse; many Ukrainians also have relatives in Russia,<sup>94</sup> and the Ukrainian authorities

have accused Moscow of forcibly deporting Ukrainians, including children, to Russia or occupied parts of Ukraine.<sup>95</sup> All host countries needed to dedicate economic, social, and financial resources to assist the refugees. The chaos caused by the war was instrumentalized further by Belarus and Russia to exert pressures on European countries: after facilitating the influx of some 16,000 migrants from the Middle East into the EU through the borders of Poland in 2021, Belarus repeated such operations in 2023 with over 19,000 migrants.<sup>96</sup> In 2023, as a response to Finland's membership in NATO, Russia helped hundreds of asylum seekers from the Middle East to reach the Finnish borders, leading the Finnish government to close all its borders with Russia.<sup>97</sup>

In the region of the Levant and the Middle East, the conflict could not remain local, and external actors supporting the Palestinian cause intervened or threatened political or military responses. Iran, a support of Hamas, the Lebanese Hezbollah, Shiite militias in Iraq, and the Houthis in Yemen (the "axis of resistance"), was accused of stirring anti-Israeli or anti-Western actions, but it clearly attempted to control those in order to avoid direct confrontation with the United States or Israel.<sup>98</sup> However, such actions did include some 100 attacks against US bases in Iraq, the killing of three US soldiers in Jordan, rockets fired by Hezbollah into Israeli territory, as well as missile and drone attacks by the Houthis against western ships in the Red Sea and the Gulf of Aden, one of busiest maritime trade route. Between November 2023 and March 2024, over 60 ships were attacked, some of which sank causing an ecological threat, and leading the US and the UK to respond militarily, including by destroying Houthi land targets.<sup>99</sup> Several hundred ships were re-routed around Africa to avoid the Red Sea and the Suez Canal (whose traffic was reduced by 65%), raising shipping costs and fuelling the fear of renewed global inflation.<sup>100</sup> After Israel launched a strike against the Iranian Consulate in Damascus and killed two Iranian generals as well as a dozen civilians on 1 April 2024,<sup>101</sup> Iran attacked the Israeli territory with missiles and drones on 14 April 2024 in which may lead to further escalation and possibly a regional war.<sup>102</sup>

## **VI) Failure of efforts to find resolution of the conflicts**

As it happens in most armed conflicts, whether international or internal, during the phase of hostilities, negotiations between the parties or third-party mediation are scarce or, if they happen, their purpose, as part of "conflict management", is rather limited. This leaves the efforts for finding just and durable solutions for a later phase. This is what has been occurring both between Ukraine and Russia and between Israel and Hamas.

There were indeed talks between Ukrainian and Russian delegations at the beginning of the Russian “special military operation”. Several rounds took place from February to September 2022, including in Antalya and Istanbul, with the mediation of Turkey. However, almost no progress was made to reduce the huge gap between the constant positions of Russia (Ukraine’s neutrality, recognition of Russia-annexed territory, “demilitarisation” and “denazification” of Ukraine)<sup>103</sup> and the positions of Ukraine (see president Zelensky’s 10-point plan, including restoration of pre-2014 borders, full Russian withdrawal, prosecution of war crimes, etc.).<sup>104</sup> In September 2022, after Russia annexed four Ukrainian provinces, president Zelensky announced that no peace talks with Russia would be possible so long as Putin was its president, and he formally applied for membership in NATO.<sup>105</sup> President Putin declared on 14 June that it would only consider a ceasefire and peace talks if Ukraine officially renounced its application to NATO and handed over the entirety of four provinces claimed by Moscow (no longer fully occupied by Russia).<sup>106</sup>

Meanwhile, some negotiations did continue between Ukraine and Russia, not on a peaceful solution but on limited mutually beneficial gains: exchanges of prisoners, including one mediated by the United Arab Emirates in January 2023;<sup>107</sup> the Black Sea Grain Initiative, mediated by Turkey and the UN in July 2022 (that expired in July 2023 due to Russia’s withdrawal); repatriation of abducted Ukrainian children, including with the mediation of Qatar, etc.

In the Israel-Gaza conflict, the only negotiations taking place involved several mediators (Egypt, Qatar, the United States) and led to a short truce extended several times in November 2023 during which hostages were released by Hamas and Palestinian prisoners by Israel.<sup>108</sup> Further talks on a longer ceasefire and more exchanges of hostages and prisoners have taken place while, after several failures, the UN Security Council eventually agreed (with US abstention), in its resolution 2728 of 26 March 2024, to demand:

*“an immediate ceasefire for the month of Ramadan respected by all parties leading to a lasting sustainable ceasefire, and also demands the immediate and unconditional release of all hostages, as well as ensuring humanitarian access to address their medical and other humanitarian needs, and further demands that the parties comply with their obligations under international law in relation to all persons they detain.”*<sup>109</sup>

In the following weeks, neither the resolution was implemented nor the separate diplomatic process succeeded. This is why the United States eventually initiated a new resolution of the Security Council, adopted on 10 June 2024 with Russia’s abstention, that aimed at reaching a comprehensive ceasefire deal in three phases to end the war in Gaza.<sup>110</sup> However, Hamas accused Israel of ambiguity regarding the actual end of hostilities and withdrawal from the Gaza Strip while some Israeli government ministers opposed the plan.<sup>111</sup>

Although the focus of direct and external actors is on the emergency humanitarian situation of the Gaza population, the unexpected consequence of the conflict is the resurgence of discussions not only on “the day after” (the end of hostilities) in Gaza but also on the political solution to the whole Israeli-Palestinian conflict.

This is where, like in the case of the Ukraine war, the international community has remained powerless thus far, especially with a UN Security Council paralysed by the systematic veto of Russia regarding Ukraine and the United States about Israel. As stated by the UN Secretary-General, António Guterres, to the Human Rights Council, “[t]he [Security] Council’s lack of unity on Russia’s invasion of Ukraine, and on Israel’s military operations in Gaza following the horrific terror attacks by Hamas on 7 October, has severely – perhaps fatally – undermined its authority.”<sup>112</sup>

Since the 1967 Six-Day War that led to the occupation of the West Bank and Gaza, the foundation of a peaceful settlement has been the “*inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security*” (UN Security Council resolution 242 of 22 November 1967). Similarly, with the impossibility of any Security Council action on Ukraine, the UN General Assembly, convened under the “Uniting for Peace” procedure initiated at the time of the Korean war, adopted a set of important resolutions at an Emergency Session, the first of which reaffirmed “*that no territorial acquisition resulting from the threat or use of force shall be recognized as legal*” (Resolution ES/11-1 of 2 March 2022).

Since the 2014 “Minsk I” and 2015 “Minsk II” agreements, mediated by the OSCE, France and Germany between Russia and Ukraine after Russia’s annexation of Crimea, there was no serious attempt to lay down the bases of a potential resolution of the conflict, including respect for the 1991 borders and full autonomy for Ukraine’s eastern provinces. The positions of the parties since the 2022 invasion remain far apart and they still give priority to military action and “full victory”. However, there will necessarily be a time when they realize that there is no military solution to the conflict and that they need to move to actual peace negotiations on the basis of the sacred principles enshrined in the UN Charter and the OSCE documents.

The Israeli-Palestinian conflict, similarly, cannot be solved by the continuation of occupation and can only be based on mutual security provided by reciprocal recognition and respect for sovereignty, i.e. the “two-state solution” advocated by most of the international community. The latter has full legitimacy to act, on the basis of the UN decisions and resolutions, the first of which called for the creation of Israel and an Arab state and several addressed the 1967 and 1973 wars as well as Israeli

military operations against the Palestinians.<sup>113</sup> Negotiations need not start from scratch since there are already a number of agreements or records of negotiations such as the Oslo Accords and its aftermath, the 2000 Camp David talks, the 2001 Taba talks, the 2003 Quartet Roadmap, etc. as well as the Track-2 “Geneva Initiative”.<sup>114</sup> It is a sad paradox that the current level of violence may have resurrected the urgent need for a political solution. Even public discourse by key external actors such as the United States, the UK or France now include talk of a Palestinian State to be recognized even outside a comprehensive agreement with Israel. This shift is clearly a means of pressure on the current government of Israel, still adamantly opposed to a Palestinian State.<sup>115</sup> The Palestinian Authority took advantage of this momentum to seek full membership in the United Nations, but the UN Security Council resolution to that end failed on 18 April 2024 due to the United States’ veto and United Kingdom’s abstention.<sup>116</sup> However, through resolution A/ES-10/L.30/Rev.1 of 10 April 2024, Palestine gained an upgraded status and a few more recognitions by Western states.

The global impact of both conflicts has led to unprecedented divisions among the international community. Countries in the Global South accuse Western countries of double standards because, on the one hand, they impose sanctions against Russia for its violations of international law and provide military assistance to Ukraine as the victim of that aggression, and on the other hand, most of them still oppose or do not support a ceasefire in Gaza, refuse to recognize a Palestinian State and even provide military assistance to Israel despite the suspicion of genocide.<sup>117</sup>

The question of military assistance is related to the notion of co-belligerence or participation of third countries in the armed conflict. Many experts consider that the law of neutrality defined in the Hague Conventions of 1907 does not apply when war has not been officially declared (which is the case by Russia). Moreover, delivery of military assistance by Ukraine’s allies can be seen as “*collective countermeasures*” in response to “*severe violations of collective obligations*” (the act of aggression). Some states even consider they have an obligation to “*cooperate to bring to an end through lawful means any serious breach*” of a peremptory norm such as the prohibition of aggression. This is supported with their obligation not to “*render aid or assistance in maintaining that situation.*”<sup>118</sup>

Although the applicability of those considerations to Israel’s attack against Hamas, which can hardly be considered as an act of aggression by a state against another state, any military assistance to Israel, at “plausible risk” of perpetrating a genocide, should at least lead to a suspension of any delivery of the weapons actually or potentially used in that military operation. As far as is publicly known so far, the Dutch Court of Appeals ordered the Netherlands to stop the export of F-35 fighter jet parts to Israel because of the “clear risk” that the parts would be used to commit or facilitate serious violations of international humanitarian law. There may be other cases pending in the UK or

Canada. Many UN legal experts called for similar decisions.<sup>119</sup> Indeed, the States Parties to the Arms Trade Treaty that export armaments are under the obligation to refrain from transferring weapons to other states when they have the “knowledge” that such weapons would be used to commit genocide, crimes against humanity or war crimes (Art. 6), and an obligation not to export if there is an “overriding risk” of serious violations of IHL being committed (Art.7). Even for states not party to the ATT (such as the United States), there is also an obligation under common Article 1 of the Geneva Conventions to “ensure respect” for the Convention by the conflict parties on which they have an influence. This comprises both a negative obligation to stop assistance that facilitates commission of violations, and to take positive measures, depending on the capacity to influence.<sup>120</sup>

## VII) Conclusions

In spite of inevitable differences and specificities explained by the history of both conflicts, the interests of the parties, the role of external actors, the military dynamics, and the prospects for peaceful resolution, the Ukraine war and the Gaza war demonstrate many commonalities that can also be found, unfortunately, in many other armed conflicts. One is the instrumentalization of history, often mixed with religion, that is used to justify the unjustifiable: invasion of a sovereign country or violations of the laws of armed conflict. Instead of opposing regular armies fighting with modern discriminate weapons in compliance with international law, both conflicts are characterised by mass violations of norms and principles that make civilian populations the main victims of violence and destruction. Those victims are in fact collectively “punished” for belonging to the population of an enemy. Images of flattened cities are reminiscent of the “strategic bombings” of Dresden, Warsaw, or Hiroshima. Military objectives that are impossible to achieve (“full victory”, “elimination of Hamas”, “denazification and demilitarisation of Ukraine”) can only lead to protracted conflicts and postpone political solutions at a huge cost of human lives and infrastructure.

Radicalization of the discourse about the enemy can only fuel hostilities or lead to escalation and make solutions of coexistence or reconciliation even more elusive. The consequences of both conflicts affect not only the population and the economy of the parties but have repercussions that threaten to enlarge the number of parties involved in the hostilities and weaken the world’s security and economy, at the expense mostly of developing countries. Although the prospects of just and lasting resolution of the conflicts remain dim at this stage, the international community should be convinced to uphold the legal norms that constitute the heritage of humanity and particularly the fundamental principle of “*inadmissibility of acquisition of territory by force*”: any exception to such a principle would amount to admitting a collective defeat, yielding to the law of force, accepting a



setback of several decades if not centuries, and incentivizing other predator states to imitate this precedent anywhere in the world. This is not a case of North-South divide or opposition between developed and developing nations. It is a matter of global stability and sustainability.

## VIII) About the Author

**Marc Finaud** is a former French diplomat who has been seconded to the Geneva Centre for Security Policy (GCSP) between 2004 and 2013 and has then worked there until 2022 to train diplomats and military officers in arms control, international and human security, while conducting research in those fields. During his 36-year career as a diplomat (from 1977 to 2013), he served in several bilateral postings (in the Soviet Union, Poland, Israel, Australia) as well as in multilateral missions (to the Conference on Security and Co-operation in Europe, the Conference on Disarmament, the United Nations). He holds master's degrees in International Law and Political Science. He was also Senior Resident Fellow (WMD Programme) at the United Nations Institute for Disarmament Research (UNIDIR) between 2013 and 2015. He is now also a Swiss citizen and remains associated with GCSP as a Fellow. Among others, he is an Advisory Board member of the Vienna Institute for Middle East Studies (VIIMES). In addition, he works as a private consultant ([www.finaudconsulting.com](http://www.finaudconsulting.com)). List of publications and media appearances: [www.gcsp.ch/marc-finauds-publication](http://www.gcsp.ch/marc-finauds-publication).

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