

SELF-DEFENCE UNDER ARTICLE 51 OF THE UN CHARTER: THE ISRAEL-IRAN TENSIONS

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RIGHT TO SELF-DEFENCE UNDER ARTICLE 51 OF THE UN CHARTER: ISRAELI-IRANIAN TENSIONS

In present age, wars have turned into struggles in which the one those have the world public opinion on his side also holds the upper hand. Perhaps in the 17th century, the strength of your wrist brought victory, but now you also need to convince the wrists to go to war. In our age, people either do not carry the concepts that they have enough love and loyalty to put their lives on the line, or they are already fighting against making war.

Moreover, international public opinion tends to strongly condemn even wars in which they are not involved. One can imagine that in order to fight a war, it is no longer enough to convince your own country, you also have to convince the international community of the rightness of the war. Despite these advances that make it harder to fight, people do not always evaluate the current moral values of ongoing wars; sometimes they carry the baggage of history. Otherwise, it would not have been possible for the atrocities in Palestine to be overshadowed by Iranian provocation. Israel is currently using the fear of Iran, one of the historical baggage of the West, to turn the tide of international public opinion in its favour.

The Israeli attack on the Iranian embassy in Damascus helped Iran to recover the support it had lost in the international community. The Iranian counter-attack, which followed shortly afterwards, was widely criticised by the Western world. Iran has responded to this criticism by invoking Article 51 of the United Nations Charter and justifying its attack on the grounds of self-defence. But how can Iran's argument be legally analysed and what are the tests of its persuasiveness? In the following analysis, we are on to examine the right to right to self defence from a terminological and international law perspective, point to examples in line with the United Nations Charter, and try to resolve the legitimacy-legality dilemma regarding the operation carried out without a UN resolution.

1. Article 51 of the UN Charter and Right to Self-Defence

1.1. On the Concept of Self-Defence

In modern legal systems, right to self defence is an institution that refers to the actions taken by a person in order to ward off a danger to himself/herself or a third party. In this context, the current Turkish Criminal Code No. 5237, in its Article 25, defines right to self defence as “...acts committed with the obligation to defend against an unjustified attack, which is directed against one's own or another's

right, which has occurred, is likely to occur or is certain to recur, in a manner proportionate to the attack according to the situation and conditions at the time...¹”.

Apparently, the right to self defence of a defence is related to the elements of an existing attack, the fact that this attack is directed against a person, that the attack is unjustified and that the defence against the attack is proportionate.

The principle of proportionality requires that the defence not only appropriately parry the attack, but also respond within a reasonable time. Reasonable time is often

¹ Kaplan, 2023, p. 1145

defined in domestic law as the “moment of attack”².

In international law, on the other hand, the concepts used in domestic law are transformed and integrated into the system of global politics, which is open to uncertainty and even desires it. To elaborate, while in domestic law the concrete existence of a danger is the leading element of self defence, in international law there are examples of self defence that are accepted even in cases where the danger is not concrete³.

States may become subjects of private law and public law in different situations. In this context, the right to self-defence is granted to these gigantic legal entities as well as to natural persons. The institutionalisation of self-defence within states is linked to the construction of global institutions.

1.2. The Emergence of Self-Defence in the United Nations Charter

The concept of self-defence emerged as a global institution of consent following the institutionalisation of war in international relations. Before the United Nations, right to self defence was a state of necessity to preserve existence⁴. Centuries ago, there was no need to talk about this right because there was no international community to be persuaded to fight.

In its early years, the United Nations envisaged systems to prevent conflicts between states. War is considered impermissible if it does not involve the urge to survive. Tarhanlı refers to the UN system and emphasises that self-defence, as a 'natural right' of states in this system,

is one of the situations that allow for exceptional war⁵. What is envisaged in the UN system is the avoidance of conflict under ordinary conditions. As a matter of fact, Article 2/4 of the UN Charter is in line with the aforementioned:

“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.”

One of the exceptions to Article 2/4 appears in Article 51:

“ 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 measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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 in order to maintain or restore international peace and security.”

It is seen that the use of the right to self-defence is subject to certain elements under the United Nations Charter. The first of these is that the person exercising the right must be a member of the UN, the second is that the attack must be armed, and the third is that the exercise of the right must end with the intervention of the Security Council. The definitions of armed

² Özgenç, 2022, p. 263

³ For further reading, see: Değdaş, 2018

⁴ Karadag, 2016, p. 182

⁵ Quoting Tarhanlı, Kaplan, 2023

attack were enumerated by the UN General Assembly Resolution A/3314 dated 14 December 1974⁶ as follows:

“a- The invasion or attack by the armed forces of a State against another State, or any military occupation or annexation by force, however temporary, of territory or part thereof of another State resulting from such invasion or attack;

b- The bombardment by the armed forces of one State of the territory of another State or the use by one State of weapons of any kind against the territory of another State;

c- Blockade of the harbours or coasts of a State by the armed forces of another State;

d- Attacks by the armed forces of one State against the land, sea or air forces or naval or air fleets of another State;

e- The use of the armed forces of a State stationed in another State in accordance with an agreement concluded with the latter in a manner contrary to the provisions of that agreement or the continuation of the presence of such armed forces in that State after the termination of the agreement;

f- A State which places its territory at the disposal of another State authorises the use of its territory by that State for the purpose of aggression against a third State;

g- The sending of armed gangs, groups, irregulars or mercenaries, or significant involvement in such acts, by or on behalf of a State against another State, who commit acts of armed force amounting to or on the scale of the acts listed above”

1.3. The Element of Time in Right to Self-Defence According to the UN Charter

It is stated that self-defence must take place immediately right after the attack. On the other hand, according to Karadağ, in the absence of immediate capacity, right to self defence can be exercised after a while if it is exercised without an interim decision⁷.

What is meant by an intermediate decision is a decision of the country that to exercise the right to defence regarding the solution of the problem. For example, if the country to be defended decides for an amicable solution and then uses force, the defence is considered to lose its legitimate grounds.

There are also those who apply the time element to the time before the unjustified attack. This view, which is formed within the framework of 'preventive right to self defence', is criticised as arising from an inappropriately broad interpretation of Article 51. Preventive self-defence is actually defended by many authors who consider these criticisms unjustified. These authors mostly focus their criticism on 'pre-emptive self-defence'⁸.

Finally, it is understood that right to self defence imposes an obligation to notify the UN, but does not require authorisation. The evaluation of Iran's operation is also in this context.

⁶ For further reading see: https://inhak.adalet.gov.tr/Resimler/Dokuman/2312020095336bm_31.pdf

⁷ Karadağ, 2016, p. 171

⁸ Karadağ, 2016, p. 184

2. Diplomatic Missions: Whose Territory?

The view that diplomatic missions are to be regarded as the territory of the country that opened the mission is based on a theory that is not widely accepted today. According to the 'Extraterritoriality Theory', the mission of the represented country is treated as if it were located in its territory⁹. This view has nowadays been abandoned and replaced by the 'Representation Theory' and the 'Functionality Theory'.

This concept is particularly emphasised in the moral aspect of international politics. However, the Vienna Conventions of 1961 and 1963, which stipulate that the property of diplomatic missions is inviolable, do not include a provision stating that the property of the mission is considered the territory of the country that opened the mission¹⁰. Therefore, it is not possible to say that the Israeli attack took place on Iranian territory. However, we can say that Iran perceives a rising threat.

3. What Could Iran Do?

In fact, we can argue that Iran's action does not contradict the UN Charter. Accordingly, let us match Iran with the conditions of right to self defence:

1. UN Membership: Iran has been a member of the UN since 24 October 1945.
2. Existence of a Current Attack: Israel attacked Iran's diplomatic mission and signalled further attacks

without any concrete ongoing tension¹¹.

3. Notification to the UN: Iran notified the UN on 10 April 2024 and asked them to take measures¹².

Iran appears to be following the necessary procedure to legitimise its right to defence. Some criticise Iran for not waiting for a Security Council resolution. Perhaps Iran could have waited for this resolution and started the operation with a possible US veto. However, we do not know whether the criticism that the reasonable time element of right to self defence has been exceeded to be raised. In addition, the UN Charter does not provide for the institution of authorisation, although right to self defence is conditional on notification. This could only be a gesture by Iran.

4. Self-Defence or Retaliation?

There have been suggestions that Iran's action was retaliatory¹³. The use of the term retaliation was probably developed to influence the United Nations agenda. As having look at the concept terminologically, referring to retaliation as a state's response in the same manner to actions taken against it by another state **that do not violate international law** but damage its interests is met.¹⁴

Retaliation includes responses to unlawful interference. Iran, for its part, states that it is fending off a threat against it¹⁵. Acceptance of this usage would mean that Israel could continue to interfere with diplomatic missions in third-party countries. In fact, for the Western world,

⁹ Çamyamaç, 2019, p. 459

¹⁰ For further reading see: https://inhak.adalet.gov.tr/Resimler/Dokuman/2312020094424bm_16.pdf

¹¹ CNN, 2024

¹² Reuters, 2024

¹³ For further reading see: Cohen, 2024

¹⁴ Eren, 2012, p. 236

¹⁵ Reuters, 2024

this is not an untenable argument. They would prefer that the fight against Iran be entrusted to Israel and that the transatlantic geography be free of war.

Türkiye, on the other hand, supports the legitimacy of the Iranian operation while calling on the region to exercise restraint, both as a balancing policy and to combat the threat of new waves of migration. On the other hand, it does not approve of Iran's bigger reactions. In any case, the next steps may go beyond right to self defence and may be evaluated in the light of discussions about a war.

5. Conclusions and Recommendations

The struggle between Israel and Iran consists of a show of force that does not actually aim at a war, but does not avoid it either. Sometimes, this struggle offers the parties the opportunity to escape from developments that narrow their room for manoeuvre. While Israel is under pressure from the international community for its massacres in Palestine, Iran is busy with social fractures, especially those caused by women's movements.

It is unlikely that the first Israeli attack can be justified. The weakening of Iran's cooperation with Hamas means that Israel is less threatened by the massacre in Palestine. Therefore, the attack on the embassy cannot be evaluated within the theories of right to self defence mentioned in the analysis read out. However, Israel seems to be trying to create a perception of threat through Iran's retaliatory action and to consolidate the international community on this point.

Iran's statements at the UN and its exercise of its right to self-defence without killing any Israeli citizen keep the threat

perception in the international community at a low level. The fact that the first attack did not come from them and their relative silence on the Palestinian issue makes it difficult for Israel to convince people.

It is a fact that both diplomatic and military confrontations between the two countries to continue. On the other hand, one of the two countries is not smooth enough to throw the other out of the system with hot contact. Both governments are struggling with a negative atmosphere in terms of domestic political indicators and are competing with different goals in foreign policy. For this reason, neither side is comfortable enough to make moves that would bring the other to a lower threat level. Therefore, it is imperative for both sides to keep the tension at a certain level.

Türkiye can assume the most important position to prevent this tension from escalating conflicts in the region. Türkiye is one of the few countries in the region where Israel would not want to test its power, even though it does not have relations with Israel that have been developed throughout history and are favourable to both sides. Türkiye, which keeps its relations with Iran at a stable level, has the capacity to melt the interests of both states into a common pot.

In addition, Türkiye's attitude and response to the tension between the two countries is also important in terms of strengthening its own international policy. Türkiye, which is frequently confronted with aggressive actions, especially by Greece, is following a very consistent and reasonable policy in terms of its right to self defence. The declaration that Iran's counter-action is right to self defence and the accompanying call for restraint may draw attention to

Türkiye's mediation skills and rational policies.

In the end, it is a constant hope that the tensions and the debate on the right to self-defence not to overshadow the Palestinians' right to live and that the world to soon turn its eyes back to the real suffering.

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