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Examining the Right to Self-Determination in the Context of the Use of Force Reflecting the Hamas-Israel Conflict

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Abstract

This paper offers a comprehensive analysis of the intricate and enduring conflict between Hamas and Israel, focusing on Hamas's claims to self-determination and Israel's deployment of military use of force. It critically explores the legal and political dimensions of the conflict, rigorously evaluating the legitimacy of Hamas's armed resistance and the compliance of Israel's military actions through excessive use of force with international law. Utilizing a qualitative methodology, the study examines a wide array of sources, including international legal documents, historical precedents, case references and reports from global human rights organizations. The findings indicate that both Hamas and Israel undertake actions that contravene international legal standards, underscoring the necessity for enhanced international mechanisms to address violations perpetrated by both state and non-state actors. This research advances the discourse on international law and conflict resolution, providing comparative legal analysis aimed at fostering a balanced and lawful resolution to the Hamas-Israel conflict.

Keywords: Armed resistance, Human rights, Necessity and proportionality, Self-determination, Use of force.

1. Introduction

The enduring conflict between Hamas and Israel, embedded within the broader Israeli-Palestinian dispute, remains one of the most complex and persistent issues in contemporary international relations. Hamas, a prominent Palestinian political entity representing the Gaza Strip, emerged near the end of the 1980s within the socio-political turmoil of Israeli occupation. And central to this conflict is the assertion of the right to self-determination by the Palestinian people- a right recognized under international law, as advocated by Hamas through armed resistance. Israel, by contrast, perceives Hamas like a non-state armed group designated as terrorist and responds with significant military force

to neutralize what it views as existential threats. This protracted conflict has led to recurrent cycles of violence and has profound ramifications, not only for the local populations but also for the global geopolitical landscape, affecting international political strategies and humanitarian outcomes.

This paper aims to dissect the legal and political intricacies of the Hamas-Israel conflict, with a particular focus on the self-determination claims of Hamas and the consequent use of force by Israel. Specifically, it tends to explore the applicable legal standards regulating the actions of both parties, assess the legitimacy of armed struggle for self-determination, and scrutinize the extent to which

Israel's military responses are justified under international law. This study seeks to find whether Hamas's armed struggle aligns with international legal standards and to examine the implications of Israel's use of excessive force, which often borders on violations under the law governing armed conflict.

The contribution of this paper lies in its detailed legal examination of the Hamas-Israel conflict, particularly in the context of the right to self-determination and the use of force. It aims to elucidate the legal foundations of Hamas's claim and its method of armed resistance, while also critically evaluating Israel's military strategies and their adherence to international legal standards. This research aspires to inform and influence international legal discourse and policy, providing valuable insights for the resolution of similar conflicts involving state and non-state actors. It emphasizes the imperative of balancing human rights considerations with the enforcement and interpretation of international law.

Finally, the findings of this paper reveal that- both Hamas and Israel have undertaken actions that challenge the boundaries of international law. While Hamas's use of armed struggle raises significant legal questions about the legitimacy of its claim to self-determination, Israel's military responses often exceed the bounds of lawful self-defense, leading to disproportionate and excessive use of force. These insights highlight the need for enhanced international mechanisms to address violations by both state and non-state entities, promoting a more equitable and lawful resolution of such conflicts. The study advocates for a strengthened international legal framework to mediate these disputes effectively, ensuring the protection of human rights and fostering durable peace and stability.

Research Question

The key research question guiding this study is: "How do the actions of non-state actors, such as Hamas, and the responses of state actors, like Israel, comport with international legal norms in conflicts concerning self-determination and territorial sovereignty?"

And this key question is complemented by three sub-questions:

- To what extent is the use of armed struggle by a non-state actor such as Hamas, claiming self-determination for the sovereignty of Gaza, permissible under international law?
- To what extent is the excessive recourse to force by the State of Israel, purportedly in self-defense, in response to Hamas's armed attacks, justified under international law?
- What are the broader impacts of these actions as to the international legal framework, conflict resolution, and human rights in similar conflicts involving non-state actors worldwide?

2. Methodology

By employing a qualitative research methodology, this study meticulously analyzes a broad spectrum of sources, including international legal documents, historical precedents, comparative case studies, relevant published literature, study reports from global human rights organizations and other relevant primary sources of data. This special methodology applied for a detailed examination of the multifaceted legal, historical, and political elements inherent in the Hamas-Israel conflict, facilitating a sophisticated understanding of its complexities. Firstly, authoritative works are scrutinized to establish the foundational framework of the research, providing a solid basis for subsequent analysis. Secondly, the actions of both successful and unsuccessful secession movements, particularly in the context of self-determination and use of force, are examined to draw parallels and distinctions with the Hamas-Israel conflict. Thirdly, previous findings from relevant theories, juristic writings, and legal cases are critically evaluated and applied to address the research questions comprehensively under this methodology. And this qualitative research methodology enables a rigorous examination of the conflict dynamics, incorporating insights from various disciplines to enrich the analysis and contribute to a better understanding of the complexities involved.

Background of the Hamas-Israel Conflict

Recently, the global community has faced a grave and serious alarming crisis emerging in Israel and within the territories of occupied Palestine particularly in Gaza Strip. On the 7th October of 2023, a devastating and meticulously planned attack, similar to the 9/11 attacks targeting the USA by Al-Qaeda,

was conducted by Hamas (also known as “the Harakat Al-Muqawama Al-Islamiya” or “Islamic Resistance Movement”) against Israel. This act of terrorism is expected to have considerable implications for the region and the security situation for the Israeli state. Regrettably, the consequence of this attack led to the death of more than 1,200 individuals and left thousands more injured, including elderly persons, children, and numerous common innocent civilians. Approximately 240 individuals, including foreign and American citizens, were captured and taken as hostages into the Gaza Strip (Dostri, 2023). Hamas carried out the attack, citing the rights to freedom and self-determination outlined in Article 1(2) pursuant to the United Nations Charter, on behalf of the Palestinian population which action was taken in opposition to perceived as criminal activities by Israel (Sharma, 2023). In response to Hamas’s unexpected surprising assault, the Israel’s Defense Forces initiated operation “Iron Swords” (“All about “Operation Iron Swords””, 2023) and initiated a prolonged series of deadly assaults on the territory of Gaza Strip, employing numerous air and ground strikes and purportedly utilizing white phosphorous in weaponry, resulting in the deaths of numerous individuals (Gupta, 2023) and this massacre is still being continued by the Israeli soldiers.

The historical conflict between Palestine and Israel has been marked by a series of contentious events. Following the Partition Plan of the UN in 1947 for Palestine, Israel started to expand its territorial dominion through coercive measures, resulting in the displacement of Palestinians. Despite several significant events such as the Crisis as to Suez in 1956, the War of six days in 1967, Resolution no. 242 of the UN Security Council in 1967 and the War of Yom Kippur in 1973- the division and fragmentation of Palestinian territory, including the West Bank, Gaza Strip, and East Jerusalem, persisted. And despite the ongoing violence, diplomatic efforts, and the issuance of an Advisory Opinion by the ICJ regarding the legal ramifications of building of wall in the Palestinian territories under occupation, the conflict between Hamas-Israel remains unresolved till now (Gupta, 2023).

From 2007, Israel has adopted a stringent blockade on Gaza Strip, significantly restricting the moving of individuals and accessories. This blockade has

resulted in high levels of unemployment, greater dependence on food assistance, as well as very limited access to vital resources like clean water and electricity supply. Israeli authority is now weaponizing the hunger as a heinous means against the Palestinians. Moreover, it has resulted in the displacement of a considerable amount of Palestinian people. Furthermore, Israel has continued its policy of building unauthorized settlements in the areas of the occupied Palestine, resulting in forced displacements, home demolitions, and the dispossession of individuals. Actions by Israel’s security forces, including raids and incursions, frequently result in casualties of civilians, including minor children, further worsening the humanitarian crisis. In recent times, Israel has increased its efforts to establish settlements, allowed forceful attacks by settlers against Palestinian people, conducted military operations within refugee camps as well as sacred sites, and initiated drone strikes. These actions have led to a significant displacement of individuals and worsened the humanitarian situation. In response to the assault of October 7 by Hamas, Israel declared a ‘state of war alert,’ invoking its right to self-defense and initiating strikes on multiple targets across the territory of Gaza Strip aiming to eliminate Hamas (Gupta, 2023).

Genesis of the Concept of Self-Determination

In 1919, former US President Woodrow Wilson presented the concept of self-determination to the League of Nations, advocating for the right of all people to determine their own government and live free from foreign control, rather than being treated as property passed from one ruler to another. Subsequently, other scholars have defined self-determination as a right arising from international recognition, enabling the residents of a colony to freely determine their independence or decide to associate with another state. Alternatively, it allows a group with common characteristics to choose its own form of governance and progress economically, socially, and culturally. Self-determination can be practiced through integration, free association, or independence, but the process itself is deemed the most important aspect (Cass, 1992; Khanam and Ali, 2022). The origin of self-determination like a political notion is not precisely known. The German term for self-determination, “Selbstbestimmungsrecht,” was initially used in a resolution during the London International Socialist Congress in 1896.

Additionally, the German Declaration of Rights from 1848 incorporated principles of self-determination grounded in nationalism and democracy. These documents highlight an emphasis on the sovereign independence of nations over the rights of individual people (Collins, 1980). The idea of self-determination as a right developed from the revolutions of the late eighteenth century and was shaped by the strong demands of nineteenth-century nationalism. In the twentieth century, the concept fully enriched with the bitter experiences of the first and Second World War (Collins, 1980; Hasnat and Ahmed, 2023).

Examining the Concept of Self-Determination

The concept of self-determination, as a fundamental aspect of international law, presents a challenge due to its lack of a precise, universally accepted definition. Despite this, most definitions emphasize the entitlement of a population to decide their future in social, administrative, financial and cultural terms. Although the requirements of sovereignty and different forms of self-determination often complicate the concept, it remains significant. Western nations have generally embraced self-determination as an international legal principle in the contemporary world rather than relying solely on theoretical political philosophies (Collins, 1980). The doctrine as to self-determination allows a group sharing a common identity and linked to a particular territory to democratically determine its political destiny. For a group to qualify for this collective right, it must meet the criteria of being considered a “people”. A traditional two-part test is used to assess whether a group meets this definition. The first part of the test is objective, focusing on the group’s shared racial background, historical background, religion, language, cultural heritage, and territorial unity of the relevant area in question. The next part of the test is based on subjective factors, evaluating the degree to which members perceive themselves as a distinct collective group and the group’s ability to establish a viable political entity (Sterio, 2013, p. 16).

Although the entitlement as to self-determination is widely recognized as a core tenet of international statutes, its status as a human right and its legal definition were not officially established until the formal establishment of the two principal covenants on international human rights. Provisions of the

ICCPR (International Covenant on Civil and Political Rights) and the ICESCR (International Covenant on Economic, Social and Cultural Rights) pronounce:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (United Nations, 1966a, Art. 1(1); United Nations, 1966b, Art. 1(1)).

The Allies and the UN’s predecessor, the League of Nations applied self-determination principle across Europe as well as the Ottoman Empire. In 1918, Poland and Czechoslovakia, previously non-sovereign territories, declared their independence based on national identity. President Wilson’s effort to include self-determination principle properly in the League Covenant became unsuccessful. Moreover, two commissions appointed by the League of Nations during the dispute as to Asland Islands concluded that international legal framework did not recognize a broad right to self-determination, except in exceptional cases where a minority group is deprived of fundamental rights. (Sterio, 2013, p. 10) Furthermore, Article 22 of the Covenant of the League of Nations ensured a mandate system, assigning advanced nations as guardians over specific colonies and territories deemed unable to self-govern (League of Nations, 1919, Art. 22, para. 2). The Atlantic Charter also ensured the right of self-determination of people as: All peoples possess the right to select their system of government. Sovereign authority and self-governance should be reinstated for those who have been forcibly stripped of them (Atlantic Charter, 1941, point 3).

Following World War II, the principle of self-determination gained recognition as a legal right. And this right was officially established in a significant international treaty through the promulgation of the United Nations Charter. Article 1 of the UN charter declares:

“The Purposes of the United Nations are: To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace ...” (United Nations, 1945, Art. 1(2)).

Article 55 describes: With the objective of establishing conditions that promote stability and general well-being - essential for peaceful and cooperative interactions among nations based on the principles of equal rights and peoples' self-determination - the United Nations is committed to:

- Raising living standards, achieving full employment, and supporting economic and social development;
- Addressing international economic, social, and health challenges, alongside fostering cultural and educational collaboration; and
- Guaranteeing universal respect for human rights and fundamental freedoms for everyone, without discrimination on the grounds of race, gender, language, or religion (United Nations, 1945, Art. 55).

Post-1948 United Nations resolutions support the argument regarding self-determination as a legal right. Three key resolutions include the 1960 resolution regarding the conferral of Independence upon Colonial territories and their Peoples, the 1966 Covenants on Political rights and rights related to socio-economic and cultural matters, and the 1970 Declaration on Friendly Relations affirm the right of "self-determination", allowing peoples to pursue their social, cultural, economic and political development freely (Collins, 1980).

The Right to Self-Determination: Colonial Context

In 1991, the United Nations observed three decades since the adoption of the 'Declaration concerning the conferral of independence upon colonial territories and their Peoples' and initiated a decade-long initiative to end of colonialism (Cass, 1992). From its inception, the United Nations concentrated on self-determination within the realm of inter-national law by applying it to colonial territories. In 1960, the notion of self-determination was formally adopted with the urgent need to swiftly and unconditionally eradicate colonialism in all its forms. Both the International Covenant-the ICCPR and the ICESCR explicitly highlight the unique obligation of colonial powers to respect the right of self-determination. As per the both instruments- States Parties to this Covenant, including those responsible for governing Non-Self-Governing and Trust Territories, are obligated to advance the fulfillment of the right to self-determination and to uphold that right in accordance with the principles set out in the

United Nations Charter (United Nations, 1966a; United Nations, 1966b)

The principal judicial organ of the United Nations has successively upheld that the entitlement to self-determination applies to all populations residing in colonial territories. And, in its opinion regarding Namibia, specifically as to South Africa's unlawful occupation of Namibia, the Court held the view that: The evolution of international law concerning non-self-governing territories, as reflected in the United Nations Charter, extended the application of the principle of self-determination to all such territories. The overarching aim of this entrusted responsibility was to ensure that the affected peoples ultimately attained self-determination and political independence (International Court of Justice, 1971, para. 52).

The ICJ reaffirmed this similar position as to self-determination right in the Western Sahara Case where Judge Dillard noted that 'that a norm of international law has emerged applicable to the decolonization of those non-self-governing territories which are under the aegis of the United Nations' (ICJ, 1975, paras. 54-55, 121). And these state practices demonstrate that the entitlement as to self-determination applies to all peoples residing in colonial territories. This position is supported by the considerable number of colonial territories that have exercised their entitlement to self-determination to form new states. Moreover, colonial powers have recognized their legal obligation to allow this exercise. Some scholars argue that this continuous state practice, along with the recognized legal obligation 'opinio juris' and the lack of opposition from states, suggests that the right to self-determination for colonial peoples has attained the status of 'jus cogens' (McCorquodale, 2018, p. 350).

The Right to Self-Determination: Beyond the Colonial Context

The practices of states indicate that the self-determination right has been acknowledged beyond colonial contexts. For example, the reunification of East and West Germany in 1990 was recognized as an assertion of the right as to self-determination by the German people, as stated in a treaty signed by four of the five permanent UN Security Council members. Similarly, the right to self-determination was referenced during the dissolution of the USSR

and Yugoslavia, as well as internally within states. Furthermore, through its Advisory Opinion on the wall's construction, the ICJ confirmed that the entitlement to self-determination applies to the Palestinian people (McCorquodale, 2018, p. 350). The ICJ has extended its interpretation of the right of self-determination by affirming its status as 'one of the essential principles of contemporary international law' and attributing to it an "erga omnes character" (ICJ, 1995). This characterization (erga omnes character) implies a universal responsibility for all states to uphold and respect the self-determination right, signaling that this responsibility extends beyond colonial powers and applies to all peoples, irrespective of colonial context. As to the UN declaration of 1970, all states should recognize that subjecting peoples to foreign domination, control, or exploitation violates the principle of equal rights and self-determination, denies fundamental human rights, and contravenes the provisions of the United Nations Charter (United Nations General Assembly, 1970, Annex).

When a particular group within a state exercise authority in such a manner that it leads to the 'subjugation, domination, and exploitation' of another group, resulting in oppression, demeaning treatment, and undermining of the dignity of that another group, the self-determination right may apply to the oppressed group. As a result, the self-determination right applies to peoples in any territory, including those that are not colonial, who are experiencing 'alien subjugation, domination, and exploitation.' Thus, all peoples within all states possess the self-determination right equally (McCorquodale, 2018, p. 351).

Exercise of the Right: Internal and External Self-Determination

Contemporary understandings as to self-determination frequently differentiate between internal and external manifestations of this right. Internal self-determination refers a range of political and social rights within a sovereign state, whereas external self-determination denotes the pursuit of complete legal independence or secession for a particular group from the larger state. Internal self-determination is demonstrated when a particular group resides within a larger central state and possesses political autonomy, self-government as well as cultural, religious, and linguistic freedom. In essence,

when the larger mother state permits the group to exercise its rights within its framework, the group's right to self-govern can be realized internally. Instances of internal self-determination include the Quebecois in Canada, indigenous communities in Brazil and Australia, and national minorities in the former Yugoslavia and USSR before their dissolution (Sterio, 2013, pp. 18-19).

However, if the group aims for further autonomy beyond what is internally granted, it raises the issue of whether the group may claim self-determination externally, through the process of secession and independence. The use of external self-determination denotes a group's desire to separate from the larger state and self-govern independently. As previously stated, self-determination can be realized through means that are less disruptive to state sovereignty than secession. Therefore, the global community often considers secession with suspicion. Historically, the right as to self-determination through independence or secession has been restricted to situations involving colonial controlling domination or other forms of repression (Sterio, 2013, pp. 18-19).

In contexts outside of colonialism, different manifestations concerning self-determination have been observed. While some instances have led to independence, like Bangladesh's separation from Pakistan and Montenegro's split from its union with Serbia, others have involved mergers, illustrated by the unification of the two Yemens, or free associations, like the relationship between Bougainville and Papua New Guinea. Certain situations have arisen after prolonged armed conflicts, such as Eritrea's freedom from Ethiopia in 1993 or following period of international territorial administrative governance, as witnessed in Kosovo (McCorquodale, 2018, p. 352).

Self-Determination, Statehood and International Recognition

The notion of self-determination is nearly connected to the idea of statehood when an entity seeking self-determination aims to establish a new state. While self-determination is not legally dependent on statehood, an entity seeking external self-determination may be required to satisfy the criteria for statehood as acknowledged under international legal standards. Once a political entity secedes from its

parent state and applies for recognition as an independent state, the legal inquiry concerns whether the entity meets the necessary international legal requirements for statehood. As per the Montevideo Convention of 1933, statehood is determined by four criteria: a clearly demarcated territory and a stable population, a functioning government, and the ability to engage in relations with other states. Moreover, scholars have suggested additional standards for statehood, including independence, sovereignty, stability, willingness and capability to adhere to international law, a certain level of societal development, and occasionally, recognition (Sterio, 2013, pp. 45-46).

Recognition, unlike statehood, is a political act performed by existing governments regarding a newly formed entity. Recognition and statehood are separate concepts; a state may recognize an entity that does not meet the four basic conditions for statehood, or it may refuse to recognize an entity that does meet these criteria. International law deals with two theories as to recognition: the declaratory approach and the constitutive approach. The declaratory view suggests that recognition is totally a political process and does not impact the juridical elements of statehood, while the constitutive view refers that recognition is a key element of statehood. Thus, under the constitutive view, Statehood cannot be attained by an entity unless it manages recognition from other actors as a state (Sterio, 2013, p. 48).

Case Studies and International Law Practice as to Self-Determination

In the advisory opinion as to the legality of Kosovo's self-proclaimed independence, the ICJ chose not to address certain issues related to external self-determination. This decision may suggest alignment with the preferences of major powers, as the court refrained from examining the legality of their support for Kosovar independence. The ICJ has similarly avoided addressing self-determination issues in other cases, often in favor of major powers' political interests. The nationality of ICJ judges may influence their decisions, reflecting their respective national stances. This pattern indicates that the sway of leading global powers may extend beyond politics to shape the reasoning of the world's highest judicial body (Sterio, 2013, p. 73). In 2008, the Kosovo Assembly announced its independence from

Serbia unilaterally. This move was recognized by numerous states, including the global superpowers UK and USA, while others, notably Serbia and Russia, opposed the independence, arguing that it violated international law. The UN General Assembly asked the ICJ to provide its opinion on this issue. In its advisory opinion, the ICJ majority ruled: Beyond the scope of non-self-governing territories and populations subjected to external domination, control, or exploitation, the issue of whether international law provides a portion of a state's population with the right to secede has been widely debated, with sharply contrasting viewpoints. Comparable disputes have arisen regarding the existence of a potential right to "remedial secession" and the circumstances under which it might apply. The Court determined that addressing these broader questions was unnecessary in the current matter. The General Assembly requested the Court's advisory opinion specifically on whether the declaration of independence was consistent with international law. The Court concluded that general international law contains no prohibition on declarations of independence and therefore found that the declaration of 17 February 2008 did not breach general international law (ICJ, 2010, paras. 82-84).

The Court opted to refrain from addressing these issues, a stance that has been strongly criticized by Judge Simma in the following way-The Court might have produced a more intellectually robust Opinion, offering greater significance for today's international legal framework, if it had approached the question in a broader manner. A more comprehensive treatment of these issues would have showcased the Court's understanding of the current configuration of international law (ICJ, 2010, para. 7).

Through its advisory ruling concerning the Western Sahara Case, the ICJ reaffirmed the self-determination principle by citing Resolution 1514 adopted by the UN General Assembly, which upholds the right of all peoples to self-determination. The court also cited the Declaration on Principles of Friendly Relations and highlighted that Resolution 2229 urged Spain, the official governing authority of Western Sahara, to facilitate a referendum for the people of Western Sahara to exercise entitlement to self-determination, consistent with Resolution 1514. Similarly, the court emphasized to Spain the importance of Resolution 3162 (1973), which

reiterated the obligation to enable the inhabitants of Western Sahara to pursue self-determination. The ICJ's ruling emphasized the self-determination rights of the colonized population concerning the Western Sahara area in accordance with these General Assembly resolutions. However, the court also suggested that the principle of territorial integrity could supersede the self-determination rights of a population if there is significant evidence of a territorial dispute, even if the inhabitants of that region do not desire governance by the claiming entity. The Western Sahara case is significant for examining the complex relationship between territorial integrity and the norm of self-determination (Sterio, 2013, pp. 90-91). In the ICJ's opinion regarding Western Sahara, several judges provided concurring opinions supporting the legal entitlement belonging to the population of Western Sahara to self-determination. They also called for more transparent legal justification and a possible potential decision regarding the territorial disputes made by Morocco and Mauritania. Judge Boni, appointed as an ad hoc judge by Morocco, contended that the inhabitants of Western Sahara should have been included in a referendum concerning the process of decolonization, proposing that they could have chosen to align with Morocco or Mauritania. Judge Dillard expressed doubts about the majority's finding that the connections between Western Sahara and Morocco or Mauritania were not significant enough to impact the self-determination principle (Sterio, 2013, p. 91).

As to "The Wall Case", in December, 2003, the UN General Assembly sought an advisory opinion from ICJ regarding the legal implications of Israel's building of a wall in the Occupied Palestinian Area, including East Jerusalem, in accordance with international law principles. Israel justified the construction as a security measure to prevent infiltration originating in the West Bank. However, Palestinians argued that the wall's route divided communities and hindered their entitlement as to self-determination. After addressing objections regarding its jurisdiction, the ICJ focused on the legal questions pertaining to Palestine, reaffirming the self-determination principle. The court cited the UN's Friendly Relations Declaration, common Article 1 of the ICCPR and ICESCR, along with previous case law on self-determination, such as the East Timor case. These sources established that self-

determination has become a right "erga omnes", thus affirming the Palestinians' right as a people with legitimate claims (Sterio, 2013, p. 94). The court found that the building of the Israeli wall was problematic due to its chosen route. The barrier gives tangible effect on the ground to unlawful actions implemented by Israel in relation to Jerusalem and settlement expansion, measures that have been criticized by the Security Council. In addition, the wall's construction carries a substantial risk of reshaping the population makeup of the Palestinian territories under occupation, as it creates circumstances that prompt the displacement of Palestinian communities from particular areas (ICJ, 2004, para. 122).

Claiming self-determination may not always succeed even if the claims are legitimate under established international legal principles. The Biafra case and the Catalonia case are prime examples of this. The conflict known as the Civil War of Nigeria or the Biafra War occurred between July, 1967, and January 1970. The conflict emerged as a political and ethnic dispute when the southeastern provinces of Nigeria, mainly populated by the Igbo ethnic group, attempted to secede, establishing the Republic of Biafra. For many Nigerians, the war is viewed as an unfortunate period that is better forgotten; however, for the Igbo community who sought secession, it stays as a vital and defining episode. In the year 1967, subsequent to two military coups and widespread instability that prompted approximately one million Igbo people to return to southeastern Nigeria, the self-proclaimed Republic of Biafra declared its independence under the leadership of a skilled military leader Emeka Odumegwu Ojukwu. The Government of Nigeria responded with a declaration of war, leading to thirty months of conflict until Biafra surrendered. The war officially concluded on January 15, 1970. Chukwuemeka Odumegwu Ojukwu, the former leader of the defunct Republic of Biafra, articulated Biafra's struggle in a historical and geopolitical context. He suggested that just as European peace was achieved through the dismantling of empires and the subsequent division of the Balkans, Africa might similarly find peace through processes akin to the fragmentation and reorganization of territories, a concept he referred to as "Biafranization." Ojukwu's argument implies that redefining national boundaries in Africa could potentially lead to stability and

harmony, as it ostensibly did in Europe (Okoronkwo, 2002, p. 63).

The movement demanding independence for Catalonia (an autonomous territory of Spain) is based on three primary assertions: that the claim for independence is a democratic issue supported by the majority of Catalan society, that independence is achievable in the short term, and that the process can be carried out legally through 'disconnection laws' approved by the Catalan Parliament (López Basaguren, 2022). However, a key challenge for the movement is the lack of an undisputed majority in favor of independence. The Spanish State and the international community view the situation as complex due to the difficulty of demonstrating the self-determination right. The Spanish Constitution provides the central government with legal authority to counter secessionist efforts, including activating Article 155 to take control of Catalonia's government and administration (López Basaguren, 2022).

While the most intense phase of the crisis has passed, tensions between Catalan separatists and the Spanish government persist, making Catalonia's status a major political concern in Spain. The Catalonia case illustrates the complexities of self-determination in established democratic states, where issues of regional autonomy and national unity often intersect with questions of identity, culture, and political governance.

The Role of Leading Global Powers in Shaping Self-Determination

The major powers refer to states that possess significant financial, strategic, political, and military influence globally. These states hold a higher level of sovereignty than non-great powers due to their elevated status and their ability to exert influence over other states. Additionally, these great powers hold privileged positions in international institutions, occupying seats of prominence such as those with veto power on the UN Security Council. They also often take on leadership positions in specialized global institutions such as the World Trade Organization (WTO) and the International Monetary Fund (IMF). Within regional blocs like the European Union, major European powers exert considerable institutional influence. Furthermore, numerous major powers maintain continuous representation on the ICJ, frequently appointing de facto permanent

national judges. Moreover, as previously discussed, great powers may undertake interventions that involve crossing the borders of other foreign states and encroaching upon their sovereignty. These powers may impose economic or military influence over other states or regions, which can either bolster or undermine them. Great powers have the ability to create international tribunals and initiate legal proceedings against leaders of other nations, or they may shape resolutions passed by the Security Council in a manner that serves their interests, thereby justifying interventions against other states (Sterio, 2013, p. 58).

The principles of freedom from domination and the exercise of power are inherently conflicting. Implementing self-determination requires the stronger party to relinquish its power, allowing the weaker party to achieve its goals despite lacking material and political strength. The history of self-determination is characterized by its limitations. As long as domination persists in international relations, self-determination will not be fully realized, and the power principle will face limitations as long as self-determination remains relevant. These principles will continue to clash, with the formal assertion that every people can exercise self-determination remaining only partially true. The right as to self-determination repeatedly challenges established territorial stability, necessitating continuous efforts to manage it (Fisch, 2015, p. 251).

Support from great powers significantly impacts secessionist matters by determining the success of self-determination-seeking entities. Entities supported by certain major powers have achieved self-determination, whereas others like the Biafrans, Kurds, or Turkish-Cypriots were compelled to remain part of their original states. The endorsement of major powers has become a critical factor for any movement seeking autonomy from its parent state. The inclusion of great power support as a necessary criterion for external self-determination has shifted the concept from a legal theory to a political contest. The entitlement as to external self-determination, once evaluated through legal standards, is now assessed through a political lens. Consequently, the influence of great powers over the legal framework governing self-determination, though unfortunate, remains as a practical reality (Sterio, 2013, p. 63).

Principle of Use of Force

The prohibition against the resort to armed force is a vital principle of international legal framework and is enshrined in Article 2(4) in the Charter of the United Nations. According to this Article, states are obligated to avoid, in their dealings with one another, any acts or threats involving armed coercion that would undermine another country's sovereignty, compromise its independent political authority, or otherwise conflict with the foundational objectives of the United Nations (United Nations, 1945, Art. 2(4)). Although the language of Article 2(4) does not specifically mention 'armed' force, most scholars agree that it primarily addresses the prohibition of military force and does not extend to non-military measures such as economic sanctions or cyberattacks. In the case regarding armed conflicts occurring inside the lands of the Congo, the ICJ emphasized that Article 2(4) is a cornerstone of the United Nations Charter framework (ICJ, 2005, para. 148).

While states and legal scholars widely acknowledge the prohibition against the use of force as both a treaty obligation and a rule of customary international legal practice and even *jus cogens* (ICJ, 1986, para. 190), there remains a lack of consensus regarding the precise extent of the prohibition's scope.

There is a lack of consensus among states regarding the proper explanation of Article 2(4). Developed and developing states hold differing opinions regarding whether the rule limiting states' recourse to coercive measures includes not only military action but also economic sanction. Additionally, there is a dispute about the kinds of actions that qualify as the use of force rather than intervention or enforcement of law. The ruling in the Nicaragua Case distinguished between the act of arming and training armed opposition groups, which might be considered an illegal use of force, and the act of providing financial support, which would not. The arbitral decision in the Guyana v. Suriname Case briefly and controversially addressed the difference between the resort to armed coercion and mere law enforcement (Gray, 2008, p. 30). The primary key debate focuses on the reading of the final clause of Article 2(4). This matter became prominent during NATO's military action in Kosovo in 1999, where states and legal scholars expressed starkly different

opinions on the legality of the intervention under Article 2(4). Some argued that a new approach of humanitarian interference was rising, while others viewed NATO's actions as a clear violation of UN legal provisions (Gray, 2008, p. 31).

Self-Defence

Article 2(4) of the UN Charter prohibits employing or threatening military force in international affairs, which has been widely accepted as customary international law. Nonetheless, during the 1945 San Francisco Conference, states of intermediate power were hesitant to relinquish their 'inherent' right to self-defense. As a result, the Fifty-first Article of the Charter provides a temporary exception to Article 2(4), allowing states to exercise individual or collective self-defense as a reaction to an armed attack before the Security Council takes action to restore the global stability and safety. This affirmation of the right to self-defense questions the absolute character of the prohibition against unauthorized use of force outlined in Article 2(4) (Chinkin & Kaldor, 2017). As to self-defence according to the UN Charter; Nothing contained in this Charter shall restrict the inherent right of a Member State to defend itself, either individually or collectively, if it comes under an armed attack, until the Security Council enacts the measures required to maintain global stability and safety. Any actions undertaken by Members in exercising this right of self-defense must be reported without delay to the Security Council and shall in no way limit the Council's authority or responsibility under this Charter to take any action it deems necessary at any time to safeguard or restore global stability and safety (United Nations, 1945, Art. 51).

In the Nicaragua Case judgment, the ICJ made clear on multiple occasions that the right to self-defense is only invoked when an armed attack has taken place. According to paragraph 195, the Court affirmed that, in situations of individual self-defense, a state may invoke this right only if it has suffered an armed assault. The use of collective self-defense, naturally, does not eliminate the requirement that the state be the target of such aggression (ICJ, 1986, para. 195). In the same case, the ICJ emphasized that in collective self-defense, it is up to the state claiming to be attacked to declare whether an armed attack has occurred, not the state invoking self-defense collectively (Green, 2009, p. 52).

Anticipatory Self-Defence

The concept of imminence is related to the idea of anticipatory self-defense. Article 51 as set out in the UN Charter specifies that the entitlement to defend oneself is triggered solely by the occurrence of an armed attack. This restrictive interpretation may disadvantage the victim and benefit the aggressor, suggesting that states should not be forced to delay defensive action until an attack actually happens. This perspective gains importance when considering nuclear weapons, weapons capable of causing widespread death and destruction and the threat of terrorist attacks. Additionally, practical challenges arise in assessing the evidence necessary to justify preemptive strikes and determining who should evaluate such evidence. The state fearing an attack might find it challenging to make impartial decisions and could act before the due time due to scare, mistrust, unreliable intelligence, or suspicion (Chinkin & Kaldor, 2017). The Israeli assault on Iraq in 1981, and the American strike on Libya in 1986 are the prime example of this type of defence (Rothwell, 2005).

Necessity and Proportionality

Establishing the requirements of necessity and proportionality concerning self-defense is a challenging task. Necessity implies that all peaceful alternatives must be attempted before turning to the employment of force; with the standard for meeting this requirement is stringent. As per Article 25 within the framework of International Law Commission regarding the responsibilities of a State, necessity can only justify an action if it is the sole means to safeguard a vital interest from an imminent and grave danger, and if it does not disproportionately harm the core interests of other states or the global community. While Article 21 acknowledges the right to self-defense, it does not provide a detailed explanation of the concept of necessity. Moreover, resorting to force in self-defense might undermine the fundamental concerns of the global community, particularly the entitlement to safety, especially if the community includes individuals (Chinkin & Kaldor, 2017). In *jus ad bellum*, the notion of proportionality presents a complex concept. Professor Vaughan Lowe raises the question of whether the degree of force should be proportionate to the potential scale of violence if the threat were realized, or if it should be evaluated based on the force required to prevent or counter the

attack. In its ruling on Nicaragua, the ICJ endorsed the latter course, restricting resorting to armed coercion for self-defense to the necessary reaction to an assault. Which is aligning with Professor Ago's interpretation within the framework of the International Law Commission, where proportionality is understood as the measure needed to repel an attack, rather than demanding symmetry between the method employed in the original assault and the method of response (Chinkin & Kaldor, 2017).

Non-State Actors and Armed Attacks

In recent instances of geo-political violence, neither the perpetrators nor the respondents are exclusively state actors. A significant instance is the terrorist assaults targeting the cities of New York and Washington on September 11, 2001. Likewise, the acts of 'systematic violence and propaganda campaigns' carried out by Islamic State across Syria and Iraq highlight the persistent potential of non-state actors to commit acts of extreme violence (Chinkin & Kaldor, 2017).

The ICJ has yet to explicitly determine whether a legal entitlement to engage in self-defense is recognized against actions initiated by non-state entities. By asserting that the natural right of self-defense emerges, when one state is attacked by another, the ICJ seems to favor a restrictive, state-centric approach. During proceedings on armed actions in the Congo case, concerning allegations brought by the DR Congo against Uganda, the judicial body did not settle the matter concerning whether, and under what circumstances, current international law recognizes an entitlement to act in self-defense against assaults conducted by non-state entities.

In this case, Judge Simma along with Judge Kooijmans in their opinions specifically examined the issue of armed assaults by non-state actors. Judge Simma argued that UN Security Council resolutions numbered 1368 and 1373, passed following the September 11 attacks, should be interpreted as affirmations that large-scale attacks qualify as 'armed attacks' under Article 51. Both Judge Simma and Judge Kooijmans concurred that assaults by non-state actors ought to be assessed using the similar standards as those conducted by state parties (Chinkin & Kaldor, 2017).

Legal Analysis: Hamas's Armed Struggle for Self-Determination Versus Israel's Use of Force as Self-Defence

The armed conflict between Hamas and Israel raises several key questions: Can Hamas, as a non-state entity, claim the self-determination right for the Gaza Strip under international law? Can Hamas employ armed struggle, using force against Israel, to achieve the pursuit of self-determination according to international legal norms? As a reaction to the armed attack from Hamas, can Israel apply 'Use Force' under the justification of 'Self-defense'? These are the core research questions of this paper, and this chapter will explore potential answers to these specific questions.

Hamas's Self-Determination Right for Gaza Strip

From 2007 onwards, Hamas has effectively governed the Gaza territory in practice functioning as an authority, despite the region still being recognized within the framework of the Palestinian Authority under Fatah control in accordance with the Oslo Agreement of 1993 (Sharma, 2023). In January 2006, Hamas secured a dominant share of seats in the legislative elections, which was a surprising outcome for both Palestine and the international community (Long, 2010). Given its electoral victory, Hamas can be considered as a legal representative for the Gaza territory and, to some extent, for all of Palestine. The British empire was granted the Mandate for Palestine by the League of Nations organization under Article 22 of the League's Covenant on 24 August 1920. This mandate was intended to safeguard the Palestinian people's right as to self-determination. However, the British failed to fulfill this responsibility, instead collaborating with Jewish agencies and the Zionist Movement. This collaboration resulted in external parties determining the fate pertaining to Palestinians, violating their entitlement to determine their own destiny as well as Britain's legal obligations as the mandatory power (Doebbler, 2011).

Later, the international community has acknowledged the Palestinian people's right to self-determination (UNGA, 2018). This recognition has influenced the relationship between the international community and Palestine, exemplified by the titles and participation status granted to Palestine (UNGA, 1988) as part of the United Nations' operations (UNGA, 1998). Additionally, the international

community bears a responsibility to actively support the achievement of self-determination for peoples living under unlawful occupation (ICJ, 2004, para. 88).

Consistent with the international legal frameworks mentioned above, Hamas's claim to exercise self-determination for Palestine, including the Gaza Strip, is legally recognized. Legally they can claim this. But the practical situation remains complicated due to Israel's ongoing continuous occupation of Palestinian territory.

Hamas's Armed Struggle: Concerns in Light of International Legal Standards

The self-determination right for the Palestinians, covering the individuals residing in Gaza Strip, is recognized under international law. However, the means and methods adopted by Hamas in its armed attack against Israel starting from 7th October, 2023 onward, may be considered unlawful from various legal perspectives. Hamas is considered as a non-state actor and not as the legitimate government of a recognized sovereign state. While Israel's highest court defines the dispute involving Israel and Palestinian terrorist groups, along with Hamas, as having the nature of an 'international armed conflict', many scholars argue that the Israel-Hamas conflict should be classified as a 'non-international armed conflict' due to Hamas's status as a non-state actor, regardless of its cross-border scope. There is ongoing debate about the character of the conflict, with no clear consensus regarding its classification as international or non-international. The core norms of the 'International Humanitarian Law' are relevant to both involved actors, Israel-Hamas in the conflict, and both parties may have violated these norms (Horowitz, 2008).

Hamas's surprise attack on Israeli territory, the action, which led to the deaths of a minimum of 1,400 Israeli civilian people, including infants, breached numerous rules of international humanitarian law designed to safeguard civilians and their belongings, throughout the duration of hostilities. These provisions comprise Common Article 3 of the four Geneva Conventions, which mandates the humane treatment of civilians and noncombatants; Article 51 of Protocol I of the Geneva Conventions, which protects civilians from attack; and clauses concerning war crime and crime against humanity as

outlined in Articles 7 and 8 as defined in the Rome Statute establishing the ICC. These relevant ICC provisions are reflective of customary international humanitarian law and are applicable to Hamas leaders, holding them individually liable under the jurisdiction of ICC. Moreover, Hamas's continuous haphazard rocket assaults on Israeli territories put civilian infrastructure and individuals at risk, further breaching these treaty articles and the norms of customary international law (Scheffer, 2023).

Hamas has committed various violations pertaining to the Geneva Conventions along with their protocols, as well as customary international humanitarian law norms, through actions such as attacks on civilians (ICRC, 1977, AP I, Art. 51; AP II, Art. 13), hostage-taking (ICRC, 1949, GC IV, Art. 147), use of children (ICRC, 1977, AP I, Art. 77), sexual violence against women (ICRC, 1977, AP I, Art. 76) and using civilians as human shields (ICRC, 2005, Rule 97).

Palestine, what has been recognized by maximum global nations as a state, as including West Bank region, Gaza territory, as well as East Jerusalem area, is a ratified party to the all four Geneva Conventions of 1949 and the three additional protocols. Consequently, being a ratifying state, it remains bound by the terms of these conventions and protocols. Hamas, functioning as the de facto governing body in Palestine, especially over Gaza Strip, and commanding its own armed forces, is legally bound to follow the Geneva Conventions adopted in 1949 and their three protocols as an entity under Palestinian sovereignty (Scheffer, 2023). Simultaneously, Hamas is bound to obey the relevant 'Customary Rules of IHL' as these rules are applicable to all parties including recognized states and non-state entities (ICRC, 2024).

Self-Defence by Israel: An Assessment under the Lens of International Law

Subsequent to the armed assault committed by Hamas beginning on 7th October, 2023, Israel declared war against Hamas (Gold *et al.*, 2023), asserting its right to self-defense. As the conflict continues, a question arises: to what extent can Israel legally claim entitlement to invoke self-defensive force in opposition to Hamas under international law?

Self-defense as a right refers the legitimate resort to coercive measures in order to counter an assault or towards the impending danger directed at the individual concerned, third parties, or an internationally protected interest. In the global perspective, self-defense is considered within the contexts of jus ad bellum (which governs recourse to force) and jus in Bello (which regulates behavior during hostilities). Article 2(4) of the United Nations Charter establishes a general ban on threats or coercive action directed at the territorial wholeness or political autonomy of states, subject only to the exceptions of individual or collective self-protection. Self-defense as outlined pursuant to Article 51 of the Charter is solely "inter-state in nature". Article 51 confirms the entitlement of states to act in self-protection following an armed assault against a UN member state, prior to intervention by the Security Council to re-establish global stability and safety (Gupta, 2023).

Determining whether Israel possesses a self-defense right as outlined in Article 51 is a complex matter that cannot be reduced to a simple yes or no answer. The conclusions depend on various underlying factors and assumptions:

"If Palestine already is a state, or the ban on resorting to force is somehow otherwise engaged, then Israel could lawfully invoke self-defence if it were accepted that non-state actors such as Hamas are capable of committing armed attacks within the meaning of Article 51 of the UN Charter and that the operation on 7 October was one such attack." (Milanovic, 2023)

"If Palestine cannot be regarded as possessing statehood, and if Article 2(4)'s restriction on the employment of force cannot otherwise be applied to Gaza, Israel cannot rely on a claim of lawful self-defence. This conclusion does not suggest that Israel is entirely precluded from employing military force within Gaza; rather, it indicates that the rules governing the resort to force under jus ad bellum would not operate as a limiting framework in this context." (Milanovic, 2023)

The self-defense right is invoked when one state faces a threat from another state. However, as Israel admits to its continued control over Palestinian territory and rejects Palestinian statehood, Gaza and

the West Bank cannot be regarded as 'foreign states' under UN Article 51 (Patel, 2023). In its 2004 advisory assessment on the legal implications of building a barrier constructed within the occupied Palestinian territory, the ICJ confirmed that Article 51 acknowledges the natural legal right to self-defense following the occurrence of a violent assault made by one state against another. Therefore, the right of self-defense does not apply to an occupying state's conflicts with the populations it occupies (Abu-Manneh, 2021), making it irrelevant to Israel's actions towards the Palestinians. Israel ensured to withdraw its illegitimate settlers from Gaza Strip in 2005 but continued to exercise total control over its borders, along with the regulation of fuel and power supplies, which it has the power to cut off at its own discretion (Patel, 2023).

Assessing Proportionality and Necessity in Armed Conflicts

The customary limits on the entitlement to self-defensive action include the requirements as to proportionality with necessity, despite the fact that these concepts are not expressly mentioned in Article 51. Proportionality can be understood in three ways. First, it can refer to a tit-for-tat approach, meaning that a response in self-defense should be corresponded appropriately to the scale and consequences to the initial assault. According to this perspective, Israel's reaction to the October 7 assault would be considered significantly excessive, as it has led to the loss of life surpassing eight times the number of Palestinian casualties compared to the number of Israelis casualties on October 7. Second, there is ends-means proportionality, which suggests that force is justified only when necessary and as an option of final recourse. If Israel contends that destroying Hamas's capability is the only way to ensure its security, then it may argue that its actions are in compliance with the necessity standard. Third, there is narrow proportionality, which involves balancing the potential benefits of employing force against the real damage it causes. In this perspective, Israel would need to provide a rationale for the claim that, its conducts save more lives in the long term than are lost in the immediate conflict. However, the key challenge lies in the lack of a clear consensus among states and scholars regarding this third interpretation of proportionality within the self-defense law (Milanovic, 2023). Within the framework of self-defense, even a legitimate objective

must be reconsidered if the negative consequences of the necessary force exceed its benefits. Therefore, even if Israel's entitlement to self-defense is applicable, its current use of that right is not proportionate (Haque, 2023).

Analyzing Israel's Use of Force: A Legal Perspective

Since the conflict began on October 7, Israel's armed operations within the territory of Gaza have led to the deaths of at least 33,137 Palestinians, with the majority of the casualties being female and infants. Save the Children reports that more than 13,800 children have lost their lives. At least 75,815 people have been injured, representing about 4% of Gaza's population. Thousands more individuals are presumed to be dead, having been trapped under the collapsed-buildings and infrastructures caused by terrible bombing. Israel's blockade and restrictions on aid have resulted in shortages of food and water, contributing to the deaths of infants due to dehydration and innutrition in the northern Gaza region. They have ensured blocking of deliveries of food, water, fuel, medical supplies and electricity. Thus, the Israeli army is weaponizing hunger as a heinous method of warfare. During multiple targeted strikes over a stretch of 2.3 km (1.4 miles), Israeli forces intentionally killed seven foreign aid workers in a convoy of cars. This incident occurred last week and led to some aid organizations suspending their services. The conflict has forced nearly 1.9 million people to evacuate their dwellings, which represents more than 80% of Gaza's population. Approximately 62% of all residences in Gaza have been either damaged or destroyed, leaving over a million people without shelter. The Israeli military has targeted hospitals across Gaza, disregarding their protected status as recognized by international legal frameworks. The army justifies its actions by claiming that Hamas is operating within and beneath these facilities. Moreover, the Israeli military accounts for the highest number of journalist fatalities in any contemporary conflict and has captured over 24 journalists (Motamedi & Chughtai, 2024). These consequences represent the outcomes of Israel's disproportionate application of force, violating the norms and rules of IHL along with its customary rules. The ICJ ruled on 26 January 2024 that Israel's slaughtering activities in Gaza, which resulted in numerous deaths, could potentially constitute genocide. Israel has employed weapons

such as white phosphorous against the civilian population, known for causing severe burns to the bone and being difficult to extinguish. Historically, the Israeli military has used Gaza as a 'testing-ground laboratory' for experimental weapons, a practice that appears to be ongoing in the current conflict (Cantarow, 2024).

Weaponizing hunger as a heinous method of war in the Gaza by the Israeli authority constitutes a serious infraction recognized under international criminal law (Human Rights Watch, 2023). The ICC is also mandated with examining crimes against humanity, including extensive or systematic attacks on civilian populations, such as murder, extermination, enslavement, deportation, and persecution. The extensive civilian casualties and destruction of infrastructure in Gaza necessitates an investigation by the ICC to assess whether these actions constitute crimes against humanity. There have been calls for the ICC to examine the conditions prevailing in Gaza as potential crimes against humanity (Pal, 2024). The features of the abovementioned crimes, such as the severity of the wrongdoing, wide and systematic intentional approach and the widespread outcome, indicate that these specific types of crimes can be labelled as genocide, war crime, crime against humanity as well as conduct amounting to aggression. Israeli authorities have committed numerous serious crimes, including bombings on hospitals and medical units, residential areas (ICRC, 1949, GC IV, Art. 14), and refugee camps; employing starvation (ICRC, 1977, AP I, Art. 54 (1)) as a method of warfare; intentional and systematic killing (ICRC, 1977, AP I, Art. 51; ICRC, 1949, GC IV, Common Art. 3) and forced displacement of civilians (ICRC, 1949, GC IV, Art. 49); destruction of civilian homes (ICRC, 1949, GC IV, Art. 53); killing of children and women, including pregnant mothers (ICRC, 1949, GC IV, Art. 27; ICRC, 1977, AP I, Arts. 76–77); restrictions on humanitarian aid (ICRC, 1949, GC IV, Art. 59); killing of aid workers (ICRC, 1977, AP I, Art. 71), journalists (ICRC, 1977, AP I, Art. 79), and medical personnel (ICRC, 1949, GC IV, Art. 20); destruction of cultural properties (ICRC, 1977, AP I, Art. 53); taking hostages (ICRC, 1949, GC IV, Art. 34); and attacks on medical transport and ambulances (ICRC, 1949, GC I, Art. 35). These actions constitute grave violations under the laws governing armed conflict. Israel has ratified the quartet of 1949 Geneva Conventions set but has not

affirmed the additional protocol I and II of 1977. Notably, Article 75 within the first Protocol has been acknowledged by America as part of CIHL. This recognition was reflected in the 2006 ruling of the American Supreme Court in the Hamdan decision (Hamdan v. Rumsfeld, 2006), which emphasized Article 75's customary application. Consequently, this provision is binding for both the U.S. and Israel (Scheffer, 2023). Today, the agreements of Geneva of 1949 and the most provisions of the 1977 Additional Protocols are regarded as vital part of customary IHL, requiring all states, regardless of ratification status, to adhere to their rules. Moreover, Israel had ratified the Genocide Convention without any reservation (Siddique, 2024).

Israel is obligated to abide by the pertinent provisions as to 1949 Geneva Conventions along with several provisions of Additional Protocol I, based on the aforementioned reasoning that they reflect the features of established international customary law. Additionally, Israel must adhere to the 'established customary norms of IHL' and the pertinent clauses of the Genocide Convention of 1948.

Challenges for International Legal Frameworks in Ceasing the Hamas-Israel Conflict

In late December of the previous year, South Africa filed a case against Israel before the ICJ, accusing Israel of breaching the Genocide Convention (ICJ, 2023). Israel has declared its plan to present its defense during the proceedings. Notably, South Africa has requested the ICJ to implement several provisional measures pending the final judgment, including a directive for Israel to cease its military actions in and around Gaza without delay. This request is ambitious, yet there is a relevant instance: in the Ukraine v. Russia case of 2022, which was also based on the Genocide Convention, the ICJ imposed interim measures instructing Russia to promptly halt the military actions initiated on 24 February 2022 within Ukrainian territory (Lempel, 2024). Finally, ICJ issued its interim ruling on the urgent measures sought by South Africa in its case against Israel concerning allegations of genocide in the Gaza conflict. The UN's principal judicial body, located in The Hague, did not mandate the suspension of hostilities in Gaza yet directed Israel to implement steps to prevent and penalize explicit calls for genocide within the enclosed territory (Al Jazeera, 2024). The Court asserts that Israel, under

its obligations from the Genocide Convention, must take all necessary actions to prevent acts described in Article II concerning Palestinians in Gaza. These acts include killing individuals belonging to the community, causing serious harm, inflicting life conditions aimed at physical destruction, and implementing measures to hinder reproduction among the community (ICJ, 2024). Judge Xue supports South Africa's standing to bring a case against Israel for breaching the Genocide Convention. She highlights that the Palestinian issue has remained under discussion at the UN since its inception, with Palestinians still unable to exercise self-determination. She underscores the UN's ongoing responsibility to protect Palestinians, especially against genocide, as mandated by relevant UN resolutions (ICJ, 2024a, 2024b). This is an interim order as to taking necessary steps not as to ceasefire. Additionally, it may take several years for the final judgment to be delivered, and by then, the situation may become more complex and deteriorate further.

After 24 weeks of hostilities in Gaza, the Security Council passed a resolution calling for a quick cessation of hostilities throughout the holy Ramadan period, aiming to establish a lasting and sustainable ceasefire. The resolution number 2728 (2024), was passed with a majority of 14 votes and one abstention (the USA), and none opposed. The resolution urges the prompt and categorical release of all hostages and mandates the facilitation of humanitarian aid to address the medical and other humanitarian needs of those affected (United Nations, 2024). The fact remains that this critical Security Council resolution mandates a ceasefire only during the Ramadan period, providing an interim solution rather than a permanent one. Nonetheless, many speakers stressed that this resolution serves as an initial step towards ensuring a permanent ceasefire.

Another significant challenge is the adverse impact of the arms trade. Arms manufacturing nations, particularly powerful Western countries, have a vested interest in continuing warfare due to the economic profits derived from it. The more there is warfare, the more there is profit. This financial interest leads many arms manufacturing countries to favor the continuation of conflicts such as the Hamas-Israel conflict, similar to the Russia-Ukraine War (2022) or the Saudi-Yemeni conflict. For

several decades, the arms trade has been among the highest-grossing industries globally, showing consistent annual growth. The Western Asia region is the fastest-growing arms market worldwide. According to reports, the United States continues to be the leading provider of arms globally, with Middle Eastern nations importing 25% more weapons than during the period from 2011 to 2015 (Al Jazeera, 2021). The easy access to arms and munitions worsens the plight of civilians, political repression, criminal activities, and terrorism. Irresponsible arms trading can lead to the destabilization of total regions, breach arms embargoes, and facilitate human rights violations (UNODA, n.d.). Due to an Israeli strike on its Damascus consulate on April 1, 2024, Iran launched a retaliatory attack on Israel with hundreds of drones and missiles on April 13, 2024. In response, Israel attacked Iran on April 19, 2024 (Berg, 2024). This escalation suggests that the Hamas-Israel conflict, which began as a non-global armed dispute, is now evolving into a cross-border armed dispute. This situation may become more complex and dire, potentially escalating to a global conflict if world powers do not take effective measures for a permanent solution. The latest concerning issue is in which, the USA has exercised its veto power in the SC to prevent the United Nations from recognizing a Palestinian state, thereby denying Palestinians full membership in the global organization (DeYoung, 2024). Obviously, this decision will not make happy to Hamas. These two critical events will pose substantial challenges for global legal framework in efforts to normalize the current situation.

The frequent references to 'International Law' by politicians, the media, international organizations, and NGOs emphasize its perceived importance. However, the grave events of the 'Hamas-Israel conflict' cast doubt regarding the significance and efficacy of 'International Law', as well as its consistent application. 'International Humanitarian law (IHL)' is frequently invoked and remains central to both the Gaza hostilities and Hamas's actions on October 7. But international lawyers face the challenge of ensuring the precise and consistent application of IHL to achieve meaningful solution. A key point that must be stressed, especially amidst political polarization, is that the IHL framework, primarily aimed at protecting civilians, is not based on "reciprocity". As Human Rights Watch high-

lighted, upholding civilian safety is a commitment to humanity, not just an agreement with other states or parties. Hamas and Israel alike have violated this principle long before October 7. Over the 56-year-long occupation of the OPT, Israel has been recorded to commit numerous IHL violations, such as unlawful settlement expansion, displacement of Palestinians, the Gaza blockade, and excessive use of force, among other transgressions. The inability of the global community to ensure accountability and follow-up on these violations has grave implications for the current escalation of violence, and it is crucial to address these shortcomings (Duffy & Pinzauti, 2023). To address these challenges, it is essential to have a collective concerted effective effort from the world-leaders to uphold IHL standards and pursue accountability for violations, ensuring that the international legal framework is respected and effective in providing genuine protection to all affected populations.

3. Conclusion

War is not a game and cannot serve as a solution to a problem as nations around the globe promised in the San Francisco Conference- 'to protect future generations from the devastation of war' to establish peace and security by approving the UN charter draft finally (United Nations, 1945, Preamble). This cannot be considered as a valid approach to attain the entitlement to determine their own political status or an appropriate means of self-defense. Instead, war only leads to loss of life and physical destruction. The human and material damage in Gaza has already reached to an alarming level. Israel often invokes the Holocaust as a rationale for its actions within Palestinian-administered areas, which raises significant concerns. The current hostilities in Gaza have led to a significant humanitarian crisis and poses a significant threat to global peace and stability. Both Hamas and Israel have breached the fundamental principles of international humanitarian law. Many have proposed a dual-state resolution for the Hamas-Israel conflict; however, without the involvement of Fatah, another significant Palestinian organization, neither Hamas nor the Israeli government are interested in accepting this solution. Their approaches are making the situation more complicated and terrible. Immediate ceasefire and humanitarian relief must be prioritized to safeguard noncombatants and provide necessary aid. Neutral diplomatic mediation and dialogue are crucial for

resolving key issues and establishing trust between the parties. International involvement from neutral parties can help to facilitate negotiations and ensure adherence to agreements. Confidence-building measures such as prisoner and hostage exchanges and easing restrictions may foster an environment conducive to lasting peace. Recommendations also include immediate ceasefires and long-term diplomatic solutions based on international law, ensuring the safeguarding of noncombatant lives and humanitarian access. Moreover, there is an immediate need for the global community to effectively enforce existing international legal frameworks and collectively work towards lasting sustainable stability and tranquility within the affected regions.

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5. Conflicts of Interest

The author affirms that no conflicts of interest are associated with the publication of this research article. The author has thoroughly reviewed and approved the final manuscript and confirms that no financial or personal affiliations exist that could have affected the objectivity or integrity of the work presented herein.

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