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Introduction

In the complex landscape of international relations, the right to self-defence is fundamental in shaping state action when faced with aggression. This right is set within the framework of international law through the United Nations (UN) Charter in article 51 (UN Charter, 1945), which delineates the limits to how states can respond to threats to their sovereignty and security. Recent events, such as the Iran-Israeli conflict, have reopened discussions on the application and interpretation of the right of self-defence. As tensions escalate and geopolitical dynamics evolve, it is essential to take a closer look at the legal foundation of states' notion of self-defence and its relevance in contemporary conflicts. This article examines the nature of self-defence in international law and explores its core elements through an analysis of the recent retaliatory spiral that started with Israel's strike on Iran's embassy in Syria.

The Context

On 1 April 2024, Israeli military aircraft struck a structure in Iran's Syrian embassy complex in Damascus. The attack resulted in thirteen casualties, of which seven were high-ranking Iranian officers, and six were Syrian citizens (Yönt, 2024). The attack is one of the deadliest in a decades-long conflict between Israel and Iran. As tensions have risen over Israel's military campaign against Hamas in Gaza, this war has come out into the open (Fassihi, 2024). Those killed in the strike include Brig Gen Mohammad Reza Zahedi, a senior commander in the Quds Force (the overseas branch of Iran's elite Republican Guards (IRGC), who was a key figure in an Iranian operation that arms Hezbollah, a militant Lebanese Shi'ite armed group (Berg, 2024).

In retaliation, Iran launched an unprecedented large-scale drone and missile attack against Israel on 13 April 2024. More than 300 projectiles – including around 170 drones and over 120 ballistic missiles – were fired toward Israeli territory in an immense overnight aerial barrage that Israel and its partners almost entirely intercepted. This reprisal marked the first time the Islamic Republic has launched a direct assault on Israel from its soil and raised fears of further escalation in the Middle East's deteriorating security environment (CNN, 2024). This paper addresses whether Iran's response was legitimate under international law and whether it can be considered an act of self-defence.

The Self-Defence Principle in the International Law

On 13 April 2024, Iran's permanent mission to the United Nations submitted a letter stating that the attack on Israel was an exercise of Iran's right to self-defence under Art. 51 of the UN Charter to the UN Secretary-General. They further explained that the attack was in response to alleged recurring Israeli military aggressions and its armed attack against Iranian diplomatic premises in violation of Article 2(4) of the UN Charter (Permanent Mission of the Islamic Republic of Iran, 2024).

Both articles mentioned in the Iranian letter are important for the strike's legality and the right to self-defence. Art. 2 (4) of the UN Charter is the core principle that states are to refrain from violence, that *"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"* (UN Charter, 1945). Instead, Article 51 relates to the right to self-defence. It reads: *"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, until the Security Council has taken the measures necessary to maintain international peace and security"* (UN Charter, 1945).

In international law, self-defence refers to a state's inherent right to use force in response to an armed attack. Self-defence is one of the few exceptions to the blanket ban against armed force provided by Article 2(4) of the UN Charter and customary international law (International Committee of The Red Cross, 2015). This has later been elaborated by the International Court of Justice (ICJ) in cases like *Nicaragua v. United States* (1986), which determined that an armed attack must rise to a certain *"scale and effect"*; therefore, not all attacks can be qualified as armed attacks. The ICJ explained the meaning of the *"armed attack"* as *"the gravest form of the use of force"* without going deeper into details and explanations of the meaning of the words *"grave form of the use of force"* (Upeniece, 2018).

Further, in *The Islamic Republic of Iran v. United States of America* (2003), the ICJ ruled that the responsibility to prove that an attack has occurred rests on the State justifying its use of force as self-defence. Use of force can be considered lawful when it is a direct response to an ongoing armed attack, and the presence of an immediate threat eliminates any questions regarding a justification for using force (Upeniece, 2018). Armed attacks that are not done in self-defence, therefore, are always qualified as unlawful uses of force under Article 2(4) of the Charter, and this also includes attacks directed against armed forces or embassies representing a state abroad (Schmitt, 2024).

Proportionality and Necessity

In the *Nicaragua Case* (1986), the ICJ held that *"self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it"* (ICJ,1986). This statement sets out two important principles in international law concerning the use of force: the principles of proportionality and necessity.

Necessity reflects an international customary rule in which a factual situation of grave and imminent peril for a state's essential interests legally justifies the State to breach international obligations if doing so is the only way to safeguard such essential interests (Tanzi, 2021). Necessity further requires that the conflict cannot be solved peacefully. Should a state be certain that no non-violent measures could prevent an enemy attack, some argue that also justifies an action's necessity, allowing pre-emptive force.

For example, this applies in situations where there is a direct threat to a state's survival and where the use of force is necessary to change the situation (Green, 2015).

The principle of proportionality is a legal principle that asserts that an action's legality is determined by the balance between its objective(s), the means and methods used, and its consequences. This principle implies an obligation to assess context before deciding on an action's legality. The responsibility to assess proportionality lies with those who act and must be carried out before an action is taken (Van Den Boogaard, 2019).

Enemy combatants and civilians directly participating in hostilities are not covered by the proportionality principle, and those responsible for planning a specific attack must opt for a weapon that mitigates or reduces the potential for civilian collateral damage. They must also conduct a diligent pre-attack assessment to ascertain an attack's potential effects on civilians and civilian infrastructure where rapid and concurrent acquisition and assessment of target information is required. Therefore, the legality of such an attack relies on an honest evaluation of the facts and circumstances known to commanders at the time of planning but cannot be based on ex-ante analysis based on hindsight (Cannizzaro, 2006).

Breaching Diplomacy: attacks on embassies

The trigger for the Iran-Israeli exchange was Israel's attack on the Iranian embassy in Damascus, Syria. The air strike was not the first Israel had conducted in Syria, but it was the first such bombardment that targeted another State's embassy (Fetouri, 2024). However, there have been numerous cases of such embassy protection violations. Radical organisations have attacked embassies for political reasons on several occasions. A prime example is the 1979 seizure of the US embassy in Tehran, during which students kept 53 staff members hostage for more than one year. Furthermore, there are also numerous instances of governments breaking into foreign embassies without consent. For instance, in 1985, South Africa police broke into a Dutch embassy without authorisation in order to detain a Dutch national who had provided support to the African National Congress. In a similar way in 1989, the United States military conducted a search of the residence of the Nicaraguan ambassador to Panama (Tricontinental, 2024).

These events are a significant violation of the 1961 Vienna Convention on Diplomatic Relations, which ensures the inviolability of diplomatic agents and premises. As per Art. 22.1, "*The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.*" (Vienna Convention on Diplomatic Relations, 1961).

Moreover, Art. 31 of the Vienna Convention on Consular Relations states that “*Consular premises shall be inviolable*” (1963), and Art. 1 of the same treaty defines consular premises as “*the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post*” (1963).

In addition, the Iranian embassy is not only a diplomatic premise, but it is also civilian, and attacks on civilian entities are prohibited by international law (IHL, 2015). Nevertheless, an embassy can still be classified as a military objective if it contributes to a military action or if there is a clear advantage if it is destroyed, captured, or neutralised (Dinstein, 2002). This makes further examination warranted. If the embassy is indeed considered civilian, Israel’s attack is a clear violation of international law. However, the embassy was alleged by the Israel Defence Force to be used for military purposes and can, therefore, be considered a military target should the allegation stands up to scrutiny. Nevertheless, if there is any uncertainty as to whether the embassy is a civilian or military objective, it should be regarded as a civilian installation, as already highlighted in *The Prosecutor v. Germain Katanga* before the International Criminal Court in 2014 (Geneva Conventions, 1949). Iran and Israel’s hostile relations and past incidents are not a direct presumption that the embassy is a military objective, and Israel’s claim that the embassy is a legitimate military target therefore requires clear evidence (Yönt, 2024).

As per the analysis, attacks on military targets must be proportionate, even if the embassy is clearly identified as a military target. Even if the target is a military objective, the rule of proportionality prohibits attacks that cause excessive civilian harm in relation to the expected military advantage (Barber, 2010). As there were civilian casualties and the strike was not in direct response to an Iranian attack on Israel, the strike appears to be disproportionate and illegal. However, this relies on the assumption that Iran did not use the embassy complex for military purposes. As such, the strike’s legality needs further legal examination (Townley, 2017).

Conclusion

Based on these observations, the lag between Israel’s attack and Iran’s retaliation puts the necessity of Iran’s missile strikes into question. Hence, Iran’s right to self-defence was forfeited because its 13 April 2024 counterattack was not immediate.

In the words of United States’ Senator Daniel Webster in the famous Caroline incident, Iran’s retaliation was not a “necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation” (Webster, 1842).

The ICJ has interpreted Article 51 narrowly and limited self-defence to only very serious attacks. In response to this, Iran authorities argue that the severity of its response is a consequence of the Security Council's failing its obligation to swiftly hold the consulate's attackers to account. (Maidin, 2024).

The risk here is that rather than restore deterrence, the scale of Iran's strikes may evoke an Israeli response on Iranian territory that could lead to a dangerous retaliatory spiral. While Iran and Israel have momentarily stepped back from the brink of conflict, the underlying dynamics of the region remain. The crisis between Iran and Israel in April 2024 highlighted the risks of making mistakes when there are no open lines of communication. With Iran-Israeli tensions still at a high point, and as Iran's nuclear programme is inching forward, it is crucial to build up lines of communication to counteract miscalculations and miscommunications moving forward. This open communication is essential to achieve long-lasting de-escalation and prevent further conflict (Zimmt, 2024).

Lastly, recent events have made it clear that Israel needs to revise its Iran strategy. There is a need for a comprehensive approach to Iran's nuclear ambitions, military expansion, and regional influence. This might include diplomatic efforts as well as targeted measures, seeking international cooperation to counter these multiple threats. Cooperation with Saudi Arabia, Egypt, Jordan, and the UAE is indispensable. Israel and Iran can address common security concerns and create a more stable environment through the creation of a new regional framework and pursuing diplomatic normalisation, especially with Saudi Arabia. Despite the many challenges, a joint effort offers the best chance for a stable and secure Middle East (Zimmt, 2024).

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