

Abuse of Self-Defense by Israel

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Abstract: In international law, the right of self-defense is recognized as an inherent right of states. However, this right is neither unlimited nor unconditional; rather, it is subject to specific requirements. Since its establishment, Israel has consistently invoked the claim that "Israel has the right to defend itself," thereby abusing this right. By abuse of this right, we refer both to Israel's invocation of self-defense despite being the aggressor, and to its failure to comply with the limits of the right even when a lawful basis for self-defense arguably exists. From this perspective, in the 1948 Arab-Israeli War, the 1967 Six-Day War, and the 2023 Gaza War, Israel's discourse of self-defense can be observed either as a tool to mask its actions or as an abuse of the boundaries of legitimate self-defense. This raises further questions: what of the right of self-defense of other states, such as Egypt or Syria? Has no state ever acquired a right of self-defense against Israel? How should the Wars of Attrition and Yom Kippur be evaluated? Moreover, how should the ongoing occupation of Palestine and the Palestinian people's right to self-determination be assessed in the context of self-defense? This study aims, through a factual analysis and from a comprehensive perspective, to demonstrate how Israel has abused the right of self-defense in the armed conflicts in which it has been involved since its inception. The study will first examine the abuse of self-defense in the 1948 and 1967 wars between Israel and the Arab states, as well as in the Wars of Attrition and Yom Kippur. It will then focus on Israeli-Palestinian relations in the context of self-determination. Finally, it will analyze Israel's security- and terrorism-based discourse of self-defense in light of the reality of occupation and the Palestinian people's right to self-determination.

Keywords: Israel, Palestine, Arab States, War, Self-Defense

Öz: Uluslararası hukukta meşru müdafaa hakkı devletlerin doğal bir hakkı olarak düzenlenmektedir. Ancak bu hak sınırsız olmadığı gibi birtakım şartlara tabidir. İsrail ise kuruluşundan beri sürekli kullandığı "İsrail kendini savunma hakkına sahiptir" söylemiyle bu hakkı kötüye kullanmaktadır. Bu anlamda kötüye kullanımdan ya saldıran taraf olmasına rağmen meşru müdafaa hakkına sığınması ya meşru müdafaa hakkı olmasına rağmen hakkın sınırlarına uymamasını kastetmekteyiz. Bu açıdan bakıldığında 1948 tarihli birinci Arap-İsrail savaşında da 1967 tarihli Altı-Gün Savaşı'nda da 2023 tarihli Gazze savaşında da İsrail'in meşru müdafaa söylemini ya eylemlerini perdeleme aracı olarak kullandığı ya da meşru müdafaanın sınırlarına uymadığı gözlemlenebilmektedir. Peki Mısır ve Suriye gibi diğer devletlerin meşru müdafaa hakkı ne olacak? İsrail'e karşı hiçbir devletin meşru müdafaa hakkı doğmadı mı şimdiye kadar? Yıpratma ve Yom Kippur savaşları nasıl değerlendirilmeli? Filistin ülkesinin işgal altında olması ve Filistin halkının self determinasyon hakkına sahip olması meşru müdafaa hakkı bağlamında nasıl değerlendirilmeli? Bu çalışma İsrail'in tarihinden bugüne içerisinde olduğu silahlı çatışmalarda meşru müdafaa hakkını nasıl kötüye kullandığını olgusal analiz yöntemiyle bütüncül bir perspektifle göstermeyi amaçlamaktadır. Çalışma öncelikle İsrail ile Arap devletleri arasındaki 1948 ve 1967 savaşları ile Yıpratma ve Yom Kippur savaşlarında meşru müdafaa hakkının kötüye kullanımını inceleyecektir. Daha sonra ise çalışma self-determinasyon temelinde İsrail-Filistin ilişkilerine odaklanacaktır. Bu anlamda son olarak İsrail'in güvenlik ve terörizm temelli meşru müdafaa söylemi işgal gerçeği ve Filistin halkının self determinasyon hakkı çerçevesinde irdelenecektir.

Anahtar Kelimeler: İsrail, Filistin, Arap Devletleri, Savaş, Meşru Müdafaa

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Introduction

The story of Israel's establishment is simultaneously the story of the transformation of the Middle East. Owing to Israel, the Palestinian territory has virtually become an international law laboratory. From the outset of the First World War, Palestine was among the central issues of post-war planning. In particular, the secret Sykes-Picot Agreement, which envisaged the partition of the Middle East among the victorious powers, raised the question of Palestine's fate. By 1917, the Balfour Declaration promised the establishment of a "Jewish national home" in Palestine, and in 1922, Palestine was placed under the British Mandate (Balfour Declaration, 1917). Thereafter, Britain allowed controlled Jewish immigration into Palestine, during which the Jewish community organized itself both civically and militarily (Sinanoglou, 2009, p. 131). By 1947, tensions between Britain and the Jewish community had reached their peak, prompting Britain to bring the issue before the United Nations. The General Assembly, by Resolution 181, recommended the partition of Palestine between the Arab and Jewish communities and the establishment of Jerusalem as a separate city under international administration (*corpus separatum*) (UNGA Resolution 181 (II), 1947). During this process, in which the Security Council failed to reach a decision, Britain announced that it would terminate the Mandate in 1948 and withdraw from Palestine. On the very day that Britain completed its withdrawal—14 May 1948—Israel declared itself an independent state through a proclamation read by David Ben-Gurion. Immediately following the declaration of independence, Israel entered into war with neighboring states, notably Jordan and Egypt. As a result, the West Bank and East Jerusalem came under Jordanian control, the Gaza Strip under Egyptian control, and the remaining areas under Israeli control (Shlaim, 1987, pp. 59–60). In 1949, an armistice was achieved through the demarcation of the Green Line, and this *status quo* persisted until 1967. That year, the Six-Day War broke out, initiating a process that culminated in the occupation of the entirety of Palestine—an outcome whose effects continue to reverberate to this day.

The year 1967 constitutes a decisive turning point in the protracted disputes between Palestine and Israel. From that date to the present, both the prospects for the establishment of an independent Palestinian state and the *de facto* situation created by the Israeli occupation have shaped the legal frameworks concerning Palestine. In this sense, the Six-Day War of 1967 not only rendered impossible the partition plan put forward by the United Nations General Assembly in 1947 but also overturned the *status quo* established after the 1948 Arab-Israeli War. Since then, virtually every resolution of the United Nations and every negotiation between the parties has had as its primary subject the Israeli occupation expanded in 1967. Indeed, the Six-Day

War and the subsequent Israeli occupation remain, even today, matters of intense debate within the literature of international law.

Several military initiatives have been undertaken to recover the territories occupied by Israel in 1967 and to bring an end to the occupation. The Wars of Attrition and Yom Kippur, waged by Arab states seeking to reverse their defeat in the Six-Day War, aimed at overturning the *de facto* situation created in the aftermath of war. In this respect, the Al-Aqsa Flood operation of 7 October represents the most recent military attempt to end this *status quo*. Yet rather than ending the occupation, Israel has engaged in actions in Gaza amounting to genocide and has implemented a plan for the complete occupation of the territory (Albanese, 2024, p. 3). One striking feature of every such conflict is Israel's invocation of the right of self-defense. These claims are usually grounded either in contested interpretations of Article 51 of the United Nations Charter or in an "existential" discourse rooted in the trauma of the Holocaust. Coupled with expansionist policies, Israel has consistently sought to normalize the *de facto* situation by treating each ceasefire as though it were a final settlement. It has characterized every action that rejects the reality of occupation and annexation as an attack against itself, thereby asserting a right of self-defense. However, a closer examination of events reveals that Israel has abused the right of self-defense to serve its own purposes. Taking a holistic view of all events since 1948, and considering the persistent fact of occupation, it becomes evident that Israel has employed the discourse of self-defense as a tool of concealment. This study, in the sections that follow, will analyze the incidents in which the discourse of self-defense has been abused through factual analysis and will seek to demonstrate, from a legal perspective, that the genuine right of self-defense has often belonged to the opposing side. In this regard, the wars between Israel and the neighboring states since 1948, as well as the armed struggle of the Palestinian people based on their right to self-determination, will be evaluated in light of the right of self-defense. Moreover, certain unilateral attacks launched by Israel under various pretexts will also be examined with respect to the right of self-defense.

Self-Defense

Article 2(4) of the United Nations Charter categorically prohibits the use of force: "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" (United Nations, 1945, 2/4). The prohibition of the use of force is widely regarded as a *jus cogens* norm (Helmersen, 2014, p. 167). According to Kelsen, one of the fundamental philosophical purposes underlying the Charter is the centralization of the monopoly

over the use of force (Kelsen, 1967, p. 39). The International Court of Justice (ICJ), in the East Timor case, characterized the prohibition on the use of force as “one of the most important principles of modern international law” (ICJ, 1995, para. 29). The two most significant exceptions to the prohibition are set forth in Articles 42 and 51 of the Charter. Article 42 authorizes the use of force upon a decision of the Security Council, whereas Article 51 regulates the inherent right of self-defense of states.

Since the Security Council’s authorization of the use of force depends on the absence of a veto by any of its five permanent members, states most often justify their resort to force on the basis of self-defense. In international law, self-defense is recognized as an inherent right of states. Although its historical roots run deep, the most fundamental contemporary regulation of self-defense is found in Article 51 of the United Nations Charter, which provides: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council 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.”

One of the most significant debates concerning the right of self-defense revolves around whether there is an obligation to wait for the first strike. Article 51 of the United Nations Charter employs the term armed attack, yet leaves unanswered the question of an imminent threat. In this respect, certain scholars who recognize the existence of the right of pre-emptive self-defense argue that it is not necessary for the opposing state to take the first step for the right of self-defense to arise. Where there are executive measures that leave no doubt that the other state is about to launch an attack, the state under threat may exercise the right of self-defense without waiting for the actual strike (Kumar, 2014, pp. 124–127). However, while such a position remains controversial within the framework of classical self-defense, it does not provide a legal foundation for preventive self-defense (Pogany, 1981, pp. 415–416). Preventive self-defense, unlike pre-emptive self-defense, does not involve unmistakable evidence of an imminent attack. Rather, it concerns action taken against a possible attack that may materialize in the future. In many instances, Israel has either engaged in preventive self-defense and attempted to present it as pre-emptive self-defense, or has otherwise exceeded the limits of lawful self-defense. This can be observed, *inter alia*, in the 1948 and 1967 wars.

The Arab-Israeli Wars from 1948 to 1967

Immediately following Israel's declaration of independence on 14 May 1948, the First Arab–Israeli War broke out between Israel and the surrounding Arab states. Although scholarly debates often converge on the 1967 war, in our view, the 1948 war must also be examined within the framework of the use of force and self-defense. According to the position advanced by Elihu Lauterpacht and Stephen Schwebel, Britain's withdrawal in 1948 left the territory in a sovereignty vacuum. In this context, immediately after the withdrawal, Israel asserted sovereignty over West Jerusalem, while Jordan did so over East Jerusalem. Elihu Lauterpacht argued that “at the moment when the Resolution 181 failed to be implemented, its description of specific boundaries ceased to be fully relevant” (Lauterpacht, 1968, p. 21). Similarly, Schwebel contended that since Resolution 181 had been rejected by the Arabs, Israel's departure from the lines drawn by that resolution was not unlawful insofar as it was acting in a position of self-defense (Schwebel, 1970, p. 346; Yishai, 1985, p. 45). By contrast, other scholars have rejected the sovereignty vacuum thesis, emphasizing that there was no sovereignty vacuum for Jerusalem and that Jerusalem should have been governed under the *corpus separatum* regime (Cassese, 2008, pp. 149, 151). Cattan stressed that the acquisition of territory by the use of force is impermissible under international law, recalling that the international community did not recognize Israel's efforts at annexation. In his view, the Palestinian people hold legal sovereignty over the entirety of Jerusalem, without distinction between East and West (Cattan, 1981, p. 9, 64 and 111). Similarly, Cassese maintained that Jerusalem's legal status continues to be governed by Resolution 181 of 1947 and that it should remain subject to the *corpus separatum* arrangement (Cassese, 1986, pp. 36–37).

In fact, it is not possible to accept the sovereignty vacuum thesis. The right of self-determination was explicitly recognized in the 1945 United Nations Charter. Article 2(4), which regulates the prohibition of the use of force, also prohibits the use of force in a manner inconsistent with the purposes of the United Nations. Accordingly, the use of force that negates the right of self-determination cannot be deemed lawful under the guise of self-defense. Nor is it possible to apply the doctrine of *terra nullius*, which evokes the colonial era. As Brownlie has observed, inhabited territory cannot be regarded as *terra nullius* in case of abandonment by the existing sovereign (Crawford, 2012, p. 228). Indeed, in the Western Sahara Advisory Opinion, the International Court of Justice emphasized that Western Sahara was not *terra nullius* at the time of Spain's colonization, noting the presence of a population inhabiting the territory (ICJ, 1975, para. 81). Thus, with Britain's withdrawal in 1948, Palestine did not

become *terra nullius*. The Palestinian people were living in the territory, and therefore the right to determine the fate of Palestine after the British departure belonged to them. The Covenant of the League of Nations, as well as the League's Mandate for Palestine, clearly articulated that the ultimate purpose was to transform Palestine into an independent state, with Britain as Mandatory power entrusted with guiding this process. Although Britain altered the course of this mandate, this does not change the underlying legal reality. Even the resulting situation did not grant the UN General Assembly the authority to partition Palestinian territory or to establish another state within it. The General Assembly does not possess the competence to create states. Resolution 181 was itself a "recommendatory" resolution, adopted in the wake of the Security Council's failure to act. In such a context, Israel's claim to self-defense cannot be sustained, since the land upon which it declared statehood belonged to the Palestinian people. It was for the Palestinian people, within the framework of their right to self-determination, to decide the future of their territory. However, as the Palestinian people at that time lacked an organized army, they were compelled to support the states—primarily Egypt and Jordan—that waged war against Israel. In this respect, the actions of Egypt and Jordan in the 1948 war appear justifiable only insofar as they were aimed at enabling the Palestinian people to exercise their right of self-determination. Indeed, both Egypt and Jordan declared that they held these territories in accordance with the will of the Palestinian people.

At first glance, Israel's claim to self-defense may appear acceptable, yet the matter can be approached from another perspective. Israel primarily relies on the sovereignty vacuum thesis and contends that Resolution 181 has become irrelevant. According to Israel, following its declaration of independence, it was attacked by the Arab states and therefore exercised its right of self-defense. In Israel's view, since it acquired territory that had no sovereign after Britain's withdrawal, its sovereignty over, in particular, West Jerusalem could not be questioned (Quigley, 1990, p. 91). However, as explained above, given that the territory was not *terra nullius* and that the right of self-determination belonged to the Palestinian people, Israel's declaration of independence on the basis of Resolution 181 in fact amounted to occupation and annexation of Palestinian territory. Although Israel maintained that Resolution 181 was irrelevant, its declaration of independence nevertheless included references to the resolution and issued a call for cooperation with the UN General Assembly. In other words, the implementation of Resolution 181 itself—both by Israel and by the UN—constituted the very starting point of the problem. Under customary international law, the occupation or annexation of territory belonging to another constitutes an armed attack. In this sense, the right of self-defense properly belonged to Palestine. The contested position of Egypt and Jordan does not transfer the

right of self-defense to Israel. From this perspective, Israel abused the discourse of self-defense.

It must be noted, however, that while Israel's abuse of self-defense rhetoric is the central issue here, the 1949 armistice lines (the so-called "Green Line," also known as the pre-1967 borders) that resulted from the 1948 war were subsequently recognized by the Palestinian authorities. Therefore, although Israel's initial acquisition of territory was unlawful, its sovereignty over the land gained as a result of the 1948 war was later consolidated by the consent of the Palestinian Authority. The Palestinian Authority continues to support a two-state solution with East Jerusalem as its capital. Yet it should be underscored that Hamas, were it to assume governing power, could alter this position. Indeed, Hamas' 2017 Charter simultaneously acknowledged the 1967 borders while also proclaiming a Palestinian state encompassing the entirety of Palestinian territory with Jerusalem as its capital (Hamas Charter).

The Six-Day War of 1967

Although the 1949 Green Line drawn between Israel and the Arab states of the region (i.e. Egypt and Jordan) did not constitute a final settlement, it generally remained in place until 1967. Following the Suez Crisis, statements by Israeli officials—particularly Prime Minister Levi Eshkol—about the "extension of operations" created suspicions that Israel might attack neighboring Arab countries, especially Syria. According to Quigley, one of the principal factors fueling this suspicion was the guiding influence of intelligence provided by the Soviet Union to the Arab states. Indeed, the findings of the United Nations Truce Supervision Organization (UNTSO), which had reported that there was no Israeli military build-up on the Syrian border, were disregarded, while the intelligence supplied by the Soviets was deemed convincing by the Arab states, particularly by Egyptian President Gamal Abdel Nasser. In this context, the absence of tanks at the military parade held on Israel's Independence Day, 15 May, was interpreted by the Soviet Union as evidence that "Israel had massed its tanks along the Syrian border and was maintaining them in a state of readiness for war" (Quigley, 2005, pp. 158–159).

In response, Egyptian President Gamal Abdel Nasser requested the withdrawal of the United Nations Emergency Force (UNEF), which had been established during the Suez Crisis to maintain peace between Israel and Egypt. Although negotiations were conducted between the UN Secretary-General and Egyptian officials, UNEF forces were withdrawn on 19 May (Carroll, 2005, pp. 73–78). Israel protested this withdrawal, arguing that Egypt could not unilaterally decide on matters concerning UN missions. Israel further asserted that Nasser had demanded the withdrawal of

UNEF in preparation for war against Israel. As a result of these developments, Israel initiated military mobilization on 19 May 1967, the day UNEF forces were withdrawn. On 22 May, Egypt closed the Straits of Tiran to all ships flying the Israeli flag as well as to any vessels carrying strategic materials to Israel. This measure restricted maritime trade bound for Israel's port of Eilat on the Gulf of Aqaba. From Egypt's perspective, the purpose of this sanction was to prevent the delivery of strategic materials that Israel might use in a potential attack against Syria (Tessler, 2009, pp. 391–393). Egypt also deployed troops to the ceasefire line with Israel and concluded a treaty of alliance with Jordan. Egypt claimed that these measures were intended to serve as a deterrent against a possible Israeli attack on Syria (Shlaim, 2012, p. 99 *et. seq.*).

Israel interpreted these developments as evidence that Egypt was preparing to attack. On 5 June 1967, the Israeli Air Force struck Egyptian aircraft on the ground at their airbases and launched a military incursion into the Sinai Peninsula. Thus began the Arab–Israeli conflict that entered world history as the Six-Day War. On the same day, following Israel's attack on Egypt, Jordan also launched an offensive against Israel, grounding its action in the right of collective self-defense under Article 51 of the United Nations Charter. In response, Israel bombed Jordanian and subsequently Syrian aircraft. By 10 June 1967, the Six-Day War had come to an end. Israel emerged in control of the Sinai Peninsula, East Jerusalem, the West Bank, Gaza, and the Golan Heights (Kurtuluş, 2007, p. 220).

Israel's claim that Egypt had imposed a blockade on the port of Eilat by closing the Straits of Tiran is itself open to debate. Egypt merely prohibited the passage of Israeli vessels in order to prevent a potential Israeli attack on Syria. The legality of this measure can indeed be questioned under international law, particularly with regard to the regime of straits that are subject to the principle of freedom of navigation (UNCLOS, 1982, art. 34-44). However, it is clear that a measure falling short of a full blockade does not constitute an armed attack and therefore cannot provide a lawful basis for the exercise of the right of self-defense. On the contrary, Egypt was preparing to act in self-defense against a possible Israeli assault. On 7 July, Prime Minister Levi Eshkol acknowledged that Israel had been the first to attack, yet sought to justify the strike as an act of self-defense against an anticipated Egyptian offensive. Nevertheless, subsequent statements by Israeli officials—most notably Yitzhak Rabin, Ezer Weizman, and Menachem Begin—revealed that Israel did not, in fact, believe Egypt was preparing to attack. According to Rabin, Nasser's troop deployments along the Israeli border were intended to deter a possible Israeli attack on Syria and to bolster his popularity in the Arab world. Weizman argued that the Six-Day War was not waged in response to any grave danger but was rather a direct

continuation of the 1948 war. Likewise, former Prime Minister Menachem Begin admitted that Nasser's military build-up in Sinai did not constitute proof of an imminent attack on Israel, and that it must be recognized that Israel had initiated the first strike. In Begin's view, however, the attack was a necessary action to safeguard Israel's security and the future of the nation (Quigley, 2005, pp. 164–165).

Another claim advanced by Israel is that Egypt's military build-up in the Sinai Peninsula, together with Syria's deployment of forces near the Israeli border, amounted to an "imminent" armed attack. Although tensions between Israel and the Arab states began with the 1948 war and escalated after 1963, the actions of the Arab states did not reach the threshold or sufficiency necessary to render an act of self-defense lawful (Kurtuluş, 2007, p. 228). Preventive self-defense is, in essence, not self-defense at all; it may at best be described as a preventive attack, which is indistinguishable from a classical act of aggression. Indeed, Israel's then Minister of Defense, Moshe Dayan, outlined the rationale for such preventive action: "The government, having heard the reports of the Prime Minister, the Minister of Defense, the Chief of Staff, and the Head of IDF Intelligence regarding the military and diplomatic situation, concluded that the armies of Egypt, Syria, and Jordan had been deployed for a multi-front attack threatening Israel's existence. The government therefore decided to launch a military strike to extricate Israel from this encirclement and to forestall the assault of the United Arab Forces" (Oren, 2002, p. 158). Although some commentators have sought to characterize these statements as reflecting pre-emptive rather than preventive self-defense (Warren & Bode, 2014, p. 26; Shapira, 1971, p. 65), in our view Israel's conduct falls within the scope of preventive self-defense, not pre-emptive. In any event, even pre-emptive self-defense is not recognized as a settled rule of international law and has not gained general acceptance. Moreover, even if Israel's actions were to be considered initially lawful, they exceeded the permissible limits of self-defense and thereby lost their legitimacy. As Green has noted, even those who regard Israel's claims of self-defense as justified have become convinced that Israel's continuing actions and occupation amounted to violations of international law (Green, 2015, p. 114).

It should be emphasized that even if Israel's claim of self-defense were accepted, the acquisition of territory as a result of self-defense remains highly contested under international law (Akande & Tzanakopoulos, 2020, para.1-5). The primary purpose of self-defense is to repel an armed attack through the use of counterforce, not to expand territorial control. Moreover, the exercise of self-defense must comply with the requirements of necessity and proportionality. Accordingly, the occupation of the adversary's territory as a consequence of self-defense is generally regarded as

exceeding the permissible limits of that right (Eritrea-Ethiopia Claims Commission, 2005, para. 10; Ruys, 2010, pp. 318–322). Nonetheless, there are views that the occupation of enemy territory may be lawful, on the basis that self-defense itself is a lawful act and that such occupation is permissible if it is the only means by which self-defense can succeed (Goodhart, 1971, pp. 293–298; Schwebel, 1970, p. 346). This approach, often described as lawful occupation, maintains that an occupation exceeding the limits required by self-defense, or losing its temporary character, would nonetheless be unlawful under international law (Zemach, 2015, p. 314). In our assessment, this approach is incompatible with existing international law. Neither the criteria for self-defense set forth in Article 51 of the UN Charter nor those defined in General Assembly Resolution 3314 on the Definition of Aggression provide any basis for such an occupation. In the case of Israel specifically, not only has the threshold of “armed attack” not been met, but the requirements of necessity and proportionality have likewise not been satisfied. Furthermore, Israel has sought, through its domestic legislation, to alter the status of the territories it occupies. As many scholars have observed, the true purpose of self-defense is to terminate the ongoing attack and to restore the *status quo ante* (Greig, 1991, pp. 396–397).

Lauterpacht and Schwebel argue that Israel acquired the territories it occupied during the 1967 war through lawful self-defense. According to these authors, Jordan’s occupation lacked legal foundation, and therefore the 1949 lines were to be regarded merely as provisional boundaries. With the outbreak of the Six-Day War in 1967, Jordan allegedly violated the 1949 Armistice Agreement by its acts of aggression against Israel, leading Israel to conclude that the agreement had come to an end. On this basis, Israel is said to have acquired sovereignty over East Jerusalem vis-à-vis Jordan as a result of lawful self-defense (Lauterpacht, 1968, p. 47; Schwebel, 1970, p. 346). In our view, however, the position of Lauterpacht and Schwebel on East Jerusalem cannot be accepted. First, as Article 51 of the 1945 UN Charter makes clear, the right of self-defense exists for the purpose of repelling an actual armed attack in a proportionate manner (United Nations, 1945, art. 51). Self-defense cannot extend beyond this function to legitimize territorial acquisition. Moreover, as explained above, Israel’s conduct in the 1967 war constituted not an act of self-defense but rather an act of aggression. Second, the claim that a sovereignty vacuum created by Britain’s withdrawal could justify acquisition of territory might arguably be raised—though in our view it is untenable—in the context of the 1948 conflict, but it is wholly inapplicable in relation to the 1967 conflict. While Jerusalem was initially envisaged within the United Nations framework as a *corpus separatum*, this arrangement was never implemented, and since 1949 Israel has exercised effective control over West Jerusalem without sustained general opposition by states. In this

sense, it can be argued that Israel possesses *de facto* sovereignty over West Jerusalem. *De jure* sovereignty, however, can only be established through an agreement reached in the course of peace negotiations—an agreement which, in our assessment, would most likely formalize the prevailing *de facto* situation.

Moreover, binding Security Council resolutions have confirmed that Israel does not possess sovereignty over the territories it occupied after 1967 (Mercan, 2019, pp. 68-83). The relatively recent Resolution 2334 reaffirms this point: “Reaffirming the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice, Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions, Expressing grave concern that continuing Israeli settlement activities are dangerously imperiling the viability of the two-State solution based on the 1967 lines” (UNSC Resolution 2334, 2016, paras. 3-5).

Wars of Recovery: The War of Attrition and the Yom Kippur War

Israel’s occupation of territories belonging to Arab states as a result of the Six-Day War of 1967 was perceived by those states and their leaders as a major loss of prestige. In this regard, the discourse of recovery—aimed at regaining both lost political standing and lost territories—remained central among Arab states. Foremost among those advancing this discourse was Egypt’s then-leader, Gamal Abdel Nasser. Egypt had suffered the greatest territorial loss in the Six-Day War, having lost the Sinai Peninsula. Moreover, Egypt was regarded as the strongest state in the region, and Nasser himself, due to his policy of Arab nationalism, was seen as a charismatic leader. For these reasons, any retaliation against Israel was naturally expected to come from Egypt. Nasser, in fact, believed that only a military initiative could compel Israel to retreat and withdraw from the Sinai Peninsula. To this end, he spearheaded the War of Attrition between 1969 and 1970 as a means of enacting his plan for revenge against Israel. Following the sudden death of Levi Eshkol in 1969, the government of Golda Meir intensified Israel’s responses to Egypt’s actions, prompting Nasser to request assistance from the Soviet Union. Although initially hesitant, the Soviet Union eventually provided support, and the conflict extended to the area around the Suez Canal. In 1970, through U.S. mediation, a ceasefire was

declared and hostilities were suspended. Following Nasser's death in 1970 and his succession by Anwar Sadat, the parties did not resume the fighting (Khalidi, 1973, pp. 60-68). In essence, the War of Attrition did not alter the prevailing *status quo* of the time: the Sinai Peninsula remained under Israeli occupation.

The failure of the War of Attrition to produce tangible results did not bring an end to Arab–Israeli tensions. Egyptian President Anwar Sadat, invoking Security Council Resolution 242, called upon Israel to return the territories it had occupied and declared his willingness to enter into peace negotiations in exchange. Israel rejected this proposal, and the dispute between the parties culminated in the Yom Kippur War. Launched by Egyptian and Syrian forces on Yom Kippur, one of the holiest days in Judaism, the Fourth Arab–Israeli War lasted from 6 October to 25 October 1973 (Akram & Lynk, 2013, p. 21). On 22 October 1973, the Security Council adopted Resolution 338, calling upon the parties to implement a ceasefire, although fighting continued for several days thereafter (UNSC Resolution 338, 1973, para. 1). While the Yom Kippur War did not result in Egypt's recovery of the Sinai Peninsula, it nonetheless marked the beginning of the peace process between Egypt and Israel. For Israeli leaders, the war underscored the conclusion that Israel could not prevail in every conflict with the Arab states. Indeed, only a few years after the Yom Kippur War, peace negotiations between Israel and the Arab states commenced.

From the perspective of international law, the central controversy raised by the Yom Kippur War concerns the legality of a state's resort to force in order to recover its own territory. The key question is whether such action can be subsumed under the right of self-defense. Scholars remain divided on this issue. According to Dubuisson and Koutroulis, because the Sinai Peninsula was under Israeli occupation—and because occupation itself constitutes an armed attack—Egypt's military action ought to be considered lawful self-defense (Dubuisson & Koutroulis, 2018, pp. 197-198). Indeed, in Security Council deliberations, both Egypt and Syria explicitly stated that they were exercising their right of self-defense against an ongoing armed attack (Karaoğlu, 2025, pp. 140-143). By contrast, Ruys and Silvestre argue that once active hostilities have ceased, occupation cannot be regarded as a continuing armed attack. In their view, under such circumstances, disputes must be addressed through peaceful means of settlement rather than by recourse to force (Ruys & Silvestre, 2021, p. 726). Similarly, Akande and Tzanakopoulos caution against conflating the use of force to resolve a territorial dispute with the lawful exercise of self-defense in response to an armed attack. Nevertheless, United Nations General Assembly Resolution 3314, which defines aggression, explicitly provides that military occupation constitutes an act of armed attack. On this basis, as long as occupation endures, the armed attack is

deemed to be continuing, and accordingly the right of self-defense remains operative (Akande & Tzanakopoulos, 2020, para. 1-5).

In our view, the recognition by the United Nations General Assembly in Resolution 3314 on the Definition of Aggression that occupation constitutes an armed attack must be regarded as sufficient for the purposes of self-defense (UNGA Resolution 3314 (XXIX), 1974, art. 3a). Resolution 3314 is accepted as reflecting customary international law. In this respect, Israel's control over the Sinai Peninsula—together with the other territories seized in 1967—was expressly characterized as occupation by Security Council resolutions, which further underscored its illegality under international law. Nor can it be argued that the territory in question was disputed in terms of sovereignty. Accordingly, Israel's occupation cannot be described as peaceful.

It should be noted that one of the significant consequences of occupation is that it gives rise to the right of self-defense. As indicated above, Article 51 of the UN Charter requires the existence of an "armed attack" for self-defense to be invoked. What constitutes an armed attack, however, has always been the subject of debate. In order to clarify this question, the General Assembly adopted Resolution 3314 on the Definition of Aggression in 1974, setting out examples of acts that amount to aggression. According to the resolution: "a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof; b) Bombardment by the armed forces of a State against the territory of another State, or the use of any weapons by a State against the territory of another State; c) The blockade of the ports or coasts of a State by the armed forces of another State..." As is clear from the text, the occupation of a state's territory, irrespective of its duration, is described as an armed attack. Where there is an armed attack, the victim state acquires the right of self-defense. Although some scholars have interpreted the notion of armed attack in Resolution 3314 as requiring active hostilities, the resolution itself imposes no such limitation. From this perspective, the existence of an unlawful occupation should be regarded as sufficient to constitute an armed attack.

Self-Defense and Palestine: The Exercise of the Right to Self-Determination

The right of self-determination entered international law under this designation in the aftermath of the Second World War with the adoption of the UN Charter, and it played a central role in the process of decolonization. With the General Assembly's Declaration on the Granting of Independence to Colonial Countries

and Peoples (Resolution 1514 (XV)) of 14 December 1960, self-determination also became part of customary international law. In this sense, self-determination is a right accorded to peoples living under colonial or colonial-like foreign military occupation (UNGA Resolution 1514 (XV), 1960, paras. 1-2). The International Court of Justice, in the *East Timor* case, affirmed that the right of self-determination is a fundamental principle of international law and stressed its *erga omnes* character (ICJ, 1995, para. 29). Similarly, in its advisory opinion on the *Chagos Archipelago*, the Court emphasized that peoples of non-self-governing territories have the right to demand the integrity of their territory and, accordingly, to exercise the right of self-determination, which the colonial power is obliged to respect (ICJ, 2019, paras. 140–162). It is widely accepted within the international community that the Palestinian people, as a people living under a colonial-like military occupation, possess this right. The ICJ confirmed this in the *Wall Advisory Opinion*, underlining that the matter is no longer subject to serious dispute. According to the Court, the *erga omnes* nature of the right entails that other states are also under an obligation to remove obstacles to the exercise of self-determination by the Palestinian people (ICJ, 2004, paras. 118, 154-159). The Court maintained the same position in Advisory Opinion of 2024 (ICJ, 2024, paras. 230-234). The right of the Palestinian people to self-determination has been reiterated repeatedly in United Nations resolutions (UNGA Resolution 58/292, 2004; UNGA Resolution 62/146, 2008; UNGA Resolution 67/19, 2012). As Cassese has observed, all states and the United Nations—save for Israel—recognize the Palestinian people as entitled to this right (Cassese, 1995, p. 240). Moreover, the existence of a state is not a prerequisite for the enjoyment of the right to self-determination. In modern international law, a population under occupation possesses the right of self-determination (Ben-Naftali, Gross & Michaeli, 2005, p. 554). It should further be noted that the right of self-determination may also be exercised through armed resistance.

In addressing the right of self-determination of the Palestinian people, it is also necessary to clarify the position of Hamas, bearing in mind the fact that Gaza is an integral part of Palestinian territory. Israel's targeting of Gaza does not mean that the other occupied Palestinian territories are excluded. In this sense, while our focus falls largely on Gaza, it should be emphasized that the term "Gaza" is not intended to denote a separate entity distinct from Palestine. The emphasis on Gaza in academic literature as well as in print and visual media often creates confusion among those unfamiliar with the subject. Both the International Criminal Court and the International Court of Justice consistently define the Occupied Palestinian Territories as comprising East Jerusalem, the West Bank, and Gaza (ICJ, 2024; ICC, 2021). Accordingly, Gaza is not a separate state, nor is Hamas the government of

such a state. As explained below, the right of self-determination is recognized for peoples under colonial rule or colonial-like foreign military occupation. The people entitled to exercise this right must do so within the framework of international law. International law, however, does not require that this right be exercised through a single liberation movement, nor does it prohibit its exercise through multiple organizations or alternative forms. Such matters fall within the internal affairs of the people concerned and do not negate their entitlement to self-determination. Indeed, it is exceedingly rare to find independence movements carried out solely by a single organization. In countries such as Ireland, India, Algeria, and South Africa, independence struggles were conducted by multiple groups, sometimes competing with one another. Nonetheless, these internal divisions did not undermine the overarching purpose of independence or the struggle against the colonial power, nor did they negate the right of self-determination.

In the Palestinian case as well, there have always been multiple organizations. Hamas was founded later than many of the other groups and, together with Fatah, became one of the two largest movements. Hamas gained prominence particularly during the First Intifada, which began in 1987, and following the Oslo peace process (Aral, 2018, pp. 8-26), it emerged as Fatah's principal rival as a political party. After the Second Intifada (2000–2005), Israel withdrew from Gaza and dismantled the illegal settlements located there. Subsequently, presidential elections in 2005 and parliamentary elections in 2006 were held throughout the Palestinian territories—namely, the West Bank, Gaza, and East Jerusalem. Hamas boycotted the presidential elections but participated in the parliamentary elections, in which it emerged as the leading party. This unexpected outcome was rejected by Israel, and tensions between Fatah and Hamas escalated. As a result, the Hamas government was short-lived and was dissolved by Palestinian President Mahmoud Abbas (Jamal, 2013, pp. 273–294). Hamas, which denounced this as unjust and unacceptable, was in effect confined to Gaza. Political circumstances thus relegated Hamas to the position of de facto administrator of Gaza. Over time, this has led to the mistaken perception that Gaza constitutes a separate entity from Palestine and that Hamas is the government of this putative entity. In reality, Gaza is an integral part of the Palestinian territory. Hamas is a political party that contested elections across all Palestinian territories—West Bank, Gaza, and East Jerusalem—and emerged as the largest party. Just as Hamas has a presence outside Gaza, Fatah also remains present inside Gaza.

Although Israel withdrew militarily from Gaza in 2005 and dismantled the settlements located there, it did not bring the occupation to an end. The blockade imposed on Gaza by land, sea, and air signifies the continuation of occupation in part. Indeed, according to the International Committee of the Red Cross (ICRC),

one of the foremost authorities on international humanitarian law, Gaza remains under occupation. In the ICRC's assessment, even though Israel does not maintain a permanent physical presence inside Gaza, the land, air, and sea blockade demonstrates a certain level of effective control, and thus Israel's obligations under the law of occupation continue to apply in relation to Gaza (ICRC, 2012, pp. 27–41). Moreover, both the West Bank and East Jerusalem remain under Israeli occupation. The law of occupation is premised on the idea that occupations are inherently temporary, grounded in military necessity, and ultimately involve the transfer of effective control of the territory back to the displaced sovereign once hostilities cease. The presumption of temporariness is intended to serve as a safeguard against both *de jure* and *de facto* annexation (Nicolosi, 2011, pp. 165–187). However, Abi-Saab and Kohen contend that the regime of occupation loses its legal coherence when it becomes prolonged and entrenched. The erosion of the principle of temporariness not only undermines the normative foundations of the law of military occupation but also risks facilitating the very domination and annexation the law was designed to prevent (Abi-Saab & Kohen, 2025, para. 1-10). Furthermore, UN Special Rapporteur John Dugard has argued in his report that Israel's occupation, over time, has become tainted with illegality (UN S. Rapp. Dugard, 2007, para. 8).

In this context, pursuant to Resolution 3314, Palestine—whose territory remains under occupation—must be recognized as possessing the right of self-defense. The right of self-defense belongs to Palestine and the Palestinian population is the holder of the right of self-determination. From this perspective, it may be said that Palestine's right of self-defense endures so long as Israel's occupation continues. Israel occupied Palestinian territory in 1967 and has not brought that occupation to an end. Until a lasting peace is achieved between the parties, Palestine retains the right of self-defense in order to reclaim its occupied lands. Accordingly, the events of 7 October must be understood within the broader historical context (Mercan, 2023, pp. 79–90). Since 1967, Israel has been in the position of the “aggressor,” while Palestine, in turn, has been in the position of exercising “self-defense.” These positions remain so long as the occupation endures. A response to self-defense does not itself constitute self-defense. Nonetheless, independent of these debates, all parties to the conflict are bound to fully respect the rules of international humanitarian law, particularly the protection of civilians. Compliance with these obligations remains necessary regardless of the legality of the military operations themselves. Moreover, the political rivalry between Hamas and Fatah does not alter the fact that Gaza forms an integral part of the occupied Palestinian territories. The Palestinian right of self-determination extends to Gaza, and the *de facto* control of Gaza by Hamas does not diminish the right of the Gazan population to self-determination. This right also

encompasses the exercise of armed resistance against Israel's ongoing occupation. Gaza is not a separate state or country. Israel, both before and after 7 October, has abused the right of self-defense, invoking terrorism and security justifications as a pretext for such abuse.

Conclusion

The right of self-defense, enshrined in Article 51 of the UN Charter, is one of the most important and contested rules of international law. Israel's characterization of its actions following the "Al-Aqsa Flood" operation as self-defense requires that its claims be examined from a broader historical perspective. In every conflict, Israel invokes the rhetoric of security and terrorism, thereby constructing a discourse designed to create the perception that the right of self-defense invariably belongs to Israel. In our view, this approach is driven by two factors. Firstly, Israel employs an abusive discourse which suggests that self-defense must always be reserved for itself. According to this narrative, anyone who criticizes Israel's wrongful acts is portrayed as wishing for the Jewish people to face genocide once again. Indeed, Israeli officials have even asserted that the United Nations itself has become an instrument of such aims. The second factor is the ceasefire dilemma. When states and the Security Council succeed in persuading Israel to accept a ceasefire, they assume they have imposed a sanction. Israel, however, interprets each ceasefire as a reset, believing that all rights—including the right of self-defense—revert to itself. In this sense, Israel has consistently abused the concept of ceasefire and has never abided by one. Moreover, after every ceasefire, Israel has once again claimed that its right of self-defense has been triggered. Yet a ceasefire does not constitute a permanent peace settlement, nor does a ceasefire line amount to a final boundary.

From this perspective, Israel first abused the right of self-defense in the 1948 war. Relying on General Assembly Resolution 181—a mere recommendation—and in violation of the Palestinian people's right to self-determination, Israel declared statehood and justified its occupation of territory between 1948 and 1949 on the basis of self-defense and the claim that the region had become *terra nullius*. Yet in modern international law, the termination of sovereignty over a given territory does not render that territory *terra nullius*, for the right of self-determination precludes such an outcome. The people of the territory must determine their own political future. Moreover, the Mandatory Power, the United Kingdom, was never vested with sovereign authority. Under Article 22 of the Covenant of the League of Nations, its role as Mandatory was limited to assisting the territory toward independence. The fact that the 1949 Green Line boundaries have subsequently been accepted by the

parties does not oblige us to disregard this historical reality.

Secondly, Israel abused the right of self-defense in the 1967 war. Statements made by Israeli officials in the aftermath of the conflict reveal that Israel had long been preparing to attack the Arab states. Nevertheless, Israel sought to justify its actions on the basis of self-defense by invoking the highly contested concept of pre-emptive self-defense in international law. Yet Egypt's conduct, rather than constituting preparations for aggression, was in fact a response to a potential Israeli attack. As a result, Israel in the 1967 war occupied the Sinai Peninsula from Egypt, the Golan Heights from Syria, and the entirety of Palestinian territory. Under the terms of General Assembly Resolution 3314, such occupation constitutes an act of armed attack. So long as the occupation endures, the right of self-defense of the occupied party likewise continues. The timing of the exercise of this right depends solely on the opportunity available to the victim state. In this sense, Egypt and Syria sought to exercise their right of self-defense during the Yom Kippur War in an attempt to recover their occupied territories. Egypt subsequently regained the Sinai Peninsula through an agreement concluded with Israel. Syria, however, has to this day been unable to recover the Golan Heights, which remain under Israeli occupation. From this perspective, Syria's right of self-defense continues to exist.

When examined in the specific context of Palestine, it is clear that the Armistice Line drawn in 1949 did not encounter significant objections from states and remained in effect until 1967. However, in that year, as a result of the well-known Six-Day War between Israel and the Arab states, East Jerusalem, the West Bank, and Gaza were also occupied by Israel. Since 1967, numerous United Nations resolutions have affirmed the invalidity of territorial acquisitions resulting from occupation. Both the Security Council and the General Assembly consistently refer to East Jerusalem, the West Bank, and Gaza as the "occupied Palestinian territories." Although Israel withdrew militarily from Gaza in 2005 and dismantled the settlements there, it did not end the occupation. The blockade of Gaza by land, sea, and air constitutes a continuation of the occupation. Moreover, since 2023 Israel has sought to fully occupy Gaza. When the Palestinian people's right of self-determination is considered together with Israel's continuing occupation of Palestinian territory, there can be no doubt that Palestine possesses the right of self-defense. From this perspective, there is no legal impediment under international law to the Palestinian people exercising this right through more than one organization. Israel, however, despite being the occupying power, has consistently abused the discourse of self-defense, from 1948 to the ongoing atrocities in Gaza since 2023, which amount to genocide.

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