

الاحتلال وحق الدفاع عن النفس في القانون الدولي: دراسة حالة قطاع غزة

Occupation and the right to self-defense in international law: A case study on Gaza strip

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Abstract:

This research aims to clarify the principle of the right to self-defense in international law, its conditions and principles, and the extent to which this right is compatible with the practices of the Israeli occupation in the Gaza Strip with this principle, and answers the question of whether these practices fall under this principle or have other names in international law such as genocide, war crimes, and crimes against humanity, as the research problem focused on determining the extent to which Israel is entitled to invoke this right to justify its practice in the Gaza Strip, and the extent to which its actions fall under Article 51 of the UN Charter. The researcher relied on the descriptive analytical approach to research and reach the study results, the most important of which was that Article 51 does not apply to the case of Israeli military operations in the Gaza Strip, and that Israel's actions are governed by human rights law and international humanitarian law, which Israel has not complied with, and that Israel's measures in self-defense are actually taken through the Iron Dome system, and Israel did not take into account the principles of necessity and proportionality in its practice. The researcher recommended the need for the UN to actually and accurately determine the international practices recognized as the right to self-defense in international law and to review the impact of the political situation in the Palestinian issue on Israel's interpretation of the right of self-defense.

Key words: Article 51, right to self-defense, Israeli occupation military operations, Gaza strip, Palestine, Israel.

الملخص

يهدف هذا البحث إلى توضيح مبدأ حق الدفاع عن النفس في القانون الدولي وشروطه ومبادئه، ومدى توافق هذا الحق مع ممارسات الاحتلال الإسرائيلي في قطاع غزة مع هذا المبدأ، والإجابة على سؤال هل تندرج هذه الممارسات تحت هذا المبدأ أم لها مسميات أخرى في القانون الدولي مثل الإبادة الجماعية وجرائم الحرب والجرائم ضد الإنسانية، حيث تركزت مشكلة البحث في تحديد مدى أحقية إسرائيل في الاستناد إلى هذا الحق لتبرير ممارساتها في قطاع غزة، ومدى انطباق أفعالها على المادة 51 من ميثاق الأمم المتحدة. اعتمدت الباحثة على المنهج الوصفي التحليلي في البحث والتوصل إلى نتائج الدراسة، أهمها عدم انطباق المادة 51 على حالة العمليات العسكرية الإسرائيلية في قطاع غزة، وأن تصرفات إسرائيل تخضع لقانون حقوق الإنسان والقانون الدولي الإنساني، وهو ما لم تلتزم به إسرائيل، وأن إجراءات إسرائيل في الدفاع عن النفس تتم فعلياً من خلال منظومة القبة الحديدية، ولم تراخِ مبدأ الضرورة والتناسب في ممارستها. وأوصت الباحثة بضرورة قيام الأمم المتحدة بتحديد الممارسات الدولية المعترف بها بحق الدفاع عن النفس في القانون الدولي بشكل فعلي ودقيق، ومراجعة أثر الوضع السياسي في القضية الفلسطينية على تفسير إسرائيل لحق الدفاع عن النفس.

الكلمات المفتاحية: المادة 51، حق الدفاع عن النفس، العمليات العسكرية للاحتلال الإسرائيلي، قطاع غزة، فلسطين، إسرائيل.

Introduction

The concept of the right to self-defense refers to the legal and moral right of the individual and the state to use force, or to act to protect oneself or others from any danger or threat to life and safety. It is part of the basics of universally recognized human rights, and based on international legislation and laws, the right to Self-defense is considered a legal justification for the use of force. Accordingly, Article 51 of the United Nations Charter clarifies the natural right of individuals or groups to defend themselves if an armed force attacks a member of the United Nations until the necessary measures are taken to maintain global peace and security. This law came after the end of the First and Second World Wars, and the effects they left behind, as the United Nations Charter prohibited the use of armed force in international relations, but in light of the modern international reality and the multiplicity of international interests, it cannot be certain that armed conflicts will not occur, or wars will break out between countries, or Illegal use of force. Therefore, the Charter permitted the use of armed force exceptionally, and in specific cases, the most important of all being the right to self-defense. Because the use of force in accordance with the Charter is limited to the Security Council, which is considered to have jurisdiction to maintain security and peace. ¹

It is generally agreed that belligerent occupation may be necessary and constitute a military instrument under the *jus ad bellum* when it arises from the use of force in self-defence, and may also be an act of self-defense against an armed attack, and remains lawful as long as the armed attack continues in accordance with Article 51 of the previously mentioned Charter.

In all cases, the right to self-defense is subject to conditions taken into account for its use, as it is assumed that the response in the case of self-defense is proportional to the size of the threat, and that the action is necessary and reasonable, such that the use of force is within the limits of necessity, and avoiding exceeding legitimate limits, or using excessive or unjustified force. ²

Research Problem

As the researcher mentioned previously, the right to defend oneself is an internationally recognized right and written as an independent article in the UN Charter, and an internationally legitimate right, it is allowed to be used by whatever country is exposed to threats as long as it is a member state of the United Nations, but this right has controls and conditions that begin From the standards, foundations and justifications for its use, to the controls and conditions that govern it, from the justification and mechanism of use, and the proportionality and reasonableness of the use of justified force in self-defense.

In this study, the researcher provides a detailed explanation of this right, its justifications, the mechanism for initiating it, and the conditions and controls that govern it. Her research problem is determined by the extent of Israel's right to use this right in its repeated military operations on the Gaza Strip based on its principles in international law, and the justifications and pretexts provided by the Israeli occupation and its practices on The Gaza

¹ Al-Jazeera, 2024, The right of self-defense. Its concept and conditions in international law

² Irish Center for Human Rights, 2023, legality of the Israeli occupation of the Occupied Palestinian Territory, including East Jerusalem

Strip, and the extent to which it falls under the principle of the right to self-defense and Article 51 of the UN Charter? Does the right to self-defense justify these practices or are they classified as crimes? And clarifying the extent to which the Israeli occupation adheres to the conditions and controls of this principle or not.

By defining this research problem, the main research question is: **To what extent are the practices of the Israeli occupation on the territory of the Gaza Strip compatible with the principles of the right to self-defense in international law?**

This question includes the following sub-questions:

1. What are the justifications for self-defense in international law?
2. What are the conditions and controls for self-defense in international law?
3. What practices does the Israeli occupation follow for self-defense in the Gaza Strip?
4. To what extent are the Israeli occupation's self-defense practices in the Gaza Strip consistent with the justifications, conditions and controls for self-defense in international law?

Research importance

The researcher sheds light on this topic specifically in international law because of the increase and greater raise in the media recently, as well as the few details about it, especially in the case of the Israeli occupation of Palestine. The researcher believes that it is important to shed light on the details of the principle, its justifications and conditions, and the study provides a broader understanding of what It includes and does not include practices that are classified as practices within the right of self-defense, and what falls under other names in international law, such as Israel's practices in the Gaza Strip after October 7, which Israel classified as a right of self-defense, while the ICJ classified them as crimes of genocide, so the role of this study is in clarifying these practices. This study also helps students of international law gain a broader understanding of the right of self-defense, which the researcher focuses on, how it is performed in relation to an occupying state, and how to differentiate between the practices that fall under it and those that fall within its conditions.

Research methodology

Based on the problem of the study, the topic that the researcher highlights, and the questions of the study and their importance, the researcher decided to rely on the descriptive and analytical approach, as they are the most appropriate approaches to the research problem and its title, and to answer its questions by tracking and collecting legal texts, their interpretations and analyzes in clarifying the extent to which the practices of the Israeli occupation of the occupied Palestinian territories are compatible with the principles of the right to self-defense in international law and studying the case of the Israeli occupation under the aforementioned principle.

Research Legal framework

The researcher studies her research problem to the extent that the practices of the Israeli occupation on the Palestinian territories are compatible with the principles of the right to self-defense through the United Nations Charter of 1945, specifically **Article 51** of it related to the right to self-defense, to provide the necessary explanations on the research topic.

Search Plan

The researcher divided the study into two integrated Chapters, and each chapter deals with a number of sections as follows:

Chapter I: The right to self-defense in the principles of international law

Section I: justifications and controls for the use of force in self-defense in international law.

Section II: Different interpretations of Article 51 of the UN Charter

Chapter II: Israel's practices and military operations in Gaza and the right to self-defense

Section I: Israel's justifications and practices in its use of the right to self-defense in the Gaza Strip

Section II: The extent to which Israel's justifications and practices of the right to self-defense in the Gaza Strip are consistent with the principles of international law and Article 51 of the UN Charter.

lighting

It is noteworthy that the Israeli occupation forces withdrew from the Gaza Strip in 2005 and evacuated the settlements that were in them, but they continued to carry out military operations in the Strip. Some of these operations continued for weeks and months and left thousands of damages and victims, given that the Gaza Strip is considered the most densely populated region in the world, as it is inhabited by more than two million Palestinians were subjected to several Israeli attacks over the years after the Islamic Resistance Movement Hamas took control of the Gaza Strip in June 2007, and Israel declared Gaza a "hostile entity" and imposed a comprehensive siege on the Strip in October of the same year. These attacks were repeated during the years 2008, which Israel's goal was to end the rule of the Hamas movement in the Gaza Strip, and to reach the place of the Israeli prisoner Gilad Shalit, who had been captured by the resistance in June 2006. Israel continued the 2008 military operation for 23 days, in accordance with reports of human rights organizations Israel is alleged to have used internationally banned weapons such as white phosphorus and enriched uranium, and released more than 1,000 tons of the explosives that killed 1,430 Palestinians and destroyed more than 10,000 homes, and the 2012 aggression, which lasted for 8 days, in which Israel announced its goal to destroy the resistance movements' storage sites for its missiles, 180 Palestinians were killed and 1,300 wounded, in addition to the 2014 aggression, which lasted for 51 days during which Israel launched more than 60 raids on the Gaza Strip, declaring that "the goal of this aggression is to destroy the network of underground tunnels built by the resistance in Gaza," claiming that some of them extend under the border envelope. The aggression resulted in 2,322 Palestinian martyrs, 11,000 wounded, and massacres committed against 144 civilian families, from each of which at least 3 members were martyred, and the 2019 aggression in which Israel targeted the military leader of the Islamic Jihad movement in Gaza, Bahaa Abu Al-Atta, and this operation resulted in the martyrdom of 34 Palestinians and 100 other wounded, most of them civilians, the 2021 military operation in which the Palestinian resistance launched missiles at Israeli towns and cities in response to Israeli settlers seizing the homes of Jerusalemites in the Sheikh Jarrah neighborhood, causing the death of 12 Israelis, while the number of Palestinian martyrs reached 250 martyrs and more than 5,000 wounded, and the most recent was the military operation of 2023, which came in response to the operation, which the Palestinian resistance called "Tufan Al-Aqsa," was a response to the ongoing Israeli violations of Al-Aqsa Mosque and Islamic holy sites in the city of Jerusalem. Israel had no choice but to declare a "state of war" and begin a military

operation with intense aerial bombardment of the Gaza Strip, in which more than 100 were martyred and 500 were wounded in one day, and it is an operation that continues to the date of writing this research, the number of martyrs in it has reached to date more than 35,000 Palestinian martyrs and more than 79,000 injured on its 430th day, claiming that Israel, in its repeated aggressions and the losses and damage it causes to civilians, is that its operations are nothing but the right to self-defense and clear Western support for this pretext.¹

Chapter I

The right to self-defense in the principles of international law

According to the UN Charter, states are prohibited from resorting to defensive force unless the threat to which the state is exposed is actual or imminent, and, as the use of special force is only resorted to until the institutional protection. International laws emphasize the elements of real danger, necessity, and proportionality, which are elements specified to ensure that special force is not resorted to except when international authorities are not in a position to prevent unlawful aggression, and that defensive lethal force is not used for ulterior motives other than declared objectives.²

Section I

justifications and controls for the use of force in self-defense in international law

The UN Charter regulates armed aggression by stating that the use of armed force is strictly prohibited, and designates the Security Council as a central authority that monopolizes the legitimate use of force, and that national self-defense is permitted only when the Security Council is unable to provide protection against an unlawful attack, and restricts the use of force to elements Imminent danger, necessity and proportionality. This means that the use of armed force within the framework of international law is illegal unless authorized by the Security Council, or unless it is consistent with the legal model of self-defense. The legitimacy of self-defense here depends on meeting specific conditions that there is a **present** and **imminent** danger occurrence of armed aggression, and the use of force is “**necessary**” and “**fully proportionate**” to ward off this unlawful threat. The use of force in this case is the only alternative to avoid an unlawful attack. The necessity here is that the user of force does not have a less harmful alternative to prevent the attack, and it was the habit of accepting pleas for self-defense only when the response from the victim is immediate, and the time lag between the threat and the response undermines the validity of self-defense claims, as imminent danger means that the time to use force will not tolerate any delay, and that the defender cannot wait any longer. In this condition, self-defense is distinguished from the unlawful use of force in a temporary manner called a preventive strike against the aggressor, which is illegal force used too early, as well as retaliation against the aggressor, meaning that the use of illegal force too late. In all cases, it must Legitimate self-defense must not be too early or too late.³

¹ Al-Jazeera, 11/10 2023, Israel's most prominent wars on the Gaza Strip

² Bakircioglu, 2013, the right of self defense in national and international law: the roll of the imminence requirement

³ Bakircioglu, 2013, Ibid.

The natural right to self-defense recognized in Article 51 of the UN Charter in the event of an armed attack constitutes an exception to the general prohibition on the use of force in Article 2/4 of the Charter. In order for legality to apply to the use of force in the right to self-defense, it must apply. It has conditions:

1. The occurrence of an armed assault or attack on the state exercising the right of self-defense, characterized by such force and gravity that the necessity arises that leaves no room for anything other than the use of armed force to repel the aggression.
2. The failure of the attacked state to use legal means to prevent and stop the infringement
3. The objectives of the legitimate self-defense act, which are to prevent or stop the infringement, are proportionate and reasonable to achieving the objective.
4. Notifying the Security Council of the defensive measures taken
5. Abstentions from the attacked state from continuing to exercise the right to self-defense due to the Security Council's intervention in the conflict and its taking the necessary measures.

This means that the use of force by states in the right of self-defense against any aggression is not left by the UN Charter without restrictions or conditions. Rather, conditions have been set that make these practices legitimate and consistent with the international system, and among these are conditions that apply to aggression so that it is necessary for it to exercise the right of defense. From this, there are conditions that apply to aggression in order for it to be necessary to exercise the right to self-defense, and conditions that apply to defense when he exercises the right to self-defense. The researcher explains them as follows:

1. Conditions for aggression to require immediate exercise of the right to legitimate self-defense

According to the definition provided by the General Assembly in its 1974 resolution, aggression is the use by a State of armed force against another State for purposes other than individual or collective self-defense, that is, **it reflects a military attack by the armed force of a State on the territory**, ships or air of another State, and is an intentional act **taken by senior officials of one state against another** in cases where resort to armed force is not permitted, and it is conditional upon it:

a. The aggression must be a violation of the state's basic rights. This means that the aggression must be characterized by a gravity that threatens the national security of the state or the elements of its establishment (the territory, the ruling regime, the people), and that it be a violation of its fundamental rights, such as aggression against the state's property. This condition of aggression is justified logically by affirming the right to defend Self in proving that a state of aggression justifies the state's use of armed force within the framework of the legitimacy of self-defense for the purposes of defending its natural right to exist, and this right guarantees:

1. The right to the integrity of the land, sea and air territory subject to the sovereignty of the state
2. The right to political independence under the principle of sovereignty, and the right of the state to conduct its affairs without the interference of any member of the international community in its internal and external affairs. Aggression against this right includes indirect aggression by secret agents, committing subversive terrorist activities, or exercising political pressure against it, but these types of indirect

aggression does not enable the state to exercise the right of self-defense, but it is confronted with other actions and measures

3. The right to self-determination included in the resolutions of the General Assembly as a justification for the permissibility of peoples struggling to gain independence to resort to force in this struggle, explicitly in its resolution 39/32 in 1984 regarding South Africa, and implicitly in its first resolutions regarding the Portuguese colonies¹ and the situation in securing them, where it affirmed the legitimacy of the struggle for these regions by all means available to them, which implicitly includes armed force.²

b. an armed attack

This armed aggression must be an unlawful aggression. If it does not have this characteristic, there is no longer room for applying the legitimate right of self-defense. In this case, either:

- 1) That the armed aggression is legitimate in accordance with the cases in which the UN Charter permits the use of force, so the right of self-defense is not used here, and it is not a legitimate defense; because the rule says there is no defense against defense
- 2) Self-defense may be invoked against any unlawful armed aggression under Article 51 of the UN Charter. If a state uses force unlawfully, the attacked state has the right to exercise its right to self-defense to repel the attack, and the aggressor state has no right to resist. Acts issued by the state that attacked it within the limits of its right under the pretext of defending itself, that is, achieving military seizure or occupation gives the state whose lands are seized or occupied the right to defend itself on its own, and to assist other states by all means, including the use of armed force, up to remove aggression from its territories, the occupying state cannot invoke legitimate self-defense.

C. Intentional aggression of a military nature

Whereas the intent in this case is one of the elements of the crime of aggression, and if this element is absent, the right to self-defense is negated under Article 51, and the aggression is given a military character by the state using its regular or irregular armed forces or armed gangs composed of individuals monitored and directed by state order. Within the territory of another state is another condition for aggression that calls for the exercise of self-defense. This condition can be verified by looking at the weapons used, their number and type. Incidents that do not have a significant degree of seriousness, such as simple border incidents, are excluded from this condition.³

D. Immediate and direct aggression

That is, the aggression must have already begun, such that the acts of self-defense are subsequent to the occurrence of the assault, and not prior to it. Otherwise, they may constitute aggression. Aggression takes place in two forms:

¹ Portuguese colonies: Today, 53 independent countries are formed from the countries of North and South America, Africa, and regions of Asia and Europe that were under the rule of the Portuguese Empire, or what is known as the Portuguese Overseas Empire, whose colonization of these countries continued for nearly six centuries (1415-1910) (Colonialism international, social, cultural, and political encyclopedia, 2003)

² General Assembly Resolutions 2708 of 1970, 2652 of 1970, and 3295 of 1974

³ Al-Tamimi, 2021, Legitimate defense in light of contemporary international practices

1. Imminent aggression: It is achieved by the existence of circumstances that can confirm that there is an aggressive act that a state will carry out against another state, even if the actual aggression has not begun, meaning that the state's actions indicate that it will carry out an armed attack, and they can be considered as preliminaries that precede implementation, such as a declaration by a state war against another state. In this case, the state against which war is declared can consider itself in a state of self-defense even before the outbreak of war. In this case, the state resorts to the Security Council by submitting a complaint so that the Council may take the necessary measures and procedures in accordance with Article 39 of the Charter of the UN.
2. That the armed aggression has actually begun, and has not yet ended, and self-defense in this case is conditional on the continuation of the aggression. However, if the armed aggression ends, the legitimacy of self-defense will also have ended, and if the attacked state uses force after the end Assault, its action falls within the category of "prohibited revenge."¹

2. conditions of defense when exercising the legitimate right of self-defense

States have a legal right to use armed force in self-defense if they are exposed to an armed attack or there is an imminent armed attack, but only to the extent necessary and proportionate. However, the content of these two conditions is not specified in the Charter of the UN or other texts in the treaties, and their content is determined through studying the practice of In view of the standards and rules that states use to justify their behavior and criticize the behavior of other states, international law researchers resort to studying the Security Council discussions on actual incidents of states resorting to armed force to constitute evidence of this law, and to constitute a general practice that makes these rules international and customary law.²

Necessity determines whether defensive force may be used to respond to an actual or imminent armed attack, and where it should be directed, while proportionality determines the amount of force permitted. Once the right to respond to an armed attack is available, these two conditions limit the scope of defensive action and ensure that it remains defensive, so that it remains the actions in response to aggression that must be achieved are "self-defense" due to the existence of this right, and necessarily to repel the attack and prevent it from succeeding and nothing else. Compliance with these two conditions "necessity and proportionality" indicates that the purposes of self-defense have been achieved and nothing goes beyond that. They seek to establish a balance in the rights and interests of each of the following actors:

1. The state's defense of itself in the face of an armed attack
2. The attacker's right to be protected from excessive defensive responses
3. The interests of states and the international community: which include concern for civil and environmental damage, and containing the risk of escalating violence and instability to contribute to international peace and security.

These two apply in principle throughout the period of armed conflict arising from self-defense, and not only at its beginning, so that if the continued use of force becomes

¹ Ibid.

² Haque, 14/11/2023, Proportionality in Self-Defense: A Brief Reply

unnecessary or disproportionate, it does not constitute legitimate self-defense, and constitutes a violation of Article 2/4 of the UN Charter.¹

Self-defense purposes

Stopping, repelling, or preventing an armed attack comes within compliance with necessity and proportionality. This compliance provides the definition of the purposes of self-defense with the standard against which necessity and proportionality are measured, so that the 2 questions are answered: Necessary to do what? And proportional to what? In this case, the state who exercise the right of Self-defense must think about the “ultimate goal” of defensive action, through which secondary actions such as overthrowing the government are permitted provided that these actions are necessary to put an end to an armed attack, that is, achieving the defensive purpose through the measure taken that complies with the conditions of necessity and proportionality, for example: an armed attack that succeeded in seizing lands that cannot be defended and restored successfully except by repelling the attacker and returning to the territorial situation that existed before the war, as a minimum goal for legitimate defense, considering that this right is a temporary and emergency right, and therefore, in order for actions to be considered necessary, they must ensure the goal of the immediate and legitimate security of the defending state is temporary, and once this threat is successfully confronted, the necessity of self-defense ceases.²

proportionality

Proportionality, in its essence, prohibits the excessive use of force to limit permissible harm to others. There is no clear legal definition of the principles of this element, so it is used based on an internal feeling about what has amounted to excessiveness. This is because states rely on international humanitarian law in determining it, and according to the advisory opinion of the ICJ, to answer the question, is it proportional to what? Regarding collective reaction, the Court identified two main criteria, namely: the consequences of the measures, activities, procedures and operations of the defending states and their collateral damage to civilians, the consequential damage they cause to infrastructure, and the results of these measures, divided into:

- 1) Quantitative proportionality: It focuses on the purely quantitative approach to the equivalence of armed attack and defensive response, and seeks to balance the amount of damage incurred or expected by each party to the conflict in terms of casualties and damage, and balances offensive kinetic forces and their results, defensive kinetic forces and their results, and the harm to civilians.
- 2) Teleological proportionality: It is proportionality linked to the defensive needs of the defending state, and it measures the defensive force (means) used against the legitimate goal (self-defense) of using that force, meaning that the proportionality of the action taken in self-defense and its relationship to its purpose. Meaning, in this case, it is wrong to believe that proportionality must be between the behavior that constituted the armed attack and the opposing behavior, and the response may take dimensions that are disproportionate to

¹ O'Meara, 2018, Necessity and Proportionality and the Right of Self-Defence in International Law

² O'Meara, 2018, Ibid.

the attack itself. What is important here is the result that the defensive action will achieve, not the action itself, its essence, or its strength. This proportionality, rather than the only criterion being the damage that actually occurred, also explains the potential need to confront ongoing and imminent attacks, and includes responding to previous, current, and potential armed attacks. Without this criterion, states' response will be limited to past events only, instead of flexibility in confronting current threats, which can be reasonably foreseen, take into account the inherent right of self-defense, Article 51 of the UN Charter.¹

Necessity

Necessity is achieved in justified self-defense if and only if an action is necessary to avert the danger faced, meaning a person who has been subjected to an unprovoked attack can take his life and kill the attacker or break his leg, and there are no other alternatives, in which case this action must be taken and it is not necessary to inflict greater harm to save himself.²

The necessity requires that the conflict cannot be resolved by peaceful measures, and the absolute certainty that no other measures can prevent the attack; This is necessarily justified, and this condition requires the presence of conclusions based on proven facts that the attack needs this response, and that the response is in response to a real threat to the existence of the state, and a valid commitment to verify whether there are no other peaceful settlements to the conflict.³

If the prohibition required for self-defense is not immediate and imminent, and there is a means other than resorting to force, such as resorting to an international organization, then in this case it is not a legitimate defense, and the use of force in this case is considered aggression, and legitimate defense against it is permissible, and this condition depends on each case separately, and the extent of progress in war technology, and not only on the danger that is actually faced, but also on the extent of the expected danger to the attacked state that invokes its right to self-defense if it proves that force here is a necessary measure to protect the state from any future harms.⁴

Section II

Different interpretations of Article 51 of the UN Charter

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence 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-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility 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”⁵

¹. O'Meara, 2018, Ibid.

². Lazar, 2012, Necessity in Self-Defense and War

³. Upeniece, 2018, Conditions for the lawful exercise of the right of self-defence in international law

⁴. Salama, 8/10/2019, the charter of the united nations stipulates the right of the state victim of aggression to confront it by force

⁵. UN Charter

Accordingly, the right to self-defense under Article 51 arises from an act of armed aggression by one state against another through its gross violation of Article 2/4¹. This act constitutes armed aggression that triggers Article 51. According to the ICJ, the most dangerous forms of using Force constitutes an armed attack that results in a serious violation of Article 2/4, which gives rise to the right to self-defense under Article 51. In this case, the terms “force and armed attack” share a violent nature, and differ only in severity and size, until the court recognized that the armed attack is the most dangerous force, but not every serious use of force constitutes an armed attack and does not give rise to the right to self-defense. Article 51 does not allow the use of armed force targeting groups of non-state actors in the territory of another state without their consent, and Non-States actors cannot use force within the meaning of Article 2/4 and therefore cannot also launch an armed attack within the meaning of Article 51, that is, non-State actors cannot seriously violate Article 2/4 and therefore cannot activate 51.

During the drafting and negotiation of the Charter, the countries tended to link the concepts of aggression and attack, despite leaving the problem of defining aggression open. Because of this dilemma, the term armed attack became the primary driver of collective self-defense. Thus, Alberto Lleras Camargo, Chairman of the Drafting Committee and delegate Colombia drafted the article equating aggression with attack, saying: “If an armed attack occurs at any time, that is, aggression against a member state of the regional group, self-defense, whether individual or collective, shall be exercised as an inherent right that applies automatically within the framework of the provisions of the Charter, until the Council takes security, appropriate punitive measures against the aggressor state,” and thus this understanding that an armed attack is an act of aggression is what left its mark on the final text of the article, as Chapter Seven of the Charter as a whole is concerned with action regarding threats to the peace, breaches of it, and acts of aggression, indicating Self-defense against armed attack is an act related to acts of aggression, and the opening phrase “if the Security Council does not succeed in preventing aggression” was deleted from the first draft to remove the suggestion that the Security Council might fail to maintain peace and security, despite the context of the article maintaining this effect in the Security Council report. If this act is aggressive and requires the necessary measures to maintain international peace and security and restore them to normal.²

It is worth noting that the French text of Article 51 uses the term “armed aggression” (l’agression armée), and Articles 1 and 39 and the title of Chapter Seven also use the term act of aggression. In this context, it is natural to understand that an act of aggression involves the use of armed force. Then in the North Treaty According to Article 51 of the Atlantic Charter, the French text used the terms “attaque armée”, and this either makes the French text evidence of the link between aggression and armed force, while the English text deleted the term “aggression” and the concept remained that armed attack is aggression, and in the end the countries refused to place a definition of aggression in the Charter, even after Bolivia and

¹ 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 UN

² Haque, 2020, The United Nations Charter at 75: Between Force and Self-Defense — Part One

the Philippines proposed that any attack by the armed forces of one state on the territory, ships or aircraft of another state should be considered aggression.

In 1974, the UN General Assembly declared that a violation is the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state, or in any other manner inconsistent with the Charter of the UN. The Statute of the ICC also defines an act of aggression by referring to: The General Assembly's definition of a sufficiently serious use of armed force that constitutes armed aggression, and therefore is presumed to constitute an armed attack that gives rise to the right to self-defense. As for the International Court of Justice, it said that "the most dangerous form of use of force" also constitutes an armed attack, also relying on the General Assembly's definition. It gave the example that "a state sending armed gangs onto the territory of another state could constitute an armed attack depending on its scope and impact, while assistance provided to rebels in the form of providing weapons, logistical support or other forms of support does not constitute an armed attack," and this indicates that the ICJ itself viewed aggression as a motive of self-defense and armed attack as a form of aggression, and not force itself, this explains why the ICJ looked to the General Assembly's definition of indirect aggression to determine when the actions of a non-state actor constitute An armed attack by a state. Thus, the ICJ severed the link between force and aggression and between aggression and self-defense, and the argument that dangerous force constitutes armed aggression. Thus, we conclude from these definitions that an aggressive act is a dangerous use of force, and therefore an armed attack is a dangerous use of force. As for the non-dangerous use of force, it does not constitute aggression, and therefore does not constitute armed attacks, and therefore does not lead to the exercise of the right to self-defense, and non-state actors cannot commit an act of aggression within the meaning of the Charter, and therefore it cannot launch an armed attack within the meaning of Article 51. In turn, Article 51 does not permit the use of armed force to target non-state actors in the territory of another state without its consent.¹

Another interpretation presents self-defense as not in itself a collective measure to suppress acts of aggression, but rather a measure consistent with the purposes of the UN and the authority of the Security Council to take such measures, as Article 51 guaranteed this consistency on the one hand:

- A. Limiting self-defense to situations where an aggressive act constituting an armed attack occurs before the Security Council takes effective collective measures
- B. Prevent self-defense after the Security Council takes effective collective measures
- C. Requesting States to immediately inform the Security Council of measures taken in self-defense so that it can take effective collective measures within the limits of Article 51, which supports the right to self-defense in accordance with the system of collective security established by Chapter VII.

Based on this interpretation, Article 51 does not operate directly on Article 2/4, but rather operates directly within the structure of Chapter VII, given that Article 2/4 allows the use of force authorized by the Security Council that does not conflict with the purposes of the UN. A prominent feature of the right to self-defense in this interpretation is that it does not extend against non-state actors. Under international law, violence committed by non-state

¹. Haque, 2020, Ibid.

actors does not constitute aggression, no matter how serious. It follows that the targeted use of force against non-state actors States cannot reconcile it with the prevention of aggression consistent with the purposes of the UN. This interpretation means that Article 2/4 prohibits the use of force that is inconsistent with the purposes of the UN, and self-defense within the limits of Article 51 is consistent with collective measures that meet these purposes in suppressing acts of aggression. As a result, the unilateral use of force that exceeds or undermines the authority of the Security Council is always contrary to those purposes and is always prohibited. Among the details of Article 51 is that it does not allow self-defense except in the event of an armed attack, and it does not allow defense before it occurs, and the Security Council is the only one who has the power to take measures to prevent and remove the threat, and it does not allow self-defense in response to force that is not dangerous enough to constitute a threat. An armed attack, also does not permit self-defense in response to violence committed by non-state actors present in the territory of a non-consenting state.¹

Another Interpretation

At the emergence of Article 51 and its formulation in the UN Charter, states were divided into two groups: states that adopted the point of view that monopolized the Security Council's action in self-defense, and states that gave the state the authority to act in the event that the Security Council was unable to carry out its role without the need to seek its permission, in when, a third point of view emerged that allows the Security Council to benefit from regional agreements and regulations in taking measures to suppress aggression, also with the permission of the Security Council, which aims to try to abolish the right of individual legitimate defense, and approve collective defense only, then the article was drafted to give the state the authority to exercise the right to defend by the Security Council, so that it is not deprived of taking action regarding confronting the aggression immediately after it occurs, and Article 51 is the only text that allows the state to enter into a war described as a legitimate war without prior permission from the Security Council, based on its right to self-defense, but the exercise of this right remains dependent and temporarily on the intervention of the Security Council, and if it intervenes, the state must stop defense measures, and the state must be subject to the control and supervision of the Security Council in its steps taken for self-defense. There are those who believe that Article 51 came in violation of Article 24/1, which states "the desire that the action in order for the work undertaken by the UN to be prompt and effective, the members of that body shall entrust the Security Council with the main responsibilities for maintaining international peace and security, and agree that this Council shall act as their representative in carrying out its duties imposed on it by these obligations." It is likely that Article 51 is complementary to Article 24 and not inconsistent with it, because the concession made by members in favor of the Security Council to maintain peace and security cannot prevent the exercise of legitimate defense when the state is exposed to aggression, especially if the Security Council is unable to do so². On this basis, interpretations emerged that adopted two theories in applying the article, which are:

¹ Haque, 2020, Ibid.

² Khatir, 2021, The Historical Origin & Legal Dimensions of the Article (51) of the Charter of the United Nations A Rooting Study of the Right of International Self-defence

1) The established theory

The proponents of this theory emphasize the right to self-defense as a “natural right,” and in interpreting the article, they return to the philosophy of natural law that adopts this interpretation, and expands the application of the principle of self-defense with the intention of circumventing the restrictions imposed by Article 51 so that states protect their fundamental rights without being limited the defense only in the event of an armed aggression, and that the use of weapons in self-defense remains permissible and unrestricted. Therefore, according to this theory, when an attack by a state occurs on one of the fundamental rights mentioned in the first section, the state has the right to take self-defense measures, even if it was not against the use of armed force. What is important is that it is against any practice against territorial sovereignty or political independence, or against state nationals abroad, or the protection of some economic rights. This interpretation means that the use of force or the threat of it creates the right to self-defense, and makes preventive defense permissible, and supporters of the established theory argue that the word “natural” is explicitly stipulated in Article 51, and it affirms the natural right to self-defense, and therefore it cannot be overlooked or dropped from the text, and this means for them that the emergence of an international organization does not constitute any restriction. Regardless of the type of this right, there are also those who believe that the natural right of legitimate defense remains valid even if there are no texts in the UN Charter granting it. Thus, in their expanded interpretation, these people move away from not only keeping the natural right of self-defense complete or undiminished, but rather Members are also given the right to take self-measures, and deviate the text from its true content, justifying this in the position of the Preparatory Committee for the Charter, Article 2/4, which says that “the use of armed force in legitimate defense remains acceptable and undiminished.” This means that the legitimate defense that prevailed before the Charter, without restrictions, will remain as it is, and they believe that self-defense is a natural right for every sovereign state, and is implicit in all agreements, and every state is free not to abide by the conditions contained in these agreements by defending to confront any attack or invasion on its territory, and affirms Supporters of this theory maintain that Article 51 came to recognize the existence of the natural right to self-defense and not to grant it under it, and therefore there is no need to restrict it to one case, which is the case of an armed attack against a member of the UN, because this restriction would deprive states that are not members of the UN of their right. Natural self-defense, which is not consistent with the principles of the Charter, and is considered a violation of international peace and security.¹

2) Constructive theory

Contrary to the established theory, supporters of the constructive theory believe that Article 51 grants the right to self-defense, and does not preserve it. They restrict self-defense only in the event of armed aggression, and that the use of force in other than this situation does not create the right to self-defense, and is considered a violation of the article 2/4, and they believe that what is meant by the word “natural” mentioned in the text is not acceptance of the right in the traditional legal defense, but rather it is only a theoretical meaning that does

¹ Khatir, 2021, Ibid.

not have any legal value, and is only intended to attract attention and show the extent of the knowledge of this right, as it is an ancient and well-known right. Even among primitive societies, the development that prevailed in the international community after the establishment of the UN must be accompanied by legal changes, as is the case with Article 51, which brought provisions that changed this right, as it became limited to only one case, which is the occurrence of an armed attack, and what this means for those who adapt this theory and interpretation of the article is the precise English text that used the expression “armed attack,” meaning armed force, in contrast to the French text, “l’aggression armée,” which means armed aggression. The word aggression is surrounded by ambiguity, and can include just incitement and threats. As for attack which goes for the intended meaning that justifies the right of legitimate defense, and they argue that the language of interpretation does not enable this text to be applied to the declaration of a state of war followed by military action, nor to the aggressor’s means of propaganda, and these cases are not considered an attack even if they may be considered an assault, and that the more expansion of this interpretation may bring disasters to world peace, as it is known, Article 51 is the exception to Article 2/4 related to the general prohibition of the use of force, and it is clear from its text that it did not use the phrase armed attack as in Article 51, but rather merely expressed it as a threat to use force or its use, which is a less serious expression than attack, may be understood at first glance as creating the legitimate right of self-defense, but following the first phrase with a phrase against territorial integrity and political independence infers the desire of the drafters of the Charter to give gravity to the act so that it rises to the level of an armed attack. Otherwise, it is not possible to imagine the use of effective, certain force affecting the integrity of the region and political independence without reaching the point of using armed force. Accordingly, the UN rejected the Israeli aggression against the Arab countries in 1967, and the Security Council issued the famous Resolution 242, after Israel relied on the argument it was exposed to the threat of the use of force by the Arab countries, but the truth of this argument has not been proven, as the countries did not launch any armed attack on Israel, and since Israel was the initiator of the attack, what it did was considered an armed aggression against others without legitimate justification, even if The UUN did not explicitly condemn the aggression until its Resolution 242 ¹was clear in calling on Israel to withdraw from the territories it occupied as a result of the war, which implicitly indicates that Israel’s use of armed force constitutes an unlawful hostile act and does not provide for the right to self-defense.²

Chapter II

Israel’s practices and military operations in Gaza and the right to self-defense

As the researcher mentioned previously, the state that has begun to exercise the right of self-defense must provide the necessary justifications and proofs to confirm its right to use this right. In this section, the researcher explains the justifications and pretexts provided by Israel for exercising it in the Gaza Strip, which it includes under its right to defend itself, and does the right to self-defense, with its justifications, controls and conditions described in the

¹ Resolution 242: Withdrawal of Israeli forces from territories occupied in the recent conflict

² Khatir, 2021, Ibid.

first section, really apply to what Israel is doing in the Gaza Strip? Or does this have other names in international law?

Section I

Israel's justifications and practices in its use of the right to self-defense in the Gaza Strip

Israel had set goals for every military operation in the Gaza Strip, which the researcher explained in the lighting of this research. The last of these declared goals set by Israeli Prime Minister Benjamin Netanyahu was:

1. Erase all presence of Hamas
2. Release its detainees

These goals are analyzed for

1. Eliminate the leadership of the Hamas movement and end its rule of the Gaza Strip
2. Destroying the infrastructure of the Palestinian resistance
3. Freeing Israeli detainees and neutralizing the military power of Hamas.¹

According to the strategic objectives set by the Israeli War Council, the strategic objectives of the recent war on the Gaza Strip are:

1. Demilitarize the entire sector
2. Working to ensure that the Gaza government is civilian and not ideologically based on a religious basis, and that the Strip obtains a deep-water port that operates under security supervision.
3. Establishing an integrated warning and protection system on the border that provides security for Israeli citizens when the conditions required in Gaza are not met or violated. It includes a security perimeter ranging in width from one kilometer to three kilometers, and Gazans are not allowed to enter it except with special permission.
4. The Israeli army will not remain in Gaza for a long period beyond what is necessary to achieve the immediate objectives of the fighting and form the alternative government in Gaza.²

Morally, Israel justifies its continuation of its military action in Gaza, and the consequences on its civilian population, with calculations it calls the lesser utilitarian calculations, that is, by saying that the innocent lives it is killing now serve to save more innocent lives in the future than the lives that have already been lost, but this justification is a moral justification. And it's not legal.

In general, there is no debate about whether any state has the right to defend itself and its people as a basic function of any state and political society organized according to Article 51, but Israel's military operations, through which it claims to exercise its right to self-defense under Article 51, are a clear violation. The principle and its conditions of proportionality and necessity, which the researcher will explain more in the second section of this chapter.³

Returning to Israel's justifications and practices, Israel's military operations in the Gaza Strip are a response to an internal threat, given that Israel is an occupying power and Gaza is within the occupied territories. Thus, according to its claim, Israel justifies the military

¹ Abu Alula, 25/1/2024, 110 days of raging war on Gaza. Has Israel achieved its goals?

² Sky New Arabia, 27/10/2023, Strategic objectives. This is what Israel wants in Gaza after the war

³ Milanovic, 2023, Does Israel Have the Right to Defend Itself?

operation as a response to an internal threat, which is not consistent with the law of justifications for war.¹

In the year 2008, Gabriela Shalev, Israel's Permanent Representative to the United Nations, sent a letter to the Security Council and the Secretary-General, in which she announced that, after a long period of restraint, the Government of Israel had decided, as of the morning of this letter, to exercise its right to self-defense, and Israel had decided to actively combat terrorism and protect... its citizens from further terrorist attacks in response to rockets fired by Hamas in southern Israel, in accordance with the inherent right to self-defense under Article 51 of the United Nations Charter, and its letter also stated that this response is only against terrorists and their infrastructure in the Gaza Strip, and not against the population. civilians, and that it will continue to provide the population with their basic humanitarian needs. As for the Security Council meeting on January 6, 2009, Israel also invoked the right to self-defense, claiming that it sought in every way to avoid conflict with Hamas, with the escalation of rocket attacks, and it had justified decisions Its targeting of civilian targets is that the Israeli army has dropped thousands of leaflets and made phone calls to Palestinian civilians asking them to leave the areas of terrorist operations, as they described it, to avoid harming them. It has accused what they call terrorism of using civilians as a cover, and the end of terrorism in Gaza cannot be guaranteed without these damages, even There is no need for other Israeli defensive operations, and if they fail to achieve military objectives, this is because terrorists use civilians as cover, while both the Permanent Observer of Palestine at the United Nations, Riyad Mansour, and the President of the Palestinian National Authority, Mahmoud Abbas, expressed that these actions of Israel It is considered an aggression against the Palestinians in Gaza by Israel as an occupying power, and that these actions constitute collective punishment against the Palestinian people, and they need an immediate ceasefire and the use of excessive force against the residents of the Gaza Strip. The countries condemned in this session the failure of the Security Council to find a solution to the situation and a ceasefire. While the United States of America was the only country that held Hamas alone responsible for the violence, unlike the other countries that took a balanced position in condemning the rocket attacks from both sides, and in the report of the urgent independent fact-finding mission in Gaza for the year 2009 led by Richard Goldstone, it covered the humanitarian situation, He overlooked the legal aspects of the process.

In the military operation on Gaza in 2012, which Israel called Operation "Pillar of Defense," Israel did not submit any message or notification to the Security Council invoking the right of self-defense in this operation, but it had published a statement on the Israeli Ministry of Foreign Affairs website in which it affirmed its right to defend itself, its population and its lands when it is attacked, as well as to take military action against terrorist attacks in the Gaza Strip, claiming that the terrorist Hamas is waging an ongoing armed conflict against Israel, and that it has violated the principle of distinction². As for Israel and the IDF, they are fully committed to the laws of armed conflict, and have defined their goals.

¹ Akande, 2014, Is Israel's Use of Force in Gaza Covered by the Jus Ad Bellum?

² The principle of distinction: Parties to a conflict distinguish at all times between civilians and combatants. Attacks may only be directed at combatants and may not be directed at civilians (International Humanitarian Law Database, ICRCC)

In this process, by strengthening Israeli deterrence, causing serious damage to the rocket launching network, and dealing a painful blow to Hamas and terrorist organizations, in addition to reducing damage to the Israeli home front, while Fawzi Barhoum, Hamas' spokesman at the time, described the assassination of Ahmed Al-Jaabari as a declaration of war, and Israel returned in its military operation "Operation Protective Edge" on Gaza, it did not immediately inform the Security Council of its procedures, and waited until the first meeting of the Council after its operation on 7/10/2014. It did not specify in this notification that it had resorted to Article 51, but it stated that it was launching an operation to defend The self called it "Protective Edge" to confront the attacks and remove the threat of Hamas dismantling its military structure with solutions that would not allow it to rest and regroup its ranks, and not giving them a respite time so that they could replenish their missile supplies and strike Israel again, and Israel argued the fact that it had no choice but to use force and defend itself against what it called "the Hamas terrorist organization in Gaza," and that its presence is what threatens the lives of two million innocent men, women, and children with its missiles, and no nation, people, or government can tolerate it, while Mansour said that Israel sarcastically used the pretext of the killing of three settlers to launch a brutal aggression against the Gaza Strip, and it was clear at the same session that most countries criticized Israel's disproportionate and excessive use of force against the civilian population in Gaza in light of the Israeli attacks that resulted in the death of a large number of civilians and the attacks against UN facilities, especially the UN School in Rafah.¹

As for Israel's aggression against Gaza, which is still ongoing at the time of writing this research, the largest thing Israel did, under the pretext of self-defense, was the bombing of the largest hospital in Gaza, and it launched 51 attacks on health facilities in the Gaza Strip within 11 days, according to reports of Global Health Organization.

In addition to Israel's targeting of health care centres, during this aggression Israel deliberately withholds water and electricity from the residents of the Gaza Strip under the pretext of self-defense as well. The Ministry of Health in Gaza confirmed that the number of victims of the Israeli aggression on Gaza since October 7 to date has reached 35,456 martyrs and 79,476 injured. Most of them are children and women. The Israeli bombing and ongoing aggression led to the death of 102 UNRWA workers. Israel also follows a policy of forced population movement and explosive violence that causes the death of civilians and the destruction of the Gaza Strip's infrastructure, and controls what enters and exits Gaza. It also closed the only power plant, which originally does not supply electricity except with permission from Israel, claiming in all these practices what it is doing is nothing but defending itself against Hamas, claiming that Hamas operates from civilian institutions, thus justifying the losses among civilians. Then the USA and President Joe Biden adopted Israel's claim that there is a base for Hamas in Al-Shifa Hospital, the largest medical facility in Gaza. But he did not provide any evidence for this, and Israel has not yet shown any evidence for this claim either, and has remained insisting that Hamas uses schools, hospitals and refugee camps as human shields, so Israel is trying to use this as a convenient excuse to create legitimacy for its attacks on these places.

¹ Henderson, 2018, Israeli military operations against Gaza: Operation Cast Lead (2008-9), Operation Pillar of Defense (2012) and Operation Protective Edge(2014)

Israel was also accused of using white phosphorus, which ignites fires and leads to severe and fatal burns, while the use of this type of material is classified as an indiscriminate attack according to Amnesty International, as it affects civilians and military targets alike. On October 13, Israel ordered more than One million Palestinians in northern Gaza to evacuate and move to the besieged southern Gaza Strip, despite the United Nations' warning to it, justifying that this measure aims to limit civilian casualties during its military operations in northern Gaza, and the researcher mentioned the number of casualties among them despite Israel's measures such as this measure is for such a pretext, and Israel also refused to allow humanitarian aid to enter the Gaza Strip despite its widespread warnings about the occurrence of a humanitarian crisis in which the Palestinians face the risk of "death from starvation," in addition to imposing a complete blockade on the supply of electricity, water, and food, as a method of war and within that it has the right to self-defense.¹

Section II

The extent to which Israel's justifications and practices of the right to self-defense in the Gaza Strip are consistent with the principles of international law and Article 51 of the UN Charter

In the previous section, the researcher explained the justifications that Israel was providing for its ongoing military operations in the Gaza Strip, and also provided an enumeration of the practices it carried out in implementing these justifications, and its alleged right to self-defense under Article 51 of the UN Charter, and in this section the researcher explains the extent to which the justifications provided by Israel and the measures it has taken are compatible with the nature of international law and Article 51 of the UN Charter, and the interpretations it has provided of the article in the first chapter.

Firstly, as the researcher mentioned, the right to self-defense under Article 51 is an exception to the prohibition on the use of force in Article 2/4, and this exception cannot apply at all if the prohibition itself is not included or at least apparent in its nature between states. For example, the use of the state uses force against a rebel group on its territory, who, for example, have caused the death of thousands of people, and in this case the state reasonably decided that it needed to use force in its defense of itself, then this is not self-defense within the meaning of Article 51, meaning that the prohibition on the use of force stipulated Accordingly, Article 2/4 does not protect the rebels, but rather applies only to international relations, and therefore the state cannot justify the use of force against them according to Article 51, that is, there is simply no law that justifies internal war, and let us apply that to the case of Gaza and Israel, the situation of Gaza is not certain regarding the prohibition of Article 2/4, but what is certain is that Hamas is a liberation movement and a non-governmental group that is not committed to or protected by Article 2/4. When Hamas uses force against Israel, or Israel uses force against Hamas, Article 2/4 does not apply. Accordingly, the exception in Article 51 does not apply, because Article 51 that Israel invokes does not apply unless Israel uses force against the entity, which is protected by Article 2/4. Logically, the exception to the ban cannot be applied if the ban itself does not apply, even if it Israel also uses force in its military operations in order to kill Hamas fighters on Palestinian

¹ Purohit, 17/11/2023, Does Israel have the right to self-defence in Gaza?

territory occupied by Israel (the Gaza envelope settlements), this would also not be self-defense within the meaning of Article 51, because the prohibition of Article 2/4 does not include the use of force against a non-states on the territory of the state itself, meaning simply that Article 51 is not a stand-alone rule that can be applied without Article 2/4.¹

As for Israel's use of force under Article 51 in the Gaza Strip, this argument applies if Palestine is a sovereign state and Gaza is part of the territory of a sovereign state. Then, even if Israel uses this justification, it must rely on it not to justify the use of force against Hamas, as it did in all its military operations, but to justify the use of force on Palestinian lands, but Israel, in the cases discussed, uses force on land that is not sovereign, and at the same time Israel does not recognize the State of Palestine, and Article 2/4 will not apply in this case because Israel's action on areas outside its claimed territory or areas outside its control and occupation. In this case, Israel's invocation of self-defense in its use of force against Hamas can be seen as an implicit acknowledgment of the idea of the existing prohibition on the use of force, and that it requires justification for violating it, meanin. (supporting the presence Palestine and its implicit recognition), and yet Articles 2/4 and 51 are not activated. However, this did not prevent Israel from using force against Hamas, but only distanced the two articles from its practices and justifications. In this case, what governs its actions is international humanitarian law and human rights laws, Human rights, and the four Geneva Conventions, which Israel also violated.²

The negotiating history of Article 51 is clear on the point that the article does not apply to armed attacks carried out by non-State actors, which was emphasized by the ICJ in its Advisory Opinion on the Apartheid wall, in which the Court emphasized that Article 51 does not apply to territories under the control of a State that tries to use force and pretext with it. It is true that Hamas has some governing authority in Gaza, but Hamas is not a government similar to the Taliban in Afghanistan, if Israel is using the excuse that what it is doing is parallel to what the USA did in the events of September 11. Even Israeli Prime Minister Benjamin Netanyahu is considered responsible for Raising the status of Hamas to weaken the rule of the Palestinian Authority in both the West Bank and Gaza, and this facilitated it by simply accusing Hamas fighters of terrorism, to the point that this does not enable it to place the responsibility of the state on Gaza or the Palestinians collectively to justify its military operations. The ICJ also confirmed that Israel remains in full control of the Gaza border, despite the withdrawal of its forces from within it in 2005. Assuming that Israel's argument of self-defense is valid, defensive measures that are proportionate to the protection of human rights that the government owes to people under its control are permissible by Israel. An effective defense is the Iron Dome shield system that Israel has already deployed on its territory, meaning that self-defense measures have already been taken.³

The ICJ raised the need to distinguish between armed attacks and mere border incidents, and to exclude border confrontations from the scope of an armed attack, as it stated that border confrontations between small infantry units, even those that involve loss of life, do not constitute an armed attack as intended in the Charter of the UN, the court concluded that these

¹. Milanovic, 2023, Ibid.

². Ibid.

³. O'Connell, 2023, The Lessons of 9/11 for October 7

clashes are considered relatively minor incidents, and do not amount to what constitutes an armed attack by any two states against another within the meaning of Article 51 in the context of a conflict between two states. In light of this, it is difficult to conclude that even Hamas' rocket attacks constitute an armed attack to allow Israel for the right to self-defense. In this opinion, Israel argues that rocket attacks over the years should not be viewed in isolation, but rather should be evaluated cumulatively to determine whether or not what is happening or an armed attack occurred based on the "accumulation theory" of events to support its claim to the right to self-defense. Although this argument has received support in the writings of scholars, looking at the reality on the ground cumulatively does not enable us to say that the extent of the effects of the missile attacks has reached the threshold of an armed attack with the actual or potential effects of these missiles on Israel, which is what the discussions within the Security Council have confirmed: Relatively insignificant, and does not require constant fear of attack, and these effects would have been much greater were it not for the Israeli "Iron Dome" missile defense system. What Israel is doing in the form of self-defense, even if it is used as an excuse and it is true, is a pre-emptive defense prohibited by international law, unless clear proof is presented that there is an imminent attack, which Israel did not do, and its taking of these measures appears clear in its objectives declared in its various military operations, which are actively combating terrorists and protecting Israeli citizens from further attacks.¹

In addition to Hamas not being considered an international body to invoke self-defense against it, and the possibility of considering its attacks as an armed attack, there are two other elements related to the law's evaluation of operations under self-defense and Article 51 that Israel invokes, namely necessity and proportionality. When self-defense is imposed on it in this case it must adhere to the principles of necessity and proportionality, and force must be the last resort, and the only chance to succeed in repelling the attack, and the force used must be consistent with the principle of proportionality. For Israel, the invasion was not a last resort. Military operations on Gaza were not a last resort, and there is no proof that there are no guaranteed alternatives to force in ending the Palestinian violence that it claims against it, for example, compliance with Security Council Resolution 242 to withdraw from the lands it seized in the Six-Day War in 1967. During The file of negotiations and the attempt to resolve the conflict peacefully. It has been proven that there is no political will on the part of Israel to choose successful alternatives to resolve the conflict. Consequently, Israel has not met the conditions for resorting to force to be a last resort under Article 51. Nor has Israel proven in its military operations that it has a reasonable chance of succeeding in ending violence against Israel, since the goal of Article 51 is not to retaliate or repel the attack, but rather to stop armed attacks that occur and repel them. What Israel does under the pretext of Article 51 may stop what it classifies as an armed attack in the short term only, but it has proven futile by its continued repetition of military operations in Gaza and the return of clashes every time, it did not eliminate the Palestinian resistance in the manner intended in its declared goals in each operation, which appears in Biden's statements and warnings to Israeli leaders to learn from the mistakes of the US after 9/11, which failed to reach its specific goals under the pretext of fighting terrorism, and even when the operations fulfilled the military force is necessarily

¹. Henderson, 2018, Ibid.

within Article 51, as the force used must be proportional to the extent of the damage. The principle of proportionality was mentioned in at least four rulings of the ICJ, as continuing to use a disproportionate amount and type of force is a violation of the principle of proportionality and does not meet the conditions of legitimate self-defense.¹

Necessity and proportionality in Israeli military operations in Gaza Strip

There is no doubt that every state has the right to protect its citizens from harm under international law and human rights. As for Israel, according to Article 43 of the Hague Regulations, it is prohibited from launching a military attack against people under its occupation. Rather, it has a legal duty to protect the Palestinians under its control and occupation, and to preserve on civil life, public order and human rights, under the jus in bello law, in this case, Israel is only entitled to resort to police forces to maintain order or military force in an exceptional case in line with the principles of international humanitarian law “necessity, proportionality and distinction”, which was also confirmed by the report of the UN mission on the conflict in Gaza in 2009.

On the ground, as until the date of writing this research, Israeli forces have displaced more than 1.8 million Palestinians out of the total population of the Gaza Strip (2.3 million), and dropped leaflets ordering them to evacuate homes and move to the south of the Gaza Strip. They also returned and ordered them to evacuate the parts of the south to which they were originally displaced.² On average, nearly 300 people have been killed daily in the Gaza Strip since October 7, according to Ministry of Health data. These numbers do not include the bodies that are still buried under the rubble of destroyed buildings and that have not been transported to hospitals. Israel has also completely destroyed more than 40,000 homes. And 234,000 homes were partially destroyed in just the first two months of its military operations, meaning 60% of the total housing units in Gaza. According to the description of military experts, Israel uses bombs, some of which weigh up to 100 pounds and others weigh up to 2,000 pounds, which contributed to this number of deaths in the aggression, despite Israel’s knowledge of the high population density of the Strip, and its imposition of a siege on it in advance, as there is a situation in which the normal number of people in Gaza is 5,700 people per square kilometer, and this for the current military operation is different from the statistics and facts of the previous operations that the researcher mentioned in the first section of this chapter. Israel also dropped more than 29,000 bombs on Gaza within two months, and 45% of them were unguided bombs (Random) can miss its target by up to 30 metres, which is the difference between hitting a Hamas headquarters and an apartment crowded with civilians, according to the American intelligence assessment, meaning that it did not take into account the principle of distinction here, while Israel claims to take precautionary measures to avoid harm to civilians. At the time of writing, the number of victims of the aggression reached 35,709 martyrs and 79,990 injured since October 7. The UN Children’s Fund (UNICEF) had stated that Gaza is currently considered the most dangerous place in the world for children, at a time when Israel announced its aforementioned goals of destroying during this period, Israel

¹ Milanovic, 2023, Ibid.

² Palestinian Human Rights Organizations Council, 2023, Israel’s Military Offensive on the Gaza Strip Breaches Law on the Use of Force on Self Defence Ad Bellum and is a Continuing Act of Aggression (position paper)

did not provide an explanation of the number of their members it killed. The Israeli army's numbers were devoid of details, and there were no reliable figures for the ratio of civilians to the fighters killed in Gaza.¹

This brings us back to the principle of proportionality in terms of quantity and teleological, and it can be concluded here that the declared goal is to eliminate the Hamas movement, but the aforementioned measures that Israel classifies as the right of self-defense are not teleologically proportional to this goal, as they violate the duty to protect the population under its control, and the actions Aggression that violates Article 51, international humanitarian laws, the four Geneva Conventions, and all international laws that govern its actions, seeking collective punishment of the Palestinian people and forcing them to leave their land by making it uninhabitable, with the aim of colonizing more Palestinian lands.²

According to the other concept of proportionality, based on the principle of an eye for an eye, the response in the case of self-defense is proportional as long as it is very similar to the effects and size of the attack, but Israel in all military operations, especially the last operation, killed more than eight times the number of Israelis who were killed on October 7. As for the goal of returning the hostages, despite all the military force that Israel has already used, the hostages are still being held by Hamas, they were also killed or injured by Israeli bombing, so Israel cannot argue that a military campaign is still necessary to recover the hostages after 460 days of military operation, which is still ongoing.³

Israel blatantly targeted densely populated civilian areas, hospitals, schools, and refugee camps, without any declaration of sufficient justification for military necessity, and there cannot be any justification under international law for targeting a civilian hospital. All of these practices could fall under international law under crimes against humanity and the crime of genocide. Which was proven by the ICJ in the case brought against Israel by South Africa, and forced displacement, but it can never fall under the right to self-defense and its principles of necessity, distinction and proportionality, as in all Israeli military operations on Gaza, especially the military operation of 2023/2024, which is still continuing. Israel directly targeted hospitals, ambulances, and residential areas, making them unusable, and directly targeted Al-Shifa Hospital, the largest medical facility in Gaza, with an R9X Hellfire⁴ missile, despite knowing that it shelters more than 7,000 displaced civilians. All of these practices and procedures are nothing but excessive use of force and unnecessary and exceeds the limits of necessity and proportionality compared to what Israel claimed was an armed attack on October 7th, compared to the declared objectives of the military operations.⁵

It is worth noting that even if Article 51 of the UN Charter is applied, which Israel claims to implement, the state must in this case inform the Security Council of the measures taken until it intervenes, which is what Israel did not do in most of the previous military operations in Gaza, including the last operation After October 7th.

¹ Thomas, 20/12/2023, srael Gaza: What Gaza's death toll says about the war

² Palestinian Human Rights Organizations Council, 2023, Ibid

³ Milanovic, 2023, Ibid.

⁴ The R9X, also known as the "Ninja Bomb", was developed under the Obama administration of the United States. It is a missile that lacks an explosive charge and is equipped with six blades that deploy before impact. They tear apart their target without any explosive effect (Le Monde, 2022)

⁵ Palestinian Human Rights Organizations Council, 2023, Ibid

Self-defense against a non-state actor in occupied territory

The ICJ's advisory opinion on the Apartheid wall includes a paragraph stating that self-defense does not apply in cases of occupation, for example: the case of territory occupied by Russia in Ukraine, and a group of revolutionaries organized an attack on the Russian armed forces. The right to self-defense simply does not apply here, nor the jus ad bellum, because the already clear position is that Russia has already violated Article 2/4, but in the event that the rebels, without the intervention of Ukraine, launch an attack on Russian forces, but in territory not occupied by Russia, and then after the end of their operations return to their territory, in In this case, it must be determined whether or not they acted on behalf of Ukraine as a non-state actor. If they were so in this case, and they were outside the occupied borders, then they constitute either armed attacks or border incidents. If they are proven to be armed attacks, then Russia's actual presence in Ukraine illegally does not constitute an armed attack against Russia, and in this case Russia only has the right to defend itself therein.¹

Let us compare this situation with what happened on October 7th, considering that Gaza is still occupied by Israel, and the case of Hamas fighters entering the settlements around Gaza, and leaving the Gaza borders, is the only case that calls for Israel to have the right to self-defense only if Hamas' actions represent actions on behalf of the Palestinian government, not as a non-state actor that carried out the alleged attack, and as an entity under occupation. Even if Israel categorizes their actions as armed attacks and hostile acts, this does not allow Israel to violate international humanitarian law when it allegedly defends itself.

No self-defense against self-defense

An aggressive occupation is considered illegal from the beginning if it begins after a prohibited use of force that amounts to aggression. Even if it is a legal occupation, it turns into an illegal occupation after its use of force in self-defense in a way that violates international and humanitarian principles and standards in an unnecessary and disproportionate manner. Israel had violated the two principles from the beginning in the 1967 war by acting under the framework of preventive self-defense by using force to prevent a potential threat from Arab forces, a principle that is not recognized as a justification for the use of force in international law, and the military occupation of the West Bank and Gaza Strip has continued since then. The illegal use of force is an act of aggression and illegal from the beginning. Even if Israel uses the pretext of preventive self-defense, or if it is allowed at all, it is an incorrect pretext for Israel because its continued occupation of the West Bank and Gaza is an illegal act, and the nature of what it is doing on the ground is the reality to prevent any threat from emerging to prevent the establishment of an independent Palestinian state out of public concern towards this state.² It is an invalid basis for occupation By self-defense, and by implementing it, Israel violates the Palestinian right to self-determination, which gives the Palestinian people themselves the right to self-defense, according to the justifications and reasons that give this right. The aggression against the Gaza Strip is considered an extension of the illegal use of force against the Palestinian territories since 1967, prolongs an aggressive occupation that must be ended, which is another issue.

¹ Milanovic, 2023, Ibid.

² Milanovic, 2023, Ibid.

The UN has also repeatedly affirmed the right of the Palestinian people to self-determination in no less than 267 resolutions and documents issued by the UN since 1970. The General Assembly has also affirmed the right to self-determination, freedom and independence for all peoples under colonial and racist regimes or other forms of foreign domination. These peoples have the right to struggle to achieve this, including armed struggle.¹

Conclusion (Results and recommendations)

There is no doubt about the right of states to defend themselves and protect themselves and their citizens as a natural duty of the government of any state from any danger or attack. Article 51 of the UN Charter came to regulate this right and set conditions, controls and acceptable justifications for its implementation and the use of force when implementing it. The state can implement this right and invoke it in its practices when it is subjected to an armed attack by another international party that has violated Article 2/4 of the Charter. Article 51 in this case acts as the only exception to the Charter's Article 2/4, provided that force and its application in this right be the last resort, and that there are no other options and alternatives to repel the attack, with the aim of preventing and repelling the attack, and not taking revenge on the aggressor, The state must notify the Security Council of the measures taken and stop them immediately upon the intervention of the Security Council. The aggression must be a violation of the basic rights of the state, and be characterized by a military nature, and the intent is the defense measures taken must comply with the objectives of defense and repelling the attack only and not with goals beyond that, as well as compliance with the most important principles in defense measures, which are: proportionality, which prohibits excessive use of force, limits damage to civilians and infrastructure, and that the response be proportional and reasonable to the attack occurring, and commensurate with the stated goal of self-defense, necessity, which means that the action used and the use of force is necessary, and absolute certainty that the conflict cannot be resolved by other means, with evidence proving that, while the principle of distinction stipulates the necessity of distinguishing between civilians and combatants in armed conflicts, as well as the need to distinguish between what is classified as an armed attack within the meaning of Article 51, and what does not apply to the right to self-defense and is not classified as an armed attack and does not violate Article 2/4, such as non-state actors who are not protected by Article 2/4, and therefore do not apply the exception in Article 51.

As for the cases of Israeli military operations in the Gaza Strip, Israel has set its declared goals, the most important of which is the elimination of the Hamas movement in the Gaza Strip, and disarming it under the pretext of fighting terrorism and the right to self-defense under Article 51, until it becomes clear to the researcher that Israel's invoking this article is an invalid pretext, considering that the Gaza Strip as an area still under Israel's control and occupation. Article 51 does not apply to internal threats. Hamas, which Israel claims to be defending itself against, is a liberation movement and a non-governmental group. It is classified as a non-state actor and is not committed to or protected by Articles 51 and 2/4 of the UN Charter, the exception does not apply unless the ban applies, and Israel also did not prove the necessity of resorting to force and military operations and the absence of other

¹. Palestinian Human Rights Organizations Council, 2023, Ibid

alternatives, so Israel could have dealt in good faith with the negotiations if their goal was actually its claim to stop Palestinian violence or to comply with a Security Council resolution 242, that is, evidence of the existence of other alternatives to the force used. Moreover, even if Israel's pretext for self-defense under Article 51 was valid, the self-defense measures had already been taken by Israel through the Iron Dome system deployed on its territory, and all of Israel's operations and practices were its justifications are not compatible with the principles of proportionality, necessity and distinction by comparing the civilian damage in the Gaza Strip in all operations with the damage in Israel, and its excessive, unjustified and indiscriminate use of force, the types of weapons used, and its deliberate targeting of hospitals, schools, UN institutions and other civilian institutions, and this is a clear violation of the principles of proportionality, distinction and necessity, and international humanitarian law, and the four Geneva Conventions, and the most important point was that there is no self-defense against self-defense, so Gaza is considered a territory that is still under long-term and illegal occupation, and the Israeli goals went beyond eliminating the Hamas movement, but rather Israel violated the right to self-determination. This gives the Palestinian people the right to self-defense and struggle, including armed struggle. There are also circumstances of the existence of a crime of genocide being committed in Gaza based on the lawsuit filed by South Africa in the International Court of Justice and the court's lawsuit to impose precautionary measures pending an investigation into the circumstances of the crime, which means that the military operations in the Gaza Strip may rise to the level of genocide if the charge is proven and may not represent of the right to self-defense.

Recommendations

At the end of the research, the researcher recommends the following:

1. An actual and accurate definition by the UN of international practices recognized as a right of self-defense in international law
2. Deepening studies into the decisions of the ICJ and its advisory opinion on the practices of the Israeli occupation to prove Israeli violations of international law on its territory and the extent of their impact on the right to self-defense
3. Study the positions of the UN, other international organizations, Arab and Western countries, and jurists regarding the practices of the Israeli occupation in Gaza
4. Reviewing the impact of the political situation in the Palestinian issue on Israel's interpretation of the right to self-defense

Conflict of interest statement:

All authors declare that they have no conflicts of interest.

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