

## INTERNATIONAL LAW AND THE ATTACKS ON GAZA

The Israeli attack on the Gaza Strip has laid bare the relative impotence of international law in the face of determined sovereign action. On 8 January 2009, the UN Security Council called for 'an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza.' It also urgently insisted on the 'unimpeded provision and distribution throughout Gaza of humanitarian assistance, including of food, fuel and medical treatment.' On 9 January the High Commissioner for Human Rights Navi Pillay told a special session of the Human Rights Council that 'international human rights law must apply in all circumstances and at all times.' The High Commissioner strongly urged the parties to the conflict 'to fulfil their obligations under international humanitarian law to collect, care for and evacuate the wounded and to protect and respect health workers, hospitals, and medical units and ambulances.' Ms Pillay also called on each side 'to allow the deployment of independent human rights monitors in both Israel and the Occupied Palestinian Territory to document any violations of international human rights and humanitarian law.' Reminding the Council that 'violations of international humanitarian law may constitute war crime for which individual criminal responsibility may be invoked', she suggested that the Council 'should consider authorizing a mission to assess violations committed by both sides in the conflict in order to establish the relevant facts and ensure accountability'. In its resolution on Monday, the Council has said that it 'strongly condemns the ongoing military operation carried out ... in the occupied Gaza Strip, which [has] resulted in massive violations of human rights of Palestinian people and systematic destruction of the Palestinian infrastructure' and it has decided to send 'an urgent independent international fact-finding mission' to investigate what is going on.

The anger evident in all this UN activity, and in particular the passion evident in the High Commissioner's choice of words, is founded upon the blatancy of the disregard of the law that has been evident in Gaza. This is not solely or even mainly about whether the operation is justified; the concern is rather with how it has been conducted. International humanitarian law requires all parties to a conflict of this nature carefully to distinguish between combatants and others, targeting only the former. It also requires that the wounded and sick must be collected and cared for by the party to the conflict which has been within its power. Methods of warfare which are likely to cause unnecessary losses or excessive suffering should not be used. The Human Rights Council was particularly exercised by what its resolution refers to as the 'targeting' of UN facilities in Gaza. Even the normally discreet International Committee of the Red Cross (ICRC) has issued what was for it a highly unusual statement to make in the course of a conflict, condemning the Israeli military for having breached international humanitarian law in having failed to allow access to a neighbourhood within which were later found four small children, starving among twelve corpses among whom were the children's mothers: according to the ICRC, the Israel Defence Forces had delayed four days before allowing the organisation's medical teams into the area.

It would be wrong to say that none of this international activity has had no effect at all: there can be little doubt that Israel has felt some diplomatic and possibly even economic pressure arising from the way in which it has conducted its operations. But in the absence of any kind of enforcement mechanism, the legal effect of all this international noise has been for all practical purposes zero. Indeed without any kind of international adjudicative body to which Israel is required to defer, the media spokespeople deployed to justify Israel's actions to the world, together with their supporters in the world community of 'academic terrorism experts,' have been able to argue that the attacks

are legitimate under international law. The argument, based on the right of national self-defence in Article 51 of the UN Charter together with the alleged use by Hamas of civilian areas from which to launch rockets on Israel, might not be able to survive a few hours in a court of law, but all it needs to withstand, at most, is five minutes interrogation on the media and it is more than fit for this purpose. No doubt the Israelis will declare their operation a success before it is allowed to become an embarrassment to President Obama on his big day and within a few months this dirty little war will have faded into a background already littered with a succession of such disproportionately violent encounters.

Are there any lessons apart from those we should already have learnt? First, the US attack on Libya in March 1986 – ostensibly based on an alleged right of pre-emptive self-defence supposedly to be found within Article 51 – was an event in the history of international law from which we can now see the subject has yet to recover. President Reagan's decision to bomb Tripoli opened the door to a unilateralism in international affairs that has shed more and more of its UN camouflage as time has gone on, and without any apparent ill-effects for those who practice it. For, secondly, as things stand Navi Pillay's warnings about individual criminal responsibility are empty threats: the Israelis have not the slightest intention of subjecting themselves to the jurisdiction of the International Criminal Court anytime soon. So while the UN and the ICRC are attacked in Gaza and civilians die in their hundreds, the restricted functionaries at The Hague continue with their decent work unearthing yet further evidence of past wrongdoing by deposed African tyrants. It is for this among other reasons that so many of the less powerful nations are so opposed to agreeing a definition of terrorism at the UN: imagine how fortified Israel would be by a UN convention which condemned attacks on them but had nothing to say about Israeli own military operations?

There should be no UN movement on a comprehensive anti-terrorism convention until there is both international agreement to clarify the remit of Article 51 and furthermore a collective decision properly to enforce international humanitarian law. If the incoming President of the United States were privately torn between his response as an empathetic human to the onslaught on Gaza on the one hand, and his concern not to tackle vastly powerful interests so early in his term of office on the other, he could do worse than launch an international campaign to restore faith in international human rights and international humanitarian law. If this really meant something and if the United States's most loyal allies were expected to lead the way, then that would make the military planners in Tel Aviv very nervous.