

Right Of States To Self- Defense: Legal Discussion Of The Zionist Entity's Claim To The Right Of Legitimate Defense In Its War On Gaza

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ABSTRACT

The rules of international law have recognized the right of States to self-defense, and this right has been stipulated in Article 51 of the Charter of the United Nations, which indicates that nothing in the provisions of the Charter contradicts the right of States, individually or collectively, to use their right to self-defense if an armed force attacks a member of the United Nations, until the Security Council takes the necessary measures to maintain international peace and security.

The Zionist entity justified its aggression against Gaza (which has continued since October 7 until now) by saying that it is exercising its right to legitimate defense. However, the use of this right by states must be in accordance with the conditions set out by the same rules of international law contained in Article 51 of the Charter of the United Nations, which gave the state subjected to external aggression to use its right to self-defense as a legitimate right to preserve its existence as a natural right Whether individually or collectively, until the Security Council has taken the necessary measures for the maintenance of international peace and security and provided that the Security Council is promptly informed of the measures taken by any Member who exercises this right, and such measures shall in no way affect the powers and responsibilities of the Council in accordance with the Charter to take at any time such actions as it deems necessary for the maintenance and restoration of international peace and security. As an exception to the general rule on which the Charter is based not to use force in international relations, the conditions that should be met in this article are: First: the occurrence of armed aggression against the territory of the State, Second: The aggression is immediate and direct, Third: The armed aggression is against the fundamental rights of the State, Fourth: The act of legitimate defense does not exceed the limits necessary to push the aggression. Fifth: Inform the Security Council of the measures taken, which will become clear through the research that they are not available in the Zionist aggression on Gaza, as the crimes committed are crimes of genocide against the Palestinian people, which is proven by the events witnessed by the whole world.

INTRODUCTION

Research Objective

This research tagged the right of states to self-defense (a legal discussion of the claim of the Zionist entity using the right of legitimate defense in its war on Gaza) aims to show the nature of the war waged by this entity on the Palestinian people, which is radically different from its claims in the exercise of the right of legitimate defense by discussing the conditions for exercising this right in accordance with the rules of international law and comparing them with the practices pursued by this regime in its war on Gaza to see the extent to which they apply to the reality of the situation of the Zionist entity. The rules of international law are the right of states to self- defense and this right is stipulated in Article 51 of the Charter of the United Nations, which indicated that nothing in the provisions of the Charter contradicts the right of individual or collective states to use their right to self-defense if an armed force attacks a

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member of the United Nations, until the Security Council takes the necessary measures to maintain international peace and security.

Research Purpose

To demonstrate the falsity of the claims of the Zionist entity in its use of the right of legitimate defense legally and to inform the world opinion about it.

Research hypothesis:

The hypothesis of the research is to question the applicability of the conditions set by Article 51 of the Charter of the United Nations to the aggression of the Zionist entity on Gaza.

Research Methodology:

The research will be dealt with and discussed legally with the methodology of analytical scientific research as it is commensurate with its nature in two sections as follows:

The First Topic: The Right Of States To Self-Defense In Accordance With The Rules Of International Law.

The first requirement: international responsibility and the exceptions that respond to it in accordance with the rules of international law.

The second requirement: the conditions for the use by States of the right of self-defense in accordance with the rules of international law.

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Rules of international law

The rules of international law have guaranteed the right of states to defend themselves and considered it a legitimate right, although the state that violates an international obligation had resulted under one of the rules of international law bear the responsibility of international responsibility for this unlawful act, which is necessitated by legal and political necessities, which is one of the principles recognized and agreed upon in the international community. The right of self-defense or legitimate defense, in a demand and then a statement of the conditions for the use of this right in another requirement.

First Requirement

International liability and the exceptions to it in accordance with the rules of international law.

It has become recognized according to the rules of international law the responsibility of the State for the damage caused to other States, the State bears responsibility for any unlawful act when it is committed in violation of the rules of international law², but States bear responsibility even legitimate acts in accordance with the rules of international and domestic law, if the exercise of such acts harms other States.³

² For details: Dr. Hamid Sultan, Public International Law in Time of Peace, Dar Al-Nahda Al-Arabiya, Cairo, 1962, pp. 288-330.

As well as: Dr. Essam Al-Attayah, Public International Law, 7th Edition, Al-Atak Press for the Book Industry, Baghdad, 2008. p. 517.

³ For details: Dr. Ahmed Abu Al-Wafa Muhammad, mediator in public international law, 4th edition, Dar Al-Nahda Al-Arabiya Press, Cairo, 2004, pp. 864-865.

It should be noted that the assessment of the wrongfulness of an act internationally is determined by the availability of two elements, one of which is personal, which is the existence of positive behavior represented by doing an act or negative and is the failure to take an act that can be attributed to the State in accordance with the rules of international law.

The second element is the substantive or material element, which is that the act or conduct is contrary to an international obligation incumbent upon that State.⁴

Accordingly, the conditions or elements of international responsibility, as some call them, are:

1- First, the condition of attributing the act to a state:

An act attributable to the State if it is issued by one of its public authorities or bodies represented by the legislative, executive and judicial authorities violates the rules of international law, whether such act is an act or an omission, even if this does not conflict with the provisions of its internal or national law.⁵

2- Condition of illegality of the act:

An act attributed to the State is supposed to be internationally wrongful, and an act committed by the State is unlawful if it is contrary to the provisions of the rules of public international law, convention, customary or general principles of law.

3. Provided that the wrongful act results in damage:

Lastly, one of the conditions for States to bear the consequences of international responsibility was that the wrongful act of a State resulted in injury to another State or States, provided that such damage must be certain and not probable, whether that damage was material or moral.⁶

However, there are acts that can be considered permissible in international law, as is the case with the reasons for permissibility in the law.

It is considered a negation ground for wrongfulness. As in the case of a State approving the entry of foreign forces into its territory to suppress an insurgency or to carry out military operations for this purpose, since the provisions of international law are originally based on the consent of its persons, the occurrence of consent turns the act from an illegal act to a legal act that does not entail international responsibility.⁷

2- Countermeasures:

States often resort to taking measures, permitted by the rules of international law, such as economic or maritime blockade or freezing of capital. etc. as a reaction to an unlawful act committed by another State against the aggressor State, in which case the action taken should be recognized by the rules of international law.

3-Force majeure or sudden accident:

In order for force majeure to be considered as a negation of states' bearing the responsibility of international responsibility, several conditions must be met; the first of which is that the action taken by the state is due to irresistible or unexpected force, whether due to nature such as natural disasters or by man, as in the case of the spread of the Corona virus. Second, the occurrence of force majeure should place the State in a state of material impossibility to perform its obligations internationally as a direct causal result of the situation of that force majeure, otherwise it cannot be relied upon as a reason for permissibility to prevent the incurrence of international responsibility.⁸

⁴ Dr. Ahmed Abu Al-Wafa, the same source, pp. 859-867. As well as Dr. Essam Al-Attayah, the same source.

⁵ For details: Dr. Mustafa Ahmed Fouad, The Origins of Public International Law, The International Legal System, Part 2, Dar Al-Maaref Foundation, Alexandria, 2008, pp. 308-312.

Also: Dr. Hamid Sultan, previous source, pp. 294-316.

Also: Dr. Essam Al-Attayah, previous source, pp. 523-538.

⁶ Dr. Mustafa Ahmed Fouad, *ibid.*, pp. 316-318.

Also: Dr. Essam Al-Attayah, *ibid.*, pp. 538-539.

⁷ For details: Dr. Hamed Sultan, the previous source, pp. 317-318. Also: Dr. Ahmed Abu Al-Wafa, the previous source, pp. 868-869.

⁸ Dr. Ahmed Abu Al-Wafa, the same source, pp. 871-872

4- Cases of necessity:

cases in which the state is forced to take a position or commit an act contrary to an international obligation, to maintain a fundamental interest threatened by a serious and imminent danger. Therefore, the cases of necessity in question here require the availability of several conditions to exclude the responsibility for international responsibility for them.⁹ First, the act of the State in breach of an international obligation is the only option.

Cases in which the use of which would be contrary to a peremptory norm of international law

Second:

This act does not harm the basic interests of the other state, such as the right to survival, the right to freedom, independence and the right to equality¹⁰, otherwise it will not be able to then consider the state of necessity to deny responsibility for it, because it has actually been committed in violation of an international obligation causing damage to the fundamental interests of the other state.

Third:

The state of necessity may not be considered in cases where the act committed in it is contrary to a peremptory norm of international law except by the agreement of the international community itself that the act has been approved by a collective treaty, or if the treaty establishing that international obligation has provided for the inadmissibility of the state of necessity, which obliges the contracting States not to consider it when it occurs in compliance with the provisions of the treaty. Not to mention cases in which the same State creates a state of necessity to exempt it from international responsibility, thus violating the principle of good faith in the implementation of international treaties.

5- The state of self-defense:

It is one of the most important reasons approved by the rules of international law to deny submission to the consequences of international responsibility because the state is then forced to use force in self-defense when it is subjected to aggression that affects its security or the integrity of its territory and interests, in other words, the action against it should be illegal in accordance with the rules of international law on what we see in detail.

Second Requirement: Conditions for the use of the right of legitimate defense

In accordance with the rules of international law

It should be noted first of all that legitimate defense as a concept finds its basis in the general theory of law, to denote situations in which a person is forced to use force in response to the aggression of others. It was also adopted within the scope of international relations.

The Charter of the United Nations recognizes the right of states to use force in cases of legitimate self-defense in accordance with the provisions of Article 51¹¹, as an exception to the general rule on which the Charter is based on the non-use of force in international relations. States may use their right to self-defence as a legitimate right to maintain their existence as a natural right, whether individually or collectively, if an armed force attacks a Member of the United Nations, until the Security Council takes the necessary measures to maintain International peace and security.

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

⁹ Dr. Ahmed Abu Al-Wafa, the same source, pp. 872-875.

¹⁰ For details on the concept of the idea of necessity, its implications and conditions of use, see: Dr. Mustafa Ahmed Fouad, Studies in Public International Law, Dar Al-Maaref Foundation. Alexandria, 2008, pp. 80 ff. and For details on these rights, see:

Dr. Mohammed Majzoub, Lectures on Public International Law, Beirut Arab University Press, Beirut.

¹¹ See the text of Article 51 as contained in the Charter and on the United Nations website: [United Nations Charter \(full text\) | United Nations](#)

of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

According to this article, there are several conditions that must necessarily be met to allow States to exercise their right to self-defense, which can be summarized as follows:

First: The occurrence of armed aggression on the territory of the state: One of the most important conditions required by the application of the provisions of Article 51 of the Charter is the occurrence of armed aggression on the territory of the state that claims its right to use this right, and the territory of the state according to the majority of jurisprudence is the spatial area in which the state exercises its competencies and the framework in which its governmental actions are legitimate, which includes a specific and fixed area of land and its contents of plains and mountains and its interior and what it contains of rivers and lakes and on the above layers of the atmosphere and the surface What may surround it from the waters of the seas to a certain distance, including its territorial waters and its bottom¹² and most importantly, such aggression is committed by another State or a group of States using its regular armed forces, i.e. from its army, which crosses the territorial borders of the other State by land, sea and air or exceeds its competences within its territorial borders.¹³ Therefore, on this basis, any State has the right to defend itself in the event of any attack on its territory, its nationals or its ships by force.

Second: The aggression should be immediate and direct: which means that the aggression must have actually occurred directly with its continuation¹⁴, which gives the aggressed state the right to respond because of the maintenance of its interests and security.

The Security Council should take the necessary measures and measures to maintain international peace and security, which gives legitimacy to its response, until the Security Council intervenes.

Third: The armed aggression should respond to the basic rights of the state: The meaning of this condition is that the external aggression targets the basic rights of the aggressed state, such as the right to survival, the right of legitimate defense, and the right to prevent aggressive expansion¹⁵ and worthy of care, which is what is contained in the Charter of the United Nations and approved by the General Assembly of the United Nations in its resolution 3314 and issued in 1974 in its definition of aggression, which referred in its first article to, It is the use of armed force by a State against the sovereignty, political independence or territorial integrity of another State or in any other manner contrary to the Charter. . The article considered that the initiation of a military attack by that State is evidence of the existence of aggression¹⁶ against it, aggression according to this definition should target the basic and fundamental rights of the aggressed State, which are:

The integrity of the territory: The integrity of a region means the unity of its territory, its indivisibility and the non-penetration of its air or sea spaces if the aggression does not aim to annex the territory and parts of that territory, and this is consistent with the provisions of paragraph (4) of Article II of the Charter, which refers to the need for Member States to refrain from the threat of the use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the Charter(2). In addition to the threat to the political independence of the state, whose importance does not seem to be equal to the aggression against the territory of the state

Fourth: The recognition of the right of legitimate defense by states is only an exceptional measure that responds to the principle of prohibiting the use of force in international relations, on which the Charter of the United Nations was

¹² Dr. Mohamed Sami Abdel Hamid, the origins of public international law, part 1-the international community, the establishment of knowledge, Alexandria, 2004, p 128.As well as: Dr. Essam Al-Attayah, the previous source, p 309.

¹³ For details: the same source, p. 310-onwards.

¹⁴ Dr. Hamid Sultan, previous source, p. 317.

For details: Kamel Ibrahim Jassim, Legitimate Defense in Public International Law, Master's Thesis submitted to the College of Law and Politics / University of Baghdad, 1984, pp. 60-79.

¹⁵ for details: Dr. Ali Sadiq Abu Heif, Public International Law, Knowledge Foundation, Alexandria, pp. 170-179

¹⁶ See the definition of aggression in accordance with UN General Assembly Resolution 3314 of 1974. On the site: legal.un.org/avl/pdf/ha/da/da_a.pdf--General Assembly resolution 3314 (XXIX) of 14 December 1974 (D... reads on the UN website :Article 2, paragraph 4, of the Charter of the United Nations [United Nations Charter \(full text\) | United Nations](#)

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

built, and this right was approved for countries that are victims of armed aggression with the aim of defending themselves until the Security Council takes the necessary measures and procedures to stop the aggression in order to preserve international peace and security.

On this basis, ensuring the right of legitimate defense of States should be sufficient to respond to aggression and under the conditions mentioned above, i.e. the necessity of responding to the act of aggression, without exceeding those limits and continuing or persisting in aggression for expansionist or ideological purposes, because this is considered an act of aggression that should be punished because it contradicts the foundations and essence of the Charter of the United Nations..

Fifth: Inform the Security Council of the measures taken: In accordance with the provisions of Article 51 of the Charter, the Member States of the United Nations, in exercising their right to self-defence, are obliged to inform the Security Council immediately Under Article 41, the Security Council may decide what non-armed measures must be taken to implement its resolutions, and may request the member states of the United Nations to implement it,

Such measures shall not affect the powers, responsibilities and procedures of the Council for the maintenance of international peace and security and shall be binding on all Parties to the conflict in accordance with the provisions of Article 25 of the Charter¹⁷ as enforceable decisions.,the Security Council may also decide, in accordance with the provisions of Article 39 of the Charter¹⁸ resolutions, such as severing diplomatic and economic relations and all kinds of communications with the aggressor state, whether partially or completely, and when such measures are ineffective, it may rely on the provisions of Article 42 of the Charter, which entitles it to use air, sea and land forces to deter the aggressor state in order to maintain peace and security. If such measures do not work, the aggressed State may continue to exercise its right to self- defense in view of the failure of the international organization to resolve the conflict¹⁹

Article 42

“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

The second topic: The legitimacy of the Zionist entity's use of the right of self-defense in the war on Gaza

The Zionist entity justified its heinous and continuous crimes against Gaza as one of its legitimate rights as a state to defend itself using the legitimate right of defense contained in the Charter of the United Nations. .

First Requirement: The legal status of the Zionist entity as an occupying power

Palestine was divided after it was a British mandate under the partition resolution No. 181 issued by the United Nations in November 1947, and the Zionist entity was approved to establish a state for it on part of the Palestinian territories that was determined for it according to the provisions contained in this resolution, whose provisions were not applied in most cases due to the Zionist entity's continuous excesses since the partition decision to this day. The conflict remained between him and the Palestinians, who considered the establishment of this state an attack on their land and on their historical and international rights in Palestine.²⁰ Israel's right to exist as a state (and UN Resolutions

¹⁷ “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.” Chapter V: Article 25 — Charter of the United Nations — Repertory of Practice of United Nations Organs — Codification Division Publications

¹⁸ Article 39 “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” the existence of a situation of armed attack and make recommendations or measures to be taken in accordance with the provisions of Articles 41 and 42 of the Charter(1).”

¹⁹ Article 41 “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

²⁰ Text of Palestine Partition Resolution No. 181 | Encyclopedia | Al Jazeera Net (aljazeera.net)

181, 242, 338),²¹ was recognized by the Declaration of the Palestinian Authority represented by the Palestine Liberation Organization (PLO) in Algiers on 15 November 1988, but Israel has not complied with all international resolutions and has continued to violate its obligations under international conventions and all Security Council resolutions in this regard.

According to the rules of international law, the Zionist entity is committed to a set of obligations towards the Palestinian people as an occupying power, particular, since this entity is one of the parties to the four Geneva Conventions of 1949 and their two annexed protocols, it is therefore obliged to fulfill these obligations in accordance with the rules of international law.²²

Referring to what is meant by occupation, occupation is clearly defined in Article 42 of the Hague Convention, to which Israel is bound. According to one Israeli expert, "If Israel is an occupying power in accordance with the requirements of the Hague Convention, then it must be considered an occupying power in accordance with the requirements of the Fourth Geneva Convention."²³ Article 1 of Part I of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Civilian Situations of 1949 relative to the Protection of Civilian Persons in International and Non-International Armed Conflicts stipulates that "the High Contracting Parties undertake to respect and ensure compliance with the provisions of this Convention in all circumstances."

Article 27 of the Convention also provides that: Protected persons have the right in all circumstances to respect for their persons and honor, their family rights and religious beliefs and the practice of their customs and traditions, and to be treated humanely at all times, protected from all acts of violence and threats of violence and inhuman treatment. And the need to protect women from attacks on their honor, especially indecent assault, rape, and all other types of attacks..

The most important articles of the Convention impose on the Zionist entity as an occupying power not to violate the fundamental rights of the persons it protects in accordance with the provisions of Articles 31, 32, 33, 39, 49 and 53, which prohibit the use of all means of physical or moral coercion against the persons covered by its provisions, as it prohibits torture or extermination, and brutal treatment.²⁴

Not to deport groups or individuals, to transfer the civilian population of the occupying power into the occupied territory, i.e. to settle them, and to prohibit the undermining or destruction of real or personal property. It is known that the Zionist entity had practiced all these practices throughout the period of its occupation of the Palestinian territories against the Palestinian people..

Article 39 also provides for the conditions in which protected persons are entitled to subsistence from the occupying Power. Article 47 provides for the inalienable and inalienable rights of protected persons: "Protected persons who are in occupied territory shall not be deprived in any way of the benefits of the present Convention by reason of any change in the occupation of the territory to the regulations or government of the said territory, nor by any treaty concluded between the authorities of the occupied territory and the occupying Power, nor by reason of any annexation by the latter of all or part of the occupied territory."

According to the provisions of Article 146, the parties to the Convention, including the Zionist entity, are required to take the necessary legislation and measures to impose effective penal penalties on persons who commit serious violations of this Convention, in accordance with the provisions of the following article, and to bring them to a fair trial regardless of their nationality. Crimes committed against protected persons or property, such as murder, torture or inhumane treatment, including life science experiments, acts that intentionally cause severe pain or serious injury to body or health, unlawful exile or deportation, forcing the protected person to serve in the forces of the enemy State, or depriving him of the rights to a legal trial under the Convention, hostage-taking, mass destruction of property or

²¹ Decision text Resolutions 242 and 338 can be found at: <https://www.aljazeera.net/2004/10/03/resolution-338>. Call for a ceasefire and implementation of 242 | Al Jazeera Net (aljazeera.net)

²² for details: Dr. Ahmed Abu Al-Wafa Muhammad, the previous source, pp. 144-148.

²³ Vanessa Langer / Implementation of the Fourth Geneva Convention to Ensure the Protection of the Palestinian People in the Occupied Palestinian Territories, published on the website of the Journal of Palestine Studies, No. 11, summer 1992.

²⁴ The text of the Geneva Convention relative to the Protection of Civilian Persons in Time of War can be found at: Fourth Geneva Convention - University of Minnesota, Human Rights Library (umn.edu)

seizure, shall be considered serious offences under Article 147. against them without military necessity and in an illegitimate and tyrannical manner.²⁵

Although the Zionist entity tried more than once to evade the application of the provisions of the Convention on the basis that they are applied only in cases where a sovereign state is occupied by a sovereign state from its occupied territory, while Palestine was not so when it was occupied by the entity in 1948, and some rulings were issued by its courts to evade the implementation of the provisions of the Fourth Geneva Convention on the grounds that they are not fit to be considered by a court on the one hand, Or it is not applicable because it is a rule of traditional international law and not a rule of customary international law, so it does not form part of the domestic law of Israel according to what the Zionist entity sees of course, and it cannot become part of this law unless the Knesset legislatively approves it by issuing a law in this regard. Although the High Court of Justice of the Zionist entity itself had recognized that the Hague Regulations apply to the territories occupied by Israel in 1967, on the grounds that they reflect customary international law, which is part of the law of the Zionist entity in the absence of any domestic law that contradicts it. (1). In addition, Article 154 of the Convention had considered the Fourth Geneva Convention to be complementary to the Hague Convention..

In the name of settlements, it had changed the demographic nature of the Palestinian territories and infrastructure, adopting a clear policy of apartheid, through a series of military orders and laws that simplify its judicial and administrative system to include illegal Jewish settlers, while applying strict military sentences to the Palestinian population. The military commander is empowered to set up a "local court" to deal with settlements. In addition, the Zionist entity has worked to completely suppress Palestinian culture, by banning books, freedom of expression and creativity, curbing higher education institutes, trade unions, newspapers, women's organizations, etc., as well as daily humiliation and various forms of harassment. (2)

The Zionist authorities have enacted their own so-called "extra-frontier" legislation, which extends as a personal jurisdiction to their citizens living in the occupied territories. Its courts, both civil and criminal, have jurisdiction to hear any claims involving a Jewish settler against a Palestinian resident. Palestinians are subject to the system of civilian courts that existed under Jordanian rule, and Palestinians are subject to a separate "justice" apparatus in military courts.

It is a broadly defined "security" reason that this occupation defines as it pleases. Of course, all these practices are contrary to the entity's obligations under international conventions, and this does not change that the judicial procedures and decisions taken in the entity were issued under or in accordance with its domestic legislation²⁶, as it is obliged to apply the provisions of the international conventions to which it is committed by its accession to those conventions.²⁷ The international community has faced these justifications with rejection and a series of resolutions have been issued by the Security Council rejecting these practices, which have not been accepted even by international legal experts or by the international committee of red cross or even according to advisory opinions issued by the International Court of Justice, the claims of the Zionist entity were refuted by responding that sovereignty over the occupied territories before its occupation was not a prerequisite for the implementation of the provisions of the Convention, which are predominantly "oriented towards the peoples" rather than "orientation to the territories" [in terms of their powers]. In its advisory opinions in the Namibia case, for example, the International Court of Justice stated that "the material occupancy of land, not [political] sovereignty or the legitimacy of the King, is the basis for the capacity of a State." For business related to other countries.²⁸

The Security Council, in its resolution²⁵⁹ regretted the delay in the implementation of its above resolution and again invited the Secretary-General to send a special representative to "the Arab territories under Zionist occupation after the 1967 war", to submit a report on the implementation of the previous Security Council resolution. Requesting the entity to receive the Special Representative of the Secretary-General, cooperate with him and facilitate his work. On 19 December 1968, the United Nations General Assembly decided to establish a special commission to investigate

²⁵ For the texts of the provisions of the above articles, see the text of the agreement on the University of Minnesota website, *ibid*.

²⁶ It is worth mentioning that the first article, of the draft developed by the International Law Commission on international responsibility, had referred to the inadmissibility of States to evade their international obligations under the pretext of incompatibility with the provisions of their internal laws Dr. Mustafa Ahmed Fouad, the principles of public international law, the previous source, p 306

²⁷ For details, Dr. Hamid Sultan, previous source, p. 288 and beyond. Also: Dr. Ahmed Abu Al-Wafa, previous source, p. 153.

²⁸ The oldest Security Council resolution was Resolution 237, adopted unanimously on 14 June 1967, in which the Zionist entity was called upon to safeguard and protect the safety of the population of the occupied territories and their rights and interests, in accordance with the Fourth Geneva Convention on 27 September 1986.

the entity's violations of human rights in the occupied territories. However, he refused to allow the Committee to carry out its work, but the Commission continued to conduct its investigations nonetheless, and submitted a report to the General Assembly stating that the Zionist entity was pursuing "politics" in the occupied territories.

FootnoIn 1988, 1989 and 1990, the United Nations adopted a series of resolutions reflecting the broad international consensus regarding Israel's implementation of the Convention. Each resolution began with a list referring to the unimplemented resolutions, which is evidence of the inability of the international body to stop the Zionist abuses and violations on the Palestinian territories .The most recent of these was Security Council resolution 681 of 20 December 1990, in which it condemned the Zionist entity for expelling four Palestinians and violating article 49 of the Convention, and reaffirming that Israel must abide by the implementation of the Convention. The Israeli Prime Minister at the time, Yitzhak Shamir, announced that this decision would remain in the archives covered in dust, like other analogues, and no one would pay attention to it. These were not only insulting words addressed to the international community, but were accompanied by an order to expel 12 Palestinians on 2 January 1992. The families of the deportees held a press conference in Jerusalem and issued an appeal to the world accusing the international community of ignoring the human rights of Palestinians and of being lenient towards the practice.

Second Requirement

The extent to which the conditions for the right of legitimate defense of the Zionist entity are met In accordance with the rules of international law.

In this request, the applicability of the aforementioned conditions will be discussed to refute the legal basis claimed by the Zionist entity in its aggression on Gaza since October 8, 2023 until now, as one of its legitimate rights guaranteed by the rules of international law for states in self-defense.

First of all, it must be emphasized that the Zionist entity is an occupied state governed by a set of obligations in accordance with the rules of traditional international law and international humanitarian law, which was confirmed by a set of United Nations resolutions and what was recently approved by the advisory opinion of the International Court of Justice issued on 20/7/2024, which stipulates ((Israel's occupation and annexation of Palestinian territories are illegal, and its discriminatory laws and policies against Palestinians violate the prohibition of apartheid and apartheid))²⁹

The International Court of Justice, by its jurisdiction, issued its decision dated 26/1/2024 in the lawsuit filed by South Africa, in which Israel was bound by six provisional measures, stressing the need for Israel to refrain from committing any acts that falls under the provisions of the Genocide Convention by jurisdiction as one of the crimes of genocide stipulated in accordance with the Convention on the Prevention of Genocide of 1946, which entered into force on 31/12/1949.The Zionist entity is one of its parties³⁰, and to prevent and punish direct and public incitement to genocide, and to take immediate and effective measures to ensure the provision of humanitarian assistance to civilians in Gaza. The Court also ordered Israel, in a crucial step, to preserve the evidence obtained from the commission of genocide and to report to the Court, within one month, and all measures taken in accordance with its order.³¹

It seems that the decision of the International Court of Justice alone cannot put an end to the atrocities and destruction witnessed by Palestinians in Gaza. In view of Israel's clear commission of genocide in Gaza and the rest of the Palestinian territories, and its disregard for the rules of international law, this calls for effective and unified pressure³² from the international community to stop the Zionist aggression against the Palestinians.

It should be noted that the same court issued its advisory opinion dated July 2004 on the legal consequences resulting from Israel's illegal policies and practices in the occupied Palestinian territories, represented in the construction of the separation wall in Palestine and the consequences of Israel's behavior on other countries. The Court issued its advisory opinion based on a resolution of the United Nations General Assembly requesting the Court, based on the provisions

²⁹ Posted on Amnesty International's website: <https://www.amnesty.org/ar/latest/news/2024/07/icj-opinion-declaring-israels-occupation-of-palestinian-territorie>

³⁰ See the text of the Convention on the United Nations website: Convention on the Prevention and Punishment of the Crime of Genocide | OHCHR

³¹ Amnesty International website, *ibid.* above.

³² It is noted that this resolution does not contain any obligation for the Palestinian forces to cease firing on the Zionist entity, which indicates the Court's conviction of the right of the Palestinian people to oppose the Zionist occupation because it continues to violate the rules of international law in that occupation.

of Article 96 of the Charter, to issue an advisory opinion in this regard and after an 18-month legal process that included public hearing of More than 50 countries, including Palestine, and three international organizations participated in the advisory opinion stating that Israel's occupation of Palestinian territories constitutes a clear violation of international law.³³

Now we should return to refuting Israel's claim that it is exercising its right to self-defense in accordance with the rules of international law discussed earlier:

First: The occurrence of an immediate and direct armed aggression against the territory of the state: To refute this claim here, it is necessary to address a set of points:

1- One of the first conditions required by the application of the right of states to use the right of legitimate defense is the need for armed aggression on the territory of their state, and as we explained earlier, the concept of aggression in accordance with the rules of international law does not apply to cases in which peoples use their right to self-determination and struggle against the occupation on their territory, a right that was recognized in the introduction to the Universal Declaration of Human Rights and in the introduction to the two international covenants, which is a reflection of what the international community agreed upon in that declaration. The right of peoples to self-determination also included the first article of the two International Covenants³⁴ and was referred to in many international resolutions.³⁵

This is what Hamas and the Palestinian resistance factions have done to defend their land to respond to the continuous violations of the Zionist entity against it since the occupation of its territory until now.

2- The aggression required here to implement the provisions of Article 51 of the Charter must be against the territory of the aggressed state, and the fact that the territory of the so-called State of Israel is an occupied territory, meaning that according to the rules of international law it cannot be recognized as a territory belonging to it, especially since it exceeds the borders of its alleged territory day after day to encroach on Palestinian land by establishing new settlements, in violation of Security Council Resolution No. 2334 in 2016 on the establishment of new illegal and illegal settlements³⁶ inhabited by 500,000 That is, half a million illegal settlers, as these settlements cancel 440 settlements, located on the territory of the Palestinian West Bank, using a policy of ethnic cleansing to expel the original Palestinian population from them, thus seizing 80% of the Palestinian water resources in the West Bank, in addition to the Zionist entity's seizure of large parts of East Jerusalem, thus exceeding even the borders seized by aggression in 1967.

3- The necessity of aggression from another country, which does not apply to the attack launched by Hamas and the rest of the Palestinian resistance factions on the Zionist entity because it is very simply not applicable to the concept of the state in accordance with the rules of international law. The International Court of Justice in its advisory opinion on compensation for damages issued on 11/4/1949, which affirms that, international responsibility takes the form of a claim between two political units equal in law, identical in form and both direct persons in international law.³⁷

4. The aggression committed for the purposes of applying the provisions of Article 51 of the Charter should be from regular armed forces belonging to a State that possesses a regular army, including the active army, the reserve army and the National Guard, whether in the contingents composed of soldiers of the State itself or soldiers of its colonies³⁸

5- One of the conditions for using the right of states to self-defense is that the aggression should not be justified, meaning that the state being attacked should not have committed an act of aggression against the aggressor state, because that gives the latter the right to repel the aggression against it as self-defense, which is actually the case. The Zionist entity, since its establishment until now, has continued to violate all the rules of international and humanitarian

³³ For details, see Amnesty International's reports on its website. Israel and the Occupied Territories: The place of the fence/wall in international law [Arabic] – Amnesty International (amnesty.org)

³⁴ Dr. Mohammed Talaat Al-Ghunaimi and Dr. Muhammad Al-Saeed Al-Dakkak, Public International Law, University Press, Alexandria, without printing year, p. 576.

³⁵ For details, see Dr. Essam Al-Attayah, previous source, pp. 302-305.

³⁶ See the content of the resolution on Wikipedia United Nations Security Council Resolution No. 2334 - Wikipedia (wikipedia.org)

³⁷ Dr. Hamed Sultan, the previous source, p. 290.

³⁸ For details: Dr. Ali Sadiq Abu Haif, the previous source, p. 706 and following.

law in its dealings with the Palestinian people without taking into account the rights of this people and without even paying attention to the resolutions of the Security Council and the International Court of Justice.³⁹

Accordingly, the Zionist entity cannot rely on the right of self-defense to justify its attack on Gaza, because what the Palestinian resistance factions did was an exercise of the right to self-determination granted to them under the rules of international law in defending their land and achieving independence, as the legitimate representative of the Palestinian people, in accordance with the United Nations General Assembly Resolution No. 3314 in its twenty-ninth session issued in 1974, which was included in the provisions of Article 7 of the definition of aggression contained in this resolution⁴⁰, especially since it obtained observer status in the meetings of the General Assembly and its specialized agencies, such as UNESCO, the World Health Organization, and the International Labor Organization, in discussions on the issue of Palestine, in accordance with General Assembly Resolution No. 3237, which enabled it to open offices in the capitals of the countries that recognized it⁴¹.

Second: The aggression must be immediate and direct until the Security Council takes its measures and procedures: This indicates that the response of the attacked state must be temporary, until the Security Council takes its necessary measures and procedures to maintain international peace and security, which gives legitimacy to its response, until the Security Council intervenes. The Zionist aggression on Gaza under the pretext of responding to the aggression continues to this day, until this research was prepared, and the Zionist entity has committed limitless massacres, exceeding the limits of self-defense approved by the Charter and the rules of international law, and the Security Council has not taken any measures or procedures to stop this aggression⁴², which indicates there is a defect in the provisions of Article 51 of the Charter to address such cases, which will be addressed in the following point, in addition to other defects in the Charter, represented by the use of the veto by major powers, as is the case with the United States and some Western countries that work to use this right in any resolution related to stopping the aggression on Gaza by the Zionist entity, which has previously used this right 42 times in any resolution condemning the Zionist entity. Third: Legitimate defense should not exceed the necessary limits to repel aggression: According to the rules of international law, the necessary action to repel aggression against a state should not exceed the necessary limits to repel this aggression, because the internationally guaranteed right of response is an exceptional measure that responds to the basic general rule contained in the beginning of the Charter in the provisions of paragraph 2/4, which is that states refrain from using force in their international relations to maintain international peace and security. Despite the recognition of the right of states to take special measures in exceptional circumstances based on the provisions of Article 4 of the International Covenant on Civil and Political Rights, this is conditional on not using them as acts of hostility is inconsistent with the rules of international law⁴³. Otherwise, the Security Council may take the necessary measures to stop the state that has exceeded the limits of legitimate defense, by requesting member states to sever diplomatic and economic relations with the aggressor state, partially or completely, in accordance with the provisions of Article 41 of the Charter, or by relying on the provisions of Article 42 of the Charter and using air, sea and land forces to deter the aggressor state in order to maintain international peace and security⁴⁴. However, the United States' use of the right of veto to stop the Zionist aggression on Gaza prevents any action that can be taken in this regard. In fact, this serious flaw in the provisions of the Charter can undermine the entire international system⁴⁵, since the provisions of the Charter were established to prevent the deterioration of international relations by states' use of force in their international relations, which takes us back to the situation that preceded the outbreak of the First and Second World Wars, threatening international peace and security and leading to the outbreak of a third world war that would end humanity due to the development of war mechanisms and techniques.

³⁹ For details: Dr. Issam Al-Attayah, the previous source, pp. 475-476.

⁴⁰ For details: Dr. Muhammad Aziz Shukri, Introduction to Public International Law, Damascus University Publications, 2016, pp. 507-511.

⁴¹ Dr. Issam Al-Attayah, the same source, p. 476. Also: Dr. Ali Sadiq Abu Haif, the previous source, pp. 548-551.

⁴² Dr. Muhammad Sami Abdul Hamid and Dr. Muhammad Al-Saeed Al-Daqqaq, Dr. Ibrahim Ahmed Khalifa, International Organization, Manshaat Al-Maaref, Alexandria, 2004, pp. 620-623.

⁴³ Dr. Muhammad Talat Al-Ghanimi and Muhammad Al-Saeed Al-Daqqaq, the previous source, p. 577.

⁴⁴ For details: Dr. Ali Sadiq Abu Haif, the previous source, pp. 548-551.

⁴⁵ For details on activating the real role of the Security Council, see: Dr. Salah Al-Din Amer, International Organization Law, Dar Al-Nahda Al-Arabiya, Cairo, 2001, pp. 437-445.

CONCLUSIONS

Our research entitled, The Right of States to Self-Defense (A Legal Discussion of the Zionist Entity's Claim to the Right to Legitimate Defense in the War on Gaza) shows a set of conclusions, which are:

Conclusions

1- A state that violates an international obligation that was imposed on it under one of the rules of international law bears the consequences of international responsibility for this unlawful act, which is required by legal and political necessities and is one of the principles recognized and agreed upon in the international community.

2- However, there are actions that can be considered cases of permissibility in international law, and they exempt states from bearing the burdens of international responsibility, as is the case in cases of approval and consent from the attacked state, cases of force majeure and necessity, and cases of self-defense or legitimate defense, the subject of this research.

3- The United Nations Charter, in accordance with the provisions of Article 51, has permitted states to use this right of self-defense as a legitimate right to preserve their existence as a natural right, whether individually or collectively, if an armed force attacks a member of the United Nations, until the Security Council takes the necessary measures to maintain international peace and security, provided that the Security Council is immediately informed of the measures taken by any member who exercises this right. These measures shall not in any way affect the powers and responsibilities of the Council, in accordance with the Charter, of the right to take at any time such actions as it deems necessary to maintain international peace and security and restore it to its proper place.

4- According to the above article, there are several conditions that must necessarily be met to allow states to use their right to self-defense, namely: First: An armed aggression has occurred on the territory of the state. Second: The aggression must be immediate and direct. Third: The armed aggression must be in response to the basic rights of the state. Fourth: The act of legitimate defense must not exceed the limits necessary to repel the aggression. Fifth: The Security Council must be informed of the measures taken. 5- It has become clear through the research that the conditions specified above do not apply to the war in Gaza for several reasons:

First: The Zionist entity is an occupying state and as such it is bound by a set of obligations towards the Palestinian people in accordance with the provisions of the international agreements to which it is a party, including the Fourth Geneva Convention of 1949, which it did not abide by throughout its occupation of Palestine despite the international community's rejection of its violations and the issuance of several resolutions against it in this regard.

Second: In light of the above violations of the Zionist entity, the exercise of the right of defense by Palestinian factions cannot be considered an aggression by another state because they are defending their usurped rights to end the occupation and which are granted to them in accordance with the rules of international law and the resolutions of the Security Council and the General Assembly of the United Nations on the one hand, and because they do not constitute a sovereign state and do not possess regular armies in accordance with the rules of international law on the other hand.

Third: The exercise of the right of legitimate defense by states in accordance with the rules of international law should be to the extent necessary to end the aggression without exceeding this limit by committing brutal massacres and crimes of genocide against the civilian population in order to achieve further population displacement with the aim of expanding to occupy new lands.

Fourth: According to the conditions required to exercise this right, the Security Council should be informed of the measures taken to repel the attack on the entity, and the latter must take the initiative to take measures in accordance with the provisions of the Charter to stop this aggression, in order to maintain international peace and security, which has not been done until the research was prepared due to the interference of the major powers, especially America, Britain and the rest of the Western countries, by taking a veto against any resolution condemning the crimes of genocide committed by the Zionist entity.

RECOMMENDATIONS

Through the conclusions of this research, the international community and the Security Council should take a set of measures to stop the Zionist aggression on the Palestinian territories through:

- 1- Immediately stopping the aggression on Gaza and the Palestinian territories and taking all measures to achieve this by activating the articles included in the United Nations Charter.
- 2- Issuing a decision by the International Court of Justice condemning the Zionist entity for all the massacres it committed against the Palestinians and immediately withdrawing from the Palestinian territories in which it penetrated, whether before or after the aggression on Gaza, and in which it exceeded the borders drawn for it under the Partition Resolution of 1948.
- 3- Taking the necessary measures to refer the Zionist war criminals who committed the massacres committed against the Palestinian people to the International Court of Justice according to its jurisdiction, considering them crimes of genocide stipulated in accordance with the Convention on the Prevention of the Crime of Genocide of 1946, which entered into force on 12/31/1949. The Zionist entity is one of its parties.
- 4- Work hard to change the voting system in the Security Council, which enables the Zionist entity to escape international sanctions by using the veto system of the major powers, and replace it with new mechanisms to maintain international peace and security. Otherwise, maintaining such a system will certainly threaten the global order and lead to the expansion of this war, leading to the Third World War, which will destroy humanity in light of the development of nuclear weapons technology and weapons of mass destruction.

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