



Israel-Palestine War: The Right of Self-Defence in International Law*

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Abstract

This paper examines the use of force in self-defence under customary international law, focusing on the Israel-Palestine war. It analyses explicitly whether the attacks on 7 October 2023 by Harakat al-Muqawamah al-Islamiyyah (Hamas) and Palestinian Islamic Jihad (PIJ) can be construed within the parameters of Article 51 of the United Nations Charter as an "armed attack" justifying Israel's use of military force in self-defence against non-state actors. The study employs a qualitative research method with a literature-based and legal approach, relying on analysing international treaties, customary international law principles, and relevant case law. The right to use force in self-defence in international and criminal law is discussed in the context of countering an armed attack or an imminent threat, aligning with the concept of *jus ad bellum*, which regulates the conditions under which states may initiate conflict. Furthermore, the paper emphasises that all forms of self-defence must comply with the Caroline principles, namely necessity and proportionality. Through a critical review of legal doctrines and international responses, this research seeks to provide a nuanced understanding of how traditional self-defence rights are applied to contemporary conflicts involving non-state actors. The findings underscore the complexities and evolving interpretations of self-defence in modern international law.

Keywords: Armed Conflict; Self-defence; Use of Force; International Law; Non-State Actors; Israel; Hamas

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A. INTRODUCTION

The attacks orchestrated by the Harakat al-Muqawam al-Islamiya (Hamas) and Palestinian Islamic Jihad (PI) against the state of Israel on 7 October 2023 were unprecedented in the history of Israel. It influenced the entire region, the European Union and the world community. It caused the death of 1,200 people in Israel, of whom at least 809 were civilians, including women, children and older persons, including 46 US citizens in Israel. Hamas attacked multiple locations in Israel, including Kibbutzim Beeri and Kfar Aza, and kidnapped over 252 hostages. (UN, 2024) In response, Israel initiated a series of continuous attacks on the Gaza Strip, encompassing countless aerial and ground strikes, along with the use of white phosphorus. (Monitor, 2024) The Israeli authority also cut off the energy supply to Gaza. (Al-Mughrabi, 2023) Israel carried out a merciless bombing campaign on Hamas and military objectives in Gaza. This was followed by a slow but steady land incursion that was designed to eradicate and destroy Hamas. It caused the death toll to pass 45,000 in Gaza. (UN, 2024)

The study indicated that 59.1% comprised women, children, and individuals aged 65 and older (Guardian, 2025). It injured more than 109,660 people and left more than 11,160 missing (Al Jazeera, 2024). Since then, an intense debate has been triggered on the right of Israel to engage in self-defence against Hamas within the framework of international and humanitarian law (IHL). It is crucial to demonstrate that the issue of *jus ad bellum*, about the legality of a state's use of force, can be distinguished from the legality of the state's means and tactics. There are serious moral and legal concerns about Israel's right to defend itself from Hamas, given the broad condemnation of its conduct in Gaza. Article 51 of the UN Charter offers states the right to self-defence. However, states cannot simultaneously exert authority over a region and utilise this right.

Literature Review

On 14 May 1948, the Jewish state was formally created by adopting the Declaration of Independence (Affairs, 1948) (Historian, 1948) and United Nations General Assembly Resolution 273 on 11 May 1949 to admit Israel as a member of the United Nations (UNGA, 1949). The nerve centre of the ongoing Israel-Palestine conflict has historical origins, albeit contemporary conflicts erupted in the 19th and 20th centuries. The territory was designated as Canaanite and then occupied by the kingdoms of Israel and Judah. The Jewish nation was dispersed following the Roman conquest of Jerusalem in 70 CE, referred to as the Diaspora (Miller, 2018). For centuries, the area was occupied by different empires, Islamic

caliphates and, from 1517 to 1917, the Ottoman Empire. At this period, the inhabitants and the owners of the land were mainly Arab-speaking Muslims only, with some presence of Christians and Jews. ([Britannica, 2025](#))

In the late 1800s, nationalism was quickly growing, and anti-Semitism was present in Europe, so Zionism arose as Jews wanted a separate land for Jews. At the same time, Arab nationalism emerged with its key themes of anti-imperialism and anti-colonialism. The immigration of Jewish people to Palestine rose, especially after Jewish people purchased some of the land and then set up the Jewish colonies, which were not well received by the Arabs. In 1917, the British government declared Balfourism, declaring it for the establishment of a 'national home for Jewish people' in Palestine that, however, should respect the rights of other communities.

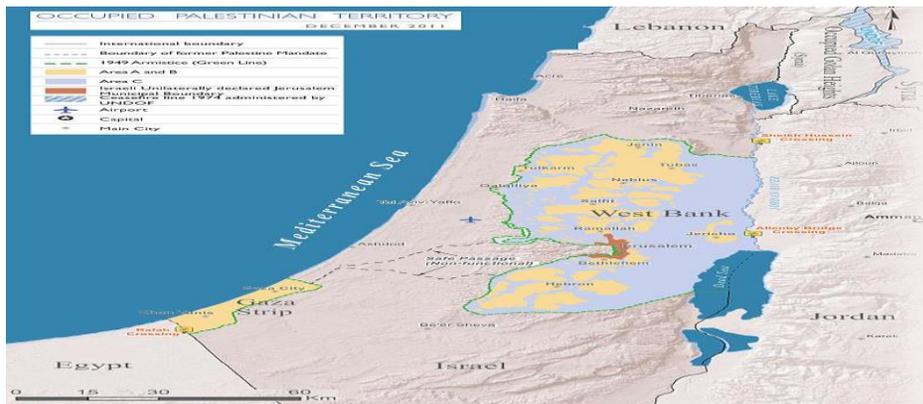
At the end of the First World War, the League of Nations assigned Palestine's hegemony to Britain. ([IWM, n.d.](#)) Also, during the interwar age, antagonism between Jews and Arabs flared up; wars such as the Arab revolts of 1936 to 1939 and the British resolve to check immigration, especially during the Holocaust, led to much tension. In 1947, the United Nations proposed a partition of Palestine into two states, one Jewish and the other Arab and Jerusalem as a zone of condominium. ([Malik, 2023](#))

On 14 May 1948, Israel's establishment led immediately to an attack by the neighbouring Arab countries. The first Arab-Israeli war in 1948 put the new state of Israel on the map and, at the same time, caused the expulsion of almost 500,000 Palestinians, the event known as Nakba. ([UN, United Nations the Question of Palestine, 2024](#)) Further, the 1949 armistice lines left Gaza to Egypt and the West Bank to Jordan. In June 1967, during the Six-Day War, Israel occupied the Gaza Strip, West Bank, East Jerusalem, Sinai and Golan Heights, starting the occupation of Palestinian territories. ([Cohen, 2017](#)). Thus, in the Yom Kippur War of 1973. ([Khan, 2022](#))

The Arabs tried to undo their loss, but not significantly. Although at this time, the PLO became a popular organisation established in 1964 and formed Palestine as its leading champion for self-rule. The First Intifada (1987–1993) captured numerous acts of violence by the Palestinians against the Israeli occupation. The peace process of the early 1990s, the Oslo Accords of 1993-1995 with Arafat, had at least the symbolic promise of the establishment of a two-state solution in which PA-controlled Palestinians were given limited self-government in Gaza and parts of the West Bank. However, some items, such as borders, refugees, and Jerusalem, remain on the table, which leads to conflict. ([State, 2001](#))

The second uprising from 2000 to 2005 resulted in increased violent acts and a hardline stance by settlers. West Bank Israeli settlements and the Hamas movement in Gaza have provided more challenges to the negotiators on the way to attaining a solution. Tensions between Israel and Gaza have flared up regularly, most notably in 2008, 2012, and 2021. The Abraham Accords, which were reached in 2020, brought together Israel and a few Arab states, but they completely disregarded the Palestinian issue. (Brown, 2023)

Fig 1. The situation in the Israeli-occupied territories, as of December 2011, per the United Nations OCHA



<https://www.ochaopt.org/content/occupied-palestinian-territory-overview-map-december-2011>

B. METHODS

This study uses a qualitative research method with a literature and legal approach. This approach was chosen to provide an in-depth analysis of the use of force in self-defence based on customary international law, especially regarding the war between Israel and Palestine. This study examines the attack on October 7, 2023, by Harakat al-Muqawamah al-Islamiyyah (Hamas) and Palestinian Islamic Jihad (PIJ). It considers whether the action can be categorised as an "armed attack" within the framework of Article 51 of the United Nations Charter, thus justifying the use of military force by Israel against non-state actors.

The literature approach is carried out by analysing various legal sources, including international treaties, principles of customary international law, and relevant case studies. On the other hand, the legal approach is used to evaluate the application of the concept of jus ad bellum and the Caroline principle, which

emphasize the elements of necessity and proportionality in self-defence actions. With a critical analysis of legal doctrine and international responses, this study aims to understand the dynamics of the application of the right to self-defence in contemporary conflicts and demonstrate the complexity of the interpretation of modern international law.

C. RESULTS AND DISCUSSION

1. The Legal Status of Palestine

The legal status of Palestine has been one of the contentious issues in international law, which is deep-rooted in the history of colonialism, conflict and the rise of nationalism. The legal issue of Palestine revolves around its status as a state and recognition of Palestine in the different legal frameworks of international law. There is persistent controversy over whether or not Palestine should be recognized as a state. In 1988, the PLO was declared the State of Palestine by the Palestinian National Council, and over 135 countries have recognized Palestine as the State of Palestine. (UN, 1988)

In November 2012, the UN General Assembly upgraded Palestine to non-member observer state status from entity by voting 65 to 7 with 32 abstentions. (UNGA, 67/19. Status of Palestine in the United Nations , 2012). However, the US, Israel and some European states are among the countries that have not recognised Palestine as a state, saying that it can only do so provided that a solution to the two-state conflict has been reached. Moreover, this situation also explains why state recognition remains a political rather than a legal resolution at the international level. For this reason, Palestine has also secured its legal status by belonging to other international organisations. In 2010, Palestine was granted non-member observer status. (UN, , 2024)

In 2011, it attained full membership in UNESCO. It has ratified numerous international accords, including the Rome Statute of the ICC. This has permitted Palestine to present cases to the ICC, including enquiries into purported war crimes in the occupied territory. (Watch, 2015) Further, many international principles are relevant to Palestine's legal status: Self-determination is acknowledged in international law, and the ICJ affirmed this for the Palestinian people by ruling against the wall in its Advisory Opinion in July 2004 (Nation, 2004). Hence, Palestinians are endowed with all the rights in the horror generally referred to as human rights protection under international laws.

2. Right of Self-Defence

The right to self-defence is codified in two articles of the United Nations Charter, Article 2(4) and Article 51 (Shaw, 2024). The "threat or use of force in international relations" is expressly forbidden by art. 2(4), establishing a narrow spectrum of exemptions to these limits (Art51, 1945) Moreover, Art. 51, which provides self-defence, is an exception to the UN charter's Art. 2(4). The drafters of the UN Charter included an explicit self-defence exception (Kim, 2021). Article 51 states, "*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.*" (Charter, 1945)

It recognises the established customary international law right to self-defence. This right pertains to individual or collective self-defence in tandem. It also establishes a restricted exemption for individual and collective self-defence in situations when a United Nations member state has been subjected to an "armed attack," which is another way of saying a serious breach of the prohibition on the use of force that is outlined in Article 2(4). Nonetheless, not each occurrence of force that contravenes Article 2(4) qualifies as an "armed attack," thereby allowing a state to properly invoke Article 51 for self-defence without breaching the law (Kim, 2021). Recent developments in international law and divergent assessments of state conduct have the potential to alter and reshape the idea of self-defence. Whether non-state entities can carry out armed assaults within the scope of Article 51 of the UN Charter and what level of scale and severity is necessary to qualify as an armed attack are two of the main points of contention surrounding the concept of armed attacks. (Heinze, 2024)

3. Armed Attack

The "armed attack" concept is important in evaluating the legality of force use under international law. Article 51 of the UN Charter recognises the inherent right to self-defence in the case of armed attacks against a member state. The charter of the UN also stipulates the right of collective as well as individual self-defence. However, the precise meaning of an armed attack continues to be a topic of significant controversy among legal luminaries, nations, and international tribunals. The notion of 'armed attack' becomes pivotal to invoking the right to self-defence since the anticipatory or preemptive use of force that cannot be qualified as a recourse to an armed attack does not constitute a pretext for a predatory military response. This distinction is also well supported by the

principles of customary international law and the case law emerging from the bench of the ICJ. In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America, 1986)*, the ICJ provides the most important interpretation of the term “armed attack.” It focuses on armed attacks involving a scale and severity greater than lesser uses of force. Minor border skirmishes or isolated incidents may not qualify as armed attacks. Still, they could be categorised as less severe uses of force or mere breaches of sovereignty, and this right can only be triggered by an armed attack on a state. In the *Oil Platforms Case (Iran v. United States, 2003)*, the ICJ further refined the criteria for an armed attack (i) Necessity and Proportionality: Where an armed attack occurs, the force can only be used when necessary and proportional.

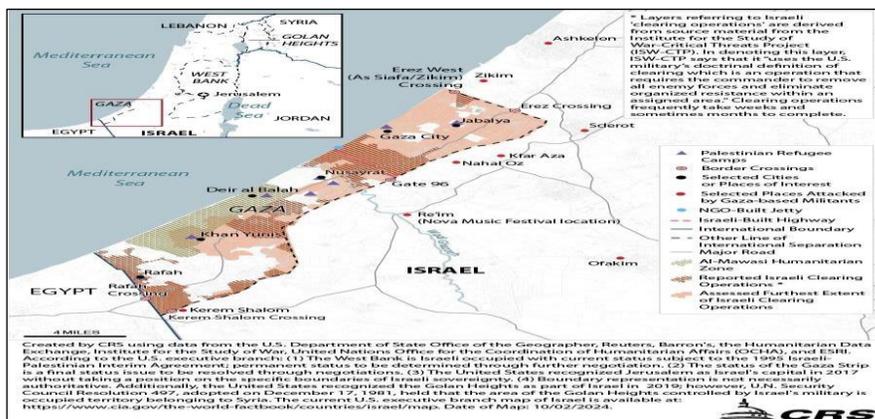
Furthermore, the most fundamental question is whether Israel has the legal right to exercise self-defence in Gaza, which is, depending on one’s standpoint, either occupied territory or disputed territory. The attacks carried out by Hamas on 7 October 2023, comprising extensive missile barrages and intrusions into Israeli territory, constitute an armed attack under international law, and Israel is entitled by Article 51 of the UN Charter to use military force in its right of self-defence. In this relation, Sharpe’s legal contradictions exist about the occupied territory, including whether an occupying power has the right to use force against aggression from the occupied territory. The US, UK, France, Germany, Italy and Canada released a joint statement reaffirming their support for Israel’s “right to self-defence against terrorism.” (Tekin, 2023)

As a result, one argument supports Israel that the occupying power does not transfer the inherent right of self-defence even if it faces armed attacks from the occupied territory, especially from groups such as Hamas. They assert that Israel has a legitimate right to defend its civilians and territory from attacks, even if those attacks originate from Gaza and with adherence to IHL. (Heinze, *International Law, Self-Defense, and the Israel-Hamas Conflict, 2012*) However, the counter-argument rejects Israel’s right to use military force in the name of self-defence. It argues that it is impossible for an occupying power to use self-defence in a territory it has occupied because, instead of using force to respond to threats, it has to do so legally. the ICJ in its 2004 Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

The ICJ ruled that Article 51 involves an armed attack by one state on another, and “Israel does not claim that the attacks against it are imputable to a foreign state.” (Erakat, 2012). In addition, the ICJ determined that the threat to Israel “originates within and not outside” the Occupied West Bank (Erakat, 2012).

According to Francesca Albanese, “Israel does not claim another state has threatened it. It has been threatened by an armed group within an occupied territory. It cannot claim the right of self-defence against a threat that emanates from a territory it occupies, from a territory kept under belligerent occupation,” (Purohit, 2024). Although Israel also argues that its withdrawal of forces from Gaza in 2005 signifies the end of occupation, both legally and practically, this withdrawal did not terminate the occupation in Palestine (Shalom, 2024). As per John Dugard, the UN Special Rapporteur on the occupied Palestinian, stated that “Gaza remained under Israel’s control” (Shalom, 2024).

Fig 2. Israel and Gaza: Conflict Map



4. Self-Défense Against Non-State Actors

The UN Charter and customary international law allow nations to use force when they face an armed attack. Decades ago, states could only use this protection when another nation launched military action, most certainly after the World Trade Centre attack on 11,2001 by al-Qaeda. The case of ICJ relied on Article 3(g) of the 1974 Resolution on the Definition of Aggression to hold that an “armed attack” could include aggression by “armed bands, groups, irregulars, or mercenaries” only if they were sent “by or on behalf of a state” (i.e., attributable to a state). (Kim A. H., 2022)

CJI, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, keeping the status quo as in Nicaragua, self-defence may only be proclaimed in reaction to an armed attack “by one State against another State.” the ICJ, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian

Territory, maintained its position in Nicaragua that self-defence could only be invoked in response to an armed attack "by one State against another State" (Occupied Palestinian Territory, Advisory Opinion, 2004). In the latest ICJ case involving the use of force against non-state actors, Uganda argued its Article 51 right of self-defence against a non-state group within the DRC, contending that the group's conduct was attributable to the DRC. ([Case Concerning Armed Activities on the Territory of the Congo \(Dem. Rep. Congo v. Uganda\)](#), 2005)

The ICJ reiterated that for aggression by a non-state actor to be classified as an "armed attack" under Articles 2(4) and 51, the non-state actor must demonstrate connections to a sovereign state recognised by the UN system for its conduct to invoke Article 51 ([Stephanie A, 2008](#)). The ICJ has stood by its evaluation, even in post 9/11, of the state-centric perspective on non-state actors. ([Stephanie A, 2008](#)). ICJ has gained support globally. According to the authoritative perspective and prerequisites, the UN Charter's requirement for self-defence states the attribution of the armed attack. As a result, it is well accepted by scholars and UN member states that states cannot legitimately consider the "unable or unwilling" theory to rationalise the use of force against a non-state actor under Article 51 of the UN Charter. ([Stephanie A, 2008](#))

According to Adil Haque, "that the UN Charter's text, context, and purpose indicate that it does not permit "one State (say, the United States or Turkey) to use armed force on the territory of another State (say, Syria), without the territorial State's consent, targeting a non-State actor ([Haque, 2019](#)). Many states, especially Latin America, such as Brazil and Mexico, have openly opposed the "unable or unwilling" doctrine; however, the majority remain silent over this issue. ([Olabuenaga, 2019](#))

5. Rule of Necessity and Proportionality

The principles of Proportionality and Necessity are integral to customary international law, particularly in the context of IHL concerning armed conflict, and are fundamental to discussions surrounding the exercise of the right to self-defence within the parameters of the Caroline principles. These principles also include the extent of steps necessary to address an armed attack, which must correspond to the perceived threat. This principle advocates for the judicious application of force, limits excessive force, and guarantees that military responses do not inflict greater harm than necessary on the targeted individuals and properties. The airstrikes, artillery, and ground operations by Israel are disproportionate due to the significant civilian casualties and assaults on civilian

infrastructure they have caused. The suitability of the ratio of Israeli military activities is passionately contested in public society. Israel's recent strikes on the Jabalia refugee camp, resulting in a minimum of 195 fatalities, seemingly violate the principles of proportionality. (Reuters, 2023)

Israeli attacks have produced a degree of civilian fatality that is significantly higher than US or UK forces have tolerated in counterinsurgency warfare. (Dworkin, 2023) Israel's attacks on medical facilities have disregarded their specific rights under IHL. The attack on an ambulance convoy near al-Shifa hospital resulted in 15 fatalities and numerous injuries. (Dworkin, 2023) Thus, Israel's conduct fails to meet this threshold since it has subjected the population of Gaza to what the International Court of Justice (ICJ) has characterised as a "plausible" genocide. (Galand, 2024)

D. CONCLUSION

The use of force against non-state entities in Palestine under Article 51 of the UN Charter presents complex legal, political, and ethical dilemmas. Article 51, which authorises self-defence against an armed attack, is predominantly construed within the framework of inter-state wars. The emergence of non-state actors, such as armed organisations in Palestine, undermines the conventional framework and demands a sophisticated approach to international law. The presence of an "armed attack," proportionality, and necessity are three strict legal requirements that states must fulfil before using Article 51 to justify their actions against non-state entities. The ideals of sovereignty and territorial integrity must be upheld, mainly when activities occur within another state's borders, even though international law does not expressly forbid self-defence against non-state actors.

The circumstances in Palestine are complicated, and the use of force in self-defence must be meticulously applied to guarantee compliance with international law, IHL. Hence, the international community must establish a more defined legal framework for self-defence against non-state actors while guaranteeing responsibility for breaches of international humanitarian law to address these challenges. Concurrent diplomatic initiatives targeting the fundamental causes of conflict in Palestine are essential for attaining enduring peace and diminishing dependence on unilateral military interventions.

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