



An-Najah National University
Faculty of Graduate Studies

**THE RIGHT OF SELF-DEFENSE UNDER
OCCUPATION: A LEGAL ANALYSIS OF
ISRAEL'S CLAIMS AND POLICIES IN GAZA
FOLLOWING 7 OCTOBER 2023**

By
Reem Bashar Naser AbuRumh

Supervisor
Dr. Majd Owda

**This Thesis is Submitted in Partial Fulfillment of the Requirements for the Degree
of Master of International Law and Human Rights, Faculty of Graduate Studies,
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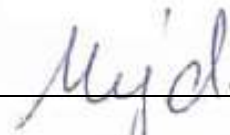
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Dr. Majd Owda

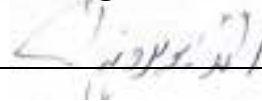
Supervisor



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Dr. Raed Abu Badawia

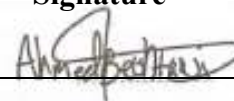
External Examiner



Signature

Dr. Ahmad Beshtawi

Internal Examiner



Signature

Dedication

To the one who believed in me when I doubted myself, the one I kept the hard work to make proud, to my precious mother. Your kind heart, love, and prayers were my strength, your support and encouragement were my guidance through every obstacle. I wouldn't have done this work without you. Your trust and belief in me made all of this possible, this is for you my ray of sun.

To my homeland, Palestine, and its resilient people. Your strength and courage shaped and strengthened my passion for justice. This work is dedicated to you as a part of a long path toward freedom and dignity.

To myself, for enduring the long and challenging road, for perseverance, and for keeping the hard work no matter what, I'm proud of you.

To my family who stood beside me and held me with love and encouragement. To my friends whose support and presence have lightened every step of this journey.

And to all those striving for justice and human dignity, this work is inspired by you and offered in solidarity with your struggle.

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Last but not least, I extend my heartfelt appreciation to the quiet strength that stood beside me whenever my own faltered, thank you for believing in me, your presence and kindness guided me every time. This work would not have been possible without you.

Declaration

I, the undersigned, declare that I submitted the thesis entitled:

THE RIGHT OF SELF-DEFENSE UNDER OCCUPATION: A LEGAL ANALYSIS OF ISRAEL'S CLAIMS AND POLICIES IN GAZA FOLLOWING 7 OCTOBER 2023

I declare that the work provided in this thesis, unless otherwise referenced, is the researcher's own work, and has not been submitted elsewhere for any other degree or qualification.

Student's Name:

ريم بشار نصر ابورع

Signature:

ريم ابورع

Date:

15/1/2026

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Abstract

Israel's use of force in self-defense as per Article 51 of the United Nations Charter has been a subject of heated legal, ethical, and international debate since 7 October 2023. Despite the worldwide spotlight on Gaza’s situation, there is still a lack of deep scholarly discourse that critically evaluates the legality of Israel's claim of self-defense in a situation where it is an occupying power. The gap is most obvious in descriptive-analytical research publications that delve into the interaction between Israel's claim of self-defense, its obligations as an occupying power, and the rules of international law.

Aiming to examine the legality of Israel's claim of self-defense and to investigate its military operations in Gaza following 7 October 2023, especially their impact on the civilians and civilian infrastructure, through the lens of “international humanitarian law” and “international human rights law”, this paper uses evidence from United Nations reports, international judicial bodies rulings, and both international and national organizations, this paper implements a legal descriptive-analytical method to examine law and facts of the area after 7 October.

This research concludes that Israel, as the occupying power in Gaza, does not have the right to self-defense against the population it occupies, therefore, its claims of “self-defense” are illegitimate under international law, and do not meet the criteria of Article 51 of the UN Charter. Israel has failed to uphold its obligations under “international humanitarian law” as the occupying power, and its military operations exceed the principles of necessity and proportionality under “international humanitarian law”, consequently, its offensive actions in Gaza since 7 October amounts to serious violations of “international law”, particularly “crimes against humanity”, “war crimes”, and “genocide”. This paper also points out a growing number of states worldwide that have been challenging and rejecting Israel's claims of self-defense in Gaza. Such declarations emphasize the urgent need for compliance with international law and

strengthening states responsibility and accountability to safeguard civilians in Gaza, and ensure the Palestinians' right to self-determination.

Keywords: “self-defense”, “occupation”, “Article 51”, “international humanitarian law (IHL)”, “war crimes”, “crimes against humanity”, “genocide”.

Introduction

This dissertation looks at the questioning of Israel's right to self-defense imposed on it by “Article 51 of the United Nations Charter”. This questioning occurs in the context of its unlawful occupation of the Palestinian territories, which has been going on for a long time, with a particular focus on the Gaza Strip. This paper delves into the interconnection between Israel's dependence on self-defense and the responsibilities of the occupier under “international humanitarian law” and “international human rights law”. Since 7 October 2023, Israel has been carrying out military operations in Gaza claiming its right to self-defense under “international law”. However, these operations' nature, scope, and intensity have raised questions regarding whether these claims could be considered as legitimate, especially in the existence of Israel's prolonged unlawful occupation in Gaza. This paper examines these claims, starting with a theoretical framework that establishes a legal foundation of the right of “self-defense” under mainly Article 51 of the UN Charter, and “international humanitarian law” key concepts, particularly law of occupation, and its main principles “necessity” and “proportionality”. In addition to analyzing “international court of justice’s” advisory opinions, notably those regarding Israel’s occupation status in Gaza and its obligations under IHL, taking into account the existence of a non-state member. Moreover, this paper in its second chapter, moves to look into a practical framework through applying the theoretical legal framework in chapter one to the chosen case study of Gaza, evaluating Israel’s policies and practices carried out in the Gaza Strip, examining their nature, scope, and intensity, in order to assess the legality of Israel’s claims of self-defense, whether they could be considered as legitimate or if they could be considered as amounting to serious violations of international law, particularly crimes against humanity, war crimes, and genocide. Taking into consideration the effect of these military operations on civilians and civilian infrastructure in Gaza. Ultimately, this research also addresses international responses to Israeli offensive on Gaza as well as accountability and enforcement mechanisms under “international law” by offering an examination of states, and international and national organizations responses, as well as relevant judicial bodies measures, especially "international court of justice” and “international criminal law” concerning Israel's claims of self-defense.

Research Terms and Expressions

The most important terms that are likely to be addressed in this thesis are:

1. Occupation

An occupation implies that a state dominates a certain area over which it does not have sovereign control and does this with the absence of consent of the rightful governing authority. According to international law, an occupation is a situation that is mainly governed by “the 1907 Hague Regulations” and “the Fourth Geneva Convention of 1949”. For this study, the word "occupation" is used to refer to the ongoing Israeli occupation of the Palestinian territories after 1967, which include the West Bank, the Gaza Strip, and East Jerusalem. The focus is, however, mostly on Gaza.

2. Self-defense

Self-defense is the basic prerogative of a state to use force to defend itself against an armed attack or an immediate threat. The self-defense operation is limited by the principles of “necessity and proportionality” and is regulated by “Article 51 of the United Nations Charter”. Here, self-defense is studied as a factor that led to Israel’s decision to act in the Gaza Strip after 7 October 2023, and the thesis thus focuses on assessing the extent to which these actions conform to the legal norms of the “International Humanitarian Law”.

3. Proportionality

One of the most important points in “International Humanitarian Law (IHL)” is a rule that prohibits attacks which are likely to cause a large number of civilian casualties relative to the specific and immediate military advantage that can be gained. Proportionality is, therefore, the key factor when it comes to determining the legitimacy of the Israeli military operations in Gaza after the October 7, 2023, incident in this dissertation.

4. Necessity

“International Humanitarian Law (IHL)” is based on the principle that any use of force must be absolutely necessary for the achieving of a legitimate military objective and that there must not be any less harmful alternatives. Necessity is very important in the first place when we talk about legality of the Israeli military operations in Gaza after 7 October 2023 in the context of this thesis.

5. Effective control

A legal notion employed to determine if a region is considered occupied, even where a dominating force does not have a constant physical presence in the area. According to the rules of war laid down in “International Humanitarian Law”, a situation of occupation is established when a foreign authority has the power to control the most vital parts of the lives of the population such as the movement, borders, the airspace, sea access, and the necessary infrastructure. The idea of effective control is the main point that helps to clarify the issue of Israel's responsibilities as an occupying power in the Gaza Strip, notwithstanding its assertion that the 2005 disengagement resulted in the termination of the occupation, in the case of this thesis.

Research Problem

The core problem around which this dissertation revolves is the fact that Israel has been claiming its right to self-defense as per Article 51 of the UN Charter in its military operations in Gaza since October 7, 2023 even as it carries out actions that are serious breaches of international law - among these are war crimes, crimes against humanity, and genocide - taking into account the legal impact of Israel's assert to self-defense while it is still unlawfully occupying the Palestinian territories, including Gaza.

Research Questions

The nature of the Israeli prolonged occupation of the Palestinian territories regarding the invocation of self-defense and the compliance with the international laws have raised concerns, thus; this thesis aims to address the following questions:

1. Can Israel, as the occupying power in Gaza, lawfully invoke the right of self-defense under “Article 51 of the UN Charter” to justify its military operations in Gaza since 7 October 2023?
2. To what extent do the Israeli military operations in Gaza since 7 October 2023 comply with the principles of “International Humanitarian Law”, mainly the principles of “necessity and proportionality”?
3. Can the actions carried out by Israel in Gaza since 7 October 2023 be classified as serious violations of international law particularly “war crimes”, “crimes against humanity”, and “genocide”?

Research Significance

This thesis is significant as it addresses a crucial issue in international law that has been widely debated for a long period of time: the question regarding the Israeli claims of self-defense against the population it has been occupying and oppressing in Gaza since a long time, particularly following 7 October 2023. This paper examines whether Israel carrying out military operations in Gaza can be considered as legitimate under “international law” and “international humanitarian law”, or whether they constitute grave violations of international law particularly “war crimes”, “crimes against humanity”, and “genocide”. Additionally, this study disputes the traditional views of self-defense by questioning whether such a right can be exercised lawfully by an occupier against the population it still occupies, and it also puts forward very important questions concerning occupation obligations, and human rights status in the situation of Gaza.

Research Methodology

This thesis adopts a descriptive-analytical methodology that examines Israel’s claim of the right of self-defense in the context of its prolonged occupation in Gaza following 7 October 2023. The study begins to present a theoretical framework of the right of self-defense under mainly Article 51 of the UN Charter, followed by examining Israel’s policies and practices in Gaza following 7 October 2023, in order to evaluate the compatibility of its actions with “international humanitarian law” and “international human rights law”, through using descriptive and analytical methods in order to identify the essential legal framework in answering the questions of this study, as they are the most appropriate and effective approaches in achieving accuracy and arriving to a solid legal foundation. This thesis concludes with a brief of the findings and recommendations intended at addressing the legal impacts of using the right of self-defense in the context of a prolonged unlawful occupation and how does the implementation of self-defense in the existence of an occupying power affect the civilians under “International Humanitarian law” and “human rights law”, by relying on international laws, particularly Article 51 and 2(4) of the UN Charter, alongside “international humanitarian law’s” rules mainly the ones governing the law of occupation, in addition to international judicial bodies rulings, notably "international court of justice's" advisory opinions and other related judicial precedents, seeking to

examine the broader legal interaction between self-defense and occupation. Moreover, this study also relies on documented evidence and reports from international and national organizations that look into the Israeli policies and practices carried out in its military operations in Gaza following 7 October 2023, to evaluate its compatibility with international law.

Literature Review

“The human rights obligations of belligerent occupiers: Israel and the Gazan population” by “Ilias Bantekas and Safaa S. Jaber in 2025”, published in *Journal of conflict and Security Law*.

This article by “Bantekas and Jaber” discusses that despite Israel’s disengagement from Gaza in 2005, the continued control over the Strip’s borders, airspace, maritime, and essentials, and the Israeli ability to re-form ‘boots on the ground’ at will amounts to effective control, and therefore Gaza remains under belligerent occupation to this day. They furthermore argue that given this effective control, Israel remains legally bound by “international humanitarian law (IHL)” and “international human right law (IHRL)”, hence, the Palestinian population in Gaza is deemed to deserve the full scope of protection under IHL and IHRL, including protection from collective punishment, deprivation, and any human rights violations. This aligns with this thesis’s core concern: examining the legitimacy of Israel’s claims to self-defense in the occupied Palestinian territories, including Gaza. While this article analysis the dual application of IHL and IHRL in situations of occupation, this thesis intends to use its ‘effective control’ framework as a foundational reference in supporting this thesis argument that an occupier cannot claim its right to self-defense against the population it occupies, but rather it has obligations to protect them, and uphold their basic needs.

“International Law, Self-defense, and the Israeli-Hamas Conflict” by Eric A. Heinze in 2024, published in *The US Army War College Quarterly: Parameters*, Volume 54, No. 1, Article 7.

This paper by “Heinze” focuses on the legal framework of “the right of self-defense”, discussing “jus ad bellum and jus in bello”, including the principles of the “international humanitarian law”, including necessity and proportionality. Moreover, it discusses the attacks that target civilians and which constitute an ‘armed attack’ under “Article 51 of

the UN Charter”. While “Heinze” recognizes Israel’s right to self-defense after 7 October 2023, his analysis provides a solid foundation that will be used in this thesis in understanding the legitimacy of defending against non-state actors like Hamas and the challenges of attributing attacks to states. Moreover, this paper also helps in giving this thesis a firm legal grounding through explaining how and when a state can lawfully defend itself.

“Israel/Occupied Palestinian Territory: ‘you feel like you are subhuman’: Israel’s Genocide Against Palestinians in Gaza.” by “Amnesty International in 2024”.

This report by “Amnesty International” documents the Israeli actions since 7 October 2023. It examines the Israeli offensive on the Occupied Gaza Strip, including the killing of civilians, forcible displacement, the obstruction of life-saving essentials and human aid, and the restriction of power supplies. Through its analysis, Amnesty International indicates Israel’s intent through its pattern of conduct and its official’s statements. Concluding that Israel has met the key elements of the crime of genocide against the Palestinians in Gaza. This documentation can be considered as relevant to this thesis in which it examines the consequences of the Israeli offensive on civilians and argues that the scale, pattern, scope, and the continuity of violence may cross the threshold into the crime of genocide, which provides a crucial legal ground for the assessment of the legitimacy of Israel’s self-defense claim under international law. However, this thesis goes beyond the crime of genocide, while Amnesty International conclusion focuses on genocide under the Genocide Convention, this thesis expands to include the framework of the right of self-defense, the occupation, and “international humanitarian law (IHL)” key principles. This report will be used as a core source and legal evidence regarding potential serious crimes and violations committed by Israel in Gaza.

“Israel’s Crimes Against Humanity in Gaza: Mass Forced Displacement and Widespread Destruction” by Human Rights Watch in 2024.

This report by Human Rights Watch documents some of the Israeli conduct against the Palestinians in Gaza since 7 October 2023. According to this report, Israeli authorities have forcibly displaced more than 1.9 million Palestinians in the Gaza Strip, through evacuation orders, denial of safe passage, attacks on the so-called “safe zones”, and the systematic destruction of essential civilian infrastructure. The report furthermore

describes how hospitals, schools, and homes were rendered uninhabitable due to the indiscriminate and widespread Israeli attacks against civilians and civilian infrastructures, which HRW considers to amount to “war crimes”, and “crimes against humanity”. Although this report focuses on documenting forced displacement and destruction rather than the doctrine of self-defense, it provides, for the purposes of this thesis, a solid legal ground in examining Israel’s claim of self-defense in Gaza. After demonstrating that, according to the law of occupation, Israel has not ensured the safety of the civilian and the provision of basic necessities, the report signals that the behavior of Israel is in conflict with the requirements of an occupying power under “International Humanitarian Law”. This aligns with the position put forward in this thesis that a foreign power which is in occupation cannot claim the right of self-defense against the people under its control, but on the contrary, it has to safeguard them and respect their basic rights.

“Israel’s Military Offensive on the Gaza Strip Breaches Law on the Use of Force on Self-Defense *Ad Bellum* and is a Continuing Act of Aggression” by “the 2023 Palestinian Human Rights Organizations Council”.

This PHROC position paper has been issued by Addameer, Al-Haq, Hurriyat, the Jerusalem Center for Legal Aid, the Center for Human Rights Studies in Ramallah, Al-Mezan, Defense for Children International–Palestine, and the Palestinian Center for Human Rights, criticizes the Israeli military for the conduct of their operations in the occupied Palestinian territories, including Gaza.

It argues that Israeli military operations going back to 7 October 2023, are just a continuation of the illegal belligerent occupation that has been going on since 1967 and, therefore, that such operations cannot be considered as self-defense under Article 51 of the UN Charter as they are not in line with the requirements of “necessity”, “immediacy”, and “proportionality” set by international law.

PHROC’s paper focuses on the unlawfulness of the occupation and the Palestinians’ right to self-determination by presenting solid legal arguments against Israel’s claim of self-defense. This paper, however, further develops that argument to demonstrate how Israel’s assertions of self-defense can lead to serious breaches of international law and to evaluate their compliance with the rules of “necessity” and “proportionality” of IHL.

“Does Israel Have the Right to Defend Itself?” by Marko Milanovic, published in EJIL: Talk! Blog of the European Journal of International Law in 2023.

In this article, Milanovic examines whether Israel has the legitimate right to defend itself under *jus ad bellum*. He argues that in order to determine if Israel has the right to self-defense, many aspects need to be legally examined, particularly the status of Gaza, whether non-states actors like Hamas can trigger self-defense rights, and that applying “Article 51 of the UN Charter” depends on assumptions regarding statehood. The author further explains that if Gaza is not to be considered as a sovereign territory of a recognized state, the prohibition of the use of force under “Article 2(4) of the UN Charter” may not apply, and hence Article 51 of the UN Charter would not be triggered as well. However, Milanovic also notes that the principles of “necessity and proportionality” still apply, and in the context of the Israeli offensive on Gaza, these principles are highly contested. In this thesis, this article is very useful as a theoretical source to highlight the complexity of the Israeli claim of self-defense. One point that has to be remembered is that the present article is not a set of final legal decisions but rather a reflection of the current legal debate, showing that cases like Gaza have to be closely examined, and if self-defense is claimed, it must be consistent with addressing all the relevant normative and legal issues.

Chapter One

Legal Framework of Self-Defense and Its Application in Gaza

This chapter delves into the laws that outline the right of self-defense on an international and historical ground. Special focus is given to the self-defense claims by the Israeli occupation in Gaza after the 7 October 2023 events. It opens the discussion with the historical and doctrinal aspects of self-defense, following the changes of the concept from customary international law to the UN Charter regulations.

The main concepts—necessity, proportionality, and distinction—are spotlighted to serve as a basis when examining lawful self-defense claims. After that, the chapter moves to a critical assessment of Israel's use of “Article 51 of the UN Charter”, taking into account the legal status of Palestine, the duties of the occupying power, and the effects of Israel’s military offensive in Gaza. Furthermore, the examination of the interaction between *jus ad bellum* (law that regulates the use of force) and *jus in bello* (law for conduct during war) is also essential in this range for understanding the legality of Israel’s claims.

1.1 The Concept of the Right of Self-defense

Self-defense is the right which is both morally and legally justified to be used by the state or the individual, to protect oneself, or others if safety or life is threatened. This right is one of the most crucial elements of human rights, which are universal, and according to international law, it can be considered as a solid ground for the use of force (Hamad, 2025).

Self-defense is a concept that has evolved through law and history over time. Back in the days, people and governments on numerous occasions fought against each other by claiming that they had to defend themselves from threats or dangers that came from other lands and groups. Eventually, these kinds of operations got legally formalized and acknowledged in international law (Khamdan, 2025).

At the core of international law, the idea of “lawful self-defense” was quite general and not legally elaborated, it didn’t have defined conditions and was mainly based on the existence of a threat to vital interests. States were given the power to a great extent to

determine the scope of such threats and to take the steps they considered proper to protect their security, survival, and national interests (Jasim, 2025).

One of the most significant examples of the conventional notion of self-defense is the Caroline case (1837) which is often cited as the basis of customary international law. The destruction of the American steamer Caroline, which was assisting the Canadian rebels, by the British, led to the establishment of the criteria that self-defense should be necessary, instant, and of a proportion equal to the threat arising. The ideas enshrined in this case then became the norm of the regulations governing the use of self-defense in international law (Khamdan, 2025).

Understanding this concept changed even more in the early twentieth century when different treaties started to recognize the right of self-defense by including provisions that confirmed the commitments to non-aggression. One illustration of this is the Locarno Treaties of 1925, which tried to maintain peace in Europe, at the same time, they allowed states to take defensive actions against dangers or attacks coming from demilitarized zones. In the same way, the 1926 Friendship Treaty between France and Romania went even further by recognizing "the right to lawful defense" as one of its provisions. These changes mark the ongoing journey of the right to self-defense as part of contemporary international law (Khamdan, 2025).

During the period of the League of Nations, which can be considered as the beginning of modern international law, the regulations concerning the right of self-defense gradually became more defined, though only indirectly at first. War was not completely forbidden but only somewhat disapproved, and states were required to seek legal ways to settle international disagreements before using force. Such measures served to prepare the way for a clearer definition of the right to self-defense (Jasim, 2025).

The creation of the United Nations and the adoption of the UN Charter in 1945 marked the beginning of a formal legal framework under international law governing the use of force. According to the UN Charter, states are required to resolve their disputes by peaceful methods and to not carry out any actions that would endanger international peace and security (Siame, 2025).

“Article 2(4) of the UN Charter” is very explicit in its prohibition, it disallows the use of force as well as the threat of force against the political independence or the territorial integrity of any state in no uncertain terms. Stating that "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" (UN, 2023).

The International Court of Justice (ICJ) in the very significant case of *Nicaragua v. United States* (1986), actually reinforced this idea, where the Court identified the prohibition of force under Article 2(4) as a peremptory norm (*jus cogens*) of international law, which cannot be violated by states. As a result, the use of force is allowed under the Charter only if it is in line with the objectives of the United Nations. There are some scholars who have tried to limit the effect of this provision by arguing that actions which are not directed against rights that are protected by law fall beyond the ban on the use of force and, thus, do not constitute a violation of Article 2(4). Nevertheless, the ICJ in “the *Corfu Channel*” case, rejected this view (Siame, 2025).

Thus, given that “Article 2(4)” codifies the common rule barring unlawful use of force, acts of aggression are likewise prohibited, and this prohibition is binding on all states as a peremptory norm (*jus cogens*) of international law. Accordingly, a belligerent occupation resulting from an act of aggression is also unlawful, as reflected in General Assembly Resolution 3314 (1974), which defines acts of aggression and considers even temporary military occupations resulting from an invasion or attack in contravention of the United Nations Charter to constitute acts of aggression (UN, 2023).

And while “Article 2(4)” expressly prohibits the use of force in international relations as noted above, the UN Charter also recognizes two exceptions: (1) “the inherent right of states, whether individually or collectively, to self-defense if an armed attack is committed against a member of the United Nations, until the Security Council has taken the necessary measures to maintain international security and peace”; and (2) “authorization by the Security Council pursuant to Chapter VII of the UN Charter” (Jasim, 2025).

“Article 51” is, in fact, the key point of the current international law concerning the problem referred to. This instrument sets up the cases when a country can legitimately

employ force for self-defense and guarantees that this privilege is used in accordance with the law. (Khamdan, 2025) If a state finds itself the victim of an armed attack, the system acknowledges the natural and fundamental right of that state to defend itself. The system also recognizes the right of the state to act in self-defense either alone or jointly with other states in reaction to such attack, i.e the state is allowed to use force to repel the attack directed against it. This is allowed as a temporary measure until the Security Council undertakes the necessary actions to reestablish and maintain international peace and security (UN, N.D).

The idea of the ‘inherent right of self-defense’ rests on international custom law and long-standing practice. States in these frameworks have always had the power to react to an offensive attack. In the words of first scholars, sovereignty of states was considered as the source of this right most notably their power to safeguard their territorial integrity and political sovereignty was regarded as the main reason for the emergence of the inherent right of self-defense (Alder, 2011).

Therefore, this right is actually pre-existing and inherent; the UN Charter is not the one to create it but only to acknowledge and regulate it within the sphere of international law (Khamdan, 2025), The “International Court of Justice” has supported this view by stating that “Article 51” serves as a codification of a pre-existing right under “customary international law” (Buchan, 2023).

Once the issue of the inherent right to self-defense has been taken care of, the next important factor is the idea of 'armed attack' under “Article 51 of the UN Charter”. The concept may be unfolded looking at four aspects: the threshold of gravity, attribution to a state, guidance from UN General Assembly Resolution 3314, and the contribution of non-state actors. Significantly, “Article 51” does not delineate “armed attack” nor does it give the standards for what constitutes one. It just indicates that states have “the inherent right of individual or collective self-defense if an armed attack occurs,” thus leaving the matter to be interpreted by international courts and states practice (International Court of Justice, 1986).

In “Nicaragua v. United States” (1986), the “International Court of Justice” (ICJ) explained that a use of force should not necessarily be considered an armed attack. The provision of “Article 51” of the UN Charter allowing self-defense is only triggered by

attacks of considerable seriousness or consequence. (The Open University, 2016). The Court further pointed out that one has to measure not only the scale but also the effects of the act to decide if an armed attack took place. Those of less intensity, which may be infringing the prohibition on the use of force under “Article 2(4)”, do not entitle the right of self-defense since they do not meet the higher level of an armed attack (The Open University, 2016).

After determining that the act is of a grave nature, the following question is whether the act can be ascribed to a state. “The ICJ” in “Nicaragua v. United States” explained this condition by saying "not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support" (ICJ, 1986, para. 195) can establish state attribution. From this it follows that the right to self-defense can be lawfully invoked only if an armed attack is traceable to a state (The Open University, 2016).

This idea is also evident in the UN General Assembly Resolution 3314 (1974) which, despite being non-binding, provides the most significant guidance in the identification of those aggression acts that mostly constitute armed attacks. In particular, the resolution acknowledges the aggression the sending of armed bands by a state or on its behalf when such acts attain the necessary level of seriousness, pointing out that numerous actions considered as aggression - e.g. invasions or the dispatch of armed groups - usually amount to an armed attack (Marxsen, 2025).

Moreover, the question of self-defense against non-state entities has stirred a strong discussion considerably. In its opinion on the Wall (2004), the ICJ held that the self-defense right under “Article 51” is mainly referring to an attack of one state against another (ICJ, 2004, para. 139). The Court's stance in that case is in line with the ruling in Nicaragua, where the ICJ pointed out that an armed attack has to be traced back to a state (ICJ, 1986, para. 195) (Marxsen, 2025).

Moreover, the “Article 21” of “the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts” (ARSIWA, 2001) specifies that the ban on the use of force is most significant in a situation between two or more states, that is when it is put into operation (Paddeu, 2017).

However, a number of scholars and state practices argue that the use of force in self-defense can, in principle, be directed at non-state actors even if their actions are not attributable to a state (Marxsen, 2025). A notable instance is the response of the United States to the 9/11 events by which it initiated military actions in Afghanistan aimed at “Al-Qaeda” and “Taliban”. This was the first time the right of self-defense was invoked against a non-state actor. In this instance, the UN Security Council, through resolutions 1368 and 1373, recognized terrorism as a threat to international peace and security and endorsed the right of self-defense in response to such attacks (Khamdan, 2025).

This extension, where states have sometimes extended the right of self-defense to non-state actors, remains contested and is not broadly accepted under the UN Charter. Any extension of the right of self-defense to non-state attacks would require a legal justification based on an expanded standard of attribution (ICJ, 2004, para.35) (Marxsen, 2025).

Another important feature of “Article 51” is the requirement for states to report their acts of self-defense immediately to the “UN Security Council”. As previously discussed, “Article 2(4) of the UN Charter” prohibits using force and the threat of using it against the territorial integrity or the political independence of any state (The Open University, 2016).

However, this prohibition is not absolute. The UN Charter itself provides specific exceptions where the use of force may be lawful. Under Chapter VII, under the title “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”, force may only be used in two main circumstances: (1) self-defense or (2) when authorized by the UN Security Council as part of the collective security mechanism (The Open University, 2016).

According to Article 39 of the UN Charter, it is the Security Council that has the power to recognize the occurrence of a threat to peace, a breach of the peace or an act of aggression, and to make a decision regarding the steps to be taken, including in the case of a use of force provided for in Articles 41 and 42. In such cases, states are not exercising their right to self-defense individually, but on the contrary, they are operating jointly under the Council’s leadership and legal control (The Open University, 2016).

This ensures transparency and allows the Council to take the necessary measures to maintain or restore international peace and security (Khamdan, 2025).

So, as per “Article 51 of the UN Charter”, a state has, as part of its nature, the right to defend itself if it is attacked by arms. It only needs the permission of the Security Council if it wants to act differently. However, such a right is restrained: the state is obliged to inform the Security Council of the act of self-defense without delay. When the Security Council takes the necessary steps to reestablish peace and security in the world, the right of the state to carry on with its defensive action on its own is thus revoked (Buchan, 2023).

It is worth mentioning that the Security Council has been ineffective in taking proper measures sometimes, e.g., throughout the period of the Cold War. Consequently, a state has the right to use force in self-defense only if it has suffered an illegal armed attack, or there is an immediate threat, and the Security Council has remained inactive. In any other case, the state would be considered a perpetrator of aggression or a breach of international law instead of a defender exercising its right to self-defense (Siame, 2025).

It is a fact that states have a right to self-defense under “Article 51 of the UN Charter”, however, the exercise of that right is limited by core principles of international law, which are codified in customary international law and are also recognized by “the International Court of Justice” (Khamdan, 2025). In the 1986 Nicaragua v. United States case, the ICJ clarified that self-defense “would allow only those measures which are proportional to the armed attack and necessary to counter it” (para. 176). This basically sets out two main ideas: (1) proportionality and (2) necessity. These principles can be found also in “International Humanitarian Law” where, with the principle of distinction, they constitute the essential regulatory framework for the behavior of parties in armed conflicts (The Open University, 2016).

The principle of proportionality needs that the level of force used by a state in response to an armed attack be matching the seriousness, scope, and character of the attack. The principle of necessity, on the other hand, stipulates that a state should refrain from taking any actions, except those that are strictly necessary, in order to repel or deter an actual or imminent attack. In particular, a state should not engage in any excessive or superfluous actions (The Open University, 2016).

One of the most prominent instances is the event when in 1981, Israel destroyed the Osirak nuclear reactor in Iraq and asserted that it had to be done in order to stop Iraq from getting nuclear weapons. The UN Security Council, however, condemned the operation in a unanimous decision, pointing out that Israel had not resorted to peaceful means and had not proven the threat to be imminent. It is an example that shows the requirement of the necessity doctrine for the existence of either an actual or an imminent attack as well as the prior exhaustion of non-forcible measures (Wood, 2013).

Besides that, the principle of distinction also requires that parties to an armed conflict distinguish civilian objects from military objectives. In fact, only military targets can be attacked lawfully, the main purpose being the minimization of harm and suffering during hostilities (The Open University, 2016).

In short, the right to self-defense is clearly recognized under both treaty and customary international law, but it is only allowed to be exercised with significant restrictions. Firstly, Article 2 (4) of the UN Charter forbids the use of force as well as its threat, except for two cases: (1) the performance of self-defense and (2) the activities authorized by the UN Security Council. Secondly, a state can only legitimately claim self-defense in reaction to an actual or imminent armed attack. Third, the defensive actions, if any, have to be in line with the fundamental notions of necessity and proportionality. Fourth, the states that are on their right to self-defense have the obligation to inform the Security Council about their actions without delay. Lastly, the self-defense right is revoked if and when the Security Council takes the necessary steps to restore international peace and security (Wood, 2013).

1.2 Legal Analysis of Israel's claim to Self-defense in Gaza following October 7, 2023

The section analyzes Israel's appeal to Article 51 of the UN Charter by first looking at Article 2(4) as the basic principle. Next, it moves on to the issue of Palestine's state status, examines the allegations made by Israel that it acted in self-defense as a power occupying the area, and finally, it uses the detailed stipulations of Article 51 to determine whether such claims were lawful.

1.2.1 The Right to Self-Defense: Applicability of Article 2(4) and the Statehood of Palestine

Continuing from the earlier discussion, the use of force or intimidation of force to violate the territorial integrity or political independence of a state is prohibited by international law. This prohibition is enshrined in “Article 2(4) of the UN Charter” and is considered a “jus cogens” norm. A defensive reaction, as stated in “Article 51” of the Charter, is the only limited instance derogating from the general ban (Paddeu, 2017).

The use of force in self-defense as per “Article 51” is mandated to comply with international law requirements of necessity and proportionality. In addition, the self-defensive measure is permissible only as a reaction to an armed attack, the level of which “the International Court of Justice” in “Nicaragua v. United States” helped to elucidate, thereby indicating that self-defense is limited to the gravest cases of the use of force (Palestinian Human Rights Organization Council , 2023).

The principle of necessity requires that any act of self-defense be “instant, overwhelming, and leaving no choice of means and no moment of deliberation,” as emphasized in the Caroline case (1837). This means self-defense may only be employed when there are no feasible alternatives, including measures taken by the UN Security Council, and the response must avoid excessive or unnecessary measures. The principle of proportionality, in turn, requires that the scale, nature, and intensity of the act of self-defense be commensurate with the armed attack to which it responds (Palestinian Human Rights Organization Council , 2023).

Self-defense under international law, refers to the “inherent right of a state to use force in response to an armed attack by another state” and this right is only engaged when the prohibition on the use of force under “Article 2(4) of the UN charter” has been violated. The prohibition itself is, at least prima facie, inter-state in nature (Milanovic, 2023) (see ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004) (International Court of Justice, 2004). Following the events of 9/11, the prevailing view in international law has become that an armed attack must be either perpetrated by, or attributable to, a state actor, with the state exercising ‘effective control’ over the non-state actor involved (Heinze, 2024).

As a result, the issue of the statehood of Palestine is very important if we are to consider the right of self-defense of Israel as one that is legally applicable in this case. The reason is that the prohibition of use of force under Article 2(4) would then operate between two states, Israel and Palestine. In such a case, Israel would have to use Article 51 not only to explain its use of force against Hamas but also to make it legal to carry out military operations in the West Bank without the Palestinian authority's agreement (Milanovic, 2023).

It is still a matter of debate if Palestine can be considered a state according to the four criteria laid down in “the Montevideo Convention on Rights and Duties of States” (1933), which are a permanent population, a defined territory, a government, and the capacity to conduct foreign relations. The borders of Palestine are disputed, and its government lacks the freedom to govern or rule the area because of the Israeli occupation. (Milanovic, 2023) In its 2004 Advisory Opinion on “the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory” the ICJ recognized Israel as the occupying power in Palestine, and kept referring to the "Occupied Palestinian Territory since 1967" that is, the West Bank and Gaza (Milanovic, 2023).

However, most countries have recognized Palestine as a state, and the UN accorded to it the status of a "non-member observer state" in 2012. (Heinze, 2024) The core difficulty that one can argue about arises from the fact that Israel, which is exercising force within Palestinian territory, not only does not recognize Palestine’s statehood, but still illegally occupies it until this day.

Therefore in this case, Israel's claims to self-defense cannot be legally used as a justification for the use of force in Gaza. Due to the issue of Palestine's statehood being still unresolved, Israel cannot claim self-defense against Palestine as a state. In the same way, a claim of self-defense against Hamas, which is a non-state armed group, would need to be attributed to a state. Even if Hamas were considered as being attributable to Palestine, it is still a problem given the fact that Palestine is a highly disputed entity. The only possible exception might be if Israel's use of force against Hamas was seen as an implicit acknowledgment that the prohibition of the use of force is engaged, thus requiring a justification for its violations (Heinze, 2024) - a proposition that could be argued that it is, indirectly, in favor of the recognition of Palestine's statehood.

On the other hand, it is claimed that the violent acts of Hamas may have been orchestrated by a different state, most probably Iran. However, this statement is very debated. It is acknowledged that there is a relationship between Iran and Hamas, but it is still uncertain how much Iran is involved and whether it has the necessary "effective control" over the situation, thus Israel lacks a firm legal ground to justify its right to self-defense (Heinze, 2024).

In that case, military operations carried out by Israel in Gaza are not regulated by Article 2(4) and, as a result, Israel cannot lawfully depend on Article 51 in its offensive on Gaza. Article 51 would only be relevant if Israel were to use force against Hamas, a non-state armed group, and such actions were to have an effect on a state or another entity protected under Article 2(4) (Milanovic, 2023).

Therefore, it can be argued that Israel's claims of self-defense per Article 51 of the UN Charter cannot be legally justified, as it shows a huge gap in the application of international law norms governing the right of self-defense. Self-defense, as previously mentioned, is the inherent right of states in which they resort to in order to repel an attack directed against them, and is limited to core principles of IHL. Thus, Israel carrying out military operations under the justification of Article 51 in the Gaza Strip does not align with international law perspective, given the criteria Article 51 requires, mainly in this case the attribution to a state, which further raises questions regarding Israel's adherence to international laws, particularly those concerning the use of force.

1.2.2 Self-Defense Against Non-State Actors in Occupied Territory

Gaza, one of the territories captured by Israel in the 1967 Six-Day War, was under the Israeli military occupation following the war. The area was, however, under Israel's de facto control till the time of the 2005 disengagement. Throughout this time, the various United Nations resolutions and the advisory opinions of the International Court of Justice (ICJ) kept on reiterating that Gaza, in addition to the West Bank and East Jerusalem, should be considered "Occupied Palestinian Territory" and, therefore, the existence of Israel in these areas is illegal according to international law (Michal, 2025).

According to UN Security Council Resolution 242, it very specifically demanded the "withdrawal of Israel armed forces from territories occupied" and it also "rejected the acquisition of territory by war" (UN Security Council, 1967). Similarly, the UN General

Assembly Resolution 2977 (1971) stipulates that "the territory of a state must not be occupied or acquired by another state as a result of a threat or use of force, in breach of the United Nations Charter" (UN, 2023).

In addition, the "ICJ Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory" (2004) also recognized Israel as the occupying power, and it kept referring to the "Occupied Palestinian Territory since 1967, including East Jerusalem," that is, the West Bank and Gaza, as one entity (International Court of Justice, 2004).

As part of its disengagement plan, in 2005, Israel pulled out its military forces from Gaza, made a unilateral declaration that it no longer occupied the territory, and handed the power over to the Palestinians. The occupation, however, did not end in reality, as Israel has been controlling the external borders of Gaza, the only land crossing and all entry and exit points under its authority have been closed by Israel, and it has had exclusive control of the Strip's airspace and territorial waters. Since 2005, Gaza has been bombarded and invaded by Israeli forces as a result of which it faces a humanitarian catastrophe, and such a situation has been occurring roughly every two years (Banteka & Jaber, 2025).

On 7 October 2023, Hamas surprised and violently breached the security fence of Israel surrounding the Gaza Strip with about 1,200 Israeli people killed and nearly 237 hostages taken. Israel attacked Hamas with a large-scale military operation and also targeted other armed groups in Gaza with which it declared war. (Banteka & Jaber, 2025) Israel imposed a comprehensive blockade, cutting off food, water, medicine, and fuel, and initiated sustained aerial bombardments followed by a ground incursion (Heinze, 2024).

The Israeli military actions have caused the death of over 64,000 Palestinians. More than 1.8 million out of 2.3 million people in Gaza have been made refugees as a result of these actions. Additionally, more than 234,000 homes have been destroyed throughout the Strip. (Palestinian Human Rights Organization Council , 2023) The enormity of these operations and the high number of non-combatant casualties have led to extensive discussions about whether Israel is legally entitled to use self-defense against Hamas in Gaza according to international law (Heinze, 2024).

This thesis, after the previous analysis, scrutinizes Israel's assertions of its right to self-defense after the 7 October events. It starts by determining whether Gaza can be considered an occupied territory and if the requirements for a lawful self-defense can be found in the international law applicable to the case.

The question of the legal status of the Gaza Strip has been at the center of a controversial debate since 2005 when Israel withdrew from Gaza. The Israeli government is of the opinion and some scholars support the view that Gaza is no longer occupied. However, a great number of international bodies such as the United Nations, relevant non-governmental organizations, and the International Court of Justice (ICJ) in its advisory opinions, continue to consider Gaza along with the West Bank and East Jerusalem as occupied Palestinian territories (Banteka & Jaber, 2025).

In its 2024 Advisory Opinion concerning the legal consequences of Israel's policies and practices in the occupied Palestinian territories, including East Jerusalem, the ICJ held that these territories are under a continuing illegal occupation, and it went as far as to say that the occupation in Gaza, the West Bank, and East Jerusalem is a "continuing" one (Banteka & Jaber, 2025).

"Article (42)" of the 1907 Hague Regulations gives the conditions for a territory to be considered occupied and hence serves as the legal foundation for the occupation. Different legal readings of the article point to three main criteria: (1) the presence of the army in the area, (2) the carrying out of authority by the occupier, (3) the absence of consent of the original government (Banteka & Jaber, 2025).

As Israel dared to disengage from Gaza in 2005, questions were being asked as to whether Israel was really exercising authority in the land. Leonard Grunstein, in his article "Gaza is not occupied by anyone other than Gazans – the war of words" (2018), comes to the conclusion that Gaza is directed by its residents only, and that neither Israel nor Egypt have control over the area. He claims that the conditions in Gaza do not meet the standards of the Hague Regulations as Israel made its exit in 2005. Grunstein points out that from 2007 onwards, Hamas has been in control of the security and civilian administration as well as all other aspects of life in Gaza. Besides, he cites the Israeli Supreme Court in the "Al-Bassiouni case" and other internal judicial

interpretations, which emphasize that the most important factor for occupation is “physical presence (‘boots on the ground’)” (Grunstein, 2018).

Nevertheless, several legal analyses dispute Grunstein's points. The 2024 ICJ Advisory Opinion, *inter alia*, stresses that Gaza being small and very near to Israel makes it possible to have an effective remote control of the Strip from Israel. It also specifies that a physical presence of troops is not required for an occupation. (International Court of Justice, 2024) In addition, Michal Luft, an Israeli lawyer, argues that Grunstein overly depends on the decisions of the Israeli Supreme Court and points out the difference between the legal language and the real life of Israel's control over Gaza. (Banteka & Jaber, 2025) Moreover, Darcy and Reynolds maintain that the scenario where Hamas manages civilian affairs, Israel's ability to dictate, limit, or interfere with the operations of the local organs of the society is what actually qualifies it as effective control (Banteka & Jaber, 2025).

It can be further argued that even if Hamas appears to be the one in control in Gaza, but that is only what shows on the surface, Israel is the one holding the actual authority in Gaza, controlling all aspects of life, affecting not only Palestine's statehood status, but also puts it, including the Gaza Strip under the Israeli occupation.

Just like Grunstein, Eric A. Heinze, in his article "International Law, Self-Defense, and the Israeli-Hamas Conflict", also points out that the legality of the Israeli self-defense depends on whether Gaza is still considered occupied in a legal sense. According to Heinze, even if Israel is said to have control over Gaza's airspace, sea areas, and most of the land crossings, it has not been running the political and military administration of Gaza since the 2005 disengagement, and therefore, it is Hamas which, therefore, holds the *de facto* authority since 2007 (Heinze, 2024).

Heinze argues that despite Israel's influence on some parts of the daily life in Gaza, it cannot be considered a threshold of occupation under the Hague Regulations, therefore the control over the West Bank and East Jerusalem remain as an occupation (Heinze, 2024). Bantekas and Jaber refute this view vigorously by pointing out that the classification of a situation as an occupation under international law is not a matter of a single side's (the power that occupies) declaration, but rather, it is based on the extent of the control that the power has over the territory. They argue that Israel may have pulled

out its troops from Gaza in 2005, and also the Israeli High Court of Justice might have ruled that Gaza is no longer under occupation by Israel according to “Articles 42 and 43” of the Hague Regulations, but for a number of reasons Israel is still effectively in control of the Gaza Strip:

First, Bantekas and Jaber assert that Hamas’s control over civilian affairs, that is, education, healthcare, and policing, by no means changes the fact that Gaza is an occupied territory. Second, although Israel controls Gaza’s maritime zones, borders, and airspace, with its technological superiority and the blockade that is still going on, it is really very difficult for people to move and access different places, thus making Gaza a de facto “world’s largest open-air prison” under the conditions of an Israeli occupation. Third, being so close to Gaza, Israel can effectively control it from a distance. Finally, Israel’s claim that it is not occupying Gaza anymore is indicative of a typical move among occupation powers, as they know very well that being an occupier means a big political, financial, and moral burden, according to international humanitarian law and international human rights law; hence, denial of occupation is more convenient for Israel’s strategic purposes (Banteka & Jaber, 2025).

Israel’s capability to come back to Gaza and set up a military presence there at any time—as it showed after 7 October when it conducted operations in northern Gaza and sent troops throughout the Strip—is the strongest proof that its occupation has never really ended. This also changes the nature of its effective control from being a remote one to a direct and close one. There is no significant difference in Gaza’s legal status before and after 7 October 2023, and the existence of fighting between Israel and Palestinian armed groups does not change Gaza’s status as an occupied territory since occupation and hostilities can coexist, and armed conflict does not sever the connection of occupation (Banteka & Jaber, 2025).

Following the establishment that Israel retains effective control over Gaza, it must be noted that an occupation may be considered as illegal under international law on two grounds: first, if it begins following a prohibited use of force amounting to an act of aggression; and second, if a belligerent occupation that initially begins legally, pursuant to the right of self-defense under “Article 51 of the UN Charter”, subsequently becomes unlawful by being carried out in violation of the principles and norms of international

humanitarian law, constituting an unnecessary and disproportionate use of force (Palestinian Human Rights Organization Council , 2023).

When Israel launched an illegal attack against Egypt during the Six-Day War and subsequently seized the remaining territory of historic Palestine, as well as the Syrian Golan Heights and the Egyptian Sinai Peninsula, it claimed to be acting in pre-emptive self-defense—using force to prevent an anticipated threat from its neighboring countries from materializing. However, pre-emptive self-defense is not a recognized principle justifying the use of force under international law and falls beyond the legally accepted norms of “Article 51 of the UN Charter”. Thus, the Israeli military occupation of the West Bank and Gaza since this illegal use of force in 1967 constitutes, in fact, an ongoing act of aggression (Palestinian Human Rights Organization Council , 2023).

Moreover, even if Israel were to argue that it had exercised a legitimate right of self-defense against Egypt in 1967— and that its occupation of the West Bank and Gaza began lawfully—such justification ceased to exist once it had defeated Egypt, Jordan, and Syria. The continuance of the occupation, maintained through unnecessary and disproportionate use of force, has become unlawful and is being carried out in violation of the Palestinian people’s right to self-determination (Palestinian Human Rights Organization Council , 2023).

Israel thus, as an unlawful belligerent occupier of the Palestinian territories, is obligated to withdraw from all territories it occupied since 1967. Moreover, the Israeli aggression against Gaza following October 7 constitutes not only a continuation of this unlawful occupation but also an extension of the illegal use of force, which Israel is required to end (Palestinian Human Rights Organization Council , 2023).

Judge Yusuf, in its separate opinion on the ICJ’s advisory opinion on the legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem, underscores this point by emphasizing that excessively prolonged occupation is itself unlawful and it violates the foundational principle that occupation must be temporary, and cannot sustained on the basis of security claims alone. He emphasizes that Israel is violating the basics of the law of occupation which is illegitimate continued use of force. Thus, the exception of self-

defense on the use of force under the UN Charter cannot be allowed to prolong unlawful belligerent occupation (Separate Opinion of Judge Yusuf, 2024).

Israel, as the occupying power that exercises effective control over the territory, is bound by the entire range of obligations imposed under “international humanitarian law” (IHL), as codified in the “1907 Hague Regulations”, the “1949 Fourth Geneva Convention”, and the “1977 Additional Protocol I”. In accordance with “Common Article (2) of the 1949 Geneva Conventions” (Kassioun Research Unit, 2023).

Under “Article 43” of the Hague Conventions of 1907, Israel is prohibited from conducting military operations against the population under its occupation. Instead, it bears an affirmative duty to ensure the protection of Palestinian population, maintain public order and civil life, and uphold human rights all within the limits of international humanitarian law principles—namely, discrimination, proportionality, and necessity. This obligation applies de facto under jus in bello (the law governing conduct during warfare), even though the occupation itself is illegal under jus ad bellum “the law regulating the resort to the use of force” (Palestinian Human Rights Organization Council, 2023).

The International Court of Justice (ICJ) has also confirmed that the obligations under the Fourth Geneva Convention are still valid. In its 2004 and 2024 Advisory Opinions, the ICJ explicitly stated that the Fourth Geneva Convention is fully applicable to the Occupied Palestinian Territory, which encompasses the Gaza Strip (Separate Opinion of Judge Yusuf, 2024).

Nevertheless, Israel continues to deny the applicability of the Fourth Geneva Convention and to reject the relevance of the law of belligerent occupation to the Occupied Palestinian Territory. (Separate Opinion of Judge Yusuf, 2024) Even though Israel is a party to seven core international human rights instruments such as “the International Covenant on Civil and Political Rights” (ICCPR) and “the Convention on the Elimination of All Forms of Racial Discrimination” (CERD), it has been asserting that these instruments are not applicable beyond its borders to the territories it occupies. Israel made this statement for the first time in 1967 and has been reiterating it since then (Banteka & Jaber, 2025). Consequently, Israel has excluded the West Bank, Gaza Strip,

and East Jerusalem from its treaty reporting and implementation obligations (Separate Opinion of Judge Yusuf, 2024).

On top of that, Israel rejects the label of an occupier and the related obligations to the Palestinian people in Gaza, even though there is abundant evidence that it is still the one that has effective control over the area. This, according to course, emphasizes the relevance of “International Humanitarian Law” (IHL), while “International Human Rights Law” (IHRL) being operative at the same time, thus underlining Israel's commitments under both legal systems (Separate Opinion of Judge Yusuf, 2024).

It can be additionally argued that Israel’s denial of its status as the occupying power in Gaza, makes it possible for it to avoid its responsibilities and obligations under IHL as an occupying power, which benefits Israel in many ways, particularly, through unbearing the burden of civilians and civilian infrastructure in Gaza. Moreover, Israel’s denial of being the one that exercises effective control in Gaza facilitates it to reduce its international legal responsibilities and justify its actions under security and sovereignty purposes.

Considering all that was said before, the Israeli claim that it was acting in self-defense after the 7 October incidents in the context of the occupation of Palestinian territory is, in fact, not legally acceptable for two major reasons. Firstly, the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, clearly stated that the right of self-defense under “Article 51” may not be directed against a non-state actor, and it may not be exercised if the alleged attack comes from a territory that is under the state's occupation (Separate Opinion of Judge Yusuf, 2024).

Thus, Israel is not allowed to assert a self-defense right of any kind against a land under its control; the law of occupation, which requires the protection of the civilian population and the maintenance of public order in the occupied territory, is applicable to its conduct (Palestinian Human Rights Organization Council , 2023).

Second, the Israeli occupation of the Palestinian territories, which was a result of its pre-emptive armed attack and has been under its military control since 1967, is an ongoing aggressive act that is still illegal according to international law. The fact that

this occupation, which has lasted for 56 years, is still ongoing is an act of aggression and "cannot be retroactively justified by the right of self-defense". As a result, the right of self-defense under "Article 51" has never been legally applicable to Israel in the case of the occupied Palestinian territories (Palestinian Human Rights Organization Council , 2023).

In the end, it is a legal mistake for Israel to use the example of self-defense to justify its actions. Therefore, its obligations and actions should be evaluated under the law of occupation, which is primarily concerned with the protection of the population of the occupied territory and the respect of international legal norms (Palestinian Human Rights Organization Council , 2023).

1.2.3 Israel's Use of Force in Gaza: Legal Implications for Necessity and Proportionality

The principles of necessity and proportionality under Article 51, which were referred to earlier, are factors that condition the self-defense actions in any way. In fact, these principles impose that the use of force of Israel, in connection with this event, should be first of all, indispensable to the elimination of the threat and secondly, commensurate with the size and character of the aggressiveness (Heinze, 2024).

As a country that has to the power of occupation, the obligations of Israel are limited even more by the law of occupation, which imposes that the use of force be of a temporary, necessary, and proportionate nature. (Separate Opinion of Judge Yusuf, 2024) In his individual opinion to the ICJ advisory opinion on Israel's policies in the Occupied Palestinian Territory, including East Jerusalem, Judge Yusuf points out that any continued presence has to meet a current level of military necessity; if this standard is not met, it is considered a violation of law of war and law of armed conflict (Separate Opinion of Judge Yusuf, 2024).

Additionally, one could argue that the first strike justifies the immediate response. Heinze (2024) however notes that prolonged blockade, the raids from the air, and the activities of the troops on the ground run the danger of going beyond the double limits of necessity and proportionality (Heinze, 2024). Marko (2023) also goes to great length to explain that a defensive force which is just held on for the sake of prevention of

possible attacks cannot be kept forever; if not, the very reaction would be in the violation of the law of using force (Milanovic, 2023).

The Palestinian Human Rights Organizations Council, similarly, highlights that Israel's measures, which include firing at densely populated civilian areas, hospitals, and schools, as well as destroying the vital infrastructure, go far beyond the limits of necessity and proportionality and, thus, qualify as infringements of “international humanitarian law” that should be considered when assessing “jus ad bellum” (Palestinian Human Rights Organization Council , 2023).

Both scenarios considered - a state acting in self-defense and an occupying power legally bound by the law of occupation - the combined analysis of Israel's persistent violent measures seems to go beyond the permissible limits of necessity and proportionality according to international law. (Palestinian Human Rights Organization Council , 2023) The specific acts of Israel in Gaza following 7 October, and their implications for these principles, will be analyzed in detail in the following chapter.

Chapter Two

From Self-Defense to Violations of International Law in Gaza After 7 October 2023 and the International Community's Response

After discussing the principles of necessity and proportionality in the previous chapters, this chapter looks at the transition of Israel's actions after 7 October 2023 from alleged self-defense measures to policies and conducts that may be violations of international law.

Throughout the period following 7 October 2023, the Israeli military command as well as government officials repeatedly characterized the operations in Gaza as "self-defense" and "a just war," arguing that the attacks of that day threatened the very existence of Israel and therefore massive military operations in the area were justified (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

“The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel” observes that contrary to Israeli authorities' assertions that their military operations in Gaza are necessary from a military point of view, the three main justifications they gave do not stand. These are: (1) the right to self-defense against the 7 October attacks, (2) the neutralization of Hamas and the security of the future, and (3) the securing of the release of Israeli hostages in Gaza. The main text of the article argues that among other things, Israel is seeking revenge and punishing the population as a whole (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

The Commission has noted the statements of Israeli officials, which indicate that the policy and pattern of are the widespread destruction most of the time killing the large numbers of civilians and forcibly displacing the population of Gaza. Besides, it has noted that dehumanizing statements made systematically about the Palestinians and calling for collective punishment being considered as incitement and, therefore, may also be serious violations of international law (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

After 7 October 2023, Israel started to bomb extensively Gaza with the clear aim to destroy the infrastructure of the place. However, the area is densely populated with many innocent people living there, and as a result, many children, women, and elderly people have been killed. Among the targets, there are also hospitals, schools, and refugee camps which have been hit without showing any kind of discrimination. These types of attacks are terrible even by military standards and therefore, they are morally and legally wrong. They also violate international humanitarian laws and international human rights laws, thus making the whole argument of the Israeli claim of self-defense contradictory from a legal point of view (Palestinian Human Rights Organization Council , 2023).

Being the occupying power, it is Israel's duty to secure the safety and fulfill the needs of the civilians in the areas under its control. Nevertheless, the way it operated in the Gaza Strip is a glaring violation of the moral and legal rules of necessity and proportionality, thus, its alleged right to self-defense has been converted into a wrongful and illegal use of force.

Moreover, the continuation of the Israeli occupation in the land of Palestine, which includes the Gaza Strip, is a deliberate and unlawful act of aggression, which destabilizes the Palestinian people's right to self-determination and is in absolute contradiction with international law. (Palestinian Human Rights Organization Council , 2023).

2.1 Section one: Israel's Policies and Practices in Gaza Following 7 October 2023

Despite Israel's continuous assertion that its military operations in Gaza since 7 October 2023 are justifiable acts of self-defense, the characteristics, the extent, and the aftermath of the operations indicate a behavior pattern that contradicts this statement. The deliberate killings of civilians and the extensive damage to the basic infrastructural facilities imply that the so-called objective of self-defense by Israel has been turned into operations that go beyond the legally allowed requirement of the law of armed conflict.

“The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel” has observed that these acts, as a whole, bring up very serious issues of unlawfulness of the use of force, prohibition of collective punishment, and possible genocidal intent (Independent International Commission of

Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

In order to deliver a thorough legal assessment of Israel's behavior in Gaza since 7 October 2023, the next segment identifies and explains Israel's documented actions and policies according to the three core international crimes recognized by international law: “genocide, crimes against humanity, and war crimes”. It first sketches the legal concepts and elements of these crimes as laid down in the “Rome Statute” and “the 1948 Convention on the Prevention and Punishment of the Crime of Genocide”. After that, it moves to the examination of the instances of Israel's acts in Gaza that fit the criteria, showing the way its assertions of self-defense have, actually, led to the breach of “international humanitarian law” and “international human rights law”.

2.1.1 Legal Overview of the Core Crimes

1. Genocide

Per “Article II” of the “1948 Convention on the Prevention and Punishment of the Crime of Genocide”, "genocide" is the occurrence of certain acts when they are aimed at the total or partial destruction of a national, ethnical, racial, or religious group (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025). According to this definition, these acts are: “(1) killing members of the group; (2) causing serious bodily or mental harm; (3) imposing measures to prevent births within the group; (4) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part; and (5) forcibly transferring children of the group to another group” (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

What sets genocide apart from other international crimes is the specific intent (*dolus specialis*) to destroy the group as such, rather than to achieve other political or military objective. International jurisprudence, including that of the “International Criminal Tribunal for the former Yugoslavia”, has clarified that the intent to destroy even a “substantial part” of a protected group suffices to establish this crime. Moreover, genocide is prohibited in every circumstance, including armed conflict, and cannot be justified on the basis of military necessity or self-defense (Amnesty International, “You

feel like you are subhuman”: Israel’s genocide against Palestinians in Gaza (Index: MDE 15/8668/2024), 2024). It is worth mentioning that the “International Court of Justice” has acknowledged Palestinians as a group entitled to protection under the Genocide Convention (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

2. Crimes Against Humanity

Crimes against humanity are among the gravest breaches of international law, which entail acts that are committed as part of a large-scale or systematic assault aimed at a civilian population. To be considered as such, these assaults have to be carried out following a state or organizational policy and the perpetrators must be aware of the attack (International Criminal Court, 1998). Unlike other crimes, crimes against humanity may occur in both times of peace and during armed conflict and are subject to individual criminal responsibility under international law. (Amnesty International, 2022)

“Article 7” of the Rome Statute defines crimes against humanity as a series of acts, e.g. killing, extermination, forcible transfer, torture, and other inhumane acts, that occur as a widespread or systematic nature and are targeted at a civilian population (International Criminal Court, Rome Statute of the International Criminal Court, 1998). Such acts are distinguished by the existence of a coordinated state or organizational policy that intentionally aims at civilians, showing a deliberate and organized behavior rather than a few isolated or incidental actions (Amnesty International, 2022).

3. War Crimes

War crimes are violations of the laws that govern war (International Humanitarian Law, IHL) carried out by military or civilian actors that result in individual criminal liability under international law. According to “Article 8(2)” of the Rome Statute, it is a war crime when the act is in the context of a violent conflict, whether international or non-international, and the act is intentionally committed, except in cases that are otherwise specified (International Commission of Jurists, 2024).

“The International Criminal Court” Prosecutor determined that the case of Israel and Gaza is an international armed conflict. Therefore, the acts in this framework may

represent infringements of the Four Geneva Conventions of 1949, and in addition, they could be considered other serious violations of the laws and customs of war governing international armed conflicts (International Commission of Jurists, 2024). “Article 8(2)” also specifies a list of such acts as direct attacks on persons or property protected by the Geneva Conventions that amount to war crimes. Among those acts are crimes such as deliberate killing, torture, and the large-scale destruction or seizure of property (International Criminal Court, Rome Statute of the International Criminal Court, 1998).

2.1.2 Israeli Policies and Practices Linked to the Three Core Crimes

Israel has regularly justified its actions as an act of self-defense to protect the State of Israel and to defeat Hamas. However, its behavior in Gaza shows a different reality (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025). To analyze these assertions, one must look at the actions of Israel's in the field, thus, the next section will examine some of the Israeli policies and measures that has been carried out in Gaza since 7 October 2023 in order to evaluate the validity of these claims, and to decide if such actions go in line with the rules of “international law” that govern the “right of self-defense”, or if they surpass them constituting serious breaches of IL and IHL.

1. Killing and Causing Serious Bodily or Mental Harm

Data reported by “the World Health Organization (WHO)” and “the Health Cluster” in the Gaza Strip following information from the Palestinian Ministry of Health indicate that since 7th of October 2023, more than 68,500 Palestinians have lost their lives. Among the dead, there are over 20,000 children and 10,400 women. The number of wounded is estimated at around 170,300. These numbers illustrate a staggering humanitarian crisis that has never been seen before, where, tragically, most of the victims are innocent civilians (WHO & Health Cluster, N.D).

The (2024) Oxfam International reports indicates that Israel has killed an average of 250 Palestinians per day in Gaza, which is more than the daily death toll of any other major conflict in the last few decades (Oxfam International, 2024). It must be noted that these numbers do not take into consideration the Palestinians buried under the rubble for the tens of thousands, and the people who have died due to lack of food, water, or medical care, which are among the results of the IOF's (Israeli Occupation Forces) total siege,

blocking of the humanitarian aid, and heavy shelling that continues (Al-Haqq, 2025), contributing to conditions that constitute both crimes against humanity and genocidal acts under international law, in which these attacks have been directed against civilians in a wide range of scale indicating the intention to destroy.

As a result, various accounts have highlighted that the attacks of the Israeli forces were of a very deliberate systematic nature. In their report (2024), Amnesty International has stated that the Israeli forces have conducted tens of thousands of airstrikes in the Gaza Strip, causing a very high number of deaths and injuries of the Palestinians, such as the use of huge and very powerful munitions such as 250-pound (110 kg), 1,000-pound (450 kg), and 2,000-pound (900 kg) bombs by Israel in its military operations in Gaza (Amnesty International, 2024).

The primary source of death and injury among civilians has been singled out to be the heavy and prolonged targeted use of these kinds of weapons in scattering the population areas (Amnesty International, 2024), and although such a prohibition is not explicitly stated in “international humanitarian law”, “the International Committee of the Red Cross (ICRC)” stresses the fact that the use of those weapons with short to medium range and large explosive effects are the main reasons why the low accuracy, wide blast radius, and large-scale destructive capacity characterize the most likely causes of that kind of indirect and disproportionate harm (Amnesty International, 2024). “The Office of the United Nations High Commissioner for Human Rights (OHCHR)” has also pointed out that the usage of explosive weapons having such large-area effects cannot be directed at a particular single military objective, therefore, it goes against the principles of distinction and proportionality and therefore, could amount to war crimes (Amnesty International, 2024).

Such patterns of indiscriminate attacks not only affect the people who have been killed and wounded directly but also raise concerns about the possibility of genocide when looked at through the lens of international law. Information from widely trusted international and Palestinian human rights organizations and the International Association of Genocide Scholars' position strongly suggest that the Israeli policies implemented in Gaza after 7 October 2023 amount to genocidal acts (Al-Haqq, 2025).

The Independent Commission came to a conclusion that Israel was responsible for the commission of four out of the five acts that constitute genocide, among which the killing of members of a Palestinian group and causing them serious physical and mental harm. Israeli operations intentionally targeted areas protected under international law such as homes, infrastructures, health care facilities, and evacuation routes, and by doing so, they brought the Gaza population into inhuman living conditions which deprived them of food, water, and medical care, and caused mass death as well as psychological trauma of a population whose primary characteristic is their national identity (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Additionally, the Independent Commission in its 2024 report to the Human Rights Council, came to the conclusion that these operations of the Israeli military in Gaza amount to a systematic and large-scale attack aimed at the civilian population, carried out in accordance with state policy. The commission further stated that these acts amount to crimes against humanity, in particular, murder, extermination, and persecution, as well as the war crime of intentional killing. The conclusions rest on the facts of such violations as direct and deliberate attacks on civilians and civilians objects (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Their actions clearly show that Israel's defense claim is not enough to justify the deliberate and systematic nature of these attacks. The change in behavior indicates that Israel's so-called self-defense is in fact a state policy of coordinated violence against the civilian population of Gaza, and that the Israeli military operations are not proportionate as the right of self-defense requires, and are indeed non-discriminatory. Thus, do not align with any legal claim of self-defense but rather fall under the definition of collective punishment and requires international criminal responsibility

2. Forced Displacement

Besides physical violence, the forcible transfer or displacement is a very significant factor that is often mentioned in the same context of genocide. The State of Israel has engineered such conditions that are difficult and even impossible for human survival that Palestinians have no other option but to move out—mainly to those places where

they are called “safe zones.” This kind of behavior amounts to the commission of genocide and crimes against humanity as it involves the intentional targeting of civilians and the deliberate infliction of life conditions aimed at their physical annihilation, totally or partly (Al-Haq, 2024).

A report by “the United Nations Office for the Coordination of Humanitarian Affairs (OCHA)” says that more than two million Palestinians in Gaza were forced to leave their homes and were kept in an area of less than 45 sq. km. which is approximately the size of Gaza City, while the rest of the land has been declared by Israel as "military control" zones. These areas to which it is not allowed to go and that are falsely called "humanitarian zones" have also been targeted by Israeli rocket attacks from time to time.

Consequently, the people living there are being exposed to brutal, arbitrary acts of violence as part of a deliberately systematic modus operandi (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025). According to the findings of “Human Rights Watch”, the Israeli policy of forcibly displacing Palestinians is extensive and constitutes a consistent systematic pattern of operations that are executed as a component of the state's policy, hence qualifying as crimes against humanity (Human Rights Watch, 2024).

Before the Israeli military offensive, majority of Palestinians in Gaza had already been forcibly displaced several times. However, on 9 September 2025, Israeli authorities went ahead with issuing more evacuation orders that forced around one million Palestinians to move to the southern areas that are mostly uninhabitable, such as Al-Mawasi that accounts for less than 4% of the Gaza Strip (Al-Haq, 2025). As such, these orders are indicative of a harsh and uncompromising approach aimed at the forcible uprooting of people, therefore, causing serious worries when considered under the concepts of genocide and crimes against humanity.

In fact, the evacuation orders were also accompanied by certain very unequivocal threats which said that those who decided to stay would be considered “terrorists” or “terror supporters” and, therefore, the Israeli Occupation Forces (IOF) could launch operations against them, including killing those civilians who could not or did not want to comply. The documented sequence offers a bleak glimpse of the risk of the civilians

who are trapped in between the warring parties, particularly the elderly, women, children, and persons with disabilities, and hence it can be said with certainty that there is no safe area in Gaza anymore (Al-Haqq, 2025), underscoring the illegitimacy of self-defense claims.

Additionally, reports from independent organizations such as “the Palestinian Center for Human Rights (PCHR)”, “Al-Mezan”, and “Al-Haq”, have provided evidence that the Israeli Occupation Forces (IOF) have intentionally attacked those internally displaced people who were looking for refuge in tents, camps, schools, and facilities that carry the UN flag, which had all been abovementioned by Israel as “safe zones.” (Al-Mezan Center for Human Rights, 2024).

The deliberate and indiscriminate attacks of that nature unveil a systematic behavior of actions which has been going on since 7 October 2023, showing that Israel has, in a direct way, targeted non-combatants in various places and situations aiming at killing, inflicting grievous injuries, and instilling fear in the biological perpetuation and survival of the Palestinian people—these being acts qualifying as genocide as per the legal standards of international law (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

The Independent International Commission once noted that, due to the “Israeli Occupation Forces” policy of forcibly displacing people multiple times, the people of Gaza have been ordered to evacuate many times, and as a result, they have had to suffer humiliation, degradation, and being attacked while they were evacuating (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

The policies of Israel which force the Palestinians to live under such inhuman conditions could also be understood as the part of a coordinated plan to drive the people of Gaza out in masses, which is an indication of the genocidal intent This is Israel's deliberate and intentional demonstration to impose living conditions that are designed to cause the physical destruction of the Palestinian group, in whole or in part, as a consequence of these conditions (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Besides that, “Article 8(2)(b)(viii)” of the Rome Statute, which lists war crimes, specifically identifies forcible transfer as one of them. It forbids the illegal deportation or displacement of persons who are under protection (Al-Haq, How to hide a genocide: The role of evacuation orders and safe zones in Israel’s genocidal campaign in Gaza (Report), 2024). The commission concluded that such forcible transfer of civilians constitutes inhumane and cruel treatment, as they forcibly make civilians evacuate from their homes, expose them to deprivation, and subject them to physical and psychological harm. These actions demonstrate that Israel’s policy of forced displacement can be reasonably considered systematic attacks amounting to war crimes under international law (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Hence, forcing civilians to evacuate, and to be displaced many times regularly, put the population in Gaza through very bad life conditions that are not suitable for human beings, while lacking proper healthcare, water, food, and all life essentials, which indicates the illegality of Israel's self-defense claims in which they are incompatible with the main principles of necessity, proportionality and distinction.

3. Deprivation of Essential Resources and Medical Services:

At the beginning of the large-scale attack on the Gaza Strip by Israel, senior officials made it clear in public that they intended to take steps that would deliberately deprive Gaza of the most basic necessities. Israel “Katz”, the Israeli Minister of National Infrastructure, Energy, and Water, declared that the electric supply was to be stopped entirely (Al-Haq, 2024). After that, Israeli Minister of Defense “Yoav Gallant” declared a total blockade: "no electricity, no food, no water, no fuel... we are fighting human animals, and we act accordingly." These kinds of statements reflect that, behind the mask of self-defense, the policy has actually been changed to that of intentionally targeting the civilians. These steps amount to a full blockade of the most basic necessities and a deliberate dismantling of Gaza's essential infrastructure and its healthcare system, thus, revealing a clear genocidal intent to eliminate the Palestinian population of Gaza either totally or partially (Al-Haq, 2025). and constituting acts consistent with crimes against humanity and war crimes (Amnesty International, 2024).

In response to these declarations, Israel went ahead just a few days later to impose a complete siege on the Gaza Strip, halting all essential supplies and heavily limiting the movement of goods and people. The essentials of life such as water, food, fuel, electricity, and humanitarian aid were intentionally hindered, so more than ninety percent of the population of Gaza were left in dire humanitarian conditions resulting from the widespread destruction and the denial of their most basic needs. These actions were not incidental military operations but rather intentional strikes against the civilian population, thus clearly falling outside the boundaries of legitimate military necessity.

It must be noted, that even before 7 October 2023, Israeli authorities had systematically calculated the minimum caloric intake required for Palestinians in Gaza to avoid malnutrition while maintaining the population in a state of chronic hunger, as documented in the Food Consumption in the Gaza Strip-Red Line report. This policy was revealed in a 2008 document, released in 2012 pursuant to an Israeli court order, which detailed the caloric threshold used by Israeli authorities to regulate the entry of food into Gaza (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Since 7 October 2023, testimonies collected by Amnesty International provide further evidence that Israel has been implementing deliberate policies of starvation in the Gaza Strip, systematically destroying the health, and well-being of the Palestinians. Amnesty International's report indicates that, throughout the past months of Israel's ongoing military campaign, the Israeli authorities have deliberately imposed conditions calculators to bring about the physical destruction of the Palestinians in Gaza. The report highlights the combination of hunger and disease resulting from Israel's blockade and military operations, which form a part of a broader genocidal policy targeting the civilian population (Al-Haqq, 2025).

Israel's strategy of deliberately starving Gaza has been the main shock that left the body is the Israeli policy that caused deaths of civilians all over Gaza by the way of starvation. From 7 October to July 2024, more than 30 people have died of hunger among the Palestinians as a result of Israeli actions and about the majority of the dead were children (Al-Haqq, 2025).

Considering all these facts, it is clear that Israeli officials have committed the war crime of intentionally starving the civilian population during the armed conflict. These actions, under no circumstances, could be excused as self-defense, since they have purposely made the Gaza's civilian population face life-threatening situations. In effect, such practices manifest a deliberate and organized policy of causing extreme suffering and injuries, which is a serious violation of the Geneva Conventions and, therefore, calls for prosecution according to international law without any delay (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

The intentional targeting and destruction of key water and sanitation facilities is, in essence, a grave breach of international humanitarian law. It is said that the acts of Israel which cause a deprivation of access to water to the local population are, on the one hand, collateral consequences of military operations, but on the other hand, they represent a deliberate imposition of conditions which severely threaten the lives of people (Al-Haqq, 2025).

Gaza has witnessed a disastrous situation brought about by the power outages that have been happening one after another and the destruction of its water infrastructure. With the water, sanitation, and healthcare systems that constitute the most basic needs of life being deliberately destroyed, it is evident that Israel is pushing the civilian population to the brink of immediate and extreme danger as well as a breach of laws of the occupation and possible war crimes under international humanitarian law. The demolition of the facilities that are necessary for life emphasizes that the results go beyond the military targets and thus, the actions cannot be justified under the self-defense pretext (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Israel's implementation of a total siege and blockade as part of its enforcement measures since 7 October 2023 has practically stopped all humanitarian aid in Gaza. This has made it impossible for the entry and distribution of the most basic goods and services to the civilian population. Humanitarian organizations were severely restricted and only very small amounts of fuel and supplies were allowed, and that too under strict Israeli control.

Even though Israeli authorities were fully aware of the disastrous consequences for the civilian population and the extremely urgent need for humanitarian assistance, they kept on restricting access to such an extent that organizations were not able to deliver adequate food, water, medical supplies, and other life-saving aid. Such intentional obstruction has contributed significantly to the worsening of the humanitarian crisis and makes the situation very worrying from the perspective of international humanitarian law, especially as concerns the protection of civilians in occupied territories (Amnesty International, 2024).

Under the pretext of self-defense, Israel claimed that all these restrictions were necessary for security reasons and argued that Gaza's shortages were the result of humanitarian organizations' failures or internal looting. However, according to Amnesty International, Israeli authorities in fact severely constrained the ability of humanitarian organizations and the population of Gaza to access aid and essential supplies, through arbitrary procedures, closure of access points, movement restrictions, and deliberate cuts to electricity and fuel (Amnesty International, 2024).

Despite its obligations as the occupying power to protect the civilians and ensure their well-being—including by facilitating the entry of essential supplies essential guaranteeing safe and unhindered reach to food, water, and medical care— Israel has made it virtually impossible to secure the most essential requirements for the civilian population in Gaza, and has effectively obstructing humanitarian organizations from operating and delivering lifesaving assistance (Amnesty International, 2025).

These actions, when considered as a whole, demonstrate that Israel's assertion of self-defense has been used as a cover to reckless kill the deliberate making of life-threatening situations for the physical destruction, in whole or in part, of the Palestinian population in Gaza. Consequently, these acts are a clear example of the commission of genocide, crimes against humanity, and war crimes as per international law.

4. Destruction of Essential Structures

The different agencies of the United Nations and several humanitarian organizations are practically on the same page in that the IOF actions are the main reason for the disastrous destruction of the essential civilian infrastructure in Gaza. Such destruction has practically impacted all the sectors that matter most, for instance, the means of food

production, a few hundred thousand houses, water, sanitation, and hygiene facilities, hospitals and health centers, as well as roads, energy, and fuel infrastructure (Amnesty International, 2024).

According to Human Rights Watch, Israeli attacks have severely damaged the most vital, life-sustaining resources that the population in Gaza depends on for survival. While Israeli authorities claim that evacuation orders are issued to allow civilians to move to safety—arguing that Palestinian armed groups operate within civilian areas—Human Rights Watch has emphasized that there is no plausible military necessity that could justify Israel’s mass destruction and displacement of nearly the entire population of the Gaza strip (Amnesty International, 2024).

The organization further noted that the evacuation orders have been inaccurate, inconsistent, and issued without providing civilians sufficient time to evacuate, thereby inflicting grave harm, fear, and anxiety among the population. Moreover, even when civilians have attempted to evacuate, Israeli Forces have repeatedly struck designated evacuation routes and so-called “safe zones”, which, according to Human Rights Watch, demonstrates a deliberate intent to permanently displace and harm Gaza’s civilian population, which reflects elements of crimes against humanity (Amnesty International, 2024), and war crimes under article 8 of the Rome Statute, given the clear targeting of civilians and civilian infrastructure, and causing injuries and suffering in Gaza (International Commission of Jurists, 2024).

Moreover, the Commission has noted that the Israeli Occupation Forces (IOF) have not only damaged and destroyed entire neighborhoods across the Gaza Strip—including agricultural lands, religious and cultural sites, schools, universities, and hospitals—through extensive airstrikes, tanks, artillery shelling, and bulldozing operations, rendering nearly all of Gaza uninhabitable, but also engaged in deliberate acts of destruction. Testimonies and verified media footage further document instances of Israeli soldiers setting fire to civilian facilities, many of which had already been evacuated by the time, providing clear evidence that such acts were intentional (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025). Thus, indicates a genocidal intent to destroy the Palestinian people’s identity and erasing Palestinian culture from Gaza

(Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Additionally, as noted previously in point number one, "Killing and Causing Serious Bodily or Mental Harm", Israel has conducted many of its attacks using heavy explosive weapons, dropping thousands of tons of munitions on Gaza—one of the most crowded areas in the world. Using such weapons in crowded areas is prohibited under international humanitarian law, as it inevitably results in indiscriminate and disproportionate attacks against civilian and civilian infrastructure. Researchers specializing in conflict monitoring have found that the scale of destruction in Gaza unparalleled in any other conflict of the 21st century (Amnesty International, 2024). proving again that the scale and nature of the Israeli destruction in Gaza since 7 October 2023 cannot be justified under any lawful claim of self-defense, but instead reveal a systematic pattern of unlawful and punitive attacks against civilians.

“The Chief of the Office of the United Nations High Commissioner for Human Rights (OHCHR)” in the Occupied Palestinian Territory also described the conditions in Gaza as "unprecedented" and pointed to the concerns raised in the war laws, in particular the issues related to the principles of distinction, proportionality, and precaution" (UN, 2024).

As per the United Nations Operational Satellite Applications Program (UNOSAT), Israeli strikes had damaged 258,201 housing units all over the Gaza Strip by April 2025. Directly hitting 403 out of 564 school buildings, the education system was severely disrupted as a result of the Israeli strikes by February 2025. Furthermore, 62% of the schools that were being used as shelters were also hit, causing numerous deaths and injuries. In addition, the Commission pointed out that the attacks on healthcare facilities constituted the aggressive strikes by the Israeli Occupation Forces against the civilian population and the Gaza infrastructure, which by June 2025 left only 36% of health facilities partially operational (Amnesty International, 2024).

The human toll, in addition to the massive material destruction, has been heartbreaking. According to the Gaza Ministry of Health, the time span from the beginning of the Israeli offensive until 7 October 2024 is marked with airstrikes that have killed more than 40,500 Palestinians, out of which about 60% were children, women, and elderly

persons. Moreover, as of the end of July 2024, around 22,500 Palestinians had become severely and permanently maimed due to these strikes, as per the World Health Organization (WHO) report (Amnesty International, 2024).

Being the occupying power, Israel is obliged, as per international humanitarian law, to ensure that civilians in Gaza have access to the most essentials such as food, water, medicine, and medical care. Besides that, it is mandated by law to permit and facilitate the easy and unhampered movement of neutral humanitarian relief to the distressed civilians. However, in reality, Israel has not only been less than willing to fulfill these responsibilities but has also been provocatively interfering with the relief operations and pushing back the aid organizations that are endeavoring to provide the most needed humanitarian assistance (Amnesty International, 2024).

5. Enforced Disappearance

Along with the huge destruction and large number of casualties, the policy of enforced disappearance by Israel is another serious violation of international law. The Palestinian Center for Human Rights (PCHR) has stated that thousands of Palestinian families in Gaza are kept in the dark about the fate of their loved ones because of Israel's deliberately coordinated policies of enforced disappearance which, in their words, "consist in mass killings, destruction, and detention." As per the data of July 2025, the number of missing Palestinians is said to have exceeded 11,000, out of which the number of women and children is more than 4,700, thus, pointing out the systematic character and the extent of these violations (Palestinian Center for Human Rights, 2025).

United Nations experts have indicated that the Israeli Occupation Forces (IOF) policy of enforced disappearance—aiming at children, women, journalists, healthcare workers, and other innocent people—has been methodically supported through judicial and military orders as well as domestic laws. These steps authorize the detention of so-called "unlawful combatants" or individuals who are considered security threats incommunicado and without any trial or due process, which is a blatant breach of international human rights law and international humanitarian law (Palestinian Center for Human Rights, 2025).

Israeli detention centers have for many years housed thousands of Palestinians who were arrested in an arbitrary manner. These prisons are characterized by harsh, degrading, and humiliating treatment of the detainees. Torture and other forms of ill-treatment have been inflicted on many detainees, and as a result, a considerable number of prisoners have died, which is a blatant disregard of international human rights and humanitarian law. (Al-Haqq, 2025) Israeli authorities have often withheld information regarding the circumstances of these deaths and the bodies of deceased detainees from their families (Palestinian Center for Human Rights, 2025).

Enforced disappearance as per international law includes not only the secret taking of a person's liberty but also the continuous denial of information regarding the person's fate or location. It is regarded as a continuing crime, which implies that every day the victim's fate is unknown or the family is denied access to the body, the violation is ongoing. This principle is set out in binding legal instruments like the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED, 2006) and is identified as a crime against humanity when it is perpetrated as a part of a widespread or systematic attack on a civilian population (Palestinian Center for Human Rights, 2025).

If, as a result of a deliberate policy, members of a certain group, e.g. Palestinians in Gaza, are subjected to enforced disappearances, and one of the aims of such actions is to exterminate the group in whole or in part, then those acts may be qualified as genocide under Article II of the Genocide Convention of 1948. The most horrific consequences arise from the social fabric being stripped of the key persons, that is, the journalists, medical staff, and leaders of the community. The criminal acts not only seriously injure the individuals, but also the social structure, stamina, and the ability of the group to recover. The occurrences of disappearances along with killings, forced displacement, and destruction of the infrastructure, point to a concerted plan to destroy the Palestinian population, thus, confirming both the genocidal aspect and the systematic nature of the crimes (Palestinian Center for Human Rights, 2025).

According to Article 7(1)(i) of the Rome Statute, the enforced disappearance of persons is a crime that constitutes a crime against humanity if it happens in a context of a large-scale or a regular attack directed at a civilian population (Palestinian Center for Human Rights, 2025). Besides the circumstances in Gaza display features of a genocide due to

their size, the fact that they were directed at a specific target, and the results, it uncovers Israel's determination to cause both substantial bodily and mental suffering to the Palestinians. It is, therefore, a part of the ill-treatment of imprisoned people that includes torture, while at the same time, it is a part of the agglomerate people's acts of humiliation, oppression, and terrorization, which are aimed at forcing down the Palestinian community (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

Moreover, reliable evidence indicates that Israeli forces have engaged in enforced disappearances, which include the abduction and secret detention of civilians, and that these forces have exposed the victims to humiliation, degrading treatment, and extreme anxiety due to the lack of information concerning their fate. Such conduct meets the elements of the offences set out in Article 8(2)(a), 8(2)(c) of the Rome Statute and customary international law, thus constituting war crimes (Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, & Israel, 2025).

In such a case, even if Israel argues that it is within its rights to defend itself, the argument does not make it right that these disappearances cause deep trauma and psychological suffering. Enforced disappearances are at the same time continuing breaches of the most basic human rights, among these the rights to freedom, security, and the prohibition of torture or other cruel, inhuman, or degrading treatment, as provided by the International Convention for the Protection of All Persons from Enforced Disappearance, 2006, Articles 2–5 (International Convention for the Protection of All Persons from Enforced Disappearance, 2006). Self-defense is meant to justify immediate and proportionate military necessity, thus cannot legitimize systematic targeting of civilians that extends suffering over time.

Concluding Observations

Consequently, the actions taken by Israel in Gaza after 7 October 2023 if considered altogether, are very much indicative of a coordinated state policy aimed at not defending itself in a legitimate way but rather at the destruction of the protected civilian populations in Gaza. The “scale, nature, scope” and also the systematic and widespread

character of Israel's actions qualify under the judicial instruments as genocide, crimes against humanity, and war crimes.

The usage of self-defense under Article 51 of the UN Charter cannot, neither from a legal nor from a moral point of view, be a reason for such grave and far-reaching violations of international law. The right to self-defense is allowed only through necessary and proportionate measures; it cannot be a reason for justifying the policies that aim at the killing of civilians, the destruction of vital infrastructures, and the imposing of life-threatening conditions on the whole population. Therefore, the claim put forward by Israel that it is acting in self-defense is not only lacking a legal basis but also acts as a facade behind which the commission of atrocity crimes is concealed.

2.2 Section two: International Responses and Legal Accountability

The international reactions of the world to Israel's military operations in the Gaza strip following 7 October 2023 reveal a disconnection between the rules of international law and the uneven enforcement of legal standards, especially concerning the right of self-defense as per Article 51 of the UN Charter. It is worth noting that an array of states, international organizations, and human rights bodies have accused Israel's offensive of deliberately committing genocide, crimes against humanity, and war crimes. Conversely, a few have justified it as an act of self-defense and have, therefore, turned a blind eye to the mounting evidence which shows that such a claim is at odds with the limitations set out in Article 51.

Consequently, the present part underlines the point that international reactions to Israel's conduct after the horrid events, including protests, sanctions and other measures, illustrate leaving behind the initial acceptance of Israel's self-defense claim by some states and finally a recognition that Israel's behavior has gone beyond what is permitted by international law.

The gap has led to the emergence of discussions around legal accountability mechanisms, mainly the positions of the International Criminal Court (ICC) and the International Court of Justice (ICJ) regarding crimes against the population of Gaza and putting an end to the prevailing impunity. This paragraph thus surveys the spectrum of international community reactions and the legal provisions that can be invoked to hold Israeli officials responsible for their deeds in Gaza.

After the events of 7 October 2023, a considerable number of states voiced their support for Israel by denouncing the attacks of Hamas and urging the cessation of hostilities and the safeguarding of the innocent. The participating countries and the respective intergovernmental organizations went to the extent of explicitly endorsing Israel's right to self-defense and security assurance as a necessity of the national interest' (Van Steenberghe, 2023).

On the other hand, a few states have placed restrictions on Israel, such as prohibiting the sale of arms and the suspension of diplomatic relations with its government. These different responses, when taken together, have deepened Israel's isolation in the international community and have led legal proceedings against it in various courts, both at the international and the domestic level, including the International Criminal Court (ICC), the International Court of Justice (ICJ), and under the doctrine of universal jurisdiction (Whitson, 2025).

2.2.1. Judicial Accountability Mechanisms

1. International Criminal Court

International Criminal Court (ICC) is a judicial institution that lasts forever and was created by the 1998 Rome Statute. Its main function is to bring to the court those people who are the most responsible for the crimes that violate international law the most, such as genocide, crimes against humanity, war crimes, and aggression. The Court may also exercise its jurisdiction over such offenses occurring in the territories of a State Party or, in instances, where a referral is made by the Security Council or by a special agreement. The Court's jurisdiction is bounded by both *ratione material* and *ratione personae*. Hence, the ICC charges individual persons with crimes, not states, thereby emphasizing the principle of personal accountability in “international law” (Zaman, 2024).

Israel did not become a member party to the Rome Statute and has been vigorous in avoiding being held accountable for her actions towards the Palestinians. As a result, the ICC is not entitled to intervene in crimes committed by Israeli nationals or in Israel's territory. Meanwhile, Palestinian authority signed up to the Rome Statute in 2015, so offenses occurring on Palestinian land, such as in Gaza, the West Bank, and East Jerusalem, are under the Court's jurisdiction. Hence, the people who were behind the

commission of crimes in the Palestinian territories can be investigated and prosecuted by the court even if Israel is not a member of the ICC (Zaman, 2024).

Practically speaking, the International Criminal Court (ICC) is employing this legal structure as a means of stepping up its inquiries relating to the occurrences of genocides, crimes against humanity, and war crimes in Gaza before and after 7 October 2023. Consequently, the limitation of the Court's jurisdiction over Israel's territory due to the latter not being a member, is outweighed by the power Palestine's membership confers upon the ICC to start investigations and to prosecute Israeli officials for criminal acts in Palestinian land (Zaman, 2024).

After 7 October, the ICC adopted a policy to proceed with investigations in Gaza, in terms of the atrocities resulting from actions by Israel's perpetrators (Zaman, 2024). In 2024, the prosecutor of the International Criminal Court submitted an application to Pre-Trial Chamber I for arrest warrants against Prime Minister Benjamin Netanyahu and the Minister of Defense Yoav Gallant, holding them criminally responsible for the following: (1) War crimes, including starvation of civilians, attacks directed at civilians, willful killing, and causing great suffering; and (2) Crimes against humanity, including extermination (through starvation) and persecution. The application also included charges against three Members of Hamas (Amnesty International, 2024), namely Mr. Ismail Haniyeh, Mr. Yahya Sinwar and Mr. Al-Masri (known as Al-Deif). Following the confirmation of their deaths, the Chamber granted withdrawal of the applications in 2024 (Haniyeh and Sinwar) and 2025 (Al-Masri) (Amnesty International, 2025).

Israel challenged the ICC's jurisdiction under Article 19(2)(c) of the Rome Statute, arguing that for Palestine to confer jurisdiction to the ICC, it must hold the status of a "state" within the meaning of the Rome Statute. Israel further claimed that the Oslo Accords limited the ICC's jurisdiction over the Palestinian territory, and therefore, for the ICC to issue arrest warrants for the Israeli actors, Israel's consent would be required. (Sala, 2025).

However, in 2021, the ICC's Pre-Trial Chamber explicitly ruled that the Court's territorial jurisdiction extends to the territories occupied by Israel since 1967, including Gaza, the West Bank, and East Jerusalem. The Chamber also found, by the majority,

that the arguments regarding the Oslo Accords did not affect the court's territorial jurisdiction in Palestine (International Criminal Court, 2021).

In 2024, a Panel of Experts in International Law was convened at the request of the ICC Prosecutor supported the assessment that the ICC has jurisdiction over crimes committed on the territory of Palestine including Gaza, since 13 June 2014. The Court therefore retains jurisdiction over any Israeli, or any other nationals who commit crimes in Gaza or the West Bank (International Criminal Court, 2024). Following the Israeli challenge, the Pre-Trial Chamber I, in its decision on Israel's jurisdictional challenge under Article 19(2) of the Rome Statute, reaffirmed that states cannot challenge the Court's jurisdiction prior to the issuance of an arrest warrant, and emphasized that Israel's acceptance is not required, as jurisdiction derives from Palestine's territorial status (International Criminal Court, 2024).

Different countries' reactions to Israel's attack in Gaza were not uniform. Although a few countries decided to keep quiet, the majority of them condemned vehemently the actions of Israel and advocated that more pressure should be exerted on the ICC to intervene. The Organization of Islamic Cooperation (OIC) together with a number of states that are members of the ICC like South Africa, Bangladesh, and Namibia, urged by way of diplomacy, the Court to carry on with its inquiries (Zaman, 2024).

International organizations have also played a crucial role in supporting the ICC investigations, with several submitting evidence of Israel violations. In 2023, DAWN submitted a report to the Court identifying approximately 40 Israeli commanders involved in attacks on Palestinian civilians in Gaza, including acts of starvation, and obstruction of humanitarian aid. In 2024, the Hind Rajab Foundation filed a submission to the ICC accusing 1,000 Israeli soldiers of committing crimes in Gaza, based in part on documentation these soldiers posted themselves on social media (Whitson, 2025).

In 2025, DAWN further urged the ICC to investigate U.S officials for their role in facilitating Israel's actions, calling for the indictment of former president Joe Biden and others for providing at least \$17.9 billion in weapon transfers, targeting assistance, diplomatic support, which substantially enabled grave abuses despite awareness of the violations (Whitson, 2025).

In response, Israel and the United States, both retaliated against the ICC through sanctions and pressure campaigns aimed at delegitimizing the court and penalizing countries, organizations, and individuals supporting its work. Shortly after returning to the white house in 2025, former President Donald Trump sanctioned Prosecutor Khan and other four judges. Meanwhile, Israel imposed a ban on five key civil society organizations—Al Haq Europe, Law for Palestine, DAWN, Lawyers for Palestinian Rights, and the Hind Rajab Foundation—for their support of the ICC’s prosecution of Israeli crimes (Whitson, 2025).

The ICC depends on state cooperation for arresting suspects, gathering evidence, and protecting witnesses, as it has no police force of its own. States Parties to the Rome Statute are legally obliged to cooperate fully with the ICC (International Criminal Court, n.d.). Hence, strong international encouragement, collective support, and pressure from ICC members and non-member states are therefore critical for ensuring that the ICC can exercise its jurisdiction effectively and hold perpetrators accountable for crimes committed against Palestinians (Zaman, 2024).

In light of the above, according to the ICC’s investigations, it is likely that the international legal framework perceives Israel’s military conduct in Gaza as exceeding the legitimate scope of the right of self-defense under Article 51 of the UN Charter and therefore invokes individual criminal responsibility rather than the protection associated with lawful defensive measures.

2. International Court of Justice

The International Court of Justice (ICJ) is the main judicial organ of the United Nations and was established in 1945 under the UN Charter. Its major functions are to settle, according to international law, contentious cases which are submitted to it by states and to give advisory opinions on legal questions that are referred to it by political organs of the UN and agencies authorized by the UN (International Criminal Court, n.d.). The ICJ is not a fact-finding body by itself; it expects the parties submitting the case to provide the proof. Consequently, the Court is heavily reliant on the reports of other UN organs, international organizations, and trustworthy non-governmental sources (Hamilton, 2025).

On the subject of Palestine, the ICJ has been instrumental in easing difficulties that are of a complicated nature and resulted in a lot of disputes related to the area through time, being involved in numerous cases that have defined the right or wrong of the measures and the policies directed at the OCP that have had the greatest impact in the Territory (UN, N.D)

One of the significant first moves of the ICJ was its 2004 Advisory Opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" (ICJ, 9 July 2004). The Court held that the building of the wall by Israel was against the law under international law, it limited the movement of the Palestinians, infringed their right to self-determination, and led to a wide range of negative effects both in the field of law and in terms of human suffering. (International Court of Justice, 2004).

Recently, the highest Court has looked at two instances where Israel's conduct was linked with allegations of genocide and illegal occupation. First, in 2023, South Africa took to the ICJ a case accusing Israel of breach of the 1948 Genocide Convention. Also, many nations such as Brazil, Ireland, Turkey, and Spain participated in the case or expressed their support to it. (Whitson, 2025) According to Article IX of the Genocide Convention, the International Court of Justice must hear the case if a dispute arises between the states parties and one of the parties requests it. South Africa and Israel have both ratified the Convention (Weed , 2024).

Unlike the ICC, the ICJ does not adjudicate individual criminal liability; South Africa's case thus focuses on state responsibility, not the prosecution of Israeli officials or citizens. In its case, South Africa alleged that Israel (1) engaged in and continues to engage in genocidal acts against Palestinians in Gaza, and (2) undertook actions intended to destroy Palestinian in Gaza as part of the broader Palestinian national, racial and ethnic group, and also requested the Court to indicate provisional measures to prevent further violations (Weed , 2024).

As a result, in 2024, the ICJ issued provisional measures requiring Israel to (1) prevent genocidal acts; (2) ensure its military refrains from committing such acts; (3) prevent and punish public incitement to genocide; (4) enable provision of humanitarian assistance; and (5) preserve evidence of violations of the Genocide Convention. The

Court, however, did not grant South Africa's request to require Israel to cease military operations in Gaza. The United States criticized the case, asserting that it is "meritless" and disputing that Israel has committed acts constituting genocide against the Palestinian civilians in Gaza. (Weed , 2024)

Although the ICJ case may take years to reach a final ruling, states and international organizations have called for public support and adherence to the court's decisions to address impunity and alleviate suffering in Gaza, and West Bank (Evenson, 2024).

The Court's second set of proceedings were a direct consequence of a request from the UN General Assembly for an advisory opinion concerning the legal consequences of the long Israeli occupation of the West Bank and Gaza, and the report of the commission on the possible commission of apartheid. In 2024, the ICJ decided in its opinion that the occupation of Israel is illegal and that the policies of Israel in the occupied territories constitute apartheid within the meaning of the Convention on the Elimination of All Forms of Racial Discrimination. Besides, the Court declared that Israel should stop the settlement activities, remove settlers, and make reparations to the Palestinian population. Furthermore, the ICJ, in its advisory opinion, stressed that the member states of the United Nations are under a legal obligation to consider the presence of Israel in the occupied Palestinian territory as illegal, not to support it, and work together to put an end to the occupation. (Whitson, 2025)

In response, the UN General Assembly adopted two resolutions in September 2024 endorsing the Court's opinion and giving Israel a one-year deadline to comply with its legal obligations in the genocide case. These resolutions also established the "High-Level International conference for the Peaceful Settlement of the Question of Palestine and the Implementation of the Two-State Solution", which took place in July 2025. The conference proposed a 15- month roadmap toward Palestinian statehood under the Palestinian Authority, urged states to recognize Palestine, and called for a ceasefire, yet it did not take any concrete actions to sanction Israel. (Whitson, 2025)

Consequently, the ICJ does not address individual liability; it holds state responsibility. Its proceedings concerning South Africa's genocide claim and the Advisory Opinion on Israel's occupation indicate that international treaty obligations, particularly under the Genocide Convention, place legal limitations on states invoking self-defense, and

confirm that wide-scale military operations against civilians cannot be justified as lawful self-defense under Article 51 of the UN Charter.

3. Universal Jurisdiction

Universal jurisdiction is sometimes referred to as extraterritorial jurisdiction and can be explained as the right of national courts to try cases in which the alleged crimes were not committed in their domestic territory. In contrast to active or passive personality principles that require a national connection either of the suspect or the victim, universal jurisdiction can be exercised in any situation, that is to say, that the nationality of the perpetrators or the victims does not matter (Trial International, 2025). National authorities worldwide have, in recent times, been quite active in resorting to universal jurisdiction as a means of pinning the responsibility for international crimes in Gaza upon individuals. This trend evidences a declination by states of their threshold of willingness to dot the i's and cross the t's of legal authority in regard to conduct forbidden by peremptory norms of international law (Whitson, 2025).

Regardless of this formal willingness, the complaints submitted across multiple jurisdictions have yet to result in indictments or prosecutions (Whitson, 2025). In their 2025 Universal Jurisdiction Annual Review, a number of international organizations jointly observed that the response to Gaza is indicative of a double standard, especially in comparison to Syria or the Russia-Ukraine conflict, where local authorities have been much more active and have taken the lead in accountability initiatives. According to the report, foreign states that invoked extraterritorial jurisdiction to carry out investigations of international crimes in Gaza in 2024 were not engaging in proper coordination of their inquiries. This deficiency in coordination between them challenges the credibility of international criminal justice system (Trial International, 2025)

There is a wealth of documentation detailing internationally illegal acts that Israel has allegedly committed in Gaza - such documentation has been provided by many local and international NGOs, UN human rights bodies, and the investigations by the ICC and the ICJ. However, there is a limited scope of state-level judicial action. So far, no country has officially initiated a full-scale investigation into the Gaza situation. As a matter of fact, a few national prosecutors have turned down the idea of starting inquiries into international crimes that the Israeli side may have committed:

1. In September 2024, French judicial authorities dismissed a complaint filed by NGOs accusing a French-Israeli soldier of torture and complicity in torture as war crimes, despite video evidence of mistreatment of Palestinian detainees in Gaza.
2. Norwegian authorities rejected an NGO-submitted complaint against three Israeli officials alleging complicity in crimes against humanity.
3. The German federal Public Prosecutor's Office declined to investigate the killing of a German-Palestinian family in an Israeli airstrike as a potential war crime (Trial International, 2025).

By the end of 2024, only one publicly known extraterritorial investigation had been initiated into alleged international crimes committed in Gaza (Trial International, 2025): Belgian prosecutors announced a probe targeting a Belgian-Israeli citizen serving in the Israeli Forces' "Refaim" Sniper unit (Whitson, 2025).

The case of Gaza, on the other hand, seems to reveal the continuation of a trend where the politics is favoring Israel as it has been faced with quite a number of persistent and credible accusations of serious international crimes (Trial International, 2025).

Despite this, local governments have slowly shown signs of more active involvement over time. Belgian officials in July 2025, held and interrogated two Israeli soldiers on their visit, who were suspected of committing war crimes, and eventually sent the file to the ICC. Canadian police, on the other hand, opened a structural inquiry into the situation of Canadian nationals who have joined the Israeli military, which falls under the ambit of the Canadian Crimes Against Humanity and War Crimes Program (Whitson, 2025).

Civil society organizations have been a major source of support for these extraterritorial investigations as well. Hind Rajab Foundation is a good example of such an organization that acts as a catalyst by filing requests for prosecution in domestic courts against Israeli soldiers who are on tour abroad and by giving necessary information to various legal bodies, such as the ICC, thus helping in the implementation of international legal obligations (UN, 2025).

Such steps have really affected the situation in a few ways, first by putting a limit to the foreign travels of Israeli soldiers and also by showing a wider resistance to their

impunity. After these legal interventions, the Israeli powers have given the advice to the soldiers who served in Gaza to keep quiet if they want to go abroad, and in addition, local officials in at least eight cases have documented that Israeli staff were given the expulsion orders in countries like the Netherlands and Cyprus after they were involved in legal proceedings (Whitson, 2025).

It is important to apply the same criteria to all situations in order to safeguard the victims and to maintain the credibility of international justice. Any state which is applying its jurisdiction outside its territory should operate in a neutral manner, thus ensuring that neither their actions nor the procedures followed can be influenced by real or only supposed bias. If these points are not respected, the confidence of the public in the system is weakened, the impunity is sustained, and the victims are deprived of real justice for the gravest international crimes (Trial International, 2025).

Moreover, such measures taken by national courts that decide to use universal jurisdiction are a strong reminder that in no case can the violations of the principles of *jus in bello*, for example, direct, indiscriminate, or disproportionate attacks on civilians and civilian infrastructure, be justified under Article 51 of the UN Charter as acts of self-defense. This behavior, therefore, amounts to a blatant violation of international humanitarian law as well as the corresponding international human rights law.

2.2.2 Non-Judicial Measures of Accountability

Non-judicial measures, besides judicial mechanisms, have been very influential in the international community's reaction to the situation in Gaza caused by Israel. These measures include political, economic, and regulatory actions taken by states, reflecting their broader responsibilities under international law.

It is true that non-judicial measures do not directly decide the legality of Israel's claims to self-defense under Article 51 of the UN Charter. However, they provide a significant and leading practical indication that the international community, which comprises states, intergovernmental organizations, and UN bodies, does not accept Israel's actions in Gaza as self-defense carried out lawfully.

By the implementation of embargoes on arms, trade sanctions, and other diplomatic measures, the operational and material capacities of Israel are being limited in an active

way. Thus, it is emphasized how far legal legitimacy extends and, at the same time, it is demonstrated that Israel's referring to Article 51 is not in line with international law.

Hence, this section analyzes some of the non-judicial responses to Israel's operations in Gaza, indicating how they may function as a complementary instrument in indirectly reinforcing the normative boundaries of Israel's claim of self-defense since 7 October 2023.

States and entities bear a *prima facie* legal obligation to refrain from facilitating, enabling, or otherwise contributing to violations of international law, including the commission of the most serious crimes. Moreover, states must ensure respect for international humanitarian law as required by the 1949 Geneva Conventions and customary international law, even when such crimes are committed under the pretext of self-defense (UN, 2024).

Consequently, states are prohibited from transferring weapons or ammunition if, based on the facts or part pattern of conduct, it is foreseeable that such arms would be used to violate international law. Under the Arms Trade Treaty (2014), states parties are further obligated to deny arms exports if they have knowledge that the arms "would" be used to commit international crimes, or if there is an 'overriding risk' that the arms "could" be used to perpetrate serious violations (UN, 2024).

In the case of Israel, the invocation of self-defense has repeatedly been used—analyzed throughout this thesis—to justify its military operations in Gaza, which, according to multiple UN bodies and independent observers, may constitute grave violations of international humanitarian law and human rights law (Donmez, 2025).

This background of systemic abuses has been heavily criticized by renowned international legal experts and human rights supporters, pointing to the difference between state duties under international law and the continuation of unpunished serious crimes. UN Special Rapporteur Francesca Albanese also evaluated the behavior of Israel as not being in conformity with international law and emphasized that Israel is the one responsible for the commission of serious violations against the Palestinian population (Donmez, 2025).

Following these judicial critiques of the law, states have put in place various non-judicial measures to restrict Israel's operational capabilities and indicate the limits of lawful conduct under Article 51 of the UN Charter.

Albanese also called on countries and the international community to suspend all trade, investment, and arms transfers to Israel, emphasizing that: (1) in order to destroy Gaza, Israel was provided with around 85,000 tons of explosives—six times the destructive power of Hiroshima—and (2) Israel is using the offensive in Gaza to test new weapons systems, drones, and radar technologies (Donmez, 2025).

In line with that, Albanese highlighted the law-based obligation of the private actors whose materially supportive activities lead to such violations. She went on to list 48 corporate entities at a minimum, including banks, technology companies, arms manufacturers, and academic institutions like Amazon, Microsoft, and BNP Paribas, whose contributions may have facilitated the commission of actions potentially resulting in serious crimes and violation of the Palestinian right to self-determination. She underlined that it is absolutely necessary right now to put these measures into effect: enforcing arms embargoes, suspending trade, and implementing accountability mechanisms against Israel so that not only states but also any entities that may be involved will be held accountable under the law for their role in facilitating these grave violations (Donmez, 2025).

Despite the fact that arms embargoes on Israel are supported by the 1948 Genocide Convention, which requires States Parties to do everything in their power to prevent genocide (Donmez, 2025), After being supported by the “International Court of Justice”, many states like the United States, Germany, the United Kingdom, France, and Canada are still directly involved in helping Israel's military operations in Gaza. The offering of arms, trading, and economic assistance, as well as giving intelligence support and using diplomatic means to protect the perpetrators, are actions that amount to the facilitation of international crimes. Besides, they hinder the process of holding those responsible accountable in a significant way (International Association of Democratic Lawyers, 2024).

Since 7 October 2023, the United States has committed over \$26 billion in military assistance for Israel, while Germany has increased its arms exports tenfold

(International Association of Democratic Lawyers, 2024). Such transfers may engage state responsibility the Arm Trade Treaty (2014) (UN, 2024). and the obligations of states under the Genocide Convention to prevent and punish acts of genocide. (Donmez, 2025)

These moves domestically are supported by measures that mute pro-Palestinian advocacy, for instance, the prohibition of groups such as Palestine Action in the UK and the charging or investigation of a large number of individuals in France who are implicated in the support of Palestinian human rights. This goes even further to demonstrate the pattern of involvement in the hindering of the demand for justice for grave international crimes (International Association of Democratic Lawyers, 2024).

State policies have changed dramatically recently as a result of which more than half of the countries have started to support either partial or full arms embargoes on Israel. Among these are also the four former major suppliers: In July 2025, Germany suspended all weapons exports to Israel; the United Kingdom restricted 30 of 250 arms export licenses; and France suspended exports of offensive weapons. Similarly, Italy, Belgium, and Canada, which were also the suppliers of Israeli arms, have stopped the arms transfer licenses in 2024 (Whitson, 2025).

Firstly, it is important to highlight that the question of the legality of weapons transfers to Israel has been raised in several places. A case was initiated by Al-Haq and Global Action Network in the UK against the government. The case is about parts of the F-35 fighter jet that were shipped to Israel. The Court of Appeal in The Hague has put a stop to the Dutch exports following examination of the possible use for violations of international humanitarian law. The German arms exports have been under similar pressure. Furthermore, Nicaragua submitted a case to the “International Court of Justice” under the “Genocide Convention”, aiming to prevent such transfers that may lead to genocide or other grave international crimes. (Whitson, 2025)

With respect to trade and economic measures that aim at preventing complicity in violations of international law, various international organizations have advocated for banning trade with and investment in companies that are engaged in military operations in Gaza or settlements in the West Bank. One notable instance is the case of the Netherlands, where the Dutch government as well as the European Union, do not

acknowledge Israel's rule over the territories occupied since 1967 and regard the settlements as being illegal under international law (Zwanenburg & Trittenbach, 2024).

By means of a "discouragement policy" the Netherlands is advising companies not to perform economic activities that would lead to the development of settlements. Nevertheless, academics and critics maintain that such a policy is insufficient in terms of the requirements set out by the "2024 ICJ Advisory Opinion" that states those third states must not engage in economic activities which consolidate the illegal occupation and must not allow trade or investment that supports it. (Zwanenburg & Trittenbach, 2024)

Even more significant is the fact that a growing number of states have decided to terminate their public contracts, funding agreements, or joint initiatives that might indirectly support the occupation of Israel. In addition, after 7 October, a handful of countries have ceased their diplomatic ties with Israel and made the official moves of withdrawing their ambassadors and diplomatic staff as a reaction to Israel's continuous and grave breaches of international law (Whitson, 2025)

To sum up, as demonstrated in this thesis, the massive destruction and the death of many innocent people in Gaza, in addition to the systematic violations that have been documented by UN bodies and independent observers, clearly show that Israel's operations cannot be considered legal self-defense under "Article 51 of the UN Charter". While Israel maintains that its military actions are those of legitimate self-defense, various judicial and non-judicial bodies have come to a different conclusion and the international community is no longer accepting these claims.

The limited enforcement powers of the ICC and ICJ make it very difficult to put a stop to illegal actions by states and individuals. Therefore, the role of non-judicial measures such as sanctions and restrictions becomes very important in reflecting the international community's disapproval and in limiting Israel's capacity to act. These measures have brought about Israel's international isolation, and thus, convey the message that the use of force against civilians in an indiscriminate manner on a large scale and disproportionate military operations cannot be justified as acts of self-defense.

These changes emphasize the necessity of judicial and non-judicial measures being used together in order to enhance international accountability and guarantee that states abide by international law. They make it clear that the right of self-defense cannot be used as a shield against serious violations of “international humanitarian law” and “international human rights law”.

Conclusion

This thesis demonstrates that the Israeli claims of self-defense under Article 51 of the UN Charter in Gaza since 7 October 2023 are legally illegitimate. As examined throughout this work, in order to invoke the right of self-defense, certain criteria are required, and in the context of Gaza, they are not met. Moreover, despite claims to the contrary, Israel remains the occupying power in Gaza—even if not physically present on the ground prior to 7 October—and retains effective control over all essential aspects of life, including Gaza’s borders, airspace, maritime, and resources, which imposes obligations on Israel under international humanitarian law and human rights law rather than conferring any right to use force against the occupied population.

Documented evidence examined through this thesis from UN bodies, international and national organizations, indicates that the systematic, widespread, intensive harm to civilians and civilian infrastructures in Gaza results from the Israeli indiscriminate, disproportionate, and unnecessary military operations. Such behavior constitutes a grave violation of international law, which includes the commission of war crimes, crimes against humanity, and genocide, and is significantly outside the scope of lawful self-defense under international law.

Ultimately, Israel has been upholding its obligations as the occupying power in Gaza under international humanitarian law, its claims of self-defense are not legitimate, instead of fulfilling its legal responsibilities as the occupying power, it has invoked self-defense to justify its actions in Gaza, which constitute serious violations of international law.

Research Results

1. Israel cannot legally invoke Article 51 of the United Nations Charter, as the conditions for self-defense have not been met in the case of Gaza.
2. As the occupying force, Israel is not allowed by law to assert the right to self-defense against the people under its occupation, since its commitments under international humanitarian and human rights law disallow the use of force against the occupied population.

3. Israel may present its military actions as self-defense, but the reality, as documented by international organizations and UN bodies, is that these operations seriously violate international law and that they oppress the Palestinian civilians in Gaza.
4. The actions carried out by Israel in Gaza do not align with the legitimate self-defense as per Article 51 of the UN Charter. Moreover, they fail to meet the legal criteria of necessity and proportionality under “international humanitarian law”, and are considered as grave violations of “international law”, particularly crimes against humanity, war crimes, and genocide.
5. The extent and the methodical character of the Israeli operations in Gaza signal that they go beyond any legitimate defensive objective, and constitute collective punishment, which is explicitly prohibited by international law.
6. Although international law currently does not have a fully efficient enforcement mechanism, the increasing worldwide repudiation of Israel's self-defense argument is indicative of its growing isolation and is evidence that Israel's actions in Gaza cannot be legitimized by a self-defense claims.

Research Recommendations

1. Request the global community to comply with their legal and moral obligations towards the Palestinians, and to guarantee that international law is followed.
2. Enjoin international organizations and states to employ consistent standards so as to hinder the occupier from obtaining benefits at the cost of the occupied population.
3. Indicate to Israel as an occupier that she should fulfill her duties under international humanitarian and human rights law, especially in the areas of protection of civilians and ensuring their basic rights in Gaza.
4. Appeal to the world community, UN organs, and international courts, to exert pressure on Israel to put an end to the firing of civilians and civilian infrastructure at the earliest, and to open Gaza.
5. Promote the idea of discontinuation of the aggressive occupation by Israel of the Palestinian territories and the subsequent recognition of Palestine's right to self-determination.
6. Endorse the sustained efforts of local and international authorities in investigating and prosecuting Israel's conduct in Gaza so that the state as well as the individuals responsible can be held liable thereby, impunity forestalled.

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جامعة النجاح الوطنية
كلية الدراسات العليا

ع

حق الدفاع عن النفس في ظل الاحتلال: تحليل قانوني لمزاعم إسرائيل وسياساتها في غزة أعقاب 7 أكتوبر 2023

إعداد

ريم بشار نصر أبو رمح

إشراف

د. مجد عودة

قدمت هذه الرسالة استكمالاً لمتطلبات الحصول على درجة الماجستير في القانون الدولي وحقوق الإنسان،
من كلية الدراسات العليا، في جامعة النجاح الوطنية، نابلس - فلسطين.

حق الدفاع عن النفس في ظل الاحتلال: تحليل قانوني لمزاعم إسرائيل وسياساتها في غزة أعقاب 7 أكتوبر 2023

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إشراف

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الملخص

ان مسالة قانونية ادعاءات اسرائيل بالدفاع عن النفس بموجب "المادة 51 من ميثاق الأمم المتحدة" في غزة يعتبر موضوعا مثيرا للاهتمام على الصعيد القانوني والأخلاقي والدولي منذ 7 تشرين الأول 2023. على الرغم من الاهتمام الواسع النطاق الذي حظي به الوضع في غزة، الا ان عدد قليل من الدراسات الأكاديمية بحثت في مدى قانونية ادعاءات إسرائيل بحقها بالدفاع عن النفس في ضوء كونها قوة احتلال، الأمر الذي يظهر نقص في الدراسات الوصفية التحليلية التي تناقش العلاقة ما بين هذه الادعاءات، والتزامات الاحتلال، وقواعد القانون الدولي الإنساني.

تهدف هذه الرسالة الى تحليل ما ان كان ادعاء إسرائيل بحقها بالدفاع عن النفس مبني على أساس قانوني، كما وتحلل هذه الدراسة هجوم إسرائيل العسكري على غزة، مع التركيز على أثره على المدنيين بشكل خاص، وذلك في ضوء كل من "القانون الدولي الإنساني وقانون حقوق الإنسان". تستند هذه الدراسة على أدلة صادرة من تقارير "الأمم المتحدة"، وأحكام من المحاكم الدولية، وتقارير من منظمات ومؤسسات دولية ووطنية، لتقديم تحليل قانوني وصفي للوضع القانوني والقائم على الأرض في غزة منذ 7 تشرين الأول 2023.

توصل هذا البحث إلى أن إسرائيل باعتبارها قوة الاحتلال غزة، ليس لها الحق في الادعاء بحقها بالدفاع عن النفس ضد الشعب الذي تحتله، لذا فإن ادعاءاتها ب "الدفاع عن النفس" غير مشروعة وفق القانون الدولي، ولا تستوفي معايير وشروط المادة 51 من ميثاق الأمم المتحدة. كما توصلت هذه الدراسة إلى أن إسرائيل لم تلتزم بالوفاء بالتزاماتها كقوة احتلال في غزة، بل وتجاوزت مبادئ الضرورة والتناسب وفق أحكام القانون الإنساني

الدولي، وبالتالي فإن عملياتها العسكرية في غزة تشكل انتهاكا جسيما لقواعد القانون الدولي، وبالأخص جرائم ضد الإنسانية، وجرائم الحرب، وجريمة الإبادة الجماعية.

كما وتشير هذه الدراسة الى عدد الدول المتزايد حول العالم التي ترفض مزاعم اسرائيل بحقها بالدفاع عن النفس في غزة. وتؤكد هذه التصريحات على الحاجة الملحة للامتثال للقانون الدولي، وتفعيل آليات ناجعة للمساءلة القانونية، من أجل حماية المدنيين في غزة وضمان حق الفلسطينيين في تقرير مصيرهم.

الكلمات المفتاحية: "الدفاع عن النفس"، "الاحتلال"، "المادة 51 من ميثاق الأمم المتحدة"، "القانون الدولي الإنساني"، "جرائم الحرب"، "الجرائم ضد الإنسانية"، "والإبادة الجماعية".