



## The Legality of Israel's Self-Defense Claim of the Strikes on Hamas

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### Abstract

Israeli strikes against Palestine on May 10-12, 2021, in the Gaza Strip caused massive losses of civilians. Israel claims that the strikes are forms of self-defense in response to previous attacks by Hamas. This study has two objectives: (1) to analyze the arrangements of self-defense in international law and (2) to find out the legality of Israel's self-defense claim of the strikes on Hamas on May 10-12, 2021. The study is the legal research with a conceptual, historical, and statutory approaches. The results of the study reveal that (1) self-defense is customary international law contains in Article 51 of the United Nations Charter; (2) Israel's self-defense claim is invalid since it does not comply with Article 51 of the United Nations Charter and elements contained in International Customary Law, such as necessity, proportionality, immediacy, and imminence.

### I. Introduction

International law strictly prohibits the use of force against other countries in accordance Article 2 (4) of the United Nations Charter. The article states that all member-states must refrain the use of violence against the territorial integrity or political freedom of other states, or in other ways that are inconsistent with the purposes of the United Nations' establishment ([Sefriani, 2016a](#)). The prohibition on the use of force has been declared *jus cogens* as a legal norm that is recognized by the international community; and the implementation cannot be reduced or changed ([Alder, 2013](#)).

The provisions prohibiting the use of force in Article 2 (4) raises several questions among legal experts. One of them is that how is the nature of the act in the form of a threat of force, and how can a threat of force trigger the right to self-defense inherent in every legal subject ([Alder, 2013](#)). This debate has prompted new legal rights as exceptions to

the use of force and gave the right to use force for the purpose of self-defense. Later, these rights were listed in Article 51 of the UN Charter. It states that the use of force is permissible in the framework of self-defense as a right of every state in the event of an armed attack (United Nations Charter art. 51). Therefore, almost all countries always use Article 51 as a justification for acts of violence committed against other parties.

Article 51 of the UN Charter that legitimizes states to carry out self-defense often triggers debates. The article does not clearly determine the classification of armed attack. Thus, it may lead to various interpretations considering the times which may produce new ways to attack a state. It is also unclear in the determination of self-defense, especially on the interpretation of “if armed attacks occur”, which triggers various opinions, including the parties involved. Furthermore, there is no explanation or travaux preparation which is the legal foundation to interpret the term *if an armed attack occurs*.

Without clear parameters, states may interpret the article arbitrarily. For instance, on the precedent of the 1986 Oil Platform Case between Iran and the United States, the International Court of Justice rejected the United States’ self-defense argument for its strike on Iranian oil platforms, October 19, 1987 and April 18, 1988 ([International Court of Justice, 2003; 161, para. 78](#)). It argued that the strike that the US received previously is not an “armed attack” as regulated in Article 51 of the UN Charter. Therefore, the United States could not bring up the self-defense rights that is inherent in every country ([International Court of Justice, 2003; 161, para. 62](#)). In addition, the American “self-defense” cannot be justified because, since it was not to respond an “armed attack”, it also does not meet the cumulative requirements of *self-defense*, which has become customary international law ([Tibori Szabo, 2011](#)). Another example that proves that there are cumulative conditions to legitimize self-defense actions is the United States strike on Iraq during the second Gulf War in 1990 ([Makalew, 2019](#)), and Russia’s invasion to Ukraine ([Schmitt, 2022](#)).

*Self-defense*, in addition to be carried out to respond other states, can also be carried out against Non-State Actors (NSA). The NSA is organization or individual that is not affiliated with, directed by, or funded by a sovereign government, that has political influence and control over a significant territorial area ([Longley, 2022](#)). An example of self-defense practices against the NSA is Israel’s strike on Hamas in 2021.

On May 10 to 12, 2021, Israel attacked Hamas and proposed the claim of self-defense. The attack was triggered by the Israel’s plans to expel Palestinians from Sheikh Jarrah in East Jerusalem, one of the oldest Palestinian Arab settlements in Jerusalem ([Dzulfarah, 2021](#)). Israel’s occupation of the West Bank and East Jerusalem is illegal ([International Court of Justice, 2004; para. 1; Resolution 2334, 2016](#)). Palestinians protested the actions of the Israeli authorities, leading to clashes between Israeli police officers and demonstrators in a number of areas of the West Bank on May 9, 2021 ([Farrell & Lubell, 2021](#)). Hamas responded to the event by launching its rockets at Israeli civilian settlements. Subsequently, Israel responded by launching airstrikes on May 10 to 12 2021 ([Ambassador of Israel to the United States and the United Nations, 2021; para. 10](#))

to the Gaza territory, a region known as the Hamas base. The incident killed more than 232 Palestinian civilians and injured more than 1900 others. Intentional and systematic destruction targeted and caused damage and destruction of vital civilian infrastructure and residential buildings totaling 450 buildings. It should be noted that the event was launched when the Gaza strip was under the Israeli air, land, and sea blockade for 14 years ([Palestine at the UN, 2021](#)).

On May 12, 2021, Israel sent a report to the UN Security Council about the attacks it carried out. They stated that it was the fulfillment of the right of self-defense. They also asked for full support for its actions to protect the rights of the state and civilians ([Ambassador of Israel to the United States and the United Nations, 2021; para. 4](#)). The Palestinian responded by stating that Israel's claim cannot be justified due to the fact that Israel is an occupying power in Palestine ([Palestine at the UN, 2021](#)). Palestine also stated that Israel's claim of self-defense is invalid under international law ([Palestine at the UN, 2021; para.2](#)). Palestine affirmed Israel's actions were acts of aggression, not self-defense ([Palestine at the UN, 2021; para. 4](#)).

The existence of different understandings raises questions about legal certainty at the right time to use self-defense. If it is misused, then of course world peace cannot be achieved. Countries will freely claim the use of their military armed force as an act of self-defense. Countries will freely claim their use of military force as self-defense. Moreover, the use of force carried out by Israel against Hamas has caused many casualties from civilians. Therefore, this article will review self-defense arrangements in international law as well as an analysis of the self-defense that Israel has carried out against Hamas from 10 May to 12 May 2021. Based on the Israeli-Palestinian differences of opinion, there are two formulations to propose. First, what are the conditions of self-defense? Second, is Israel's claim of self-defense legal under international law?

## II. Requirements that Must be Fulfilled to Legitimize Self-Defense Actions

### A. Armed Attack

The UN Charter contains the goals and principles to respect sovereign equality for all nations, for the sake of creating international peace and security ([Mulyana & Handayani, 2015](#)). Article 2 paragraph (4) of the UN Charter prohibits states from using force that threatens the territorial integrity of other states (use of force), except in the context of self-defense, as regulated in Article 51.

Article 51 of the UN Charter requires two conditions of self-defense: (1) an incoming attack (armed attack); and (2) a report to the UN Security Council immediately after the self-defense. It is in accordance with Article 39 of the UN Charter, in which the UN Security Council has the authority to determine steps to be taken in accordance with Articles 41 and 42 of the UN Charter to prevent any attempt that could threaten international peace and security. It aims to enable

the UN Security Council carrying out its duties and authorities in maintaining international security and peace by taking the necessary actions before carrying out attacks or force in terms of self-defense (United Nations Charter art. 41).

Article 51 does not explain in detail armed attack that justify the right to self-defense but the jurisdiction of the International Court of Justice states that armed attack is the main condition that triggers the legal right of self-defense ([Paddeu, 2017](#)). Some experts say that the categories of armed attacks in question include invasions, air attacks, large-scale and large-effect of weapon attacks (Tibori Szabo, 2011), or attacks that destroy the most important elements of state such as the economy and security, infrastructure, and the destruction of government buildings ([Karl, 2013](#)).

In the Nicaragua Case, the Court states that before carrying out self-defense, a state must ascertain whether the armed attack is a response that is a more severe use of force; or whether the armed attack is a response that causes less severe effects (the gravest forms of the use of force from other less grave forms) (Case Concerning Military and Paramilitary Activities in and Against Nicaragua [Nicaragua v. United States of America], 1986; para. 191). In the Oil Platform case, the Court also states that self-defense is to protect interests of essential security or the interests of state security ([International Court of Justice, 2003](#)). In addition, self-defense can only be carried out legally when the threat of an armed attack is imminent, concrete, and objectively-verifiable as strongly evidenced by the attack rather than just an assumption ([European Convention on Human Rights, 2008](#)).

## B. Necessity

Other requirements of self-defense are necessity, proportionality, and immediacy, which are cumulative in nature ([Hamid, 2007](#)). It was mentioned after the appearance of Caroline Case ([Nilsson, 2008](#)), which means that self-defense was known before the emergence of PBB ([Makalew, 2019](#)). The three principles have become one of the customary international laws that must be obeyed by all states carrying out self-defense.

There are three conditions of necessity ([Dinstein, 2017](#)). First, it must be proven that there has been an armed attack from the enemy. The proof must be conclusive and concrete, not mere a conjecture. Second, it must be proven that the use of violence originated from an armed attack carried out by another state against its own state; and it is not a mere accident or mistake that incurs the responsibility of the state. The Court in the Oil platform Case adds that if the attack aims to a specified target in a country, it was not a wrong target due to an identification error. Third, it must be proven that there is no other better alternative than using the use of force for self-defense. In other words, the use of force is the last resort ([Khdir, 2016](#)).

*Self-defense* will be deemed necessary if it is carried out in an instant-and-balanced manner, does not provide other options, no time for deliberations, and not based on careful preparation and planning ([Upeniece, 2018](#)), in other words, the condition means that a state has no other choice to protect its country from a fast attack, besides using weapons again in the form of self-defense ([Brandis, 2018](#)). Thus, the principle of necessity is closely related to the timing of an armed attack and the urgency to respond to the armed attack, or the immediacy ([Szabo, 2011](#)).

### C. Proportionality

In addition to the requirement of necessity, proportionality is also an important legal and practical requirement for the emergence of self-defense right ([Lubel, 2016](#)). The proportionality requirement is a condition that arises during an armed attack and the power of the state implementing self-defense is in the same or balanced condition ([Dinstein, 2017](#)). There is a prohibition against launching an attack that might cause additional loss of civilian lives, civilian injuries, funds, or excessive damage to civilian objects.

Proportionality acts as a barrier to ensure that all forms of use of force in self-defense are commensurate with the damage caused by an armed attack or defending not more than that caused by an armed attack ([Khdar, 2016](#)). Proportionality is also the principle that will ensure that there is no self-defense that legitimizes larger actions such as military aggression in response to an armed attack ([Brandis, 2018](#)). If the action of a self-defense does not meet the requirements of necessity then the action cannot be said to be proportionate either.

### D. Immediacy

The condition of immediacy is the state's readiness to declare self-defense. Readiness that does not take too long between an armed attack and the application of self-defense ([Dinstein, 2017](#)). Immediacy considerations are measured by the time interval between an armed attack and when a state or an ally uses weapons for the purpose of self-defense by demonstrating the unavoidability of the situation ([Alder, 2013](#)).

The doctrine of self-defense prior to the emergence of the UN charter was not very significant because, at the time, war was not an act that was prohibited. Thus, the justification of self-defense was not felt important. It was created only for political purposes ([Halima et al., 2016](#)). The customary law regarding the legitimacy of self-defense does not make a uniformed practice. It is because self-defense that is regulated by the UN and codified in Article 51 of the UN Charter is considered unclear. There has been debate among legal experts regarding the scope of the armed attack referred to in Article 51 of the UN Charter ([Ratner,](#)



[2012](#)). Dissenting opinions regarding the self-defense right and the rapid development of technology have led to the emergence of other self-defense concepts.

Some states implement self-defense with preventive measures before things that endanger the sovereignty come. This principle is known as the anticipatory self-defense principle ([Al-Haj, 2015](#)). The anticipatory principle is not in line with the principle of self-defense contained in Article 51 of the UN Charter because there are different elements, namely in the concept of an armed attack ([Catic, 2020](#)). This has led to a long debate on the interpretation of Article 51 of the UN Charter.

Essentially, *Anticipatory Self-defense* is an act of self-defense that is carried out against an imminent threat of armed attack or will occur in the near future ([Gardham, 2004](#)). The term self-defense actually existed in Caroline Case in 1837 ([Catic, 2020](#)). However, the practice was developed and practiced by other states. For instance, in the Six Days War case between Israel and Arab states, Israel's actions against the Iraqi nuclear reactor was recognized in the Report of the Security Council's High-Level Panel & UN Secretary General in 2004 ([Nilsson, 2008](#)).

In addition to Anticipatory Self-defense, the ambiguity of Article 51 of the UN Charter, especially in the phrase "if an armed attack occurs" gave rise to the term Pre-Emptive Self-defense doctrine, also known as the Bush Doctrine. The doctrine emerged after the September 11, 2001 attack on the World Trade Center (WTC) ([Encyclopedia, n.d.](#)) and to a new paradigm in self-defense, the doctrine of pre-emptive self-defense. Pre-Emptive Self-defense gives legitimacy to state to carry out self-defense preemptively, without any real evidence of an attack. Bush finally included the term *Pre-Emptive Self-defense* into the National Security Strategy on September 20, 2002 ("[The National Security Strategy of the United States of America,](#)" 2006). The use of the Pre-Emptive Self-defense has sparked controversy and is considered an act that violates International Relations because it does not meet the requirements for an imminent threat and does not have to report to the UN Security Council ([Green, 2015](#)).

After the WTC 9/11 attack case, it has led to an expansion of the interpretation of "if armed attack occurred" in Article 51 of the Charter and can be applied to non-state actors regardless of the interests of a country ([Ratner, 2012](#)). This self-defense against non-state actors can also be seen from other cases, for instance Turkey against the Kurdistan Worker's Party (PKK) guerrillas operating in Iraq or the Russian case against Chechen guerrillas operating in Georgia ([Lukito, 2018](#)).

Apart from the term Pre-Emptive Self-defense, there is a term that is almost similar, namely Pre-Emptive Attack. Pre-emptive attack is basically not much different from pre-emptive self-defense. Pre-emptive attack is the use of armed force by state before there is an armed attack or an imminent threat. However, the action is carried out unilaterally and not as a state's self-defense, usually to eliminate factor that has the possibility of harming the state ([Mirza & Sajid, 2019](#)).

This narrow and highly defensive conceptualization of pre-emptive strike is reflected in the definition of the concept of nuclear strategic thinking during the Cold War era, in which the avoidance of a pre-emptive strike by one of the superpowers was one of the highest priority. For example, Williams and Williams describe a “preemptive strike” as “an attack precipitated by an imminent and certain attack”. Betts argues that there are three types of first strike: (1) preemptive; (2) aggressive; and (3) prevention; and that “a preemptive attack is an attack carried out in anticipation of an enemy attack”. Schelling and Halperin define pre-emptive war as “a war that is started” in the hope that an attack is imminent.

Thus, the concept of *Pre-emptive Attack* have a fundamental difference with *Pre-Emptive Self-defense*. In the *Pre-emptive Attack*, the idea of attacking first has the potential to violate international law, especially humanitarian law regulated in the United Nations because it is prone to misuse of a state’s military power. In the law of war, an ultimatum is required before a war occurs ([Makalew, 2019](#)). In the *Pre-Emptive Self-defense*, defense happens because of threat.

In addition to these two terms, the term Self-Preservation also appeared in the UN Charter. Self-Preservation action can be interpreted as a state action to defend unilaterally even though there is no armed attack ([James A, 2009](#)). Self-Preservation occurs when state does not have to wait for an armed attack to be able to defend ([James A, 2009](#)). The purpose of Self Preservation is that state seeks to maximize security and to maintain its position. An example is the actions of the United States in the North Korean denuclearization process 2017-2018. It is in accordance with the United States’ Self Preservation that includes the interests of maximizing security and maintaining position. The United States’ national defense strategy states “... military forces needed to deter war and protect the security of our nations” (Ardiani et al., 2020).

The main problem in the interpretation of Article 51 of the UN Charter lies on the first part of the first sentence, “*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 Nation*”. The interpretation of Article 51 of the UN Charter then formed two groups, the counter-restrictionist interpretation and the Restrictive interpretation ([Chowdhury, 2013](#)).

Supporters of the counter-restrictionist interpretation approach argue that self-defense is recognized as an inherent right in Article 51 of the UN Charter. Therefore, it proves that the UN Charter does not provide any restrictions in customary international law on pre-existing self-defense based on recognition of inherent rights ([Chowdhury, 2013](#)). They consider that it is an interpretation of the first sentence of Article 51 of the UN Charter that reads “*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 Nation*” ([Chowdhury, 2013](#)). In addition, they argue that the

use of violence in the context of self-defense is not only a response in the event of an armed attack but it is a response to an imminent threat ([Chowdhury, 2013](#)). They argued that self-defense is a part of international custom whose existence is recognized in the UN Charter. Previously, under international customary law, anticipatory self-defense was permitted if it was known that there was a forthcoming or imminent threat of armed attack. The UN Charter then codifies rules regarding self-defense from pre-existing international customs but they are not more detailed ([Upeniece, 2018](#)).

Then there are the Restrictive Interpretation supporters. In this view, they argue that the use of force in terms of self-defense in Article 51 of the UN Charter clearly provides a limit only when there is an armed attack. They believe that, in general, an armed attack refers to a condition when an armed force from a state has crossed the border and launches an armed attack. Thus, even though customary international law allows anticipatory self-defense practices, based on the UN Charter, it is clear that it is limited. It can only be carried out to respond to an armed attack from other state ([Catic, 2020](#)).

The Restrictivists argued that although self-defense had been permitted before the adoption of the UN Charter, existing customs were modified by Article 51 of the UN Charter. First, in a balanced normative position between customary international law and international agreements, and according to the *lex posterior* principle, the rules of the UN Charter on the use of force remove pre-existing habits that are not in accordance with the UN Charter ([Upeniece, 2018](#)). Second, each element of interpretation supports the view that the occurrence of an armed attack is a *sine qua non* in Article 51 of the UN Charter ([Upeniece, 2018](#)).

### III. The Legality of Israel's Self-defense in the Israel-Hamas Conflict

#### A. Hamas and Israel conflict

The open conflict between Palestine and Israel mainly involves Hamas. The conflict cannot be separated from the issue of Israel's occupation of the Palestinian territories since 1967. One of the triggers that leads to the conflict is the massive expansions of Jewish settlement in the Palestinian territory. The trigger of the recent Palestinian-Israeli conflict is also the expansion plan. The Israeli plans to expel Palestinians from Sheikh Jarrah in East Jerusalem. Sheikh Jarrah is one of the oldest Arab-Palestinian settlements in Jerusalem ([Dzulfarah, 2021](#)). The Palestinians protested the Israeli plan. Later, the protest is developing into clashes between the Israeli police and the demonstrators in a number of West Bank areas ([Farrell & Lubell, 2021](#)). The tension was increasing after the last Friday prayer of the month of Ramadan at the Al-Aqsa Mosque complex, after Palestinian Muslims clashed with Israeli security forces that injured a number of Palestinians ([Farrell & Lubell, 2021](#)). Hamas has previously warned Israel to



stop the violence at the Al-Aqsa Mosque compound and threatened to launch attacks if they did not stop ([BBC News Indonesia, 2021](#)). Hamas subsequently responded to the Israeli security forces' violent actions with rocket attacks. Finally, both Hamas and Israel were engaged in fights ([TOI Staff, 2021](#)).

The Palestinian-Israeli conflicts that are triggered by the issue of Jewish settlement expansion has happened several times. Such conflicts is very likely to occur again in the future, especially when the Israeli authorities continue to impose their will, even though it violates international law. The spokesperson for the UN Human Rights Office, Rupert Colville, in Geneva on May 8 2021, reaffirmed the UN position on the Israeli occupation of the Palestinian territories, that the Jewish settlement in the Israeli-occupied Palestinian territories violates international law ([TOI Staff, 2021](#)).

Under international law, Israel's occupation of the West Bank and East Jerusalem is illegal. The Security Council Resolution 2334, Geneva Convention IV, as well as the opinion of the International Court of Justice on the Construction of a Wall ([International Court of Justice, 2004; para. 1; Resolution 2334, 2016](#)) confirms it. However, it contradicts the views of Israeli Prime Minister Benjamin Netanyahu. Benyamin Netnyahu does not recognize international law and rejects the international community's pressure on Israel to respect Palestinian rights ([Mogwe & Staberock, 2021](#)). The support of the previous President of the United States, Donald Trump, for Israel through the Deal of Century peace proposal, seems to have influenced Netanyahu. In Trump's peace proposal, which among others was designed by Jared Khusner, Jerusalem is mentioned as the capital of Israel, while the capital of Palestine is on the outskirts of the City of Jerusalem. It was also stated that the areas currently occupied by Palestinians in Gaza and the West Bank will remain Palestinian territories. However, the thousands of Jewish settlements that have been built in the area, including in Jerusalem, will become Israeli territory ([Bowen, 2020](#)).

## **B. Israel's Self-Defense Application to the United Nations**

Israel sent a request to the UN Security Council on the latest acts of terror against Israel by Hamas. As of May 10, 2021, Hamas has launched more than 1,500 rockets from the Gaza Strip targeting Israeli civilian communities and major Israeli metropolitan areas, including Jerusalem, Tel Aviv, Ashkelon and Ashdod ([BBC News, 2021](#)). These attacks resulted in seven fatalities: a 16-year-old girl, her father, and a 6-year-old boy; hundreds of others were also injured. Israel maintains that many Israeli civilians are under relentless attacks by Hamas; and they are forced to remain in shelters. Schools and kindergartens were closed due to the threat, and a rocket hit a school in Ashkelon.

Hamas is one of the largest Islamic militant organizations in Palestine ([BBC News, 2021b](#)). Some states, such as the United States, Canada, Europe, Israel,

Japan, and the United Kingdom, have designated Hamas a terrorist organization ([BBC News, 2021b](#)). Israel considers Hamas responsible for the attacks to Israeli territory on May 10, 2021 ([Ambassador of Israel to the United States and the United Nations, 2021](#)). Israel maintains that Hamas rocket fire constitutes a war crime for targeting Israeli civilians. Israel accuses Hamas of using the Palestinian conflict as a cover for attack. In addition, Israel alleges Hamas of lying about its claim to be a “defender of Jerusalem and the Holy Sites” ([Ambassador of Israel to the United States and the United Nations, 2021; para. 4](#)).

Israel claims that their attack is the fulfillment of the right to self-defense. In the final paragraph of the plea reads as follows ([Ambassador of Israel to the United States and the United Nations, 2021; para. 7](#)).

*“Israel has the right and duty to defend its people and sovereignty and will continue to do so vigorously. I call upon the international community to unequivocally condemn the indiscriminate attacks by terrorist groups in the Gaza Strip against Israeli civilians and population centers and to support Israel’s fundamental right to self-defense.”*

Israel appealed the entire international community to fully support their military actions as self-defense to protect the rights of the state and the civilians.

#### **IV. Palestine’s Answer to Israel’s Appeal**

The Palestinians refutes the Israeli Letter of Application to the United Nations Security Council on May, 2021 (S/2021/463). The Israel’s application surely invokes their “right and duty of Israel to defend its people and sovereignty” and urging the international community to support the “fundamental right to self-defense” ([Ambassador of Israel to the United States and the United Nations, 2021; para. 9](#)). Palestine explains that Israel’s call to the principle of self-defense is illegitimate based on international law ([Palestine at the UN, 2021; para. 2](#)).

The Palestine claim that Israel’s actions are acts of aggression that cannot be justified with reference to the right of self-defense. Israel cannot use the right of self-defense to justify the excessive use of military forces against the besieged Palestinian population in the Gaza Strip ([Palestine at the UN, 2021; para. 4](#)). As reaffirmed by the UN Security Council in Resolution 1860 (2009), the Gaza Strip is an integral part of the occupied Palestinian territories, including East Jerusalem. Israel have occupied the areas since 1967. Israel is bound by relevant provisions, starting with the Geneva Convention and all other provisions of international law, including UN resolutions.

The letter, which was delivered by Israel’s Permanent Representative to the UN Security Council, contains an unacceptable amalgamation of Israel’s obligations with the general principle of self-defense based on Article 51 of the UN Charter. In this regard, the International Court of Justice, in its 2004 Advisory Opinion on the Legal Consequences of

the Construction of a Wall, have clearly explains that the inapplicability and irrelevance of the 'self-defense' argument against the territories under Israeli occupation ([Palestine at the UN, 2021; para. 6](#)).

Israel's actions in May 2021 have resulted in fatalities and serious injuries. The devastation has occurred because Israel deliberately and systematically targeted, damaged, and destructed vital civilian infrastructure, including health facilities, schools, power grids, and desalination plants that provide clean water to 250,000 people, commercial and media towers, and residential buildings, a total of 450 buildings ([UN News, 2021](#)). Previously, Gaza has also been under an Israeli blockade, by air, land and sea for 14 years.

*"Therefore, we reiterate that its invocation of the 'right to self-defense' to justify these systematic violations and crimes it is committing against the Palestinian people must not be appeased. Israel must be demanded to respect its obligations under international law, including humanitarian and human rights law, as has been repeatedly demanded by the Security Council and the General Assembly of innumerable resolutions that not only remain unimplemented but are being breached every single day with utter contempt and with grave repercussions on the lives of the Palestinian people who continue to seriously suffer under this illegal, colonial occupation"*([Palestine at the UN, 2021](#)).

Therefore, Palestine insists that Israel's call for the 'right to self-defense' to justify the violations and crimes committed against the Palestinian people is invalid. Israel must respect its obligations under international law, including humanitarian and human rights law, as has been repeatedly demanded by the Security Council and the General Assembly in many resolutions, which are not only remain unenforced but are decisively violated every day.

## V. Legality of Israeli Claims for Self-Defense

In addition to Israel's self-defense claim, this study is of the position to further review whether the claim is legal based on the international law. Article 51 of the UN Charter refers self-defense with the phrase "if an armed attack occurs". Thus, there must be a forerunner for self-defense. Israel claims self-defense after Hamas launched more than 1,500 rockets to the Israel's occupation. However, the fact is that the rocket attack launched by Hamas on May 10, 2021, was triggered by Israel's attack on the Aqsa Mosque on May 9, 2021. It does not justify armed attacks because Israel carried out attacks on Hamas first.

Article 51 of the UN Charter also requires that the use *self-defense* must be immediately reported to the UN Security Council to determine whether the action constitutes a threat to international peace and security ([Sefriani, 2016](#)). Israel made a report three days after the first attack was carried out. Thus, the self-defense claim of Israel do not comply the principles of necessity, proportionality, immediacy, and imminence based on customary international law.

#### A. Element of *Necessity*

The element requires an evidence of *use of force*, which is conclusive, concrete, and not only a conjecture of an accident or a mistake. It must be a last choice due to no other solution. The Hamas attack on Israeli territory was based on Israel's first attack on the Aqsa Mosque because Israel did not stop the attacks and injured many Palestinians. Consequently, Hamas launched a rocket attack on May 10, 2021 due to Israel's failure to fulfill Hamas' request to stop attacks on the Aqsa Mosque on May 9, 2021.

#### B. Element of *proportionality*

The element requires the proportion between the consequences of *use of force* taken against the impact of the attack received ([Nadira et al., 2021](#)). Israel does not fulfill the element because the impact of the designed counterattack as an act of self-defense was not smaller. It was unequal to the strike received by Israel. Airstrikes by Israel and clashes by Israeli Police at the Aqsa Mosque killed 21 Palestinians and injured more than 300 other Palestinians. Israeli airstrikes killed 232 Palestinians, and injured 1900 others. On the other hand, Hamas' rocket launched into Israeli territory killed only 2 Israelis and injured 70 others.

#### C. Element of *Immediacy*

The element requires no distance between the arrival of an armed attack and self-defense as a response to the initial attack (Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), 1986; para. 237). Unfortunately, the conflict between Israel and Palestine and Hamas has been going on for dozens of years. Thus, the self-defense claim is no longer relevant.

#### D. Element of *Imminence*

The element means that the use of force in the context of self-defense can only be carried out if the impact or threat posed by the armed attack really threatening or endangering ([Nadira et al., 2021](#)). Israel believes that attacks carried out by Hamas affect the continuation of the Israeli occupation of its territory. However, because there was no previous attack from Hamas or threats of an attack against Israel, the element of imminence cannot be proven.

### VI. Conclusion

This study concludes two conclusions as follows.

1. The principle of self-defense is regulated in the UN charter as well as customary international law. It requires the fulfillment of the elements of necessity, proportionality, immediacy, and imminence. There are two important things in self-defense arrangements: an attack (if an armed attack occurs) and immediate

report to the UN Security Council. The phrase *if armed attack occurs* is not clearly regulated. Thus, there are multiple interpretations.

2. Israel's claim of self-defense does not comply the provision of Article 51 of the UN Charter, *if an armed attack occurs*. In addition, Israel also does not respect the principles of self-defense based on international law, such as necessity, proportionality, immediacy, and imminence. Thus, Israel's self-defense claim is invalid. The claim can be considered as an abuse of the self-defense as an inherent right. It can trigger chaos and threaten the stability of international security.

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