The Right to Self-Defense and the Israeli Exceptionalism?

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A thesis submitted to the National University of Science and Technology, Islamabad in partial fulfilment of the requirements for the degree of Master of Science in Peace and Conflict Studies

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National University of Sciences and Technology (NUST) Islamabad (2022)

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Dedication

I dedicate my thesis to my parents, Abu and Ami, my siblings and baby Zahra. Without their support, I would not be where I am today! And to the Palestinian people for standing up against oppression.

Acknowledgements

I would like to begin by expressing my gratitude to Dr Imdad Ullah, my thesis advisor, for his unending support and encouragement. Without Dr Imdad, it would not have been possible to finish this dissertation. I will always be thankful for his help.

I would also like to thank Dr Ahmed Waqas Waheed for guiding me, especially during the first session of coming up with ideas for topics, and for giving me important advice. I would also like to thank Dr Bakare Najimdeen for helping me understand concepts better and giving me insight into my research.

During this dissertation process, every student had to deal with several problems. But I am glad that the Center for International Peace and Stability's faculty and staff were there for everyone.

I also want to thank my day-scholar and hostel friends, who were always there for me and helped me through tough times.

Abstract

Israel has an exceptional position in the Middle East and a prominent role in global politics, notably in the West, as a result of the Jewish experience and the Palestine conflict. This has elevated the Israel-Palestine conflict to a spectacle of the 21st Century with its enduring characteristics and violent engagements. The future existence of a State of Palestine becomes contingent upon or undermined by Israel's engagements with Palestinians, Hamas, the Palestine Liberation Organization, and External Actors such as the United Nations, the USA, and Arab states. It complicates the question of establishing the future State of Palestine following International Law. This research suggests that Israel's exceptionalism, rooted in its cultural and historical evolution, enables it to manipulate/escape International Law. It critically examines Israel's use of the right to self-defence, which conflicts with Palestine's right to self-determination. Through exploratory analysis, this research will analyse Israel's Use of Force and Self-Defence in regions with a majority of Palestinians i.e., Gaza. It will use international law principles, occupation law, and customary law to assess the legality of Israel's Use of Force/ Right to Self Defence.

Keywords: International Law, Right to Self Defence, Exceptionalism, Israel-Palestine Conflict

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List of Abbreviations

ACHR	American Convention on Human Rights
ASIL	American Society of International Law
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
EU	European Union
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IAC	International Armed Conflict and
NIAC	Non-International Armed Conflict
UK	United Kingdom
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
USA	United States of America
US	United States

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Chapter 1: Introduction

This research project investigates and examines the right of self-defence that states claim, with a particular emphasis on Israel's use of that right, in the Palestinian territories. The proposed research would examine how Israel has used its right of self-defence in Gaza because of its exceptional status in the Middle East and around the world. This research will conduct a comprehensive examination of the right to self-defence and contribute by evaluating the legality of Israel's claim to that right. What Israel claims clashes with Palestine's right to self-determination and the sovereignty of Palestinian territories.

The central premise is that Israeli exceptionalism, which has historical and cultural roots, enables Israel to manipulate and circumvent international law. Conceptually, the framework of international law, and principles of the right to self-defence/use of force, are used to understand the force that Israel employs in Palestinian territories. It will then connect it to enforcement, manipulation, and power politics in the case under scrutiny. The period covered is post-2000 to comprehend the contemporary understanding of self-defence for states, which is essentially guaranteed by the United Nations Charter. Thus, the Doctrine of Use of Force and right to self-defence get evaluated through the lens of international law, and the rationale for Israel's use of such doctrines is determined. It then sheds light on the USA's control over the UN, which enables Israel to use unprecedented force in Palestine by delaying the UN's response to such force.

Background

Israel and Palestine issue became overly complex even before the UN's 1947 solution was finalized. There were many cultural, economic, and social factors such as Jewish historical claim of Israel, the spread of Zionism, Jews purchasing lands of Palestine, Muslim and Jews Clash, British mismanagement of Palestinian Mandate, World Wars, Jew Holocaust, UN's mishandling, Arab majority countries in the Middle East and USA's support to Jews migrating to Palestine Mandate (Oluwashakin, 2017). All these factors promoted the creation of a state of Israel in 1948 – Jews took control of most of the land of the Palestine mandate (Shandi, 2010). It drove thousands

of Palestinians to abandon their homes. In 1967, Israel assumed control of the remaining territories. It acquired control of the Gaza Strip and the West Bank, including East Jerusalem. It was devastating for Palestinians, as it left most of them stateless, marginalized, and uprooted.

After international mediation, in 2005, Israel officially confirmed its withdrawal from the Gaza Strip, stating that it was no longer responsible for the welfare of its civilian population (Khen, 2019). But Israel's continuous control of its land, military control of its boundaries, expanded military operations, and control of the sea, and air borders indicated that, despite the disengagement plan, it did not cede control of the Gaza Strip.

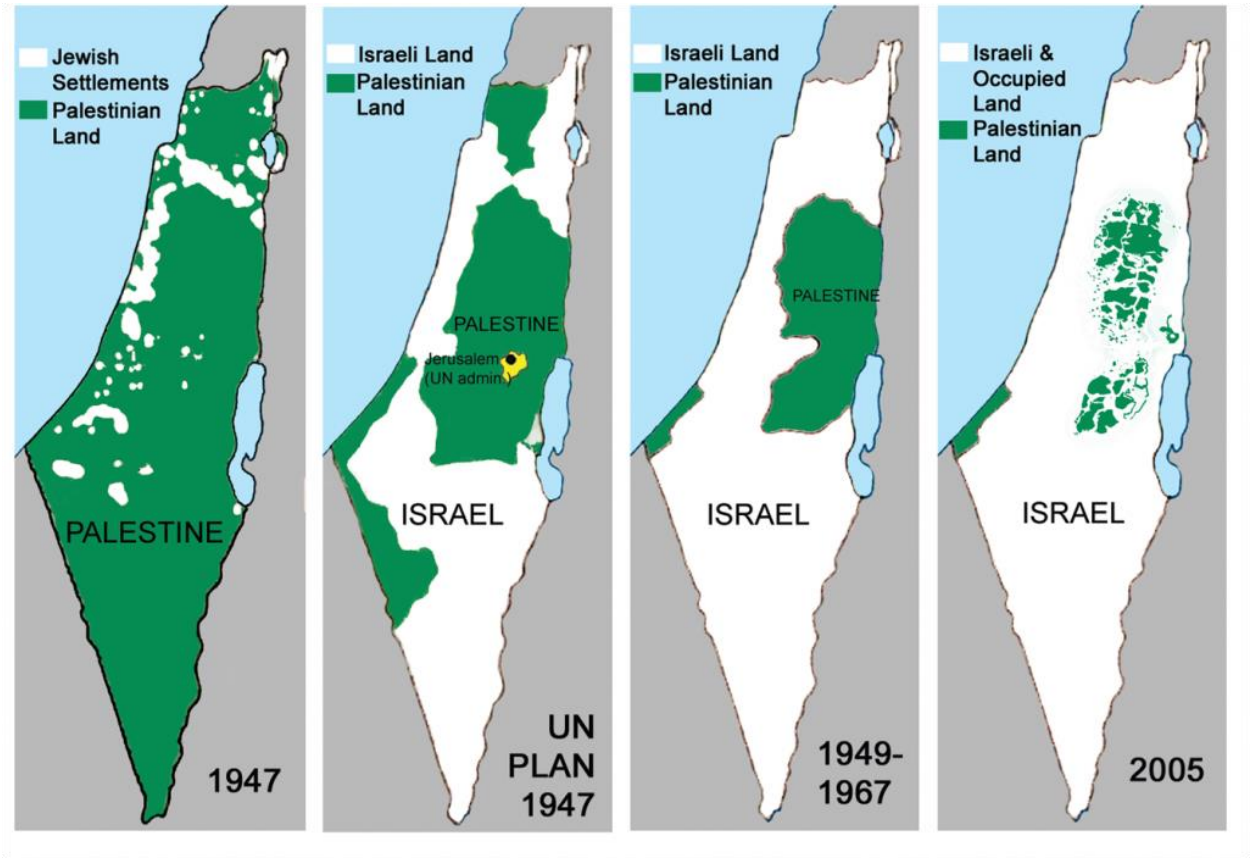

Figure 1 Disappearing Palestine (Source: Washington Post, 2021)

In addition to Hamas's violent takeover of Gaza on June 19, 2007, Israel imposed a strict military embargo on the territory. Israel has designated the region controlled by Hamas as hostile territory and a safe haven for terrorists (Khen, 2019). Israel has stepped up settlement construction in the West Bank and eastern Jerusalem as part of its disengagement strategy. Multiple large-scale

military operations have been carried out in the Gaza Strip by Israeli forces (Khen, 2019). They have resulted in thousands of fatalities, the destruction of tens of thousands of homes, and devastating damage to the infrastructure and financial streams of the Gaza Strip. Article 51 of the United Nations Charter allows for the right of self-defence, which Israel claims gives them the right to conduct a military operation in the Gaza Strip (Annex 1). There has been considerable death and destruction in the West Bank and Gaza as a result of Israel's use of its self-defence right.

Many different organisations throughout the world have tried and failed to broker peace talks between Israel and Palestine, most recently in 2013 and again in 2014. As a result, peace efforts and discussions often fall through. As demonstrations against the recognition of Jerusalem as Israel's capital city became more violent in May 2021, Israel retaliated with airstrikes (The International, 2021). It draws attention to the persisting features of this ongoing struggle. To determine whether or not Israel may use force in the Palestinian territories, this study examines the legal standing of the Gaza Strip in light of Israel's disengagement plan. Therefore, this study analyses Israel's claim to the right of self-defence and use of force from the viewpoint of International Law and argues that all of this has been feasible due of Israeli exceptionalism in the Gaza Strip.

Literature Review

Israeli Exceptionalism and Zionism

The world's recognition and acceptance of Israeli exceptionalism is concerning. The term "exceptionalism" refers to a sense of exclusivity, whether real or perceived, that leads to institutionalised isolation and a desire to avoid comparisons with other circumstances or references to common principles such as international law (Adler, 2012). The concept of exceptionalism has long been studied in American Studies, and it is often associated with Alexis de Tocqueville's 1831 essay Democracy in America (Lipset, 1996; Huntington, 1981; Lepgold and McKeown, 1995). However, exceptionalism is closely related to nationalist ideology in general, since the cohesion of national communities is dependent on recognising their shared qualities as unique from those of other groups (Merom 1999; Anderson 1991).

There has not been much work done on Israeli Exceptionalism. However, there have been several events that point in that direction. In 1967, the Israeli military assaulted a U.S. ship, the U.S.S. Liberty, killing thirty-four of the ship's crew and wounding 171 (Guardian, 2010). Israel was overseen exceptionally (Adler, 2012). Had France or Britain done this, the attack would not have been ignored but perceived as a big diplomatic problem. Secondly, Israel has displaced Palestinians by building "settlements" in territory seized by Palestinians and yet is generally insulated from censure for the same activities that prompted international condemnation of Serbia's conduct in Kosovo (Scheindlin, 2017).

Alam has explained the Zionist movement's basic tenets, demonstrating how it has progressed speedily from its inception towards regional supremacy, while simultaneously drawing the United States, its firm supporter, into the never-ending Middle East wars (Alam, 2009). The Jews have always considered themselves as exceptional people-*"God's chosen people"*-and the Zionists built on this theological idea to make it work as the intellectual basis for the contemporary state of Israel's foundation and justification (Adler, 2012). According to Alam, Zionism is predicated on the concept of exclusionary colonialism. It could only advance by inciting and propagating conflicts (Alam, 2009).

The Zionists' first goal was to take over the territory already occupied by others, displacing them. Choosing Palestine as a homeland for the Zionists was a sure-fire way to incite strife (Dwiastuti, 2021). Zionists put a lot of key reasons up to support their cause (Alam, 2009; Braun, 2013). First, they maintained that the area was not actually owned by the locals but rather was the Jewish homeland by *historical right* and that it had been granted to them by God and then seized by intruders (Dwiastuti, 2021). Protestants who place a high value on the Old Testament have found this argument particularly persuasive. To further appeal to the socialist Left and the capitalist Right, they asserted that they were better than the native Arabs in terms of social and economic advancement. And since the Holocaust, the assertion that Jews have suffered more than any other people and should be compensated has been a crucial issue in the West (Alam, 2009; Braun, 2013. The Zionists claimed to be the ultimate victims. It helped politically legitimise their occupation of Palestine, but it also protected them from criticism for their treatment of Palestinians, as they stressed that any anguish faced by Palestinians could not compare to the infinity of agony endured by Jews during the Holocaust (Dwiastuti, 2021). Finally, the Zionists contended that the Jewish

state serves as a strategic advantage for Western interests in the Middle East for those driven less by moral empathy and more by national self-interest (Alam, 2009; Braun, 2013. Western nations have implicitly acknowledged Israeli exceptionalism, and as a result, it has enabled Israel to disregard international norms and standards. (Alam, 2009)

International and Customary Law

All agree that humanitarian law applies in both war and belligerent occupation. According to the Fourth Hague Convention on the Laws and Customs of War on Land (Hague Regulations) and the Fourth Geneva Convention Concerning the Protection of Civilians in Time of War, Israel is obligated as the occupying force to adhere to all applicable laws and customs, including the Fourth Geneva Convention (Fourth Geneva Convention). But Israel rejects the Fourth Geneva Convention's application to the Occupied Palestinian Territories although it contends that the Hague Regulations are applicable owing to their customary nature. Israel, despite its 1951 ratification of the Geneva Conventions, refuses to acknowledge their de jure application, arguing that because it reclaimed Palestinian territory from foreign occupying forces such as Jordan, Syria, and Egypt in 1967, these lands lack official status under the Geneva Conventions owing to a lack of previous sovereignty and do not thus make up a High Contracting Party to the Conventions (Kling, 2015).

Israel further asserts it should no longer be regarded as an occupying force with responsibilities toward the Palestinian territories and their civilian population because Israel's military presence in the occupied territories has been gradually dwindling (at least in the Gaza Strip), and Palestinians have assumed expanded domestic responsibilities and capabilities (Murphy, 2005). Despite these assertions, Israel has controlled Palestinian areas since 1967. Article 42 of the Hague Regulations states that a 'territory is deemed occupied when it is effectively put under the control of the opposing army' and that the occupation expands 'to the territory where such authority has been established and may be exercised.

The Nuremberg Tribunal in the Hostage Case ruled that 'the test for application of the legal regime of occupation is not whether the occupying force cannot establish effective authority over the area, but whether it can exercise such power.' Israel's relationship with the West Bank and Gaza Strip is still subjected to this test (Nuremberg Tribunal, 1946). Both the UN General Assembly and the

Security Council, and states across the globe, have repeatedly maintained that the Fourth Geneva Convention is de jure applicable to Israel as an occupying force.

Scholars Michaeli and Ben-Naftali point out that the ambiguities in legal discourse allow Israel to express its sovereignty, both within and outside of its legal responsibilities to the international community (Ben-Naftali & Michaeli, 2009). Not that international law is meaningless, or that it exists solely and inexorably to preserve the illusion of Israeli lawfulness. Rather, whatever legibility or legitimacy may be accessible through international law is seized by the Israeli state to depict its unlawful conduct as exceptional, despite and in service of those systems that make up the ambiguous boundaries and limitations of the Israeli law (Adler, 2012). "Israel," they write, "enjoys both the powers of an occupier and a sovereign in Palestinian territories, while the Palestinians enjoy neither the rights of an occupied people nor the rights of citizenship" (Ben-Naftali & Michaeli, 2009). Because of this, Israel can escape the ire of the international world while continuing to pursue policies of "greater Israel" without risking its Jewish majority.

Two principles govern self-defence in international law: the Caroline Paradigm (common international law) and Article 51 of the United Nations Charter. Shah argues that, since the Caroline Paradigm, little has changed in Customary International Law (Shah, 2010). There are three important constraints to using force in self-defence that arise from the Caroline paradigm: proportionality, need, and imminence (Collins & Rogoff, 1990). Proportionality, the state's use of all necessary measures, and that the devastation one is attempting to avoid is impending, are all factors that must be met before an act of self-defence may be justified, according to these guidelines (imminence). The UN Charter states that "nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations." Treaties and convection also explain that the use of force in self-defence can only be enforced when an armed attack was inflicted on their territory (Charlesworth & Chinkin, 2022).

The Israeli State broke all three of the three customary international law standards (immediacy, proportionality, and necessity) at the onset (Sabel, 2022). A massive imbalance in proportionality is causing Palestinians to suffer more than Israelis. As of May 18, 2021, Israeli airstrikes have murdered 65 Palestinian children in Palestine, while 721 Palestinian children have been injured; 2

Israeli children have been killed in Israel, and 5 Israeli children have been injured (Kessler, 2021; The International, 2021). It has forced seventy thousand Palestinians from their homes in the Gaza Strip, while it has forced no Israelis to flee their homes; seventeen hospitals and forty-nine educational facilities have been wrecked, but no Israeli facilities have been ruined (The International, 2021). Around 232 Palestinians have been killed since a ceasefire request was issued, whereas just 12 Israelis have been killed (The International, 2021). Neither Israel nor the United States heeded warnings about the risk. Rather, Israeli claims of being the defender may be challenged based on the Al-Aqsa Mosque disaster and the forcible deportation of Palestinians by the Israeli state. Both of these episodes, which have been probable war crimes by the UN Commission on Human Rights, may have led to an armed conflict between Israel and Hamas, in which Israel can be characterised as an aggressor rather than a protector.

Furthermore, the threat emanating from Palestine and the Hamas network did not appear immediately (Sabel, 2022). Immediately after the Oslo Accords, Israel could control most of West Bank security, which improved considerably Israeli conventional and non-traditional security in the West Bank region. Whereas it also put a block on Gaza Strip to impede the military capacity of Hamas.

Article 51 of the United Nations Charter states that the right to self-defence may only be used within a limited set of parameters, and any extension of those parameters is a bad idea. All sources of international law can verify these facts and legal decisions (Annex I). When states are compelled to comply with an expansive right of self-defence, they provide themselves with a reason to illegally attack other states. Article 2, section 4 of the United Nations Charter, prohibited governments from threatening or using force against any state's territorial integrity or political independence, or in any other manner inconsistent with the purposes of the United Nations (Sabel, 2022). A few exceptions can be made to this rule. This right to self-defence is granted under Article 51 of the U.N. Charter; however, S.C. must be informed immediately of any acts, and all activities must cease as soon as S.C. implements the steps required to maintain international peace and security. The International Court of Justice (I.C.J.) made it plain in the Case Concerning Oil Platforms that a state that uses force in self-defence must prove that an armed attack has occurred (Taft IV, 2004). Under customary international law, a state cannot use force to defend itself when there is no immediate or imminent need to do so. This explanation is consistent with this rule.

USA and Israel

Finally, Israel came to terms with the fact that it would have to do more than simply rely on the Zionist lobby for political support if it wanted the complete support of the US administration for its programs (Dwiastuti, 2021). This means that Israeli activities would be necessary to make Israel appear to be of strategic importance to America. When the Arabs threatened to attack Israel, Israel exploited this as a pretext to ask for more aid from the West. As a way to prove that it was a more trustworthy ally to the West, it distanced Arabs from the West by escalating Arab hostility toward the West. To put it in plain language, Alam argues, "Israel had constructed the possibilities that would make it appear as a strategic asset " (Alam, 2009). Chomsky and his admirers think Israel is an American asset that serves to further US goals in the Middle East (Chomsky, 1999). Alam argues that the Israel lobby has portrayed Israel as America's sole trustworthy ally in the Middle East because of Israel's activities that turn the rest of the East against the United States (Alam, 2009). As a result, the United States has played a crucial role in promoting Israeli exceptionalism. At least 53 UN Security Council resolutions critical of Israel have been vetoed by the United States during the past five decades (Newton, 2021).

Problem Statement

Use of force and the right to self-defence principles have become a growing concern in recent years, as the functionality of International Law is questioned, notably in the situation of Israel and Palestine. Today, countries are only permitted to use force if approved by the UN Security Council or if they are defending themselves against an armed attack, according to the UN Charter. The issue emerges as a result of the second case's ambiguity—when states have to defend themselves against an armed attack. According to the Caroline Incident of 1837, self-defence in the event of an armed attack must first fulfil the three criteria of immediacy, need, and proportionality (Collins & Rogoff, 1990). This implies that states must face a serious imminent threat to respond promptly in self-defence (Webster). In a world where international law's terms are ambiguous, its application becomes easier and instrument, yet assessing it on legal grounds becomes more complicated.

Israeli actions in Gaza are focused on this research. They have been reported to the United Nations Security Council as a case of the principle of self-defence being used. But Gaza's distinctive position in this conflict makes the rationale for Israeli use of force exceedingly contentious and

dubious (Wilde, 2022). So, the question is if the Israeli interventions and use of force in Gaza justifiable. If not, then why is Israel not held accountable? Gaza is not regarded to be part of Israeli territory nor is it a sovereign state. Israel maintains that Gaza is no longer an occupied area, having withdrawn its soldiers in 2005. But many states and institutions like the UN, argue that Israel continues to be an occupying force since it maintains effective authority over this region – that is, over its airspace, seaports, and land boundaries. So, the Israeli interventions in Gaza do not seem to be a legitimate application of the law of self-defence.

Moreover, there is no doubt in the fact that Israel enjoys an exceptional status in the world, being the only proclaimed Jew Country (Adler, 2012). Israel believes in its exceptionalism because of its Jewish exceptionalism which has driven its ideological, historical, and political evolution. It is alarming that the world, especially the USA, treats it exceptionally amid its atrocities (Ben-Naftali & Michaeli, 2009). It makes the issue of Israeli exceptionalism crucial in assessing how Israel has been able to escape or exploit international law.

Variables must be determined to formulate the assumption in this research. Israeli Exceptionalism will be a significant independent variable because it carries a diversity of connotations for Israel, the Middle East, the United States, the United Nations, and the rest of the world, including the concept of 'chosen people/land for people without land,' 'Jewish nationalism,' 'Zionism,' Semitism & Anti-Semitism, and so forth.

Among the dependent variables, Israel's use of force/ right to self-defence is the most salient one. The implications of Israel's actions and legal mechanisms governing the use of force, and the dynamics of Israel Palestine conflict are indicators to gauge these variables. The legal indicators of dependent variables include the extent of violation of the sovereignty of the Palestinian population and breach of lawful mechanisms in the use of force under the U.N. Charter and other conventions and norms part of both contemporary and customary laws. Legal mechanisms, both in contemporary (U.N. Charter, Geneva conventions, etc) and customary law (Caroline criteria), and Israel's posture on Palestine, are intervening variables.

Based on the factors, the following assumption is made, which will lead the proposed study's detailed research: Israeli exceptionalism enables Israel to exploit/undermine international law,

notably the right to self-defence, hence Israel's use of force/right to self-defence in Gaza is questionable.

Research Objectives

The purpose of this research is to gain a better understanding of the Israel-Palestine Conflict through the prism of International Law and to link it to the narrative of exceptionalism. This case is enlightening as it demonstrates how a state's exceptionalism and public acceptance/support of that exceptional status may enable it to bend the self-defence and use of force principles in International Law, to its advantage. The purpose of this research is to examine Israel's right to self-defence in Palestinian majority territory, its legality, and its connection to Israel's exceptionalism. It will examine UN resolutions relating to Israel and Palestine, as well as international law concepts such as the right to self-defence, use of force, occupation law, and customary law. Thus, the exploratory analysis will be conducted to understand Israel's use of force and self-defence in the Gaza Strip. This research can also be easily applied to other states that are bending these International Law principles to their will such as the USA's pre-emptive drone attacks in the guise of self-defence.

This research will be multidisciplinary as it includes peace and conflict themes as well as legal and security studies. It aims to be exploratory as it intends to shed light on the complexities of the Israel-Palestine Conflict, Israel's exceptionalism, Israel's use of force and its claim to the right to self-defence. It aims to contribute to bridging the gap in existing legal literature as it analyses the role of Israel's exceptionalism in its handling of International Law.

Thus, this research will begin by conceptualizing the right to self-defence and the use of force on a global scale while delving into the dynamics of the Israel-Palestine conflict. Second, it will examine Israel's exceptionalism narrative and how it relates to Israel's proclaimed self-defence and use of force principles in Palestinian territories. Third, it will attempt to analyse the role of the United States in empowering Israel enough that Israel manipulates and circumvents International Law on a global scale and across several venues, including the United Nations. Additionally, it attempts to analyse the impact on the credibility of international law with Israel's use of force and right to self-defence. It will contribute to making sense of the emerging status of International Law principles as per the current usage of states like Israel and its consequences for the existing world

order. Lastly, this research strives to comprehend the conflict, its nature, and the claims of Israelis and Palestinians within the context of Israeli exceptionalism but does not offer solutions.

Research Questions

This study aims to answer the following questions:

- Are Israel's claims to the right to self-defence and use of force in Palestinian majority territories legitimate under international law?
- Does Israel's exceptionalism enable it to manipulate/ escape international law? What is the relationship between Israel's exceptionalism and its use of International Law principles?
- What repercussions does the exceptionalism narrative has on the credibility of International Law principles?

Research Significance

The significance of this thesis lies in the fact that it adds to the existing literature regarding the understanding of the right to self-defense generally and in the context of the Israel-Palestine Conflict. Its significance also lies in how it relates Israel's exceptionalism to international law. This research finds the historical and contemporary causes, the effects and beyond that the ways of Israeli Exceptionalism. There are a lot of books and papers on international law and Israel's occupation and use of force in Palestine. But no research before has explored the relationship of Israeli exceptionalism with Israel's practice of International Law, principles such as the right to self-defense. Besides that, it also carries out primary research by analyzing and interpreting original UN documents and International Law principles. It enhances the understanding of international law principles like the right to self-defense and the law of occupation as it tries to assess the legitimacy of their usage by Israel.

Methodology

This research will be qualitatively exploratory as it aims to understand the complexities of the Israel-Palestine conflict post-2000 and assess Israel's legality of the use of force and right to self-defense in international law. Exploratory content analysis, as well as interpretive-explanatory research analysis, will be done to assess the UN decisions concerning Israel and Palestine,

principles of international law, the law of occupation and Customary Law to examine Israel's Use of Force and Self Defense in territories with majority Palestinians. This form of analysis will be of immense value to make objective inferences after analyzing the relevant data. It would aid in the study of implications of the narrative of exceptionalism and dynamics of the Israel-Palestine Conflict in International law and its credibility. Moreover, it will give a perspective on the events of the Israel-Palestine conflict, the utility of laws, their application, and their ramifications in this case.

The second chapter of this research conceptually examines the right to self-defense and use of force in international law as it explores the dynamics of the Israel-Palestine conflict. It will comprehensively examine the principles of international law to assess the legality of Israel's claims and the ramifications of Israel's usage of international law for the contemporary world order. It will then link it with enforcement, manipulation, and power politics. The third chapter will study the evolution of Israel and Palestine conflict historically, socially , religious, and culturally. It will also highlight Israel's usage of international law and the current scenarios. Fourth will contribute to making sense of the emerging status of International Law principles as per the current usage of states like Israel and its consequences for the existing world order. Its fifth chapter will try to assess the research findings which intends to assess the effects of Israel's usage of force and right to self-defense on the credibility of International Law.

The study will involve both primary and secondary sources of research. Primary sources will include the United Nations Charter and its articles dealing with the use of force and Israel-Palestine issues, legal dictionaries; decisions of the ICJ that apply to the use of force and sovereignty issues; Geneva Conventions (1949 and 1973); official treaties between Israel and Palestinian Authority and Caroline incident correspondence. Secondary sources of data include documentary and online resources comprising critical and analytical works of legal and security experts. It will access secondary sources through libraries and online databases like JSTOR, Taylor & Francis, etc.

Chapter 2: Conceptual Framework

International Law

According to traditional principles of international law, a state may declare war (jus ad helium) against another state for any reason (Kling, 2015). The use of force has been increasingly condemned since the turn of the century when states were granted a restricted power "to resort to war" in the Covenant of the League of Nations on April 28, 1919 (Charlesworth & Chinkin, 2022). This was followed by a universal ban of aggressive war "as an instrument of national policy" and "for the settlement of international problems" in the General Treaty for the Renunciation of War (Briand-Kellogg Pact), signed on August 27, 1928 (Charlesworth & Chinkin, 2022). The concept of non-use of force has been reaffirmed and expanded upon in subsequent treaties, declarations, and resolutions, such as the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States respecting the Charter of the United Nations (UNGA Res. 2625 (XXV)), the 1974 Definition of Aggression (UNGA Res. 3314 (XXIX)), the 1975 Helsinki Final Act, and the 1975 Vienna Declaration and Programme of Action (Kling, 2015).

The right to self-defence has deep historical roots in international law. States often resort to war to protect their territory and establish their sovereignty (Catic, 2020; Weightman, 1951 etc.). Politicians and thinkers alike have used the concept of a state's right to self-defence to legitimise the use of military force in self-defence. They argue that, just as people have a right to protect their autonomy and physical safety against tyranny, so do governments have a right to defend their sovereignty and territory from injustice (Catic, 2020; Weightman, 1951). Though the right to self-defence on the part of a state does not always justify going to war (just as the right to self-defence on the part of an individual does not always justify the use of fatal force), defensive war is regarded to be justifiable when the appropriate conditions are satisfied. It is one thing to argue that war itself is justifiable, and another to defend specific military operations inside that conflict.

What occurred in the past to people who did not have states, has to be studied, to understand why they are the most suited entity to provide safety for people. There is little chance of success or even survival when people do not have governments to safeguard them. Consider the struggles of the

Jewish people in Eurasia, the Roma in central Europe, and the Irish Travellers in the United Kingdom and the United States. Throughout most of the Middle Ages and Early Modern Eras, Jews in Eurasia were stigmatised and treated as second-class citizens (Braun, 2013). The Jewish people were the target of genocide in many major historical events, including the Russian pogroms of the nineteenth and twentieth centuries and the Holocaust of World War II (Braun, 2013). The Jewish victims of these attacks and murders were not citizens of the states in question, even though they were living there at the time of the attacks and deaths. Lacking a monopoly on legal physical strength and de facto political authority, the Jewish people were defenceless against state-sanctioned assaults since they were not protected by the state (Sabel, 2022). The existence of states is essential to the safety of people in a multi-state world. It is worth noting that Jewish people themselves realised this; their persecution is what sparked the Zionist movement, which sought to establish a Jewish state (Dwiastuti, 2021).

Customary Law

To argue clearly, the right to self-defence has never been seriously challenged in the court of international law. However, it has had vastly varied implications at various times, not because of any intrinsic shift in the concept through time, but rather because of where it stood in the overarching philosophical framework of the time (Glennon, 2001). Human history can be divided into three distinct eras (Bowett, 2009; Weightman, 1951):

The first, from antiquity to Grotius (who, in this sense, may be termed a natural-law thinker), was marked by the dominance of natural law. There was a clear delineation between the Just War and the Unjust War at this time (Bowett, 2009; Glennon, 2001; Weightman, 1951). It was obvious that defensive wars were in the former group, and that although retaliation and punishment were allowed, they were not considered to be necessary components of self-defence. Rights to self-preservation and self-help tended to overtake the right to self-defence during the second period, the golden age of unfettered state autonomy (Bowett, 2009; Weightman, 1951). The honour given to self-defence was more symbolic than substantive.

Essentially, the end of World War I marked the beginning of the third phase, which saw the return of the concept of righteous and unjust conflicts via the prohibition of specific forms of warfare

(Bowett, 2009). The "inherent" character of the right to self-defence was discussed extensively, yet a resurgence of natural-law thought was not inferred. Instead, the phrase has taken on a new significance as a result of concerted attempts to impose international law via treaties and global constitutions (Bowett, 2009). A critic has pointed out that, "Self-defence as a fully juridical institution demands an established legal order," and that this means that international self-defence is intrinsically linked to a better developed international organisation (Bowett, 2009).

The Middle Ages were the first time religion influenced political and legal systems (Bowett, 2009). St. Thomas Aquinas, of course, provides the established justification for this modern reality in his writings (Bowett, 2009). St. Thomas's four-part system for organising legal doctrine was adopted unquestioningly by mediaeval publicists. The eternal rule was the embodiment of God's omniscience. The term "natural law" refers to the body of the everlasting law that may be deduced by a person using just his or her reason (Bowett, 2009; Weightman, 1951). Similarly, a divine law was based on everlasting law, but it was revealed instead. Finally, the law of nations, although distinct from municipal law, originated from natural law. This is because international law is an application of natural law to international events. Given that both municipal law and international law are manifestations of human law, it is not hard to see why academics looked to municipal law for guidance when speculating about international law. In city law, the right to self-defence was long recognised. The so-called "naturalists" physically incorporated it into international law (Bowett, 2009; Weightman, 1951). Because of this, it is important to find out what they were conveying.

In his research, French academic Giraud examined how self-defence laws are managed in the penal codes of developed countries (Bowett, 2009). The following is a summary of his findings: It is generally accepted throughout legal systems that the right to self-defence is a judicially regulated and interpreted right. The purpose of legitimate self-defence is to prevent more violence by retaliating with force, but it cannot be used to assert a legal claim (realiser un droit) or to seek restitution (Bowett, 2009). Every legal framework recognises the right to self-defence in the face of physical assault, and many acknowledge a similar right to defend one's property against criminal attack (Défense of property against an assault is permitted under French law only if the attacker poses a threat to the owner's personality) (Bowett, 2009). It is only acceptable to oppose violence

if it is unjustified. The individual is not permitted to assert his right to self-defence in the face of public restraint (such as the authority of the police). For the defence to succeed, these conditions must be necessary (Bowett, 2009; Collins & Rogoff, 1990):

- The threat has to be imminent. However, an actual danger to one's life is not required for self-defence to be justified; rather, the assault needs only be imminent.
- When all other options have been exhausted, then and only then should force be used.
- The defence must be proportional to the threat level and end when the threat is no longer there. No harm can be done to the offender if the defence chases after them after they have fled.

Self-defence is an inherent right in all systems, but it is strictly limited since it cannot be used as a means of retribution. Many people point to the 1648 Peace of Westphalia as the moment when the modern nation-state was born (Ferreira-Snyman, 2006). The conflict known as the Thirty Years' War was settled with the signing of the Peace, which had its origins in disputes over the secularisation of church territories in Germany and the legitimacy of the Holy Roman Emperor. The Peace affirmed the validity of the concept of territorial sovereignty. The relevance of international law changed dramatically (Ferreira-Snyman, 2006). This does not mean that the substance of the legislation suddenly changed. The law, like other social institutions, is slow to catch up to modern lifestyles. There was not a huge departure between mediaeval international law and the law of nations in the 17th century.

Since there were no "nations" previous to his time, Grotius might be considered the "father" of international law in this sense (Bowett, 2009; Brett, 2002). From a unique perspective, the conditions that led to the adoption of the Grotian system ultimately killed it (Brett, 2002). The doctrine of sovereignty bolstered the relevance of international law but also undermined its basic underpinnings. Grotius combed over a vast swath of ancient literature to produce his mammoth De jure Belli ac pacts (1625) (Brett, 2002). This was not only out of curiosity in the end. He was open to adopting the natural law posited by Catholic jurists. However, the religious ramifications made him uncomfortable as a Protestant. Thus, he revisited Aristotle and used his concepts of natural law and voluntary law to organise laws (Brett, 2002).

The former consisted of nothing more than the "dictate of right reason," while the latter encompassed things like contractual obligations and the conventions of international life. Grotius hints that voluntary law is the expression and often the embodiment of natural law but makes it clear that its role is always subordinate (Brett, 2002). Therefore, the law of nations is a combination of universal natural law and individual consent. When discussing what constitutes a righteous and unjust war, Grotius evaluates them in light of their conformity with natural law (Brett, 2002). However, he does not stop there. He does this by referencing a wide range of sources, drawing attention to specific historical events, and discussing common practices across developed countries; in short, he backs up his reasoning with real-world examples. When he says, "The first reason of a justified war is a damage not yet inflicted, which menaces either life or property," he is considering self-defence under the jurisdictional law (Brett, 2002). Therefore, "the threat must be immediate and impending," as he points out, "condonation is only in the character of a pardon, of exemption from punishment," and "killing in self-defence is not a privilege" (Brett, 2002). This is a posture that simply cannot be maintained. According to international law, it is acceptable to use force to curb the expansion of a power seen as potentially dangerous.

Thus, the right to self-defence is narrowly interpreted, and this is not a matter of petty legal semantics. If a body were established to deal out punishment for violence, the right of a single state to punish may vanish, yet the right to self-defence would remain unaffected (Brett, 2002). Publicists of the future would eventually combine the first two ideas into a single, sweeping right to self-defence. Since Grotius, three primary streams of international law have emerged (Brett, 2002). Even though the three are not mutually exclusive, the learner will benefit from the categorization since it will help bring some order to an otherwise chaotic situation. In a nutshell, naturalists have sought to establish international law on the firm ground of natural law, positivists have relied purely on treaties and conventions, while Grotians, or eclectics, have attempted to blend aspects from the other two systems (Brett, 2002). Although Catholic academics have kept it passionately alive and it has made an astonishing resurgence in recent years, naturalism in international law has never again had the status and acceptability it enjoyed in the Middle Ages. In a lesser way, the positivists have overshadowed the Grotians (Brett, 2002).

To paraphrase Pufendorf, the best of the naturalists, "An effective argument could be made in favour of the proposition that positivism was more thoroughly attuned to the spirit of the Eighteenth and Nineteenth Centuries" (Olsthoorn, 2019). Just wars have three causes (Olsthoorn, 2019; Bowett, 2009):

- The first is self- and property-defence
- The second is asserting rights when others refuse to grant them.
- The third is recovering damages and ensuring nonrecurrence of attack.

Defence in such instance is essential, expedient, and honourable; but in any instance, it should be observed if it is as required (Olsthoorn, 2019; Bowett 2009). Finally, the honourable defence may be done to aid another state only for the sake of national honour when there is no fear of invasion or prospect for benefit.

By the end of the nineteenth century, the term "sovereignty" had come to imply a country's independence from external authority (Olsthoorn, 2019; Bowett, 2009; Ferreira-Snyman, 2006). As the ultimate judge of its behaviour in the global society, the state sets the standards. A stronger state can hold it accountable or compel it to do what it wants, but the notion of justice is seldom at play. Additionally, states are credited with a broader set of rights that include both self-defence and what have been called "self-preservation" and "self-help" (Bowett, 2009). As a result, Hall asserts, "In the end resort nearly the totality of the obligations of governments are subjugated to the right of self-preservation" (Hall, 2010). Some consider armed protection crucial the state survival (Bowett, 2009). From its inception, it has been used to characterise the Monroe Doctrine, and many British prime ministers have used the concept of "self-defence" to justify Britain's historic stance of non-interference with Belgium" (Collins & Rogoff, 1990).

In the now-famous case of The Caroline, Daniel Webster argued that one must have an "immediate, overpowering threat, leaving no choice of methods and no opportunity for contemplation" before acting in self-defence" (Collins & Rogoff, 1990). It is impossible to finish a conversation on self-defence without bringing up Caroline Doctrine. First, it is crucial to understand what the Caroline event is and why it is so fundamental to discussions about self-defence. The current idea of self-defence may be traced back to the event that occurred in the 1800s, when the notion was still in its

infancy, and which altered the course of world politics forever. The US merchant ship Caroline was carrying goods to Canada in 1837(Alter, 2014; Collins & Rogoff, 1990). The ship was assaulted and sunk by British soldiers in an act of self-defence because it was close to British territory. Following this occurrence, United States State Secretary Sir Webster publicly criticised the British statute and said that he would never again accept self-defence as a valid justification (Collins & Rogoff, 1990).

Daniel Webster was the first to define the parameters and limitations of the right to self-defence, stipulating that it could only be used in the face of immediate and serious danger to one's life or physical safety (Collins & Rogoff, 1990). Named after the doomed steamship on which it was enacted, this revised form of self-defence became known as the "Caroline doctrine"(Bassiouni, 2012). Article 51 of the United Nations Charter was inspired by the Caroline philosophy of legitimate self-defence. It provided a more precise definition of self-defence under international law, specifying that it may be used only if the invader is armed and constitutes a danger to the security of the state.

Influenced by municipal law, this counsel of law was used to condemn a British action rather than defend an American one; it is notable that the American protest was withdrawn shortly thereafter, and that Webster's definition, while often cited, has had relatively negligible impact on political behaviour or legal theory (Collins & Rogoff, 1990).

The entirety of World War I gave urgency to the issue of the legality of war as a tool of national policy. The wars of the 18th and 19th centuries were partial in that they required just a portion of the people, natural resources, manufactured goods, and other components of national wealth from the combatants (Bowett, 2009). Even when they were at war, governments maintained what may be called "civilian" ways of living (Bowett, 2009). The justification for war was not a pressing concern. Warfare, however, was no longer something to be shrugged off or consigned to the moralists to be explained in terms of the wrath of God, the depravity of social man, or the sentient efforts of nature to rid the globe of the excess population; World War I shook the foundations of the international community to their very core (Bowett, 2009).

The doctrine lists certain scenarios in which the use of force is prohibited because it would be in breach of its terms (Charlesworth & Chinkin, 2022). This effectively brings back the idea of a "just" war and an "unjust" one. Because it is confined to a select few circumstances, the Geneva Covenant also effectively acknowledges that war remains an acceptable weapon of national strategy. The members of the League of Nations after WW1 pledged not to go to war with one another (Article 12) until three months after a judgement had been handed down, and not to go to war with one another at all (Article 13) against League members complying with the decision. Although the right to self-defence was not explicitly addressed, it was made plain that the purpose of these articles was to restrict the scope of self-defence and to set boundaries on what might be lawfully attempted in the name of self-preservation (Charlesworth & Chinkin, 2022).

In 1945, with the creation of the United Nations Charter, the concept of an "inherent right" to self-defence first appeared in an international treaty or global constitution (Bowett, 2009). The Charter centralised enforcement authority, in contrast to previous international agreements. Some kind of plan had to be devised for the time between an assault and the Security Council being able to command the use of force if the Council was the only body with the authority to do so lawfully.

The noteworthy aspect of Article 51 is its similarity to the idea of self-defence in municipal law (Bowett, 2009). The Security Council stands for order and law; a person may defend himself only until a higher authority takes control. Nonetheless, there are key distinctions between the two (Charlesworth & Chinkin, 2022). Curiously, Article 51 imposes more limitations on this freedom than local law does in at least one important regard (Charlesworth & Chinkin, 2022). Until "an armed assault happens," the UN member is not allowed to protect himself, while under local law, an attack is sufficient if it is simply impending (Charlesworth & Chinkin, 2022).

Article 51 of the United Nations Charter is often cited as an authority on the legality of self-defence in the wake of the world's two major wars and the need to prevent another (Charlesworth & Chinkin, 2022). When properly interpreted, Article 51 of the Charter allows for a clear understanding of the legal use of self-defence and its misuse. Individual and collective self-defence against armed attacks is permitted under Article 51(Charlesworth & Chinkin, 2022). However, governments may only use this prerogative if the Security Council has not already intervened to find a solution. While the framework established by Article 51 has greatly advanced the idea of

self-defence in international law, it has not yet been effective in clarifying ambiguities about this issue. The global political landscape is complicated by factors like Article 51, which established the Security Council as the primary body responsible for mediating conflicts between nations, but which can only really use its powers in awfully specific circumstances (Keck, & Sikkink, 2014).

Principles of the Right to Self Defence

The United Nations Charter, which was established in 1945, was the first international treaty or worldwide constitution to recognise the "inherent right" to self-defence (Bowett, 2009). Nothing in this Charter will be construed as precluding the inherent right of individual or collective self-defence in the event of an armed assault on a United Nations member, until the Security Council has adopted the measures required to preserve international peace and security. Any action taken in the exercise of this right of self-defence must be promptly reported to the Security Council, but this does not limit the Council's capacity to take such actions as it considers necessary to preserve international peace and security in conformity with the Charter (Bowett, 2009).

Aggression is not acceptable behaviour in the eyes of any well-educated young person. But self-defence is more than simply "good;" it is one of those abstract, unquestionable ideas like justice, truth, or honour. Every phrase of this kind has the characteristic that its meaning changes depending on the culture in which it is employed.

Self-defence is the first and foremost norm of every armed conflict. This provision provides the exclusive basis for the use of force during armed conflict, as stated in Article 51 of the Charter (Charlesworth & Chinkin, 2022). At no point should any country be forced to tolerate aggression against its territory, and any nation that feels threatened has the right to use force to do so. In this context, it is immaterial whether the attack is carried out collectively by a state, by an organisation like Hamas, or by a group of volunteers (Khen, 2019). The notion of a community of independent states that recognise one another depends on the bedrock of the right to self-defence. There has been a lot of discussion recently over the place of human dignity in the law of war, specifically whether or not it is allowed to hurt the dignity of the enemy's people or military.

Whatever the case may be, the battle with Gaza is an international rather than an internal one, since Israel's highest court has ruled on many occasions that Gaza is not a part of Israel (Khen, 2019).

Israeli "law, jurisdiction, and administration" have not been established in the Palestinian territories of Gaza and the West Bank, and Israel has not annexed these areas (as was done with east Jerusalem in 1967 and the Golan Heights in 1981) (Khen 2019). Gaza was part of the Ottoman Empire's sphere of influence from 1517 until 1917, following when it became part of the British Mandate of Palestine. After British soldiers withdrew from Gaza in 1948, Egypt claimed the land, but it never legally annexed it. In 1967, Israel occupied Gaza without formally annexing it (Khen, 2019).

Israel won the war in June 1967 and subsequently occupied the Gaza Strip, the West Bank, and East Jerusalem. In September 2005, Israel implemented its unilateral disengagement plan from the Gaza Strip, bringing the territory directly under the control of its military (Khen, 2019). Israel has said that it will be departing the Gaza Strip once this plan is put into action, and that it will no longer be responsible for the protection of the Palestinian population. The disengagement plan seems to have failed to fulfil its declared purpose of freeing Palestinian detainees since Israel continues to maintain full control of the territory and airspace surrounding the Gaza Strip (Khen, 2019). Israel has maintained a strict military blockade on the Gaza Strip since Hamas took control of the area on June 19, 2007 (Khen, 2019).

Since the disengagement plan was implemented, Israel has increased its settlement activity in the West Bank, especially in East Jerusalem. Israel has increased its aggression and attacks on the Gaza Strip and its people, killing scores of civilians in public places and at the houses of several resistance movement leaders (Wilde, 2022). To add insult to injury, Israel has repeatedly launched large-scale military offensives in the Gaza Strip, most notably Operation Cast Lead, which have led to the deaths of thousands of people, the destruction of tens of thousands of homes, schools, hospitals, places of worship, and police stations, and the complete breakdown of infrastructure and economy in the area. Israel has justified its use of force in the Gaza Strip by invoking Article 51 of the United Nations Charter, which upholds the right of nations to self-defence (including Operation Cast Lead) (Wilde, 2022).

With Israel's withdrawal from Gaza in 2005, Hamas was able to take complete control of the area two years later (Wilde, 2022). Some have referred to the Gaza Strip as a sui generis enclave, while others have described it as a self-governing entity with some but not all of the powers of a state

(Wilde, 2022, Kling 2015 etc.). Both the 1993 Israeli-Palestinian Declaration of Principles on Interim Self-Government Arrangements and the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip called for negotiations on a permanent status for Gaza and the West Bank, but these efforts have so far failed.

A Palestinian state coexisting with Israel is one of the goals of the road plan from 2003(Khen, 2019). There is much debate as to whether or not Gaza is still under military occupation. As many academics have pointed out, Israel maintains control over the skies above Gaza and the waterways adjacent to the region, which makes it almost impossible for anybody else to claim occupation of the territory (Khen, 2019).

Despite the execution of the disengagement plan, Israel continues to exert real authority over the Gaza Strip due to its large-scale military operations that retain effective control of all land, sea, and air border crossings and airspace of the Gaza Strip (Khen, 2019). Israel controls the flow of goods and people into and out of Gaza by giving exit and entry permits to residents, foreign diplomats, and humanitarian aid convoys (Khen, 2019). It is an administrative body responsible for deciding whether or not petitions for family reunion filed by Gazans would be approved. That's why, in international law, Israel is still considered an occupying power.

Occupation Law

The Hague Regulations of 1907 (Regarding the Laws and Customs of War on Land), Article 42 states that a territory is considered occupied when it is put under the authority of the hostile army (Shandi, 2010). The occupation extends only to the territory where such authority has been established and may be exercised.

Israel controls the entry and exit of persons and goods into and out of Gaza, giving exit and entry permits to Palestinians, foreign diplomats, and aid convoys (Shandi, 2010). As an administrative authority, it determines whether or not family reunification applications filed by residents of Gaza will be approved. This fact alone establishes Israel's legitimacy as an occupying force under international law (Shandi, 2010).

Meanwhile, the Advisory Opinion of the International Court of Justice on the Separation Wall case establishes that the Gaza Strip is an occupied territory (Shandi, 2010). In the Gaza Strip, the West Bank, and East Jerusalem, Israel is still deemed an "Occupying Power," according to a recent judgement by the International Court of Justice (Shandi, 2010). While the Advisory Opinion is not legally enforceable, the fact that it contradicts Israeli assertions that the Palestinian areas are "not occupied, but contested regions" is noteworthy (Shandi, 2010). This not only confirms the findings of the International Committee of the Red Cross and the United Nations Commission on Human Rights, but it also recalls the wording of Resolution 1860 of the Security Council from 2009 (Shandi, 2010). Legally, Israel's argument that it no longer governs the Gaza Strip because of the Disengagement Plan is baseless (Shandi, 2010). Even now, Israel clearly maintains "effective power" over the Gaza Strip (Shandi, 2010).

Use of Force and Its Legality

Since great powers want to maximise their power and influence, they are likely to adopt military methods against any kind and form of rising danger, making the ever-evolving nature of threats a key security worry for nations in the international system. For a state to "mandate aggression" (realists) and adopt a security policy of unilateralism to survive, survival is a primary consideration (neo-conservatism). Under the current legal security framework, a state may resort to the use of force unilaterally, but only if its very existence is threatened (Charlesworth & Chinkin, 2022; Wilde, 2022).

Since “possession of weapons of mass destruction” (WMDs) by governments or individuals poses a serious threat to global security, especially the security of great power," a state's right to use pre-emptive self-defence (attack) in this situation can be rationalised “based on state's action as a rational actor for maximising its security in a neo-realist perspective” and “based on military might as a tool for unilateral action to achieve certain goals or interests” (Charlesworth & Chinkin, 2022).

As a result of the Caroline Incident, "pre-emptive self-defence" may only be used in the following limited situations (Collins & Rogoff, 1990):

1. The danger is nearby
2. There is a reasonable relationship between the size of the target and the danger it poses

3. proof of a credible danger; action must be available
4. an assault must be proportionate to the threat, and military action must be the final choice in all circumstances

These are the four conditions for a justifiable pre-emptive strike in self-defence (Charlesworth & Chinkin, 2022).

Article 2, paragraph 4 of the United Nations Charter states, "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 any other manner inconsistent with the Purposes of the United Nations" (UN Charter, 1945).

Only in the following situations is the use of force authorised by the Charter:

- Security Council enforcement measures (Articles 39, 41, and 42 (Annex I)).
- the right to individual or collective self-defence (Article 51(Annex I)).
- regional agreements or regional agencies authorised by the Security Council
- and under its leadership to enforce such agreements or agreements (Article 53).
- and exceptional circumstances under the provisions of Chapter VII.

Only in the event of Security Council enforcement measures and the exercise of the right to individual or collective self-defence is the use of force authorised under the Charter. Articles 39, 51, and 53 are particularly relevant to understanding the prohibition on the use of force (Charlesworth & Chinkin, 2022). Concepts like "any danger to the peace," "breach of peace," "armed assault," and "aggressive policy" are used in their provisions without more elaboration.

Concerning paragraph 4 of Article 2, the wording of the provision has led to two distinct meanings of the word "force" (Ronzitti, 2006). This idea encompasses not only armed assault but all uses of force. The seventh paragraph of the Preamble is used to support the view that Article 2, paragraph 4 encompasses only, military force, as does Article 44 on the use of "force" by the Security Council and "contingents of armed forces" of member states. Article 2, paragraph 4's prohibition on the use of force against the territorial integrity or political independence, or in any other manner

inconsistent with the purposes of the United Nations, can be interpreted to include political and economic force, concerning the evolution of international law (Ronzitti, 2006; UN Charter, 1945).

The Charter states in Article I, paragraph2, that "the development of friendly relations among nations" is a goal of the United Nations. Article 55 of the Charter discusses international economic and social cooperation, and the Preamble urges states "to practise tolerance and live together in peace with one another as good neighbours" (Ronzitti, 2006). Chapter VII of the Charter upholds a broad definition of force (Ronzitti, 2006). Articles 42–47 address the use of military force expressly; Articles 41–50 address the use of economic and political force; and Articles 39–49 do not specify the sort of force to be applied (UN Charter, 1945).

In opposition to the general idea of "force," proponents point to the Preamble's stated aim of "saving succeeding generations from the scourge of war" and the need to guarantee "that armed force shall not be used, save in the common interest" (Ronzitti, 2006). They also point to Article 51, which limits the right to self-defence to the case of an armed attack. Even if this conclusion is somewhat supported by the background materials for the development of the United Nations Charter, they do not allow the inference that Article 2, paragraph 4, should apply solely to military force. Several treaties and resolutions of the United Nations embody the idea of force in its broadest sense (Murphy, 2005). The use of armed force is, without a question, the most hazardous kind of force (Ronzitti, 2006).

In the Nicaragua case, the International Court of Justice addressed the tension between the United Nations Charter's ban on the use of force and customary international law (Highet,1987). The United States contended that "the relevant articles of the United Nations Charter subsume and supervene related principles of customary and general international law," and that "the standards of general and customary law and those of the United Nations Charter are in reality identical" (Ronzitti, 2006; Highet, 1987). Because of its similarity to "multilateral treaty law which it may not apply," the Court concluded that it could not adopt this kind of customary law (Highet,1987). However, the Court flatly rejected this effort to undermine the independent application of customary rules. It noted that the Charter's scope was limited and that other instruments were needed to address all aspects of the use of force in international affairs.

Particularly, it highlighted Article 51 of the Charter, which states that "nothing in the present Charter shall impede the inherent right of self-defence in the case of an armed assault," as a reference to1 pre-existing customary law (Murphy, 2005; Highet,1987). The Court found it customary and also used many additional grounds, including that the Charter failed to include the principle of proportionality, a longstanding norm of customary international law, and that the Charter failed to define an "armed assault," a phrase that is not part of treaty law (Highet,1987). It was highlighted by the Court that "customary international law continued to exist alongside the treaty law" and that "the two sources of law, therefore, did not overlap perfectly, and the rules did not have the same substance" (Highet,1987). Since Article 51 does not "subsume and supervene" customary international law, the Court did not agree with the claim that it did (Highet,1987).

Considering the development of international law since the adoption of the Charter, in particular the 1970 Declaration on Friendly Relations among States, the 1987 Declaration on Enhancing the Effectiveness of the Principle of Non-Use of Force, and other "affirmative" decisions, the prohibition of the use and threat of force may be characterised as the obligation of every state (Ronzitti, 2006; Highet,1987):

- not to use direct or indirect use of force against any other state.
- not to resort to arson or other forms of mass destruction.
- not to use nuclear weapons; and
- not to initiate, incite, or participate in civil conflicts or terrorist activity in another state.
- not to permit on its territory the organisation of activities designed for the preparation of these crimes, if they entail the threat or use of force; and
- not to engage in war propaganda

Exceptionalism

Members of a group form a shared identity based on their views of the similarities between themselves and other members of the group, and their judgments of the differences between themselves and members of other groups. Images of identity and difference, whether they be innate, imagined, or learned, serve as the cement that holds humans together in their shared social imagination. Furthermore, they provide the groundwork for a feeling of exceptionality that is

crucial to the development of religious, ethnic, and national communities and frequently continues to benefit these groups long after their initial establishment (Ben-Naftali & Michaeli, 2009).

Carl Schmitt's idea of "the exception" is where the theoretical lens of "exceptionalism" comes from (Schmitt, 1988). He argued that "the exception" is just as important to sovereignty as much as the showing of sovereignty. Schmitt's "The Exception" from 1988 is the basis for the theory of exceptionalism, which is based on three theoretical lenses: the political theology of sovereignty, decisionism, and ideational (Schmitt, 1988).

The first step is a meta-analytic transformation of religious concepts like "sovereignty" or "God's infinite power" into the secular meaning "the unlimited authority of the state/sovereign to act beyond control, above others, and to decide on the exception" (Schmitt, 1988). For Schmitt, "the exception in jurisprudence is like the miracle in religion," and thus leads to the concept of decisionism (Schmitt, 1988, p. 36). Schmitt contends that the exception is distinct from anarchy and chaos because legal order nonetheless predominates, even if it is not the typical form. Last but not least, it is conceptual since there can be no exceptions to a standard until there is a norm to begin with (Hjorth, 2014).

In the seventeenth century, the British took pleasure in their reputation as the most logical and scientific people on earth, and modern-day Americans continue to feel that they are guided by a unique idealism ideology. A shared feeling of exceptionality seems to benefit groups, the contemporary nation-state included (Adler, 2012). When combined with authority, a belief in one's specialness may lead to hostility and even violence. Communities at the national level that rise to prominence frequently persuade themselves that their success is evidence that they are culturally or otherwise distinctive and are thus entitled or even destined to become agents of global acculturation (Adler, 2012). They also found a justification for a hedonistic celebration of empire expansion and exploitation in their feeling of exceptionality. When compared to that of favourites, the underdogs' feeling of superiority is unique. It often involves a mix of inferiority and superiority complexes. Besides the obvious uniqueness, there is also a profound exposure to danger. A country may benefit from its diversity at times, but it also carries the risk of being overburdened.

Many in Israeli culture and leadership feel this way because they believe the Jewish and Israeli people, their history, and the security issues they confront are unique (Adler, 2012). There are cultural, historical, and geopolitical underpinnings for these exceptionalism views. Biblical ideas about the Jewish people as divinely "chosen" to provide the cultural basis of exceptionalism. The majority of Israelis hold such views because they have been taught to do so and because they adhere to the core tenants of Judaism. There are a variety of ways in which religious convictions and the concept of uniqueness are linked to one another. Non-observant Likud party lawmaker and ex-high ranking GSS officer Gideon Ezra attribute his faith in God to the fact that "only God could have created a people so remarkable as the Jewish people (Al-Jazeera, 2010). This notion of Jewish exceptionality in culture is sometimes represented in more secular ways.

The present state of Israel's predecessor, David Ben-Gurion, often emphasised the need for Jews to stand out. When asked about Israel's nonconformist character, Ben Gurion said, "Perhaps we are the only 'non-conformist' individuals in the world... Others argue this is because humans are defective and hence do not conform to the norms of humanity. I believe [this is] because the overall pattern is wrong, and we do neither accept it nor make any adjustments to it. The idea that the Jews will become a "light unto the nations" or a beacon to the globe is part of the Jewish feeling of inherent uniqueness that stems from ideas like the chosen people (Oren et al., 2015). Again, Ben-Gurion's statements show how ancient religious ideas were absorbed into Israel's contemporary secular-nationalist ideology. When speaking to Israeli youngsters, Ben-Gurion expertly fused the ideas of moral exceptionalism and intrinsic national security exceptionalism, saying, "You know that we were always a little people, constantly surrounded by large countries with which we engaged in a fight, political as well as spiritual; that we produced things that they did not accept" (Oren et al., 2015).

References to previous national disasters and the allegedly harsh experience of living in the Diaspora at the mercy of Gentiles and anti-Semitism provide the historical roots of the Israeli idea of exceptionalism (Al Jazeera, 2010). Such basic elements foster an overwhelming feeling of isolation and abandonment. The cultural basis of Israeli exceptionalism gives meaning to historical events and also shapes them. As a result, the Jewish people's preconceived fate to "live in

loneliness" provides further support for the idea that isolation is intrinsic to the Jewish dilemma, and the historical experience of isolation is seen as confirmation of this idea (Oren et al., 2015).

Several additional events in recent history also contributed to this feeling, with the following being the most significant: The indifference of the world to the Nazi drive to exterminate the Jews, no change in the British White Paper's strategy of opposing Jewish immigration to Palestine beginning in May of 1939, not even after the Holocaust (Adler, 2012). The 1948 Israeli War; the "defection" of the French and British from the 1956 Sinai Campaign coalition in response to American and Soviet pressure; and the lessons learned from both conflicts (Khen, 2019). The terrifying events leading up to the Six Day War in 1967, such as the withdrawal of United Nations monitors from the border between Egypt and Israel and the inability of the United States to break the Egyptian blockade of Israeli southern sea lanes (Khen, 2019). After the Six Day War, several African and communist nations severed ties with Israel and de Gaulle imposed an immediate weapons embargo on the Jewish state. Support for the Arab boycott from governments and businesses. The UN votes condemning and chiding Israel, such as the one in 1975 that labelled Zionism a racist ideology (Dwiastuti, 2021). Both cultural and historical roots of exceptionalism contribute to the strategic underpinnings of the Israeli notion of exceptionalism.

Power Politics

The balance of power is crucial in international relations because it affects the status quo and the dynamic nature of the relationships between nations. To maintain their independence, all states want the authority to veto any attempts to subjugate them (Mearsheimer, 2001). However, power may be perceived in a variety of ways, from the perspective of resources to that of diverse state capabilities, all of which lead to distinctive conceptualizations (Walt, 2002). According to the classical realist perspective, nations' insatiable hunger for power stems from people's inherent wickedness and competitive drive to further their interests (Morgenthau, 1967). As a result, realists' factor in the fight for power in the field of international relations under the impersonal nature of the individuals who eventually conduct power politics in the name of their respective states (Morgenthau, 1967).

Thus, nations engage in power politics, where they compete with one another for their self-interests, seeking either to dominate one another or to keep one another in check so that they may live together in the international system (Morgenthau, 1967). State relations in the context of competition for resources and assets are best understood through the lens of "power politics." Maintaining safety is another driving force behind the pursuit of power (Carr, 1964). Neo-classical realism is a theoretical offshoot of classical realism that contends the external environment of the world order is as important as internal considerations in shaping the conduct of states in their pursuit of power and competition (Mearsheimer, 2001).

The realist definition of the international system is based on the concept of self-help, but is entirely state-centric; hence, "the structure of the international system is anarchic," in the sense that "there is no central authority or global government" (Mearsheimer, 2001) In the view of the realists, a "state is the sole player in the international political system, and its survival is the main purpose of national interest". This argument is used to justify the Israeli attacks on Palestine, as Israel considers it all its territory. As a result, they support the use of force alone, with the overarching goal being the preservation (security) of the state and the protection of its interests (Charlesworth & Chinkin, 2022). Such action is also backed by offensive and defensive neorealism, both of which "focus on national interest to obtain maximum strength and security."

Military might permit a strong state to "use its authority notably the military force, to influence others, for accomplishing its aims," according to neoconservatives. A powerful military like the Israeli Armed forces may help a country accomplish its long-term objectives and advance its national interests more quickly and effectively than diplomacy alone (Catic, 2020). That is to say, "neo-conservatives prefer unilateralism over multilateralism," and a state may act unilaterally by depending only on its military strength.

Chapter 3: Evolution of Israel-Palestine Conflict

Historical Factors

According to the Zionist ideology, the movement's founders arrived in Palestine in the late 19th century to restore their traditional homeland (Dwiastuti, 2021, Adler, 2012). This land that they have been promised. Jews settled in a new area after purchasing land there. Palestinian Arabs reacted violently, perhaps because of their intrinsic anti-Semitism. However, the case was not that simple. A social and economic divide between Arabs and Jews in Palestine was a primary source of tension in beginning (Adler, 2012). On the other hand, Zionists insist they had no choice but to resort to self-defence, and that, in some form or another, this is their claim even today.

The truth is that the Zionist movement has always planned for Israel to be as Jewish as possible, which meant planning for the full expulsion of the Indigenous Arab people (Dwiastuti, 2021). The Jewish National Fund owned all of the lands it purchased, and it was forbidden to sell or lease any of it to Arabs (a situation which continues to the present). As the Arab people learned more about the Zionists' plans, they vehemently opposed additional Jewish immigration and property purchasing, seeing it as a direct threat to the survival of Arab society in Palestine (Dwiastuti, 2021; Kelemen, 2018; Adler, 2012). All Zionist ambitions would have been doomed without the British military's support due to this hostility (Kelemen, 2018).

Since the seventh century A.D., the vast majority of Palestine's inhabitants have spoken Arabic (over 1200 years). For the most part, Zionism was founded on the false, imperialist belief that the rights of the indigenous population did not matter (Kelemen, 2018). There was no anti-Semitism behind the Arabs' rejection of Zionism; rather, it was motivated by a rational concern for the future of their people. Given the Jewish history of persecution, the Zionists' desire to create a homeland where Jews could control their destiny is justified (Kelemen, 2018). Since the late 1930s, when the threat to European Jewry became clear, the Zionists' efforts have been fuelled by genuine despair. And the Arabs' behaviour was no better (Kelemen, 2018). Already in 1919, 700,000 Palestinians called the mythical "country without people for a people without land" home. To put it simply, here is where the issue originates (Kelemen, 2018).

The Fall of the Ottoman Empire

Starting in the 14th century, the Ottoman Turks would expand their empire to include most of what is now the Middle East (Adler, 2012). When the Ottoman Empire expanded rapidly militarily in the early sixteenth century, Palestine became a part of it, and it remained under Ottoman authority for over four hundred years, from 1516 until 1917 (Adler, 2012; Alam 2009). Given its lack of strategic relevance, Palestine was ignored by the Ottomans during this period as they focused on maintaining their empire in Europe. The Ottoman Empire collapsed after the end of World War I, and it was formally dissolved in 1922(Kelemen, 2018; Adler, 2012, Alam, 2009).

Following the Ottomans' decision to side with the Central Powers in World War I in 1914, the Allies, led by the United Kingdom and France, devised a plan to divide the Middle East in line with their own strategic objectives and national preferences (Kelemen, 2018; Adler, 2012, Alam, 2009). After World War I, the French and British governments came to an agreement, known as the Sykes-Picot agreement, outlining their respective zones of influence and authority in Western Asia. After much debate, the British decided to administer Palestine (Kelemen, 2018; Adler, 2012, Alam, 2009).

Balfour Declaration

From August 29-31, 1897, Basel, Switzerland was the site of the first ever Zionist Congress (Kelemen, 2018; Adler, 2012, Alam, 2009). The Basel Program and the Zionist Organization were both established during the meeting. To "establish for the Jewish people a home in Palestine guaranteed by public law," the ultimate objective of the Zionist movement, many preliminary actions were outlined in the programme (Kelemen, 2018; Adler, 2012, Alam, 2009). Until the start of World War I, the Zionist organisation was able to keep up its support-gathering efforts (Kelemen, 2018; Adler, 2012, Alam, 2009).

The British government's backing for the Zionist cause increased dramatically by the year's conclusion (Kelemen, 2018; Adler, 2012, Alam, 2009). To aid the cause, they needed the backing of powerful Zionists, and they got it (Kelemen, 2018; Adler, 2012, Alam, 2009). The British saw this backing as crucial for two reasons: first, it helped them in their efforts to persuade the United States to join the war by appealing to the pressure of American Jews; second, it helped them win

over Russian Jews, who were "influential among Russian revolutionaries," at a time when they were worried that Russia would withdraw from the conflict. This led to the famous Balfour Declaration, published by British Foreign Secretary Arthur Balfour in 1917, which called for the "creation of a Jewish homeland in Palestine" (Kelemen, 2018; Adler, 2012, Alam, 2009). When Britain initially promised Jewish people a national home in Palestine, it was in the form of the Balfour Declaration. With one of the world's leading nations poised to assume control of Palestine, the Zionists had a major ally in their quest to establish a Jewish state in the region (Kelemen, 2018; Adler, 2012, Alam, 2009). The Balfour proclamation called for creating "a national home for the Jewish people," while also committing to protect the civil and religious freedoms of the region's Arab majority (Kelemen, 2018; Adler, 2012, Alam, 2009).

But Britain pushed the Arabs to fight against the Ottomans and help the British during World War One, promising the Arabs freedom in exchange. High Commissioner for Egypt Henry McMahon and Sharif Hussein of Mecca reached this understanding. Correspondence between McMahon and Hussein reveals that McMahon assured Hussein of "the freedom of the Arab nations and their populations and [British] willingness to accept an Arab caliphate upon its declaration" (Kelemen, 2018; Adler, 2012, Alam, 2009). Since these agreements directly opposed pledges made to Jews in the Balfour Declaration and to the British and the French in the Sykes-Picot agreement, they were not honoured (Kelemen, 2018; Adler, 2012, Alam, 2009).

The British Mandate in Palestine

By the beginning of the 20th century, Palestine had become a flashpoint for territorial disputes and political rivalries (Kelemen, 2018; Adler, 2012, Alam, 2009). Several European nations were increasing their influence in the countries bordering the eastern Mediterranean, especially Palestine, as the Ottoman Empire declined. British high commissioner in Egypt Sir Henry McMahon covertly wrote with Hashemite patriarch and Ottoman ruler of Mecca and Medina Husayn ibn 'Ali between 1915 and 1916, while World War I was in full swing (Kelemen, 2018; Adler, 2012, Alam, 2009). Since the Ottoman Empire was on the side of Germany in the war against Britain and France, McMahon successfully persuaded Husayn to spearhead an Arab uprising against it. McMahon stated that the British government would back the creation of an independent Arab state under Hashemite authority in the Arab areas of the Ottoman Empire,

including Palestine, provided the Arabs helped Britain win the war (Kelemen, 2018; Adler, 2012, Alam, 2009). Faysal, Husayn's son, and T. spearheaded the Arab uprising. During World War I, the British Empire gained control over a large swath of the Middle East thanks to the efforts of E. Lawrence (Lawrence of Arabia) (Kelemen, 2018; Adler, 2012).

The Husayn-McMahon agreements, however, were at odds with other pledges Britain made throughout the war. British foreign minister Lord Arthur Balfour made a public declaration (the Balfour Declaration) in 1917 declaring British support for the creation of "a Jewish national home in Palestine." A third promise, the Sykes-Picot Agreement, was a secret deal between Britain and France to divide the Arab provinces of the Ottoman Empire and control the region (Kelemen, 2018; Adler, 2012).

After the war, Britain and France successfully argued for the extension of their quasi-colonial authority over former Ottoman lands to the nascent League of Nations (the forerunner to the United Nations) (Kelemen, 2018; Adler, 2012). The rule by Britain and France was called a "mandate" by the locals. Lebanon, a mostly Christian country, was separated from Syria when France secured a mandate there (Kelemen, 2018; Adler, 2012). The current states of Israel, the West Bank, and Gaza, as well as Jordan, were all part of a larger mandate granted to Britain that included Iraq.

This latter province was split in half by the British in 1921, with Faysal's brother 'Abdallah taking control of the Emirate of Transjordan and the rest becoming the Palestine Mandate. For the first time in modern times, Palestine was able to establish itself as a single political entity (Kelemen, 2018; Adler, 2012).

The United Nations Partition Plan

It was after WWII that fighting broke out between Zionist militias and the British army, as well as between Arabs and Jews over the future of Palestine (Sabel, 2022). The British government agreed to hand over control of Palestine to the newly formed United Nations. However, the British administration hoped that the United Nations would be unable to reach a satisfactory settlement and that Palestine would be returned to the United Kingdom as a UN trusteeship (Sabel, 2022; Adler, 2012). To better understand the situation in Palestine, the UN deployed an investigative team comprised of members from several nations. Even if the committee's members were split on

the best way to achieve a political settlement, the vast majority believed that the nation should be partitioned to meet the requirements of both Jewish and Palestinian Arab communities. By year's end in 1946, the population of Mandate Palestine had swelled to 1,269,000 Arabs and 608,000 Jews (Sabel, 2022; Adler 2012). Israel's Jewish population owned around 20% of Palestine's farmland after purchasing 7% of the country's total land area (Sabel, 2022).

The United Nations General Assembly passed a resolution on November 29, 1947, dividing Palestine into a Jewish state and an Arab state (Sabel, 2022; Adler 2012). With a few Jewish communities in the projected Arab state and hundreds of thousands of Palestinian Arabs in the proposed Jewish state, the United Nations partition plan ensured that each state would have a majority of its people. Based on projections of future Jewish immigration, the area set aside for the Jewish state would be somewhat bigger than that allotted to the Arab state (56% against 43% of Palestine, excluding Jerusalem) (Sabel, 2022; Adler 2012). The United Nations partition plan called for the Jerusalem and Bethlehem region to be turned into a neutral international zone (Sabel, 2022; Adler 2012).

The Zionist leadership officially supported the UN partition proposal, but they secretly sought to increase the size of the Jewish state's allocated territory (Sabel, 2022; Adler 2012; Alam, 2009). The Arab Palestinians and the neighbouring Arab governments all voted against the UN proposal, seeing it as a betrayal on the part of the international community. Some others complained that Jews got too much land in the UN's proposed plan (Sabel, 2022; Adler 2012; Alam, 2009). The majority of Arabs saw the proposed Jewish state as a settler colony and said that the topic of Jewish statehood was only on the world table because the British had allowed massive Zionist settlement in Palestine against the interests of the Arab majority (Sabel, 2022; Adler 2012; Alam, 2009).

Days after the UN partition plan was adopted, fighting broke out between Arabs and Jews living in Palestine. The Arab armies were inadequately led, equipped, and educated. Zionist military forces, in contrast, were well-organized, trained, and equipped despite being less in numbers (Sabel, 2022; Adler 2012; Alam, 2009). By the beginning of April 1948, Zionist troops had taken control of most of the land designated for the Jewish state under the UN plan and had started to advance, annexing territory beyond the division boundaries in some areas (Sabel, 2022; Adler 2012; Alam, 2009).

Following the British withdrawal from Palestine on May 15, 1948, Zionist leaders declared the establishment of the modern nation of Israel. Egypt, Syria, Jordan, and Iraq, all Arab neighbours, attacked Israel in 1948, saying they were fighting Zionists to "rescue" Palestine (Sabel, 2022; Adler 2012; Alam, 2009). Although they declared war, Lebanon did not invade. In reality, the Arab rulers were just as uninterested in the establishment of a Palestinian state as the Zionists were (Sabel, 2022; Adler 2012; Alam, 2009). There was a lot of uncertainty about the result of the first Arab Israeli conflict during its most intensive months of May and June in 1948. However, the Israeli military strengthened its advantage and gained more territory outside the limits the UN partition plan had outlined for the Jewish state after receiving weaponry supplies from Czechoslovakia (Sabel, 2022; Adler 2012).

As a result of the armistice accords, the conflict between Israel and the Arab nations ended in 1949. Formerly known as Palestine, the nation is now split into three sections, each of which has its own government (Sabel, 2022; Adler 2012). The armistice lines of 1949 (the "Green Line") served as their separation. More than 77% of the landmass was inside the borders of the State of Israel. During their occupation, Jordan seized control of central Palestinian hills and East Jerusalem (the West Bank). Egypt has occupied the Gaza Strip's coastal plain (the Gaza Strip) (Sabel, 2022; Adler 2012). There was never a Palestinian Arab state as envisioned by the UN partition plan.

Over 700,000 Palestinians were forced to flee their homes as a result of the conflict in Palestine/Israel between 1947 and 1949 (Sabel, 2022; Adler 2012). Both the actual number of migrants and who is to blame for their flight are points of intense debate. Many Palestinians assert that the mass expulsion of their people was part of a Zionist plot to cleanse the land of its non-Jewish residents (Sabel, 2022; Adler 2012). According to the official Israeli line, the refugees left after being ordered to do so by Arab political and military authorities. According to one Israeli military intelligence document, at least 75% of the refugees had departed by June 1948 as a result of armed activities by Zionist militias, psychological campaigns meant to scare Arabs into leaving, and hundreds of direct expulsions (Sabel, 2022; Adler 2012, Alam, 2009). Since the greatest single deportation of the conflict (50,000 from Lydda and Ramle) happened in mid-July, the percentage of expulsions is likely greater (Sabel, 2022; Adler 2012). Following instructions from Arab officials, only approximately 5 percent of the population evacuated. The mass exodus of Arabs has

been observed in various incidents of massacres. Approximately 125 Arab villagers living in the hamlet of Dayr Yasin, located near Jerusalem, were brutally murdered by right-wing Zionist militias in what has become the most notorious massacre in recent history (Sabel, 2022; Adler 2012).

During the Six-Day War

In 1967, tensions between the Arab world and Israel were at an all-time high. There were repeated threats of war on both sides. While Israel advocated for unimpeded trade channels, Egypt took measures to prevent the passage of any shipments carrying Israeli products (Sabel, 2022; Adler 2012). After fresh threats and mobilisation of Egyptian troops, Israel conducted an airstrike that entirely destroyed the Egyptian air force. The Six-Day War was a resounding victory for Israel due in large part to the destructive aerial bombardment they unleashed and the inadequate communication between Jordan and Egypt (Sabel, 2022; Adler 2012. Israeli state territory grew steadily throughout time, including all of Jerusalem and annexing the remaining Palestinian territories in Gaza and the West Bank (Sabel, 2022; Adler 2012). Moreover, they were successful enough to seize control of territory in Egypt and Jordan. After the dust settled from this battle, Israel gained full authority over territory that had previously been under Palestinian rule.

U.S. President Jimmy Carter brokered the signing of the Camp David Accords between Israeli Prime Minister Menachem Begin and Egyptian President Anwar Sadat after Israel had taken over large swaths of Egyptian land in the Six Day War (Sabel, 2022; Adler 2012). Israel and Egypt made up with the signing of the peace deal known as the Camp David Accords, which led to the return of land formerly held by Israel to Egypt. Egypt, however, did not welcome this peace accord with open arms (Sabel, 2022; Adler 2012). In the end, it was this contentious decision that led to the death of Anwar Sadat at the hands of ultranationalists.

Some of Israel's Arab neighbours softened their stance after an initial outcry. Also hoping to escape the violent fighting that was causing so much disturbance in the area, they finally made peace with the newly created government.

In the 1960s, Yasser Arafat established the Palestinian Liberation Organization intending to destroy Israel and restore Muslim rule in the region. Many innocent people lost their lives as a

direct consequence of PLO's continuing guerrilla warfare and terrorist operations against Israel (Sabel, 2022; Adler 2012). Yasser Arafat consented to a partition of the two nations, with some territory going to Palestine and some to Israel while directing assaults on Israel (Sabel, 2022; Adler 2012). To many, this represented a loss for the PLO, which had been widely seen as a failure due to its inability to liberate Palestinian residents from their marginalisation. Instead, it paved the way for the growth of more extreme organisations like Hamas.

Peace Treaty of Oslo and its Aftermath

Israel and the PLO signed the Oslo Accords in 1993 and 1995, respectively (Sabel, 2022; Adler 2012). Lands were partitioned between Area A and Area B, and the Palestinian Authority was established in the West Bank as a result of these accords; this was celebrated as a positive step toward peace and Palestinian sovereignty (Sabel, 2022; Adler 2012). Despite the seemingly benign character of the accords, they were met with strong criticism from both Palestinians and Israelis. This opened the door for Hamas, an extreme Palestinian group publicly advocating for Israel's destruction, to launch a bombing campaign on multiple strategic locations, resulting in the deaths of several people. Yet the Israeli PM was widely reviled at home, with many citizens labelling him an anti-Semite and a Nazi (Sabel, 2022; Adler 2012). There was a simmering animosity that would one day explode, leading to the murder of Prime Minister Yitzhak Rabin (Sabel, 2022; Adler 2012).

Israeli settlers poured into Palestinian-majority regions of the West Bank and Gaza Strip as the conflict between Israel and Palestine escalated. More were drawn to the West Bank because of the religious significance of the area, while still others came for inexpensive, subsidised accommodation (Sabel, 2022; Adler 2012). However, most were relocating to Palestinian-majority neighbourhoods to feel like they were reclaiming Israeli territory.

This mass exodus of people, now known as Israeli Settlers, had devastating effects on the world at large. These settlers were responsible for driving thousands of Palestinians from their property because they moved into Palestinian territory (Sabel, 2022; Adler 2012). The presence of Israelis further divided the Palestinian community, making collectivization and long-term independence more challenging, which was the worst result of the relocation (Sabel, 2022; Adler 2012). Around

a million settlers now live on these territories, even though their presence there is unlawful under international law (Sabel, 2022). Tensions among Palestinians reach a breaking point, ushering in the intifadas.

Amid this vacuum, the Palestinians launched an uprising known as the Intifada, leading to violent clashes between the two sides (Sabel, 2022). Over 5,000 individuals, on both sides, had been slain by the conclusion of the second Intifada (Sabel, 2022). Israelis were becoming more pessimistic about the Palestinians, believing that peace talks would be fruitless since the Palestinians would never seek peace in the area. The fact that Hamas is a known terrorist organisation further contributed to this mistrust. Instead of working toward a peaceful resolution, Israel has built concrete barriers and established military zones to contain the Palestinians (Sabel, 2022). As a result of wanting more, peaceful negotiations were rejected.

Israel tightened its monitoring of the Gaza Strip in response to Hamas' insurgency, which has had a devastating effect on the lives of Palestinian citizens there (Sabel, 2022). Israeli forces responded swiftly to any terrorist or insurgent activity, with tragic results for innocent bystanders. Such is the state of the battle even now. People have been desensitised to the misery of millions of Palestinian citizens locked in a struggle fuelled by radical, intolerant organisations and the new settlers who continue to suffocate and displace them from their land as a result of the decades-long war (Sabel, 2022). Although various groups have attempted to mediate peace talks between the two countries, the situation remains precarious. And if nothing is done to resolve the Israel-Palestine dispute, a third Intifada is possible.

Social Factors

Many Arabs saw British and French rule as an affront to their right to self-determination, and they were frustrated that Britain had broken its pledge to establish an independent Arab state (Sabel, 2022). The promise of British help for the establishment of a Jewish national home only added complexity to the situation in Palestine (Keleman, 2018). Increasing opposition from Palestinian farmers, journalists, and politicians met the swelling flood of European Jewish immigration, land purchases, and settlement in Palestine. They were worried that a Jewish state would be founded in Palestine as a direct result of the inflow of Jews. Palestinian Arabs were against the British

Mandate because it prevented them from achieving their goal of self-rule, and they were against the huge immigration of Jews because they felt it undermined their status in the nation (Sabel, 2022).

When Arabs and Jews clashed in 1920 and 1921, nearly the same number of people were murdered on both sides (Sabel, 2022). Since the Jewish National Fund bought up significant swaths of property in the 1920s from absentee Arab property owners, the Arabs who had previously lived there were forced to relocate (Sabel, 2022). These relocations exacerbated existing tensions and sparked deadly clashes between Jewish settlers and Arab peasant tenants.

It was in 1928 when tensions between Jews and Muslims in Jerusalem over the Western Wall (also known as the Wailing Wall) first erupted (Sabel, 2022). The Wall is the holiest landmark in Judaism since it is all that remains of the second Jewish Temple. The huge plaza above the Wall is called the Temple Mount, and it is the site of the two ancient Israelite temples (though no archaeological evidence has been found for the First Temple). Muslims also hold this site in high regard; they refer to it as the Noble Sanctuary (Sabel, 2022). It is the site of the al-Aqsa Mosque and the Dome of the Rock, which Muslims believe marks the point from whence Muhammad rode his winged horse al-Buraq into heaven and anchored it to the Western Wall (also called the Wall of the Horse in Muslim legend) (Sabel, 2022).

At a demonstration and flag-raising ceremony at the Western Wall on August 15, 1929, members of the Betar Jewish youth movement (a pre-state organisation of the Revisionist Zionists) took part (Sabel, 2022). The Arabs retaliated by assaulting Jews in Jerusalem, Hebron, and Safed out of fear for the safety of the Noble Sanctuary. In Hebron, 64 Jews were killed. Muslims in the area rescued a large number of people (Sabel, 2022). When the last of the Jews in Hebron moved to Jerusalem, the Jewish community there died out. There were 133 Jewish deaths and 115 Arab deaths during a week of communal rioting (Sabel, 2022).

After Hitler came to power in Germany in 1933, a large influx of European Jews immigrated to Palestine, where they bought up more property and established new towns. The Arab Insurrection of 1936–1939 was the high point of Palestinian resistance to British rule and Zionist colonisation (Sabel, 2022, Alam, 2009). Britain repressed the revolt with the support of Zionist militias and the

participation of neighbouring Arab rulers (Sabel, 2022). After putting down the Arab uprising, the British rethought their approach to government in an attempt to keep the peace in a volatile region. They declared independence in 10 years, guaranteeing a majority-Arab Palestinian state, and restricted Jewish immigration and property purchases in their 1939 White Paper (a declaration of government policy) (Sabel, 2022). Given the dire position in which Jews in Europe found themselves, the Zionists saw the White Paper as a breach of the Balfour Declaration and especially grievous conduct. The British-Zionist partnership dissolved with the release of the 1939 White Paper (Sabel, 2022, Keleman, 2018). However, the Palestinians were politically unorganised throughout the pivotal decade that determined Palestine's fate due to the loss of the Arab revolution and the exile of the Palestinian political leadership.

Palestinians

Christians, Muslims, and Druze are all included in the modern definition of "Palestinians," which describes the people whose ancestry can be traced back to the land of Palestine as it was established by the British mandate (Kagan, 2009). Approximately 5.6 million Palestinians make their home in this region, which includes the State of Israel as well as the West Bank and Gaza, all of which were conquered and occupied by Israel in 1967 (Kagan, 2009). Israel's current population includes about 1.4 million Palestinian citizens who were born after the 1949 truce and who now make up nearly 20% of the nation (The International, 2021). Two and a half million people reside in the West Bank (including around 200,000 residents of East Jerusalem) and one and a half million people inhabit the Gaza Strip (The International, 2021). It is estimated that another 5.6 million Palestinians are dispersed around the world outside of the territory they consider to be their national homeland (The International, 2021).

Around 2.7% of all Palestinians living outside of Palestine call Jordan home. Several thousand of them are still living in the refugee camps that were set up in 1949, while the rest have relocated to urban areas (Sabel, 2022). Large numbers of Palestinians may also be found in Lebanon and Syria, with many of them still living in refugee camps (Sabel, 2022). A large number of Palestinians have relocated to Saudi Arabia and other Arab Gulf nations in search of employment, while others have gone elsewhere in the Middle East or even further afield (Sabel, 2022). Palestinians in Jordan are the only Arab citizens of a country in the region. In most Arab countries, Palestinians do not have

the same legal protections as locals. It is particularly bad for Palestinian refugees in Lebanon since many Lebanese hold them responsible for the civil war that ravaged their nation from 1975 to 1991 and wants them relocated abroad (Sabel, 2022). Certain segments of Christian Lebanon are eager to get rid of the mostly Muslim Palestinians because they see them as a danger to the country's fragile religious harmony. Since the beginning of the uprising against the government in 2011, Palestinians in Syria have been caught in the crossfire (Sabel, 2022).

Many Palestinians are still relegated to squalid conditions in refugee camps or urban ghettos, while others have found success in the marketplace. Today, Palestinians have the highest percentage of college graduates per capita in the whole Arab world (Sabel, 2022). Their time spent in exile bolstered a high degree of politicisation across all segments of the Palestinian people; nevertheless, this trend waned in the new millennium as political factionalism grew and the likelihood of a Palestinian state diminished.

Palestinian Citizens of Israel

About 150,000 Palestinians were still living in what would become Israel in 1948 (Sabel, 2022). They received Israeli citizenship and the opportunity to vote. Since Israel sees itself as the state of the Jewish people and a Jewish state, Palestinians have always been and continue to be treated as second-class citizens in many ways (Sabel, 2022). There was a military regime in place that severely limited their freedom of movement and other liberties until 1966 (to work, speech, association and so on) (Sabel, 2022). The Histadrut, Israel's labour organisation, did not admit Arabs as full members until 1965. To the tune of 40%, their property was taken by the state and put to use in development projects that mostly or solely benefitted Jews (Sabel, 2022). All Israeli administrations have discriminated against Israel's Arab citizens by providing much less funding for areas like education, healthcare, public works, municipal governance, and economic growth.

Because of Israel's official stance that any display of Palestinian or Arab national emotion is subversive, Palestinian Arab inhabitants of Israel have had an uphill battle in maintaining their cultural and political identity (Sabel, 2022). They were cut off from the rest of the Arab world and were considered traitors by their fellow Arabs because they decided to live in Israel before 1967. Some Palestinians have become increasingly conscious of their Palestinianness since 1967(Sabel,

2022). The March 30th, 1976, mass strike against the ongoing theft of Arab lands was one significant manifestation of this identity (Bernard, 2018). Six Arab people were slain by Israeli security forces on that day (The International, 2021). As a result, it has become a national holiday for all Palestinians.

Commemorating the nakba, the forced migration of more than half of Arab Palestine's inhabitants in 1948, is now prohibited in Israel (Sabel, 2022). The Central Elections Committee in Israel has prohibited many Arab people whose opinions it considered offensive from running for parliamentary elections based on blatantly political grounds. While the Supreme Court eventually reversed the lower courts' rulings in every instance, the precedent they set led to a rise in anti-Arab and anti-democratic attitudes among Jewish Israelis around the year 2000 (Sabel, 2022).

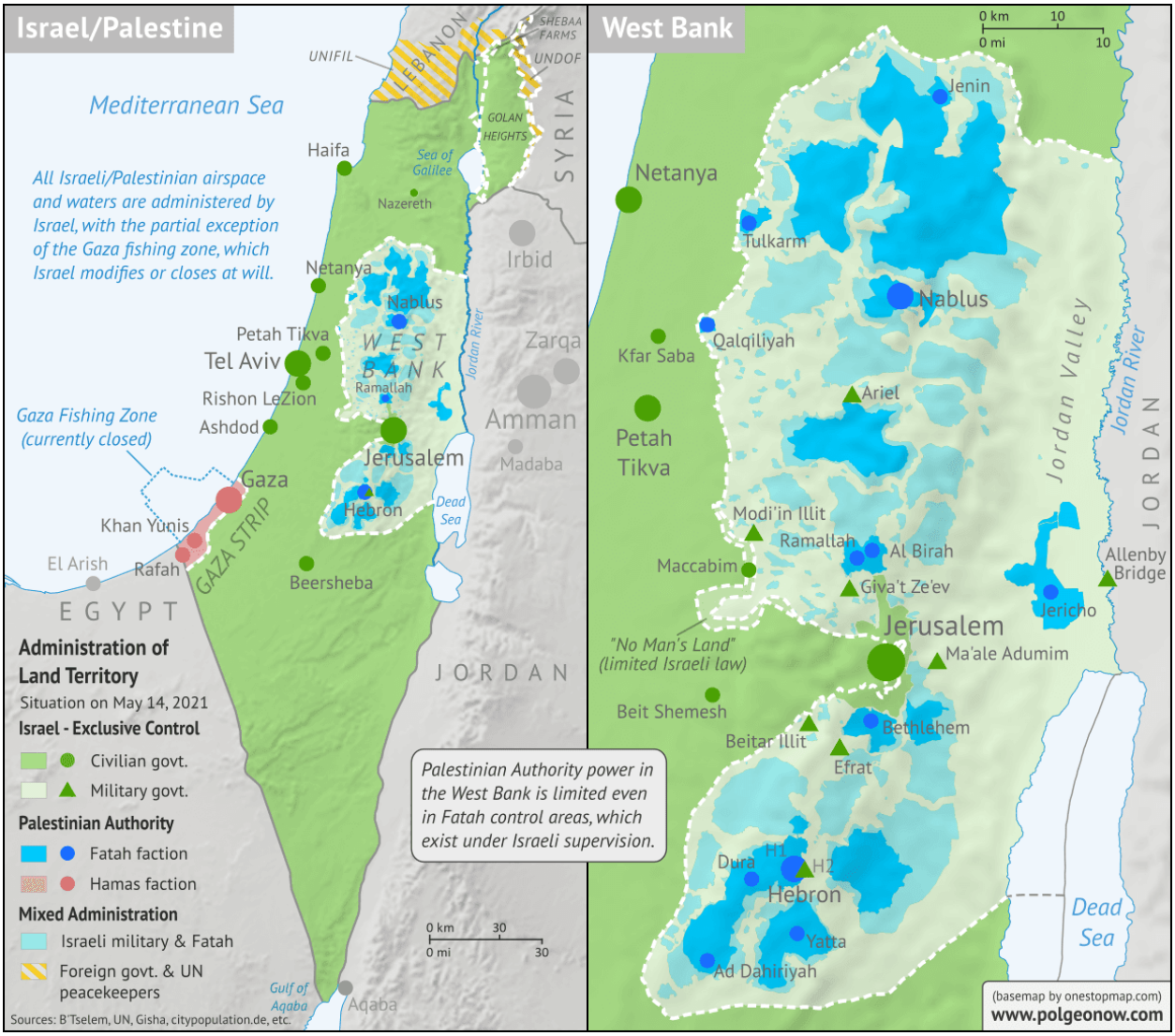

Figure 2 Israel Palestine After 2021 Attacks (Map by Evan Centanni, 2021)

Israel's occupation of the West Bank in May 2021 provoked armed conflict between the Israeli military and Palestinian resistance organisations based in the Gaza Strip (Kessler, 2021; International, 2021). The war lasted for a total of 11 days (International, 2021). Over 250 Palestinians, including sixty-six children, were murdered as a result of Israel's unrelenting bombing of Gaza (International, 2021). Israel occupied the West Bank and al-Quds in 1967, and since then has constructed over 230 settlements, where over 600,000 Israelis now make their home (Kessler, 2021; International, 2021). According to international law, all Israeli settlements must be dismantled immediately

Religious and Cultural Factors

The Zionist Movement and the Persecution of Jews in Europe

For Jews, waiting for the coming of the Messiah is central. The anticipation of the Messiah, as defined by Klausner, is "the Prophetic hope for the end of this era, in which there will be political freedom, moral perfection, and earthly joy for the nation of Israel in its territory, and also for the whole human race" (Bernard, 2018). This foresight was crucial to the development of Zionism in the nineteenth and twentieth centuries. 'Jewish belief maintains that God has given His chosen people sovereignty over the Land of Israel, Eretz Yisrael so that they acquire a region in which to create their commonwealth based on His law" (Bernard, 2018). Israel was sacred to Jews as the country of their ancestors and as the place where the Messiah would one day rule. The growth of this belief during the nineteenth century led many Jews to believe that settling in what is now Israel was necessary to make way for the Messiah's promised territory. Theodore Herzl coined the term "Zionism" in the latter half of the nineteenth century as a "movement to construct a national home for the Jews in Palestine" (Bernard, 2018).

Nationalism and Judaism have a strong historical connection. The idea of a Jewish state, Israel, originated in the biblical promise of a homeland in what is now known as Israel (Bernard, 2018). It was envisioned as a place where the Chosen People, the Jews, might establish a government based on God's principles and serve as an example to the rest of the world. Zionism originated from the idea that the return of Eretz Yisrael was a necessary condition for the advent of the Messiah (Bernard, 2018). In this way, Jewish national identity was forged in part via religious principles. In the 19th century, Jewish nationalism quickly swept over Europe. The Jews were seen as a separate country because of their religion, Judaism, which placed them apart from the rest of Christian Europe. This increased the need of establishing Israel in Palestine as a safe haven for Jews.

Creating a Jewish state was driven not only by nationalist and religious ideals but also by a need for safety (Bernard, 2018). By the turn of the nineteenth century, anti-Semitism and the persecution of Jews had spread across Europe. According to Herwitt, "throughout their existence in Eastern Europe, Jews were restricted to tiny, isolated settlements and subjected to numerous assaults or

pogroms” (Bernard, 2018). Jews fled Russia after realising that life there was unpleasant, with many hoping to one day return to their ancestral homeland of Palestine. The safety of the Jewish people is one of many reasons why they should have their own country. The growing Zionist movement encouraged Jewish emigration to Palestine as a refuge from the mounting violence and persecution they faced throughout Europe (Keleman, 2018). Jews "began to contemplate returning to their holy birthplace of Israel and establishing, obtaining political authority, and founding a Jewish state" because of anti-Semitism in Europe (Keleman, 2018).

Zionism gave the Jewish people a nationalist and religious impulse, which ultimately led to the establishment of the state of Israel (Bernard, 2018). The Jews' desire for a homeland became more pressing as time went on, for both the satisfaction of their religious aspirations and the establishment of their physical safety. Having "no place inside it for the Jews as a separate group," the "political structure of Europe was unable to create a space within it for the Jews as a nation," further heightened the urgency of establishing Israel (Bernard, 2018). This worldview defined the Jewish people and gave them a sense of national pride in a Holy Land that symbolised their heritage and faith.

Understanding the Current Conflict

With the Israeli occupation of the West Bank and the Gaza Strip already exceeding 53 years, the Israel-Palestine conflict has been one of the world's longest-lasting ongoing conflicts (Khen, 2019). There are major humanitarian ramifications, and the peace process is complex because of the recent bloodshed in the region. The present political dispute has its roots in the early 20th century, although Jewish and Arab Muslim claims to the area go back many thousand years (Khen, 2019). Jews trying to escape persecution in Europe sought to do so in a region with a Muslim and Arab majority. As the Arabs saw it, the territory in question was theirs by right, and they refused to cede it. A failed United Nations proposal led to several conflicts between Israel and Arab nations over the territory. The current borders reflect the outcomes of two of these wars (1948 and 1967). Israel's continued military occupation of Palestinian territory, including the West Bank and the Gaza Strip, since a war in 1967 has been a major factor in the ongoing conflict (Khen, 2019).

The humanitarian situation in the Gaza Strip was already quite precarious before the recent events in May 2021 (The International, 2021). Increases in poverty, unemployment, hunger, and isolated acts of violence were all on the rise. Demolition of Palestinian-owned buildings and settler violence have both persisted at historically prominent levels in the West Bank. Seventeen hospitals and clinics in Gaza were destroyed during the nine-day conflict between Hamas terrorists and the Israeli troops (Kessler, 2021). Palestine's sole coronavirus testing facility was destroyed, and water pipelines for at least 800,000 people were broken, triggering a humanitarian catastrophe that would eventually impact almost two million people (Kessler, 2021).

Within Gaza, sewage infrastructure has been severely damaged. The territory's desalination facility, which supplied drinking water to 250,000 people, is now inoperable (The International, 2021). Somewhere about 600,000 pupils will be absent from school since dozens of schools have been destroyed or evacuated. About 72,000 people in Gaza have been uprooted from their homes. Including scores of youngsters, at least 213 Palestinians have been slain (The International, 2021). The extent of devastation and loss of life in Gaza has underscored the humanitarian dilemma in the enclave, already suffering under the weight of an indefinite embargo by Israel and Egypt even before the fighting.

2.2 million people are living in the Gaza Strip; however, the area has poor infrastructure (The International, 2021). Egypt and Israel control all the escape routes, so getting out is difficult. At least 220 people, including fifty-eight children, have been killed and 6,300 wounded as a consequence of the continuous Israeli bombings on Gaza and the unrest in the West Bank, including East Jerusalem (The International, 2021). Forcible relocation is a real concern for a large number of Palestinians as well. The recent threats of forcible deportation have contributed to an increase in violence that is only getting worse. The forced eviction of Palestinians, the destruction of Palestinian homes, and the continued theft of Palestinian property have resulted in the displacement and de facto deportation of 970 persons, including 424 children (The International, 2021).

In light of the continued violence, it is essential to plan for the future and develop lasting, meaningful solutions.

Chapter 4: Israeli Actions in Gaza

Cases of Legitimate Application of Law of Self Defence

In international law, the idea of justified self-defence is more nuanced than it first seems. In reality, there are many debates around the issue since the legal ramifications of self-defence are not sufficiently defined. The notion of justifiable defence has close ties to international politics, much as many others. The misconception of the legal consequences of justifiable defence has been attributed to the International Court of Justice. International law and politics have progressed, and so has the notion of justifiable defence; nonetheless, there are still some grey areas that need to be ironed out (Weber, 2013).

There does not seem to have been a specific charter or article written with justifiable defence in mind throughout the 19th century. There were no legal ramifications or limits on self-defence during that period. At the time, governments were on the point of conflict with one another, and world politics was through a significant period of change (Burchill, et. al. 2013). The right to self-defence offered the United Kingdom the legal authority it needed to ensure its safety during the battle of power, thus many nations, including the United Kingdom, refused to restrict it. To settle the debates about justifiable defence, however, nations like Paris signed the Paris Pact. Despite its good intentions, the agreement was quickly dissolved by the political pressure of the United Kingdom, which prevented it from establishing borders and conditions for lawful defence (Amstutz, 2013).

The drafting and implementation of the United Nations Charter dramatically altered the landscape of international law and politics. The danger paradigm abruptly moved to the peace-oriented idea of justified defence. The charter makes it quite clear that the right to self-defence is not to be exploited for terrorist activities or to threaten other people. Even the United Nations charter makes it clear that the use of force and the right to self-defence are two separate concepts. The right to self-defence supersedes the application of laws that limit the use of force (Charlesworth & Chinkin,

2022). To protect national security, a security council was established. If a state was attacked and the Security Council did nothing, the targeted state was within its rights to take defensive measures. The legitimate right to self-defence is still abused and used for three main reasons, all of which are made possible by the fact that the UN charter does not define how to authenticate justifiable defence:

- In light of current geopolitical conditions, all nations are prohibited by law from formally declaring war; instead, governments resort to the use of force against one another by claiming they have a right to do so in the name of justifiable self-defence (Weber, 2013).

- Due to the United Nations ineffectiveness in maintaining international peace and security, individual governments are now free to protect themselves, justifying them to resort to violence in the name of national defence.
- The total ban on using force in any circumstance has rendered states impotent. This Charter provision has given more authority to aggressors. Therefore, states have the right to employ force in self-defence if they feel threatened (Burchill, et. al. 2013).

Proper application of Article 51 of the Charter may lead to a thorough understanding of the justifiable use of self-defence and its exploitation. The right to individual and collective self-defence against armed attacks is guaranteed under Article 51 (Glennon, 2001). However, governments may only use this prerogative if the Security Council has not already intervened. As debates flared up over Article 51, a change was proposed to the article to enable the intervention of any humanitarian group or state if the Security Council fails to preserve peace owing to its restricted capabilities (Alter, 2014).

Here, four points are made crystal obvious by Article 51's interpretation of international law on lawful self-defence (Glennon, 2001):

- The first and most crucial aspect of this article is that it recognises the "right" to self-defence and grants each state the unrestricted legal authority to exercise this right.
- A careful reading of Article 51 reveals that governments are permitted to employ force for self-help to defend their peace and integrity.

- The section of Article 51 declaring individual and mutual self-defence permissible may actually provoke a state of war between countries. In the guise of legitimate self-defence, two or more nations may band together to attack another nation.
- Finally, the circumstances under which self-defence is permitted are not precisely defined in Article 51. As it does not specify that states may only do so to ensure their existence, states may employ this right in any circumstance.

There seems to be a lack of clear and well-organized standards for the use of self-defence within the present framework of the UN Charter and the legal implications of the Caroline doctrine. To provide just one example, Article 51 makes no mention of the right to preventative self-defence (Szewczyk, 2005). In the event of an assault on a state's sovereignty, the right to self-defence exists. However, many countries utilise self-defence to stop attacks before they happen; this is known as anticipatory self-defence. The correct understanding of Article 51 is the key to untangling these knots (Glennon, 2001).

In the strict sense, Article 51 states that self-defence is only permissible after an assault has already taken place; anticipatory self-defence is not mentioned anywhere in the article. If such is the case, governments would have to wait until missiles or drones crossed their boundaries before using their right to self-defence (Glennon, 2001). The International Court of Justice could not clear this quandary when it arose during 2004's revisions to the United Nations Charter. But the UN General Secretary convened a group and included language about anticipatory defence. According to the UN Charter's report, pre-emptive military action is acceptable in the face of serious danger. However, the Security Council must approve any action taken by a state in the name of self-defence. And in the event of anticipatory defence, governments must provide the Security Council with advance notice.

Changes to Article 51, including the inclusion of anticipatory self-defence, have shaken up international politics. Some speculated that states may abuse their newfound authority and use force against one another illegally. However, UNSC clarified that the right to self-defence supersedes the application of laws that limit the use of force (Charlesworth & Chinkin, 2022). Article 51 of the United Nations Charter is often cited as an authority for self-defence in international law, although its basis is really only an updated version of older peace accords

and pacts. Nonetheless, the article has greatly reduced the likelihood of the wrong use of this right. However, there is still some wiggle space under Article 51 (Charlesworth & Chinkin, 2022).

International Law & the Case Concerning Oil Platforms (Iran v. USA)

The United States accused Iran of conducting a series of aggressive actions and provocations against neutral commerce in the international seas of the Persian Gulf (Taft IV, 2004). The case was taken to ICJ where the court demanded proof from the United States that Iran had laid the mine that sank the military vessel and that the self-defence actions employed were appropriate and necessary in light of the assault (Taft IV, 2004).

The consideration of the circumstances in the Court under which recourse to self-defence is permissible was consistent with the Court's Nicaragua opinion from 1986 (Highet, 1987). The Court's law in this area has been repeated, and the Oil Platforms ruling expands that jurisprudence in several ways, albeit it has also left several problems unsolved (Taft IV, 2004). The Court looked at the 18 April 1988 attack on the Salman and Nasr complexes, which the United States claimed in its notification to the Security Council was a lawful response in self-defence after the USS Samuel B. Roberts suffered severe damage on 14 April 1988 from a mine allegedly laid by Iran in international waters.

In its application to institute proceedings, Iran claimed that U.S. naval troops assaulted and damaged oil platforms belonging to the National Iranian Oil Company on the Iranian continental shelf on October 19, 1987, and April 18, 1998 (Taft IV, 2004). Iran argued that the United States violated its responsibilities to the Islamic Republic under the Treaty of 1955, namely Articles I and X (1). Iran also argued that the United States' actions ran counter to the Treaty's stated purposes and were illegal under international law.

Article XXI (2) of the Treaty states that any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other means (Taft IV, 2004). Iran alleged in its Memorial that the United States had also breached Article IV (1) (Taft IV, 2004). The

United States argued that Iran's claims involved the use of force, which was outside the scope of the 1955 Treaty because it was primarily concerned with commercial matters. The United States also argued that Article XX (1) of the Treaty (the so-called "war powers" provision) precluded the Court from hearing cases involving military matters (Taft IV, 2004). It is also required to carry out a High Contracting Party's duty for the preservation or restoration of international peace and security or required to safeguard that party's vital security interests. The United States has claimed that this clause proves the 1955 Treaty was not meant to protect the signatories' "vital security interests" (Taft IV, 2004).

At the Preliminary Objection stage, the Court was tasked with deciding whether or whether the disagreement between the two nations constituted a dispute "as to the interpretation or application of the Treaty of 1955" about the legitimacy of the activities taken out by the United States against the Iranian platforms (Taft IV, 2004). The Court was required to evaluate whether Iran's claimed violations of the Treaty were within its provisions and if the subject was one over which it had jurisdiction ratione materiae by virtue of Article XXI (2).

Article X (1) of that Treaty provides that "within the territories of the two High Contracting Parties there shall be freedom of commerce and navigation," and the Court's judgement from 12 December 1996 addressed Iran's claims under this provision (Taft IV, 2004). When questioned whether the Treaty of 1955 applied in the context of the use of force, the Court concluded that "matters associated to the use of force are therefore not per se excluded from the reach of the Treaty of 1955" (Taft IV, 2004). The Court emphasised that Article XX(1)(d) "does not limit its jurisdiction in the present case but is constrained to affording the Parties a plausible defence on the merits to be employed should the occasion arise" (Taft IV, 2004).

According to Iran's closing arguments, the Court's primary duty on the merits was to decide whether the United States "breached its obligations to Iran under Article X, paragraph 1, of the Treaty of Amity"18 by "attacking and destroying on 19 October 1987 and 18 April 1988 the oil platforms referred to in Iran's application" (Taft IV, 2004). However, the bulk of the judgement focused on the question of whether the United States' actions could be

justified under international law. Before concluding whether a breach of the Treaty had occurred, the Court seems to have investigated a potential defence by looking at the meaning of this specific phrase and then going on to Article X (Taft IV, 2004). According to the ICJ's criteria, additional provisions of the 1955 Treaty were relevant only if they affected the interpretation or application of Article X (Taft IV, 2004).

In this regard, the Court concluded that:

The Court would have to rule in favour of Iran if it found that U.S. conduct violated Article X, paragraph 1's guarantee of unfettered commerce between the territories of the Parties and that such conduct was not necessary to protect U.S. essential security interests, as contemplated by Article XX, paragraph 1. The Court decided that Article XX(1)(d) should be applied first, because (1) the dispute between the parties concerned the legitimacy of the United States' actions in light of international law on the use of force, and (2) the parties recognised the significance of the case's implications in the field of the use of force, despite their disagreements (Taft IV, 2004).

Following Islamic Republic of Iran assaults on U.S. vessels in the Persian Gulf, the United States claimed it was acting in "the basic right of self-defence under international law by taking defensive action" (Taft IV, 2004). However, the United States was required to "prove that attacks had been made against it for which Iran was accountable; and that those attacks were of such a kind as to be classified as "armed attacks" within the meaning of that word in Article 51 of the United Nations Charter" (Taft IV, 2004).

The legality of Israel's Use of Force

Self-defence is only permissible under certain circumstances. The defendant must have had a "reasonable belief" that "imminent" risk at the hands of an armed aggressor exists and that the use of deadly force was "necessary" and "proportionate" to stop the threat (Murphy, 2005). The burden of proof is on the putative defender, who must demonstrate that the danger was grave and immediate and that the use of force was reasonable and required if fatal force was used to avert an illegal assault (Wilde, 2022).

In both domestic and international law, necessity requires that the defendant be unable to avoid the attack through less harmful means, that they are unable to retreat (if this is required by the national system), and that they are unable to seek help from the appropriate national or international authorities (Murphy, 2005). Proportionality requires that the interests of the aggressor and the defender be balanced. The condition of imminence, on the other hand, represents the time aspect of self-defence and ensures that the use of defensive action is neither excessive nor disproportionate to the damage posed by the unlawful attack. Self-defence claims have historically only been upheld where the defendant's use of deadly force was an instant reaction to the aggressor's unlawful threats or actions (Murphy, 2005). It is difficult to claim self-defence when there is too much time between the alleged unlawful threat or conduct and the alleged defensive action (Murphy, 2005).

The Security Council discussed the criterion of imminence after Israel attacked the Iraqi nuclear reactor in 1981(Scheindlin, 2017). Because of "Iraqi pronouncements and conduct, and Iraq's unwillingness even to sign an armistice deal with Israel," Israel believed it was within its legal rights to employ military force in response to the Iraqi nuclear threat (Scheindlin, 2017). Both the United Kingdom and Sierra Leone used the Caroline formula in their arguments against Israeli actions, highlighting its moral reprehensibility. Representative of Sierra Leone said, "it has long been accepted that, for it to be invoked or justified, the necessity for action must be instant, overwhelming, and leaving no choice of means and no moment for deliberation" (Scheindlin, 2017). This is why the aforementioned countries condemned the Israeli attack in general. Almost every other country voiced its disapproval of Israel's actions, saying that the danger was not immediate (Scheindlin, 2017). Scholars believe that only if the military reaction meets all three criteria of need, proportionality, and immediacy can self-defence be considered legitimate.

Classification of Israel-Palestine Conflict

Whether the Gaza conflict is an IAC (International Armed Conflict) or a NIAC (Non-International Armed Conflict) is particularly important for figuring out which laws of armed conflict apply (Egbonwonu, 2013). Even though under customary international law, many of the rules of IAC, especially the basic principles of IHL, apply to NIAC, there are still differences (Egbonwonu, 2013). The law of IAC, which is written down in Common Article 3 of the Geneva Conventions

of 1949 and Additional Protocol I of 1977, protects civilians and forces parties to the conflict to do more than the law of NIAC, which is written down in Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II of 1977 (Egbonwonu, 2013).

If a state exercises effective authority over territory without the consent of the people residing there, the area is considered occupied according to international law. In accordance with Article 42 of The Hague Regulations, an area is considered occupied after it has fallen under the authority of an opposing military force (Egbonwonu, 2013). So long as Israel maintains its military presence in the Gaza Strip, the war there was controlled by the provisions of international law that deal with occupying forces (Egbonwonu, 2013).

Inter-Agency Conflicts oppose two or more sovereign nations. Therefore, Palestine must be recognised as a State in order for the Gaza war to be labelled an IAC between Palestine and Israel (Egbonwonu, 2013). If Palestine is recognised as a state, then IAC rules would apply if Hamas's conduct were ascribed to the State of Palestine or if Palestine refused to allow Israel to use force on its territory. If Palestine is to be held responsible for the events that led to conflict with Israel, it will need to establish that it exercised decisive control over Hamas. Hamas's actions that may be attributed to Palestine lead to what is known as an "internationally aggravated war". However, if Hamas were to do anything unrelated to Palestine, the resulting war would be classified as an intrastate armed conflict (NIAC) (Egbonwonu, 2013).

Historically, NIACs occurred only inside the borders of a state party between a state party and a non-State party (Egbonwonu, 2013). Previously known as "internal armed conflicts," today's armed conflicts are increasingly taking place outside of the territory of the State party (Egbonwonu, 2013). Cross-border NIACs are a transitional category between IACs and NIACs (Egbonwonu, 2013). Several features of both IACs and NIACs are shared by cross-border conflicts. In both IACs and cross-border conflicts, for instance, participants to the conflict often operate from different States, and hostilities take happen across many territories. Hostilities between State military forces and an organised armed group are a common feature of both NIACs and cross-border conflicts (Egbonwonu, 2013).

The fact that a dispute involves individuals from different countries is irrelevant to whether or not it may be considered international. That being said, if a State and a well-organized armed organisation are engaged in armed conflict, the NIAC's regulations will apply, regardless of whether or not any international boundaries are crossed (Egbonwonu, 2013). The fighting between Hamas and Israel might be classified as a cross-border NIAC since the Palestinians cannot be held responsible for Hamas' actions.

However, it is possible that both an IAC and NIAC occurred simultaneously in Gaza. The battle between Hamas and the Israeli military would still be governed by NIAC legislation in cases when Hamas's conduct could not be attributed to the State of Palestine (Egbonwonu, 2013). Israel's use of force in Gaza was not sanctioned by Palestine (Wilde, 2022). The use of force by Israel on Palestinian territory from a distance might be seen as an unlawful use of force, prompting the implementation of the law of IAC. The "double categorization" method attempts to account for the fact that the organised armed group's acts cannot be linked to the territorial State (Egbonwonu, 2013). Therefore, there are presumably two different wars occurring simultaneously.

Palestine's Statehood

Palestine's claim to statehood is controversial due to the lack of an agreed-upon area (Kaghan, 2009). Nonetheless, in 2012, the United Nations granted Palestine non-member observer State status, which is effectively the same as recognising Palestine as a State. Since Palestine now has majority support in the UN General Assembly, it may apply to join the International Criminal Court. However, there are still a number of countries, Israel in particular, who refuse to acknowledge Palestine's statehood. Consequently, the legitimacy of Palestine's statehood is contested by several nations.

For the ban on the use of force to come into play, a state must use force against another state ((Charlesworth & Chinkin, 2022). So, when figuring out the Jus Ad Bellum, Palestine will be looked at as a State. One of the most important parts of international law is that you cannot threaten or use force. This is a rule of both customary international law and jus cogens. Israel used force in Gaza when it started Operation Protective Edge, which was meant to stop Hamas from firing

rockets and destroy Hamas tunnels. Armed fighting broke out between the two sides, and more than 1,000 civilians were killed in Gaza. Hamas said that it fired rockets in Israel in July. After that, Israel said it was acting in self-defence when it started ground operations.

A majority of individuals believe that military force is required to repel an armed assault. However, according to a ruling by the International Court of Justice (ICJ) in Nicaragua, the definition of "armed assault" is now crystal clear (Highet, 1987). According to the Court, an armed assault occurs when "armed bands, gangs, irregulars, or mercenaries are sent by or on behalf of a State to commit acts of armed forces against another State of such seriousness that they amount to" an armed attack.

Even though Hamas is in charge of Gaza and is responsible for the firing of rockets, Gaza is still part of Palestinian territory. But it is not clear whether Hamas rockets come from the State of Palestine or not. If the fires cannot be blamed on Palestine, then no state can be held responsible. Self-defence against a non-State actor is still not clear under the law. The ICJ confirmed that the right to self-defence in Article 51 of the UN Charter only applies between States and that the use of force by organised armed groups can only be seen as an armed attack if it can be linked to a State (Charlesworth & Chinkin, 2022). However, in Congo v. Uganda, the Court left open the possibility that modern international law gives a right to self-defence against large-scale attacks by irregular force. So, if Hamas's actions cannot be blamed on Palestine, Israel might still be able to defend itself against Hamas.

Israel's use of force against Palestine must be judged in light of whether or not it was required as a reasonable and proportionate response to an armed attack, and whether or not that response was itself excessive. Israel's ground invasion of Gaza in response to Hamas rocket fire must be justified by demonstrating this need and proportionality (Wilde, 2022). When it comes to acts of self-defence, the International Court of Justice (ICJ) has ruled that only those that are "proportional to the armed assault and essential to react to it" are legal (Highet, 1987). This ruling was made in the case of Nicaragua.

Israel's ground invasion of Gaza was justified because of the danger presented by Hamas, but only if it could be demonstrated that the assault was essential to halt Hamas' rocket attacks (Khen,

2019). Since future outcomes are considered by the proportionality criterion, the answer to the question of whether Israel's actions were just during the invasion of Gaza lies in Israel's stated goals. If it could be shown that Israel could not have accomplished its aims without resorting to force, and if the level of force employed was not excessive in comparison to what was required for that reason, then Israel's actions would be recognised as justified (Khen, 2019). According to the United Nations Office for the Coordination of Humanitarian Affairs, almost 70 percent of those murdered in Gaza were innocent bystanders (Khen, 2019). It is important to keep in mind that the data for this horrifying claim comes from the Hamas-controlled Gaza Health Department.

The conflict between the two states has a long and complicated history, which will make it hard for the International Criminal Court to figure out the nature of the conflict and investigate the crimes involved. It could be years before we see any prosecutions, and Israel will fight against the Court's involvement.

Enabling Israel's Exceptionalism and Its Implications

The idea of a basic power imbalance between the Arab world and Israel, the sense of Arab professed hostile intents, and the perception of Arab aggressive deeds are the three main components that make up the strategic underpinning of exceptionalism (Braun, 2013). The basic imbalance of power stems from Israel's inherent numeric inferiority in comparison to the demographic, financial, and military resources that the whole Arab World possesses, as well as Israel's geostrategic fragility, or lack of a measure of strategic depth.

The Israeli understanding of the national security challenge centres on the Israeli perception of its exceptionality, and more specifically on the interplay between the strategic, historical, and cultural aspects that form its basis (Braun, 2013). Israel's sense of danger, operational definition of national interest, and military plans have all been influenced by these factors. They also played a role in developing a wide range of different perspectives, identities, and worldviews. Most importantly, the roots of Israel's image of uniqueness have perpetuated the belief that the country is mired in a battle of unprecedented proportions, marked by absolute ideological enmity, an almost unsustainable strategic relationship, and unrelenting hostile activity (Braun, 2013). Indeed, ideas

of national security exceptionalism permeated Israeli culture to the point that they were integrated even into the discourse of society's most critical minds.

When Israeli leaders like Ben-Gurion argued that Israel's existential threat was "rather different from that of every [other] nation," "utterly unique and [without] parallel among the nations," or "one of a kind problem, much as [Jews] is a one of a kind people," they were all referring to the same thing (Oren et al., 2015). For Israelis, the national security exceptionalism boils down to one word: "small." Israel was the only small nation in danger of total collapse, the "destruction of the Third Temple," and extinction. For instance, in 1988, forty years after Israel's founding, Prime Minister Yitzhak Shamir elaborated on this concept, saying that "If we closely study our reality, it has not altered" (the Arabs want to send the Jews to the sea) (Oren et al., 2015). The Arabs have not changed, and neither has the ocean. The goal remains the same; that is, the destruction of the small Israeli state." Shamir's statements suggest that Israel views the Arab world as a single entity.

Israelis have been conditioned to believe that the nation's founding, continued existence, and current state of affluence are the result of miraculous circumstances (Braun, 2013). After all, they must be remarkable if they accomplished a sovereign state in the face of unprecedented challenges and dangers.

Israel’s former Defense Minister Moshe Arens said clearly in 1995: "The creation of Israel was an extraordinary phenomenon in recent human history. Her perseverance in the face of relentless Arab assault and fear in the volatile Middle East struck me as nothing short of extraordinary” (Oren et al., 2015). Arens concluded that "It's hard to imagine a comparable example of a tiny population facing comparable odds and enduring such a high death toll with such bravery and vitality” (Oren et al., 2015).

According to Ariel Sharon's analysis, "Israel has unique difficulties, and in order to continue to thrive [it] must be able to find unorthodox answers” (Oren et al., 2015). Even academics have agreed that Israel's strategic solutions are, might be, or maybe should be unusual. While no other country has ever publicly challenged the worldwide nuclear system of the Non-proliferation Treaty, Shai Feldman dared to recommend that Israel set up an open nuclear deterrent against the conventional Arab threat.

After the Six Day War, Yitzhak Tabenkin, a leading activist within the Labour camp, argued that: There is an instrumental value embedded in the threat component of what we term the image of national security exceptionalism "One of the "secrets" to our victory was the isolation caused by the prospect of extinction, and we must make a point of permanently imprinting this realisation on our minds so that we can factor it into our future actions" (Oren et al., 2015). Alternatively, some scholars say that if Israel and its issues are certainly unique, the country's strategic decisions and actions are not out of the ordinary. It is barely fair to continue assessing Israel as a small state in light of Israel's relative economic development, the fragmentation of the Arab world, the end of bipolarity, and Israel's better strategic posture.

Edward Said, a Palestinian scholar, once said, "Israel is unique in the world because of the excuses made for it" (Said, 1993). Shahid Alam writes, "They (the Zionists) would always tell the Jews that they are an ancient, divinely chosen, uniquely talented, racially superior, and unbeatable people who deserved more than anyone else to make history as a great nation" (Alam, 2009). The Zionist had no choice but to produce a philosophy based on the idea that Jews are special. Martin Buber, an Israeli Jewish philosopher, says, "Israel is not just another example of a nation; it is the only example of a species Israel' (Oren et al., 2015)

There are many such examples of Israel's ability to stand apart from the others. Israeli municipal law differentiates between "citizenship" and "nationality," giving "Jewish nationals" of Israel preferential treatment over non-Jewish citizens;" this is based on a "permanent state of exception" and "alternative legality" that states human rights law only applies to its Jewish population (Braun, 2013). There is a wide variation in treatment of non-Jewish citizens, depending on factors such as the status of their resident rights, which are often revised in response to military and settlement expansion.

Israel is the only place in the world that makes a difference between citizenship and nationality (Braun, 2013). No one can be an Israeli national because there is no Israeli nationality. There are diverse kinds of citizenship in Israel, which is a strange thing that does not happen anywhere else. Citizenship is the highest form of recognition in all modern states, where every citizen, at least in theory, has the same rights and privileges. Israel does not follow this basic principle (Braun, 2013). So, Israel is not a country for all its citizens. Instead, it is a country for some of its citizens. In

practice, this means that Jewish citizens and non-Jewish citizens are treated differently. The former has all rights and privileges, while the latter does not have many.

The laws about the land show this discrimination most clearly: up to 92% of the land in Israel is only for "people of the Jewish race/religion and origin" (Braun, 2013). The land is managed by quasi-state organisations like the Jewish National Fund, which set up a variety of bureaucratic structures to make sure that most of the country is only inhabited by Jews (Braun, 2013). This raises questions on Israel to uphold the spirit and basic principles of democracy, though.

Keeping up this front when ethnic cleansing is still going on, the country has been occupied for 60 years, there have been many military offensives, and human rights are being violated every day is, at the very least, desperation (Braun, 2013). After Israel was founded in 1948, the world did not become "post-Zionist," as some of its supporters say. On the contrary, keeping Zionism alive and achieving its main goal of occupying as much of Palestine as possible with as few Palestinians as possible means that ethnic cleansing is built into Israeli society and politics (Braun, 2013).

Israel's problem is that it is trying to keep a political relic alive in a world where settler-colonialist projects are no longer acceptable. Israel struggles all the time to find a balance between its Zionist ideology and its superficial appearance of democracy, even though the two ideas are quite different. The implications are that Israel has pushed the narrative in the mainstream discourse so much that scholars and leaders of other states have started accepting it. Israel is treated differently as evidenced above.

Chapter 5: Research Discussion & Findings

The dynamics of the Israel-Palestine conflict, as well as the legal rules controlling the use of force, have been analysed to arrive at these conclusions about Israel's conduct in attempting to vindicate the right of self-defence.

State use of force in self-defence is permissible under international law "if an armed attack occurs," as the legal phrase puts it (to quote the UN Charter). If a state intends to use this power, it must comply with all of the Charter's stipulations. Israel's claim of self-defence is nothing more than an ongoing effort to ensure the survival of the state at the cost of universally accepted values and morals (Wilde, 2022). Invoking the right of self-defence without meeting the condition is not only unlawful for Israel, but also marks an exercise in retrogression with respect to the evolution of the law of war (Sabel, 2022). The failure of the 1948 United Nations partition plan and the lack of legal grey area around self-defence further add to the complexity of the situation (Glennon, 2001).

If the Security Council feels it must interfere before a state exercises its right to self-defence, it may do so under Article 51 (Glennon, 2001). To provide more clarification on the legal right, a state of war may ensue if independent governments are free to utilise military force without the involvement of a central authority. Furthermore, the world cannot afford another conflict now that every nation has nuclear weapons. The UN Charter needs to strengthen its legal framework and clarify the right of self-defence in light of these possible hazards and difficulties (Glennon, 2001). It has been suggested that a new, more powerful authority be created to which all countries must answer if the United Nations Security Council is shown to be wanting. It is imperative that all countries, especially the world's superpowers, account for their acts before the United Nations if international peace and stability are to be maintained. It is only by collective effort that we can lessen the risk of states using their right to self-defence (Keck, & Sikkink, 2014).

Too far, Israel has not totally withdrawn its soldiers from the Gaza Strip; rather, they have just been redeployed or relocated. Israel continues to exercise complete military dominance in the sea, air, and land surrounding Gaza. Due to these withdrawals and evacuations, the Palestinian Authority has been unable to establish its authority in the Gaza Strip (Sabel, 2022). Without a shadow of a doubt, the Disengagement plan (2005) states that Israel would remove its residents

from the Gaza Strip and redeploy them elsewhere. When this operation is over, Israeli security forces won't be stationed on the Gaza Strip's vacated territory (Sabel, 2022). As stated in Article 42 of the Hague Regulations of 1907, a lack of permanent military bases in occupied territory does not invalidate the reality of occupation (Sabel, 2022).

Because of the disengagement plan, Israel will still have effective authority over the Gaza Strip. According to the Disengagement Plan's section titled "[T]he Security Situation Following the Disengagement," Israel will continue to protect and monitor the external land border of the Gaza Strip, will continue to retain exclusive authority in Gaza air space, and will continue to perform security activities in the water off the coast of the Gaza Strip (Sabel, 2022). Since it has ended its effective authority over the Gaza Strip, Israel claims it is no longer responsible under international law for the safety of its civilian population there. Israel's stated desire for a complete withdrawal from the Gaza Strip is implied to be nothing more than empty rhetoric in this passage. During the implementation of the Disengagement Plan, Israel made it clear that, in its view, the only way to continue exercising effective control over the Palestinian regions was to continue the occupation.

This is confirmed by a ruling from Israel's highest court: "The legal status of the occupied Palestinian Territories stems from the reality of effective Israeli control over them, and the Israeli Military Governor derives his power in accordance with international law on occupation, primarily the Hague Regulations on the rules and customs of war, which represent International Customary Law" (Sabel, 2022). Denying a people their right to self-determination is a violation of international law, which the unilateral Disengagement Plan does.

It would be inappropriate for the occupying army to declare an end to the occupation until the occupied people had fully exercised sovereignty over their territory, population, and right to self-determination. Either the Israelis or the Palestinians would be in violation of the Washington Agreement of 1995 if they took any action in the West Bank or Gaza that may influence the outcome of final status talks (Sabel, 2022). The Disengagement Plan disregards the idea of physical unification between Gaza and the West Bank (including East Jerusalem), which is central to Israel's obligations undersigned agreements with the Palestinians and various international resolutions. Since the West Bank and the Gaza Strip are deemed to be part of the same geographical

entity, their integrity must be preserved until a final settlement, as stated in Article 4 of the Declaration of Principles from 1993 (Sabel, 2022).

The Gaza Strip is considered to be an integral part of the territory occupied in 1967 and will be a part of the Palestinian state in accordance with Resolution 1860 of the United Nations Security Council (Sabel, 2022). This is in accordance with Article 11 of the Washington Agreement, which states, "[t]he two parties consider the West Bank and the Gaza Strip one geographical entity whose integrity and status must be protected throughout the interim period" (Sabel, 2022). Therefore, it is evident that Israel maintains its legal and practical occupation of the Gaza Strip and continues to exercise effective control over the region notwithstanding the implementation of the Disengagement Plan.

If the Gaza Strip is an occupied territory, then that occupation is illegal under international law because it violates the principle of the non-use of force in international relations, as stated in Article 2, paragraph 4, of the United Nations Charter and reaffirmed in Resolution 2625 of the United Nations General Assembly (Wilde, 2022). In its ruling on the Nicaragua case, the International Court of Justice stated, "The concept of the inadmissibility of the use of military force non-international relations and the subsequent illegitimacy of the acquisition of territory via armed force constituted an International Customary Law' (Highet, 1987). This ruling suggests that Israel's designation of the Gaza Strip as "enemy territory" is not supported by international law (Wilde, 2022). For reasons that will become apparent, the very use of the word violates international law. To begin, the term "enemy territory" does not exist in international law; rather, it is a political creation of Israel designed to aid it in evading its obligations to the Palestinian people living under Israeli control of the Gaza Strip. It is impossible for an occupying army to exert effective control over territory that is actively opposed to it.

Treating the Gaza Strip as hostile territory is a threat to use force, which is prohibited under the United Nations Charter. UN General Assembly Resolution 3314 24 also called Israel's closure of the Gaza Strip during Operation Cast Lead an act of "military aggression" since it violated Article 51 of the UN Charter (Sabel, 2022). War crimes, crimes against humanity, and other major breaches of international law characterise Israel's siege of the Gaza Strip and its military activity during the last few years.

Israel considers the Gaza Strip to be "enemy territory" so that it may treat it as a sovereign nation-state, exempt from the obligations of an occupying power to protect the rights and well-being of the local population under international law (Sabel, 2022). Israel's blockade of the Gaza Strip and its population's subsequent collective punishments have lasted for a long time. Israel is attempting to transform the Gaza Strip into a massive prison camp (Sabel, 2022). People living in the Gaza Strip now have difficulties obtaining basic essentials such clean drinking water, medication, food, and clothing. The actions of the Israeli government have wrecked the economy of the Gaza Strip, leaving many unemployed and living in poverty. Unfortunately, many lives have been lost. After all, they required medical care that they couldn't acquire because they were restricted from going abroad. Israel's hostile practises against the Gaza Strip and other Palestinian Territories render its assertions that the occupied area is an "enemy territory" laughable (Sabel, 2022).

Israel has long disputed the fact that it is an occupying force in the Palestinian Territories, despite the clear legal status of the Gaza Strip and other activities in this territory. First, Egypt and Jordan claimed lawful jurisdiction over the Occupied Territories after Israel gained control of the region in 1967; second, the Gaza Strip was under Egyptian administration and the West Bank (including East Jerusalem) was under Jordanian control (Sabel, 2022).

As Israel has repeatedly disregarded international resolutions recognising the Palestinian Territories as occupied territory and calling for Israel's withdrawal from Gaza to ensure the Palestinian people's right to self-determination and the establishment of an independent state, the international community has rejected Israel's claim. The peace agreements between Israel and the Palestinians, which practically acknowledge the two-state option and the right to self-determination of the Palestinian people, are irreconcilable with Israel's claim (Sabel, 2022).

In a case brought by the Beit Sourik Village Council, the Israeli High Court determined that the Hague Regulations and the first three Geneva Conventions are binding on Israel since they constitute customary international law (Sabel, 2022). The High Court first recognised the Fourth Geneva Convention in Military Order No. 3 from June 1967, but subsequently revoked this recognition due to the lack of a statutory basis for the Convention. Since no nation may use its internal legislation to avoid enforcing international commitments, the Court's decision is in violation of international law. The Hague and Geneva Conventions are two examples of

international customary law that obligate all countries to abide by certain rules. All four agreements agree in their second article that "[T]he Fourth Geneva Convention shall apply to all conditions of partial or entire occupancy, even if the said occupation meets with no armed resistance' (Geneva Conventions 1864-1977).

Since Israel occupies Palestinian territory, international law under the Fourth Geneva Convention must be followed. The validity of this was confirmed by a number of international commissions and decisions (Sabel, 2022). In 2001, this perspective gained the support of the Conference of High Contracting Parties to the Fourth Geneva Convention (Sabel, 2022). The International Court of Justice confirmed in its Advisory Opinion on the Legal Consequences of the Construction of a Wall that the Occupied Palestinian Territories must be included in the scope of the Fourth Geneva Convention.

Israel is legally bound to observe the International Covenants of 1966, the Convention on the Rights of the Child, and the Universal Declaration of Human Rights while occupying Palestinian land (Wilde, 2022). In international relations, the use or threat of force is prohibited under the United Nations Charter. However, Article 51 of the Charter makes it clear that the use of force is permitted in self-defence (Charlesworth & Chinkin, 2022). Israel has argued that its embargo of the Gaza Strip and Operation Cast Lead were justified acts of self-defence. Numerous Israeli officials have emphasised the significance of this concept.

Under the heading "Security Situation following the Disengagement," the Disengagement Plan states twice that "Israel reserves its right of self-defence, both preventive and reactive, including the use of force, in respect of threats emanating in the region" (Khen, 2019) However, for Israel to claim the legitimate right to self-defence regarding the Gaza Strip, its military operations must meet the following conditions.

International law recognises the right to self-defence whenever a state is subjected to an "armed attack" that justifies the use of force to resist (Charlesworth & Chinkin, 2022). One does not inherently have the right to use lethal force in self-defence if they are the target of an armed attack. Self-defence must meet the following standards in order to be considered a legitimate reaction to an attack. There needs to be a consensus that violence is never justified. Using deadly force in self-

defence needs an unprovoked, uncoordinated armed attack (Glennon, 2001). If the state initiated military action without reason or provoked the attack, its claim to self-defence is not recognised (Glennon, 2001). The aggressor state is not the innocent victim of aggression, but rather the cause of the breakdown of international order. Therefore, if the people of the occupied region or the assaulted state resort to violence against the occupying or violating state, they give up their right to self-defence.

To put it in terms of the principle that prohibits the use of force in international relations, this is completely in line with the norm (Charlesworth & Chinkin, 2022). To put it another way, it is not acceptable to use force to prevent someone else from using force in self-defence (Charlesworth & Chinkin, 2022). Additionally, pre-emptive military actions to defuse a potential armed attack, as well as acts of vengeance and revenge, are beyond the limits of legitimate self-defence.

Israel's continued occupation of the Gaza Strip and the rest of the Palestinian Territories is, therefore, a direct challenge to the wishes of the international community (Khen, 2019). The Israeli government and people have been commonly portrayed as being at war with the Palestinian territory and people since 1967(Sabel, 2022). According to General Assembly Resolution 3314 (1974), "nothing in this definition could prejudice the right of people forcibly under colonial and racist regimes or other forms of alien domination to struggle for self-determination, freedom, and independence" (UNGA, 1947). This means that the occupying state cannot legally uphold a right of self-defence against the occupied people and cannot use the threat of force to prevent the people from exercising their right to resist occupation and achieve self-determination. All the offspring of an unlawful profession are equally unlawful.

Furthermore, Israel's insistence on its right to self-defence is undermining the Palestinians' right to self-determination (Sabel, 2022). This privilege is enshrined in Article 1 of the United Nations Charter. The international community has formally recognised the Palestinian people's right to pursue national self-determination.

In addition, international law forbids the occupation, annexation, hegemony, and dominance of other areas by the use of force (Charlesworth & Chinkin, 2022). Israel's occupation of Palestinian land, which includes the West Bank, East Jerusalem, and the Gaza Strip, has been the subject of

dozens of resolutions enacted by the international community (Kling, 2015). The world community put pressure on Israel to withdraw from the region. Despite this, Israel has maintained its authority over the Gaza Strip. It has been striking Palestinian civilians and their property for decades, in direct violation of the Palestinian people's rights and dignity. Self-defence is a legitimate justification only when one state employs force against another (Kling, 2015). Article 51 of the Charter is only applicable when one state is being attacked by another state using force, as interpreted by the International Court of Justice (ICJ) (as in the Separation Wall case). It has been noted that the ICJ has placed significant limits on the exercise of the right to self-defence. The Court's aim was to limit the constraints on legitimate self-defence to the absolute minimum consistent with the general principle that prohibits the use of force in international affairs (Charlesworth & Chinkin, 2022).

The International Court of Justice (ICJ) agreed in its Nicaragua case, stating that: the legitimate right of self-defence against armed attacks by unorganised forces is conditional on the presence of a link between these armed attacks and a specific state; while armed attacks conducted by non-state entities, unless the assaults can be linked to a specific state, attacks against an organisation or group as such do not justify (Kling, 2015; Highet, 1987).

As long as it refuses to implement these international resolutions, continues to besiege the Gaza population, controls all of its space, continues settlement activity in the West Bank, continues to Judaize Jerusalem, and violates the inadmissible rights of the Palestinian people, Israel cannot claim the right to self-defence against the Palestinians and cannot uphold the rights and dignity of the Palestinian people. Under international law, the use of force, even in self-defence, must meet the two basic conditions of proportionality and distinction (Khen, 2019). A state that is exercising its right to self-defence, in accordance with the concept of proportionality, should not respond to aggression with disproportionately large military operations, but rather with appropriate defensive measures. It should also choose the safest way to counter the threat if there are several options.

A state's authority to use military force is limited to situations when it is directly tied to protecting itself against further aggression (Scheindlin, 2017). States that legitimately defend themselves against military assault must adhere to the concept of difference, which requires them to

differentiate between military aims and combatants and civilian targets and non-combatants. It must not do harm to individuals or penalise groups as a whole.

Israel has not adhered to the principles of proportionality and distinction in its operations, including the blockade of the Gaza Strip, Operation Cast Lead, and other military operations, as evidenced by the course of Israel's military action in the Gaza Strip, even after the implementation of the Disengagement Plan (Scheindlin, 2017). Numerous individuals in Gaza were killed or injured during Operation Cast Lead as a consequence of various tactics, including indiscriminate bombing, intentional targeting of civilians, and the use of civilians as human shields. A state's authority to use military force is limited to situations when it is directly tied to protecting itself against further aggression. States that legitimately defend themselves against military assault must adhere to the concept of difference, which requires them to differentiate between military aims and combatants and civilian targets and non-combatants. Israel has not adhered to the principles of proportionality and distinction in its operations, including the blockade of the Gaza Strip, Operation Cast Lead, and other military operations, as evidenced by the course of Israel's military action in the Gaza Strip, even after the implementation of the Disengagement Plan (Sabel, 2022). Numerous individuals in Gaza were killed or injured during Operation Cast Lead as a consequence of various tactics, including indiscriminate bombing, intentional targeting of civilians, and the use of civilians as human shields (Sabel, 2022).

All this highlights that Israel used force that was more than necessary in areas with majority Palestinians and no concrete action to stop this by any major country shows that the world enables this barbaric exceptionalism.

Chapter 6: Concluding Remarks

The UN charter and the International Court of Justice worked together to make the right of self-defence legitimate for every state to keep the peace across the world. As stated in Article 51 of the United Nations Charter, a state has the right to use force to defend itself and its borders against an armed attack (Glennon, 2001). From what has been said above, it is clear that governments continue to abuse their lawful right to self-defence because of specific defects in Article 51. The credibility of the Security Council should be addressed first. The Security Council, as the highest authority, ought to have the authority to interfere in more situations.

If self-defence is recognised as a legal "right," then it must also be subject to certain responsibilities. The right to self-defence in particular has been a source of conflict between some countries (Sabel, 2022). Therefore, self-defence should be seen as an important aspect of international law; indeed, there should be a distinct rule for legal self-defence, so that every state is responsible to the law for employing this authority. Although the Caroline concept formed the foundation for Article 51 of the United Nations charter, which is recognised as an authority for self-defence in international law (Sabel, 2022). However, Article 51 has undergone meaningful change as a result of developments in international law and politics. As a full framework for self-defence, it has progressed well beyond a mere reflection of ancient peace treaties and pacts and an advanced form of Caroline's philosophy. On the other hand, the International Court of Justice and Article 51 must cooperate to ensure that the right of self-defence is being exercised lawfully (Glennon, 2001). In the event of a legalised use of self-defence, every nation has the same chance to safeguard its sovereignty.

Israel's assertion of a right to self-defence in the Gaza Strip, at the detriment of the Palestinian people, is not supported by international law. Despite Israel's assertion that its 2005 Disengagement Plan implementation marked the end of its occupation of the Gaza Strip, this assertion is not borne out by the facts on the ground (Sabel, 2022). Israel is still technically and de facto occupying territory in the Gaza Strip since it controls the enclave's land, sea, and air borders (Khen, 2019). Since 2007, residents of the Gaza Strip have been suffering under a harsh military siege. Because of this, a humanitarian crisis is imminent. The siege is intended as collective punishment for the Palestinian independence fighters.

The Israeli military's conduct in Gaza during Operation Cast Lead exposed Israel for what it really is, a country that not only ignores the internationally recognised rights of the Palestinian people, but also commits war crimes, crimes against humanity, and other crimes against the unarmed population under the guise of self-defence. Under international humanitarian law, relations between Israel and the Palestinians might deteriorate even if the Disengagement Plan is implemented (IHL) (Khen, 2019).

This conflict between Israel and the Palestinian under occupation is not governed by the Fourth Geneva Convention, the Hague Regulations of 1907, or Article 51 of the United Nations Charter since Israel is the occupying state. Israel's right to self-defence could be used against it if the country is unable to protect itself from external threats. Because of this, the self-defence clause's original purpose may be lost.

The Advisory Opinion on the Separation Wall issued by the International Court of Justice made it very obvious that the Occupied Palestinian Territories are beyond the scope of Israel's purported right to self-defence (Murphy, 2005). As long as it continues to occupy the Palestinian lands despite international condemnation, Israel is in an aggressive state towards the Palestinian people and has no basis to claim the right of self-defence.

As long as Israel maintains its occupation, the Palestinian people and their resistance have every right to fight back against it, in defence of their right to freedom, sovereignty, and self-determination. To protect these freedoms, international law must be adopted. For forty years, Israel has been able to continue portraying itself as a victim, while building settlements in the West Bank, annexing Jerusalem, and violating the rights of Palestinians in Gaza and the Occupied Territories. The world's population gave their approval, either implicitly or explicitly, for all of this to occur. The world has enabling Israel’s exceptional treatment event though it is just like any state and not that small, considering the weapons it holds. In conclusion, Israel's claims of the right to self-defence are baseless accusations.

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ANNEX I

- *Article 1 Paragraph 2—UN Charter*

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

- *Article 51—UN Charter*

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

- *Article 2(4) —UN Charter*

The Organization and its Members, in pursuit of the purposes stated in Article 1, shall act following the following principles. '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 any other manner inconsistent with the Purposes of the United Nations

- *Article 39 —UN Charter*

"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."

- *Article 53 —UN Charter*

Article 53 deals with the respective responsibilities of the Security Council and of regional arrangements or agencies in the maintenance of international peace and security.

- *Article 55 —UN Charter*

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development.

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

- *Article 41 UN Charter*

"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."

- *Article 42 UN Charter*

"Should the Security Council consider that measures provided for in Article 41would 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."

- *Article 42 —Hague Convention*

A 'territory is deemed occupied when it is effectively put under the control of the opposing army' and that the occupation expands 'to the territory where such authority has been established and may be exercised'.

- *Chapter VII of the UN Charter*

Articles 42–47 of the UN Charter deal specifically with the use of military force; Article 41 and, to a lesser extent, Article 50 deal with the use of economic and political force; and Articles 39, 48, and 49 do not identify the form of force to be employed.

- The 1974 Definition of Aggression (UNGA Res. 3314 (XXIX)),

  General Assembly Resolution 3314 (1974), "nothing in this definition could prejudice the right of people forcibly under colonial and racist regimes or other forms of alien domination to struggle for self-determination, freedom, and independence."

- The Nuremberg Tribunal in the Hostage Case
- Geneva Conventions (1949 and 1973)
- General Treaty for the Renunciation of War
- 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (UNGA Res. 2625 (XXV))
- 1987 Declaration on Enhancing the Effectiveness of the Principle of Non-Use of Force
- Article XXI (2) of the Treaty of 1955
- Article X (1) of the Treaty of 1955
- Article XX(1)(d) of the Treaty of 1955
- Article X, paragraph 1, of the Treaty of Amity
- The law of IAC, which is written down in Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol I of 1977, protects civilians and forces parties to the

conflict to do more than the law of NIAC, which is written down in Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II of 1977.