

## **Jurists for Palestine Forum**

### **Summary of the Webinar:**

### **Legal Obligations of States and Private Entities under the Law of the Sea in the Transfer of Arms and Energy Supplies to Israel**

**Prepared by: Assalah Mansour, Reviewed by: Nourhan Fahmy**

#### **Main Information on the Webinar:**

**Date:** 10 April 2025

**Duration:** 88 minutes

**Location:** Online via Zoom and live on Youtube

#### **Speakers:**

- Irene Pietropaoli – Director of the Human Rights Due Diligence Forum, British Institute of International and Comparative Law.
- Pierandrea Leucci – Director of ASCOMARE- Law of the Sea Expert.
- Ana Sanchez – Global Energy Embargo for Palestine Campaign Coordinator.
- George Katrougalos – UN Independent Expert on International Order, Former Foreign Minister of Greece.

**Moderator:** Mutaz Qafisheh, Chair of the Board of Trustees at Law for Palestine Law for Palestine, and Professor on Int'l Law, Hebron University.

**Organised in partnership with:** ICHR and ASCOMARE

**Attendees:** Online Via Zoom -

**Recording link:** Click here <https://www.youtube.com/watch?v=nghHogzXt2o>

### **Speakers' Discussion**

#### **Mutaz Qafisheh - An Overview of the Law of the Sea, Human Rights and Palestine**

- Let me start by saying a few words about the links between the law of the sea and human rights, specifically when it relates to the case of Palestine and the genocide that is taking place at this moment in the Gaza Strip. Palestine acceded to the United Nations Convention on the Law of the Sea, UNCLOS, in 2014, which entered into force in 2015, whereby Palestine demarcated and claimed its maritime zones overlooking the Gaza Strip.
- The Gaza Strip is overlooking about 40 kilometers on the Mediterranean and that gives it and Palestine, of course, at least 12 nautical miles on the coast of Gaza, in addition to up to 200 nautical miles in the exclusive economic zone for Palestine, which gives Palestine exclusive

sovereignty, I would say, of sovereign rights on the resources that exist in the exclusive economic zone. And this is not only the story. The story is that this convention, the UNCLOS, or the United Nations Convention on the Law of the Sea, establishes obligations on all member states to implement the convention considering the general rules of international law, including international humanitarian law, international human rights law, the law of genocide, the law of energy, the law of weapons transfer, etc., in particular, all states and ships that fly any flag of any member state of the UN clause because it's under an obligation, *erga omnes* obligation, to prevent the arm transfer to Israel as a state that commits war crimes and crimes against humanity. And as the ICJ, the International Court of Justice, decided in the South Africa v. Israel case, a plausible case of genocide is taking place in Gaza right now. So, this webinar will discuss this issue in addition to the obligations of all riparian states in which ships and vessels pass through these territorial coastal zones, where these states have an obligation under international law of the sea to monitor these ships that carry weapons and energy to a state that is committing war crimes and crimes against humanity.

- Of course, this also establishes obligations not only on states and governments, but also on companies and private entities that ship the weapons to the State of Israel. And this issue, the *erga omnes* and *jus cogens* obligations, which means the peremptory rules of international law that establish obligations on all states, brings the issue of the advisory opinion that was decided by the ICJ in July last year, whereby the court ordered Israel to end its occupation of the territory of Palestine, not only the Gaza Strip but also the West Bank, including East Jerusalem, and established obligations on all states to end that occupation. And as we know, the General Assembly decided in September last year that this occupation, based on the ICJ decision, should end within one year. That means in September this year, the world, the court and the international law order in general will be facing a moment of truth. How, and this is a big question that might be discussed by the speakers this evening, what states ought to do, what are their obligations to not only prevent and put embargo on the transfer of weapons and energy to Israel, but also, which is a bigger question, to end the Israeli occupation of Palestine.
- Our first speaker is Irene Pietropaoli, a senior fellow in business and human rights at the British Institute of International and Comparative Law. She is an expert in international law and the director of the Human Rights Due Diligence forum and conducts in-depth research on issues

relating to corporate responsibility regarding human rights in general and the law of the environment.

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### **Irene Pietropaoli on the implications of the ICJ provisional measures, orders and advisory opinion**

- As other experts will focus on the specific aspect of the law of the sea, I'm going to cover some points related to the implications of the ICJ provisional measures, orders and the advisory opinion that you just mentioned. So, I will cover three points:
  1. The implications of the ICJ provisional measures on genocide related to state parties and corporations.
  2. The implications of the advisory opinion on the unlawfulness of the occupation.
  3. The obligations and the accountability of corporations that are currently selling and transferring and shipping arms and weapons to Israel.
- In relation to the first point, the implications of the provisional measures on the genocide, the obligation of third states to comply with the ICJ order, they flow directly from the Genocide Convention. Article 1 of the Convention requires states to prevent and to punish genocide. It is a negative obligation not to commit or be complicit in genocide and a positive obligation to prevent and to punish genocide. In relation to the obligation not to be complicit in the commission of genocide, the ICJ had already clarified in the Bosnia v. Serbia case that this obligation to refrain from being complicit through aid or assistance starts the moment that the states become aware of the existence of a serious risk that a genocide may be committed, there doesn't need to be already a found genocide, but being aware of the risk.
- The order that was issued by the ICJ which found a real imminent risk that prejudice will be caused to the rights found out by the court to be plausible. In short, that there is an imminent risk of genocide means that states are aware of this risk. And so here, third states must consider that their military or other assistance to Israeli military operations puts them at risk of being complicit in genocide under the Genocide Convention. But also, corporations and their managers, directors and other leaders of a company could also be held liable for the commission of an act of genocide and complicit as well in war crimes and crimes against

humanity. This is because Article 6 of the Genocide Convention specified that persons must be held liable for genocidal act. This could include also individual businessmen or corporate leaders as natural persons.

- As mentioned, the prohibition of to commit genocide is a *jus cogens* norm from which no party, including corporation, can derogate. In addition, international humanitarian law binds states and non-state actors, including businesses, whose activities are linked to international crimes during an armed conflict. This notion of this concept of corporate complicity implies that corporations may be hiding or abetting genocidal acts perpetrated by others, so in this case by the State of Israel. A corporation or an individual businessperson who knowingly assists the state of Israel in violating customary international law, including the prohibition of committing genocide may be complicit in such violation. In this case, it's not required that this corporate accomplice decides that the principal offence is committed, nor that the actor needs to intend the result, it's enough that the corporation knew of the likely effect of their assistance and that such support has a substantial effect on the commission of genocide. Therefore, companies investing or partnering with the Israeli government or with Israeli-owned enterprises face a salient risk of hiding, abetting and facilitating or contributing to genocide. So, arms, weapons, ammunition, vehicles, other military supplies that are essential to the activity of the Israeli Air Force, Ground Force, Navy, that they make an essential contribution to the violation of international humanitarian law and a genocidal act against the Palestinians.
- Then there is also the obligation to prevent genocide. This obligation starts as the ICJ had clarified, at the instant that the state learns or should have learned of the existence of a serious risk that genocide will be committed. It is necessary that the situation amounts to a serious risk and that the states knew or should have known about that situation. So again, the ICJ finding of plausible rights and imminent risk constitutes this knowledge and triggers third state legal obligations under the Genocide Convention to prevent genocide. This obligation to prevent is an obligation of conduct, not of result, meaning that it is not about whether the state achieved the results of preventing genocide, but whether it took all necessary measures that are in its power to prevent genocide. This is not a passive obligation but implies the notion of due diligence. So, it's an assessment based on facts and the ICJ has clarified that that is related to the state capacity to influence the action of the person likely to

commit genocide. This capacity of influence depends, as the ICJ has clarified, on, for example, geographical distance of the states, strengths of political links, and other links. This means that while all third states have the duty to prevent genocide, this responsibility is heightened for states that have this capacity to influence. In this case, for example, the US, the UK, Germany, they have the strongest political and economic link with Israel, so they have this enhanced responsibility to prevent genocide.

- The second point is actually also on the implication of the other advisory opinion on non-assistance in the unlawful occupation because as mentioned, the ICJ concluded that Israel's prolonged occupation is unlawful. It also reaffirmed that states are under the obligation not to recognize this illegal situation. The principle of non-assistance is an expression of customary international law, when dealing with serious breaches of peremptory norms, here it's about the violation of the Palestinian right to self-determination. So, arms and related supplies that assists Israel's military occupation or enables the commission of violation in the occupied territory constitute also aid or assistance in maintaining an unlawful situation. Therefore, states violate international law if they not only supply or facilitate the supply of weapons or other commodities that are essential to Israel's illegal occupation, so in practical terms, this means that any states allowing shipment by sea to Israel, for example, permitting a weapons carrying vessel to the party's port or pass through its water must ensure that it is not hiding or abetting the illegal occupation or the commission of war crimes. In October last year, for example, the Irish government announced plans to impose trade sanctions on Israel, following advice from Attorney General. This move aligns with Israel's trade policy in response to this ruling of the ICJ that countries must avoid economic dealing with Israel concerning the occupied territory.
- The last point is about the obligation on corporations, because here, thinking about Article One of the Geneva Convention that requires State parties to refrain from transferring weapons if there is an expectation that this weapon could be used to violate the Convention. There are also obligations that States have under the UN Arms Trade Treaty to deny arms exports if they know that they will be used in committing international crimes. EU member states are further bound by the EU common position on exports but independently from home state regulation, companies that sell weapons, arms, ammunition, technology, oil and fuel, artificial intelligence

, other military supply and anything that is assisting the government of Israel to commit violations of international humanitarian law and international criminal law, have separate responsibility independent from the home states.

- There are international standards like the UN Guiding Principles on Business and Human Rights that articulate the expectation that businesses respect human rights. Principle 23 of these guiding principles specifies that there is heightened human rights due diligence by both states and corporations in conflict affected areas. Therefore, what companies need to do is to conduct human rights due diligence, have an understanding not only of the impact on human rights, but also of the impact on conflict. And this is not limited to the war in Gaza but inevitably needs to expand to understand the business impact and contribute to the wider conflicts and occupations. Companies must understand that when they lack the ability to have leverage to prevent, to mitigate adverse impact, like is in the case of assisting the government of Israel, then they need to end any existing relationship. Otherwise, they are complicit in a serious violation of human rights. This risk is particularly salient for companies that are investing and partnering with state-owned enterprises, for example, firms that provide arms and weapons.
- Despite that, there is still a salient transfer of weapons persisted despite repeated calls, including from the UN Human Rights Council, there are dozens of companies, especially from the US and Germany, but also the UK that sell and transfer arms, weapons, ammunition, oil and fuels. And there are currently several ongoing cases at the domestic level, challenging this action. For example, in the UK, there is a case that was filed in 2023, where the court challenged the government decision to continue arms sales to Israel. There is a case in the Netherlands where the court of appeal ruled that the Netherlands must cease exporting F-35 fighter jet parts to Israel. And in Denmark, Canada and several other European countries.

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### **Pierandrea Leucci (ASCOMARE) on the key findings and the legal considerations emerging from the legal opinion**

- This [legal opinion](#) was commissioned by the BDS National Committee and was coordinated by ASCOMARE. It was published on 11 March, so it is very recent. While ASCOMARE oversaw the coordination of the project, the opinion itself was drafted by a team of eight legal experts in

different areas of the law of the sea, experts in human rights, in navigational rights, in due diligence, and supported by additional research staff. It was an important collective work, and I want to thank all the people who took part in this project on top of their very busy agenda. The process involved intensive research, collaborative drafting and internal discussions. I must say that in contrast, for instance, to similar legal initiatives which I was involved in in the past, I think this opinion was marked by a high level of consensus among the contributing experts, which I think is something that speaks for itself. We are talking about a 49-page document, which addresses two core questions. The first question concerns the regime of innocent passage within the territorial sea. The territorial sea is the breadth of sea which extends normally up to 12 nautical miles from the baselines, which is either a line along the coastline or in some cases a line across the sea, but still very close to the shore. Innocent passage is a recognized right, and it is a very old right, which reflects customary international law. It entails the right of vessels of all states to traverse the territorial sea of another country under certain conditions.

- The first question examined whether a coastal state possess not only the right, but also potentially the obligation to suspend the passage of a foreign ship navigating through its territorial sea, where in particular the vessel is transporting arms or other equipment intended for use in the commission of acts such as genocide, apartheid, or otherwise engaged in conduct which is not compatible with the peremptory norms of international law, *jus cogens*.
- In short, what the expert group concluded is that there is indeed a right to suspend the passage. This right is encapsulated into the conventions that Professor Motaz was mentioning, which are the framework conventions governing the law of the sea, so UNCLOS. But the relevant provisions also reflect customary international law and therefore are applicable and binding on all states. There are three circumstances where the coastal state has a right to suspend the passage of a foreign vessel:
  - The first one is when there is complicity in the threat or use of force. In this case, the fundamental principles embodied into the UN Charter, including the principles of territorial integrity and self-determination.
  - Possible suspension in the event of the exercise of criminal jurisdiction on board the vessels. The cases which are covered by UNCLOS are in a certain way limited in scope

because that was not the main objective of the conventions. This is also an article which is sort of inherited from the 1958 Geneva Conventions on the Law of the Sea. But this is of course without prejudice against any kind of powers the coastal State may have to exercise criminal jurisdiction, for instance to enforce international arrest warrants or in other cases covered by international law.

- The third case, which is probably the most important, was examined in the context of the legal opinion which is the possibility to suspend the passage when the passage itself is not consistent with the broader obligations of the states under international law, and this is included in the chapeau of article 19 paragraph 1 of UNCLOS. This is important because this is sort of a legality text, it is an umbrella provision which indicates that if the passage has created tensions between other obligations which are binding on the coastal state and this obligation in particular we are talking about stemming from peremptory norms of international law, but also the expert group examined those, for instance, encapsulated into the arms trade treaty, the genocide conventions, the apartheid convention.
- In all these cases where we have a specific threshold, which is very high, there is not only the right of the coastal state to suspend the passage of foreign vessels, but also a duty. There is a legal duty which should be discharged by the coastal state and that could otherwise lead to responsibilities for non-compliance with international law and the corresponding responsibilities under the rules of state responsibility. This was a very important finding since as I mentioned before these rules reflect customary international law so even if UNCLOS is highly ratified now and many of the rules are in line with the previous 1958 Geneva Conventions on the Law of the Sea, but in any case, it widely recognized the customary status of these provisions.
- The second aspect, which is also the second question, concerns the role of the flag states. Here, we look at what happens in the waters of the coastal state while the vessels are traversing these waters and the responsibility of the states of nationality of these vessels. The second question concerns the role and responsibility of states with respect to ensuring that vessels flying their flag comply with the obligations arising under the ATT, the Arms Trade Treaty, as well as the peremptory norms of international law. The expert group in this case concluded that flag states bear not only general responsibility to effectively exercise jurisdiction and



control (this is the terminology used into article 94 of UNCLOS) over vessels registered in their territory, but they also have a specific due diligence obligation under both UNCLOS and customary international law. This obligation is an obligation to ensure, so an obligation of conduct, the one mentioned by Irene, to ensure that such vessels act in compliance with the international obligation, which is binding on the flag state itself. This due diligence requirement is the result of a combined reading of Article 91 and 94 of UNCLOS, which is a finding because it creates a direct link with the legal basis into the UNCLOS, resulting in the case of non-compliance with these specific obligations, also includes a potential breach of the UNCLOS obligations. And this is an obligation for the flag state to take adequate measures to do the utmost to prevent violations of international law. There is quite an extensive recent case law on due diligence and the law of the sea. So, failure to fulfil these obligations may give rise to the international responsibility as well of the flag state. And even in this case, the expert group concluded that these rules reflect customary international law.

- To conclude, we have a coastal state possessing not only a right but also an obligation, a duty to prevent the passage and where necessary to take appropriate enforcement measures against foreign vessels transiting in the territorial sea when this passage is inconsistent with the international legal obligations binding upon that state. This is particularly the case where those obligations reflect the *jus cogens* or where the states in action would give rise to an internationally wrongful act under the rules governing state responsibility. And then we have a flag state duty. This is, on the one hand, the right to exercise effective control of jurisdiction, but also a duty to ensure that vessels flying the flag of this state comply with the international obligations which are incumbent upon that flag state. This includes obligations under the ATT, the Genocide and Apartheid Conventions, the UN Charter's principles and other *jus cogens* norms. This duty is rooted in the due diligence obligations, which require the state to take proactive action: legislative, administrative, enforcement action, to ensure compliance.
- There are certain aspects which are not specifically covered by the legal opinion, but that are still connected to reality today, and they should be read against the backdrop of this reality. For instance, what happens when the vessels operate outside the territorial seas, so for instance, in the exclusive economic zones, what are the port state jurisdictions, the port state powers, when the vessels, for instance, enter port, or to prevent the vessel entering port, what is the regime of international straits. So, there are a lot of different aspects which relate to the

findings and the conclusions of this legal opinion that deserve further discussions and examination.

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### **Ana Sanchez on global energy embargo for Palestine and how the campaign can be carried out and implemented by States and companies**

- The Global Energy Embargo for Palestine is a network of activists, researchers, trade unionists that calls on the states to impose a full energy embargo on Israel, to halt all energy imports and exports, and to make sure that private corporations comply with their obligations under international law and human rights across all the energy value chains, because we've been talking about the importance of an arms embargo, and you might wonder why also an energy embargo, right? Because energy can be perceived as a more neutral form of trade. But I'm making no spoiler here in saying that there is no neutral form of trade and in the case of energy, we can think that it may be something that sustains life. But in the case of Palestine, energy is sustaining Israel's regime of settler colonialism, illegal occupation, apartheid, and genocide and it is important to acknowledge how Israel is using energy as a tool of oppression which was quite clear and straightforward during the ongoing genocide, particularly in the Gaza Strip, where Israel announced a complete siege, including banning all access to energy. And not having energy doesn't only mean not having electricity at night, it means not being able to power hospitals, desalination plants, sewage systems, and in general to power what sustains life. These sorts of acts of intentionally denying the right to energy have been described by organizations like Human Rights Watch as genocidal acts. But this is not only something specific to the Gaza Strip. Israel also uses energy as a tool of oppression in the West Bank by, for instance, systematically denying all the permits of Palestinians to be able to develop their own energy infrastructures, while at the same time, allowing the expansion of the illegal settlement industry in occupied Palestine. Israel also uses electricity cuts as a form of collective punishment. And finally, if we look at how the electricity grid is designed in Israel, we see that the settlements are directly connected to this grid. They are an integral part of it. That means that every single piece of energy that is powering this energy grid is powering the illegal occupation of Palestine. And as the previous speakers, Irene and Pierandrea have beautifully described, that has consequences under international law, because third states have legal responsibilities to stop rendering assistance to war crimes and crimes against

humanity. Energy has also been used to power all the military vehicles, war planes, to provide electricity to the artificial intelligence that is being used to surveil and kill Palestinians in the Gaza Strip. So, I think it is clear why we need an energy embargo on Israel and why we need to stop this energy complicity with the ongoing genocide in Palestine.

- But who are the main suppliers of this energy? Israel is not able to sustain all this structure of violence, oppression and discrimination on its own. Israel can cover some of its energy needs with natural gas mainly, which can cover approximately around 40% of the Israeli energy needs. But for the other remaining part, it relies on external sources of energy and here we have countries like Azerbaijan, Kazakhstan, Gabon, Nigeria, and Brazil, which are providing Israel with crude oil and refined fuel. Then we also have countries like Russia, South Africa and until recently Colombia, that are providing Israel with the coal that they need to be burned to then feed all the electricity grid and to cover its needs in terms of electricity. In terms of jet fuel, which is a kind of refined fuel that is used to cover all the military needs, the U.S.A is the main supplier.
- On top of this use of energy as a tool of oppression and this energy being used to fuel an ongoing genocide and sustaining an illegal occupation, we must take into consideration that all these sources of energy that I mentioned are fossil fuels, meaning they are not only jeopardizing the life of Palestinians, but also the sustainability of our planet. This also has a massive impact in accelerating the current climate emergency that we are living in.
- All these energy sources do not magically appear in Israel. They need to be transported somehow. And by being here today, I guess you're already guessing how all this energy is being shipped. And yes, it is by maritime transfers. Along with military equipment, we are seeing now how vessels, ports, and many other actors are being used to assist and be complicit on this ongoing genocide. As part of the Global Energy Embargo for Palestine network, we are part of the No Harbours for Genocide campaign, which is a campaign that tries to visualize precisely the crucial role that ports play in this transport and distribution of energy and military supplies that are sustaining this genocide against the Palestinian people. One of the things that we've learned over these last terrible and dark months is that we have a very powerful legal framework, as Irene and Pierandrea already explained, but this legal framework is not going to work on its own. We need to mobilize popular pressure, we need to mobilize this pressure from below to apply this system of international law that we have, and they have explained that we

have regulations, that the states can ban vessels with weapons, that they can ban all these logistics of the genocide, but that's not happening.

- That's not happening because there is no political way to do so. This is why it is important to mobilize and to organize collectively to stop all these shipments that are directly going to assist the ongoing genocide. One of the things that we have been doing as part of the No Harbours for Genocide campaign, as I said, is trying to identify the actors that are involved, that are needed for this logistic support.
- And that is not only the vessels or the port, we need to think also about the operators, the companies that are helping put all this in place. We need to think about insurance companies that are ensuring the cargo that these vessels are carrying. And one important thing is that we need to be able to develop strategies that can address the issue in a more holistic way, meaning that we cannot go boat by boat. I mean, we will do it if needed and we have done that in the past. If we think about the example of the Spanish state and its port of Algeciras in the south, which is the entrance of the Strait of Giralda and highly complicit in allowing the transfer of energy and weapons to Israel, we have been really going boat after boat. But one thing that we have learned is that there are patterns. We have vessels that have been doing recurrent routes, transporting weapons and energy.
- And in the past, we succeeded, we managed to have several vessels like Borkum carrying weapons, Overseas Santorini carrying jet fuel that did not dock in Spanish ports. And we will continue to do so because we have the moral and the legal obligation to keep doing so, to cut ties with this genocide. But what we want to achieve and the change that we want to see now is to have a ban on this list of vessels that are currently doing routes that are assisting the ongoing genocide. Vessels like the ones that are part of the maritime security program, for instance, a program of the MARAD, the naval administration of the US, that has an agreement with the US Department of Defense for transferring all the military equipment that is killing Palestinians in the Gaza Strip. And this is the kind of effort that we are trying to push with this campaign.
- We need also to enhance transparency in customs and international trade to ensure that all the transit control provisions are effective, because if there is no transparency, for instance, in the manifesto of cargo of those vessels, all these provisions trying to prevent and control the

transit of illegal goods, it just becomes something useless. We need to develop more transparency to be able to control these illegal transfers of military goods or energy that are again fueling this genocide.

- And as we speak, I think it's important to mention that there is already now another vessel carrying F-35 parts to Israel from the US. As we speak, we have Mars Detroit, a vessel that is part of this maritime security program that is on its way to provide the genocidal regime of Israel with more weapons. It is expected to go through the port of Tangier in just 10 days, the 20th of April, and we are mobilizing people across the Strait of Gibraltar, in the port of Tangier, in the port of Algeciras, and also I expect more mobilizations across the Mediterranean, because we know that is people's pressure, popular mobilization, what is going to move governments to impose these very much needed sanctions, because at the end of the day, we know that all this energy is powered by greed, by fossil capitalism, and that has an end. We all know that that has an end. But our campaigns, our efforts are powered by hope of justice and liberation, and you cannot just stop that. We have the energy to stop this genocide, and we will do it collectively.

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### **George Katrougalos on the Role of International Law and the Power of Civil Society**

- I have already learned a wealth of information from all the previous speakers. I will now try to share my thoughts through the lens of my mandate. As mentioned, I serve under the Special Procedures with a focus on the promotion of a democratic and equitable international order. For those unfamiliar with the Special Procedures, they are essentially the bridge between the United Nations and civil society. These are independent experts who are not paid by the UN, but who use their expertise to promote understanding, advocate for rights, and foster international solidarity. Among the best examples of this work is Francesca Albanese, the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory. In addition to country-specific mandates like hers, there are also thematic mandates, including my own.
- One of the main paradoxes of today's international order is that, while we have an advanced and robust body of legal norms, we simultaneously witness widespread lawlessness. Israel's actions exemplify this contradiction—not only the genocide in Gaza, but also ongoing attacks

and violations in Syria and Lebanon. But the problem extends beyond Israel. We are witnessing a broader trend, especially among powerful states, where "might makes right" increasingly dominates behavior, particularly under the new U.S. administration, though this trend began earlier. What explains this paradox? International law today is a battleground—not only of national interests, but also of broader ideological and economic struggles: Global North vs. Global South, capital vs. labor. This battle plays out not just in how treaties are interpreted or implemented, but even in how they are drafted. A prime example is the United Nations Convention on the Law of the Sea (UNCLOS).

- When UNCLOS was first negotiated in 1982, the Global South, holding a majority at the UN, succeeded in drafting a progressive text that defined the oceans as the common heritage of humankind. However, the major maritime powers—the United States and the United Kingdom among them—refused to ratify the treaty unless significant changes were made. As a result, the Global South was compelled to compromise and water down key provisions, especially regarding the legal status of the oceans. Still, UNCLOS remains a pivotal legal instrument that reflects a shift in the balance of power within the UN.
- We must remember that international law is not static. We are no longer in the colonial era. However, remnants of colonial thinking persist. The historical division between “civilized” and “uncivilized” nations, which underpinned colonial international law, still exists—even in the statute of the International Court of Justice (ICJ), which recognizes as law only those principles accepted by “civilized nations,” as if others do not qualify. This highlights the ongoing legacy of colonialism in international legal structures. Yet, due to the rising influence of the Global South, we saw a redirection of international law in the post-colonial period—particularly after the 1960s. This was evident in the two International Covenants that for the first time explicitly recognized the right to self-determination, followed by the right to development and calls for a New International Economic Order (NIEO).
- And again, we encounter a paradox. The NIEO, first proclaimed in Bandung and discussed at the North-South Global Summit in Cancun in 1982 (to which Reagan and Thatcher were invited), was ultimately replaced. Instead of realizing the Global South’s vision, the 1980s brought a neoliberal economic order. This shows that international law is neither monolithic nor homogeneous. Still, we must strive for a holistic interpretation of legal norms. For example,

UNCLOS should be interpreted in harmony with the Arms Trade Treaty, the Genocide Convention, and the Apartheid Convention. International law must not operate in silos.

- My second point concerns the ICJ's Advisory Opinion on the illegality of Israel's occupation. This is a watershed moment that we must use to its fullest extent. It is no longer only Israel's specific actions that constitute violations—such as crimes against humanity, war crimes, and genocide—but the very existence of the occupation itself that breaches international law. The UN General Assembly has convened to underscore the importance of implementing this ruling. On September 18, 2024, it articulated three key obligations for states:
  1. **All states must cease importing products originating from Israeli settlements and must immediately halt the provision or transfer of arms, ammunition, and related equipment to Israel.**
  2. **States must refrain from rendering aid or assistance in maintaining the illegal situation created by Israel's presence in the occupied territories.** This includes not only clearly prohibited acts—such as arms sales or energy transfers—but also any actions that enable the continuation of the occupation.
  3. **States must ensure that any impediments caused by Israel's presence that prevent the Palestinian people from exercising their right to self-determination are brought to an end.**
- The General Assembly reminded **states that, as parties to the Fourth Geneva Convention, they are obligated to ensure Israel's compliance with international humanitarian law.** This is of critical importance, especially in light of ongoing atrocities in Gaza—the mass killing of civilians, including children—which amount to yet another step toward genocide.
- In the interest of time, I will now make a few brief comments on UNCLOS, though Pierandrea has already presented this topic excellently. The thoughtful work of ASCOMARE and other organizations offering pro bono legal support is a testament to the vital role of civil society in upholding international law. Supporting the Palestinian people is not only a moral imperative, but also a way to defend the very foundation of the international legal order that the UN represents. The erosion of this order is dangerous—not only for Palestinians and other victims

of state power, but for the entire system of rights and protections built over decades, largely through the efforts of the Global South. As Pierandrea noted, UNCLOS has achieved widespread ratification and is now considered customary international law. Even the United States, which is not a party to UNCLOS, generally respects its provisions. The ICJ's opinion made a clear and useful distinction between the responsibilities of coastal states and those of flag states. It is essential that flag states exercise effective jurisdiction and control over the vessels flying their flags. Think tanks and NGOs should also explore legal avenues—such as actions in European courts or at the International Tribunal for the Law of the Sea in Hamburg—to make these obligations more visible and enforceable.

- Finally, I believe that the most important message today came from Ana, who emphasized the essential role of civil society mobilization. Legal pronouncements, even court decisions, remain on paper unless they resonate with ordinary people. Ideas become a material force only when they are taken up by the masses. Solidarity movements matter. In Piraeus, for example, port workers recently refused to load a container bound for Gaza. This demonstrates the potential of alliances between trade unions and human rights defenders. Beyond the diplomacy of states, the diplomacy of peoples can—over the medium and long term—affect even the policies of powerful nations. The Vietnam War did not end solely because of the Vietnamese struggle, but also due to massive public protests in the United States and Europe. Precisely because this solidarity is powerful, we now see it under attack. In the United States, student and faculty protesters are being persecuted. Similar repression is happening in Europe, including in Germany and the United Kingdom. This is not just about Palestine—it's about all our rights and freedoms. We must, of course, stand up for the rights of those being massacred in Gaza and the West Bank. But we must also understand that this is a shared struggle—for justice, for law, and for a world where the powerful are held accountable.

## Q & A

**Q1: Regarding the possibility of filing complaints or so-called urgent actions to you as a special expert or special rapporteur, how can specific cases—when international law is violated by a company, ship, or vessel—be followed up on?**



**George Katrougalos:** Thank you. You are absolutely right—it is important to have remedies. Otherwise, there is no law. But this is one of the main flaws in international law. Besides sanctions against states and specialized cases where jurisdiction exists—as is the case with UNCLOS, where we have a specialized court, the International Tribunal for the Law of the Sea in Hamburg—we do not have the same possibilities to bring cases before courts as we do in domestic legal systems. We must be inventive. For instance, you may remember how the collaboration between different legal systems brought an end to the immunity of Pinochet. He felt very safe traveling to the United Kingdom, but a special prosecutor in Spain connected the crimes committed during the junta in Chile with the murder and torture of Spanish citizens. Now that Netanyahu is visiting European states—whatever the governments are saying—prosecutors and judiciaries must have the same courage to act as the Spanish prosecutor did. Regarding other special procedures, we are essentially agents of advocacy. We participate in legal affairs, but only as *amicus curiae* in many disputes, including the genocide case before the International Court of Justice. Many of us submitted *amicus curiae* briefs supporting South Africa. But we cannot be part of litigation. This is because we must maintain our independent role. We are not neutral, we stand with the victims, not the victimizers. Yet we must be objective. Therefore, we cannot be a party to any litigation. However, as I mentioned, we can support such litigation brought before international courts.

**Q2: Could there be claims brought against the European Union or certain European states for shipping arms, gas, and other equipment to Israel?**

**Pierandrea Leucci:** I think the short answer, when it comes to the European Union directly, is negative. The EU is a contracting party to UNCLOS since—I believe—1994 or 1998. So there are specific obligations that apply to the Union as a party, which have been examined in several cases, particularly regarding fisheries. There was also an advisory opinion in 2015 by ITLOS—please investigate that. The EU has specific obligations as a party, especially in areas where it has exclusive competence, such as fisheries. In the cases under discussion, however, I don't believe such obligations would directly apply. As Mutaz said, the responsibility of each individual state under the relevant international instruments—including UNCLOS—remains. And if I recall correctly, all EU member states are contracting parties to UNCLOS. So, in that case, responsibility would apply independently of the EU as a collective party.

**Q3: Could you share any examples or cases from your work or campaigns that show positive impacts of international law mechanisms to prevent the transfer of weapons, oil, or gas to Israel?**

**Ana Sanchez:** Yes, I think it's great to show that we can actually succeed. According to our experience, it wasn't international law that created change or protected human rights—it was again popular pressure and the mobilization of civil society that pushed colonial states to fulfill their own obligations. One good example is Colombia. It was one of the main coal exporters to Israel until August 2024, when they issued a decree banning all coal exports to Israel. That sets a very important precedent. It showed that we can translate political declarations into actions that impact the ground and protect Palestinian rights. That call to ban coal exports came from the mobilization of miners' communities—especially Indigenous miners—who were deeply affected by private corporations like Glencore. These corporations violated their basic human rights. It was these communities that stood up for Palestine and linked their local struggle to the broader crisis. As Professor George explained, it's not only about Palestine—it's about a global crisis of democracy. So we need to continue pushing. We need to own and appropriate these systems of international law. They shouldn't be left only to courts and closed rooms—we must bring them into practice and understand that we have the power to push our governments to impose much-needed sanctions.

**Q4: What about the legality of Yemeni targeting of ships in the Bab al-Mandab crossing? Would you consider these embargoes or attacks on ships legal?**

**Pierandrea Leucci:** What's evident from the findings and conclusions of the advisory opinion is that coastal states have certain rights—and even obligations—regarding vessels transiting their waters. This means that, on the one hand, we cannot exclude the possibility that certain actions might be justified circumstances, especially when undertaken to fulfill the obligations of coastal states. At the same time, there is substantial case law regarding enforcement activities at sea, starting with the *Saiga II* case in 1999. That jurisprudence affirms that any use of force at sea must comply with the three general principles: **proportionality, necessity, and last resort**. Use of force should only occur when it is truly unavoidable. So, from a purely academic standpoint, the real question is whether the actions taken so far meet those three criteria. The academic community is certainly divided: some argue the actions are not proportional—even if they might

be considered necessary—and certainly not unavoidable. Others argue that, in this case, necessity may prevail. So, it’s a very difficult legal question.

**Speaker's concluding remarks:**

**Pierandrea Leucci:** I want to return to what Ana and George emphasized—the importance of combining legal analysis with advocacy and mobilization. This is critical. Even just talking about these issues creates space to ask more questions and build networks to find answers. So, thank you very much for organizing this event, it’s such a timely and important discussion.

**Ana Sanchez:** Yes, I want to echo that. We need to reform and decolonize the international legal system—to make it more democratic. It’s unacceptable that colonial powers still hold veto power in the UN Security Council and can block initiatives that protect human rights. The current system is not designed to protect life or dignity. It’s structured to protect private or corporate interests, not the values international law is supposed to uphold. Reforming that must be a priority. And please—don’t lose hope. That’s something we cannot allow. Keep pushing for popular mobilization and supporting all these grassroots initiatives. That’s how we build the movement for justice that we all believe in. Thank you.