



As at 22.12.2023

Middle East Task Force – selected questions in the field of international law

Question	Answer
Palestine as a state?	
Does Switzerland recognise Palestine as a state?	<ul style="list-style-type: none"> - Switzerland does not recognise Palestine as a state at the bilateral level. - However, since 2012 Palestine has held observer state status at the multilateral level. The UN General Assembly has confirmed Palestine's statehood in multilateral relations.
What rights and obligations does Palestine have under international law?	<ul style="list-style-type: none"> - At the multilateral level, Palestine automatically benefits from the rights and obligations of international law that generally apply to all states. - Palestine can accede to the international conventions open to states. For example, Palestine acceded to several UN human rights treaties in 2014 – the Geneva Conventions for the protection of war victims and their three protocols – and in 2015 it joined the Rome Statute of the International Criminal Court (ICC).
What is the status of Hamas under international law?	<ul style="list-style-type: none"> - Hamas does not represent a state and is considered a non-state actor under international law. The rules of international law, which apply only between states, do not apply to Hamas. - However, since Hamas exercises a degree of de facto control in the Gaza Strip, it has a responsibility to respect human rights. - In the context of an armed conflict, international humanitarian law (IHL) is also applicable to non-state actors like Hamas.
Neutrality	
Is the law of neutrality applicable to the ISR-PAL conflict?	<ul style="list-style-type: none"> - No. The law of neutrality is only applicable in a conflict between states. Switzerland, like ISR and numerous other states, does not recognise Palestine as a state at the bilateral level. The law of neutrality is therefore not applicable to the current conflict.
Is the law of neutrality applicable to the ISR-Lebanon conflict?	<ul style="list-style-type: none"> - The law of neutrality applies only to conflicts between states that are of a certain duration and intensity. The question of neutrality does not currently arise because the conflict has not yet met the required threshold of intensity.
Self-defence	
Does Israel have a right of self-defence against Palestine under Article 51 of the UN Charter?	<ul style="list-style-type: none"> - Israel has the right to protect its security and that of its citizens. Switzerland recognises Israel's legitimate determination to ensure its national defence and security. Israel therefore has the right to take all necessary measures to ensure its security, provided they are proportional and respect human rights and IHL.

	<ul style="list-style-type: none"> - Switzerland does not view this situation as falling under Article 51 of the UN Charter, which permits the use of military force against another state or within another state's territory. Israel's actions are directed at Hamas, a non-state actor operating within territory occupied by Israel. Switzerland, along with Israel and many other countries, does not recognise Palestine as a state at the bilateral level. The International Court of Justice (ICJ) has explicitly affirmed this interpretation in its advisory opinion on Israel's separation barrier.
Does Israel have a right of self-defence against Lebanon under Article 51 of the UN Charter?	<ul style="list-style-type: none"> - In principle, yes. However, the precise extent of this right is contingent upon the specific circumstances surrounding an attack. - It should be noted that Israel is permitted to take measures in the name of defence or national security. Nevertheless, in all situations, Israel is obligated to adhere to international law, which includes IHL and human rights.
IHL and human rights	
How is the conflict classified under IHL?	<ul style="list-style-type: none"> - The hostilities between Hamas and Israel constitute an armed conflict under IHL. Furthermore, the armed conflict related to the occupation of the occupied Palestinian Territory by Israel lasts since 1967. The occupied Palestinian territory comprises the West Bank, including East Jerusalem, and the Gaza Strip.
What does IHL say about the protection of people?	<ul style="list-style-type: none"> - IHL safeguards individuals who are not involved in combat, such as civilians, medical staff and humanitarian workers. It also extends protection to those who are no longer capable of participating in hostilities, including wounded soldiers and prisoners. - For example, both Hamas members who have taken part in the hostilities and been captured by Israeli forces and Israeli soldiers who have been captured by the opposing forces are protected under IHL and must be treated humanely. - IHL prohibits the following actions against individuals who are not participating or have ceased to participate in hostilities: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, and outrages upon personal dignity, in particular humiliating and degrading treatment.
What rules must be respected in the conduct of hostilities?	<ul style="list-style-type: none"> - Hostilities and military attacks between Israel and Hamas, including acts of terror against civilians committed by Hamas, are subject to the rules of IHL. - IHL must be respected even if the adversary does not (principle of reciprocity). - Given that IHL takes into account legitimate security and military necessity, all its rules must be adhered to without exception. - <u>The following IHL rules are particularly relevant to the current situation:</u> <ul style="list-style-type: none"> • The prohibition of acts primarily intended to spread terror among civilians. • The prohibition of directing attacks against civilians not taking part in hostilities (<u>principle of distinction</u>).

	<ul style="list-style-type: none"> • The prohibition of conducting attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated (<u>principle of proportionality</u>). • The obligation to take all possible measures to avoid or at least minimise the impact of military operations on civilians and civilian property, such as homes, shops, schools, and medical facilities (<u>principle of precaution</u>). These precautions include doing everything feasible to verify that the targets are military objectives and not civilians or civilian property, giving effective advance warning of the attacks if the circumstances permit doing so, and refraining from attacking if the rule of proportionality is likely to be violated. In populated areas containing buildings or other structures, both above and below ground, the parties must take into account the difficulty of distinguishing between civilians and combatants. • The prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as food and water. • The prohibition of using the civilian population to prevent certain points, areas, or military forces from being the target of military operations (human shields). • Every effort must be made to avoid placing military objectives, including fighters, ammunition, weapons, equipment and military infrastructure, in or near densely populated areas, and to comply with the obligation to strive to move civilians away from military objectives. At the same time, a party to the conflict is not exempt from its obligation to consider the risk to civilians, including the duty to prevent causing disproportionate harm to civilians, on the grounds that it deems the other party to the conflict accountable for placing legitimate military targets within or in proximity to populated areas.
<p>What does IHL say about humanitarian access?</p>	<ul style="list-style-type: none"> - The parties to the conflict must allow and facilitate the rapid and unimpeded passage of impartial humanitarian relief for civilians in need, without any adverse distinction, subject to their right of control. - Humanitarian pauses are temporary cessations in hostilities to facilitate the delivery of humanitarian aid. The concept of 'humanitarian pause' is not defined in law. All parties are obliged to permit and facilitate humanitarian access, regardless of whether a humanitarian pause is in place. - The use of starvation as a method of warfare is a war crime, necessitating an investigation and the prosecution of the alleged perpetrators. Switzerland's efforts helped to secure an amendment to the Rome Statute in 2019, extending the crime of starvation to non-international armed conflicts. - Breaches of other rules of IHL, such as launching attacks against objects indispensable to the survival of civilians and impeding humanitarian access, may also constitute violations of the prohibition of starvation insofar as they deprive civilians of resources essential to their survival.

<p>What are ISR's obligations as an occupying power?</p>	<ul style="list-style-type: none"> - The rules of IHL relating to the law of occupation apply to the entire occupied Palestinian territory. The occupied Palestinian territory comprises the West Bank, including East Jerusalem, and the Gaza Strip. - As an occupying power, Israel has the responsibility, to the extent of the means available to it, to ensure the provision of food and medical supplies to the population of Gaza under occupation. Specifically, when the resources of the occupied territory are inadequate, it is incumbent upon Israel to bring in necessary items such as food and medical supplies. The occupying power is obliged to accept relief efforts initiated by other states or impartial humanitarian organisations if the population lacks adequate supplies. - IHL prohibits the occupying power from transferring its own population to the territory it occupies (settlements), as well as from forcibly transferring people out of the occupied territory. - Siege and closure: implementing a siege in a manner that uses starvation as a method of warfare, destroys objects indispensable to the survival of the civilian population, or arbitrarily denies humanitarian access, constitutes a violation of the responsibilities of an occupying power under IHL. It is important to distinguish between a siege and a closure. The concept of 'siege' is not defined in international law. Sieges generally involve isolating enemy forces from reinforcements and supplies, typically through two elements: (i) encircling an area to isolate it and (ii) bombardment. A closure refers to measures that restrict the movement of goods and individuals from, to and within a specific area, in this case the Gaza Strip. Israel and Egypt have imposed a series of restrictions on Gaza, including a near-permanent closure of the Rafah crossing point, a blockade by sea and air, a maritime navigation limit set at 3 nautical miles, limitations on the movement of people and goods to and from Israel, and access restricted areas. - IHL also prohibits collective penalties, including under the law of occupation.
<p>What is a war crime?</p>	<ul style="list-style-type: none"> - War crimes are serious violations of IHL. Examples: targeted killing of civilians; mistreatment of detainees; taking of hostages; use of ammunition that does not distinguish between military targets and civilians; torture; sexual slavery and other forms of serious sexual violence; intentional starvation of the civilian population. - The ICC is currently investigating the situation in Palestine, focusing on alleged crimes committed since 13 June 2014 which fall within its jurisdiction. This investigation encompasses both the events of 7 October and the ongoing developments in Gaza and the West Bank. - On 1 January 2015, the Palestinian government submitted a declaration under Article 12(3) of the Rome Statute. This declaration recognised the jurisdiction of the ICC over alleged crimes committed "on the occupied Palestinian territory, including East Jerusalem, since 13 June 2014".
<p>How must ISR and PAL/Hamas respect human rights?</p>	<ul style="list-style-type: none"> - International human rights law applies to the entire occupied Palestinian territory. Given the effective control and territorial jurisdiction exercised by Israel as an occupying power, it is bound by the obligation to respect and protect the human rights of the population of the occupied Palestinian territory.

	<ul style="list-style-type: none"> - The Palestinian Authority and Hamas in the Gaza Strip are obliged to comply with international law. Palestine has ratified several key UN treaties, including the UN Covenant I on Economic, Social and Cultural Rights, the UN Covenant II on Civil and Political Rights, and the UN Convention against Torture. - Hamas, despite being a non-state actor, is also obligated to respect human rights. Any violation of human rights by Hamas fighters against individuals under their control constitutes a breach of these rights. - As a signatory to the UN treaties, Palestine, or the Palestinian Authority, is accountable to the UN treaty bodies for any human rights violations occurring within the Gaza Strip. Even in the absence of effective control over parts of its territory, a state party is required to take all possible diplomatic, economic, judicial, or other measures, in line with international law, to ensure the rights guaranteed by the Convention to individuals in those parts of its territory (cf. CRPD/C/28/D/67/2019, CRPD/C/28/D/68/2019, para. 8.9).
Hamas	
Why is Hamas not considered a terrorist organisation in Switzerland today?	<ul style="list-style-type: none"> - At present, only Al-Qaida, the Islamic State (Daech), and affiliated groups are banned terrorist organisations under Swiss law. - However, in light of the exceptional circumstances precipitated by the terrorist activities of Hamas, the Federal Council has decided to banning Hamas and designating it as a terrorist organisation, irrespective of its UN listing status. - At its meeting on 22 November 2023, the Federal Council decided to propose a federal Act to Parliament banning Hamas in Switzerland. The Act will provide the federal authorities with the necessary tools to counter any Hamas activities or support for the organisation in Switzerland. The Federal Council instructed the Federal Administration to submit the draft legislation by the end of February 2024.