

Normative Juridical Analysis of Israel's Exercise of Self-Defense Against Hamas Based on Article 51 of the UN Charter: Perspective of International Humanitarian Law and Human Rights

Thino Bagus Panuntun¹, Ahmed Hassan²

¹ Brawijaya University, Indonesia, ² Alexandria University

thinobagus90@student.ub.ac.id¹, ahmed.hassan1@alexu.edu.eg²

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Abstract

This study examines the legality of Israel's use of armed force in its conflict with Hamas based on Article 51 of the United Nations Charter concerning the right of self-defense. The conflict that peaked on October 7, 2023, raised critical issues related to international humanitarian law and human rights law, especially concerning the compliance with the principles of lawful warfare. Using a juridical-normative research method with a statute approach, this study analyzes the legal provisions governing self-defense and armed conflict as stipulated internationally. The research critically reviews Israel's counterattacks against Hamas by interpreting elements of Article 51 and evaluating relevant case precedents handled by the International Court of Justice and instances resolved through bilateral agreements. The results highlight the extent to which Israel's actions align with international law principles on self-defense and armed conflict, contributing to the ongoing debate on legal limits and justifications in the Israel-Hamas conflict.

I. Introduction

The Charter of the United Nations (hereinafter referred to as the UN Charter) was signed on June 26, 1945, in San Francisco, United States, and entered into force on October 24, 1945. This document sets out the organizational structure, objectives, and basic principles of the United Nations. The main purpose of the UN Charter is to prevent future wars and promote peace and international cooperation. The Charter serves as the legal basis for the UN's operations and regulates various aspects of its international activities, including conflict resolution, human rights protection, and socio-economic development.

When the United Nations was founded in 1945, the member states of the United Nations declared that they and the international community would not allow mass killings and other crimes against humanity to be repeated (Setyo Widagdo, 2021). Regarding armed conflict, the UN Charter states in article 2 paragraph (4), namely the prohibition of the use of force, namely:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

This article explicitly states that every member state of the United Nations avoids as much as possible the threat or prevents the use of armed force in its international relations that may harm the territorial integrity or political sovereignty of any country, and not to act contrary to the purposes of the United Nations.

The exception to this article is known as a right regulated in article 51 of the UN Charter, namely the right to self-defense.

"Nothing in the present Charter shall impair the inherent right of individual or collectiveself-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right ofself-defense 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."

This article provides an exception to the prohibition on using armed force in the interest of self-defence, either individually or collectively, in the event of an armed attack against one of the Members of the United Nations. This right is valid until the Security Council takes the necessary steps to safeguard international peace and security. Any act of self-defence committed shall be immediately reported to the Security Council and shall not diminish the authority and responsibility of the Security Council, by this Charter, to take such steps as it deems necessary in maintaining or restoring international peace and security. This right is used to defend oneself from attacks on a country's territory. This article is intended to remind us of the nature of human nature, which is to protect oneself from attacks on a country's territory. This article is the legitimacy of a country using the armed forces, but in the context of defending the country, meaning that this article must be implemented by

paying attention to several things, including an armed attack on a country. The country that is attacked is allowed to defend itself, this is a response to the attack that has occurred. The act of self-defense must be proportionate to the attack received, that is, the response taken must not exceed what is necessary to overcome the attack. The goal is to ensure that the Actions of the Slayer are not greater than the threat faced. After committing an act of self-defense, the country must immediately report its actions to the UN Security Council. This allows the Security Council to assess the situation and take the necessary steps to safeguard international peace and security.

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council 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.”

This article provides an exception to the prohibition on the use of armed force in the interest of self-defense, either individually or collectively, in the event of an armed attack against one of the Members of the United Nations. This right is valid until the Security Council takes the necessary steps to safeguard international peace and security. Any act of self-defence committed shall be immediately reported to the Security Council and shall not diminish the authority and responsibility of the Security Council, in accordance with this Charter, to take such steps as it deems necessary in maintaining or restoring international peace and security. This right is used to defend oneself from attacks that occur on the territory of a country. This article is intended to remember the nature of human nature, which is to defend oneself from attacks that occur on the territory of a country. This article is the legitimacy of a country using the armed forces but in the context of defending the country, meaning that this article must be implemented by paying attention to several things, including, there is an armed attack on a country, then the country that is attacked is allowed to defend itself, this is a response to the attack that has occurred. The act of self-defense must be proportionate to the attack received, that is, the response taken must not exceed what is necessary to overcome the attack. The goal is to ensure that the Actions of the Slayer are not greater than the threat faced. After committing an act of self-defense, the country must immediately report its actions to the UN Security Council. This allows the Security Council to assess the situation and take the necessary steps to safeguard international peace and security.

Acts of self-defense must be carried out within the limits of international law, including international humanitarian law. This means that, even in self-defense, the state must adhere to humanitarian principles and the protection of civilians as well as the avoidance of unnecessary harm. Self-defence under article 51 is temporary and must be stopped as soon as the threat or attack for which self-defence is the basis has been overcome or eliminated. These conditions are designed to ensure that the right to self-defence is not abused and that the use of force remains within the broader framework of international law.

A prominent case is the Oil Case in Nicaragua (Nicaragua v. United States of America, 1986). The background to this case began when Nicaragua filed a lawsuit against the United States for military intervention and funding of rebel groups (Contras) operating against the Nicaraguan government. The United States argues that the measure is part of the right to self-defense because Nicaragua has been accused of supporting insurgency in neighboring countries, such as El Salvador. This case sets an important precedent in limiting the use of force by the state in the name of self-defense.

Another case that can also be used as a reference is when a Rose Revolution exploded in Iran, which caused the entrapment of US embassy employees. In 1979, Iranian demonstrators stormed the U.S. Embassy in Tehran and took American diplomats' hostage. The United States claims that its act of sending troops to free the hostages, through Operation Eagle Claw, is part of the right to self-defense. This case confirms that a claim of self-defense does not apply if there is no armed attack involving state actors or that can be directly attributed to the state.

The use of the excuse of self-defense as an exception to the prohibition of the use of armed force in resolving problems began with the case of the Caroline ship (1837), this case began due to tensions between Britain and the United States in connection with the conflict known as the "Rebellion of 1837" in Canada. The Canadian rebels, who sought to overthrow the British colonial government, used the ship Caroline to transport supplies and personnel. The British attacked the ship on December 29, 1837, which was on the United States side, on the banks of the Niagara River, near the Canada-United States border. The ship was then burned and sunk on the American side. The UK claimed that its Actions were part of a legitimate Self-Defence Effort. They argued that the rebels were using the Caroline to attack British territory, and that the attack was a response to a real threat to security. The United States responded by filing a protest with the United Kingdom. They assert that the attack was carried out without prior approval or notice and consider that the Act violates the sovereignty of the United States. This incident became one of the important events in the development of the principles of international law, especially in terms of self-defense.

The principle of self-defense is clearly recognized by the United Nations, but that does not mean that the practice of this principle does not cause problems. There is a difference in understanding due to a difference in the basis of interpretation, which is recognized, in this case there is a difference in the basis of the customs that have been done previously and the unclear of the arrangement because the explanation in the UN charter is general. This principle is often misinterpreted as the legitimacy of a country to enter the territory of another country with military force and even to overthrow a regime which is a domestic affair that cannot be interfered with by other countries.

One of the misinterpretations of Article 51 of the UN Charter and the irresponsible use of the Caroline Doctrine is the Pre-emptive Strike. It still lacks clarity about its relevance in contemporary international law. Prior to the establishment of the United Nations Charter (The 1945 Charter), this action was still considered reasonable in the eyes of the world and for international customary law, as long as the action had a reason and evidence that their country was under threat and would be attacked by another country or an imminent threat.

When the UN Charter was established, this pre-emptive strike was still carried out, using the pretext of self-defense (Ion Hiroshi Yuki Rombot, 2013).

Article 2 paragraph (4) of the UN Charter regulates the prohibition of using force (non-use of force). This article does not justify any form of use of violence other than self-defense. Pre-emptive strike is also a form of action that uses violence. Moreover, a pre-emptive strike is a preliminary attack that uses military force (the use of military force to attack a country first without an ultimatum). Although the United Nations recognizes self-defense, it does not mean that applying this action does not cause problems in practice. There is a difference in understanding due to a difference in the basis of interpretation. In this case, there is a difference in the basis of the customs that have been done previously and the unclear arrangement because of the mention of self-defense in Article 51 of the UN Charter in general. As a result, many practices of self-defense based on article 51 are not following the purpose of the principle, they are used as an excuse for a country to enter the territory of another country with military force and even to overthrow a regime, which is a domestic affair that cannot be interfered with by other countries.

The actual case that uses the excuse of self-defense is the conflict between Israel and Hamas that occurred in Gaza, Palestine. the latest on October 7, 2023. Hamas launched its invasion and attacks on Israel from the Gaza Strip, breaking through Israel's Gaza border wall and forcing entry through the Gaza border crossing, to the nearest settlements of Israeli military installations.

Hamas called the attack on October 7, 2023, the Al Aqsa Flood operation. This event was the first direct conflict in Israeli territory since the Arab-Israeli War in 1948. The clashes began in the morning with rocket attacks on Israel and the entry of vehicles into Israeli territory. Israel officially declared war. The counter-operation launched by Israel was named Operation Iron Sword. The United Nations documented that 2023 has been the deadliest year for Palestinians in the West Bank, as of January 7, 2024, at least 22,835 Palestinians in Gaza have been killed, about 70% of whom are women and children.

The hypothesis of this research posits that Israel's invocation of the right to self-defense, as regulated in Article 51 of the UN Charter, can be considered lawful under international law only if it fulfills all constituent elements required by this provision, including the presence of an armed attack, the necessity and proportionality of the response, and proper notification to the United Nations Security Council; previous International Court of Justice (ICJ) decisions are expected to provide interpretative benchmarks for assessing whether Israel's actions meet these legal criteria, and thus determine the legitimacy of its self-defense claim in the context of the Israel-Hamas conflict.

This research assumes that Israel's claim of the right to self-defense under Article 51 of the UN Charter will only be legally justified in international law if it meets all essential elements required by the Charter. These elements include proof of an armed attack as the basis for self-defense, a response that is both necessary and proportional to the threat, and the requirement to notify the United Nations Security Council. The research further presumes that decisions issued by the International Court of Justice will serve as important

interpretative references in assessing whether Israel's actions in the conflict with Hamas fulfill these legal standards, and therefore, whether the claim of self-defense can be considered legitimate within the framework of

II. Research Method

The research method used by the author in this work is a normative juridical method with a legislative approach. Although this study focuses on normative juridical data, the author will also analyze various identical cases, as a consideration and to strengthen normative data in producing constructive analysis and suggestions for this research.

III. Results and Discussion

The Right of States to Defend Sovereignty

The state is still the most important subject of international law compared to other subjects of international law. Many international legal experts provide definitions of entities called states. One of them is C. Humphrey Wadlock who gave the definition of the state as an institution, or a container where human beings achieve their goals and can carry out their activities. Fenwich defines a state as a political society that is organized on a fixed basis, occupies a particular area, and lives within the boundaries of that area, as opposed to other countries, so as to act as an independent body on earth.

The world at this time has been regionally divided into states, nations or federations of states. Each ruler in the territory of the states has the authority to exercise his power. This ability is called sovereignty. Among the powers that can reflect the existence of sovereignty in a country is the power to form rules and enforce them. Because there are many states, in their application there are often conflicts as a result of the application of jurisdiction by states. For example, there are often conflicts between one country and another in terms of the application of jurisdiction which gives the authority to two countries at once or sequentially to apply their jurisdiction. In relation to these issues, jurisdictional international law is present.

The concept of international law divides sovereignty into 3 main aspects external and internal aspects (Nkambo Mugerwa, 2008). The meaning of external sovereignty is to have the same position as other countries. The continuation of the principle of equality between countries results in these countries having: (1) a jurisdiction over their territory and its citizens who reside in them; (2) the obligation for other countries not to interfere in problems that occur in the territory of other countries; (3) The obligations resulting from customary law and international treaties are based on the will of the State itself. Regarding the meaning of sovereignty internally, it can be said to be sovereignty aimed at the jurisdiction of the country concerned. And this internal sovereignty is realized in the form of authority or ability to: (a) form laws; (b) obtain submission, and (c) decide matters arising within its jurisdiction.

State sovereignty is a concept that shows that a state has full and supreme power over

its territory and people, without interference from outside parties. In political science and law, sovereignty is often associated with the right of a country to regulate its own internal affairs as well as interact with other countries based on international law. The first point that states that all countries have the same sovereignty politically is highly doubtful, as evidenced by the very diverse economic capabilities of the existing countries. The second point cannot be understood absolutely as evidence is that when an election takes place in one country requires legitimacy from the international community, third, which states that countries have exclusive jurisdiction over their territory must also be understood with various exceptions, for example, in the event that a country has been declared incapable of holding a fair trial, the international community will act.

Further changes in the understanding of the conception of sovereignty can be seen, for example in the views given by Judge Vereshcetin and Judge Skubiszewski in relation to the issue of the Case Concerning East Timor, in which Portugal filed a lawsuit after Indonesia and Australia made an agreement on the delimitation of the continental shelf. In 1975 Indonesia invaded East Timor, because of this fact Portugal rejected the validity of the agreement between Australia and Indonesia as a country violating the rights of the East Timorese people to self-determination. At the time of Indonesia's invasion, no party could question Indonesia's attitude to the ICJ considering that Indonesia did not recognize the authority of the ICJ. In this case, the ICJ refused to give a ruling because Indonesia's absence would automatically be affected by the impact of the ruling. But in relation to the issue of sovereignty, this decision has indications that there has been a change in the perception of sovereignty. Here are the views of the two ICJ judges, Judge Vereshcetin and Judge Skubiszewski:

Judge Vereshcetin (separate opinion)

"Besides Indonesia, ... there is another 'third party' in this case, whose consent [was not sought]. ...the 'third party' at issue is the people whose right of self-determination lies at the core of the whole case, have no role to play in the proceedings. This is not to suggest that the Court should have placed the State parties to the case and the people of East Timor on the same level procedurally. ...this is merely to say that the right of a people to self-determination, by definition, requires that the wishes of the people be at least ascertained and taken into account by the Court. ...[there is a] necessity for the court at least to ascertain the views of East Timorese representatives of various trends of opinion on the subject matter of Portuguese Application...I believe that nowadays the mere denomination of a state as administering power may not be interpreted as automatically conferring upon that state a general power to take action on behalf of the people concerned, irrespective of any concrete circumstances."

Judge Vereshcetin (separate opinion)

"East Timor has not been well served by the traditional interests and sovereignties of the Strong. ...[While] both Parties invoked the interest of the East Timorese People. ...they presented us with little or no evidence of what the actual wishes of that people were."

From the statements of the two ICJ judges, the following conclusions can be drawn, if international law at this time has a humanitarian dimension as evidenced by the demand

to consider the interests of the East Timorese nation. This situation has implications for issues related to subjects in international law itself and may in the future have implications for the recognition of individuals as parties by the ICJ

The Use of Self-Defense to Protect the State's Sovereignty

Because international law is accepted as law, international law has the power to be binding and obeyed as law by its subjects, especially by countries that are the main subjects of international law. The foundation of binding power as the law of international law is the same as the foundation of binding law in general. Regarding the philosophical basis of binding law, there are various schools of legal philosophy that have tried to provide a basis for binding legal provisions such as the natural law school (natural law), the positive law school (legal positivism) and the sociological school. Public international law is the set of rules and principles of law that govern relations or issues that cross national borders (international relations) that are not civil (Setyo Widagdo, 2019).

According to Tim Hillier, unlike national law which has a uniform enforcement mechanism, international law does not have a uniform enforcement mechanism. Furthermore, Hillier described the various international law enforcement mechanisms available as follows:

1. Enforcement through the United Nations.
2. Enforcement through the courts.
3. Enforcement by eliminating the rights and preferential treatment of perpetrators of violations of international law, and
4. Self-help by a state aggrieved by violations (Tim Hillier, 1998).

The UN Charter provides for sanctions against countries that violate international law in the form of actions using military force and actions without military force. The UN Security Council can take these actions in carrying out its function as a maintainer of international peace and security. The UN Security Council may take action: a) to resolve disputes that threaten international peace and security; b) to eliminate any threats and violations of the peace and acts of aggression. UN Security Council actions can be acts of coercion without force of arms and acts of coercion by force of arms, including the use of war. In addition to the UN Security Council, the UN General Assembly can recommend actions to resolve international disputes, as long as they are not being handled by the UN Security Council. In practice, the General Assembly can also act alone to resolve an international dispute that endangers international peace when the UN Security Council fails to deal with the dispute. This kind of practice was carried out by the UN General Assembly, for example, in handling the conflict on the Korean Peninsula in the 1950s, where the UN Security Council could not handle the dispute because the Soviet Union as a permanent member of the UN Security Council boycotted the UN Security Council's decision-making.

War is a dispute between two or more countries using armed forces with the aim of subduing the opponent and imposing peace conditions that must be obeyed by the losing party. The use of war to resolve international disputes has been commonly carried out as a way of resolving international disputes since ancient times. However, with the enactment of

the UN Charter of October 24, 1945, war of aggression is a prohibited act and is a gross violation of international law. According to the UN Charter, war can only be carried out:

1. As an act of self-defense by a state or a group of countries as an effort to defend themselves (*self-defense*) as stipulated in Article 51 of the Charter and,
2. As an action of the UN Security Council in carrying out its function as a maintainer of international peace and security.

Although the settlement of international disputes by force (coercion) is still possible, in principle, the settlement of international disputes must be resolved peacefully. In contrast, settling disputes by coercion, especially through war, must be avoided. Article I of the Hague Convention of 1907 sets out the principle of peaceful settlement of international disputes. After establishing the United Nations, the United Nations Charter in principle prohibits the use of force of arms (albeit with exceptions) and obliges the United Nations members to resolve any international dispute through peaceful means, which does not jeopardize international peace and security.

The UN Charter is an instrument to which almost the entire community of states is a party, larger than most countries. All parties to the UN Charter agree with the norms written in article 2 paragraph (4). The norms contained in Article 2, paragraph (4) of the UN Charter, are very important because they add to the status of general international law and are approved and recognized by the international community, i.e., countries, including all important components of the international community of all international legal systems. In addition to obtaining recognition from non-member countries. Then the principle contained in article 2 paragraph (4) of the UN Charter, where there is an obligation for UN member states to resolve their disputes peacefully,(Adi Kusumaningrum , 2022) It is also an achievement in itself when Member States and non-members agree that this principle is irreplaceable. Any disregard for this norm may give rise to actions taken by the Security Council, firstly by individual or collective means of self-defense without any intervention by the Security Council and secondly by means of the implementation of actions taken by the Security Council under *Chapter VII* of the Charter of the United Nations or by other channels, namely the regional security system or the parties having the authority of the Security Council.

Undeniably, in the relationship between the subjects of international law, especially between countries, disputes can arise because each country has the same sovereignty and has national interests that can conflict with each other. When a dispute arises, the principle that applies is a peaceful settlement. This is under the prohibition of the use of force or the threat of violence against a country's territorial integrity or political independence, clearly indicates a violation of the state's sovereign rights. However, in this principle, there are limited exceptions, the principle of prohibition of the use of force or the threat of violence against territorial integrity and political independence can be excluded by the principle of self-defense which permits the use of armed force for dispute resolution. Self Defense Principle as a form of self-help that allows the use of armed force in its implementation.

As the right of the state to defend itself, it aims to maintain the territorial integrity and political independence of an attacked country, giving the authority to the country that is the

object of attack to restore peace and security of its territory as soon as possible, as a means to maintain the authority and honor of the state in the eyes of the international community and its people. In addition, self-defense can also be used as *jus ad bellum* in accordance with international law. As a result, self-defense can only be declared by the subject of international law in the form of a sovereign state.

International law expressly recognizes this right as the right of a country that is the object of attack, on the other hand, it is not mentioned to whom this declaration of self-defense is made. The self-defense principle in international law recognizes the rights of the subject of international law in the form of a state a state entity can only declare self-defense in international law. As stated by the International Court of Justice in its advisory opinion that every country has the right to survive and one of the ways that can be used is:

"Self-defense, furthermore, the Court cannot lose sight of the fundamental right of every state to survival, and thus its right to resort to self-defense, in accordance with Article 51 of the Charter, when its survival is at stake.

Developments related to this right, in addition to the state, non-state actors can also be targeted for the implementation of self-defense. This development emerged in the decisions issued by international organizations stating that state actors can apply self-defense as in Security Council Resolutions No. 1638 and No. 1373 related to September 9, 2001. In addition, for non-state actors to be subject to the principle of self-defense, every attack carried out by non-state actors must have such a scale and influence that it will be equivalent to the influence caused by a country's armed forces. Using the principle of self-defense has two grounds of limitation, necessity and proportionality. As the ICJ in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons states that the application of the principle of self-defense is subject to the conditions of necessity and proportionality which are rules in customary international law.

Israeli-Palestinian Armed Dispute

Armed conflict or known as Armed Conflict can be interpreted based on the opinions of several figures, one of which is Pictet and Edward Kossoy, stating that, "Armed conflict is the right and logical word to replace the term war. Armed conflict is defined as a dispute between two or more countries through their armed forces, for the purposes of defeating each other and forcing conditions of peace as desired by the victorious side of the war". (Haryo Mataram, 1988) Based on this statement, it can be concluded that armed conflict is a condition of war that occurs between two or more countries that occurs as a result of problems arising from two or more countries, thus causing a ceasefire that forces the losing party in the war to reconcile.

According to the former Palestinian Ambassador to Indonesia, H.E. Fariz Mehdawi that the protracted conflict that occurred in Palestine was more influenced by the tug-of-war between the interests of regional powers and major/super powers. The conflict that occurred in Palestine is not a mere ideological conflict but rather a political conflict between the Arabs and Israelis.

In Broto Wardoyo's opinion, the Palestinian conflict actually has four different levels, namely: (Broto Wardoyo, 2008)

1. Intra-factional conflicts, especially within Fatah and Hamas. The conflict is related to Palestinian domestic politics. Palestinian-Israeli conflict and relations with regional countries. Fatah's internal conflict occurs because historically the group was built from diaspora groups (the Tunis Group) and local politicians in the occupied territories. Arafat prioritizes diaspora groups to play a greater role in central positions. The deteriorating performance of the Palestinian Authority has led to more pronounced divisions, especially discontent from local politicians. After Arafat, divisions were increasingly inevitable such as the emergence of Marwan Barghouti, Muhammad Dahlan's silent coup against Abbas and the failure in the legislative elections.
2. Conflicts between factions in Palestine, especially between Fatah and Hamas. There are differences regarding *resistance* and *state-building*. *Resistance* by Hamas is understood as acts of violence against the Israeli occupation. This strategy actually positions Hamas as a *spoiler* in the peace process. Hamas's actions often discredit Fatah in the eyes of the public. According to Milton-Edwards, when Hamas won the election, Hamas gained legitimacy in popularity and positioned itself as an opposition movement, which had an impact on the recognition of the Oslo accords that Hamas had previously opposed to rejecting diplomatic efforts with Israel (Amaney Jamal, 2001).
3. Palestinian-Israeli conflict, this conflict continues as peace process efforts are stopped. The parties argue that one of the factors of the stagnation of the peace process is due to Israel's absence from the peace talks agreement. Israel is considered not serious in responding to and responding to the results of the peace negotiation agreement.
4. Conflicts between regional countries involving the US. The interests of regional actors, including the US, can be seen from two shals, namely first, the definition of the policies of each actor and second, the mapping of the constellation of problems in the region. The US involvement can be seen from two cases, namely the decision to leave the Israeli-Palestinian peace process and the demand for Palestinian reform.

Based on historical facts and a series of events, it can be described that there are several aspects related to the factors that cause the Israeli-Palestinian conflict that are very complex, namely:

1. The factor of Israel's occupation of Palestinian land.
Israel occupies Palestinian territory based on historical and theological aspects, the Israeli-Palestinian conflict began with the desire of the Zionist political movement to establish a Jewish state in the land of Palestine. The Jews believe that the land of Palestine is the promised land according to Judaism. At that time the existence of the Jews of the diaspora so they wanted to have a country that was their homeland. After going through several wars supported by western countries, Israel succeeded in seizing the territory that had long been inhabited by the Palestinian population.
2. Factors of western power

British support for the Jews occupying the Palestinian territories. Britain had a big role to play when it gave Israel permission to get Palestinian territory that was made into a Jewish state in the Middle East. Israel with the help of Western countries that have advanced weapons so that they are able to destroy Palestine. This situation is unbalanced where Palestine as a country with the weakest military equipment in the world. The British mandate through the Balfour declaration confirmed the forerunner of the Israeli-Palestinian conflict. Furthermore, it is also related to the support of the United States for Israel, such as when the United States was led by Donald Trump, the policies it has taken, such as the recognition of Jerusalem as the Capital of Israel and the relocation of the US Embassy from Tel Aviv to Jerusalem, have changed the geopolitical dynamics in the region. (Setyo Widagdo, 2024)

3. Factors of Internal Conflict of Hamas-Fatah.

Since the Israeli-Palestinian conflict, organizations have emerged on behalf of the Palestine liberation organization. One of them is Hamas, which is quite hard in fighting for the rights of the Palestinian people. Hamas is principled in carrying out its struggle through weapons. The militaristic approach taken by Hamas is clearly different from Fatah, which prioritizes a diplomatic approach through negotiation and diplomacy so that peace negotiations can continue to be fought. Internal conflicts are inevitable between Hamas and Fatah. The Gaza Strip is currently controlled by Hamas and the West Bank by Fatah. On January 25, 2006, Hamas won the Palestinian elections. The victory reflects the vast majority of Palestinians who support Hamas. However, the victory actually has implications, namely the threat of the process of peaceful settlement of the Israeli-Palestinian conflict, because the US and the European Union are worried about the direction of the hardline Hamas organization. However, there is a glimmer of hope that Hamas may follow in the footsteps of the PLO and change its strategy of struggle by abandoning violent methods and turning to the negotiating table.

4. Factors Vying for the Status of the Holy City of Jerusalem

Jerusalem is a core issue in this conflict, where according to the 1993 Oslo Accords the status of Jerusalem will be decided through negotiations and based on UN Resolutions to become an international zone. But when US President Donald Trump recognized Jerusalem as the capital of the state of Israel, the policy destroyed the mediation efforts initiated by the mediators.

The protracted Israeli-Palestinian conflict seems to always attract the attention of the world, not only because of Israel's aggression on the Palestinian territory but also vice versa, the counterattacks of the Palestinian people against the Israeli army continue to rage in order to maintain the pride of a country that wants to be independent and sovereign. The struggle of the Palestinian people to regain their rights is not only through the battlefield but through negotiation and diplomacy that finally resulted in an agreement in the form of an international agreement in the form of a Peace Agreement between Israel and Palestine. Of course, with the hope that the agreement can end the conflict that occurred.

As explained earlier, the conflict in Palestine is not only between Israel and Palestine, but also between factions, even as the last conflict, which began with an attack on the Israeli

border on October 7, 2023, was carried out by Hamas. Hamas is a political movement based on Islam. Hamas was formed due to the Israeli invasion. Nationally, Palin's struggle was organized when the Palestine Liberation Organization (PLO) was formed in 1964. The PLO was then authorized when it was decided as the sole legitimate representative of the Palestinian people in October 1974. Its existence was increasingly recognized when Yasser Arafat visited various countries to seek international support for Palestinian independence. The PLO was established on the initiative of the President of the Arab League, Gamal Abdul Nasser, as a forum for many covert activities in the Palestinian liberation movement.

Harakatul-Muqāwamatul-Islāmiyyah or the Islamic Resistance Movement (Hamas) is an organization that stands inseparable from the influence of the Muslim Brotherhood that has been established in Palestine, especially Gaza, for a long time. The Muslim Brotherhood (IM) is an Islamic movement organization founded by Hasan Al-Banna, a charismatic cleric from Egypt. It was established in April 1928 in Ismailiyah, Egypt, when the condition of Islam was neglected, the ummah was scattered, superstition was rampant, superstition, blind taklid among Muslims, the colonization of Islamic countries by Europeans after the defeat in World War I and the collapse of the Ottoman Empire. In 1969, the PLO was led by Yasser Arafat and gained a place in the hearts of the people. Since October 1974, Yasser Arafat has succeeded in bringing the PLO to become the sole legitimate Palestinian organization and gaining recognition from Arab and international countries. One month later, Yasser Arafat had a great opportunity to deliver his speech before the United Nations, New York, and the PLO was accepted as a supervisory member. In its first session at the UN, Palestine got its own clause. One of the most important UN resolutions related to the Palestinian people is Resolution 3236 issued on November 22, 1974 entitled "Resolution on the Rights of the Palestinian Nation". The resolution contains the right of the Palestinian people to determine their own future destiny, the right to independence and sovereignty, the right to return to their homeland, the right to return to their fundamental rights by all means in accordance with the objectives of the UN Charter.

The death of Yasser Arafat on November 11, 2024 made the PLO without a charismatic leader. This led to internal conflicts re-emerging between Fatah and Hamas, especially after Hamas won elections in 2006. These two factions have ideological differences, Fatah with secular nationalists and Hamas with Islam. One of the results of the Oslo Accords was the establishment of the Palestinian National Authority in 1994. Throughout Arafat's leadership, the Palestinian Authority has been an extension of Israel in suppressing the struggle of Palestinian militants, including Hamas. The 2006 Palestinian legislative election, which Hamas won with 42.9% of the vote, elected Ismail Haniyah as Prime Minister of Palestine. However, because Hamas has tended to carry out attacks on Israel, western countries have placed Hamas as a terrorist organization, coupled with Ismail Haniyah's statement that it will not recognize the existence of Israel.

Israel has never stopped its attacks on Palestinian territories. Hamas retaliated by throwing rockets into Israeli territory. This made Israel and the West (including the UN Secretary-General) stop the arms act and even call it a terrorist act. Fatah also joined in opposing Hamas and even killed Hamas figures. A war broke out between the two and killed hundreds of people. Culminating on June 14, 2007, the President of the Palestinian Authority

dissolved the cabinet and fired Ismail Haniyah. Hamas rejected the decision and still considered Ismail Haniyah as prime minister. until now Gaza is controlled by Hamas and the West Bank is controlled by Fatah. Since June 2007, Israel has blockaded Gaza.

Legality of Israel's Use of Armed Force

The conflict between Israel and Palestine has occurred for a long time, where in this study it is limited to the dispute that began with an attack on the Israeli border on October 7, 2023, which is currently entering the ceasefire phase starting January 19, 2025. The ceasefire was carried out for 42 days for the exchange of hostages of Israeli prisoners and Palestinian prisoners. As explained earlier, Self defense is an instrument for a country to uphold its sovereignty in the event of disturbance or armed attack from other parties. In article 2 paragraph (4) of the UN Charter, there is an editorial of territorial integrity or political independence related to the term sovereignty which is a fundamental problem in international law. So that the use of violence or the threat of violence against the territorial integrity or political independence of a country clearly indicates a violation of the sovereign rights of the country under attack. This shows that the UN Charter upholds the provision contained in article 2 paragraph (4) that violations against it (use of armed force) cannot be prosecuted, but these provisions are exempted by exercising the rights inherent in the principle of self-defense as stipulated in Article 51 and its application is also limited when a country is a victim of an armed attack.

There is another option besides the use of self-defense, which is as stipulated in article 39 of the UN Charter which states that the Security Council can determine a condition in which there is a real threat to international peace and security, then if a security threat is found by the Security Council, then action can be taken either through military or non-military channels in order to restore international peace and security. The rights contained in article 51 in the case of armed attacks are limited only when the Security Council takes the necessary action. Therefore, the settlement of violations of article 2 paragraph (4) by giving authority to the Security Council, the exception in article 51 for using armed force is only a form of defense and not retaliation, which must be balanced and proportionate.

Also related to the previous discussion regarding the position of Hamas, whether it is possible to be considered a representative of the Palestinian state, this organization is different from the PLO led by Yasser Arafat, which has been authorized. Hamas is one of the factions that, together with Fatah, run the wheel of government, with Fatah ruling in the West Bank and Hamas in the Gaza Strip. Because of the attitude of Hamas through its official who was the Prime Minister in Palestine until June 14, 2007, Ismail Haniyah, who stated that he would not recognize the existence of Israel, was often one of the obstacles to the creation of peace in the region, so that the Palestinian Authority dissolved the cabinet. However, Hamas did not recognize this dissolution. Based on this condition, Hamas' position cannot be categorized as an official representation of Palestine, so the attack on October 7, 2023, carried out by Hamas and other Palestinian armed groups by 44 countries is considered an act of terrorism even though the majority of Arab countries also consider Hamas' actions to be caused by the Israeli occupation.

The action is considered to have occurred on the border of Israel and the Gaza Strip, which Israel has entered their sovereign territory, although until now it is still not clearly known the boundaries of Israel's territory because since independence in 1948 the elements of the formation of a state, namely certain territories, cannot be fulfilled by Israel, because the territory is always increasing by reducing the large portion of the territory of Palestine. This action by Hamas further led to the killing of 859 Israeli civilians and at least 350 soldiers and police. Given that Hamas is not a representative of Palestine, these attacks fall into the category of those carried out by non-state actors, this is similar to the cases that have been decided by the International Court of Justice, namely in the case of Congo vs Uganda and also in the case of Nicaragua v the United States, where the court held that "the absence of action by the Government of Zaire against rebel groups in the border areas is not the same as tolerating or approving their activities" (in Congo vs Uganda case). The Congo vs. Uganda case, where there was an operation called "Safe Haven", made no mention of responding to armed attacks, a necessary prerequisite for the use of armed force in the UN charter. Article 51 states that for the fulfillment of self-defense actions, there are conditions for an armed attack, but in practice it raises the issue of whether an armed attack is also an imminent threat of an attack and whether actions carried out by non-state actors can be classified as an armed attack.

Two schools express their opinions about the timing of this armed attack, the first is the restrictive school which states that the armed attack is the basis for the use of the principle of self-defense is an armed attack that has been started or has occurred, while the second school is the liberal school which argues that an imminent attack) is included in the definition of armed attack and states are allowed to use armed force to defend DRI in anticipation or when a threat is real and imminent.

In the first opinion, adherents of the school, as stated in the judgment in the Nicaragua Case at paragraph 194, self-defense can be applied only in cases where an armed attack has already occurred and in the event that an imminent threat of an armed attack has not arisen. This is based on the wording of Article 51, which states that "if an armed attack occurs", and it is narrowly translated as self-defence if and only if an armed attack occurs.

The second opinion is based on two arguments used as the basis for using violence as self-defense in the event of an imminent attack or also referred to as anticipatory self-defense. The first argument states that Article 51 still refers to the customary law of self-defense, which recognizes anticipatory self-defense. Waldock said that when there is convincing evidence not only of a potential threat and danger, but of a weapon that has been installed, it can be said that an armed attack begins even though it has not crossed the border. Waldock, C. (1952) Waldock also stated that article 51 was to protect the aggressor's rights on the first attack. Meanwhile, Bowett stated that the construction of article 51, which limits self-defense when an armed attack occurs, is a limitation that is not necessarily recognized by international law in general, which acknowledges the existence of anticipatory self-defense. And Schachter added that it is impossible to interpret article 51 without considering the practices that existed before implementing the UN Charter.

The development of weapons technology and its delivery system became the basis for

the first argument. At this time, weapons have been created that are very destructive and reach the target quickly, which is what leads to the weakening of the opinion that self-defense is only for attacks that have already occurred. Because if self-defense applies when an armed attack occurs, it would cause a lot of losses if the weapon used as the beginning of the attack is very destructive. This causes the demand to expand the right to reactive self-defense, namely anticipatory self-defense. Judge Higgins stated that in the era of nuclear deterrence, it is generally impossible to ask one to interpret an ambiguous provision in a text by telling a country to passively accept its fate before it can defend itself, even in the face of conventional war, it would also appear to be only a contemporary realistic interpretation of the right to self-defense. This is a potentially detrimental consequence of the prohibition of self-defense unless an armed attack has occurred, which leads people to prefer this interpretation despite having to say that, as a matter of simple construction of words alone, other conclusions can be reached.

IV. 4. Conclusion

Self-defense is an instrument for a country to uphold its sovereignty in the event of disturbance or armed attack from another party. In article 2 paragraph (4) of the UN Charter, there is an editorial of territorial integrity or political independence related to the term sovereignty which is a fundamental problem in international law. So that the use of violence or the threat of violence against the territorial integrity or political independence of a country clearly indicates a violation of the sovereign rights of the country under attack. The right to self-defense in Article 51 can only be exercised in the event of an armed attack or at least an imminent attack against a country. Any country that has the intention of asserting the right to self-defense is given an obligation to provide strong evidence to the international community that it has suffered an attack.

Chronologically, the attack on Israel was carried out on October 7, 2023, beginning in the morning when the Al Qassam Brigades, the military wing of Hamas launched a massive military operation against Israel, from here in accordance with the elements of article 51 of the UN charter, that is, the inherent right to defend itself, Israel already has the right to reactively respond to attacks from the military wing of Hamas. Armed attacks, this right of self-defense only applies if there has been an armed attack on a UN member state, an attack such as the one that occurred on October 7, 2023 has met this element, considering that in addition to the armed attacks carried out on the border between Gaza and Israel, the country has been a member of the United Nations since May 11, 1949 Report to the Security Council, after the attack launched by Hamas, Israeli Prime Minister Benjamin Netanyahu immediately declared war as a quick response. Israel also reported the incident to the UN Security Council through Israel's Ambassador to the UN, Gilad Erdan, who called on the Security Council to put maximum pressure on Hamas to release the hostages held since the attack. Israel also asked the UN Security Council to hold an emergency meeting to discuss the hostage situation in Gaza.

The authority of the Security Council, here as is known, after being attacked by the

Hamas-affiliated Al Qassam Brigades, Israel retaliated by bombarding strategic buildings and military targets, further killing civilians, further known that the UN Security Council has issued Resolution no. 2712 of 2023 adopted on November 15, 2023, where this resolution calls for a humanitarian pause and the opening of humanitarian corridors in Gaza for the duration of the The resolution was approved by 12 member states of the Security Council, while the remaining members abstained, namely Russia, the United Kingdom, and the United States. When chronology and facts are linked to the elements in article 51 of the UN Charter, then the claims of self-defense made by Israel can be said to be not contradictory, but it is necessary to know some principles that make them contradictory. International humanitarian law requires that responses in self-defense must be proportionate and distinguish between combatants and civilians, as is known as a result of an attack that Israel claims in retaliation for the Hamas attack on October 7, 2023, has killed civilians, this is contrary to the laws of war even though the claim of self-defense is in accordance with article 51 of the UN Charter.

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