

HAMAS, THE PALESTINIAN AUTHORITY, AND THE CHALLENGES OF POST-WAR GOVERNANCE IN GAZA

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Abstract: *This contribution examines the legal status of Hamas and the prospects for post-war governance in the Gaza Strip, arguing that although the international community seeks Hamas's disarmament and the transfer of public authority, Hamas might likely to continue governing Gaza. The study demonstrates that Hamas constitutes a sui generis actor, exercising de facto political, administrative, and military control without seeking to establish an independent state. Its classification is assessed against categories such as national liberation movements, insurgents, belligerents, and terrorist organizations, highlighting its partial legitimacy, territorial control, and limited international engagement. The paper further analyses Palestinian reconciliation efforts, including the Beijing Declaration (2024), and President Abbas's 2025 UN statements, as well as Israeli population-concentration plans and the 20-point White House peace proposal, considering international humanitarian law, governance feasibility, and security considerations. While initial ceasefire measures and humanitarian interventions produced success, uncertainty remains regarding Hamas's willingness to disarm and transfer authority, as well as the establishment of a unified Palestinian administration. The paper concludes that these uncertainties challenge the full implementation of the peace plan, and that ongoing Hamas governance in Gaza may hinder Palestinian statehood and regional security, making the long-term success of post-war settlement contingent on political developments and compliance by all parties.*

Keywords: *Hamas, Gaza Strip, Palestinian Authority, international law, non-state actors, ceasefire, post-war governance, Palestinian statehood, regional security, White House 20-point plan*

INTRODUCTION

In the last two years, a large-scale armed conflict occurred in the Gaza Strip. The State of Israel was subject to serious accusations from the international community, including the crime of genocide. As off the time of completion of this manuscript, the end of 2025, the 20-point Gaza peace plan was introduced by the USA and endorsed by the international community through resolutions adopted by General Assembly and Security Council. It

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included the ambition to ensure lasting peace, end the rule of Hamas, its disarmament and the establishment of a new government in the Gaza Strip, that would no longer pose a threat to the State of Israel. The international community expressed the urge to end the war in Gaza and to take steps towards full development of the Palestinian statehood without any involvement of Hamas in its government. These events created the need to examine the issues related to the status of Hamas and the Palestinian Authority from the perspective of international law and provided space for reflection on the future post-war government of the Gaza Strip, regional stabilization and security. The paper argues that the rule of Hamas might continue in Gaza despite the efforts and interest of the international community in ending its rule, transferring power, and complete disarmament.

The paper is structured into five chapters. The first explains the reasons for researching this issue and summarizes the impacts of the almost two-year-long war in Gaza on the civilian population. The second deals with the actors exercising public administration in the Palestinian territories. It explains how Hamas came to power and explains why it rules in the Gaza Strip, while the Fatah-led Palestinian National Authority exercises public power to a certain extent in the West Bank and East Jerusalem. A smaller space is dedicated to the international organisation UNRWA, which has a mandate to exercise some components of public power, that are usually carried out by sovereign states. This chapter also clarifies the position of the State of Israel as an occupying power in relation to all parts of the Palestinian territory and explains the reasons for this finding from the perspective of the international law. This is followed by the third chapter, which addresses the position of the Palestinian Authority from the point of view of international law and finds that Palestine is currently a state in the stage of birth, in *statu nascendi*. The fourth chapter is focused on the position of the Hamas from the perspective of the international law, which, according to the authors, is an entity *sui generis*, since it cannot be qualified as one of the non-state actors defined by international law. The fifth chapter deals with theoretical considerations on the international legal impacts of the implementation of the Palestinian intention to create a government of national unity, in which all political fractions, including the Hamas, would hypothetically participate. The authors also consider what effects the implementation of the post-war intentions of the state of Israel towards the Gaza Strip would have from the point of view of international law. The authors also assessed the 20-point Gaza peace plan. Finally, the authors dealt with the theoretical considerations and variants of the post-war development of the Gaza Strip.

I. THE RESEARCH RATIONALE

Hamas is responsible for the attack on the State of Israel on 7 October 2023, during which nearly 1,200 people were murdered, and more than 250 hostages were taken.¹ Hamas had long and thoroughly prepared for the terrorist attack of 7 October 2023. It ensured the training of its militants, equipped them with weapons, built sophisticated underground tunnels, and stockpiled large quantities of food, medicines, fuel for generators, and other

¹ WILLIAMS, Dan. How the Hamas attack on Israel unfolded. In: *Reuters* [online]. 7. 10. 2023 [2026-02-17]. Available at: <https://tinyurl.com/579vepn7>.

supplies.² In response, Israel declared war on Hamas, aimed at freeing the hostages and eliminating the leadership and combat capabilities of the terrorist organisation.³ Based on the data provided by the Gaza Health ministry, the war in Gaza claimed over 70,000 victims by the end of 2025.⁴

The war in Gaza lasted for almost two years, however, the military objective of freeing the hostages, eliminating the leadership and combat capacity of the Hamas was not achieved. The State of Israel and Hamas thank to the involvement of the USA reached an agreement called Gaza Peace Deal and implemented its first phase. This plan is a 20 points program which involves ending the armed conflict, releasing the remaining hostages, both alive and fallen, increase of humanitarian aid, gradual withdrawal of the IDF upon the deployment of the International Stabilisation Forces (ISF) to Gaza, ending Hamas rule, their disarmament and further provisions concerning the post conflict transition and renovation of the Gaza Strip.⁵ During the first weeks, several armed skirmishes occurred but did not develop into the end of ceasefire. It might be uncertain whether this plan would be fully implemented in case of lack of interest in the involvement of some international actors to provide their troops to enforce Gaza peace and in case of Hamas's unwillingness to hand over power and disarm, as the plan expected.⁶ Internal problems associated with the implementation of some of its points cannot also be completely ruled out, e.g. regarding the demilitarization of Hamas and their handover of the government. Due to the uncertainty regarding the Hamas rule in Gaza and related issues of the response of the State of Israel in case the agreement is violated, it is reasonable to consider the legal consequences, these steps may have for all the actors involved, i.e. Hamas, the Palestinian Authority and the State of Israel, which is the subject of this paper.

1.1 Summary of the Effects of the Gaza War on the Civilian Population

The war in Gaza has a significant impact on the civilian inhabitants. According to reports published in May 2025, the IDF counted the ratio of civilian casualties at 83% to 17% Hamas fighters.⁷ Casualty figures for the conflict vary by source, and their numbers are increasing with each passing day of the war. More than half of Gaza's population was repeatedly urged to evacuate due to planned military operations.

Israel repetitively throughout the ongoing war restricted the entrance of the humanitarian aid to Gaza and significantly limited the activities of the international organisations

² NAKHOUL, Samia – SAUL Jonathan. How Israel was duped as Hamas planned devastating assault In: *Reuters* [online]. 10. 10. 2023 [2026-02-17]. Available at: <https://tinyurl.com/5n7jvw3c>.

³ Israel and Hamas at war: Latest News. In: *Reuters* [online]. 12. 10. 2023 [2026-02-17]. Available at: <https://tinyurl.com/5n7hyxmf>.

⁴ More than 70,000 killed in Gaza since Israel offensive began, Hamas-run health ministry says. In: *BBC* [online]. 30. 11. 2025 [2026-02-17]. Available at: <https://tinyurl.com/yuzwv75k>.

⁵ Donald Trump's 20point Gaza peace plan in full. In: *BBC* [online]. 9. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/yey4fpaz>.

⁶ KEANE, Fergal. International troops won't want to enforce Gaza peace, says King of Jordan. In: *BBC* [online]. 27. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/4uh4tsjs>.

⁷ GRAHAM-HARRISON, Emma – ABRAHAM, Yuval. Revealed: Israeli military's own data indicates civilian death rate of 83 % in Gaza war. In: *The Guardian* [online]. 21. 8. 2025 [2026-02-17]. Available at: <https://tinyurl.com/4byhjt98>.

ensuring the humanitarian aid.⁸ The civilian inhabitants of Gaza were exhausted due to the consequences and impacts of the long-lasting war. Gaza was marked by the United Nations as “no safe place for the civilians to go”. Civilians lived in catastrophic conditions marked by starvation, destitution, and death. Hospitals were overwhelmed and operated about three-times capacity. Hundreds of cases of malnutrition were reported. The international community called for immediate ceasefire and release of hostages.⁹ In August 2025 famine was confirmed in Gaza for the first time by the World Health Organisation.¹⁰ In September 2025 the UN Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel found that the State of Israel committed genocide in the Gaza Strip.¹¹ Nevertheless, the leadership of the State of Israel decided to continue military operations with “unprecedented force” and intensified fighting in some parts of Gaza,¹² e.g. in Gaza City which included demolition of residential buildings, so that they cannot be used by Hamas fighters.¹³ Due to the combat operations in Gaza City, it became impossible to ensure the delivery of humanitarian aid to the area. The impact of the State of Israel’s decision to conduct military operations in Gaza City also resulted into suspending activities provided by the organisation Médecins Sans Frontières,¹⁴ which might lead to a further deterioration of the health and humanitarian situation.

II. ACTORS RESPONSIBLE FOR THE EXERCISE OF PUBLIC AUTHORITY OVER THE PALESTINIAN TERRITORIES

The Palestinian territories are divided into several territorial units: the Gaza Strip, the West Bank, and East Jerusalem. In terms of exercising public power over the concerned territorial parts, the State of Israel intervenes, namely in the form of the occupation. However, the occupation is exercised in various forms across these territorial units. The exercise of public power by the Palestinian authorities and its extent also varies across the individual parts of the Palestinian territories. In addition to the Israeli and Palestinian authorities, the international organization UNRWA exercises certain components of public authority in the Palestinian territories. UNRWA is through its mandate empowered in the areas of providing humanitarian assistance, maintaining civil records and

⁸ UNRWA Situation Report #188 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem. In: *UNRWA* [online]. 12. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/mr38mp7e>.

⁹ Gaza: Ceasefire urgently needed as civilians left with ‘no safe place’ to go. In: *UN News* [online]. 10. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/yeync4su>.

¹⁰ Famine confirmed for first time in Gaza. In: *WHO* [online]. 22. 8. 2025 [2026-02-17]. Available at: <https://tinyurl.com/mthfpx4>.

¹¹ Israel has committed genocide in the Gaza Strip, UN Commission finds. In: *OHCHR* [online]. 16. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/2ry5j3ry>.

¹² MALLINDER, Lorraine. Israel strikes Gaza City with “unprecedented force”, tens of thousands flee. In: *Aljazeera* [online]. 19. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/42fkyveu>.

¹³ ABU ALKAS, Dawoud – AL-MUGRHABI, Nidal – LE POIDEVIN, Olivia. Israel’s Gaza City demolitions fan fears of permanent removal of Palestinians. In: *Reuters* [online]. 21. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/3pp3sz8r>.

¹⁴ MSF forced to suspend activities amid intensified Israeli offensive in Gaza City. In: *Médecins Sans Frontières* [online]. 26. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/b3hrhntd>.

population registration, ensuring the digitisation of registry documents (Palestinian refugees and their descendants), social services, education, training, healthcare, and finally, providing financial assistance and loans to support entrepreneurship.¹⁵

These aspects result into a high complexity of the factual situation and poses challenges for the legal qualification of the status of Palestine as well as status of Hamas from the perspective of the international law.

II.1 SUMMARY OF THE DEVELOPMENT OF THE EXERCISE OF PUBLIC POWER OVER THE PALESTINIAN TERRITORIES

The origins of the issues addressed in this paper may be traced back to 1947, when UN General Assembly Resolution 181 (II) expressed the international community's intention to establish two states, a Jewish state and an Arab state, within the territory of the Mandate for Palestine.¹⁶ The resolution was rejected by the Palestinian Arabs, who opposed the establishment of a state limited to part of the Mandate territory and instead sought control over the entire area, to be divided between Egypt and Jordan.¹⁷

The idea of an independent Palestinian state emerged more clearly after the Six-Day War in 1967, when the State of Israel gained control over the West Bank and Jordan lost the ability to exercise public authority there, while Egyptian administration of the Gaza Strip simultaneously came to an end.¹⁸

A major milestone was reached in 1988, when the Palestinian Liberation Organisation declared the independent State of Palestine over territory under Israeli military occupation. The State of Israel subsequently recognised the Palestinian Liberation Organisation as the representative of the Palestinian people, and in 1993 and 1995 the parties concluded the Oslo Accords. These agreements regulated cooperation in the exercise of public authority in the occupied territories and established transitional periods intended to expand the scope and capacity of Palestinian authorities. In practice, however, the Oslo Accords were not fully implemented due to renewed violence between the parties.¹⁹

As a result, negotiations between the State of Israel and Palestinian representatives effectively ended at the beginning of the 21st century, significantly hindering the ability of Palestinian authorities to strengthen and expand public authority in the West Bank. Although, under the Oslo Accords, public power in the West Bank formally remains divided between the State of Israel and the Palestinian National Authority, in practice Israel has progressively expanded its influence, thereby reducing the space for the development of Palestinian governance.

The last legislative elections in the Palestinian territories were held in January 2006 and resulted in the victory of Hamas over the previously dominant Fatah. Hamas leader Ismail Haniyeh was appointed by President Mahmoud Abbas to form a government,

¹⁵ What We Do. In: *UNRWA* [online]. [2026-02-17]. Available at: <https://tinyurl.com/4fs6ebh5>.

¹⁶ UN doc. A/RES/181(II).

¹⁷ ELARBY, Nabil. Some legal implications of the 1947 Partition Resolution and the 1949 Armistice Agreements. *Law and Contemporary Problems*. 1968, Vol. 33, pp. 97–109.

¹⁸ SixDay War. In: *Britannica* [online]. 23. 1. 2026 [2026-02-17]. Available at: <https://tinyurl.com/4bcp868b>.

¹⁹ Oslo Accords. In: *Britannica* [online]. 26. 12. 2025 [2026-02-17]. Available at: <https://tinyurl.com/2xm4zf7x>.

in which Fatah refused to participate. Escalating tensions between the two movements led to a deterioration of law and order and to violent clashes, particularly in the Gaza Strip. In February 2007, after prolonged negotiations, Hamas and Fatah agreed to form a national unity government. Nevertheless, on 14 June 2007 Hamas took control of the Gaza Strip. President Abbas responded by dismissing the Hamas-led government and appointing a new Fatah-led government under Prime Minister Salam Fayyad, a step rejected by Hamas as unlawful. Although the authority of the Fatah-led government formally extended to all Palestinian territories, it has in practice been unable to exercise any public power in the Gaza Strip, where Hamas has maintained effective control. A certain legitimacy of Hamas' rule in the Gaza Strip can be inferred from these events. The results of the 2006 elections, in which Hamas participated as an actor within Palestinian Authority, were not disputed and there were no reports that the elections were rigged and Palestinian residents were forced to vote for Hamas (unlike e.g. the elections in the Donetsk and Luhansk regions in 2023).²⁰

Under these circumstances, the Palestinian Legislative Council ceased to function, and legislative activity was replaced by presidential decrees issued by Mahmoud Abbas. Despite the four-year presidential term prescribed by law and the expiry of Abbas's mandate in September 2009, he has remained in office, and no further elections have been held since 2006.²¹

This development resulted in a de facto division of Palestinian public power between geographically separate parts of a territory that remains legally unified. Neither the Gaza Strip nor the West Bank and East Jerusalem seek to establish separate states. Hamas must therefore be distinguished from the official institutions of the Palestinian National Authority,²² namely the Fatah-led government, which exercises no public authority in the Gaza Strip. In the West Bank and East Jerusalem, the Palestinian National Authority's powers remain significantly constrained by the State of Israel, particularly in key areas such as border control, security, and taxation.²³

II.2 The Development of the Position on the Occupation Carried out by the State of Israel Concerning All Parts of the Palestinian Territories

The ability of both Hamas and the Palestinian National Authority to exercise public power independently over the respective parts of the Palestinian territories and their population is significantly constrained by the presence of the State of Israel. From the perspective of international law, Israel has exercised an occupation over all parts of the Palestinian territories, although the way this occupation has been carried out has differed between the Gaza Strip and the West Bank, including East Jerusalem. This position

²⁰ Ukraine criticises Russian fake elections in occupied regions. In: *The Guardian* [online]. 8. 9. 2023 [2026-08-01]. Available at: <https://tinyurl.com/5efhnhuz>.

²¹ SILVERBERG, Sanford R. Diplomatic recognition of states in statu nascendi: Case of Palestine. *Tulsa Journal of Comparative and International Law*. 1998, Vol. 6, No. 1, pp. 27–31.

²² BUREŠ, Pavel – FAIX, Martin – SVAČEK, Ondřej. *Vznik a uznání státu. [Emergence and Recognition of the State]*. Praha: Leges, 2013, p. 47.

²³ EDEN, Paul. Palestinian Statehood: Trapped Between Rhetoric and Realpolitik. *The international and comparative law quarterly*. 2013, Vol. 62, No. 1, pp. 225–239.

has been expressed in two Advisory Opinions of the International Court of Justice and supported by findings of independent international commissions and resolutions of the UN General Assembly.

The first ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 19 July 2004,²⁴ applied at the time of its adoption to the West Bank and East Jerusalem. In this opinion, the Court concluded that Israel was under an obligation to bring the occupation to an end.²⁵

The position of Israel as an occupying power in relation to the Gaza Strip was subsequently addressed by the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/1. Its 2015 report identified a range of elements demonstrating Israel's continued control over Gaza, including patrolling of the territorial sea by the Israeli Navy, continuous aerial surveillance by the IDF, and exclusive control over Gaza's airspace and maritime areas, subject only to limited fishing activities. The report further noted the existence of a land-based no-go zone of varying width along the Green Line fence, continuous Israeli control and landscaping of this area, and the joint Israeli Egyptian control of the Rafah crossing. Israel was also found to exercise control over customs, duties and the monetary system based on the New Israeli Shekel, as well as significant influence over the construction sector through approval of materials. In addition, Israel retained authority over the Palestinian population registry, including the issuance and modification of Palestinian identity documents.²⁶

These findings were later confirmed by the Independent International Commission of Inquiry on the Occupied Palestinian Territory, which stated in its 2022 report that Israel maintains control over, inter alia, Gaza's airspace and territorial waters, land crossings, civilian infrastructure such as water and electricity, and key governmental functions, including management of the population registry.²⁷

The ICJ endorsed this approach in its second Advisory Opinion, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* of 2024, in which it extended its earlier conclusions on occupation to the Gaza Strip.²⁸ The Court reiterated that a territory is occupied when it is placed under the effective control of a hostile army and that occupation does not require permanent physical presence of armed forces.²⁹ According to the ICJ, the withdrawal of Israeli armed forces and civilians from Gaza in 2005 is therefore not determinative, as “physical military presence in the occupied territory is not indispensable for the exercise

²⁴ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion, No. 31, 9 July 2004.

²⁵ ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Advisory Opinion, No.186, 19 July 2024. The interest of the majority of members of the international community on the withdrawal of Israel from the West Bank was also later reflected in the General Assembly resolution of 13 September 2024. UN doc. A/RES/ES-10/24.

²⁶ Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1. UN doc. A/HRC/29/CRP.4 (24 June 2015), para. 29.

²⁷ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. UN doc. A/77/328 (14 September 2022), para. 19.

²⁸ ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Advisory Opinion, No.186, 19 July 2024.

²⁹ Ibidem, para 90.

by a State of effective control, as long as the State in question has the capacity to enforce its authority.”³⁰

The authors note that the occupation of the Gaza Strip thus does not correspond to the classical model of occupation assumed by international humanitarian law, which is based on the continuous physical presence of the occupying power.³¹ As the ICJ clarified, the decisive criterion is not whether the occupying power retains a permanent physical presence of its armed forces, but whether its authority has been established and can be exercised. Where a State remains capable of exercising elements of its authority in place of the local government, it may continue to bear obligations under the law of occupation.³²

In conclusion, the factual situation described above directly affects the assessment of the status of Palestine and Hamas from the perspective of international law. It is also relevant to the potential legal consequences of renewed cooperation between Palestinian actors and to the assessment of future actions of the State of Israel, whether in the context of continued military operations or arrangements following the end of the war.

III. THE STATUS OF PALESTINE UNDER INTERNATIONAL LAW

In recent decades, developments in international law and international relations have influenced the status of Palestine. These fields coexist: international politics shapes the material sources of law, and international legal norms, in turn, influence state interactions. From each perspective, however, different conclusions may be drawn regarding Palestinian statehood.

Palestine is party to several significant international treaties, including the Geneva Conventions and Additional Protocols I (2014), II, and III (2015), and the Rome Statute of the International Criminal Court (2015). Its accession to the Rome Statute was accepted without resolving the question of whether Palestine qualifies as a state under international law, effectively recognising it as a state solely for treaty purposes. In 2024, Palestine accepted the ICJ’s jurisdiction,³³ over disputes under the Genocide Convention, and in 2018 over disputes under the Optional Protocol to the Vienna Convention on Diplomatic and Consular Relations. It also confirmed its voluntary acceptance of UN Charter obligations.³⁴

Palestine has held observer status at the UN since 1988, following recognition of its Declaration of Independence.³⁵ This recognition signalled support for an independent Palestinian state and marked the transition from the Palestinian Liberation Organization,

³⁰ Ibidem, para 91.

³¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Adopted at Geneva on 12 August 1949. 75 UNTS 287.

³² *ICJ, Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem. Advisory Opinion, No.186, 19 July 2024.* Para. 92.

³³ States not parties to the Statute to which the Court may be open. In: *ICJ* [online]. [2026-02-17]. Available at: <https://tinyurl.com/bdf8wvuk>.

³⁴ MALANCZUK, Paul. Some basic aspects of agreements between Israel and PLO from the perspective of international law. *European Journal of International Law*. 1996, Vol. 7, No. 1, pp. 485–500.

³⁵ UN doc. A/RES/43/17.

which had represented the Palestinian people since 1974 and held non-state observer status.³⁶ Since 2012, Palestine has been a permanent observer state at the UN. Efforts to obtain full UN membership were blocked in April 2024 by a US veto in the Security Council.³⁷ In response, the General Assembly granted Palestine additional rights, including participation in committees, submitting proposals, and sitting with member states.³⁸

International support for Palestinian statehood continued through the New York Declaration of 12 September 2025, which called for “tangible, timebound, and irreversible steps” toward statehood without Hamas participation. The Declaration emphasised the Two-State solution as the “irreversible pathway” to peace, called for an immediate ceasefire in Gaza, the release of hostages, disarmament of Hamas, normalization of Israel-Arab relations, and collective security guarantees. Adopted by 142 UN members, with 12 against and 10 abstentions, it reflects broad international support.³⁹ As of September 2025, approximately 81% of UN members (157 of 193 states) formally recognise Palestine, including France, Luxembourg, Malta, Monaco, Andorra, Belgium, Canada, Australia, Portugal, the UK, and Mexico.⁴⁰ Recognition facilitates diplomatic engagement, international relations, and political support for Palestinians affected by the Gaza conflict, and signals pressure on Israel to end the war and occupation.

Further support was expressed through Security Council Resolution 2803 (17 November 2025), which annexed President Donald J. Trump’s Comprehensive Plan to End the Gaza Conflict.⁴¹ The resolution established the Board of Peace, a transitional administration with international legal personality, responsible for coordinating redevelopment of Gaza until the Palestinian Authority completes reforms and can effectively govern. The Board was authorised to implement transitional governance, supervise a Palestinian technocratic committee, coordinate reconstruction and public services, facilitate movement in and out of Gaza, and undertake other tasks necessary to implement the Comprehensive Plan. The Security Council also authorised temporary International Stabilisation Forces under the Board’s command to cooperate with Israel, Egypt, and Palestinian police to secure borders, stabilize security, demilitarize Gaza, protect civilians, and support humanitarian operations, after which the IDF would withdraw.⁴² The Board of Peace was launched on 22 January 2026 and as a first task the Board aimed to oversee the demilitarization of the zone and for Hamas to lay down its arms.⁴³

Political support for Palestine and the Two-State solution has greatly increased in 2025. Nevertheless, UN admission does not replace the legal requirements for state-

³⁶ UN doc. A/RES/3210 (XXIX).

³⁷ Security Council Fails to Recommend Full United Nations Membership for State of Palestine, Owing to Veto Cast by United States. Press release SC/15670. In: *UN Security Council* [online]. 18. 4. 2024 [2026-02-17]. Available at: <https://tinyurl.com/4f7v44>.

³⁸ UN doc. A/RES/ES-10/23.

³⁹ General Assembly endorses New York Declaration on twoState solution between Israel and Palestine. In: *UN News* [online]. 12. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/5emza54a>. UN doc. A/80/L.1/Rev.1.

⁴⁰ DEMONI, Catarina – ACHARYA, Bhargav. Britain, Australia and Canada recognise Palestinian state. In: *Reuters* [online]. 22. 9. 2025 [2026-02-17]. Available at: <https://tinyurl.com/wj7tt28j>.

⁴¹ UN doc. S/RES/2803 (2025).

⁴² Ibidem.

⁴³ HOLLAND, Steve. Trump launches Board of Peace that some fear rivals UN. In: *Reuters* [online]. 23. 1. 2026 [2026-02-17]. Available at: <https://tinyurl.com/2ssj6pn>.

hood.⁴⁴ Experience shows that entities such as South Sudan, admitted as a UN member soon after independence, may not yet function fully as states. In international relations, Palestine operates almost entirely as a state, though terms like “Palestinian Territories” or “Palestinian Authority” persist.⁴⁵ Recognised by three-quarters of UN members, it has not yet become a UN member. From an international relations perspective, Palestine may therefore be considered a state; from the standpoint of international law, a different conclusion might be reached.

III.1 Examining the “Degree” of Palestinian Statehood

Recognition of a state, membership in international organizations, and accession to treaties are expressions of political will, reflecting the intention to treat an entity as a state in international relations. In practice, recognition, particularly when by most UN members, may accelerate state formation, and some argue that UN membership can serve as final confirmation of statehood for disputed entities.⁴⁶

Under contemporary international law, recognition is no longer required for an entity to be considered a state.⁴⁷ It has a declaratory effect, primarily serving as evidence of state existence, while statehood itself arises from fulfilment of the four constitutive elements defined in the Montevideo Convention of 1933: defined territory, permanent population, effective government, and capacity to enter into relations with other states.⁴⁸ These classical criteria have become customary law,⁴⁹ though some scholars argue they are the attributes a state should possess rather than strict legal conditions.⁵⁰

Opinions differ on whether Palestine qualifies as a state under international law. Its efforts to fulfil the criteria are evident, particularly its capacity to engage in international relations. Some scholars contend that Palestinian statehood has developed to such an extent that it functions as an autonomous subject of international law, subject to the system’s principles, including the prohibition of the use of force and interference in internal affairs. According to this view, Palestine meets the criteria of statehood at least minimally.⁵¹ The authors of this paper do not share this conclusion, but the arguments supporting minimal functionality create space to consider Palestine as a state in the stage of birth, *in statu nascendi*.

III.2 Palestine as a State *in statu nascendi*

A state *in statu nascendi* can be understood as one in the middle of the process of coming into existence, as when a treaty is being negotiated or an organization is in

⁴⁴ UN doc. A/RES/67/19.

⁴⁵ Palestinian Territories. In: *US Department of State* [online]. [2026-02-17] Available at: <https://tinyurl.com/yd-janvan>.

⁴⁶ BUREŠ, P. – FAIX, M. – SVAČEK, O. *Vznik a uznání státu. [Creation and emergence of the state]*. Praha: Leges, 2013.

⁴⁷ CRAWFORD, James. The creation of the State of Palestine. Too much or too soon? *European Journal of International law*. 1990, Vol. 1, No. 1, pp. 307–313.

⁴⁸ The International Conferences of American States, First Supplement, 1933–1940, p. 121.

⁴⁹ CRAWFORD, James. *The Creation of States in International Law*. Oxford: Oxford University Press, 2007, p. 545.

⁵⁰ BUREŠ, P. – FAIX, M. – SVAČEK, O. *Vznik a uznání státu. [Creation and emergence of the state]*, p. 18.

⁵¹ *Ibidem*.

formation.⁵² International law does not specify any limits on the duration of state formation.

The authors argue that Palestine is a state in *statu nascendi*, a state in the stage of birth, as it does not yet fulfil all four objective criteria of statehood under international law. The principal gap concerns the exercise of public authority, one of the core constitutive elements.

Effective governance is considered the fundamental criterion of statehood, closely linked to independence, and essential for assessing whether an entity qualifies as a state. Professor Crawford views a state's ability to exercise effective public authority within its territory as a consequence of statehood.⁵³ From this perspective, a newly established state should assert power and exclude competing authorities on its territory, even if obstruction arises from another state, regardless of the legality of that presence.⁵⁴

The authors' position, that Palestine is a state in the stage of birth, not a failed state, rests on several points. The key distinction between an emerging and a failed state is whether the entity has ever functioned as a state: exercising independent public authority over a defined territory and permanent population and engaging in relations with other states. Palestine has never met this criterion due to historical and political constraints. Consequently, the authors reject characterizations of Palestine as weak or failing. Their analysis also considers Palestine's declared intention to establish a government of national unity and unify all political factions, including Hamas. The development of full Palestinian statehood is complicated by the actions of Israel, which has a strong interest in maintaining and potentially expanding its control to ensure security in response to armed threats.

The author's position is not hindered by the fact that Palestine has been recognized as a state by more than half of the UN member states. The act of recognition has political significance. Even Palestine's potential full membership in the UN would not mean, from the point of view of international law, that Palestine is truly a state. The admission of an entity as a member state to the UN can in practice accelerate the process of emergence of the state according to international law. It is therefore necessary to distinguish the concept of a state within international relations and international law. It is clear from Palestine's membership of the Rome Statute; Palestine is considered a state only for the purposes of the jurisdiction of the ICC and the proceedings before it.⁵⁵ The fact that Palestine is a party to the Rome Statute should not be interpreted as meaning that it is also a state under international law.⁵⁶

⁵² In *statu nascendi*. In: *Oxford Reference* [online]. [2026-02-17]. Available at: <https://tinyurl.com/43b662nw>.

⁵³ NORMAN, George – TRACHTMAN, Joel, P. The Customary International Law Game. *The American Journal of International Law*. 2005, Vol. 99, No. 3, p. 541.

⁵⁴ ŠTURMA, Pavel – ČEPELKA, Čestmír. *Mezinárodní právo veřejné. [Public International Law]*. Praha: C. H. Beck, 2018, p. 37.

⁵⁵ ICC Office of the Prosecutor. Summary of submissions on whether the declaration lodged by the Palestinian National Authority meets statutory requirements. In: *United Nations* [online]. 5. 3. 2010 [2026-08-01]. Available at: <https://tinyurl.com/2x6zaar8>

⁵⁶ What does the International Criminal Court's Decision to hold its jurisdiction in Palestine mean? In: *Law for Palestine* [online]. 21. 2. 2021 [2026-08-01]. Available at: <https://tinyurl.com/5bwyek2j>.

IV. STATUS OF HAMAS UNDER INTERNATIONAL LAW

In addition to sovereign states, certain entities possess international legal personality, though their rights and obligations are narrower than those of states. The scope of their international legal capacity corresponds to their nature. Some entities, such as international organizations, are created by states through treaties that grant them defined rights and obligations. Others arise independently of state will, deriving their rights and obligations from customary international law, i.e., long-standing practices considered legally binding.

The legal personality of non-state actors is typically temporary and may represent an intermediate stage toward statehood or the demise of the movement. In international law doctrine, non-state actors include rebels, insurgents, freedom fighters, national liberation movements, resistance groups, guerrillas, opposition organizations, semi-state entities, unrecognized organizations, and even criminal gangs.⁵⁷ Armed non-state actors are often central players in conflicts, and Hamas is no exception. As noted in section 2.1, Hamas must be distinguished from the official bodies of the “unified” Palestinian National Authority.⁵⁸

IV.1 Summary of the Key Moments Related to Hamas and its Operations at Present

Hamas, formally the Islamic Resistance Movement, has exercised full control over the Gaza Strip for more than two decades. Disagreements between Hamas and Fatah, which holds the dominant position within the official Palestinian representation, can already be traced to the 1990s, when Hamas condemned the peace agreements concluded between the State of Israel and the PLO and expressed disinterest in the “two-state solution.”⁵⁹ Although Hamas did not identify with the PLO’s engagement in peace negotiations with the State of Israel in the 1990s, it also did not present any alternative programmatic solution to the Oslo Accords. Instead, it proclaimed a policy of continued resistance through armed force and subsequently carried it out in a series of violent events referred to as the Second Intifada.⁶⁰ Hamas continues to incite a violent resolution of the Israeli Palestinian conflict and refuses to abandon violence against Israel altogether.

A fundamental basis of the ideology espoused by Hamas is the view that “Palestine is an Islamic land entrusted to the Muslim generations until Judgment Day. No one may renounce all or even part of it.”⁶¹ This doctrine underlies Hamas’ hostility toward the State of Israel and its justification for waging war against it, as Israel is perceived as a foreign and racist regime occupying territory to which, according to Hamas, it has no legal

⁵⁷ HOFMANN, Claudia – SCHNECKENER, Ulrich. NGOs and Nonstate Armed Actors, Improving Compliance with International Norms. In: *United States Institute for Peace*. [online]. [2026-02-17]. Available at: <https://tinyurl.com/mvb5vuaz>.

⁵⁸ BUREŠ, P. – FAIX, M. – SVAČEK, O. *Vznik a uznání státu. [Creation and emergence of the state]*, p. 54.

⁵⁹ SCHANZER, Jonathan. *Hamas vs. Fatah: The struggle for Palestine*. New York: Palgrave Macmillan, 2008, p. 37.

⁶⁰ ROY, Sara. *Hamas and civil society in Gaza: Engaging the Islamist Social Sector*. Princeton: Princeton University Press, 2011, p. 19.

⁶¹ DALACOURA, Katarina. *Islamist Terrorism and Democracy in the Middle East*. Cambridge: Cambridge University Press, 2012, p. 66.

claim. The objective of this struggle is to achieve complete independence from Israel and to exclude its presence from areas Hamas considers Palestinian, including the territory of the State of Israel itself.

Hamas opposed the formal renunciation of violence against the State of Israel by the Palestinian Authority.⁶² Another reason for this divergence lay in the more secular orientation of the government in the West Bank, whereas Hamas sought the strict implementation of Islamic religious practices within state administration.⁶³

In relation to the Palestinian Authority, Hamas long represented an opposition force. In the strict sense, Hamas did not seek to establish a separate state in the territory of the Gaza Strip; rather, it relied on the outcome of elections to assume public authority. Hamas continued to exercise governance in Gaza even after being dismissed by the government in the West Bank. It may be concluded that, through this course of action, Hamas sought to gain support among Palestinian inhabitants living in other parts of the occupied Palestinian territory.⁶⁴

The core programmatic principle of Hamas, as both a political and militant group, has traditionally been the rejection of the existence of the State of Israel, against which it has conducted violent attacks. In this respect, Hamas constitutes one of the components of the so-called axis of resistance, a regional network of anti-Israel partners that includes Palestinian Islamic Jihad, Lebanon's Hezbollah, Yemen's Houthis, and various militias in Iraq and Syria.⁶⁵ From a programmatic perspective, reference may be made to the 1988 Charter, which focused on the destruction of the State of Israel and the establishment of an Islamic society on the historical territory of the Mandate for Palestine.⁶⁶ Pursuant to Articles 14 and 32 of this Charter, Hamas aligns itself with the objectives of Islamic organizations and declares its intention to fight against all states, including certain Arab states, that recognize the existence of the State of Israel.⁶⁷ Hamas participated in the events of both the First (1987–1993) and Second (2000–2005) Intifadas. This corresponds to the widespread slogan still used today, “from the river to the sea,” referring to the intention of Hamas to claim land encompassing Israel.

In 2017, Hamas presented a new programmatic document emphasizing the rejection of recognition of the State of Israel and the objective of liberation from the domination or occupation exercised by the State of Israel.⁶⁸ This revised Charter, however, also indicated that Hamas might accept a future Palestinian state along the borders established prior to the Six-Day War, which are generally recognized internationally as the borders of the West

⁶² COOK, Steven A. What is Hamas? In: *Council on Foreign Relations* [online]. 6. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/4cbpu6r3>.

⁶³ Doctrine of Hamas. In: *Wilson Centre* [online]. 20. 10. 2023 [2026-02-17]. Available at: <https://tinyurl.com/35d-cbb9f>.

⁶⁴ AWAD, Hani. Understanding Hamas. *Arab Centre for Research & Policy Studies*. 2022, Vol. 4, No. 2, pp. 42–62.

⁶⁵ MISHAL, Saul – SELA, Avraham. *The Palestinian Hamas. Vision, violence, and coexistence with a new introduction*. Columbia: Columbia University Press, 2006, p. 83.

⁶⁶ Doctrine of Hamas. In: *Wilson Centre* [online]. 20. 10. 2023 [2026-02-17]. Available at: <https://tinyurl.com/35d-cbb9f>.

⁶⁷ Ibidem.

⁶⁸ What does 'from the river to the sea' actually mean? In: *AP News* [online]. 11. 11. 2023 [2026-02-17]. Available at: <https://tinyurl.com/8wtvu2b6>.

Bank and the Gaza Strip.⁶⁹ Under Article 21 of the revised 2017 Charter, Hamas declared that the Oslo Accords concluded between the PLO and the State of Israel were contrary to international law. Nevertheless, from the provisions of other articles of the document, a certain degree of change and moderation in the organization's position can be discerned. Article 28 states that Hamas believes in and observes the conduct of its Palestinian relations based on pluralism, democracy, and national partnership with the Palestinian Authority. Article 30 expresses the intention to build Palestinian administrative organs and public institutions on democratic principles and through free elections. Article 42 declares that Hamas rejects the imposition of Islamic power practices on other states in the world.

From the above, it is evident that although Hamas is significantly more radical than the representatives of the Palestinian government in the West Bank, and while it functions as an opposition movement to the Fatah-led Palestinian National Administration, it has no interest in establishing a separate state in the territory of the Gaza Strip. It also follows that the classification of Hamas within one of the established categories of non-state actors under international law remains somewhat difficult.

IV.1.1 Hamas as an Actor Sui Generis

Hamas's status under international law can be analysed through various categories of non-state actors. National liberation movements, independence movements, and peoples fighting for independence are treated as synonymous in legal science. Their legitimacy derives from UN General Assembly resolutions of the 1960s, notably 2105 (XX)⁷⁰ and 2625 (XXV),⁷¹ recognizing the right to armed struggle against colonial domination, foreign occupation, and racist regimes as part of the exercise of self-determination. Such movements aim to end external control and establish a state on seceded territory. This may be relevant to Hamas only marginally, as its aim has included eliminating what it considers the occupation by the State of Israel, but Hamas does not seek the establishment of its own state independent of the Palestinian Authority.

The international legal personality of such movements is grounded in Article 1 (4) of Additional Protocol I to the Geneva Conventions, with Article 96 (3) allowing, but not requiring, a unilateral commitment to comply with international humanitarian law (IHL). Scholars regard this personality as particular, reflecting the limited ratification of Additional Protocol I and serving practical purposes, including access to military, humanitarian, economic, and political support. Recognition depends on effective territorial control and the exclusion of the sovereign's authority. Governance through autonomous institutions over members and populations has led some authors to describe these entities as states *in statu nascendi*. UN practice may include the conferral of observer status, participation in international conferences, assistance, and recognition of the legitimacy of armed resistance.⁷² This, however, is also irrelevant to Hamas, as none of these elements has occurred.

⁶⁹ A Document of General Principles and Policies. In: *Hamas Info EN* [online]. [2026-02-17]. Available at: <https://tinyurl.com/yc6zt45u>.

⁷⁰ UN doc. A/RES/2105(XX).

⁷¹ UN doc. A/RES/2526(XXV).

⁷² *Ibidem*.

Insurgent or belligerent movements and armed opposition groups constitute, in relation to the above examined entities, a related but distinct category. Unlike national liberation movements, insurgents aim to alter state structures, overthrow central authorities, or seize political power rather than to exercise self-determination. They are bound by IHL to the same extent as the state within whose territory they operate, and this obligation applies to the movement as a whole.⁷³ Their particular legal personality derives from their factual role in the conflict and the international interest in ensuring compliance with IHL.⁷⁴ It is functionally and temporally limited, applying only to IHL obligations for the duration of the conflict. The scope of applicable norms varies with territorial control, although the loss of such control does not terminate personality.⁷⁵ Recognition by states allows insurgent movements to participate in international relations for military, economic, humanitarian, and political support. Unilateral declarations are legally relevant only where obligations beyond standard IHL are assumed, while declarations attempting to exempt the movement from IHL have no legal effect.⁷⁶

The classification of Hamas as an insurgent movement or armed opposition group does not apply, as Hamas primarily operates in the Gaza Strip. Conversely, Hamas may have only limited access to Israeli territory, for example through underground tunnels. Prior to the Gaza war, there were cross-border rocket attacks, the intensity of which rather corresponded to cross-border tension. By contrast, there was no domestic armed conflict within the territory of the Gaza Strip, and the State of Israel may be perceived as Hamas's external (foreign) enemy.

Hamas also does not meet the criteria of a belligerent, which represents a specific type of insurgent movement seeking to overthrow a democratic regime and establish a government based on Islamic law, typically possessing extensive personnel and material resources. For example, Al Qaeda in Afghanistan was recognised by the United States and some NATO members as a belligerent in order to justify collective self-defence following 11 September 2001, although this view is not universally accepted. However, Al Qaeda cannot be regarded as a subject of international law due to the absence of territorial control and broad state recognition. Unlike Al Qaeda, Hamas, at least before the outbreak of the war, exercised practically full control over the territory of the Gaza Strip, although this control was partially limited from the outside by actions of the State of Israel (as described in Chapter 2).

Finally, among the existing categories of armed entities, reference may be made to terrorist organisations. The international treaty regulation on terrorism concerns terrorist acts by private individuals, not state terrorism. It is also important to emphasise that there is no legally binding international definition of terrorism or terrorist organisation,

⁷³ MOIR, Lindsay. *The Law of International Armed Conflict*. Cambridge: Cambridge University Press, 2002, p. 30. ZEGVELD, Liesbeth. *Accountability of Armed Opposition Groups in International Law*. Cambridge: Cambridge University Press, 2002, p. 133.

⁷⁴ O'CONNEL, Mary E. – TAMS, Christian. J. – TLADI, Dire. *Self-defence against non-state actors*. New York: Cambridge University Press, 2019, p. 90.

⁷⁵ ONDŘEJ, Jan – ŠTURMA, Pavel – BÍLKOVÁ, Veronika – JÍLEK, Dalibor. *Mezinárodní humanitární právo. [International Humanitarian Law]*. Praha: C. H. Beck, 2012, p. 71.

⁷⁶ BÍLKOVÁ, Veronika. *Úprava vnitrostátních ozbrojených konfliktů v mezinárodním humanitárním právu. [Regulation of internal armed conflicts in international humanitarian law.]*. Praha: Karolinum, 2007, p. 44.

nor any treaty addressing state responsibility for international terrorism.⁷⁷ Under IHL, terrorism is prohibited as acts or threats of violence aimed at spreading terror among civilians in both international and non-international armed conflicts.⁷⁸ Several states, including Australia, EU member states, Canada, Israel, Japan, New Zealand, the United Kingdom, and the United States, classify Hamas as a terrorist organisation; however, this classification is primarily relevant in international relations, and it has not been determined whether Hamas constitutes a terrorist organisation under international law. In this regard, it may primarily be noted that the ICC issued arrest warrants against Hamas senior leaders Ismail Haniyeh and Yahya Sinwar for alleged crimes against humanity and war crimes committed in Israel and Palestine from 7 October 2023, including murder, extermination, torture, rape and other sexual violence, hostage-taking, cruel treatment, and outrages upon personal dignity. The ICC continues to investigate the situation and anticipates further arrest warrants as the conflict develops.⁷⁹

The concept of Hamas as a (regular) terrorist organization, which is considered to be Al Qaeda or the Islamic State under international law, would be misleading. It would be more correct to understand Hamas as an entity using terrorist methods, but it is not a terrorist organization in the true sense of the word. Hamas is interested in exercising public power in the Gaza Strip and at the same time in carrying out terrorist operations directed against the inhabitants of the State of Israel. On the contrary, Al Qaeda was not aimed at exercising public power and the Islamic State did control a certain territory with power, but only with a very minimal degree of legitimacy. With regard to the specificity of Hamas's position in Gaza, supported by the results of the parliamentary elections, it is possible to grant Hamas at least a minimal degree of international legal personality. Hamas could therefore also be seen as a *de facto* regime, as it controlled the Gaza Strip and exercised public administration over its inhabitants (although not exclusively with regard to the control exercised by the State of Israel and the administrative and humanitarian assistance provided by UNRWA). Given the fact that Hamas controls the territory of the Gaza Strip, it should guarantee its inhabitants a minimum framework of human rights protection. Granting a certain degree of international legal subjectivity is desirable given that international law requires that *de facto* regimes not operate in a legal vacuum, as the protection of the human rights of the population is a mandatory norm of customary law.

In connection with the circumstances describing the relationship between Hamas and the Palestinian Authority (Sections 2.1 and 4.1), it is not currently possible to conclu-

⁷⁷ SAUL, Ben. Defining terrorism in international law. In: *Globalex* [online]. [2026-02-17]. Available at: <https://tinyurl.com/mtn73ucc>.

⁷⁸ Rule 2. Violence aimed at spreading terror among civilian population. In: *ICRC* [online]. [2026-02-17]. Available at: <https://tinyurl.com/msuayzrc>.

⁷⁹ Warrants have been issued for Hamas senior leaders Ismail Haniyeh and Yahya Sinwar for alleged crimes against humanity and war crimes committed in Israel and Palestine from at least 7 October 2023. These include murder, extermination, torture, rape and other sexual violence, taking hostages, cruel treatment, and outrages upon personal dignity. The ICC prosecution continues to investigate and anticipates further arrest warrant applications as the conflict continues. Situation in the State of Palestine: ICC Pre-Trial Chamber I issues warrant of arrest for Mohammed Diab Ibrahim Al-Masri ('Deif'). Press release. In: *ICC* [online]. 21. 11. 2024 [2026-02-17]. Available at: <https://tinyurl.com/3zsz8eph>.

de that Hamas is controlled by the Palestinian Authority. Consequently, terrorist acts committed by Hamas cannot be attributed to the Palestinian Authority for the purposes of state responsibility. UN Security Council resolutions have not adopted any binding position concerning responsibility for terrorism in this context.

With regard to the international legal classification of Hamas, the authors are inclined to the view that it constitutes an entity or actor *sui generis* due to its unique combination of characteristics. Hamas exercises, to a certain extent legitimately based on electoral results, effective territorial control over the Gaza Strip, which is independent of the Palestinian Authority in the West Bank. It maintains autonomous institutions for governance and public services and possesses organised military and administrative structures. Hamas also engages in limited international relations, for example by participating in negotiations with mediators concerning the Gaza conflict. It cooperates with the International Committee of the Red Cross to a very limited extent, notably in the handover of released hostages. Hamas does not aim to constitute an independent state. The legal personality attributed to certain non-state entities, such as national liberation movements under Article 1 (4) of Additional Protocol I, has not materialised in its case. These circumstances make it impossible to place Hamas unequivocally within existing categories of non-state actors, as it does not fully correspond to their defining characteristics. It is likewise difficult to identify any organisation operating in an equivalent manner and within comparable contexts. These considerations support the authors' view that Hamas should be classified as an actor *sui generis*. The situation can be compared to so-called *de facto* states or *de facto* regimes. In the case of Hamas, it functions as a *de facto* regime rather than a state. Unlike other *de facto* regimes, such as South Ossetia, Abkhazia, or Northern Cyprus, which arose under unclear or explicitly illegal circumstances, the initial basis for Hamas's power over Gaza was legal. However, its exercise of power since 2007 has been purely *de facto*. Another key distinction is that Hamas does not seek to establish an independent state. Its authority in Gaza is manifested externally, for instance through the conclusion of ceasefire agreements with Israel. It can therefore be concluded that Hamas constitutes a *sui generis* entity. Long-term developments will determine whether Hamas continues to operate in Gaza and represents the local population.

V. LEGAL CONSIDERATIONS ON THE POST-WAR FUTURE OF THE GAZA STRIP

Over the two years of war in Gaza, a range of opinions and political proposals emerged regarding the future post-war administration of the Gaza Strip. These considerations can generally be grouped according to the parties expressing them: Palestinian, Israeli, and third parties, such as the United States, which has supported specific solutions to the Gaza conflict. This chapter reflects on all these approaches.

V.1 Reconciliation Efforts and the Prospects of Palestinian Statehood

Over the past two decades, Fatah and Hamas made several unsuccessful attempts to reach reconciliation agreements and cooperate in forming a new Palestinian government for Gaza and the West Bank. Among the significant efforts was the Cairo Agree-

ment of October 2017, under which a unity government was to assume administrative control of Gaza within two months. Five months later, however, Palestinian Authority Prime Minister Rami Hamdallah survived an assassination attempt during a visit to Gaza in March 2018. Fatah immediately accused Hamas of responsibility, and the agreement collapsed.⁸⁰

Another key step was the “National Unity Deal,” or Beijing Declaration, signed in July 2024 by 14 Palestinian factions, including Hamas, Fatah, and Palestinian Islamic Jihad. Unlike earlier accords, it set out concrete measures toward a consensus government, aiming to unite representatives of Gaza and the West Bank in the struggle against Israeli occupation, secure territorial unity, and establish post-war governance. The declaration imposed several obligations, most notably: the creation of an independent Palestinian state with Jerusalem as its capital, in line with UN GA Resolution 181 (1947) and UN SC Resolution 2334 (2016), including the right of return; recognition of the Palestinian right to resist occupation in accordance with international law, using “all available forms”; and the establishment of a temporary consensus government with authority over the West Bank, Jerusalem, and Gaza to unify institutions, begin Gaza’s reconstruction, and prepare for parliamentary elections.⁸¹ The parties also agreed on a timetable for implementation.

Further progress came with the Hamas-Fatah agreement of 3 December 2024 to establish a joint committee of 10 to 15 non-partisan figures to oversee economic, educational, health, humanitarian, and reconstruction in Gaza. Operating under the Palestinian Authority in the West Bank, the committee would also administer the Palestinian side of the Rafah crossing with Egypt, currently controlled by Israel.⁸²

However, President M. Abbas’s statement at the UN General Assembly on 25 September 2025 introduced new dynamics. He emphasised that Gaza was an integral part of the Palestinian state and that the Palestinian Authority was prepared to assume full responsibility for governance and security there, based on “one state, one law, and one legal security force.” He further stated that he would not allow Hamas to govern Gaza after the war. Significantly, he condemned the terrorist attack of 7 October 2023, called on Hamas to lay down its arms, and expressed interest in ensuring a unified Palestinian state that would be “modern and democratic,” based on the “rule of law, peaceful transition of power, and respect for human rights, youth and women’s empowerment.”⁸³

President Abbas’s statement could, on one hand, be seen as a renewed intention not to implement the concluded agreement on a Palestinian government of national unity. On the other hand, it cannot be completely ruled out that Hamas might be involved to some extent or form in a future Palestinian government.

⁸⁰ Hamas and Fatah sign unity deal in Beijing aimed at Gaza governance Al Jazeera. In: *Aljazeera* [online]. 23. 7. 2024 [2026-02-17]. Available at: <https://tinyurl.com/5n6ph24n>.

⁸¹ Beijing Declaration to End Division and Strengthen Palestinian National Unity. In: *Democratic Front for the Liberation of Palestine* [online]. [2026-02-17]. Available at: <https://tinyurl.com/5n8s8dm2>.

⁸² MCCARTHY, Simone – YEE, Isaac – SALMAN, Abeer. Hamas and Fatah sign agreement in Beijing ending their division, China says. In: *CNN News* [online]. 22. 7. 2024 [2026-02-17]. Available at: <https://tinyurl.com/5t2t32sx>.

⁸³ Palestinian President Abbas rejects Hamas attack, urges world to back peace plan at UN. In: *UN News* [online]. 25. 9. 2025 [2026-02-17]. Available from: <https://tinyurl.com/5n9b249j>.

From an international law perspective, the conclusion of the Hamas-Fatah agreements does not prevent Palestine from being considered a state in the future. International law does not require a newly established state to adopt a particular form of government;⁸⁴ a state can, in principle, be totalitarian or even fascist, based on “the principle of equal rights and self-determination of peoples.”⁸⁵ Therefore, even a government led by Hamas, which is responsible for terrorist acts, would not obstruct the full development of Palestinian statehood, which could occur if it gains full control over public power.

The implementation of the Beijing Declaration, however, remains uncertain. While it is a written agreement, it is a political declaration without enforceable mechanisms. Non-fulfilment would primarily affect relations between Palestinian factions but could also have some impact on post-war reconstruction in Gaza, as discussed in Sections 5.3 and 5.4.

V.2 Israeli Measures Concerning Gaza and International Law Implications

The State of Israel expressed its intention to concentrate the civilian population of the Gaza Strip in its southern part, purportedly to facilitate military operations. Civilians were requested to relocate to areas deemed safer. According to a plan published by the Israeli Ministry of Defence in July 2025, a humanitarian city would be established in Rafah, where Gaza residents would be evacuated after verification that they have no ties to Hamas. This zone would be closed, with no possibility of exit, and would be controlled by the IDF. Humanitarian aid would be provided by several international organizations. Israel also indicated support for the “voluntary emigration” of Palestinians from Gaza, planning negotiations with foreign states potentially willing to accept some of the displaced population.⁸⁶

From the perspective of international law, the implementation of such a plan would be difficult to justify. Several aspects could constitute breaches of Israel’s obligations. First, the Fourth Geneva Convention prohibits the forcible transfer of civilians within occupied territory and any alteration in the character or nature of such territory by the occupying power.⁸⁷ Should the plan evolve, for example through the construction of civilian settlements or support for the “voluntary transfer” of Israeli residents into northern Gaza beyond the proposed southern zone, this could amount to a serious violation of the obligations of an occupying state, as repeatedly emphasized by the ICJ regarding Israel’s conduct in the West Bank. Moreover, critics could argue that the mass concentration of Palestinians in a confined area might approach the threshold of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide.

Second, such a plan would significantly hinder the development of Palestinian statehood by restricting the Palestinian government’s ability to exercise authority over a sub-

⁸⁴ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgement, I. C. J. Reports 1986, p. 14.

⁸⁵ UN doc. A/RES/2625 (XXV).

⁸⁶ Aid group planned massive camps for Gazans in bid to advance Trump’s vision. In: *Times of Israel* [online]. 7. 7. 2025 [2026-02-17]. Available at: <https://tinyurl.com/55xmfevj>.

⁸⁷ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Adopted at Geneva on 12 August 1949. 75 UNTS 287.

stantial part of the territory and population. Israel would likely encounter strong international disapproval, which, while not legally prohibiting the plan, could result in political isolation and weaken Israel's ability to justify the measures as necessary for the protection of its security and territorial integrity.

Third, regarding the facilitation of voluntary emigration of Palestinians to other states,⁸⁸ reference may be made to the ICJ Advisory Opinion of 19 July 2024, which explains that Article 49 of the Fourth Geneva Convention “was intended to exclude from the scope of the prohibition transfers that might be effected with consent of the protected persons” and states that the “transfer may be forcible, not only when achieved through the use of physical force, but also when the people concerned have no choice but to leave.”⁸⁹ In the case of Gaza residents, many departures may fall precisely into this situation: even if ostensibly voluntary, they could be effectively coerced. Overall, the implementation of such a plan would likely be considered legally and politically problematic.

V.3 President Donald J. Trump's Comprehensive Plan to End the Gaza Conflict

The plan was announced on 29 September 2025 during a joint White House press conference by U.S. President D. Trump and Israeli Prime Minister B. Netanyahu.⁹⁰ It received political support from some Arab states. Initially, this plan is not a bilateral treaty but rather political-diplomatic agreement or proposal, to which Hamas was given the opportunity to consent; otherwise, Israel would continue military operations with greater intensity. This plan was subsequently adopted by a UN Security Council resolution, thus becoming legally binding. The plan is a twenty-point framework intended to achieve a ceasefire in Gaza, reconstruct the territory, alter governance, and ultimately provide a conditional and indefinite “pathway” to Palestinian self-determination. Upon Hamas's consent, the first phase of the ceasefire was implemented: the remaining 20 hostages were released in exchange for about 2,000 Palestinian detainees, and Hamas returned the remains of several fallen hostages. The IDF withdrew to the so-called “Yellow Line,” justified by Israeli security requirements (while still controlling approximately 53% of the Gaza Strip). Israel allowed around 400 trucks of humanitarian aid to enter within the first five days, with the number expected to gradually increase.⁹¹

While the provisions of the first phase were implemented, the major long-term provisions, which depend on subsequent stages of the ceasefire, remained uncertain at the end of 2025. After the IDF withdrew to the Yellow Line, Hamas restored its rule and began exercising armed control.⁹² It is unclear whether Hamas is genuinely willing to relinquish governance and disarm. On one hand, its political leadership announced willingness to

⁸⁸ US and Israel look to Africa for resettling Palestinians uprooted from Gaza. In: *Aljazeera* [online]. 14. 3. 2025 [2026-02-17]. Available at: <https://tinyurl.com/ybdy2788>.

⁸⁹ Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem; I. C. J. Reports 2024 (Advisory Opinion), para. 145.

⁹⁰ Donald Trump's 20point Gaza peace plan in full. In: *BBC* [online]. 9. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/yey4fpaz>.

⁹¹ AIKMAN, Ian – CHATER, James. Israel and Hamas agree first phase of Gaza ceasefire deal. In: *BBC* [online]. 9. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/5n6mdhnp>.

⁹² ADAMS, Paul – ABUALOUF, Rushdi. Hamas ruled Gaza with an iron rod – will it really give up control? In: *BBC* [online]. 20. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/5d6rdurd>.

hand over political control; on the other, Hamas reportedly persecuted Gazans who opposed it or collaborated with Israel.⁹³

Uncertainty also surrounds whether the International Security Force would enter Gaza to assume security responsibilities, train a Palestinian police force, and oversee borders and vacated areas. If this does not occur, the IDF might maintain a “security perimeter presence,” as Gaza may not be deemed “properly secure.” A key prerequisite for Israeli withdrawal is Hamas’s full disarmament, including dismantling military infrastructure such as tunnels. Under the plan, Hamas must be excluded from any governance role, directly or indirectly. Amnesty is offered to members who pledge peaceful conduct, and those wishing to leave Gaza may do so. Governance would be carried out via a “technocratic, apolitical Palestinian committee” under the supervision of a new “Board of Peace.” The selection process, legal status, legitimacy, scope of authority, oversight, and accountability of this committee remain unspecified.

In this plan, the statehood of Palestine is perceived as an “aspiration” rather than an immediate or guaranteed outcome. A conditional pathway is foreseen, dependent on Palestinian Authority reform and reconstruction progress. Unlike the Israeli considerations, this plan does not anticipate or require population transfers from Gaza; those wishing to leave may do so voluntarily, with the right to return guaranteed.

A brief evaluation of the plan shows that its initial success cannot be denied: it contributed to the end of armed conflict in Gaza, improved humanitarian conditions, and enabled the release of the remaining hostages. However, the development of subsequent stages remains uncertain. The plan provides a general political framework and lacks mechanisms for resolving disputes arising from its implementation. Its success depends on Hamas’s ability to enforce disarmament and transfer of authority among its rank-and-file members. Internal disintegration of Hamas cannot be ruled out: the leadership may express commitment to the plan while losing the ability to control members, who might independently continue hostilities.

Implementation also relies on the willingness of third states to contribute troops to Gaza. According to U.S. Secretary of State M. Rubio, several countries offered to participate in an international security force.⁹⁴ At the time the manuscript was closed, Indonesia, declared to agree to potentially deploy up to 8,000 troops to Gaza at the end of June 2026.⁹⁵ Only time will reveal whether the plan can be fully implemented and achieve its intended results.

V.4 Other Considerations on Future of the Gaza Strip

In addition to the scenarios described above, other possible developments regarding governance in the Gaza Strip can be considered theoretically in the long-term context. It should be noted that even during the first phase of the ceasefire, there was no full truce.

⁹³ LISTER, Tim – DAHMAN, Ibrahim. Hamas asserts control in Gaza and targets alleged collaborators as ceasefire takes hold. In: *CNN World* [online]. 12. 10. 2025, [2026-02-17]. Available at: <https://tinyurl.com/ycjudf9c>.

⁹⁴ BACHEGA, Hugo – BERG, Rafi. Rubio says lots of countries willing to join Gaza security force. In: *BBC* [online]. 24. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/58w33484>.

⁹⁵ KARMINI, Niniek. Indonesia says 8,000 troops ready for possible peacekeeping mission in Gaza by June. In: *AP News* [online]. 15. 2. 2026 [2026-02-17]. Available at: <https://tinyurl.com/2ucfrxjc>.

Minor clashes occurred between the IDF and Hamas fighters in areas where both parties remained in position. Since the 11 October 2025 agreement, the Palestinian authorities have reported over 400 casualties in Gaza.⁹⁶

Predicting the situation's evolution is highly uncertain. At the time of this manuscript's completion, there was little indication that Hamas had any genuine interest in laying down arms and relinquishing power. Theoretically, Hamas could outwardly claim willingness to hand over governance but insist on transferring it to a specific body, differing from the entity that would eventually assume power. Such a condition could delay the next phases of the ceasefire. For example, Hamas might condition the handover of power and disarmament on the formal establishment of the state of Palestine.⁹⁷ This would raise problems under international law, as a state must first eliminate competing public authorities to assert its sovereignty. For the Palestinian Authority to function as a state, it would first need to assume control from Hamas and neutralize its armed influence in Gaza.

The authors consider it very likely that Hamas will continue to govern, or at least participate in governing, Gaza for an initial period, potentially months rather than weeks, potentially involving both civilian and armed elements.⁹⁸ It is uncertain whether the technocratic government envisaged in the Security Council Resolution would be formed and whether it would have the capability to carry out effective government in Gaza. Israel may not consider withdrawal feasible, for instance, due to objections to the involvement of certain states, such as Turkey, which has openly expressed support for Hamas,⁹⁹ in international stabilization forces temporarily assuming control in Gaza.¹⁰⁰

The implementation of the post-war peace plan for Gaza is nevertheless crucial for regional security because it addresses both immediate and structural sources of instability. By implementing a ceasefire, facilitating humanitarian aid, and laying the groundwork for governance reforms, the plan reduces the risk of renewed hostilities between Hamas and Israel, which have historically triggered broader regional tensions. Establishing a stable and partially demilitarized Gaza limits the potential for cross-border attacks, deters escalation, and diminishes the influence of extremist groups that could exploit chaos to expand operations beyond Palestinian territories. Furthermore, the plan's framework for conditional Palestinian self-determination and reconstruction enhances the legitimacy and capacity of Palestinian governance structures, which is essential for long-term stability. A functioning, unified Palestinian administration could foster cooperation with neighbouring states, prevent the spillover of violence, and contribute to the broader objective of a two-state solution, thereby reinforcing security in the Middle East.

⁹⁶ Death toll across Gaza Strip surges to 70,942, over 171,195 injured. In: *Wafa Agency* [online]. 23. 12. 2025 [2026-02-17]. Available at: <https://tinyurl.com/5n8v83kr>.

⁹⁷ MACKINTOSH, Thomas. Hamas refuses to disarm until Palestinian state is established. In: *BBC* [online]. 2. 8. 2025 [2026-02-17]. Available at: <https://tinyurl.com/mrxbt7v3>.

⁹⁸ ALMUGHRABI, Nidal. Hamas quietly reasserts control in Gaza as postwar talks grind on. In: *Reuters* [online]. 15. 11. 2025 [2026-02-17]. Available at: <https://tinyurl.com/2vdrbns3>.

⁹⁹ GUMRUKCU, Tuvan - HAYATSEVER, Huseyn. Turkey's Erdogan says Hamas is not terrorist organisation, cancels trip to Israel. In: *Reuters* [online]. 25. 10. 2023 [2026-02-17]. Available at <https://tinyurl.com/23pnn8pe>.

¹⁰⁰ LUBELL, Mayan. Israel won't accept Turkish armed forces in Gaza, foreign minister says. In: *Reuters* [online]. 27. 10. 2025 [2026-02-17]. Available at: <https://tinyurl.com/ywr5twj5>.

As time passes, these agreements might eventually be modified or postponed, as it would be necessary to respond to current changes in the situation, including the possibility of renewed hostilities.

CONCLUSION

Hamas's victory in the 2006 parliamentary elections created a legal basis for the movement's activities in the Gaza Strip. In 2007, Hamas did not recognize the dismissal of the Hamas-led government by President Abbas and continued to exercise power over Gaza. This constitutes the *de facto* exercise of authority by Hamas.

A related question is whether the “New York Declaration on the Peaceful Settlement of the Palestinian Question and the Implementation of a Two-State Solution” of 12 September 2025 will be fulfilled. The Declaration establishes a unified plan for achieving a two-state solution, Israel and Palestine, and commits to tangible, time-bound, and irreversible steps toward a peaceful settlement of the Palestinian question. It aims for the realization of an independent, sovereign, economically viable, and democratic Palestinian state, living side by side in peace and security with Israel. The Declaration also condemns the Hamas attacks on civilians on 7 October 2023, Israeli attacks on civilians and civilian infrastructure in Gaza, and the siege and starvation that caused a humanitarian catastrophe.

From an international law perspective, the 20-point Gaza peace plan appears to offer an acceptable framework for post-war settlement and regional stability. In practice, however, it may give rise to complications or even fail in the long-term perspective. Initially, this plan was a political agreement, subsequently its nature changed and it became legally binding through the adopted Security Council Resolution. Nevertheless, its success depends on the willingness of all involved actors to comply or on the ability of the key actors to enforce the plan. Disarmament of Hamas and the handover of power are likely to be the most problematic steps. Delays in their implementation could stagnate the ceasefire's full development and hypothetically allow Hamas to restore its military capacity and prepare for future attacks.