

**Arab American University
Faculty of Graduate Studies
Department of Law Sciences**



Master Program in International Law and Diplomacy

**The Right to Self-Defense in International Law "The Claims
of the Israeli Occupation as a Case Study".**

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and Diplomacy.**

Palestine, Feb/2026

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Faculty of Graduate Studies
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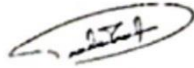
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The Right to Self-Defense in International Law "The Claims of the Israeli Occupation as a Case Study".

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Declaration

I declare that, except where explicit reference is made to the contribution of others, this thesis is substantially my own work and has not been submitted for any other degree at the Arab American University or any other institution.

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Dedication

To Palestine,
the land that continues to test the justice of international law;
and to Gaza, where pain has transformed into a legal testimony of enduring suffering.

To every Palestinian standing at checkpoints, burdened by and uncertainty;
to the prisoners behind bars, steadfast in the face of captivity;
and to all those who hold firmly to their land and their rights despite oppression and abandonment

I dedicate this modest academic effort,
in loyalty to a cause that still seeks true justice.

To my family,
my first support and constant pillar—
to my mother, the source of strength and patience, my everlasting pride;
to my siblings, companions of the journey and the dream;
and to those closest to my heart,
who were always present with their prayers, words, and support—
this work is offered to you with deep appreciation and gratitude.

From Ronza, who once wrote her first modest legal paper,
which fell short of the level she aspired to achieve,
to Ronza, who has now completed an entire master's thesis—
after effort, research, and countless attempts,
and after learning that sincere effort, no matter how slow,
ultimately reaches its destination.

To myself,
this work stands as a testament to patience,
and to the truth that diligence never goes to waste,
and that the road, no matter how difficult, can always be crossed.

Ronza Omair Khaleil Manasrah

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I would also like to extend my thanks to everyone who offered me support, advice, or encouragement, and who had a direct or indirect contribution to the completion of this academic work.

I pray that this modest effort will serve as a beneficial contribution in this field.

The Right to Self-Defense in International Law "The Claims of the Israeli Occupation as a Case Study".

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Abstract

This study aims, at the outset, to analyze the legal framework for the right to self-defense as organized by the United Nations Charter, and to clarify its limits and regulations in light of the interaction between public international law and international humanitarian law. The study starts from the hypothesis that the right to self-defense, despite being recognized as an exception to the principle of prohibiting the use of force in international relations, is subject to a narrow legal interpretation and strict conditions. An occupying state cannot invoke this right against a population under its control, as this constitutes an abuse of Article 51 of the United Nations Charter to justify aggressive actions and serious violations of international law.

This study is based on taking a sample to apply the theoretical framework and the legal texts that interpret and analyze the right to self-defense, with the Gaza Strip serving as a live case study to examine the legality of Israel's claims under Article 51 of the United Nations Charter to justify its actions and policies, considering the specific legal status of the region as land under occupation and the continued Israeli control over fundamental aspects of sovereignty therein.

The legal analysis has shown that attempting to subject the Palestinian situation in general, and the Gaza situation in particular, to the concept of legitimate defense contradicts the objective conditions established by international law, the most important of which is the condition of an armed attack originating from a state, as well as the conditions of necessity and proportionality, in addition to the impossibility of invoking this right in the context of ongoing occupation.

The study addressed Israeli military practices in the Gaza Strip according to the rules of international humanitarian law, especially the principles of distinction, proportionality, and military necessity. The study concluded that the pattern of behavior adopted reveals serious violations that may amount to war crimes and crimes against humanity, raising suspicions in some aspects of committing genocide according to the standards established in international criminal law.

The study emphasizes, in its final results, that the use of the concept of self-defense outside its legitimate legal framework undermines the international collective security system established by the United Nations. The study also concluded the necessity of restoring strict legal interpretation of Article 51 and activating mechanisms for international judicial accountability, ensuring that states that violate the law do not escape

punishment, thereby contributing to the protection of the rights of peoples under occupation, foremost among them the Palestinian people.

Keywords: Right to Self-Defense, Article 51 of the United Nations Charter, Israeli Occupation, Gaza Strip, International Humanitarian Law.

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1.1. Introduction

Since ancient times, wars have been driven by the pursuit of resources, control of land, expansion of territory, political and military power, religious motives, and revenge. At that time, war was a legitimate and acceptable means of resolving conflicts and achieving interests and goals.

Especially since there was no international legal system at that time to prevent or regulate the use of force, and there were no laws providing for the protection of civilians and the wounded. Therefore, all means were justified to achieve goals.

In those historical stages, there were no legal standards governing when and how wars could be waged, Therefore, military strength was the key factor that determined when a war could be launched With the absence of binding legal and ethical constraints, many civilians lost their lives, and the goal of states became to increase their power to wage wars, control resources, and expand geographically.

Especially at that time, the international community sought to establish rules governing wars.

The Hague Conventions of 1899 and 1907 marked the beginning of regulating the conduct of states during wars⁽¹⁾, This convention addressed the regulation of the use of weapons, the rights of prisoners, and the protection of property. Then came the Geneva Conventions, which consisted of four main agreements in addition to three protocols. These four agreements are collectively known as the “Geneva Conventions of 1949.” These agreements focused on protecting the wounded and sick, and the fourth agreement is considered to be the one that fully codified and established the principles of international humanitarian law⁽²⁾.

(1) The Hague Conventions form the cornerstone of international humanitarian law, aiming to regulate the conduct of hostilities and restrict the use of means and methods of warfare, with a focus on protecting civilians and property from the effects of armed conflict (International Committee of the Red Cross, 2004. Internet reference, accessed 22/6/2025)

https://www.icrc.org/ar/doc/assets/files/other/what_are_the_rules_of_war.pdf

(2) “The four Geneva Conventions of 1949 constitute the fundamental legal framework for the protection of victims of armed conflict, whether wounded, sick, prisoners of war, or civilians, obligating States Parties to respect fundamental humanitarian principles during wars.” International Committee of the Red Cross. 2015. The Geneva Conventions of 1949 and their Additional Protocols. International Committee of the Red Cross, Internet reference: accessed 22/6/2025

<https://www.icrc.org/ar/doc/resources/documents/misc/geneva-conventions-summary.htm>

These conventions did not prevent wars but rather sought to make them more humane⁽¹⁾.

Then came the United Nations Charter⁽²⁾ The year 1945 marked a turning point in the prohibition of war, explicitly stating in Article 2, Paragraph 4 the prohibition of the use of force or the threat thereof. The Charter clarified one exception to war, namely the right of legitimate self-defense in the event of aggression against states, as stipulated in Article 51⁽³⁾.

This was followed by the United Nations Charter in 1945, which marked a qualitative shift in the prohibition of war. Article 2, paragraph 4, explicitly prohibits the use or threat of force. The Charter clarified one exception to war, which is the right to legitimate self-defense in the event that states are subjected to aggression, as stipulated in Article 51 of Chapter VII of the United Nations Charter or by a decision issued by the Security Council.

Despite developments in the parameters and controls on the use of force in international relations, the Palestinian situation remains a highly complex legal issue until this day, as the legal frameworks governing relations between states do not apply to it. The Palestinian people do not represent a fully sovereign state recognized by the United Nations with full membership. The Palestinian people have been under occupation since 1967, which confirms their right to resist the occupation within the limits recognized by

(1) International humanitarian law seeks to limit the humanitarian consequences of armed conflict. Its primary aim is to restrict the means and methods of warfare that may be used by parties to a conflict and to guarantee the protection and humane treatment of persons who are not taking direct part in hostilities or have ceased to do so. See: Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, International Committee of the Red Cross, 2016, p. 17

(2) The Charter of the United Nations is the founding document of the organization and the supreme legal framework for regulating international relations. It enshrines the principles of sovereignty, the non-use of force, and the peaceful settlement of disputes, and it enshrines the commitment of states to maintain international peace and security. (Internet reference, dated 23/6/2025) <https://www.un.org/ar/about-us/un-charter>

(3) Article 51 falls under Chapter VII of the Charter of the United Nations, which deals with “measures to be taken in cases of threats to the peace, breaches of the peace, and acts of aggression.”

This article provides the sole legal basis for the use of armed force in only two cases:

1. Legitimate self-defense in the event of an armed attack.

2. Authorization by the Security Council to take military measures to maintain or restore peace.

Article 51 states that nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by States in such self-defense shall be immediately reported to the Security Council and shall in no way affect the authority and duty of the Security Council, under the present Charter, to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

<https://www.un.org/ar/about-us/un-charter/full-text>

international law. The Israeli occupation is considered the longest occupation in modern history, accompanied by practices that amount to gross violations of international humanitarian law and the rules of human rights recognized by international law with regard to the Palestinians⁽¹⁾.

This characteristic became particularly apparent after the events of October 7, 2023, when Hamas launched a unexpected or sudden attack on Israeli military sites and settlements, leading to a significant military escalation by Israel in the Gaza Strip.

And a declaration of war that included the destruction of infrastructure in Gaza (hospitals, schools, places of worship, and government and foreign institutions, among others.) Which caused the death of a Huge number of civilians. On the one hand, the West and the United States recognized Israel's right to self-defense, which Israel used as a pretext. On the other hand, some considered the attack a form of armed resistance against occupation, which created controversy and conflict over the interpretation of Article 51 of the United Nations Charter and the determination of who has the right to exercise legitimate self-defense.

1.2. Research Problem

This study aims to clarify the legal concept of the right of self-defense under international law and to trace its historical development. It further seeks to analyze the essential conditions governing the exercise of this right, particularly the requirements of an armed attack, necessity, and proportionality, with special reference to Article 51 of the United Nations Charter, which enshrines the inherent right of self-defense.

The study also examines the legal status of the Palestinian territories and the Israeli occupation in light of international law, and it analyzes the legitimacy of Palestinian resistance in the context of Israel's claims to the right of self-defense. Moreover, it seeks to determine the legality of Israel's invocation of Article 51 of the United Nations Charter in the aftermath of the events of October 7, 2023, and to assess the lawfulness of Israel's military response from the perspective of international law.

(1) Rabah A. A. (2017). The Rules of Legitimate Defense in the UN Charter and the Reality of International Practice. Journal of Research in Law and Political Science, 3(2), 314-329. <https://asjp.cerist.dz/en/article/68067>

1.3. Research Objectives

This study aims to clarify the legal concept of the right of self-defense under international law and to trace its historical development. It further seeks to analyze the essential conditions governing the exercise of this right, particularly the requirements of an armed attack, necessity, and proportionality, with special reference to Article 51 of the United Nations Charter, which enshrines the inherent right of self-defense.

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1.4. Research Questions

1. What is the right of legitimate self-defense, and what is the legal basis for this right in light of Article 51 of the United Nations Charter?
2. What are the conditions and limitations required for the lawful exercise of this right?
3. What is the distinction between the legitimate exercise of the right of self-defense and the misuse of this right as a pretext for aggression?
4. What is the legal status of the occupied Palestinian territories?
5. What is the legality of Palestinian resistance against the Israeli occupation under international law?
6. Do the claims advanced by the Israeli occupation meet the conditions and requirements for the lawful exercise of the right of self-defense?

1.5. Limitations of the Study

This study is defined by a set of substantives, temporal, and spatial boundaries, in addition to certain limitations that may affect its findings. These are outlined as follows:

- **Substantive Scope:** The study focuses on the principle of the right of self-defense under international law.
- **Geographical limitation:** The spatial scope of this study is limited to the Palestinian territories occupied in 1967, with particular emphasis on the Gaza Strip.
- **Time limitation:** The temporal scope covers the period from the onset of the Israeli occupation in 1967 up to the events of October 7, 2023, and the subsequent political, military, and legal developments, as well as the international reactions and legal positions expressed by various parties.

1.6. Definitions and Key Concepts

- **Self-Defense:** Self-defense is one of the fundamental principles of international law. It refers to the inherent and legitimate right of a state to use military force in response to an armed attack, in accordance with Article 51⁽¹⁾ of the United Nations Charter. This article permits the invocation of this right as an exception to the general prohibition on the use of force in international relations.
- **Occupation:** In international law, occupation is defined as the control exercised by a foreign power over a territory that does not fall under its sovereign authority, without the consent of the legitimate state, and on a temporary basis beyond the scope of lawful authority. Occupation is governed by the rules of international humanitarian law, particularly the Hague Regulations of 1907 and the Fourth

(1) Article 51 of the Charter of the United Nations states: “Nothing in this Charter shall impair the inherent right of individual or collective self-defense if attacked by armed aggression.” See Article 51 of the Charter of the United Nations.

Geneva Convention of 1949, which establish the obligations of the occupying power toward the civilian population as well as public and private property⁽¹⁾.

- **Resistance:** Resistance refers to the right of peoples under foreign occupation or colonial domination to struggle for the restoration of their sovereignty, including through the use of armed force, in accordance with the principle of self-determination. The legitimacy of resistance has been recognized in several United Nations resolutions, particularly in the context of resistance to foreign occupation⁽²⁾.
- **Aggression:** Aggression is defined as the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, in violation of the United Nations Charter. Forms of aggression include invasion, occupation, bombardment, or blockade⁽³⁾.
- **Necessity:** In the context of self-defense, necessity refers to the condition that the use of force must be the only available means to repel an armed attack, and that no effective peaceful alternatives exist to avert the imminent threat. The danger must be immediate and unavoidable, leaving no reasonable possibility for delay or diplomatic resolution⁽⁴⁾.
- **Proportionality:** In international law, proportionality means that the military response must be limited to what is strictly required to repel the armed attack, without exceeding the scale or intensity of the original act of aggression.

(1) The Hague Convention defined occupation as follows: “The territory of a State is considered occupied when it is under the effective authority of the enemy army. Occupation extends only to the territory in which such authority is established and can be exercised.” (Hague Convention (IV) Respecting the Laws and Customs of War on Land, and its Annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907).

The Geneva Convention, Article 2 and Article 47, defined it as follows: “This Convention applies in all cases of partial or total occupation of the territory of a Contracting State, even if no armed resistance is encountered. The inhabitants of the occupied territory shall not be deprived, in any case or in any manner whatsoever, of their rights under this Convention, whether by reason of any change in the institutions or government of the territory resulting from the occupation, or by reason of any agreement concluded by the occupying power with the local authorities.” (Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, United Nations Treaty Series, vol. 75, p. 287).

(2) United Nations General Assembly. (1974). Definition of Aggression, Resolution 3314 (XXIX), 14 December 1974.

(3) United Nations General Assembly Resolution 3314 defines aggression as the use of armed force by one state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations.

United Nations General Assembly. (1974). Definition of Aggression, Resolution 3314 (XXIX), 14 December 1974

(4) Brownlie, I. (2008). Principles of Public International Law (7th ed.). Oxford University Press

Proportionality does not imply equality in the means employed, but rather a balance in the overall effect and consequences of the defensive action⁽¹⁾.

1.7. Research Methodology

This study adopts a combination of descriptive, analytical, methodologies, given the complex and intertwined nature of the topic, which spans legal, political, and practical dimensions.

The descriptive method is employed to present the theoretical framework and conceptual foundations related to the right of self-defense under international law, through an examination of relevant legal principles such as Article 51 of the United Nations Charter, the Hague and Geneva Conventions, and resolutions of both the General Assembly and the Security Council.

The analytical method is used to interpret international legal texts and the decisions of international organizations, with the aim of identifying the general rules governing the exercise of self-defense. Special emphasis is placed on assessing the applicability of these principles to the Palestinian case under Israeli occupation. The study also analyzes Israel's degree of compliance with these legal norms, as well as the nature of international legal responses to its practices.

1.8. Literature Review

First Study: The Right of Self-Defense in Contemporary International Law, by Mohammad Abdul Karim, University of Damascus, 2017⁽²⁾.

This study examines the evolution of the concept of self-defense within the framework of the United Nations Charter.

It focuses on the application of this right in several international conflicts, such as the Gulf War and the war in Afghanistan. It adopts an analytical methodology and

(1) Dinstein, Y. (2011). War, Aggression and Self-Defence (5th ed.). Cambridge University Press

(2) The Right of Self-Defense in Contemporary International Law. Abdul Karim, M. (2017). Damascus University, Faculty of Law.

discusses both the narrow and broad interpretations of Article 51 of the United Nations Charter.

The similarity between this study and the present research lies in their shared focus on the right of legitimate self-defense. However, the distinction lies in the scope: while Abdul Karim's study addresses the right at the international level, the present study concentrates on its application within the Israeli–Palestinian context specifically.

Second Study: The Legitimacy of Armed Resistance Against Occupation from the Perspective of International Law, by Abdul Rahman Al-Assaf, University of Jordan, 2019⁽¹⁾.

This study explores the legitimacy of armed struggle against occupation under the principle of self-determination, examining resistance from both political and legal perspectives.

It is noted that both studies address the legitimacy of resistance; however, the focus of Al-Assaf's research is on resistance as an expression of the right to self-determination, whereas the present study analyzes resistance within the framework of the right of self-defense, particularly examining the mechanisms of invoking this right in the context of the Palestinian situation.

1.9. Research Outline

The nature of this study necessitates its division into two main chapters.

The first chapter addresses the theoretical and legal framework of the right of self-defense in international law. It examines the legal basis of this right by clarifying its concept and tracing its historical development in both legal doctrine and international practice. The chapter also analyzes the regulation of the right of self-defense under the United Nations Charter, with particular focus on the legal analysis of Article (51), and

(1) Al-Assaf, A. (2019). The Legitimacy of Armed Resistance Against Occupation from the Perspective of International Law. University of Jordan, Faculty of Graduate Studies

highlights the conditions and limitations governing the exercise of this right under international law.

The second chapter is devoted to the legal analysis of the Israeli occupation's claims to exercise the right of self-defense, as a case study and analytical model. It begins by examining the legal and political context of the Israeli–Palestinian conflict and the legal status of the occupied Palestinian territories, as well as the right of the Palestinian people to resist occupation under international law and the restrictions imposed on such resistance. The chapter further analyzes the legality of Israel's use of force within the framework of the right of self-defense, including the use of force against civilians and civilian infrastructure, with the war on Gaza serving as a contemporary case study. It also examines the position of the international community toward these claims and assesses the extent to which Israeli practices comply with the conditions of legitimate self-defense.

2. The Theoretical and Legal Framework Governing the Right of Self-Defense in International Law

The right of self-defense constitutes one of the most fundamental principles underpinning the modern international legal order. It represents a narrowly defined exception to the general prohibition on the use of force, as established in Article 2(4) of the United Nations Charter. This chapter aims to outline the theoretical and legal framework upon which this right is founded in international law, through an analysis of its legal basis, substance, and limitations in light of the Charter and state practice.

In the first section, the study will examine the legal foundation of the right of self-defense by tracing its conceptual and historical development from classical international law to the United Nations Charter while elucidating its codification in Article 51. The section will include a legal analysis of the article's content and the restrictions imposed by international law on the exercise of this right, such as the obligation of immediate reporting to the Security Council and adherence to the principles of necessity and proportionality.

The second section will address the legal parameters governing the exercise of the right of self-defense, focusing on the conditions required to invoke it particularly the occurrence of an armed attack and the criteria of necessity and proportionality in the use of force. It will also distinguish between legitimate self-defense and analogous cases, such as preemptive deterrence and preventive attacks, which are often invoked to justify unlawful uses of force.

Ultimately, this chapter seeks to establish the theoretical foundation necessary for analyzing and assessing Israel's practices in the occupied Palestinian territories in light of international law. It further aims to determine whether such practices fall within the legitimate scope of self-defense or constitute systematic violations of the principles of the UN Charter, representing aggressive uses of force under the guise of unlawful defensive claims.

2.1.The Legal Basis of the Right of Self-Defense

International law recognizes the principle of a state's right to defend itself in the event of an armed attack, as explicitly provided for in Article 51 of the United Nations Charter, which states:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations..."

This provision affirms that the exercise of the right of self-defense is lawful only in the event of an actual armed attack, and must be conducted in accordance with the principles of necessity and proportionality. Moreover, Article 29 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the International Law Commission, reinforces this principle by stipulating that an act constituting a lawful measure of self-defense under Article 51 of the Charter shall not be considered an internationally wrongful act.

Thus, the legal foundation of self-defense in international law rests on a dual structure: first, its recognition as an inherent right under the UN Charter; and second, its regulation through customary international law and state practice, which impose substantive and procedural limitations on its invocation⁽¹⁾.

The determination of the nature of conduct that may be deemed a lawful justification for the use of armed force in self-defense constitutes a pivotal issue in delineating the limits of a state's sovereign right to engage in defensive warfare.

This issue assumes special significance in cases such as the Israeli occupation's claims of engaging in "defensive actions" against alleged threats within the occupied territories, where the invocation of self-defense raises complex questions about the legitimacy and scope of this right under international law⁽²⁾.

The Dutch jurist Hugo Grotius, one of the foremost founders of modern international law, addressed this issue within the framework of natural law, basing his

(1) Laila Osmani, "Legitimate Defense in International Law: A Comparative Study between the Right of Legitimate Defense Granted to the State and the Right of Legitimate Defense Granted to the Individual", *Journal of International Law and Development* 2, No. 1 (2014): 118–128.

(2) H. H. Grotius, *De Jure Belli ac Pacis Libri Tres* (1625), pp. 173–175, 549.

reasoning on the inherent right of individuals to defend themselves. Grotius maintained that this right recognized by reason and natural justice extends from individuals to states, which are regarded as legal persons within the international community.

Thus, in Grotius's view, the right of self-defense is not a creation of positive law, but rather an inherent and pre-existing natural right that belongs to states by virtue of their existence and sovereignty. This philosophical foundation later became a cornerstone in shaping the legal principles governing the lawful use of force in international relations⁽¹⁾.

According to Grotius, the exercise of self-defense is lawful only when the use of force by the aggressor is preceded by an imminent and imminent danger or a clear and immediate threat. In other words, the moment at which the threat materializes into an actual and unavoidable danger constitutes the essential condition for justifying defensive action.

Grotius further stipulated that the threat must be "imminent and immediate", such that the state under attack has no practical alternative but to resort to instant military response to avert the danger. This formulation laid the groundwork for the classical doctrine of anticipatory self-defense, which continued to influence subsequent interpretations of necessity and immediacy in customary international law⁽²⁾.

This conception contributed to the formulation of one of the most significant legal principles distinguishing between an "actual act of aggression" and an "imminent threat of aggression." It is upon this distinction that certain states including Israel have later relied to justify preemptive strikes, invoking the argument that the danger was no longer potential but had become imminent⁽³⁾.

However, Grotius firmly rejected the notion of launching an attack merely to prevent an adversary from acquiring future capabilities that might constitute a later threat. He regarded such preventive action as a violation of the principles of international justice, emphasizing that self-defense may be invoked only in response to an immediate and unavoidable attack, not as a pretext for anticipatory or preventive warfare⁽⁴⁾.

(1) H. H. Grotius, *De Jure Belli ac Pacis Libri Tres* (1625)„, pp. 174–175, 575.

(2) H. H. Grotius, *De Jure Belli ac Pacis Libri Tres* (1625)„, p. 184; see also J. Westlake, *International Law*, Part II (1913), pp. 19–25.

(3) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688)„, pp. 264–294 [182]–[202].

(4) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688)„, pp. 265, 267–270 [183–186]; Book VIII, pp. 1292–1294 [880–881].

The jurist Samuel Pufendorf supported this line of reasoning, asserting that the right of self-defense is not limited to situations in which a state has already suffered the first blow. Rather, it may be exercised when a threat becomes imminent, provided that the potential aggressor possesses both the actual capability and the means to carry out the threatened attack.

Pufendorf thus emphasized that imminence must be grounded in objective indicators of intent and capacity, distinguishing genuine defensive necessity from speculative or hypothetical fears. In this sense, his interpretation reinforced the restrictive nature of lawful self-defense within natural law and early international legal thought, limiting its invocation to circumstances where the danger is immediate, concrete, and unavoidable⁽¹⁾.

Pufendorf argued that the range and power of weaponry are integral factors in determining the precise moment at which military intervention becomes lawful⁽²⁾. This means that the assessment of the seriousness of a threat is not merely a theoretical matter but depends on technical and factual considerations. He further observed that the right of a state to use force defensively extends to the crossing of borders toward the source of the threat, whether to repel or to neutralize it⁽³⁾, and may also encompass the defense of allies, provided such action is taken upon their explicit request⁽⁴⁾.

Nevertheless, Pufendorf maintained that the essence of this right must remain contingent upon a bona fide belief in the existence of an imminent threat, even if it later proves to have been mistaken. These theoretical foundations constitute a crucial framework for understanding the legal arguments employed by the Israeli occupation to justify its military operations as acts of self-defense particularly when asserting that the threat is imminent or that the danger transcends the conventional temporal distinction between an actual armed attack and a merely potential one. The subsequent chapters will

(1) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688), p. 265 [182]; see also pp. 272–274 [188–189].

(2) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688), pp. 265, 276–277 [190–191].

(3) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688), p. 269 [185]; Book III, pp. 1298–1302 [884–885].

(4) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688), pp. 270–271 [186], 356 [242]; Book III, pp. 1294, 1296, 1305–1306 [881, 889].

examine the legitimacy of such claims under international law and in light of the established principles of the United Nations Charter⁽¹⁾.

2.1.1. The Right of Self-Defense – Concept and Historical Development

The concept of the inherent right of self-defense emerged within the context of the intellectual and political transformations that Europe experienced from the medieval period into the early modern era. It was articulated in the writings of early legal scholars who laid the foundations for what later became known as the Law of Nations the legal framework that formed the initial core of contemporary public international law⁽²⁾.

This intellectual development coincided with the rise of the modern nation-state following the Treaty of Westphalia in 1648⁽³⁾, which established the sovereign state as the central actor in international relations⁽⁴⁾. With this transformation, the right of self-defense evolved from being a personal⁽⁵⁾ prerogative of rulers to becoming a fundamental principle of state sovereignty⁽⁶⁾.

Classical legal scholars such as Hugo Grotius, Samuel Pufendorf, and Emer de Vattel adopted concepts of war derived from ancient legal systems (e.g., Athens and Rome) as well as from natural and moral law to explain the legitimacy of resorting to armed conflict.

(1) S. Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688), p. 272 [187].

(2) G. Triggs, *International Law: Contemporary Principles and Practices* (2006). 577–578; Doyle, *Striking First: Preemption and Prevention in International Conflict* (2008) 11–15;

(3) The Treaty of Westphalia, signed in 1648 in the German cities of Münster and Osnabrück, marked a pivotal turning point in the history of international relations. It ended the Thirty Years' War in Europe and established the principle of state sovereignty and non-interference in internal affairs as the foundation of the modern international order. It also enshrined the idea of legal equality among states, regardless of their size or power, which later paved the way for the emergence of the concept of the nation-state in international law.

Osiander, A. (2001). Sovereignty, International Relations, and the Westphalian Myth. *International Organization*, 55(2), 251–287. <https://doi.org/10.1162/00208180151140577>

(4) A sovereign state is defined as a political entity that possesses supreme authority over a defined territory and its resident population, with complete independence in managing its internal and external affairs without being subject to any higher authority, within the framework of international law. Sovereignty comprises two essential elements: internal sovereignty, which is the state's monopoly on power within its territory, and external sovereignty, which is the state's freedom to conduct its relations with other states on the basis of legal equality.

(5) H. Grotius, *De Jure Belli ac Pacis Libri Tres* (1625); Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688); Wolff, *Jus Gentium Methodo Scientifica Pertractatum* (1764); Vattel, *The Law of Nations* (1758).

(6) Ayala, *De Jure et Officiis Bellicis* (1582), vol. 2; Grotius, op. cit., pp. 92 and 164; Vattel, op. cit., pp. 13–14, 235–236; Wolff, op. cit., pp. 9, 129–130, 313–314.

In this context, Grotius defined war as a condition of armed confrontation between parties, whereas Pufendorf described it as a means of repelling harm or reclaiming rights. Wolff considered war as the preparation for or use of force against an adversary, while Vattel viewed it as a tool for enforcing rights through the application of force.

These varying interpretations collectively contributed to the development of the legal and philosophical foundations of justified use of force and the emergence of the modern principle of self-defense under international law.⁽¹⁾

A common thread among these scholars is the recognition that self-defense whether by an individual or by a state is a natural right derived from human instinct. Consequently, the state, as the collective embodiment of individuals, inherently possesses this right⁽²⁾.

These scholars also distinguished between defensive war and offensive war. Francisco de Vitoria argued that both types of war could be considered lawful if they met the relevant moral and legal conditions; however, a defensive war remains, in essence, a legitimate response to an aggression that threatens the existence or security of the state.

Vitoria further expanded the scope of this right to include the reclamation of territory and property following the cessation of aggression, as well as the prevention of its recurrence in the future. This conceptualization laid the groundwork for later international legal doctrines that link the right of self-defense to both immediate and restorative measures in response to unlawful attacks⁽³⁾.

In turn, Balthazar Ayala accorded defensive war a special status, considering it a “natural right” for any individual or collective entity, even outside the framework of sovereign authority. This reflects his view that the source of the right is the same for both individuals and states, namely natural law.

Ayala also emphasized the principle of equality in the exercise of this right, while acknowledging that the mechanisms for its application differ depending on whether it is invoked by an individual or a state. This perspective reinforced the conceptual link between natural rights and the lawful use of force in defense, which later influenced the development of international legal norms on self-defense⁽⁴⁾.

(1) Pufendorf, *De Jure Naturae et Gentium*, Book II, paragraph 226; Book VII, paragraphs 1118–1119; Wolff, *op. cit.*, pp. 28–30, 145.

(2) F. Vitoria, *De Indis et de Iure Belli Relectiones* (1696), 168–170

(3) Ayala, *De Jure et Officiis Bellicis*, Vol. II, pp. 8–11.

(4) Pufendorf, *De Jure Naturae et Gentium*, Book VIII, pp. 1294, paragraph [881], and 1298, paragraph [884].

Pufendorf, for his part, adopted a similar approach, considering that defensive war aims to protect property and rights against any direct threat, whereas offensive war may be waged to recover rights or impose future guarantees. He affirmed that both types are subject to moral and legal standards that determine their legitimacy.

Similarly, Christian Wolff viewed a state's capacity to defend itself as a fundamental criterion for its survival within the international system, clearly distinguishing between defensive war which responds to an existing aggression and offensive war, which begins without provocation or an imminent threat.

This historical evolution of the concept of self-defense from a personal prerogative of rulers to a sovereign principle of the state provides the intellectual background for the formulation of modern international law rules. It also offers a necessary framework for understanding contemporary interpretations, including the claims put forward by the Israeli occupation to justify its use of force under the guise of "self-defense," which will be analyzed in the subsequent chapters in light of the principles of international legality and the limits of this right as established in international jurisprudence and doctrine⁽¹⁾.

2.1.1.1. Clarifying the Concept of the Right of Self-Defense in International Law

The principle of lawful self-defense constitutes a well-established legal norm within the structure of criminal law, both at the domestic level and within the framework of international criminal law. It is based on the exclusion of liability for an act committed by a person with the intent to repel an imminent and immediate danger threatening their life, physical integrity, or the safety of others, in circumstances that require urgent and immediate intervention without the opportunity to seek assistance from competent authorities.

This right is regarded as an extension of human instinct to protect oneself and one's community from harm, which has rendered it a fundamental element in most legal systems throughout history⁽²⁾.

(1) M. C. Adler, "The origin in international law of the inherent right of self-defence and anticipatory self-defence," *West. Aust. Jurist* 2 (2011): 107–128., 107-128.

(2) Ahmed Shawqi Omar Abu Khatwa, *Explanation of the Provisions of the Aun in the Penal Code* (Cairo: Dar Al-Nahda Al-Arabiya, 2011), 375.

view holds that the principle of lawful self-defense constitutes a legislative exception to the general rule established in criminal law, which criminalizes any act that corresponds to a penal provision in force. This approach is based on the premise that punishment is imposed only when two essential conditions are met: first, that the act is explicitly criminalized by law; and second, that it is free from any justifying or exculpatory cause. According to this perspective, a crime is only constituted when its material elements (the prohibited act) and mental elements (criminal intent) are fully satisfied, and no factors exist that negate unlawfulness or relieve the actor of criminal responsibility.

Accordingly, self-defense is classified as a lawful justification that negates the unlawfulness of the act and precludes liability, as it nullifies one of the essential elements of a crime the element of unlawfulness. An act committed in the context of lawful self-defense, while formally corresponding to the criminal pattern defined by law, lacks the criminal character in substance due to the presence of a legal justification.

Further assert that the existence of lawful self-defense does not require the actual occurrence of harm or the materialization of injury from the attack. It suffices that there exists a real and imminent danger threatening a legally protected right. The term “attack” is understood here as a serious and direct threat, even if it has not yet been completed or resulted in harm, provided it is in a state of imminent realization that necessitates immediate intervention by the defender, and no less harmful means are available to avert it.

This conception aligns with the legislative philosophy underlying the institution of self-defense as a preventive and lawful measure to avert danger, rather than a punitive response after its occurrence. The legislator does not obligate individuals to endure the threat or await the actual infliction of harm to their fundamental rights; rather, it grants them the right to employ force within the limits of necessity to repel an imminent or actual threat, whether in defense of themselves or others⁽¹⁾.

Lawful self-defense is considered a legitimate act when directed against an unlawful and imminent attack, leaving the defender no opportunity to resort to the authorities. The means of defense must be appropriate and necessary, and it is required

(1) Mahmoud Naguib Hosni, Explanation of the General Penal Code (Cairo: Dar Al-Nahda Al-Arabiya, 2016), 150.

that the act of defense be aimed at protection rather than retaliation. Furthermore, it must be executed at the proper time and to the extent necessary to avert the threat, without exceeding what is required⁽¹⁾.

The attack justifying self-defense cannot be a mere theoretical possibility or an insubstantial threat; it must be real, ongoing, or imminently impending. If the defensive act is based on a reasonable belief in an imminent danger, legal protection remains valid even if it later transpires that the danger did not actually exist.

International criminal law scholars emphasize that the legitimacy of a defensive act is not assessed solely on the presence of an attack, but also in accordance with the principles of necessity and proportionality. This means that the defensive response must be commensurate with the threat and limited to what is necessary. If the defense is excessive or exceeds the limits of necessity, it may fall outside the scope of legality and become a punishable act⁽²⁾.

The rules derived from the United Nations Charter regarding the use of force remain valid and effective in the contemporary international system, despite the practical challenges they may face. These rules are grounded in both the Charter provisions and customary international law. The Charter explicitly prohibits the threat or use of force under Article 2(4), while recognizing two primary exceptions where this prohibition does not apply.

The first exception arises when the Security Council adopts or authorizes coercive measures under Chapter VII of the Charter. The second exception concerns the use of force in the exercise of the individual or collective right of self-defense, as provided in Article 51. In addition, some governments most notably the United Kingdom have suggested a possible third exception involving the use of force to prevent an imminent humanitarian catastrophe, known as “humanitarian intervention”. However, this exception is not explicitly mentioned in the Charter, meaning that, if recognized, it would derive its legitimacy from customary international law.

Furthermore, the use of force at the request or with the consent of the legitimate government of the territorial state raises no issues under *jus ad bellum*. Conversely, the

(1) Muhammad Hisham Abu Al-Futuh, *Explanation of the General Section of the Penal Code* (Cairo: Dar Al-Nahda Al-Arabiya, 1990), 847.

(2) Ahmed Fathi Sorour, *The Mediator in Explaining the Penal Code: Part One, General Section* (Cairo: Dar Al-Nahda Al-Arabiya, 1981), 305.

use of force for purposes of revenge, punishment, or reprisal is considered unlawful, and it is advisable to avoid such terminology even in political discourse.

Within certain academic circles, questions have been raised about the continued applicability of these rules or the existence of a significant divergence between the United States and other states on this matter. The late Tom Franck noted a growing trend among U.S. legal scholars and practitioners that reflects these differences in interpretation and application of the Charter's use-of-force provisions⁽¹⁾.

2.1.1.2. Evolution of the Right of Self-Defense in International Practice

The concept of the right of self-defense in international law has undergone a significant historical transformation, evolving from a natural right derived from principles of nature and abstract justice to become a central legal principle forming the foundation of the contemporary international legal system.

In ancient and medieval periods, this right lacked a clear international legal framework and was exercised spontaneously by individuals, groups, and states when faced with any aggression. Its application relied on prevailing customary practices and the instinct for survival, without binding legal provisions or institutional mechanisms to regulate its exercise or define its scope⁽²⁾.

The concept of the right of self-defense in international law has experienced a significant historical evolution, transforming from a natural right derived from the principles of nature and abstract justice into one of the core legal principles underpinning the contemporary international legal system.

In ancient and medieval times, this right lacked a clear international legal framework and was exercised spontaneously by individuals, groups, and states when faced with aggression, relying on prevailing customs and the instinct for survival, without binding legal provisions or institutional mechanisms to regulate its practice or define its scope⁽³⁾.

(1) Michael Wood, "International Law and the Use of Force: What Happens in Practice?" *Indian Journal of International Law* 53 (2014).

(2) Abdul Aziz Sarhan, *Public International Law in Peace and War*, 2nd ed. (Cairo: Dar Al Nahda Al Arabiya, 1980), 112–114.

(3) Abdul Aziz Sarhan, *Public International Law in Peace and War*, 2nd ed. (Cairo: Dar Al Nahda Al Arabiya, 1980), 112–114.

Scholars and political theorists from the medieval period through the modern era have contributed to establishing the legal foundations of the concept of lawful self-defense, emphasizing that it constitutes a legitimate right, but not an absolute one, as it is subject to objective conditions that define the scope of its exercise.

This development culminated with the adoption of the United Nations Charter in 1945, which explicitly recognizes in Article 51 the right of states to defend themselves in the event of an armed attack, within the framework of international legality and under the supervision of the Security Council⁽¹⁾.

This transformation from an unregulated natural right to a binding principle of international law lies at the heart of contemporary debates regarding the claims of the Israeli occupation in justifying its continued use of force under the guise of self-defense. While international law recognizes this right, it imposes strict limitations to prevent its exploitation as a pretext for policies of coercion and occupation. This makes the study of this case a practical model for understanding the scope and conditions of the right of self-defense under international law⁽²⁾.

Key treaties have contributed to this trajectory, most notably the Treaty of Westphalia of 1648, which, although it did not directly address the right of self-defense, established the concepts of state sovereignty and territorial integrity, thereby laying the groundwork for the later codification of this right⁽³⁾.

With the adoption of the UN Charter in 1945, a clear legal framework for the exercise of self-defense was established in Article 51, which authorized the use of force in response to an armed attack, subject to the oversight of the UN Security Council. The practical development of this right has been demonstrated through contemporary crises that have sparked widespread controversy, such as NATO's intervention in Kosovo under the pretext of "humanitarian intervention" without a Security Council mandate⁽⁴⁾. The

(1) R. Buchan, "Non-Forcible Measures and the Law of Self-Defence," *International and Comparative Law Quarterly* 72, no. 1 (2023): 1–33.

(2) Muhammad al-Majdhub, *Public International Law*, 11th ed. (Beirut: Halabi Legal Publications, 2018), 547–550.

(3) B. Mueser, "Why Westphalia Still Matters: Territorial Rights under Empire," *International Studies Review* 26, no. 2 (2024).

(4) In 1999, Kosovo experienced a severe humanitarian crisis as a result of the armed conflict between Serbian forces and Kosovo Liberation Army (KLA) fighters. This conflict was accompanied by grave human rights violations, including mass killings and the forced displacement of the Albanian population. On March 24 of that year, NATO launched a 78-day bombing campaign against targets in Serbia and Kosovo, with the stated aim of halting the violations and protecting civilians. However, this intervention was undertaken without authorization from the UN Security Council under Chapter VII of the UN Charter,

alliance claimed it was acting to protect ethnic Albanian groups, raising questions about the line between self-defense and humanitarian action⁽¹⁾.

The alliance claimed it was acting to protect ethnic Albanian groups, raising questions about the line between self-defense and humanitarian action. Similarly, the US military operations against Afghanistan and Iraq followed the September 11, 2001 attacks⁽²⁾. This opened a broad international debate on the difference between legitimate self-defense and preemptive attacks, with some countries considering these actions a transgression of the principle of self-defense and a violation of sovereignty, while the United States justified its intervention as a legitimate preventive measure against terrorist threats⁽³⁾.

In recent years, there has been a notable recurrence in the invocation of the right of self-defense across various contexts of international conflicts, prompting extensive legal and ethical debate regarding the legality of this right and its limits, particularly concerning the necessity and proportionality of its use relative to the threats facing the international community. The application of this right has encompassed a diverse range of conflicts, including traditional regional military disputes, counter-terrorism operations, as well as modern security threats such as cyber- attacks and other unconventional assaults.

International law further stipulates that the means of self-defense must correspond to the magnitude and severity of the attack, in order to avoid excessive or unjustified

due to opposition from Russia and China. NATO justified its operations with the concept of "humanitarian intervention," a controversial concept as international law does not recognize it as an explicit exception to the prohibition on the use of force stipulated in Article 2(4) of the Charter. The report of the Independent International Commission on Kosovo concluded that the intervention was "illegal but legitimate," referring to its conflict with explicit legal provisions, while acknowledging the existence of exceptional humanitarian justifications.

Independent International Commission on Kosovo. (2000). *The Kosovo Report: Conflict, International Response, Lessons Learned*. Oxford University Press.

(1) A. Lefteratos, "Contested statehood, complex sovereignty and the EU's role in Kosovo," *European Security* 32, no. 2 (2022): 294–313.

(2) Following the September 11, 2001 attacks, the United States, with the participation of an international coalition, launched military operations against Afghanistan under the banner of "Operation Enduring Freedom," invoking the right of self-defense enshrined in Article 51 of the UN Charter. The justification given was that the Taliban regime provided safe haven to al-Qaeda, the organization responsible for the attacks. In 2003, the United States led an invasion of Iraq based on allegations that Iraq possessed weapons of mass destruction and had ties to al-Qaeda, in addition to the concept of preemptive defense against potential future threats. The Iraqi invasion sparked widespread legal controversy, with the majority of legal scholars and states considering it a violation of the Charter's provisions due to the absence of an actual armed attack and the lack of a Security Council mandate. This contrasts with the Afghan case, which garnered broader support due to its direct connection to a confirmed armed attack.

Gray, C. *International Law and the Use of Force* (4th ed.). Oxford University Press. (2018).

(3) Tahir Mehmood, "The Global War on Terror (GWOT) in Afghanistan and its Socio-economic Impacts on Pakistan," *Humanities and Academic* 8 (2022): 43–70.

collateral damage. Nevertheless, assessing proportionality in practice remains a complex challenge, particularly given the difficulty of accurately determining the degree of threat and the immediacy of the need for military response, placing states in a persistent dilemma between exercising their legitimate right to self-defense and avoiding excessive reactions that may violate international law principles.

Regarding necessity, international scholars have affirmed that self-defense is a last-resort right, which may only be exercised after all peaceful means of dispute resolution such as negotiation, mediation, and arbitration have been exhausted, as emphasized in Article 33 of the Charter⁽¹⁾.

However, the escalation of unconventional threats, including terrorism and cyberattacks, has prompted some states to resort to military force as a primary option or a rapid justification, generating increasing debate over their adherence to the principle of necessity and the gradual escalation of force within the framework of international law.

In this context, international judicial bodies, foremost among them the International Court of Justice (ICJ), play an essential role in adjudicating disputes related to the right of self-defense, relying on binding principles and rules of international law. Yet, the complexity and political sensitivity of such cases make the Court's task of distinguishing between lawful self-defense and unlawful use of force extremely challenging, particularly given the variations in assessments and the specific circumstances of each case. Moreover, the International Criminal Court (ICC) may be required to investigate individuals responsible for defensive actions to determine the legality of their conduct and whether it constitutes an international crime, thereby reinforcing the authority and credibility of international law, despite the ongoing debates concerning the limits of lawful self-defense.

In light of these growing challenges, the international community continues to explore and develop alternative mechanisms to address issues of self-defense, including the enhancement of mediation and negotiation tools, recourse to arbitration, and the development of regional and international cooperation frameworks, with the aim of

(1) Article 33 of the Charter of the United Nations states: "If any dispute arises between the Members of the United Nations which may lead to a breach of international peace, they shall first endeavor to resolve it by peaceful means, such as negotiation, arbitration, inquiry, conciliation, mediation, special tribunals, or other peaceful means of their own choice."

reducing the likelihood of armed conflicts and ensuring compliance with international law, while safeguarding international peace and security⁽¹⁾.

The right of self-defense is one of the fundamental rights recognized by international law for states. However, its exercise often raises legal issues concerning its potential conflict with other core principles, particularly the principles of sovereignty and non-intervention in the internal affairs of states.

On one hand, the tension between self-defense and sovereignty lies in the legitimacy and necessity of the measures taken under this pretext; in some cases, the exercise of self-defense may amount to a direct violation of another state's sovereignty. This situation imposes upon the international community the responsibility to review and assess such actions to ensure their conformity with the principles and objectives of international law, especially those aimed at maintaining international peace and security.

On the other hand, conflict arises with the principle of non-intervention when some states invoke the right of self-defense as a justification for interfering in the internal affairs of other states or undermining their territorial integrity. Such conduct not only constitutes a breach of legal norms but also poses a serious threat of escalating disputes and international conflicts.

Accordingly, there is an urgent need to strengthen international oversight over states' adherence to the limits of the right of self-defense and to restrict its exercise in accordance with the provisions of international law. To mitigate these tensions, states and the international community must intensify cooperation and dialogue to develop the relevant legal frameworks, while maintaining strict compliance with the principles of sovereignty and territorial integrity thereby enhancing the prospects of preserving global peace and security⁽²⁾.

2.1.2. Regulation of the Right of Self-Defense in the United Nations Charter

Article 51 of the United Nations Charter constitutes the cornerstone of the legal regulation governing the right of states to self-defense. It provides the principal legal

(1) X. Tan, "Research on the Interpretation and Application of Self-Defense Rights," Lecture Notes in Education Psychology and Public Media (2025).

(2) X. Tan, "Research on the Interpretation and Application of Self-Defense Rights," Lecture Notes in Education Psychology and Public Media (2025).

framework upon which states rely to justify the use of force in response to an armed attack. In examining the claims advanced by the Israeli occupation under this right, the role of Article 51 becomes pivotal in delineating the legal boundaries of the legitimacy of such claims, particularly when evaluated against contemporary developments in international law.

In interpreting and applying Article 51, international legal scholarship has focused on several fundamental questions that cast significant implications for modern conflicts, including the Palestinian situation.

First, there is an ongoing debate regarding the definition of the term “armed attack” as used in the text of Article 51, and whether it encompasses non-traditional forms of aggression such as economic blockades or financial sanctions. Some states have invoked these measures as grounds for defensive action, raising critical questions about the compatibility of such interpretations with Israel’s practices in the occupied territories.

Second, the question arises as to whether the right of self-defense is confined to direct responses against the aggressor state, or whether it can be extended to include other parties linked to the attack, whether state or non-state actors. This dimension holds particular significance in the Israeli case, as certain justifications rest upon associating attacks with non-governmental entities, thereby raising complex issues related to alliances, regional interventions, and the scope of lawful defense.

Third, the exercise of the right of self-defense is inherently bound by fundamental principles of international law most notably the principles of proportionality, necessity, and distinction which collectively aim to regulate the use of force, minimize collateral damage, and ensure that military measures remain within legitimate bounds. Israeli military practices, however, have provoked extensive debate regarding their compliance with these principles, especially in light of the wide-ranging humanitarian and security consequences of their operations.

These challenges are not merely theoretical or doctrinal debates; rather, they constitute core dimensions for understanding and assessing the legality of Israel’s claims to self-defense under Article 51, and their broader implications for the maintenance of international peace and security⁽¹⁾.

(1) Zugliani, N. “The Supply of Weapons to a Victim of Aggression: The Law of Neutrality in Light of the Conflict in Ukraine.” *European Journal of International Law* 35, no. 2 (2024): 389–410.

Some scholars argue that the right of self-defense under Article 51 of the United Nations Charter should be interpreted strictly, limiting its scope to responses against direct armed attacks. Others, however, advocate for a broader interpretation, contending that the right of self-defense may also encompass responses to non-traditional threats such as cyberattacks and terrorist activities⁽¹⁾.

Regional organizations also play a significant role in the interpretation and application of the right of self-defense. For instance, Article 5 of the North Atlantic Treaty (NATO Charter) establishes the principle of collective defense, stipulating that “an armed attack against one or more of them in Europe or North America shall be considered an attack against them all.” This provision embodies the commitments of collective security and mutual defense among NATO member states.

However, NATO members remain divided over whether non-traditional threats such as cyberattacks and terrorist activities should fall within the scope of the right of self-defense. Some member states advocate for the inclusion of such threats under the collective defense clause, whereas others maintain a more cautious and restrictive position⁽²⁾. In addition, regional organizations must ensure that their interpretations and applications of the right of self-defense are consistent with international law and the provisions of the United Nations Charter⁽³⁾.

With the growing prominence of non-traditional threats such as cyberattacks and terrorist activities, the international community’s capacity to use force in response to these threats and the manner in which such force may be employed has become a subject of considerable debate⁽⁴⁾. With the growing prominence of non-traditional threats such as cyberattacks and terrorist activities, the international community’s capacity to use force in response to these threats and the manner in which such force may be employed has become a subject of considerable debate⁽⁵⁾.

(1) Perot, E. “The EU’s nascent role in collective defense.” *Journal of European Integration* 46, no. 1 (2023): 1–23.

(2) Jacobsen, Jeppe T. “Cyber offense in NATO: challenges and opportunities.” *International Affairs* 97, no. 3 (2021): 703–720.

(3) C. Dany, “Between aid and rights: Humanitarian international NGOs responding to the crisis of European refugee protection,” *Z Politikwiss* 34 (2024): 355–372.

(4) Muhammad Shoaib Afsah Qazi and Muhammad Faisal, “Russia–Ukraine War and the Indo-Pacific: A Perspective from Pakistan,” *Journal of Asian and African Studies* (2023).

(5) Adam Saud, Muaz Ullah Khan, *Geo-Politics of Afghanistan under Taliban Regime*, Central Asia, 10.54418/ca-91.181, 91, Winter, (39-63), (2023).

2.1.2.1. The Text of Article 51 of the United Nations Charter and Its Legal Analysis

Article 51

Nothing in the Charter of the United Nations shall impair or diminish the inherent right of states, whether individually or collectively, to defend themselves in the event of an armed attack against a Member of the United Nations. This right shall continue until the Security Council has taken the measures necessary to maintain international peace and security. Members shall immediately inform the Council of any measures taken in the exercise of the right of self-defense, and such measures shall in no way affect the authority and ongoing responsibilities of the Security Council, as provided in the Charter, to take at any time such action as it deems necessary to maintain or restore international peace and security⁽¹⁾.

The right of self-defense is one of the fundamental rights recognized in most legal systems.

However, the nature and scope of this right vary significantly depending on the maturity of the legal system and the effectiveness of its law enforcement mechanisms. In societies that lack a developed legal system, or where legal protection mechanisms are weak or nonexistent, individuals are often granted a wide margin to defend their own rights when threatened or violated. This broader latitude stems from the absence of inadequacy of competent authorities capable of providing the necessary protection.

In contrast, in mature legal systems that possess effective enforcement agencies and robust institutions, the freedom to exercise individual self-defense becomes progressively restricted. The responsibility for protecting individual rights shifts to the state, which ensures security and protection through organized legal mechanisms. Nonetheless, the right of self-defense continues to exist in every legal system, regardless of its level of development, because exceptional circumstances may arise in which an individual must act immediately to safeguard vital interests before competent authorities can intervene. This reality underscores the essence and necessity of the right of self-defense in all legal frameworks.

(1) Charter of the United Nations (full text)

At the level of international law, and given the absence of effective enforcement mechanisms capable of compelling state compliance until the mid-twentieth century, the concept of self-defense long remained broad and ambiguous. It was exercised in various forms and without consistent regulation. However, with the establishment of international institutions such as the League of Nations and later the United Nations and with efforts to develop mechanisms for enforcing international legal norms the right of self-defense was codified and its scope more clearly defined. Article 51 of the United Nations Charter emerged as the principal legal framework governing the right of self-defense in the modern era.

For a deeper understanding of the nature of the right of self-defense in international law, it is essential to distinguish between the various concepts associated with it and to clarify the fundamental terminology related to this right before examining its substantive provisions and practical applications⁽¹⁾.

The right of legitimate self-defense is one of the fundamental rights in contemporary international law and has been explicitly recognized in Article 51 of the United Nations Charter, which acknowledges an exception to the general prohibition on the use of armed force in international relations. While the Charter imposes a general ban on the use of force, it simultaneously grants states the right to defend themselves in the event of an “armed attack,” thereby reflecting a delicate balance between the preservation of international peace and the respect for national sovereignty⁽²⁾.

Despite the clarity of this provision, Article 51 does not precisely define the content of the right of legitimate self-defense, leaving room for legal scholarship and international jurisprudence to establish the criteria and conditions for its application. On one hand, some scholars argue for the necessity of a clear and predetermined definition specifying when and how this right may be exercised; on the other hand, others contend that the text itself is sufficient, as self-defense constitutes an inherent right that may be invoked upon the emergence of an actual or imminent threat, without the need for a rigid definition⁽³⁾.

In the realm of legal scholarship, some jurists adhere to the restrictivist approach, which emphasizes that Article 51 permits a state to resort to force only in response to an

(1) A. Ezdi, *Self Defence under Article 51 of the United Nations Charter: A Critical Analysis* (2016).

(2) Self-Defense. (n.d.). Obo. <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0028.xml?utm.com>

(3) Upeniece, V. Conditions for the lawful exercise of the right of self-defence in international law. SHS Web of Conferences, 40, 01008. (2018). <https://doi.org/10.1051/shsconf/20184001008>

armed attack that has already occurred. In contrast, a group of broad interpreters advocate for expanding the scope of self-defense to include cases of imminent threat, relying on traditional principles such as the Caroline test, which requires that the necessity of self-defense be “instant, overwhelming, leaving no choice of means, and no moment for deliberation,” while ensuring adherence to the principles of necessity and proportionality.

This latter approach has been supported by scholars who consider self-defense to be a natural and inherent right that does not require a precise legal definition for its activation. Instead, it depends on certain objective elements namely, the occurrence of an unlawful attack and the necessity of an immediate and appropriate response so that the right of self-defense may be exercised when necessity becomes compelling, irrespective of theoretical definitions. This position is justified by the practical need to enable states to protect themselves without delay, particularly in situations involving sudden threats that leave no room for prior definitions or detailed procedural conditions.

Consequently, this ambiguity in defining the conditions of legitimate self-defense has allowed international judicial bodies, chiefly the International Court of Justice, along with other international institutions, to contribute to the development of doctrinal and legal standards that respond to the challenges of the modern era. These standards seek to strike a balance between the sovereign right of states to defend their security and the imperative of preserving the international legal order and preventing the escalation of aggressive wars.

At the same time, this divergence in interpretation highlights the continuing importance of legal and international scholarship in developing a shared and comprehensive understanding of the concept of legitimate self-defense one that harmonizes the protection of national sovereignty with the maintenance of international peace and security⁽¹⁾.

The UN Charter requires a state exercising the right of self-defense to notify the Security Council immediately upon taking any defensive measures, in order to enable the Council to take appropriate action to ensure the maintenance of international peace and security. This procedure is an important international monitoring mechanism aimed at

(1) Muhammad Ibrahim Alian, *The International Legal System* (Cairo: Dar Al Nahda Al Arabiya for Publishing and Distribution, 1998), 39.

regulating the use of the right of self-defense and preventing its exploitation as a pretext for aggression or interference in the internal affairs of other states⁽¹⁾.

International legal doctrine is divided regarding the interpretation of Article 51 of the United Nations Charter into two main approaches, reflecting a fundamental difference in understanding the scope and substance of the right of legitimate self-defense.

The first approach, known as the restrictive approach, holds that the right of self-defense applies only in cases where an actual and direct armed attack has occurred against a state. It does not permit any preventive or preemptive measures before the realization of an actual aggression. This approach is grounded in the principles of sovereignty and non-intervention and emphasizes strict adherence to the rules that define when and how the use of force in self-defense may be exercised. Its purpose is to preserve international peace and security and to prevent the slide into acts of aggression or unlawful conflict.

The second approach, known as the broad or expansive approach, allows a state to exercise the right of self-defense even before an actual attack occurs, provided that there is clear evidence of an imminent threat to its security and safety.

Legal scholars distinguish between two fundamental concepts within the broader framework of self-defense:

- **Preventive Self-Defense:** A reactive measure aimed at repelling an imminent and certain attack, where the danger is clear and immediate, thus requiring prompt action to safeguard national security.
- **Preemptive Self-Defense:** Measures taken to confront a potential danger that may materialize in the more distant future, without the existence of an immediate or direct threat. This form of defense is far more controversial, as it may be used to justify early preventive strikes not based on a clear and imminent threat.

A prominent historical example that has sparked significant debate in this context is Israel's 1981 attack on the Iraqi nuclear reactor (Operation Opera)⁽²⁾.

(1) Abdel Ali Samah Qalaq, *Responsibility and Punishment for War Crimes* (Alexandria: Dar Al-Jami'a Al-Jadeeda, 2004), 41–42.

(2) Operation Opera (1981) is a prime example of the problematic nature of the concept of preemptive defense in international law. Israel launched an air attack targeting the Iraqi nuclear reactor (Tammuz), justifying it as an imminent threat to its national security due to fears that Iraq was developing nuclear weapons capabilities. However, the international community rejected this justification, considering the attack an illegal act of aggression that violated the provisions of the UN Charter and the principle of state sovereignty. The Security Council expressed this position by adopting Resolution 487 (1981), which

Israel justified this action as a form of legitimate preventive self-defense, claiming it was necessary to avert a potential threat posed by Iraq's nuclear weapons program. Nevertheless, the attack provoked extensive debate among international jurists and legal scholars regarding the legality of using force under the doctrine of preventive self-defense. Opinions diverged, whether the Iraqi threat constituted an imminent and direct armed attack sufficient to justify such a measure.

Accordingly, this divergence in the interpretation of Article 51 reflects the profound challenges facing international law in addressing the nature of modern threats and in balancing the right of states to defend themselves with the need to preserve the international legal order and prevent the unlawful use of force under questionable pretexts. This situation emphasizes the necessity of continued legal and political discourse aimed at developing clear and universally accepted standards consistent with contemporary security developments⁽¹⁾.

In this context, Professor Dieter Taladi made a significant contribution to the legal discourse on the right of legitimate self-defense by developing the concept of the "non-consenting innocent state" in the interpretation of Article 51 of the United Nations Charter. Taladi argues that the interpretation of the article should be restrictive and not expansive, so as to prevent states from exercising military force against a third state that has not given its consent.

He emphasizes that the use of force across borders without the prior authorization of the host state constitutes a clear violation of the United Nations Charter, particularly of the general prohibition on the use of force established in Article 2(4), which criminalizes the use of force except in cases of legitimate self-defense or with Security Council authorization. From this perspective, Taladi stresses that the right of self-defense under Article 51 is limited solely to the protection of a state subjected to a direct armed attack and may not be extended to justify the use of force against other states, even if they are linked to the aggression or threat, except in rare and exceptional circumstances recognized by international law.

unanimously condemned the Israeli attack and considered it a threat to international peace and security, emphasizing the responsibility of states to settle their disputes by peaceful means. United Nations Security Council. (1981). Resolution 487 (1981) [Iraq-Israel]. S/RES/487. <https://digitallibrary.un.org/record/39290>

(1) Saad Daoud Mohammed Al-Tamimi, "Legitimate Defense in Light of International Practices" (Master's Thesis, College of Law, Qatar University, 2021), 20.

Taladi also emphasizes the necessity of interpreting Article 51 in accordance with the judgments and decisions of the International Court of Justice, which rigorously define the scope of this right to prevent the justification of violations and unlawful use of force. The Court has contributed effectively to establishing clear standards that distinguish between lawful self-defense and unlawful use of force, while calling for respect for state sovereignty and adherence to the principles of international law that underpin the stability of the international order.

Thus, Taladi's contribution reflects the importance of respecting state sovereignty and limiting the concept of self-defense to direct armed attacks. This approach strengthens mechanisms for regulating international conduct, mitigates the risks associated with expanding self-defense to actions that violate international law, and contributes to the preservation of international peace and security, while promoting stability in inter-state relations⁽¹⁾.

2.1.2.2. Legal Constraints on the Exercise of the Right of Self-Defense

In its 1986 judgment in the Nicaragua case⁽²⁾, the International Court of Justice (ICJ) decisively rejected the principle of preventive self-defense, affirming that the right of legitimate self-defense under international law may only be exercised in response to

(1) K. Fatima, et al., "Use of Force against Non-State Actors: An Analysis of Right to Self Defense," Pakistan Journal of International Affairs (2023).

(2) The 1986 case of Nicaragua v. United States of America before the International Court of Justice is a landmark case concerning the use of force and the right of self-defense in international law. Nicaragua accused the United States of supporting the Contra rebels on its territory and of conducting direct military operations, including the laying of mines in Nicaraguan ports. In its landmark judgment, the Court ruled that the actions of the United States violated the principle of non-use of force enshrined in the Charter of the United Nations and customary international law. The Court affirmed that the right of self-defense can only be exercised in the event of an "armed attack" within the narrow meaning of Article 51 of the Charter and does not extend to forms of indirect intervention or support for armed groups.

International Court of Justice. (1986). Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986, p. 14

an actual and real armed attack, not based on assumptions or future expectations of a potential aggression. The Court emphasized that this right must be exercised only when clear and concrete criteria demonstrate the occurrence of a direct or imminent armed attack, thereby justifying immediate defensive measures in accordance with the principles of necessity and proportionality.

When evaluating the U.S. military interventions in Nicaragua, including support for rebel groups, the Court held that these actions did not constitute an armed attack justifying self-defense, as they did not meet the conditions set forth in Article 51 of the United Nations Charter. The ICJ concluded that self-defense does not arise merely from future concerns or hypothetical threats; rather, it must be based on tangible and factual circumstances that satisfy the legal requirements namely, the existence of an actual armed attack, exhaustion of peaceful means, and ensuring proportionality between the defensive response and the magnitude of the threat⁽¹⁾.

This judgment represents a pivotal moment in the development of international law regarding legitimate self-defense, as it reinforced the strict adherence to the limitations on the exercise of this right and warned against expanding its scope to include preemptive or preventive uses that could serve as a justification for arbitrary or unlawful use of force. Accordingly, the Court's decision contributed to strengthening the international legal order by establishing clear standards that limit the unlawful resort to force, protect state sovereignty, and preserve international peace and security⁽²⁾.

The right of self-defense is characterized by several features, including: it is a restricted right exercised under specific conditions, such as the necessity of an attack occurring or being imminent and direct.

It is a temporary right that ends as soon as the threat is eliminated. and finally, it is an inherent right that cannot be taken away from states, provided they adhere to the provisions of Article (51) of the Charter of the United Nations⁽³⁾.

(1) International Court of Justice, Military and Paramilitary Activities in and against Nicaragua case (Nicaragua v. United States of America), Judgment in principle, 27 June 1986, International Court of Justice Reports 1986.

(2) International Court of Justice, Military and Paramilitary Activities in and against Nicaragua case (Nicaragua v. United States of America), Judgment in principle, 27 June 1986, International Court of Justice Reports 1986.

(3) Muhyiddin et al., The Israeli Economy: The Israeli Military Doctrine (Beirut: Palestine Liberation Organization - Research Center, 1969).

The Covenant of the League of Nations, established after the First World War, stipulated the necessity of resolving international disputes through peaceful means and resorting to methods such as negotiation and mediation before considering the use of force. The Covenant emphasized the submission of disputes to the League Council or to international arbitration; however, it did not explicitly prohibit or criminalize aggressive wars. Despite subsequent attempts to regulate and prevent aggressive wars through international treaties, such as the 1925 Geneva Protocol, the League of Nations failed to achieve its objectives due to the absence of effective monitoring and enforcement mechanisms, which contributed to the outbreak of the Second World War despite the provisions of the Covenant.

The United Nations Charter subsequently established a new legal order that emphasized the prohibition of the use or threat of force in international relations and affirmed the resort to peaceful means for the settlement of disputes. The Preamble of the Charter expressed the desire of the peoples of the world to save future generations from the scourge of war⁽¹⁾.

An analytical reading of Article 51 shows that the right of legitimate self-defense is confined to actions against states, and non-state actors are not explicitly mentioned. Nevertheless, some states have relied on this article in recent years to justify the use of force against such actors, particularly following the September 11th. attacks. States have been divided into two camps regarding the interpretation of the scope of this provision: a broad camp, which includes the United States and its allies such as the United Kingdom, Turkey, and the Netherlands, considers armed attacks by non-state armed groups equivalent to an armed attack by a state, thereby justifying self-defense; and a restrictive camp, led by Russia and Pakistan, maintains that Article 51 was drafted to address attacks by states only⁽²⁾.

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(1) Ahmed Saleh Hamdi, *Studies in Public International Law*, Algeria: Dar Al-Huda, (2002), 32.

(2) Gray, C. *International law and the use of force* (4th ed.). Oxford University Press. (2018)

camp, including the United States and its allies such as the United Kingdom, Turkey, and the Netherlands, considers armed attacks by non-state armed groups to be equivalent to an armed attack by a state, thereby justifying self-defense; and a restrictive camp, led by Russia and Pakistan, maintains that Article 51 was drafted to address attacks by states only.

However, the developments following the September 11th. attacks, and the adoption of United Nations Security Council Resolution 1368, have led to a practical expansion of the interpretation of Article 51. This expansion allows for responding to attacks by non-state actors, provided that random terrorist acts do not automatically justify the exercise of the right of self-defense, except in exceptional circumstances and with the consent of the host state⁽¹⁾.

Article 51 does not explicitly authorize preemptive self-defense in the event of a potential threat, a point reaffirmed by the International Court of Justice in the *Nicaragua v. United States* case. The Court held that a state subjected to an armed attack must form and declare its position that it has in fact been attacked, and that there exists no customary rule permitting another state to exercise collective self-defense based on its own assessment of the situation. Furthermore, a state exercising the right of self-defense must immediately inform the Security Council of its use of force, as subsequent claims of self-defense are considered unconvincing if not promptly reported⁽²⁾.

Despite the United Nations Charter's clear prohibition on the use of force in international relations, it does not provide a precise and comprehensive definition of the concept of aggression. This ambiguity has been exploited by some states to pursue political and expansionist interests under various pretexts. The lack of a legal definition has been a primary source of difficulties in applying the principle of the prohibition on the use of force, as both international legal scholarship and the international community have faced divergences in interpreting what constitutes lawful or unlawful aggression.

To address this legal gap, the United Nations General Assembly adopted Resolution 3314 in 1974, which provided a detailed definition of aggression. The resolution includes a list of acts considered as international aggression, such as invasion, military attack,

(1) K. Fatima, et al., "Use of Force against Non-State Actors: An Analysis of Right to Self Defense," *Pakistan Journal of International Affairs* (2023).

(2) K. Fatima, et al., "Use of Force against Non-State Actors: An Analysis of Right to Self Defense," *Pakistan Journal of International Affairs* (2023).

territorial blockade, violation of the airspace or territorial waters of another state, and support for armed groups to carry out aggressive actions. The resolution also emphasized the necessity of respecting state sovereignty and refraining from its violation, thereby establishing an important reference framework for assessing the use of force under international law⁽¹⁾.

Within the framework of the United Nations Charter, the legal text specifies the circumstances in which the use of force is permitted as exceptions to the general prohibition, identifying three main cases:

- Measures taken against the Axis powers during the Second World War under Article 107⁽²⁾, which constitute an exceptional situation tied to specific historical events⁽³⁾.
- Collective measures adopted by the Security Council under Chapter VII of the Charter, granting the Council the authority to take necessary actions to maintain or restore international peace and security, including the use of military force.
- The right of individual or collective self-defense under Article 51, which allows states to respond to an actual or imminent armed attack, either individually or in cooperation with other states, within the limits established by international law.

This precise delineation of the use of force provides a legal framework that strengthens the system of international peace and security. It balances the protection of state sovereignty and the prevention of aggression on one hand, with the necessity to allow states to defend themselves or to resort to the Security Council to resolve disputes

(1) The United Nations General Assembly adopted Resolution 3314 (29) in 1974, which included a detailed definition of the concept of aggression. The resolution defined aggression as the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state in a manner contrary to the Charter of the United Nations. It also included various forms of aggression, such as invasion or military attack, occupation of territory, bombardment of another state's territory, and allowing the use of a state's territory to commit aggression against a third state. This resolution has become a fundamental reference in international jurisprudence and practice regarding the determination of acts that constitute aggression.

(2) Article 107 of the Charter of the United Nations: "Nothing in the present Charter shall invalidate or prevent any act by a State which, during the Second World War, has carried out an act of war against any State which was an enemy of any of the States Parties to the present Charter, so long as such act has been authorized as a result of that war by the States responsible for carrying it out."

(3) Article 107 of the UN Charter was drafted in the aftermath of World War II to authorize the victorious Allied powers to take military action against the defeated Axis powers, such as Germany, Japan, and their allies, without this being considered a violation of the Charter's provisions. However, this article is now considered outdated and has lost its practical value in light of developments in the contemporary international system, even though it remains formally included in the Charter's text.

on the other. This codification reflects the evolution of international law in regulating the use of force and preventing the escalation into unjustified armed conflicts, while preserving the legitimate right of states to protect their security and sovereignty within the bounds of international law⁽¹⁾.

2.2.Legal Constraints on the Exercise of the Right of Self-Defense

The right of self-defense is considered a fundamental and central principle in contemporary international law, constituting a clear exception to the general prohibition on the use of force established in Article 2(4) of the United Nations Charter. Article 51 of the Charter affirms the continuation of this right in the event that a member state is subjected to an armed attack, while obliging the state to immediately inform the Security Council of the defensive measures it takes. This requirement underscores the importance of involving the Council in monitoring the exercise of this right to ensure its regulation and prevent exceeding its limits.

However, the exercise of the right of self-defense is neither absolute nor unrestricted. It is subject to a series of legal conditions and constraints that have been shaped through customary international law, the jurisprudence of the International Court of Justice, state practice, and Security Council resolutions. These constraints aim to strike a delicate balance between enabling states to lawfully defend their sovereignty and territorial integrity and adhering to the general principles of international law, which seek to preserve international peace and security and prevent the arbitrary use of force.

Among the most prominent legal constraints are: the requirement that the armed attack be actual and evident; the principle of proportionality, ensuring that the defensive response is commensurate with the scale of the aggression; the principle of necessity, which mandates that self-defense be the only available means to repel the attack; and the requirement of immediate notification to the Security Council of any defensive measures taken.

(1) Arts, Fayez Jassim. "The Right of Self-Defense in International Law." *Al-Shara'i' Journal*, Special Issue, 2025.

With the rise of transnational threats posed by non-state actors, such as terrorist groups, extensive scholarly and diplomatic debate has emerged regarding the applicability of these traditional constraints to attacks originating from non-state entities.

This debate has given rise to divergent interpretive schools: legal frameworks adhere to a restrictive interpretation of Article 51, limiting its application to disputes between sovereign states only, while others advocate for a broader interpretation to include new forms of unconventional threats. This reflects the need to develop international legal concepts in line with contemporary security challenges.

This section will provide a detailed analysis of these legal constraints, examining their doctrinal and judicial dimensions and assessing their applicability to the current realities of international relations, particularly in light of post-September 11th. practice and the positions of the International Court of Justice and the Security Council on related issues⁽¹⁾.

2.2.1. Conditions for Resorting to Self-Defense

The right of self-defense constitutes a fundamental principle of contemporary international law and is explicitly recognized in Article 51 of the United Nations Charter as a limited exception to the general prohibition on the use of force set forth in Article 2(4) of the Charter. Under this provision, the exercise of this right is confined to situations in which a state is subjected to an actual armed attack, provided that it is carried out within strict rules and standards derived from international law. These include the requirement that the attack has indeed occurred, adherence to the principles of necessity and proportionality in the defensive response, and the obligation to immediately notify the Security Council of the defensive measures undertaken.⁽²⁾

Within this legal framework, it is understood that resorting to force under the claim of self-defense is neither an absolute nor automatically lawful right merely because of a potential threat or risk. Rather, it constitutes a restricted exception that requires the fulfillment of objective and substantive conditions to ensure that this right is not exploited

(1) fonon, Fayez Jassim. "The Right of Self-Defense in International Law." *Al-Shara'i' Journal*, Special Issue, 2025.

(2) United Nations, Charter of the United Nations, Article 51, adopted on 26 June 1945, entered into force on 24 October 1945.

to pursue aggressive objectives contrary to the fundamental principles of the United Nations in maintaining international peace and security.

The significance of these conditions lies in achieving a delicate balance between a state's right to protect its sovereignty and territorial integrity on one hand, and its duty to refrain from using force beyond what is permitted under international law, on the other. Accordingly, any violation of these conditions by a state exposes its exercise of the right of self-defense to legal accountability and renders it susceptible to accusations of breaching the United Nations Charter and committing acts of aggression contrary to the international order⁽¹⁾.

The legality of the right of self-defense requires the fulfillment of fundamental conditions related, on the one hand, to the aggression justifying defense and, on the other hand, to the defensive act itself. A legitimate case of self-defense is established only when conditions on both sides are met simultaneously.

Firstly, regarding the aggression: it must be actual, imminent, and unlawful. This wrongful aggression constitutes the legal basis that permits the defender to respond without being considered criminal. An actual attack is one that leaves the defender no opportunity to resort to competent authorities before being exposed to harm. It also encompasses anticipated or imminent aggression that poses a serious and tangible threat requiring immediate prevention. The defender is not required to wait until actual harm occurs to exercise the right of self-defense.

Moreover, the aggression must be unlawful, meaning it does not arise from the legitimate exercise of a right or the performance of a legal duty. Acts authorized by law, such as disciplinary measures, medical procedures, or law enforcement interventions within the scope of their official duties are lawful and cannot be resisted. However, if the actor exceeds their legal authority, resistance within the framework of legitimate self-defense is permissible under precise legal constraints.

Even if the aggressor is not criminally responsible such as non-competent minors or persons with mental illness, the right of self-defense remains valid, as the purpose of defense is the protection of rights, not the punishment of the aggressor. Defense remains lawful as long as the aggression is actual and unlawful, regardless of the aggressor's

(1) fonon, Fayez Jassim. "The Right of Self-Defense in International Law." *Al-Shara'i' Journal*, Special Issue, 2025.

capacity. Legal immunities or mitigating excuses do not negate the defender's right to self-defense, as immunity does not confer legitimacy on the aggression.

In the case of a perceived or imaginary threat, self-defense is justified only if the defender reasonably believes that a threat exists based on objective grounds; this scenario is closer to coercion or duress and does not constitute lawful defense in the strict legal sense.

Secondly, regarding the defensive act itself: the defense must be necessary, meaning that the defender resorts to force only when it is the sole available means to repel the aggression. This condition is met if protection through state mechanisms is unavailable or if the state cannot intervene in a timely manner. Defense must be directed at the source of the threat to neutralize it while using the least harmful means possible.

It is worth noting that some scholars reject the requirement that the victim must retreat or flee as a precondition for self-defense, emphasizing the right to protect one's dignity and rights under any circumstances.

Finally, the defense must be proportional to the actual threat. The purpose of self-defense is to neutralize the aggression, not to seek revenge or cause excessive harm. Therefore, the defensive response must not exceed what is necessary to repel the attack⁽¹⁾.

2.2.1.1. The Requirement of an Armed Attack

In the context of international law, an armed attack is defined as the actual use of armed force by one state against the sovereignty, territorial integrity, or political independence of another state, or against any aspect of its national sovereignty protected by the United Nations Charter. Such aggression constitutes one of the most serious violations threatening the international order and state security, as it represents a direct assault on the fundamental principles underpinning peaceful international relations.

The concept of armed attack is not limited to conventional assaults alone. It also encompasses the use of force by land, sea, or air, as well as operations carried out by irregular armed groups or mercenaries, provided that these groups are supported or directed by a particular state. In such cases, their actions are attributed the character of

(1) Ben Sadouk, Mustafa, and Winton. "The Principle of Concomitance and Proportionality in Legitimate Defense: A Comparative Study between Islamic Jurisprudence and Positive Law," 2020.

aggression under international law. Accordingly, acts falling within this definition are subject to international legal sanctions and constitute a legitimate justification for exercising the right of self-defense under Article 51 of the United Nations Charter.

However, mere threats of force or non-military actions, such as cyberattacks or coercive economic measures, do not, by themselves, constitute an armed attack sufficient to trigger the right of self-defense. The activation of this right requires the existence of an actual and tangible armed attack i.e., a direct and concrete use of military force rather than a mere potential or preparatory threat. This strict criterion ensures that the concept of aggression is not misused to justify disproportionate responses or hostile acts that could escalate conflicts.

Thus, international law seeks to establish clear and precise limits on the concept of armed attack to safeguard international peace and security while allowing states to exercise their legitimate right to self-defense when subjected to a real armed attack, in accordance with the principles of necessity and proportionality, thereby preventing recourse to unlawful or aggressive uses of force that threaten the stability of the international system⁽¹⁾.

The Israeli attack on the Iraqi nuclear reactor on 7th. June 1981 constitutes one of the most prominent examples of an armed attack. The United Nations Security Council condemned this act as a blatant violation of the principles of the UN Charter, and it was not recognized as a legitimate exercise of the right of self-defense. Similarly, the U.S. occupation of Iraq in 2003, characterized by extensive military force that clearly violated Iraq's political independence and territorial integrity, serves as another example of an unjustified armed attack under international law.

It should be noted that resorting to armed force under the pretext of self-defense is permissible only in the event of an actual and tangible armed attack, in accordance with Article 51 of the UN Charter. The concept of armed attack is not limited to conventional military aggression; it may also encompass other forms of aggression, such as economic, cultural, or financial warfare, provided that such acts are accompanied by the actual use of armed force by the attacking state. This requirement ensures that the use of force cannot be justified solely on the basis of non-military forms of conflict and emphasizes the

(1) Fatah, Omar Hussein. *The Right of Peoples to Self-Determination and the Establishment of a Palestinian State*. Cairo: Dar Al-Nahda Al-Arabiya, 2005.

necessity of distinguishing between acts that legitimately trigger the right of self-defense and those that must be addressed through legal and peaceful means⁽¹⁾.

The right of self-defense is recognized as a fundamental principle of international law and constitutes an important exception to the general prohibition on the use of force in international relations. The exercise of this right is conditioned upon the fulfillment of a set of objective and legal requirements aimed at preventing its misuse and achieving a delicate balance between a state's protection of its sovereignty and its legitimate right to defend itself, on the one hand, and the maintenance of international peace and security, on the other.

Firstly, the right of self-defense requires the existence of an actual armed attack or a clear and direct assault targeting the state invoking the use of force. A mere threat or potential danger does not suffice; the aggression must be real and tangible. Moreover, the attack must be external, as internal violence or domestic disturbances do not justify the invocation of self-defense under international law.

Secondly, the defensive response must adhere to the principle of proportionality, ensuring that it is commensurate with the scale and necessity of the aggression. A state may not exceed the limits necessary to repel or prevent the attack. International law prohibits the excessive or aggressive use of force under the guise of self-defense. The principle of proportionality emphasizes that the response must be purely defensive, devoid of retaliatory motives, and employ the minimum force necessary to achieve the legitimate objective, thereby ensuring that the conflict is not escalated and that international peace is not endangered⁽²⁾.

Thirdly, international law requires that the defending state notify the Security Council immediately upon taking any defensive measures. This ensures effective international oversight of the use of force and safeguards the integrity of the international system. Failure to comply with this obligation may have legal implications, potentially undermining the legitimacy of the self-defense claim, as it could be interpreted as an overreach or misuse of the right.

(1) fonon, Fayez Jassim. "The Right of Self-Defense in International Law." *Al-Shara'i' Journal*, Special Issue, 2025.

(2) Saad Daoud Mohammed Al-Tamimi, *Legitimate Defense in Light of International Practices*, Master's Thesis, College of Law, Qatar University, 2021, p. 20

Finally, international judicial scholarship, particularly through the decisions and rulings of the International Court of Justice, underscores the importance of these conditions as fundamental safeguards. They serve to regulate the use of force and prevent arbitrary or indiscriminate resort to armed action in international relations. This legal framework has contributed to the establishment of clear rules governing the right of self-defense, balancing the protection of state sovereignty and security with the preservation of the international order from collapse due to unregulated armed conflicts.

Accordingly, the conditions for invoking the right of self-defense constitute essential legal and ethical guarantees that protect a state's right to defend its sovereignty and territorial integrity while simultaneously maintaining the stability of the international system and reducing the risk of indiscriminate escalation of armed conflicts⁽¹⁾.

2.2.1.2. The Requirement of Necessity and Proportionality in the Use of Force

The concept of necessity, as defined in legal scholarship, refers to a situation in which a defensive act constitutes the only available and effective means to repel aggression or an armed attack. In other words, there are no alternative measures that are less severe or less harmful that could be employed to stop the ongoing assault against the state, other than the use of armed force.

From this definition, it is understood that defense in such circumstances is not merely optional but constitutes a mandatory act that cannot be foregone. The defending party is precluded from resorting to peaceful or non-military measures to avert the threat if those measures are incapable of halting the attack or preventing its escalation.

This requirement constitutes one of the foundational principles of contemporary international law. It is used to justify the legitimacy of the use of force under the right of self-defense, emphasizing that the activation of this right occurs only when the condition of necessity is met i.e., when military defense represents the sole feasible and effective means of protection⁽²⁾.

(1) Saad Daoud Mohammed Al-Tamimi, *Legitimate Defense in Light of International Practices*, Master's Thesis, College of Law, Qatar University, 2021, p. 20

(2) Abu Al-Khair, Ahmed Attia Omar. "The Theory of Preemptive Military Strikes: Preventive Defense in Light of the Rules of Contemporary International Law".

On this basis, the use of force for illegitimate purposes is prohibited, such as occupying the territory of the attacked state, seizing its natural resources, or imposing political or economic domination, as such acts constitute a clear violation of the principles of international law and the United Nations Charter.

The principle of proportionality also obliges the defending state to continuously assess the extent of force employed, ensuring that defensive measures are limited in scope, duration, and means to what is strictly necessary. This includes adhering to the distinction between military targets and civilians, thereby safeguarding fundamental human rights and minimizing collateral damage.

Accordingly, the principle of proportionality ensures the regulated use of defensive force, protects international security from escalation into widespread or unjustified conflicts, and reinforces states' obligation to act within the framework of international law when exercising the right of self-defense⁽¹⁾.

Moreover, the condition of necessity is linked to the existence of a serious and imminent threat affecting the fundamental interests of the state, such that coercive defensive measures constitute the only effective means to address it. Necessity is considered an exceptional circumstance that justifies deviation from general rules obliging the state to adhere to international agreements or to resort to the use of force only as a last resort to protect its national security, sovereignty, and territorial integrity.

This condition requires that the threat be imminent and direct, leaving no opportunity for delay or retreat. It must be impossible to avert or counter through ordinary peaceful means, such as diplomatic negotiations, arbitration, or recourse to international courts. Accordingly, the concept of necessity distinguishes between exceptional situations that justify resorting to military defense and ordinary circumstances that require adherence to established legal and peaceful mechanisms in international relations.

This distinction reflects international law's emphasis on regulating the use of force and protecting the international system from arbitrary escalation into armed conflicts, while granting states the right to take necessary and immediate measures in response to

(1) fonon, Fayez Jassim. "The Right of Self-Defense in International Law." *Al-Shara'i' Journal*, Special Issue, 2025.

existential threats, ensuring that the response is proportionate to the severity of the situation and the imperative of safeguarding vital national interests⁽¹⁾.

2.2.2. Distinction Between Legitimate Self-Defense and Similar Circumstances

The distinction between legitimate self-defense and the state of necessity constitutes a fundamental issue in both criminal and international jurisprudence, as each differs in its conditions and legal effects. Legitimate self-defense is based on the use of force as a direct and necessary reaction to repel an actual or imminent armed attack by a human actor, whether a state or an individual. It requires that the use of force be the only suitable means to repel aggression while adhering to the principles of necessity and proportionality, which renders the act lawful in itself and free from legal liability. In contrast, a state of necessity arises from an exceptional circumstance imposed by a grave and imminent threat that may not stem from human action but rather from natural forces or irresistible circumstances. Its prevention is only possible through the commission of a prohibited act, provided that no reasonable alternatives exist and the harm inflicted is proportionate to the anticipated harm. In this context, necessity constitutes a personal excuse that exempts the actor from punishment without legitimizing the act itself. Hence, the fundamental difference emerges: legitimate self-defense is a legal justification rendering the act lawful, whereas necessity is a shield against liability, leaving the act prohibited under law while excusing the actor from sanction.

2.2.2.1. Cases of Misuse of the Self-Defense Principle

In 2015, the United Kingdom conducted a targeted killing operation using a drone within Syrian territory, targeting one of its citizens (Riyad Khan), as part of its intensified campaign against terrorism and to counter threats from the Islamic State of Iraq and the Levant (ISIS).

(1) Abu Al-Khair, Ahmed Attia Omar. "The Theory of Preemptive Military Strikes: Preventive Defense in Light of the Rules of Contemporary International Law".

This operation marked an unprecedented turning point in British security and military policy, being the first of its kind executed outside traditional military operations and away from formal battlefields, at a time when the UK was not engaged in direct armed conflict on Syrian territory. The British government justified this operation as a preemptive defensive measure aimed at confronting an imminent threat to national security and its citizens. The then Prime Minister, David Cameron, described it as a “new shift” in British defense policy, which provoked diverse reactions within political, legal, and public spheres and opened a broad debate on the legality and ethical limits of this approach.

This strike was not isolated or exceptional but part of a general trend emerging in British security policy based on the concept of preemptive strikes against potential threats. Former Defense Secretary Michael Fallon confirmed the UK’s readiness to repeat such operations if necessary, emphasizing that resorting to military force was an available option when there was credible intelligence of an imminent attack on British interests, especially when other means were insufficient to counter the threat. This new approach relied on expanding the concept of legitimate self-defense to include preemptive responses against transnational terrorist threats, even in the absence of a traditional armed conflict.

This trend raised fundamental questions within parliamentary and legal circles, particularly following reports confirming the UK government’s inclination to adopt lethal strikes abroad targeting individuals suspected of planning imminent terrorist attacks. These actions were considered a measure of last resort when other means failed to prevent the attack. This approach reflected profound shifts in the understanding of rules of engagement and the limits of force, surpassing in certain respects traditional concepts of international armed conflicts.

From a legal and political perspective, the use of drones in counter-terrorism represents a controversial development in the practices of major states. The United States pioneered this strategy and clearly published its guiding principles, whereas the United Kingdom officially denied adopting targeted killing as a counter-terrorism policy. However, the 2015 strike marked a clear turning point, aligning British policy more closely with the U.S. model, particularly regarding the legal justification grounded in the principles of self-defense and imminent threat.

Nonetheless, this operation sparked deep controversy regarding the legality of this approach under international law, particularly since the United Kingdom was not at war with Syria, and Syria was not party to an armed conflict with the UK. This raised a fundamental legal dilemma concerning the respect for state sovereignty and the limits of cross-border military intervention under the guise of self-defense. Questions also arose about the interpretability and potential expansion of the “imminent threat” concept, particularly in light of emerging security challenges and the proliferation of transnational armed groups. This placed British defense and security policies under scrutiny both domestically and internationally.

This case illustrates the complexity of balancing national security protection with compliance with international legal norms a balance increasingly fragile in light of modern technological developments enabling new means of military force, such as drones. It also highlights the growing recourse to preemptive self-defense justifications against unconventional threats, reflecting profound shifts in international law norms and reshaping concepts of sovereignty, legitimacy, and legal responsibility in the context of contemporary counter-terrorism operations⁽¹⁾.

Article 51 establishes the right of self-defense against “armed attacks,” yet it does not provide detailed guidance on when a planned terrorist attack by an individual or a small group can be classified as an “armed attack” justifying the preemptive use of military force.

This question gains particular significance considering that the restrictions set forth in Articles 2(4) and 51 of the Charter are not solely intended to protect state sovereignty but also to regulate the use of military force and to enhance international peace and security more broadly.

This raises the central issue of whether the requirements of Article 51 can be considered satisfied merely by addressing sovereignty concerns, such as obtaining the consent of the host state or demonstrating that the targeted state is unwilling or unable to address the threat, while also limiting recourse to military force to situations of imminent and actual threat. Moreover, does Article 51, through its reference to an “armed attack,” implicitly require additional evidence demonstrating that the threat possesses sufficient

(1) A. Birdsall, “New technologies and legal justification: The United Kingdom’s use of drones in self-defence,” *Global Constitutionalism* 11, no. 2 (2022): 197–216.

scale and severity to justify the use of military force, which goes beyond the basic principles of necessity and proportionality traditionally governing the resort to force?

If the Charter establishes real and substantive limitations on the use of military force, emphasizing that force may only be employed when necessary and proportionate, it becomes essential to engage in an in-depth discussion on when planned terrorist actions may rise to the level justifying military force under Article 51. The UK's strike in this context underscores the need to reconsider these legal questions in a manner inadequately addressed by U.S. legal claims, which were based on the hypothetical existence of an ongoing armed conflict. This highlights the broader necessity of clarifying the scope of the right of self-defense in responding to unconventional terrorist threats within contemporary international law.

The United States also invoked Article 51 to justify the use of military force outside the context of armed conflict, for example, against Al-Qaeda following its attacks on the U.S. embassies in 1998 illustrating the contested and evolving interpretations of self-defense in the context of non-state actors and transnational terrorism⁽¹⁾.

Nevertheless, the justification for those strikes was founded on facts that are materially different from those relied upon by the United Kingdom in the present case. Crucially, the United States did not resort to force there until al-Qaeda had manifested both the intent and the capability to carry out large-scale attacks against the United States. By contrast, the British strike was carried out before Khan had carried out any attacks specifically against the United Kingdom, let alone any large-scale attacks (the ISIS attack in Tunisia, which resulted in the deaths of many British tourists, may complicate this analysis, but the United Kingdom offered no explanation linking that attack to its use of force against Khan).

Moreover, there has been insufficient discussion and study of how any use of military force to target and kill individuals planning terrorist acts accords with international human rights law. It is noted that the Office of the Legal Counsel of the Department of Justice carefully concluded that the targeted killing of al-Awlaki was

(1) The United States' strikes against al-Qaeda in Sudan and Afghanistan following the 1998 attacks on its embassies in Nairobi and Dar es Salaam were considered an exercise of the right of self-defense against a threat from non-state actors. The United States claimed to have expanded the application of Article 51 of the UN Charter to justify the use of military force outside the context of conventional armed conflict. (United Nations. (1998). Letter dated 20 August 1998 from the Permanent Representative of the United States of America to the United Nations to the President of the Security Council (S/1998/780). United Nations Digital Library. <https://digitallibrary.un.org/record/259582>

consistent with international law (and thus lawful under U.S. law)⁽¹⁾. He pointed out that the use of force against enemy forces in an armed conflict, in accordance with the law of armed conflict, fulfills human rights obligations, and that this rationale does not apply to British strikes outside the context of armed conflict⁽²⁾.

Similarly, the U.S. invasion of Iraq in 2003 stands as a prominent example of the misuse of the self-defense principle under international law. The United States justified its military intervention on the basis of preventive self-defense against a potential threat, namely Iraq's alleged possession of "weapons of mass destruction" and its purported intent to use them, despite the absence of conclusive evidence of an imminent attack or immediate aggression.

This justification sparked extensive debate within legal and political circles, as many experts and observers considered that the United States had expanded the concept of self-defense in a manner inconsistent with international standards, which require the occurrence of an actual armed attack or a very imminent threat. The United Nations and several states criticized the invasion, viewing it as a political pretext that exploited the framework of international law to achieve geopolitical objectives, thereby undermining the credibility of the self-defense principle and opening the door to broad interpretations that permit preemptive use of force without sufficient safeguards.

This invasion marked a turning point in the understanding and application of Article 51 of the United Nations Charter and has led to ongoing discussions regarding the legitimate limits on the use of force, particularly in light of technological and military developments that render future threats less clear and more complex⁽³⁾.

(1) The United States targeted Anwar al-Awlaki in 2011. This targeting is a prominent example of the expansion of the interpretation of Article 51 of the UN Charter. Washington justified the targeted killing carried out by a drone in Yemen against al-Awlaki, a leader in al-Qaeda, as an exercise of the right of self-defense against a persistent threat from non-state actors. The then-legal advisor to the US Department of Justice asserted that this action was consistent with international law and therefore permissible under US law as well. This sparked widespread debate about the legality of such operations under international human rights law and international humanitarian law.

U.S. Department of Justice. (2013). Lawfulness of a lethal operation directed against a U.S. citizen who is a senior operational leader of al-Qa'ida or an associated force [White Paper]. United States Department of Justice. <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/white-paper.pdf>

(2) K. Martin, "UK's legal rationale for drone strikes differs fundamentally from US rationale," Just Security, April 24, 2020.

(3) SHAFIR, G. CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL.2007

2.2.2.2. Preemptive Deterrence and Preventive Strikes

Amid the profound and rapid transformations characterizing the nature of modern warfare and armed conflicts, significant changes have emerged in the international legal rules governing the use of armed force and the right of self-defense. These developments are not spontaneous but result from the accumulation of new challenges posed by operational and technological advances on contemporary battlefields, which have exposed the limitations of traditional legal frameworks in addressing modern threats.

One of the most prominent events illustrating this shift is the Russian invasion of Ukraine on 24 February 2022, in which President Vladimir Putin justified the incursion on the grounds of an imminent threat from the North Atlantic Treaty Organization (NATO). Despite the clear provision of Article 2(4) of the United Nations Charter, which prohibits the resort to armed force, the Russian invasion constituted a blatant violation of this principle, bringing to the forefront complex debates regarding the concept of preventive or preemptive self-defense, its legality under international law, and the need to reassess and clarify its legal limits in light of current developments.

It should be noted that the historical roots of such reassessments of self-defense principles trace back to the 1837 Caroline affair, which laid foundational doctrines concerning the legitimacy of anticipatory action under customary international law⁽¹⁾. The Caroline incident, which occurred during the border tensions between the United States and the United Kingdom, laid foundational concepts in international law, such as the necessity and proportionality principles. These principles have since formed the theoretical and practical basis for discussions regarding preemptive or anticipatory self-defense. They continue to underpin the legal framework relied upon by international scholars and courts today when interpreting cases involving the use of force prior to the occurrence of an actual aggression.

(1) The Caroline incident occurred in 1837 during an armed rebellion in Canada against British rule. The American steamer was being used to transport rebels and supplies from the United States to Canadian territory. On the night of December 29, a British force crossed the Niagara River to the American side, seized the steamer, set it on fire, and drove it into the falls, killing one American. This incident sparked a severe diplomatic crisis between Britain and the United States, but it also established what later became known as the "Caroline Doctrine," formulated by US Secretary of State Daniel Webster. This doctrine stipulated that the use of self-defense is justified only if the danger is imminent and the necessity is so pressing that it leaves no room for choice, and that the response must be proportionate to the threat. (Sami Shawqi, *Principles of Public International Law*, Cairo: Dar Al-Nahda Al-Arabiya, 2015).

In practice, the United States' conduct during the Iraq War under President George W. Bush provided a clear example of applying the preemptive defense principle. The U.S. adopted a stance allowing the use of force to prevent potential future threats before they materialized into an actual armed attack, without waiting for the threat to become imminent and immediate. This approach sparked widespread debate regarding its legality, particularly under international law, which strictly limits the use of force.

Similar debates arose concerning Israeli military operations targeting countries such as Iraq, Palestine, Syria, and Iran, where Israel justified these strikes on the basis of preventive self-defense. These actions drew significant criticism for exceeding internationally recognized legal limits.

Consequently, it has become imperative to reassess traditional legal principles relating to self-defense, especially in the context of emerging, unconventional threats such as transnational terrorism and cyberattacks. These developments call for the international community to develop more flexible and pragmatic legal mechanisms that balance respect for state sovereignty with the preservation of international peace and security. Moreover, these challenges necessitate an in-depth discussion on the limits of the preemptive defense concept and its applicability in new contexts that extend beyond traditional armed conflicts, ultimately contributing to clearer rules governing the use of military force and reducing the risk of escalation into broad or unjustified aggression.

Article 51 of the United Nations Charter addresses the right of states to self-defense and provides: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

A contextual interpretation of this provision reveals four key points:

- Self-defense is a natural and inherent right of states.
- The exercise of this right is conditional upon the occurrence of an "armed attack".

- This right must be exercised with due regard to the powers and measures of the Security Council.
- States must immediately notify the Security Council of any defensive measures undertaken.

The concept of preventive (or preemptive) self-defense generates considerable legal debate regarding its legitimacy under Article 51. Many scholars maintain that the express language of the article confines the right of self-defense to situations where an armed attack has actually occurred and does not extend to anticipatory measures against potential threats that have not yet materialized⁽¹⁾.

However, customary international law provides a broader perspective on the right of self-defense, recognizing preventive action as an integral aspect of this right. Hugo Grotius, in his seminal work *De Jure Belli ac Pacis* (1625), asserted that self-defense is not exercised solely after an aggression occurs but may be undertaken preemptively when a threat is imminent, supporting this with his famous dictum: “It is lawful to kill one who is preparing to kill.” Similarly, Emer de Vattel, in *The Law of Nations* (1758), emphasized that the best means of protection is to prevent harm before it occurs, thereby affirming the legitimacy of preemptive defense as a means to avert danger and destruction.

A broad reading of Article 51 reinforces this perspective, as the purpose of recognizing the right to self-defense is to protect peoples and states from potentially catastrophic threats. If a state were compelled to wait until an attack materializes to defend itself, irreparable harm might ensue such as in the case of a nuclear strike. Accordingly, some scholars argue that disregarding existential threats undermines the underlying philosophy and purpose of Article 51, which seeks to enable states to safeguard their survival and security in the face of imminent dangers⁽²⁾.

This approach is further supported by the view of Lord Goldsmith, who emphasized that the concept of self-defense is not static but evolves in line with the changing nature of threats and military capabilities, and must adapt to the realities of the modern era. Even though Article 51 does not explicitly mention preemptive defense, its spirit does not

(1) Garg, R. Role of independent international organisation in international law - iPleaders. iPleaders. (2020, November 5). <https://blog.ipleaders.in/role-independent-international-organisation-international-law/>

(2) In, S. S. |. A. L. S. (2021, October 27). Israel, Preemption and anticipatory Self-Defense. JURIST - Commentary - Legal News & Commentary. <https://www.jurist.org/commentary/2021/10/louis-rene-beres-israel-preemption-self-defense/>

preclude a state from resorting to such measures in the face of an imminent and grave threat that leaves no option but to act before the attack occurs.

Nevertheless, preemptive self-defense remains subject to strict limitations and narrow boundaries under Article 51. The threat must be imminent and certain, as established in the Caroline case, and preemptive action must constitute a last resort while adhering to the principle of proportionality in the use of force.

Article 51 also imposes two additional requirements:

- Preemptive defense may only be undertaken after the Security Council has taken necessary measures to maintain peace.
- The state must provide immediate notification to the Security Council upon initiating defensive measures.

Thus, Article 51 does not prohibit the exercise of preemptive self-defense but subjects it to precise and well-defined safeguards. These limitations ensure that such defense is not misused as a pretext for violating the sovereignty of other states, while obligating states to operate within the legal framework regulating the use of this right under international law⁽¹⁾.

The U.S. drone strikes in Pakistan and Yemen represent a stark example of the legal and ethical controversy surrounding the legitimacy of using armed force outside the framework of conventional warfare. These strikes resulted in civilian casualties, including women and children, in contexts where no imminent threat justified resorting to armed force, thereby constituting a violation of international humanitarian law principles.

In many instances, these strikes were carried out based on unverified or questionable intelligence, without clear evidence linking the targeted individuals to active combat operations or immediate threats. This practice violated the principle of necessity, which mandates that force may only be used when it is the sole means to avert an imminent danger, and the principle of proportionality, which requires that the force applied be commensurate with the threat and limited in its impact.

Furthermore, these operations drew widespread criticism due to the lack of transparency and legal accountability. They were conducted in remote areas, beyond

(1) U. Ahmad, H. Rehman, and A. Khan, "Legality of Anticipatory Self-Defense in International Criminal Law: Special Case Studies in Focus," *Pakistan Journal of Criminal Justice* (2023).

judicial oversight, without clear mechanisms for holding perpetrators accountable or providing remedies to victims. Targeting individuals solely based on suspicion, without fair trials or judicial proceedings, constitutes a blatant violation of the right to life and the right to a fair trial, contravening fundamental norms of international human rights law.

Finally, these military strikes contributed to escalating international tensions, eliciting negative reactions from affected governments and causing considerable resentment among local populations. The operations exacerbated security conditions, fueling further armed conflicts rather than containing them, and fostering environments conducive to radicalization and violence in conflict zones.

This reality underscores the severe risks associated with expanding the concept of preemptive self-defense and applying it outside its legally defined framework. Its negative consequences extend beyond the military sphere, impacting humanitarian conditions by aggravating civilian suffering and threatening international stability by undermining the international legal system, state sovereignty, and the principle of non-intervention. Therefore, any misuse of this concept necessitates a careful reassessment of the legal and political safeguards governing the use of force to prevent escalations that could lead to humanitarian crises and intensified regional conflicts⁽¹⁾.

Practical Applications of the Principle of Preemptive Self-Defense

- **Israeli Preemptive Strikes:**

Israel represents a prominent example of applying the principle of preemptive strikes, particularly against Iraq, Palestine, Syria, and Iran. In 1981, Israel conducted an airstrike on the Iraqi nuclear reactor under the framework of what became known as the “Begin Doctrine,” which sought to justify preemptive action against perceived sources of threat. Although the United Nations Security Council condemned this attack under Resolution 487, considering it a violation of the UN Charter, some scholars, such as Timothy McCormack, argued that the strike could be legally justified given the catastrophic potential of nuclear weapons⁽²⁾.

Nonetheless, Israeli strikes continue to provoke ongoing legal debate regarding the limits of preemptive self-defense in the nuclear era. The case highlights the tension between state security imperatives and the strictures of international law governing the

(1) A. Birdsall, “New technologies and legal justification: The United Kingdom’s use of drones in self-defence,” *Global Constitutionalism* 11, no. 2 (2022): 197–216.

(2) Louis Rene Beres, “Israel, Preemption and Anticipatory Self-Defense,” *JURIST*, October 27, 2021.

use of force⁽¹⁾, raising critical questions about proportionality, imminence, and the legitimacy of anticipatory military actions in the context of existential threats⁽²⁾.

- **The Bush Doctrine and the Iraq War:**

Following the events of September 11th., 2001, the “Bush Doctrine” reshaped the concept of preemptive self-defense within the strategic security framework of the United States, as explicitly articulated in the 2002 U.S. National Security Strategy. This doctrine posited that effective defense may require taking preemptive measures against threats, even if they are not yet certain or imminent. President George W. Bush invoked this concept to justify the 2003 invasion of Iraq, claiming that the operation was a preventive action against a potential threat posed by Iraq’s alleged possession of weapons of mass destruction a claim later proven unfounded. In his address at West Point, Bush argued that waiting for a threat to materialize before acting was impractical in the context of contemporary terrorism, which operates through secretive networks without providing clear warning signs.

This expansion of the preemptive defense concept generated intense debate within international legal circles. Many scholars viewed it as a serious transgression of the provisions of Article 51 of the UN Charter, which confines the right to self-defense to responses against an actual and tangible armed attack. Critics contended that adopting such a broad interpretation opens the door to extensive preemptive military action, potentially undermining international peace and security, weakening the legal constraints governing the use of force between states, and increasing the likelihood of unjustified armed conflicts⁽³⁾.

- **The 2022 Russian Invasion of Ukraine:**

On 24th. February 2022, President Vladimir Putin announced the commencement of a full-scale invasion of Ukraine, justifying this action as a form of preemptive self-defense against an alleged imminent threat purportedly posed by the North Atlantic Treaty Organization (NATO). However, this justification was widely rejected by the international community, as Russia failed to provide credible evidence supporting the

(1) T. L. H. McCormack, *Self-defense in International Law: The Israeli Raid on the Iraqi Nuclear Reactor* (Palgrave Macmillan, 1996).

(2) Louis Rene Beres, “Preserving the Third Temple: Israel’s Right of Anticipatory Self-Defense under International Law,” *Scholarship@Vanderbilt Law* (2021).

(3) U. Ahmad, H. Rehman, and A. Khan, “Legality of Anticipatory Self-Defense in International Criminal Law: Special Case Studies in Focus,” *Pakistan Journal of Criminal Justice* (2023).

existence of a real military threat or the deployment of NATO forces along the Russian border both of which constitute fundamental conditions for any armed response to be considered lawful self-defense under international law. Furthermore, Russian claims regarding Ukraine's alleged development of biological weapons with U.S. support and funding were factually unfounded, lacking any verifiable proof. Consequently, the Russian invasion did not satisfy the essential criteria of immediacy and necessity required for a legitimate exercise of the right to self-defense⁽¹⁾.

Both of these criteria immediacy and necessity constitute fundamental pillars of the principle of lawful self-defense. In this case, there was neither a direct nor imminent attack requiring an immediate military response, and the measures undertaken by Russia failed to observe the principle of proportionality, exceeding what was necessary to deter the purported threat and causing extensive damage across Ukrainian territory, including significant human and material losses. Consequently, this invasion constitutes a blatant violation of international law, particularly the United Nations Charter, which imposes a comprehensive prohibition on the use of force except in cases of legitimate self-defense or pursuant to authorization by the UN Security Council.

This event has also revived debates regarding the limits of preemptive defense and the extent to which it can be applied in the context of contemporary conflicts, emphasizing the critical importance of adhering to core principles that safeguard international peace and security and prevent violations that may escalate conflicts and undermine regional and global stability⁽²⁾.

(1) Caroline's Criterion (1. Immediacy: The danger is imminent, about to occur, and there is no room for waiting.

2. Necessity: The use of force is the only option available to repel the danger, and there are no peaceful alternatives).

(2) U. Ahmad, H. Rehman, and A. Khan, "Legality of Anticipatory Self-Defense in International Criminal Law: Special Case Studies in Focus," *Pakistan Journal of Criminal Justice* (2023).

Finally, regarding the Israeli occupation of Palestine, Israel invokes Article 51 of the United Nations Charter, claiming the right to lawful self-defense in justifying its attacks against Palestinians, most recently during the Gaza war. This raises a critical legal question concerning the status of occupation under international law: do the attacks carried out by Palestinians against Israelis constitute a real and imminent threat sufficient to justify a war under the pretext of self-defense? This complex issue will be examined and analyzed in detail in Chapter Two.

3. Legal Analysis of Israeli Occupation Claims to Exercise the Right to Self-Defense

After the theoretical framework we presented in the first chapter, we will in this chapter apply and project international laws and resolutions onto the Palestinian case. This chapter aims to provide a legal analysis of the Israeli occupation's claims to exercise the right to self-defense against the Palestinian people, by placing these claims in their correct legal and political context.

We will begin by explaining the legal status of Palestinian territories as occupied territories under international law, emphasizing the applicability of the Geneva Conventions and fundamental rules of international humanitarian law to them, and the obligations incumbent upon Israel as an occupying power under international law. The chapter also addresses the right of the Palestinian people to resist occupation as a right guaranteed in international law, confirmed by international resolutions and charters on the right of peoples to self-determination, while presenting the restrictions imposed on armed means used in this resistance.

In the second section, we will study the repeated Israeli claims that the use of force against Gaza and the West Bank comes within the framework of the legitimate right to self-defense, through analyzing examples of Israeli practices against the Palestinian people, such as targeting civilians and infrastructure, and responding to the Gaza war as a model of the Israeli claim to its right to legitimate defense. This chapter also includes an assessment of the position of the international community and the United

Nations on these claims, showing the extent to which Israeli actions comply with or contradict the conditions for the legitimate right to self-defense

stipulated in the United Nations Charter and customary rules of international law, and Israel's claim to this right. Therefore, the chapter aims to deconstruct the legal foundations of Israeli practices and discourse, and reveal the legitimacy of these practices in light of international law principles, especially Article (51) of the United Nations Charter.

Through this analysis, the chapter seeks to provide an objective legal assessment of Israel's claims to exercise the right to self-defense, while highlighting the gaps and

challenges these practices pose to international law, particularly concerning the protection of civilians and the right to self-determination of the Palestinian people.

3.1.The Legal and Political Context of the Israeli-Palestinian Conflict

The Israeli-Palestinian conflict is a complex political and legal conflict ; it is an issue of conflict over land and the right to self-determination. The issue revolves around the Israeli occupation of Palestinian territories and depriving the Palestinian people of their right to self-determination. This occupation is considered a long-term occupation, and the issues and crises between the two parties have been significant, the most important being settlement, the refugee issue, the status of Jerusalem, depriving the people of their basic and customary rights, and stealing their resources.

Therefore, the Palestinian cause has evolved through several stages, and the people have engaged in multiple forms of resistance, whether individual or collective, including popular movement, mass uprisings, and political and diplomatic action paths at both regional and international levels.

The first Palestinian Intifada in 1987 is considered a pivotal point in the history of this conflict; it came as a result of several rounds between the two parties where Israeli policies based on land confiscation, expanding

settlement construction, and imposing military and administrative restrictions on the movement of the Palestinian population. These policies adopted by the occupying state collectively constituted a systematic violation of fundamental rules of international humanitarian law and customary law and a clear violation of the Palestinian people's right to self-determination and a clear violation of Article (1) Paragraph (2) of the United Nations Charter.

Based on this existing conflict and dispute, we cannot describe it as a dispute between two parties that can be resolved by international agreements and truces. Israel's control over all the resources of the Palestinian people and construction of settlements and other systematic policies and practices confirm that this situation is one of continuous occupation that must be governed by internationally recognized legal rules, with clear international obligations arising under the Geneva Conventions and international law.

Therefore, understanding the legal and political status of this conflict is essential for analyzing Israeli claims related to exercising the right to self-defense, which we will

analyze more broadly later, and to assess the legitimacy of actions carried out by the occupying state under the cover of the legitimate right to self-defense in light of international rules governing the use of force⁽¹⁾.

Palestinians have suffered greatly from occupation, policies, and injustice, so they engaged in various forms of popular resistance including protests and demonstrations, stone throwing, declaring civil disobedience. All these forms of resistance adopted by Palestinians made this conflict the focus of attention and interest of world nations, and the Palestinian cause went through several pivotal stations⁽²⁾, where new political forces emerged.

With increased international community interest in the Palestinian cause, the United Nations issued resolutions condemning occupation practices and affirming Palestinian rights, where the features of Palestinian-Israeli dialogue began to appear to lay an initial foundation for a later peace process.

The year 1993 is considered a pivotal year in the history of the Palestinian cause, where an agreement was reached between two parties in secret negotiations on the Oslo⁽³⁾ Accords. This agreement is considered an important turning point between the Palestine Liberation Organization and the Israeli government under American sponsorship, where this agreement stipulated the establishment of a Palestinian Authority in the West Bank and Gaza Strip, and the agreement confirmed ending the occupation and beginning negotiations on the most prominent and important issues such as Jerusalem and refugees. However, this agreement failed to achieve lasting peace, and the continued settlement expansion and continuation of Israeli military operations were the main reason for this agreement's failure⁽⁴⁾.

(1) The Arab Democratic Center. *The Palestinian–Israeli Conflict: A Chronological Analysis of the Gaza Wars and the Role of International and Regional Actors in the Conflict*. Berlin: Arab Democratic Center, 2025

(3) The Oslo Accords, signed in 1993 between the Palestine Liberation Organization (PLO) and the Israeli government under Norwegian sponsorship, represent a key milestone in the course of the political settlement of the Arab–Israeli conflict. The agreement provided for the establishment of a transitional Palestinian Authority with limited powers in parts of the West Bank and the Gaza Strip, in return for the PLO's recognition of Israel's right to exist. It also stipulated that negotiations on final-status issues—such as Jerusalem, refugees, borders, and settlements—would be completed at a later stage. Palestine Liberation Organization and Israel. 1993. *Declaration of Principles on Interim Self-Government Arrangements (Oslo Accords)*. Oslo: Norwegian Ministry of Foreign Affairs.

(4) Amin, Abbas Nadhir, and Khaled Abd Nimal. "The Oslo Accords and Their Impact on the Turkish Position on the Palestinian Issue." *Midad Al-Adab*, no. 13, part 2 (2019): 847–862.

The situation and tension between the two parties continued as it was. Israel continued its repressive and settlement policies and depriving the Palestinian people of their rights, and the people rejected these practices and resisted with all they could. These events continued until 2000, when Ariel Sharon's visit to Al-Aqsa Mosque was the beginning of the Second Intifada, known as the Al-Aqsa Intifada. Sharon's visit to the mosque was interpreted as direct provocation to Palestinians and imposing a fait accompli. This stage was a pivotal stage in the history of the cause, characterized by resorting to the use of firearms, which led to large numbers of casualties. This intifada contributed to reshaping the Palestinian scene internally, but on the other hand, it led to escalating tension with Israel and the imposition of more checkpoints and strict security measures. Israel also adopted a policy of imposing facts on the ground on Palestinians through its control of all aspects and resources of the Palestinian people⁽¹⁾.

International interest in the Palestinian cause increased greatly, but the peace process repeatedly faltered as a direct result of continuing Israeli policies and ongoing military escalation and violation of all UN and international resolutions that condemned and demanded Israel stop these policies and withdraw from Palestinian territories. All this kept the roots of conflict alive and hindered any final settlement.

Recognition of international legal personality for any entity is a fundamental condition for enjoying the capacity that enables it to acquire rights and bear international obligations and grants it the right to litigate

before competent international bodies, whether as plaintiff or defendant. This personality is no longer limited to states as "original persons" in international law but has included international organizations whose role has evolved and whose functions have expanded, foremost among them the United Nations, which is considered the official authorized body for maintaining international peace and security and which contains the Security Council, the most important and prominent body for settling international disputes. The International Court of Justice confirmed this development in its 1949 Advisory Opinion on Reparation for Injuries, when it recognized the Organization's independent international legal personality from that of member states, giving it the ability to acquire rights and bear responsibilities, and be subject to the rules of

(1) The Arab Democratic Center. The Palestinian–Israeli Conflict: A Chronological Analysis of the Gaza Wars and the Role of International and Regional Actors in the Conflict. Berlin: Arab Democratic Center, 2025.

international responsibility in case of committing unlawful acts, whether positive actions or omissions from performing prescribed duties⁽¹⁾.

In the Palestinian context, this principle acquires special importance, as grave violations are committed by Israeli occupation forces within an international environment where the inability of the Security Council and the United Nations to exercise their legal responsibilities in maintaining international peace and security is observed. International silence and the inability to compel Israel to implement UN resolutions and its obligations under international law texts is a fundamental legal problem related to the extent of holding international organizations accountable for failing to fulfill their duty to ensure respect for international humanitarian law in the occupied Palestinian territories, especially in not taking necessary measures, which led to enabling the occupation to continue its violations. Therefore, a legitimate question arises about the extent of consistency of this inaction with the legal obligations of international organizations, as an actor possessing international legal personality and bound by virtue of the Charter to prevent aggression and protect peoples under occupation.

This analysis is essential for understanding the framework in which Israel's claims to exercise the right to self-defense are discussed, and the legitimacy of these claims in light of the absence of an effective international role that ensures fair and balanced application of international law rules⁽²⁾.

After the International Law Commission completed its second reading of the draft articles on responsibility of states for internationally wrongful acts, the General Assembly in its resolution No. 56/82 dated December 12, 2001, recommended addressing the subject of responsibility of international organizations. Based on this, the Commission included this topic in its work program during its fifty-fourth session in 2002, and appointed Mr. Giorgio Gaja as special rapporteur. Work continued until 2011 when it adopted the final articles on the responsibility of international organizations after taking into account the observations of states and organizations.

The draft included (66) articles that discussed forms of internationally wrongful acts emanating from international organizations and how to attribute them to them, in

(1) E. Dinda. International Law in the Palestinian–Palestinian Conflict through the Minister of International Cooperation “Reem Al-Hashimy.” Multidisciplinary Linguistic Studies (PhD dissertation, Maulana Malik Ibrahim State Islamic University, 2024).

(2) Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion), International Court of Justice, ICJ Reports 1949, 174.

addition to mechanisms for implementing responsibility and putting it into effect. Article Four acquires special importance in this context, as it stipulated:

"An international organization commits an internationally wrongful act when conduct consisting of an action or omission⁽¹⁾: (a) Is attributable to that organization under international law; and Constitutes a breach of an international obligation of that organization."

Careful analysis of this text shows that an internationally wrongful act may manifest in a positive form when an international organization violates its obligations, or in a negative form when it refrains from doing what international law requires of it. Therefore, the responsibility of the organization is not limited to direct acts but also extends to cases of inaction, such as failure to prevent the occurrence of violation or continuation in allowing it to occur⁽²⁾.

Facts on the ground reveal that Israel has committed and continues to commit grave crimes in the occupied Palestinian territories that constitute a clear violation of international humanitarian law and human rights law. As an occupying power, Israel is bound to apply the 1907 Hague Convention and the Fourth Geneva Convention of 1949 on the protection of civilians during armed conflicts, as well as the First Additional Protocol of 1977. However, its practices have contradicted these obligations, Among the most prominent of these violations⁽³⁾:

- Since occupying Jerusalem in 1967, Israel has worked to change the character of the city through Judaization, converting some mosques to other uses, and repeated attacks on holy sites including Al-Aqsa Mosque. This reached its peak in 1969 when fire was set to the mosque in an attack that caused severe human and material losses, which constitutes a violation of Article (46)⁽⁴⁾ of the 1907 Hague Convention.

(1) Draft articles on the responsibility of international organizations 2011

(2) United Nations International Law Commission, Draft Articles on the Responsibility of International Organizations, art. 4 (New York: United Nations, 2011).

(3) 11 Nawal Zayani. "The Security Council and the Palestinian Issue: From Marginalization to International Accountability." *Journal of Legal and Economic Research* 3, no. 1 (2020): 124–139.

(4) Article 46 of the 1907 Hague Convention stipulates that family honor and rights, the lives of individuals, and private property must be respected, and that private property may not be confiscated. This constitutes a breach of the obligations of an occupying power toward civilians in occupied territories.

- Violation of the principle of proportionality in military attacks as manifested in the 2008 Gaza war, where damage inflicted by Israeli

bombing on Palestinian civilians far exceeded the scale of losses resulting from resistance rockets, despite Israel's claim of self-defense.

- Use of internationally prohibited weapons such as white phosphorus and DIME⁽¹⁾, which was confirmed by field investigations by Human Rights Watch after the 2008 Gaza assault, where the use of these weapons left horrific injuries among civilians including women, children, and elderly.

From the above, we can understand that the Palestinian political and legal situation is a complex situation legally established that Israel is still to this day an occupying state exercising force against Palestinians, depriving them of the right to determine their fate, violating international law and not fulfilling its duty as an occupying state. Here we will study the legal status of Palestinian territories and the right to resistance and Israel's invocation of Article (51) in its response to Palestinian attacks in resisting occupation according to international law rules and recognitions.

3.1.1. The Legal Status of Occupied Palestinian Territories

The legal status of Palestinian territories is among the most complex situations in contemporary international law, as a result of the Israeli occupation that extended its control over them and the multiplicity of legal systems that have been applied to them, which has produced an inheterogeneous legal and political structure between the West

Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907, Article 46

(1) Weapons such as white phosphorus and DIME (Dense Inert Metal Explosive) are considered controversial from both legal and humanitarian perspectives. White phosphorus is an incendiary substance sometimes used for smoke screening or illumination purposes; however, its use in densely populated civilian areas leads to severe burns ...and the destruction of civilian property. Its use has been linked to violations of the rules of international humanitarian law, as it is considered an incendiary weapon that can cause civilian deaths or serious injuries. As for DIME weapons, they are explosives containing dense metal particles that generate intense damage within a limited radius, with severe anatomical effects and serious humanitarian consequences (such as amputations and grave internal injuries). This has raised questions about the compatibility of their use with the principles of distinction and proportionality. Overall, there is no comprehensive international list that classifies white phosphorus or DIME weapons as “fully prohibited” in all circumstances. However, the use of any of these means against civilians, or in a manner that causes unjustified harm, constitutes a violation of international humanitarian law and calls for international accountability.

Bank, Gaza Strip, Jerusalem, and areas that have been under occupation since 1948. Despite repeated attempts to establish an independent Palestinian entity since the British Mandate in 1922, regional and international considerations prevented achieving this goal, in continued violation of the Palestinian people's right to self-determination, which is a right established as a peremptory norm in international law⁽¹⁾.

Since 1922, Palestine has witnessed at least four legal experiences to establish an independent Palestinian entity⁽²⁾, but political regional and international circumstances prevented the success of any of them. This setback was fundamentally linked to the principle of self-determination, which has become a peremptory rule in international law. However, the existing international political system often uses this principle to serve its interests or seeks to disable it if it conflicts with its strategic balances.⁽³⁾

Determining the legal status of occupied Palestinian territories is a fundamental issue for understanding the obligations of controlling parties, as the International Court of Justice's decision in 2004 explicitly stated that Palestinian territories including East Jerusalem are territories under occupation according to international law. The Court confirmed that Israel, as an occupying state, is bound to apply the obligations of the Fourth Geneva Convention of 1949⁽⁴⁾.

Article Four of the Fourth Geneva Convention explicitly applies to civilians located under the authority of a hostile army in occupied territory, and what obligations this entails for the occupying power, including (protecting the civilian population, respecting their property, ensuring continuation of basic services, and not affecting the institutional

(1)Ahmed Shehab. "The Legal Status of the Occupied Palestinian Territories: The Legal Status of the Occupied Palestinian Land." *Al-Irshad: Journal of Islamic and Contemporary Issues* 3, no. 1 (2018): 35–49.

(2) 6 The All-Palestine Government was proclaimed in Gaza in October 1948 under the leadership of Ahmad Hilmi Abd al-Baqi, by decision of the Arab Higher Committee, in the post-Nakba context. It received limited recognition from some Arab states but did not exercise effective authority on the ground. See:

United Nations General Assembly, Resolution 3236 (XXIX), "Question of Palestine," November 22, 1974. The Palestinian National Council, at its session held in Algiers on November 15, 1988, proclaimed the establishment of the State of Palestine, based on United Nations General Assembly Resolution 181 of 1947. This declaration was recognized by more than one hundred states. See: United Nations General Assembly, Resolution 181 (II), "Future Government of Palestine," November 29, 1947.

(3) Shafik Al-Masri. "The Status of the Palestinian State in International Law." *Al-Difa' Al-Watani* (National Defense Journal), no. 83 (2013).

(4) "The Court concludes that the territories occupied by Israel since 1967, including East Jerusalem, are occupied territories within the meaning of international law." *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*

structure of society under occupation)⁽¹⁾. This confirms the rights of Palestinians as a people under occupation according to international resolutions. However, Israel has persistently attempted to evade these obligations by claiming non-applicability of the Convention to Palestinian territories, in an attempt to give false legitimacy to its policies and open the way for widespread violations under the pretexts of (military necessities) or (self-defense)⁽²⁾.

The importance of determining the legal status of Palestinian territories and the extent of applicability of the Fourth Geneva Convention to them is that the Convention explicitly provides for protection of civilian persons located under the authority of a hostile army in occupied land. This is confirmed by Article Four, and the result of this legal status and international recognition that Palestinian territories are territories under Israeli occupation imposes clear obligations on the occupying power related to international humanitarian law and international human rights law in addition to rules governing military operations.

However, the Israeli occupation continuously sought to evade these obligations, claiming non-applicability of the Convention to occupied Palestinian territories, because Palestine before 1967 was under British Mandate and there was no recognized state called Palestine, and the Gaza Strip at that time was under Egyptian administration. This claim is to evade legal responsibility and grant its forces wide freedom to commit violations under the pretexts of "military necessities" or "self-defense."

Protection of civilians in international humanitarian law has been a central topic, especially with the Fourth Geneva Convention, which for the first time devoted a written framework for protecting civilians in times of war, granting it a special place among humanitarian law treaties⁽³⁾. This protection comes in view of the great dangers that civilians may be exposed to under military occupation, especially when viewed as a security threat to the occupying power through resistance activities aimed at expelling the occupier ⁽⁴⁾.

(1) Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Art. 4. International Committee of the Red Cross

(2) Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Art. 4. International Committee of the Red Cross

(3) Abdul Rahman Abu Al-Nasr. The Fourth Geneva Convention for the Protection of Civilians, 1949, and Its Implementation in the Occupied Palestinian Territories. Palestine, 2000.

(4) Tahar Yakir. Civilians in International Armed Conflicts under the Rules of International Humanitarian Law (Master's thesis, Faculty of Law, Saad Dahlab University, Algeria, 2006), 82.

Although occupation authorities tend to impose their orders on the population under the pretext of the duty of obedience, this obligation does not rest on an absolute legal basis but is a reality imposed by the existence of occupation itself. International law texts, especially the Geneva Conventions, limit this duty and set limits for occupation authorities so that it cannot be employed as a tool to subjugate the population or undermine their fundamental rights. The rules governing occupation derive their legitimacy from international customs, treaties and agreements, as well as general rules of international humanitarian law and human rights law⁽¹⁾.

Regardless of the legitimacy of occupation or not, international law imposes fundamental obligations on the occupying state toward civilians and territories under its control⁽²⁾, including ensuring humane treatment, respecting property, providing public services, and enabling national institutions to continue performing their functions⁽³⁾. Therefore, any Israeli attempt to evade these obligations constitutes a direct violation of international humanitarian law and is considered a means to legitimize violations against the Palestinian people.

3.1.1.1. Israeli Occupation in International Law

After studying the legal status of Palestinian territories, it is necessary to study the Israeli occupation in international law. From what has been mentioned above, the highest judicial body in the International Court of Justice and modern international jurisprudence explicitly stated that the West Bank including East Jerusalem and the Gaza Strip are considered "occupied territories" since 1967, and that Israel is considered an occupying power subject to rules of international humanitarian law, especially the Fourth Geneva Convention of 1949. This was confirmed and endorsed by the Security Council in its resolutions (242) 1967, (338) 1973, and (478) 1980, which state the illegitimacy of annexing territories by force and the necessity of Israel's withdrawal from occupied

(1) Moataz Faisal Al-Abbasi. The Obligations of the Occupying Power toward the Occupied Territories (PhD dissertation, Faculty of Law, University of Baghdad, Iraq, 2008), 27.

(2) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 75 U.N.T.S. 287, arts. 27, 53, 55, 56.

(3) Musleh Hasan Abdul Aziz. Principles of International Humanitarian Law. Jordan: Dar Al-Hamed for Publishing and Distribution, 2013, 47.

territories, including East Jerusalem, as an integral part of occupied Palestinian territory⁽¹⁾.

This was confirmed by the International Court of Justice in its Advisory Opinion issued on July 9, 2004, regarding construction of the wall in occupied Palestinian territories, that it constitutes a violation of the principle of inadmissibility of acquiring territory by force and the Palestinian people's right to self-determination, and that Israeli occupation is temporary by nature and that any change in the character of territories or their annexation is considered illegal, which proves that the West Bank and Gaza are subject to the status of military occupation⁽²⁾.

In its latest Advisory Opinion issued on July 19, 2024, regarding legal consequences arising from Israel's policies in occupied Palestinian territories including East Jerusalem, the Court concluded that the continuation of Israeli presence in those territories is "unlawful" because it constitutes a violation of the principle of inadmissibility of acquiring territory by force and the Palestinian people's right to self-determination⁽³⁾.

The Israeli occupation of Palestinian territories since 1967 constitutes a clear violation of international law rules, where Security Council resolutions, foremost among them Resolution 242⁽⁴⁾, confirmed the principle of inadmissibility of seizing territories by force and demanded Israel's immediate withdrawal from territories it occupied. However, Israel continued its policy of procrastination and invoking false interpretations of international texts to consolidate its control, especially in East Jerusalem, in clear violation of United Nations principles and international humanitarian law.

Resolution 476⁽⁵⁾ of 1980 also emphasized that Israel is an occupying state and that all territories it controlled after the June 1967 war are occupied territories and therefore

(1) United Nations Security Council, Resolutions 242 (1967), 338 (1973), and 478 (1980).

(2) Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, International Court of Justice, I.C.J. Reports 2004, 136.

(3) Mohammed Raafat Mahmoud. Jerusalem: History and Future, 478.

(4) United Nations Security Council, Resolution 242 (1967), Adopted at the 1382nd meeting on 22 November 1967, United Nations, <https://digitallibrary.un.org/record/111489>

(5) United Nations Security Council, Resolution 476 (1980) on the Situation in the Arab Territories Occupied since 1967, including Jerusalem, adopted June 30, 1980, United Nations. United Nations Security Council. (1980). esolution 476 (1980), on the situation in the Arab territories occupied since 1967, including Jerusalem. Adopted on June 30, 1980.

the provisions related to military occupation contained in international law apply to them⁽¹⁾.

It must be noted that Israel is not only an occupying state controlling another state's land and exploiting and controlling its resources and capabilities. This is what distinguishes the nature of the Palestinian-Israeli conflict as an existential conflict. Palestinians are clinging to their land despite all Israeli policies and actions, while occupation authorities exercise actions and deeds that contradict and violate all international and humanitarian laws, claiming that these actions are individual actions and not resulting from a state. However, after World War II, a trend emerged in international law emphasizing the principle of individual criminal responsibility for grave violations, embodied in the Rome Statute of the International Criminal Court⁽²⁾, which assigned its jurisdiction to consider four basic crimes: aggression, genocide, crimes against humanity, and war crimes.

Article (25) of the Rome Statute of the International Criminal Court of 1998 stated that "these crimes create personal criminal responsibility for everyone who contributes to committing them, whether as a principal perpetrator or as an accomplice or instigator"⁽³⁾. However, this principle does not exempt the state itself from international responsibility, as it remains bound to respect and apply international law rules, especially since grave crimes are often committed under the sponsorship or direct support of the state. Hence, Israeli occupation is not only understood as an unlawful practice attributable to individuals but as a state act attributable to a state responsible before the entire international community⁽⁴⁾.

Therefore, Israeli occupation of Palestine is considered illegitimate, as the foundations of illegitimacy are manifold, where it represents a form of domination and foreign subjugation. It can be considered a manifestation of colonialism. Despite the absence of precise criteria defining the concept of domination and foreign subjugation,

(1) Mohammed Adel Al-Qadi. Jerusalem in International Resolutions (2019).

(2) Rome Statute of the International Criminal Court,.

(3) Rome Statute of the International Criminal Court, Article 25 (Individual Criminal Responsibility). United Nations, 1998.

(4) Al-Hashimi Kamrsho and Farid Al-Awash. "Limits of Self-Defense under the United Nations Charter and the Statute of the International Criminal Court." Journal of Legal and Political Sciences 11, no. 2 (2020): 548–565.

elements such as systematic exploitation, dispossession, fragmentation, inhuman acts, and discrimination all confirm the illegitimate character of occupation.

World Bank, International Labor Organization, and Human Rights Council reports have documented systematic exploitation of Palestinian natural resources, leading to massive economic losses, as well as excessive exploitation of Palestinian workers ⁽¹⁾.

UN recognition in its early resolutions of the colonial nature of occupation is a confirmation of the occupation's character, which the UN Special Rapporteur for occupied Palestinian territories reaffirmed, pointing out that colonialism is illegal under international law. The International Court of Justice clarified in its Advisory Opinion issued in 2019 in the Chagos Archipelago⁽²⁾ case the illegitimacy of territorial control resulting from violation of the right to self-determination, which contributes to supporting the legal position regarding the continuation of Israeli occupation of Palestinian territories and accompanying military and security measures and invoking self-defense as occupation policies that constitute an obstacle to Palestinians' right to self-determination and are considered a grave breach of peremptory norms in international law⁽³⁾.

Despite all these UN resolutions and legal texts confirming that Palestinian territories are occupied territories and the Palestinian people do not enjoy the right to self-determination, and Israel is a state that does not comply

with international law and invokes Article 51 of the United Nations Charter in its legitimate right to self-defense, here we will study the extent of Israel's commitment to the legal framework for its right to legitimate defense.

3.1.2. The Extent of Israel's Commitment to the Legal Framework for Legitimate Defense

In light of the ongoing conflict between Israel and Palestine, the importance of studying commitment to international laws related to legitimate defense emerges. The Geneva Conventions and the international legal framework are considered fundamental

(1) Shahd Al-Hamouri. A Legal Study of the Palestinian People: The Right to Resist by All Available Means within the Principles of the United Nations Charter (University thesis, University of Kent, 2024).

(2) International Court of Justice. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 25 February 2019, I.C.J. Reports 2019.

(3) Shahd Al-Hamouri. A Legal Study of the Palestinian People: The Right to Resist by All Available Means within the Principles of the United Nations Charter (University thesis, University of Kent, 2024).

tools for determining the rights and duties of conflicting parties, including what relates to occupation and settlement. We will analyze the extent of Israel's commitment to legal frameworks specific to legitimate defense, and how this affects the current situation in occupied Palestinian territories, through reviewing relevant legal texts and international provisions. Complex issues surrounding the concept of legitimate defense in the context of the Israeli-Palestinian conflict will be addressed.

Palestinian territories, as territories under Israeli occupation, are subject to provisions and rules of international humanitarian law, including the four Geneva Conventions of 1949 and their two Additional Protocols of 1977.

First, it is necessary to review the legal articles stipulating occupation obligations that Israel violates and contravenes. Article (49) of the Fourth Geneva Convention states "prohibition of transferring civilian population belonging to the occupying power to occupied territories"⁽¹⁾. This article is an explicit text confirming that Israeli settlement is a clear breach of international law. The UN Security Council also confirmed in its Resolution 2334 (2016) that Israeli settlements are "illegal and constitute a flagrant

violation of international law"⁽²⁾. Here is confirmation that the article applies to the Palestinian case. The danger of this violation is not limited to its illegitimate nature in itself, but extends to the legal effects it entails, foremost among them the inadmissibility of enabling the occupying state to invoke legal rights or justifications arising from a situation originally created in violation of international law.

Here we must question the legitimacy of Israel's reliance on the right to self-defense and invoking Article (51) of the United Nations Charter, especially since Israel in many of its practices and policies calls it "anticipatory self-defense" to justify the use of force or taking military measures aimed at protecting settlements or securing their existence, as installations established in the context of illegitimate occupation.

While the inherent right to legitimate defense is among the recognized principles in international law, its exercise remains restricted by a set of strict substantive and temporal conditions. Article (51) of the 1945 United Nations Charter explicitly stated recognition of this right in case of an "armed attack," confirming that it cannot be undermined or

(1) Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Art. 49. International Committee of the Red Cross

(2) United Nations Security Council. Resolution 2334 (2016) on Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem. Adopted December 23, 2016. United Nations.

diminished through Charter provisions, which constituted the first clear recognition of this right within a multilateral international agreement framework. However, this recognition does not grant states absolute freedom in using force, nor does it establish a legal basis for expanding the scope of legitimate defense to include protecting or perpetuating illegitimate situations, including occupation and settlement, which requires assessing claims of self-defense, especially anticipatory defense, in light of the occupying state's obligations and respect for international humanitarian law rules and the right of peoples under occupation to self-determination⁽¹⁾.

A similar problem was raised during negotiations for the 1928 "Paris Treaty" on the prohibition of war as an instrument of national policy, where states considered that it was not necessary to explicitly state an exception for legitimate defense from the general prohibition on resorting to war. US Secretary of State Frank Kellogg and the British government emphasized that the right to legitimate defense is "inherent" in every state and "implicit" in all treaties. Some US Senators went so far as to say that no state would accept signing a treaty understood to detract from its right to defend itself when subjected to aggression⁽²⁾.

As for anticipatory defense, it was completely absent from discussions accompanying these treaties, as this concept did not appear in international law until relatively late periods. Some jurists and states use the term "anticipatory defense" to denote a wide spectrum of actions portrayed as defensive acts, starting from responding to an imminent and unlawful threat of force use, to using force against a party that may possess in the future means that constitute a potential threat⁽³⁾.

Although the principle of legitimate defense was enshrined in Article 51 of the United Nations Charter within the framework of general international law, its practical application in international relations remains problematic, especially with different power balances and varying assessment of threat and legitimacy of response. However, what must be emphasized is that claiming legitimate defense does not exempt conflicting parties from complying with international humanitarian law provisions enshrined in the

(1) Charter of the United Nations, opened for signature June 26, 1945, 59 Stat. 1031 (entered into force October 24, 1945).

(2) General Treaty for Renunciation of War as an Instrument of National Policy, opened for signature August 28, 1928, 94 LNTS 57 (entered into force July 24, 1929).

(3) Matthew Waxman, "The Use of Force against States That Might Have Weapons of Mass Destruction," *Michigan Journal of International Law* 1 (2009): 1–77.

1949 Geneva Conventions and their Additional Protocols, which apply upon the outbreak of armed conflict regardless of the legitimacy of resorting to force.

International law and the United Nations Charter have established two most important principles that must be adhered to in case of launching an attack: the principle of distinction and proportionality that we mentioned previously. It is necessary to distinguish between combatants and civilians, civilian and military sites, and proportionality in using force is the essence of these conventions. They prohibit targeting civilians and protected facilities such as hospitals and places of worship, and also prohibit using weapons with excessive or internationally prohibited effects. In this framework, military operations conducted by Israel against Palestinians, especially the latest aggression on Gaza which Israel justified as its legal right to legitimate defense after the events of October 7, 2023 did not observe in its field conduct the rules of international humanitarian law we will provide a detailed explanation of this case. Any violation of these rules, such as targeting civilians or destroying humanitarian infrastructure, is considered a war crime under the Rome Statute of the International Criminal Court (1998). Therefore, distinguishing between legitimacy of resorting to force (*Jus ad Bellum*) and legitimacy of conduct during conflicts (*Jus in Bello*) remains fundamental to understanding the limits of applying Geneva Conventions, which stipulate the duty to protect civilians even in cases of alleged legitimate defense⁽¹⁾.

Legitimate defense that Israel invokes is a special case distinguishing it from other concepts such as state of necessity or retaliatory actions. "State of necessity" is defined as one in which a state faces a grave and imminent or impending danger threatening its survival or independence without being responsible for its emergence, such that it has no other means to repel it except by committing an act that harms interests of another state protected by international law⁽²⁾.

State of necessity intersects with legitimate defense in that both deal with external danger for which the state was not responsible. However, the difference remains in that legitimate defense is exercised against armed aggression (an unlawful act), while necessity may justify affecting a legitimate interest of another state without prior aggression. Therefore, legitimate defense reflects direct confrontation with aggression,

(1) Musab Khlawati. "Legitimate Defense in International Law: Between Possibility and Impossibility." *Journal of Law and Human Sciences* 17, no. 1 (2024): 155–177.

(2) Nisreen Sharifi. "Legitimate Defense between International Criminal Law and National Law" (2022).

while state of necessity involves a conflict between legitimate interests where one is sacrificed to protect the other⁽¹⁾.

All of the above confirms that Israel is an occupying state with no right to justify its military operations and aggression under the right to legitimate self-defense, as it cannot in any way adhere to an article of law and apply it or justify its actions with it while completely violating all rules of law, especially international humanitarian law.

In addition, several resolutions have been issued by the UN General Assembly, most notably Resolution 2253 of 1967⁽²⁾, which considered Israeli measures in Jerusalem null and void and called for their cancellation. It was followed by subsequent resolutions such as Resolution 2254 and Resolution 2851, which repeated condemnation of Israeli measures and confirmed their nullity. These resolutions are based on rules of international humanitarian law, especially the Geneva Conventions, which prohibit the occupying state from changing the legal or demographic status of territories it occupies, making Israeli policies in East Jerusalem clearly contrary to these conventions⁽³⁾.

UN General Assembly resolutions since 1967 confirm the applicability of the Fourth Geneva Convention on the protection of civilians in time of war to all Arab territories occupied by Israel including Jerusalem. Resolution 2253 was issued to confirm that Israeli measures in Jerusalem are null.

Subsequent resolutions such as Resolution 90/34 of 1977 and Resolution 113/33 were issued, demanding Israel recognize the Geneva Convention and comply with its provisions. Nevertheless, Israel continued to refuse this application on the grounds that its presence in Palestinian territories is a result of "self-defense," and that the Geneva Convention was not applicable before occupation pretexts that contradict international law rules prohibiting seizure of territories by force⁽⁴⁾.

(1) Ali Mohammed Jafar. *Modern Trends in International Criminal Law*. 1st ed. Lebanon: University Foundation for Studies, Publishing, and Distribution, 2007.

(2) United Nations General Assembly Resolution 2253 (1967) was issued following the June 1967 War and condemned Israeli measures to alter the legal status of East Jerusalem. It called for the annulment of these measures and urged restraint from any actions that could change the status of the city. This resolution is considered one of the early decisions affirming the illegality of Israeli actions in Jerusalem and underscoring the international community's commitment to protecting the city's legal status. United Nations General Assembly. Resolution 2253 (ES-V) concerning the situation in Jerusalem. July 4, 1967.

(151) Fathi Al-Wahidi. "Israeli Measures in Jerusalem in Light of United Nations Resolutions," in *International Conference on Jerusalem*, 366.

(4) Abdullah Al-Ash'al. *The Impact of the Palestinian State Declaration on the Legal Status of the Occupied Palestinian Territories*, 46.

The United Nations confirmed through a series of resolutions, including Resolution 478 of 1980, the continued applicability of the Fourth Geneva Convention to occupied Palestinian territories including Jerusalem, which means Israel's obligation not to change the legal or demographic status of occupied territories.

Resolution 672 of 1990 also re-emphasized the necessity of protecting civilians in occupied territories according to the Fourth Geneva Convention, confirming that any military operations must observe the balance between war necessities and basic humanitarian considerations⁽¹⁾.

All of the above legal articles and resolutions issued by the Security Council and General Assembly are a legal description of the Palestinian-Israeli situation, including resolutions that confirmed and recognized the occupation of Palestine and resolutions that condemned and demanded Israel's withdrawal and cessation of its actions and practices, and confirming that Israel is an occupying state that cannot consider itself a

state adhering to international law and justify its actions under Article 51 of the United Nations Charter. Its status as an occupying power makes this claim illegal in international law, as occupation is an illegitimate practice and Israel violates the rules of the Fourth Geneva Convention and does not work on its obligations as an occupying state. Its illegitimate presence cannot be justified by adhering to a legitimate article in international law.

Here it is necessary to address the legal status of Palestinian resistance in international law.

3.1.3. Palestinians' Right to Resist Occupation

The right of peoples to resist occupation is based on the principle of self-determination stipulated in the United Nations Charter (Article 2/1) and in the Declaration on Friendly Relations between States of 1970. The UN General Assembly confirmed in its Resolution 2625 that "the struggle of peoples for independence, national unity and

(1) Mohammed Adel Al-Qadi. Jerusalem in International Resolutions (2019).

liberation from occupation and foreign domination is a legitimate struggle"⁽¹⁾. Based on this, international law has recognized and acknowledged the right of peoples to self-determination, and this applies to the Palestinian people. Resistance is a legal right to resist occupation as long as this occupation prevents it from exercising its right to self-determination and national independence⁽²⁾.

International law confirms, according to the United Nations Charter, that resistance is considered a legitimate right for peoples under occupation, as resistance is closely linked to the right to self-determination as a fundamental pillar of international law and international justice. However, some political and media discourses work to portray resistance in all its forms, whether peaceful or armed, as terrorist acts that threaten

international peace and security. This discourse seeks to politicize humanitarian issues and turn the oppression of occupied peoples from a legitimate right into a terrorist act condemned and rejected by states. This is a shift in the moral and legal position of occupied peoples and makes their legitimate struggle appear as if it violates the law⁽³⁾.

Historical experiences confirmed that colonial powers during colonialism periods sought to eliminate liberation movements using tools of military repression and media distortion, which constituted a flagrant violation of peoples' right to liberation and self-determination. The Palestinian case appears as a clear example of this. Palestinian resistance against Israeli occupation is based on international law rules, but it is often presented in some international forums as terrorist acts, reflecting a policy of marginalizing an inherent and legitimate right of Palestinians⁽⁴⁾.

This is what the Palestinian cause is experiencing at the present time. Through its political and media discourses, Israel seeks to describe all forms of Palestinian resistance, whether peaceful or armed, as terrorist acts. This political discourse seeks to change

(1) United Nations General Assembly. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. Resolution 2625 (XXV), October 24, 1970.

(2) Dr. Azmi Bishara. "Negotiations Are Not the Only Palestinian Option" (2010).

(3) Balthazar Ayala, *De Jure et Officiis Bellicis et Disciplina Militari Libri III* (1582); Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (1625); Alberico Gentili, *Hispanicae Advocatiois Libri Duo* (1661); Francesco de Vitoria, *De Indis et de Ivre Belli Relectiones* (1696); Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688); Emer de Vattel, *The Law of Nations or the Principles of Natural Law* (1758); Christian Wolff, *Jus Gentium Methodo Scientifica Pertractatum* (1764).

(4) Balthazar Ayala, *De Jure et Officiis Bellicis et Disciplina Militari Libri III* (1582); Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (1625); Alberico Gentili, *Hispanicae Advocatiois Libri Duo* (1661); Francesco de Vitoria, *De Indis et de Ivre Belli Relectiones* (1696); Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688); Emer de Vattel, *The Law of Nations or the Principles of Natural Law* (1758); Christian Wolff, *Jus Gentium Methodo Scientifica Pertractatum* (1764).

Palestinians' position from an occupied people to a terrorist people and prevents recognition of their legitimate right to resist occupation. However, there is a set of legal articles.

What we analyzed previously confirms that Palestinian resistance clearly and explicitly is based on the right to self-determination. Resistance does not align with terrorism standards, as Article 1 Paragraph 2 of the United Nations Charter stated peoples' right to self-determination, and this is an explicit text that resistance against occupation is considered a legitimate practice. The General Assembly also confirmed in Resolution 2625 that "the struggle of peoples for independence, national unity and liberation from occupation and foreign control is a legitimate struggle." This resolution confirms that resistance against occupation is not a terrorist act but a legitimate right.

The International Court of Justice also confirmed in the Namibia case (1971)⁽¹⁾ that colonial control constitutes a violation of peoples' right to self-determination, which enhances the legitimacy of struggle against occupation. The Court confirmed, as we mentioned previously, in its Advisory Opinion in the Separation Wall case of 2004 that building the wall in Palestinian territories is a breach of international law and illegal. These articles and judicial precedents confirm Palestinians' right to resistance, and this was confirmed by the Geneva Conventions and the International Covenant on Civil and Political Rights on peoples' right to self-determination.

This is all evidence that Israeli claims and characterizing resistance as terrorist acts is a false claim, legally incorrect. Everything we mentioned above confirms and states that resistance against occupation is a legitimate and inherent right in international law, and the international community is required to recognize this right and work to support occupied peoples in their struggle for freedom and self-determination.

Many international organizations and institutions work to support liberation and resistance movements and confirm international human rights organizations such as SHIELD International⁽²⁾ the danger of attempts to distort the concept of resistance and

(1) The Namibia case (1971) is considered one of the most significant judicial precedents established by the International Court of Justice in the field of the right of peoples to self-determination. In its advisory opinion, the Court affirmed that South Africa's continued control over the territory of Namibia constituted a serious violation of international law and of the principle of self-determination, and that the existing colonial presence lacked any legitimate legal basis. The Court concluded that peoples subject to colonial domination possess a legal right to bring an end to this unlawful situation.

(2) The International Congress for Protecting the Rights and Freedom of Citizens (SHIELD) is a global humanitarian organization concerned with defending human rights, protecting public freedoms, and

emphasize the need to spread human rights awareness and correct misconceptions. Promoting a culture of peaceful resistance and documenting violations is considered one of the fundamental strategies in confronting these challenges. This aligns with Nelson Mandela's famous statement: "There can be no freedom without resistance," which highlights the deep humanitarian dimension of this right.

Therefore, the international community is called upon to take practical steps to support the legitimacy of resistance to occupation by enabling human rights organizations and strengthening international law mechanisms that protect peoples' rights, which consolidates a solid base confirming the legitimacy of their struggle. The right to resistance is not only a political right but an inherent human right linked to the essence of justice, embodying peoples' struggle for freedom as a struggle for universal human values.

Here we can say that the Palestinian people's right to resist occupation is based on the foundation established by early international law jurists when addressing the issue of sovereignty and legitimate defense. Grotius, Vitoria, Pufendorf, and Vattel considered that sovereignty necessarily includes the right of the political community or people to defend itself against any external aggression, and that this right is a natural extension of the individual right to self-defense⁽¹⁾.

Therefore, Palestinian resistance to Israeli occupation falls within the framework of legitimate defensive war confirmed by natural law and the law of nations since the sixteenth century, making it a legitimate exercise of customary international law before being explicitly enshrined in the United Nations Charter (Article 51)⁽²⁾.

Early jurists also clearly distinguished between offensive war and defensive war, considering defense of land and rights within the framework of "just war" and considered

promoting the values of justice and international peace. Through its offices and delegations in a number of countries, including Palestine, the organization works to monitor violations committed against civilians and issues statements and reports condemning violations of international humanitarian law, particularly those related to the Israeli occupation and its practices against the Palestinian people. In its statements, the organization affirms that the actions carried out by the occupying authorities constitute a clear violation of international law and the United Nations Charter, and it calls on the international community to provide protection for the Palestinian people and to open safe humanitarian corridors

(1) Balthazar Ayala, *De Jure et Officiis Bellicis et Disciplina Militari Libri III* (1582); Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (1625); Alberico Gentili, *Hispanicae Advocatiois Libri Duo* (1661); Francesco de Vitoria, *De Indis et de Ivre Belli Relectiones* (1696); Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo* (1688); Emer de Vattel, *The Law of Nations or the Principles of Natural Law* (1758); Christian Wolff, *Jus Gentium Methodo Scientifica Pertractatum* (1764).

(2) Michael W. Doyle, *Striking First: Preemption and Prevention in International Conflict* (Princeton: Princeton University Press, 2008), 11–15.

legitimate for both individuals and states alike ⁽¹⁾. From this perspective, Palestinian resistance against illegitimate occupying power is a legitimate act, as it is a defensive war aimed at repelling continuing aggression and restoring usurped rights, not launching offensive war.

The 1949 Geneva Conventions and the First Additional Protocol of 1977 reinforced this principle, where Article (4/1) of the Protocol stated that peoples' struggle against colonial domination and foreign occupation is considered an international armed conflict, which gives international legal legitimacy to Palestinian resistance provided it complies with international humanitarian law rules 4.

Resistance to occupation is an application of the concept of defensive war. We can say that resistance against the enemy is a legitimate and internationally guaranteed defense aimed at restoring usurped rights, contrary to what colonial states claim that resistance is offensive war.

A guaranteed characteristic cannot be distorted internationally, and this was confirmed by the 1949 Geneva Conventions and the First Additional Protocol of 1977, where Article 1 Paragraph 4 of the Protocol stated that "peoples' struggle against colonial domination and foreign occupation is considered an international armed conflict"⁽²⁾, which gives legal legitimacy to Palestinian resistance provided that the resistance complies with international humanitarian law rules.

Therefore, Palestinians' right to resist occupation is not merely a moral position or one-sided political bias. Resistance is an inherent right in international law rules, based on a combination of jurisprudential opinions and internationally stipulated conventions.

UN recognition that Palestinian territories, including East Jerusalem, are occupied territories subject to international law is recognition of the Palestinian people's right to resist occupation in all its forms. UN General Assembly resolutions have stated the legitimacy of peoples' struggle under colonialism or foreign occupation for self-determination⁽³⁾.

(1) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 1(4).

(2) International Committee of the Red Cross. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). June 8, 1977.

(3) Shadi Adnan Al-Shdiefat. Legal Considerations on the Status of Jerusalem in International Law: The Chaos of the Past and Present, 48

Resolution 242 issued by the Security Council is recognition of the Palestinian people's right to self-determination, and confirmed that the continuation of Israeli occupation is a barrier to achieving this right. This resolution is a confirmation of the Palestinian people's right to resistance against occupation as a legitimate international means to restore their rights⁽¹⁾.

International recognition of peoples' right to self-determination since the mid-twentieth century has been linked to confirming the legitimacy of their struggle against colonialism and foreign domination. The International Court of Justice confirmed in more than one Advisory Opinion regarding international cases including the right to self-determination, but there is no specific mechanism for implementing it, which means that peoples may resort to multiple means to achieve this right and obtain their right to self-determination.

In this context, the Court considered in its Advisory Opinion on Namibia (1971) that apartheid and colonial control practices by South Africa constituted a grave violation of peoples' right to self-determination, which enhanced the legitimacy of struggle against it⁽²⁾.

Here we conclude that resistance practices are considered a legitimate exercise of the right to self-determination, while discussion remains open about the limits of legitimacy of resorting to armed means within this framework⁽³⁾.

This applies especially to the Palestinian case, which has suffered from long-term occupation. International law has not addressed this issue, but there is consensus in judicial precedents, UN resolutions and convention texts on the right to self-determination and resistance to occupation.

However, despite the legitimacy of the right to resistance, there are restrictions and conditions stipulated by international law. What are resistance rights and obligations under international law?

(1) Mohammed Adel Al-Qadi. Jerusalem in International Resolutions (2019).

(2) International Court of Justice (ICJ), Advisory Opinion of 21 June 1971 — Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).

(3) Shahd Al-Hamouri. A Legal Study of the Palestinian People: The Right to Resist by All Available Means within the Principles of the United Nations Charter (University thesis, University of Kent, 2024).

3.1.4. The Right to Resist Occupation Under International Law

Despite the legitimacy of resisting occupation, international humanitarian law imposes restrictions on means and methods of resistance (combat), the most important being the principle of distinction between civilians and combatants and the principle of proportionality in using force. Modern legal studies have clarified that these principles aim to preserve the humanitarian nature of armed conflicts even in the context of liberation wars.

Most jurists believe that the origin of the inherent right to legitimate defense is directly linked to the concept of state sovereignty in international law. However, studies addressing the origin of anticipatory

defense remain very limited; it is often dealt with as an existing "right" in international law without careful examination of its historical or legal roots. Some jurists suggest that this concept is based on customary international

law rules, suggesting it is an independent legal right from the inherent right to legitimate defense⁽¹⁾.

Through the international community's confirmation that occupied Palestinian territories including Jerusalem are subject to rules of military occupation, the continuation of Israeli occupation of these territories becomes an unlawful act, and therefore recognition of the Palestinian people's right to resist occupation is recognized as a legitimate right endorsed by UN resolutions related to peoples' right to self-determination.

This appears in the international community's rejection of Israeli pretexts regarding "self-defense," as the occupation of the West Bank, Gaza and Jerusalem resulted from an aggressive war violating Article (2/4)⁽²⁾ of the United Nations Charter⁽³⁾.

Palestinian people's resistance by all available means against an illegitimate occupying power is considered a legitimate act, as depriving peoples of their right to resistance represents denial of their right to equality and human dignity, which contradicts United Nations Charter principles. The legitimacy of resistance is based on the

(1) Bowett, Derek W. *Self-Defence in International Law*. Manchester: Manchester University Press, 1958.

(2) United Nations, Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Articles 2(4), 51

(3) Abdullah Al-Ash'al. *The Impact of the Palestinian State Declaration on the Legal Status of the Occupied Palestinian Territories,* 46.

illegitimate nature of occupation and the absence of international political will to address it, as well as the unequal situation in which the Palestinian people find themselves ⁽¹⁾.

The rules of belligerent occupation constitute a fundamental part of international humanitarian law. They are comprehensively regulated in the Fourth Hague Convention of 1907 and its annexed Regulations, as well as in the Fourth Geneva Convention of 1949. These rules aim to protect the civilian population and public and private property in occupied territories, while emphasizing that the occupying power does not acquire sovereignty over the occupied territory.

Rather, it exercises a temporary de facto authority limited to administering the territory and ensuring public order, while respecting existing laws unless they impede the fulfillment of its obligations under international law.

International humanitarian law also does not impose loyalty to the occupying power, and therefore allows peoples under occupation to use force to resist it. Thus other states become bound to recognize the legitimacy of Palestinian resistance while Israel is prevented from justifying its repressive practices under the pretext of self-defense against this legitimate resistance ⁽²⁾.

Historical developments in international law confirm that resisting foreign occupation is not an act outside legitimacy, but a recognized right for peoples under domination and colonialism. The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples stated that subjecting peoples to colonialism and foreign domination constitutes denial of fundamental human rights and a clear violation of the United Nations Charter. The 1970 Declaration on Friendly Relations reinforced this trend by confirming the legitimacy of peoples' struggle for liberation and self-determination, including resorting to all available means that do not conflict with Charter provisions ⁽³⁾.

Thus Palestinians' right to resist Israeli occupation becomes an integral part of the international legal framework, as it is considered an extension of the principle of self-

(1) N. Rabee, A. Hammash, & A. Salem, *Palestinian Self-Determination: Land, People, and Practicality*, Working Paper No. 28 (BADIL Resource Center for Palestinian Residency and Refugee Rights, 2021).

(2) Shahd Al-Hamouri. *A Legal Study of the Palestinian People: The Right to Resist by All Available Means within the Principles of the United Nations Charter*. University of Kent (2024).

(3) Shahd Al-Hamouri. *A Legal Study of the Palestinian People: The Right to Resist by All Available Means within the Principles of the United Nations Charter*. University of Kent (2024).

determination and rejection of any form of foreign subjugation, whether manifested in traditional colonialism or forms of racial discrimination and forced separation ⁽¹⁾.

Some jurists start from exceptional logic considering that circumstances arising from depriving peoples of their right to self-determination create a unique situation requiring application of different rules that legitimize within certain limits resorting to force. This perspective is based on the fact that denying a fundamental right of peoples is not limited to producing a state of international illegitimacy but also leads to generating a fertile environment for continuous tension and conflict.

Cassese pointed out that restoring territories by force can acquire legitimacy if peoples have exhausted all possible peaceful means before resorting to armed violence, which aligns with the traditional Roman legal principle "*licet Repeller vi vim*" (it is permissible to repel force with force). The UN General Assembly established this logic in the Declaration on the Granting of Independence to Colonial Peoples, confirming that depriving peoples of freedom or placing obstacles before them constitutes a serious threat to international peace and security.

Therefore, the legitimacy of resistance embodies a legitimate response to illegitimacy itself, making it a legitimate tool capable of mitigating its negative effects in the absence of international political will to protect peoples' legitimate rights. But are there restrictions imposed on armed resistance ⁽²⁾.

3.1.4.1. Restrictions Imposed on Armed Resistance

International law recognized peoples' right to resist foreign occupation to achieve their independence by all legitimate means guaranteed by general international law rules, both peaceful and non-peaceful. This right was confirmed in many international charters and resolutions, most notably Resolution 3070 (XXVIII) issued by the UN General Assembly on November 30, 1973, which confirmed "the inalienable right of all peoples subject to colonial and alien domination and foreign occupation to self-determination, freedom and independence, and to struggle by all available means consistent with the

(1) Shahd Al-Hamouri. A Legal Study of the Palestinian People: The Right to Resist by All Available Means within the Principles of the United Nations Charter. University of Kent (2024).

(2) United Nations General Assembly Resolution 1514 (XV) (1960), adopted on December 14, 1960, UN Doc. Resolution 1514 (Fifteenth Session).

United Nations Charter." The Special Committee on Decolonization and General Assembly resolutions also enshrined this principle as part of peoples' inalienable right to self-determination, which is one of the fundamental principles in contemporary international law⁽¹⁾. The Palestinian people, as an occupied people, have the right to resistance guaranteed in international law.

However, this right is restricted by compliance with international humanitarian law provisions, especially regarding the necessity of distinguishing between civilians and combatants and prohibiting targeting civilian objects. Hence, the legitimacy of Palestinian armed resistance depends on the extent of its respect for these rules. These restrictions stipulated by international humanitarian law on some forms of resistance, especially armed resistance, are to preserve civilians and limit the use of force, as civilians are protected persons on both sides, while emphasizing the illegitimacy of systematic Israeli violations targeting Palestinian civilians and changing the demographic composition of Palestinian territories⁽²⁾.

Resistance is defined as a group of civilians from the occupied people resorting to using weapons to expel the occupier and achieve freedom, whether individually or through organizations that do not rise to the level of regular armies. Despite the simplicity of this definition, the term armed resistance itself raises multiple problems due to its intersection with other similar concepts in international law and politics, as many liberation movements were described as terrorist.

This is what we mentioned previously in describing resistance as terrorism, although resistance is a legally guaranteed right, but this right is subject to conditions we mentioned previously. Perhaps the Palestinian case is a very complex case. The Palestinian resister who resists occupation and settlements built on his land, the law has not addressed this situation faced by Palestinians of long-term occupation. The position of the resister who kills a settler, for example, and here we find ourselves in a state of ambiguity and legal controversy, reflected in the issue of recognizing resistance fighters

(1) United Nations General Assembly, Resolution 3070 (XXVIII) titled "The Inalienable Right of Peoples under Colonial and Foreign Domination to Self-Determination," November 30, 1973.

(2) Mahmoud, Mohammed Raafat. Jerusalem: History and Future, 500.

as prisoners of war enjoying specific legal guarantees or classifying them as criminals lacking any international protection⁽¹⁾.

International humanitarian law addressed restrictions imposed on forms of armed resistance, requiring distinction between combatants and civilians and prohibiting targeting non-participants in hostilities. Resolution 672 (1990)⁽²⁾ reaffirmed these principles, emphasizing the necessity of taking all precautions to spare civilian populations the effects of military operations⁽³⁾.

With international law's recognition of Palestinians' right to resist occupation, whether individual resistance or resistance in organized groups, we question the extent of legitimacy of Israel's adherence to Article 51 of the United Nations Charter in its right to self-defense against Palestinian resistance operations. Does it have the right to this claim to justify its operations in occupied Palestinian territories, especially its latest war on the Gaza Strip?

3.2.Legitimacy of Israel's Use of Force Within the Framework of the Right to Self-Defense

We have explained the political and legal situation of Palestinian territories and analyzed the Palestinian people's right to resistance and restrictions imposed by international law on resistance and its practice, obligations of the occupying state. We analyzed Israel's practices and non-application of any obligations and laws as an occupying state. But why does Israel insist on invoking Article (51) of the United Nations Charter to justify its actions? This is what we will do, as we will analyze the legitimacy of Israel's use of force within the framework of the right to self-defense, by reviewing relevant international laws, UN resolutions, and the impact on the humanitarian situation in occupied territories.

(1) Rashid Hamad and Abdelsalam Hussein Al-Anzi. "Armed Resistance under the Rules of International Law." *Journal of Legal and Economic Research (Mansoura)* 5, no. 58 (2015): 267–312. <https://doi.org/10.21608/mjle.2015.156627>

(2) United Nations Security Council Resolution 672 (1990) was adopted on October 12, 1990, following the unrest at the Al-Haram Al-Sharif in Jerusalem. The Council condemned acts of violence committed by Israeli occupying forces against Palestinian civilians, particularly at the holy site. The resolution reaffirmed the applicability of the Fourth Geneva Convention of 1949 concerning the protection of civilians in times of war to the occupied Palestinian territories, including Jerusalem, and called on Israel to fully comply with international humanitarian law and to allow the International Committee of the Red Cross and other humanitarian organizations access to the victims.

(3) Mohammed Adel Al-Qadi. *Jerusalem in International Resolutions* (2019).

Initially, two main reasons can be distinguished for considering military occupation illegitimate according to the law of war justifications, either from the moment of its emergence or from a later stage.

First: Occupation arising from an aggressive act is an illegitimate act according to international law, as Article (2/4) of the United Nations Charter stated: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Based on this, international criminal responsibility may arise from occupation based on aggression. For example, the International Military Tribunal at Nuremberg considered that Austria's annexation was carried out within a "common plan of aggression⁽¹⁾," and therefore was considered an unlawful act from its beginning.

Second: Occupation loses its legitimacy when exercised through excessive or disproportionate use of force within what is claimed to be self-defense. International Court of Justice case law provides important criteria for determining the principle of proportionality. In the Nicaragua ⁽²⁾ case, the Court concluded that the United States' reaction far exceeded the time period in which a possible armed attack could be expected, which deprived its actions of the justification of self-defense. Similarly, the Court clarified in its Advisory Opinion on Nuclear Weapons⁽³⁾ that any use of force must respect in particular the principles and rules of international humanitarian law. Therefore, any attempt by Israel to evade these obligations constitutes a direct violation of international humanitarian law and is considered a means to legitimize violations against the Palestinian people⁽⁴⁾.

(1) The Nuremberg Tribunal affirmed that the annexation of Austria to Germany in 1938 was carried out within the framework of a "Common Plan of Aggression," and was therefore considered unlawful from the outset, as it constituted a clear violation of the principle prohibiting the use of force in international relations.

(2) The Nicaragua v. United States of America case (1986) was examined by the International Court of Justice regarding U.S. support for the rebels in Nicaragua. The Court concluded that the actions of the United States constituted an unlawful use of force and exceeded the limits of lawful self-defense.

(3) In its advisory opinion issued on July 8, 1996, on the Legality of the Threat or Use of Nuclear Weapons, the International Court of Justice affirmed that the use of force, even within the framework of lawful self-defense, must comply with the principles of international humanitarian law, in particular the principles of distinction between military objectives and civilians and proportionality in the use of force. The Court further emphasized that the threat or use of nuclear weapons would generally be contrary to international humanitarian law due to their widespread and uncontrollable effects on civilians and the environment.

(4) Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), 99; Christine Gray, *International Law and the Use of Force* (Oxford University Press, 2008), 154–155.

In addition to these two reasons, a third reason emerges directly related to the Palestinian situation, which is violating the Palestinian people's right to self-determination as land under occupation. Article (2/1) of the United Nations Charter stated that self-determination is an inherent right for all peoples and is a peremptory norm of international law, creating absolute obligations on all states. This right acquires special importance for territories under mandate, as its exercise is viewed as a "sacred trust" that must be fulfilled. The International Court of Justice established in its Advisory Opinion on Southwest Africa⁽¹⁾ a prominent example of the illegitimacy of occupation in case of violating this principle.

Throughout history, states have sought to justify the use of force by invoking multiple exceptions, some more controversial than others, such as what is known as the "humanitarian intervention principle⁽²⁾." Humanitarian intervention means a state or group of states or even an international organization using force within the territory of another state to protect its population from grave violations of human rights or crimes of genocide. This justification has been used on several occasions, including Tanzania's military intervention in Uganda between 1978-1979⁽³⁾, and NATO bombing operations against Serbia in 1998/1999⁽⁴⁾.

However, this type of intervention remained subject to acute controversy, not only because international law prohibits military interventions in general, but also because it is not stipulated as a legitimate exception in the United Nations Charter ⁽⁴⁾.

(1) In the South West Africa (Namibia) case, the International Court of Justice issued an advisory opinion in 1971 in which it affirmed that the continued South African presence in Namibia, following the termination of the Mandate, was unlawful. The Court further held that all states were obliged to refrain from recognizing the legality of this occupation or cooperating with it, as it was incompatible with the principle of the right of peoples to self-determination.

International Court of Justice (ICJ). (1971). Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, I.C.J. Reports 1971, p. 16.

(2) The principle of humanitarian intervention refers to military action undertaken by a state or a group of states in the territory of another state without its consent, under the pretext of preventing or halting serious human rights violations, such as genocide, ethnic cleansing, or crimes against humanity. This principle is considered one of the most controversial concepts in international law due to its potential conflict with the principles of state sovereignty and non-intervention in the internal affairs of states. Shaw, M. N. (2017). International Law (8th ed.). Cambridge University Press, p. 113

(3) Tanzania intervened militarily in Uganda between 1978 and 1979 after the forces of Ugandan President Idi Amin launched a cross-border attack on Tanzanian territory. Tanzania justified its intervention as an act of self-defense and a response to Ugandan aggression. However, the intervention also led to the overthrow of Idi Amin's regime and sparked broad debate regarding the boundary between lawful self-defense and humanitarian intervention.

(4) International Court of Justice, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Judgment on the Merits), I.C.J. Reports 1984, p. 213, para. 237

Nevertheless, there remain only two exceptions that enjoy wide acceptance from the entire international community: Security Council authorization to use force and the right to legitimate self-defense. The Security Council is considered primarily responsible for maintaining international peace and security, and under Articles 42⁽¹⁾ and 43⁽²⁾ of the United Nations Charter, it has the authority to grant authorization to use armed force when necessary to maintain or restore international security and peace, including cases implemented by regional organizations after obtaining explicit authorization from it 90.

The concept of legitimate defense sometimes overlaps with other cases of force use such as state of necessity or retaliatory actions, which requires removing confusion by clarifying similarities and differences. However, proceeding requires determining the legal basis for the right to legitimate defense as an independent legal system before distinguishing between it and other concepts related to force use in international relations 91.

Here we conclude briefly that Israel is an occupying state under UN resolutions with no right to claim the right to self-defense against Palestinian resistance in all its forms because resistance is considered legally legitimate, whether individual or collective resistance according to international law.

3.2.1. Analysis of Israeli Practices Under the Cover of Self-Defense

In this requirement, we will study some Israeli practices as a practical model of Israel's claim to its right to self-defense.

Israel invokes the right to self-defense to justify its actions and military operations in occupied Palestinian territories. Although the status of occupation is established according to international humanitarian law rules, especially the Fourth Geneva Convention of 1949, it does not comply with legal obligations arising from being an

(1) If the Security Council considers that the measures provided for in Article 41 are inadequate or have proven ineffective, it may take, by air, sea, or land forces, such action as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations carried out by forces of United Nations members.

United Nations, Charter of the United Nations, art. 42.

(2) 1-All members of the United Nations undertake, in order to contribute to the maintenance of international peace and security, to place at the disposal of the Security Council, on its call and in accordance with special agreements or arrangements, armed forces, assistance, and facilities, including the right of passage, necessary for the maintenance of international peace and security.

occupying power but pursues policies and practices involving violations of Palestinian rights, including excessive and unlawful use of force against civilians, expanding settlement activity, extrajudicial killings, and arbitrary detention.

Although the right to self-defense is considered an internationally recognized right, and even if we accept Israel's right to self-defense argumentatively, its exercise is not absolute but subject to strict conditions, foremost among them the occurrence of an actual armed attack and compliance with the principles of military necessity and proportionality. However, Israeli practices reveal employing this right outside its legal framework, transforming it from an exceptional means to protect the state into a tool to consolidate the reality of occupation, excessive use of force, and sustaining illegitimate control over occupied territories.

Therefore, this study aims to analyze Israel's practices as an occupying power and analyze the extent of its commitment or violation to legal duties imposed on it under international humanitarian law and international human rights law.

3.2.1.1. Excessive Use of Force Against Civilians and Infrastructure

Israel bases its justification for its military operations, especially its operations in the Gaza Strip, on the claim of exercising the right to self-defense stipulated in Article (51) of the United Nations Charter, considering Palestinian resistance acts as terrorist acts constituting armed aggression against a sovereign state. However, this claim is based on deliberate disregard of the legal reality of the Gaza Strip as an integral part of occupied Palestinian land, subject to Israel's actual control, as well as being besieged for years under conditions widely described as an open prison, depriving its residents of exercising their most basic rights guaranteed under international humanitarian law and human rights law.

This justification fundamentally contradicts legal principles governing the conduct of occupying states. Initially, Palestinian territories including the West Bank, East Jerusalem and Gaza Strip are territories under Israeli occupation authority according to international laws and resolutions. However, Israel does not comply with its obligations as an occupying state. Moreover, Israeli practices including (settlement expansion,

imposing restrictions on movement and mobility, turning Palestinian cities and villages into large prisons using iron gates and military checkpoints, demolishing homes and bulldozing lands, controlling all resources and diverting them to settlements' benefit, deliberate killing of civilians) all constitute grave violations of international law rules and a flagrant challenge to international law, especially the Geneva Convention obligating the occupying state to protect civilians under its control.

Israel is not content with all these violations but also uses a policy of excessive force, including killing, field liquidation and arbitrary detention against Palestinians, in complete disregard of UN resolutions that confirmed the illegitimacy of settlements and condemned continuing Israeli violations.

Its latest aggression on the Gaza Strip exceeded the concept of traditional military operations and took the character of large-scale operations to liquidate civilians and destroy infrastructure with a clear and public goal of displacing the indigenous population. This conduct rises in terms of its nature and effects to acts that can be classified as war crimes and forced displacement crimes internationally prohibited ⁽¹⁾.

Israeli large-scale operations against civilians and infrastructure in Gaza including intensive bombing, starvation, and forced displacement constitute a violation of the principles of proportionality and distinction and are considered war crimes according to the Rome Statute of the International Criminal Court ⁽²⁾.

The right to self-defense is considered a limited exception to the general prohibition on using force in international relations and has enjoyed wide acceptance in international jurisprudence and practice, despite being explicitly included in the United Nations Charter in 1945.

However, its roots extend to international custom, where it first emerged as a legal justification in the "Caroline" incident of 1837, which established the right to legitimate self-defense as justified if there were no options except using force and left no room for choosing means and no time for thinking or hesitation. Therefore, any use of force beyond the limits of necessity and proportionality loses its legitimate character and cannot be justified under the umbrella of legitimate defense. Based on this, using force against civilians or targeting vital infrastructure is inconsistent with this principle because it

(1) Article 51 of the United Nations Charter

(2) Rome Statute of the International Criminal Court

exceeds the condition of "proportionality" and "necessity" that any state must observe when exercising its right to legitimate defense ⁽¹⁾.

Israeli practices have shown that force use was not limited to confronting organized military actions but extended to affect civilians and civilian infrastructure, in grave violation of rules protecting civilians during armed conflicts. This is not new since the beginning of occupation, and it has been committing such violations, many of which were not documented.

However, the most prominent documented was Resolution 662 of 1990, where the Security Council documented these violations in the resolution that condemned acts of violence committed by Israeli security forces at the Holy Sanctuary in Jerusalem on October 8, 1990, which resulted in killing and injuring a large number of civilians and worshippers, and called on Israel as the occupying power to comply with the Fourth Geneva Convention provisions ⁽²⁾.

Since the beginning of Israeli occupation to this day, it controls Palestinian territories and conducts military operations and violates all international customs and conventions, justifying its operations under the right to legitimate self-defense, despite the illegality of this claim. Perhaps the most important thing we are experiencing is the Gaza war, which we will discuss more broadly.

3.2.1.2. The War on Gaza as a Case Study

Initially, the Gaza Strip cannot be considered not subject to Israeli occupation according to their claim. The Gaza Strip has been under siege since 2007, where Israel imposed a tight blockade on Gaza, leading to unprecedented deterioration of economic and living conditions. This included strict restrictions on movement of individuals and goods, significantly affecting the lives of Gaza residents. Israel also imposed complete control over land crossings and airspace and maritime space, as well as controlling the

(1) Catic, E. (2020). A right to self-defence or an excuse to use armed force?: About the legality of using self-defence before an armed attack has occurred.

(2) Jerusalem/Al-Haram al-Sharif incidents/ Protection/ Fourth Geneva Convention meeting, measures/ Impartial presence - SecGen report under S/RES/672 (1990); - Question of Palestine. (2019, March 11). Question of Palestine.

population registry and basic resources, leading to unprecedented deterioration in economic and humanitarian conditions for Gaza Strip residents.

According to Article (42)⁽¹⁾ of the 1907 Hague Convention, the occupation criterion is based on actual control, not permanent military presence, which proves and reinforces that the Gaza Strip is occupied territory according to international law provisions despite Israeli claims of withdrawal from it in 2005.

This illegitimate blockade, a form of collective punishment prohibited according to Article 33⁽²⁾ of the Fourth Geneva Convention of 1949, created a state of continuous tension and escalating armed confrontations between Israel and Palestinian factions in the Gaza Strip. The Israeli response to every aggression it launches against the Gaza Strip is justified as these operations are a right to defense guaranteed by international law against rocket fire from the Gaza Strip and dismantling resistance cells for fear of their actions against the State of Israel, as stipulated in Article (51) of the United Nations Charter on the right to self-defense.

This blockade and continuous tension between the two parties created an environment of continuous wars and attacks, most notably:

Operation Cast Lead / Battle of Al-Furqan (2008-2009) launched by Israel, aiming to end Hamas rule; Pillar of Defense / Stones of Baked Clay (2012) launched by Israel, aiming to destroy warehouses where resistance movements store their rockets;

Protective Edge / Eaten Cliff (2014) launched by Israel, aiming to destroy the tunnel network built by the resistance; Battle of Dawn Outcry (2019) launched by Israel by assassinating the Northern Region commander in the Saraya Al-Quds, the military wing of the Islamic Jihad movement in Gaza, Bahaa Abu Al-Ata; Guardian of the Walls - Sword of Jerusalem (2021) launched by the resistance by firing rockets in response to settlers' incursions into Al-Aqsa Mosque and their seizure of houses in Sheikh Jarrah; Breaking Dawn / Unity of Arenas (2022) launched by Israel by assassinating one of the most prominent leaders of Islamic Jihad.

The international community worked to contain these attacks continuously for fear of their escalation despite the tense environment due to all these aggressions,

(1) Hague Convention (IV), art. 42.

(2) Fourth Geneva Convention, art. 33

transgressions and exposure of civilian life in Gaza to killing with every aggression Israel carried out ⁽¹⁾.

On October 7, 2023, armed factions (resistance factions) in the Gaza Strip began an attack on Gaza envelope settlements. This attack led to the killing of a number of Israelis and detention of others. It should be noted that these settlements are considered illegal under the Fourth Geneva Convention according to Article (49/6), which confirmed the article prohibits the occupying state from transferring part of its civilian population to territories it occupies, which was confirmed by the International Court of Justice in its Advisory Opinion issued in 2004 regarding the separation wall, and reaffirmed by the Security Council in its Resolution 2334 of 2016 ⁽²⁾.

Initially, targeting settlements as part of the illegitimate occupation structure does not grant Israel the right to invoke self-defense within territory subject to occupation, as explicitly stated in the Advisory Opinion related to the separation wall in occupied Palestinian territories, as the occupying state may not invoke the right to self-defense to justify using force within territories it actually controls.

Israel claimed that the events (attack) of October 7, 2023 constituted an "armed attack" against civilians, and this attack justifies its resort to the right to self-defense according to Article (51) of the United Nations Charter. Israel identified a set of goals stated by its Prime Minister Benjamin Netanyahu, including (eliminating Hamas's organizational presence, releasing Israeli detainees). These goals are interpreted according to Israeli political and military discourse as liquidating Hamas's political and military leadership and ending its control over the Gaza Strip, destroying Palestinian resistance infrastructure, freeing Israeli detainees and neutralizing Hamas's military capabilities. According to what the Israeli War Council announced, the declared goals are to disarm the entire Strip, reshape the nature of governance in Gaza to become civilian governance not based on religious ideological foundation while seeking to establish a seaport under strict security supervision, establish an integrated warning and protection system on Gaza borders to achieve security for Israelis, where a security zone will be imposed ranging in width from one kilometer to three kilometers that the Gaza Strip is prohibited from entering except with special permits, confirming that Israeli forces will

(1) UN OCHA; UN Human Rights Council; ICRC, Reports on Gaza Conflicts and Blockade, 2008–2022.

(2) UNSC Resolution 2334 (2016).

not remain in the Gaza Strip for a period exceeding what Israel claims is necessary to achieve direct military objectives while working to find and form alternative authority in the Strip.

Israel based its discourse from an ethical standpoint in justifying the continuation of its military operations in the Gaza Strip and the resulting significant effects on civilians on what it calls "lesser harm utilitarian calculations," where Israel claims that taking civilian lives at present aims to save a greater number of lives in the future. Israel claims this justification is a political and ethical justification, but it does not rise to the level of legitimate legal justification and finds no support in international law rules. These statements completely fall outside the concept of self-defense.

Legally, the right to self-defense is subject to strict restrictions, foremost among them the condition of an armed attack occurring from a state, and the conditions of necessity and proportionality. The International Court of Justice confirmed in the *Nicaragua v. United States* case of 1986⁽¹⁾ that acts emanating from armed groups of non-state actors do not in themselves rise to the level of armed attack that activates the right to self-defense unless these groups are subject to actual control by another state. Based on this, the attack carried out by Palestinian resistance factions cannot be considered an international armed attack in the sense intended in Article (51) of the United Nations Charter and does not create a legal justification for Israel to use extensive military force.

Furthermore, the International Court of Justice confirmed in the *Oil Platforms* case (*Iran v. United States* 2003)⁽²⁾ that merely claiming an armed attack occurred is not sufficient to justify self-defense, but the state must prove its commitment to the principles of necessity and proportionality, which are an existing condition for the right to self-defense. However, Israeli military operations in Gaza were clear and characterized by excessive and disproportionate use of force, manifested in extensive bombing of residential neighborhoods and destruction of civilian infrastructure, targeting hospitals, schools and refugee camps, which constitutes a grave violation of international law provisions.

(1) International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Judgment, ICJ Reports 1986, p. 14.

(2) International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Judgment, ICJ Reports 1986, p. 14.

The operation carried out by Israel violated international conventions and laws, as Common Article (3)⁽¹⁾ of the four Geneva Conventions stipulated the obligation to protect civilian persons not directly participating in hostilities. However, Israel targeted civilians and killed them directly and deliberately. Article (79)103⁽²⁾ of the First Additional Protocol of 1977 also confirmed protection of journalists during armed conflicts, but the war launched by Israel on Gaza witnessed the largest number of journalist deaths in the world. Article 19⁽³⁾ of the same Protocol confirmed protection of medical units and personnel, but Israel deliberately targeted hospitals and medical personnel, with its most prominent crimes being bombing Al-Mamdani Hospital and besieging Al-Shifa Hospital.

The violations committed against these civilians and protected persons under international law constitute war crimes according to Article 8⁽⁴⁾ of the Rome Statute of the International Criminal Court, and these crimes cannot be justified by any defensive pretext.

This trend is reinforced by what was issued by the International Court of Justice in its provisional orders of 2024 in the South Africa v. Israel⁽⁵⁾ case, where the Court confirmed the existence of a real and imminent danger to the civilian population in the Gaza Strip and imposed immediate obligations on Israel to prevent acts that may rise to grave violations of international law, which confirms the non-acceptance of the international judicial community of the narrative issued by Israel that its military operations fall within the framework of the legitimate right to self-defense stipulated in Article (55) of the United Nations Charter.

Israel's war on Gaza or what it claimed to be a war initially does not qualify as a war because it does not meet the legal conditions for the right to self-defense, whether in terms of the actor's nature they are resistance factions, not a state or the territory's nature. Gaza is not a state; it is part of a state's territory internationally and legally recognized as under occupation. All this refutes the Israeli claim.

(1) Geneva Conventions of 1949, Common Article 3

(2) Additional Protocol I (1977), art. 79

(3) Additional Protocol I (1977), art. 19

(4) Rome Statute of the International Criminal Court (1998), art. 8

(5) International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v. Israel), Provisional Measures Orders (26 January 2024; 28 March 2024; 24 May 2024), Press Releases 2024/6, 2024/47.

Even if we accept argumentatively that Israel has the right to self-defense against the operation launched by the resistance, it exceeded and violated all international conventions and laws that explicitly stipulated protecting civilians and violated the principles of proportionality and necessity in its reaction, which is the essence of Article 51 of the United Nations Charter. What Israel did is an illegitimate exercise of force by an occupying state against a territory subject to its actual control, coupled with grave violations of international law rising to war crimes and dropping any legal cover it could rely on under Article (51) of the United Nations Charter.

3.2.2. Assessing Israel's Claims in Light of International Law

Israel bases most of its military operations' justification on the right to self-defense stipulated in Article 51 of the United Nations Charter, which states "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations." However, general international law in its customary and contractual sources imposes strict restrictions on exercising this right to prevent its misuse or expansion outside its legitimate framework. The most prominent of these restrictions are:

- **The condition of military necessity:** Force use must be necessary and indispensable to repel an actual or imminent armed attack, and less severe means to achieve the same purpose must not be available.
- **The principle of proportionality:** The reaction must be proportionate to the act, so that the military response is limited to the extent necessary to confront the existing threat, not exceeding the damage imposed by the attack's nature.
- **The principle of distinction:** International humanitarian law, especially the Geneva Conventions, confirmed distinguishing between civilians and combatants, as civilians and civilian objects must be avoided, and force used only against specific military targets, and indiscriminate attacks prohibited.

The fundamental problem is that Israel often practically justifies its military operations against the Gaza Strip as a response to rocket fire by Palestinian factions, while these practices face international criticism regarding the extent of proportionality and distinction in its operations, especially since military strikes are characterized by

extensive and indiscriminate nature leading to large numbers of civilian casualties. According to documented crimes, Israel's operations in the Gaza Strip appear to be retaliatory operations in which Israel used excessive force and completely destroyed the Gaza Strip. All this confirms the lack of conditions for legitimate defense in the precise sense of Article (51) of the United Nations Charter ⁽¹⁾.

3.2.2.1. Position of the International Community and the United Nations on These Claims

Several international bodies, including the Human Rights Council and UN investigation committees, rejected Israel's justification for its military operations in the Gaza Strip based on self-defense, considering that the continuation of occupation weakens the legal basis for this claim and even contradicts it in principle, because the occupying state remains subject to international humanitarian law rules, not the system of force use between sovereign states.

Despite codifying the right to self-defense in the United Nations Charter, the International Court of Justice confirmed in a binding judicial decision in the Nicaragua case (1986) that customary international law rules prior to the Charter are still valid and applied alongside its texts. This case confirmed that military intervention under the pretext of self-defense cannot be justified except under strict conditions, and that Article 51 was not intended to regulate the entire rules of force use in international law. The Court also emphasized that exercising this right is conditional on immediately informing the Security Council of measures taken, considering this a fundamental procedural guarantee to prevent arbitrariness in force use.

However, Israel does not inform the Security Council of its force use and launching military strikes against Palestinians, which led to widespread criticism regarding Israeli practices for not complying with this procedural obligation, in addition to its military responses using excessive force beyond the limits of legitimate defense⁽²⁾.

The United Nations and Security Council expressed on several occasions their rejection of Israeli pretexts, considering that Israel's reliance on self-defense to justify its

(1) The right of self-defense as provided for in Article 51 of the United Nations Charter

(2) Catic, E. (2020). A right to self-defence or an excuse to use armed force?: About the legality of using self-defence before an armed attack has occurred.

practices in occupied territories contradicts its international obligations. Resolution 271 of 1969 is a clear example of this, as the Council condemned occupation attacks following the burning of Al-Aqsa Mosque and considered such acts threaten international peace and security⁽¹⁾.

The United Nations and Security Council expressed on multiple occasions their rejection of Israeli pretexts and justifications, considering that reliance on the right to self-defense to justify military practices in occupied Palestinian territories contradicts Israel's obligations as an occupying state. Resolution 271 of 1969⁽²⁾ is a clear example, as the Security Council condemned the burning of Al-Aqsa Mosque and considered it a threat to international peace and security.

On the other hand, the events of September 11, 2001 showed a relative shift in the Security Council's position toward the concept of legitimate defense, as it considered terrorist attacks a threat to international peace and security, issuing Resolution ⁽³⁾ 1368 on September 12, 2001, to confirm states' right to defend themselves against terrorism, whether individually or collectively. This was followed by Resolution 1373 ⁽⁴⁾, which obligated states to take strict measures to combat terrorism financing and not provide a safe environment for terrorist groups. This development gave broader legal cover to linking the concept of "combating terrorism" with the right to self-defense, despite the absence of a precise definition of terrorism in the United Nations Charter. This intervention was a green light for Israel to justify its actions according to its claims that resistance acts are terrorist operations.⁽⁵⁾

These two resolutions are considered a fundamental legal framework for applying the right to self-defense within the scope of international terrorism, confirming that the

(1) Al-Qadi, Mohammed Adel. Jerusalem in International Resolutions (2019).

(2) United Nations Security Council Resolution 271 (1969) emphasized that any act of destruction or desecration of holy sites, or the encouragement of such acts, could seriously threaten international peace and security. The resolution called on Israel, as the occupying power, to comply with previous Security Council resolutions, revoke all measures that might alter the status of the city of Jerusalem, and adhere to the provisions of the Geneva Conventions and international law relating to military occupation. This resolution is one of the early decisions underscoring the necessity for the occupying power to respect fundamental rules of international law, and it clarified that violations against holy sites or changes to the legal status of Jerusalem are not merely internal matters but constitute a direct threat to international peace and security.

United Nations Security Council, Resolution 271 (1969), 15 September 1969, S/RES/271 (1969).

(3) United Nations Security Council, Resolution 1368 (2001), 12 September 2001, S/RES/1368 (2001).

(4) United Nations Security Council, Resolution 1373 (2001), 28 September 2001, S/RES/1373 (2001).

(5) Hamad Abdullah Abu Al-Ala. The Development of the Role of the Security Council in Maintaining International Peace and Security. Egypt: Dar Al-Kitab Al-Qanuni, 2005, 241.

right to self-defense against terrorism is internationally guaranteed, but it is only exercised within the limits of international law and the actual threat and imminent danger must be present, in addition to the necessity that force use be appropriate and consistent with the principle of proportionality and necessity.

Resolution 1373 also highlights the importance of international cooperation and collective commitment to prevent terrorist acts, reflecting a shift in the international community's understanding of the concept of self-defense to include non-traditional threats such as cross-border terrorist attacks, while maintaining strict commitment to international law and other states' rights⁽¹⁾.

Everything mentioned regarding the right to legitimate self-defense against terrorism and Security Council resolutions enables us to understand Israel's claims to self-defense against Palestinian resistance factions, which considers all their operations terrorist operations and incitement against Israeli state civilians.

Although this right is a guaranteed right, merely claiming threat from the other party is not sufficient to justify using extensive military force, but international law conditions must be met in terms of the actual nature of the attack, necessity and proportionality, and the necessity to respect civilians' rights and international humanitarian law.

Therefore, Israel's claims based on the right to self-defense, even if justified as terrorist operations or to avoid attack and incitement from another party, these claims do not withstand general international law rules,

whether in terms of substantive conditions for exercising this right or in terms of the legal context specific to the occupation situation. Expanding interpretation of Article (51) of the United Nations Charter to allow an occupying power to justify using force against residents of territory under its control leads to emptying international humanitarian law of its content. Invoking the discourse of "combating terrorism" to bypass requirements of necessity, proportionality and distinction constitutes a deviation from the original purpose of the right to legitimate defense and transforms it from a limited exception to the prohibition on force use into a tool to consolidate a legally illegitimate reality.

(1)United Nations Security Council, Resolution 1373 (2001), Threats to international peace and security caused by terrorist acts, adopted September 28, 2001, UN Doc. S/RES/1373 (2001).

Therefore, Israeli practices do not represent legitimate application of the right to self-defense as much as they reflect a pattern of recharacterizing force use in the occupation context in contradiction with Charter provisions and cannot be justified under any legal justification, which is confirmed by International Court of Justice jurisprudence and similar positions of the international community.

3.2.2.2. Extent of Compatibility of Israel's Practices with Conditions of Legitimate Defense

International law stipulated that exercising legitimate defense is conditional on fulfilling a set of conditions, foremost among them the occurrence of an actual armed attack from another state, and that the state claiming this right is not an occupying power regarding the disputed territory.

Since Israel is considered an occupying power according to international law provisions and United Nations resolutions for both the Gaza Strip and the West Bank, its repeated resort to justifying its military actions under the pretext of "self-defense" is inconsistent with correct international legal texts and purposes.

Israeli military practices of extensive scope that Israel deliberately used to starve civilians, forcibly displace them, destroy vital infrastructure, and turn the Gaza Strip into an uninhabitable area these violations constituted a violation of international humanitarian law rules and rise in many of their forms to war crimes and crimes against humanity according to classifications adopted in international criminal law⁽¹⁾.

The principle of self-defense is a principle of customary laws before its codification in the United Nations Charter as an explicit legal text, where the text contained in Article 51 of the United Nations Charter "inherent right" is interpreted to reflect reference to customary roots of the principle of self-defense, reflecting an overlap between customary law and written law.

It follows that interpreting this right must not be done in isolation from standards established by international custom, especially those established by the Caroline incident,

(1) Chatham House, Legal Issues Arising from Israel's Actions in Gaza, November 2024.

represented in the two conditions of urgent and immediate necessity and proportionality in force use.

Considering Israeli practices, their clear exceeding of these two conditions is evident, whether through excessive force use or extensive targeting of civilians, making it difficult, if not impossible, to consider these practices compatible with legitimate defense provisions, bringing them closer to the circle of grave violations of the prohibition on force use in international relations ⁽¹⁾.

Israel justifies its occupation of Palestinian territories as coming within the framework of self-defense following the 1967 war. However, this claim contradicts established principles in international law prohibiting force use to acquire territories. Article (2/4) of the United Nations Charter explicitly states prohibiting threat or use of force against the territorial integrity or political independence of any state. Since Israeli occupation was a result of aggressive war, Israel's continuation in controlling these territories constitutes a continuing violation of international law and cannot be characterized under any circumstances as legitimate exercise of the right to legitimate defense⁽²⁾.

Studying relevant legal texts and United Nations resolutions clearly shows that Israeli practices are inconsistent with legitimate defense conditions stipulated in Article (51) of the United Nations Charter, as occupation itself is considered unlawful aggressive action, and therefore Israel may not invoke self-defense to justify continuing its military presence or aggressive actions against Palestinian civilian population⁽³⁾.

The international legal system recognized after World War II the principle of individual criminal responsibility for internationally unlawful acts. The Rome Statute of the International Criminal Court determined its subject matter jurisdiction to consider four basic international crimes: the crime of aggression, genocide crime, crimes against humanity, and war crimes.

(1) Catic, E. (2020). A right to self-defence or an excuse to use armed force?: About the legality of using self-defence before an armed attack has occurred.

(2) Abdullah Al-Ash'al. The Impact of the Palestinian State Declaration on the Legal Status of the Occupied Palestinian Territories, 46.

(3) Mohammed Adel Al-Qadi. Jerusalem in International Resolutions (2019).

The Statute confirmed, as Article (25)⁽¹⁾ stated, that these crimes entail personal criminal responsibility, so that everyone who commits any of these crimes is held accountable before the Court, whatever their degree of contribution, whether as a principal perpetrator, accomplice, instigator, or any other form of criminal participation.

However, the provision established in Article 25 of the Rome Statute of the International Criminal Court does not affect state responsibility under international law as an active party in forming and creating international criminal law rules. It is bound to apply and respect its rules on one hand, and on the other hand, these crimes, given their seriousness and extended effects to the entire international community, are crimes that can only be committed by states or with their support. There is an opinion confirming that behind every crime committed by an individual is a crime perpetrated by the state, which was confirmed by Article 19 of the draft on state responsibility⁽²⁾.

Article (19) of the draft on state responsibility confirmed that "recognizing individuals' criminal responsibility for acts such as war crimes does not negate international responsibility on states. The state remains responsible for these practices carried out by individuals in its name.

This practically applies to the Israeli situation, where leaders and officers in the army are prosecuted for their acts of war crimes, but this does not negate the criminal character of the state. This is what the International Law Commission confirmed in this dual concept of responsibility in the draft Code of Crimes Against the Peace and Security of Mankind of 1996 (in its first reading), where it confirmed that these crimes can only be unlawful acts emanating from the state, thus establishing state responsibility alongside individuals' personal criminal responsibility.

There is an exception negating personal criminal responsibility in case of an individual committing an international crime, which is the case of self-defense of oneself or essential property for one's survival or others' survival, which is explicitly stipulated

(1) Article 25 establishes individual criminal responsibility:

(The Court shall have jurisdiction over natural persons pursuant to this Statute.

A person who commits a crime within the jurisdiction of the Court is individually responsible for it and liable to punishment under this Statute.)

(2) Layla Osmany. "Legitimate Defense in International Law: A Comparative Study between the Right of Self-Defense Granted to States and the Right of Self-Defense Granted to Individuals." *Journal of International Law and Development* 2, no. 1 (2014): 118–128.

in Article (31/1/c)⁽¹⁾ of the Rome Statute of the International Criminal Court. This raises a fundamental legal problem represented in questioning whether negation of individual criminal responsibility necessarily entails negation of state responsibility. In other words: Do grounds for justification provided to the individual in Article (31)⁽²⁾ of the Rome Statute of the International Criminal Court extend to include the state itself?

Another problem emerges centered on the extent of international law's acceptance of the right to legitimate defense as a justification for the state committing serious international crimes, such as the crime of aggression, war crimes, crimes against humanity, or genocide crime.

These problems are answered by distinguishing between the basis of the right to legitimate defense provided to the state and its basis for the individual. International law recognized the state's right to defend itself in case of armed aggression, as Article (29) of the draft on state responsibility confirmed that the illegitimacy of the state's act is negated if this act constitutes a legitimate measure for self-defense according to what is stipulated in Article (51) of the United Nations Charter.

As for the individual, the legal basis for the right to legitimate defense appeared in Article (31/1/c) of the Rome Statute of the International Criminal Court, which required proportionality between the act of defense and existing danger.

Regarding the legal basis for the right to legitimate defense, international law recognized the state's right to defend itself in case of armed aggression, as Article 29 of the draft on state responsibility confirmed that the illegitimacy of the state's act is legitimized if the act constitutes a measure for self-defense according to what is stipulated in Article 51 of the United Nations Charter.

Therefore, it becomes clear that both Article (51) of the Charter and Article (31) of the Rome Statute of the International Criminal Court stipulated for establishing legitimate defense essential elements, most importantly: illegitimacy of aggression, immediacy, and

(1) Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 31(1)(c)

(2) No person shall be tried except in accordance with the provisions of this Statute, and a person shall be criminally responsible for committing the crimes referred to in Articles 5 to 8, whether as a principal, accomplice, inciter, or for aiding and abetting the commission of the crime. No one shall be exempt from criminal responsibility under this Statute on the ground that they were acting pursuant to a legal authority or the orders of a superior.
Rome Statute of the International Criminal Court, 17 July 1998, art. 31, 2187 UNTS 90.

directing the response to a specific source conditions that do not apply to the Israeli situation in occupied Palestinian territories.

International law jurists agree that legitimate defense did not exist as an independent right before establishing the United Nations, because resorting to force was subject to the logic of force more than to organized legal rules. With adoption of the United Nations Charter in 1945 based on the principle of general prohibition, legitimate defense became a narrow exception to the general prohibition on force use in international relations. Therefore, any claim to exercise this right must be subject to strict interpretation of Article (51) conditions, which raises serious questions about the legitimacy of Israeli practices committed under this cover.

This chapter concluded, through analyzing legal texts and international legitimacy resolutions, confirming Palestinians' right to resistance as a people under occupation, which legally and realistically negates Israel's claims to its legitimate right to self-defense by relying on Article (51) to justify its actions.

However, because the powerful rule the world, we see how international powers are used to justify and pass these actions, especially using the veto in the Security Council to disable UN resolutions to compel Israel to stop aggression and condemn grave violations of international law.

Despite the UN cover for the State of Israel, legal evidence and field facts confirm that Israel violated in its latest war on the Gaza Strip international humanitarian law rules and committed many war crimes in which it violated all peremptory international rules, which enhances pursuing it as a state and pursuing its leaders and soldiers in competent international courts. Documenting these crimes is considered an opportunity to hold it legally accountable.

Through this chapter, we addressed in detail the articles and international resolutions confirming Palestinians' right to resistance as a people under occupation, and these legal articles and resolutions were a response to Israel's invocation of Article 51 in its right to self-defense. Israel's claim is considered incorrect and does not apply to it.

Conclusive evidence and documented crimes confirmed that Israel in its war on Gaza violated international law and violated all customs, practicing all war crimes, which gives Palestinians the ability to pursue Israel in international courts.

Conclusion

This thesis concluded that the right to legitimate defense as organized by the United Nations Charter in Article (51) is not considered an absolute right but a conditional right and narrow exception subject to strict conditions related to the existence of an actual armed attack, fulfillment of the elements of necessity and proportionality, and that the claiming state is not an occupying power, and that the attack emanate from a sovereign state existing with its elements.

We studied the international legal framework and analyzed resolutions issued by the United Nations and International Court of Justice rulings from judicial precedents. This legal framework was a response to Israel's claim of employing this right to justify its military practices in occupied Palestinian territories, as this claim lacks correct legal basis.

The study proved that the continuing Israeli occupation of the Gaza Strip and West Bank, including East Jerusalem, in itself constitutes an unlawful act in international law and negates Israel's possibility of invoking the right to self-defense toward territory subject to its actual control. It also showed that Israeli military practices, especially its latest aggression on the Gaza Strip, exceeded and violated international humanitarian law rules, through extensive targeting of civilians, infrastructure destruction, and imposing policies of siege, starvation and forced displacement acts rising to war crimes and crimes against humanity according to international law.

The thesis showed that responsibility for war crimes and violations committed by individuals is not limited to them alone but extends to include the state, according to international responsibility rules, confirming the dual character of international criminal accountability.

This thesis relied on the Gaza Strip as a case study to analyze the legitimacy of Israel's claims based on the right to legitimate defense, given that the Gaza Strip represents a clear legal case of occupation existence and continuation of actual control, and for the extensive military practices it witnessed that revealed the gap between Israeli legal discourse and practical reality on the ground, especially after the war Israel launched on the Gaza Strip after the events of October 7, 2023.

Applying Article (51) standards of the United Nations Charter and principles of necessity and proportionality to the Gaza situation showed that Israel used the concept of

self-defense as a legal cover to justify acts that do not meet international legitimacy conditions, which makes Gaza a revealing model of misusing this right in contemporary context.

According to legal texts, their analysis and judicial precedents that can be taken for their similarity to the Palestinian case, we concluded that the Palestinian right to resistance as a people under occupation finds its basis in international law rules and international legitimacy resolutions, versus the illegitimacy of Israeli claims based on misinterpreting Article (51) of the United Nations Charter by the occupying state and those who justify this cover for it. The results we reached confirmed the great and necessary need to activate international accountability mechanisms and strengthen the role of international judiciary in pursuing committed crimes. Perhaps activating these mechanisms and strengthening judiciary's role contributes to protecting international peace and security, which is the spirit of the United Nations Charter on which this Charter was based, away from double standards and domination of force and political influence considerations over the international system.

Results

- The study showed that the concept of legitimate defense developed after World War II more broadly and was codified in the United Nations Charter as a principle prohibiting force use except under conditions stipulated by the Charter.
- It became clear through applying Article (51) that the right to legitimate self-defense is an inherent and guaranteed right, but application is affected by considerations of major states and international politics, leading to justifying aggressive acts and grave violations in international law.
- The thesis confirmed through reviewing some practices of Israeli occupation in Palestinian territories that these practices exceed the limits of legitimate defense, as these acts often rise to excessive force use, and justifying occupation behaviors to Article (51) is illegal justification.
- The study proved that the absence of effective mechanisms to apply international law led to using international law as a political tool, especially the principle of self-defense addressed by the thesis in particular. In many judicial precedents and

occupation state behaviors, this principle was employed as a justification for illegal behaviors more than as a disciplined legal rule.

- The study revealed that contemporary cyber and terrorist threats pushed some states to adopt new concepts such as "anticipatory defense" and "preemptive deterrence," requiring developing international law rules to keep pace with these developments.

Recommendations

- The researcher recommends the necessity of re-adjusting interpretation of Article (51) of the United Nations Charter in a strict interpretation ensuring it is not exploited as a pretext to justify aggression, and activating international law mechanisms restricting use of this principle only in cases of real armed attack meeting conditions and controls for this right.
- It is necessary to strengthen the role of the International Court of Justice and Security Council in monitoring force use and obligating states to submit reports when resorting to self-defense under supervision of competent persons.
- Pursuing Israel in competent courts and demanding activation of international accountability mechanisms against Israel for continuing violations against the Palestinian people as aggressive acts constituting grave violations rising to war crimes and not falling under legitimate defense but within occupation and colonialism policies.
- Palestinians' right to resistance is a guaranteed legal right based on the principle of self-determination and United Nations resolutions. Therefore, legal protection must be provided to civilian and military resisters within the framework of international humanitarian law and not adopting the Israeli position on resistance as a form of terrorism.
- The world currently faces modern security challenges, such as terrorism and cyber- attacks. Therefore, it is necessary to develop the concept of self-defense without affecting fundamental principles prohibiting force use outside the scope of legitimate necessity and proportionality principles.
- At present, due to politics' control over international law rules and interpretation of legal rules, we recommend the necessity of creating a unified international

reference for interpreting the right to self-defense issued by the International Law Commission to ensure application of international legal rules.

On the Palestinian diplomatic level, the study recommends the following:

- We recommend the necessity of strengthening diplomatic coordination with African countries and other countries that submitted the file of Israeli violations to the Criminal Court and filed a case against Israel based on the territorial jurisdiction decision that included occupied Palestinian territories.
- Investing results and data from International Court of Justice and International Criminal Court decisions as diplomatic tools and sending them as files to friendly countries and international bodies, aiming to enhance the Palestinian narrative to exercise international pressure on Israel diplomatically and enhance the Palestinian position.
- Establishing multiple bilateral diplomatic channels with friendly countries supporting international justice and international humanitarian law, and placing the Palestinian cause within the agenda of regional organizations (such as the African Union, Association of Asian States) and human rights organizations, focusing on investing Court decisions (not just issuing them) and working to find effective tools and popular pressure from world peoples to implement all decisions issued regarding the Palestinian cause. Perhaps the most important is gaining solidarity of world peoples with the Palestinian people, because peoples are capable of influencing their governments' decisions.
- Working on a judicial-diplomatic follow-up plan that works on: 1- Monitoring Israel's implementation of international court decisions and compliance with them 2- Preparing periodic reports directed to countries and international organizations about the extent of compliance 3- Studied international media campaign to clarify that Palestine is following the international legal path, which enhances the Palestinian position in self-defense and resistance according to international law.
- We recommend proposing that the Palestinian leadership include in its diplomatic strategy a special item called "Preserving Rights and International Accountability." The goal of this unit is negotiations not only to stop aggressive actions, documentation and evidence collection, following up international resolutions and working on their implementation, finding means and alternatives

to work with international pressure to follow up implementation of international resolutions issued against Israel.

- We recommend establishing a specialized diplomatic unit within the Palestinian Foreign Ministry or an independent body, whose mission is to follow up international legal issues, collect evidence of Israeli transgressions, coordinate with international lawyers, and prepare files periodically and continuously presented to countries and the international community to keep the Palestinian cause an ongoing issue that does not end except by gaining its rights. We also recommend filing cases to competent authorities against Israeli leaders and soldiers who violate international law, whether through the International Criminal Court or through national judiciary according to the principle of universal jurisdiction.

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حق الدفاع عن النفس في القانون الدولي " ادعاءات الاحتلال الإسرائيلي نموذجاً".

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الملخص:

تهدف هذه الدراسة في بدايتها إلى تحليل الإطار القانوني لحق الدفاع عن النفس كما نظمه ميثاق الأمم المتحدة، وبيان حدوده وضوابطه في ضوء التفاعل بين القانون الدولي العام والقانون الدولي الإنساني، وتنطلق الدراسة من فرضية مفادها أن حق الدفاع عن النفس رغم إقراره كاستثناء على مبدأ حظر استخدام القوة في العلاقات الدولية يخضع لتفسير قانوني ضيق وشروط صارمة، ولا يجوز لدولة الاحتلال التدرع بهذا الحق في مواجهة شعب تحت سيطرتها، لما في ذلك من إساءة لاستعمال المادة (51) من ميثاق الأمم المتحدة لتبرير أعمال عدوانية. وانتهاكات جسيمة للقانون الدولي.

قامت هذه الدراسة على أخذ عينة لتطبيق الإطار النظري والنصوص القانونية التي تفسر وتحلل حق الدفاع عن النفس وكان قطاع غزة نموذجاً تطبيقياً حياً لدراسة مدى مشروعية ادعاءات إسرائيل للمادة (51) من ميثاق الأمم المتحدة لتبرير أعمالها وسياساتها، وذلك بالنظر إلى الوضع القانوني الخاص للإقليم بوصفه أرضاً تحت سيطرة الاحتلال، واستمرار السيطرة الفعلية الإسرائيلية على مظاهر السيادة الأساسية فيه.

وقد أظهر التحليل القانوني أنّ محاولة إخضاع الحالة الفلسطينية بشكل عام والحالة الغزية بشكل خاص لمفهوم الدفاع الشرعي يتعارض مع الشروط الموضوعية التي أقرها القانون الدولي أهمها شرط وقوع هجوم مسلح صادر عن دولة، وشرطي الضرورة والتناسب، عدا عن استحالة التدرع بهذا الحق في ظل الاستمرار بالاحتلال.

تناولت الدراسة الممارسات العسكرية الإسرائيلية في قطاع غزة حسب قواعد القانون الدولي الإنساني، وخاصة مبادئ التمييز والتناسب والضرورة العسكرية، وخلصت الدراسة إلى أنّ نمط السلوك المعتمد يكشف عن انتهاكات جسيمة قد ترقى إلى جرائم حرب وجرائم ضد الإنسانية، بما يثير في بعض جوانبه شبهة ارتكاب جريمة الإبادة الجماعية وفقاً للمعايير المعتمدة في القانون الدولي الجنائي.

وتؤكد الدراسة، في نتائجها النهائية، أنّ توظيف مفهوم الدفاع عن النفس خارج إطاره القانوني المشروع يؤدي إلى تقويض نظام الأمن الجماعي الدولي الذي أرسته الأمم المتحدة، كما خلصت الدراسة إلى ضرورة إعادة الاعتبار للتفسير القانوني الصارم للمادة (51)، وضرورة تفعيل آليات المساءلة القضائية الدولية، بما يضمن عدم الإفلات من العقاب للدول التي تخترق القانون، بما يسهم ويحقق الحماية لحقوق الشعوب الواقعة تحت الاحتلال، وفي مقدمتها الشعب الفلسطيني.

الكلمات المفتاحية: حق الدفاع عن النفس، المادة (51) من ميثاق الأمم المتحدة، الاحتلال الإسرائيلي، قطاع غزة، القانون الدولي الإنساني