

ARE ISRAEL'S ACTIONS IN PALESTINE CONSIDERED AS

SELF DEFENCE ?

ADVANCED SEMINAR: OCHI MEGUMI • TEAM: THE PROSECUTOR

INTRO

- AN OVERVIEW OF THE ISRAEL-PALESTINE CONFLICT (FROM 7TH OCTOBER 2023)
- CRITICAL LEGAL ANALYSIS OF ISRAEL'S CLAIM OVER "SELF-DEFENCE" OF ITS CONTINUOUS RETALIATION ATTACKS TO GAZA BASED ON SEVERAL INTERNATIONAL LAWS
- UNDERSTANDING THE LEGALITY OF ISRAEL'S SELF-DEFENCE CLAIMS IS VITAL FOR SHAPING INTERNATIONAL RESPONSES AND FUTURE PEACE-BUILDING EFFORTS.

HAMAS ATTACK

HAMAS: PALESTINIAN MILITANT AND POLITICAL (RESISTANCE) GROUP

- CARRIED OUT COORDINATED ATTACKS ON THE SOUTHERN PART OF ISRAEL
- ON OCTOBER 7, 2023. IT WAS ON JEWISH HOLIDAY OF SIMCHAT TORAH
- DUE TO ROOTED IN LONG HISTORICAL AND POLITICAL FACTORS (LONG-LASTING ISRAELI OCCUPATION IN PALESTINE, ISRAEL BLOCKADE OF GAZA, ETC)
- ALLEGEDLY COMMITTED VARIOUS WAR CRIMES SUCH AS, HOMICIDE, HOSTAGE-TAKING, AND CRIMES AGAINST HUMANITY OF MURDER, ETC.

OCT
7
2023

IDF ATTACK

IDF: ISRAELI DEFENCE FORCE

- IDF CARRIED BRUTAL 'SELF-DEFENCE' ATTACKS FROM 7TH OCT 2023 - UNTIL NOW CAUSING TENS OF THOUSANDS OF CASUALTIES AND DISPLACED PEOPLE.
- ISRAEL ALLEGEDLY COMMITTED VARIOUS WAR CRIMES OF MURDER, INTENTIONAL TARGETING OF CIVILIANS, STARVATION (BLOCKADE), FORCIBLE TRANSFER, SEXUAL VIOLENCE, DISRESPECT OF DEAD, ETC.
- DEC 2023 - SOUTH AFRICA BROUGHT ISRAEL BEFORE THE ICJ UNDER THE ACCUSATION OF GENOCIDE AGAINST THE PALESTINIANS

Scope of Jus ad Bellum & Jus in Bello

- **JUS AD BELLUM** (LATIN: RIGHT TO WAR) IS A DOCTRINE THAT DICTATES IN WHAT CONDITIONS STATES CAN RESORT TO WAR.
- **JUS IN BELLO**, OR THE DOCTRINES THAT DICTATE WHAT CONDUCT IS ALLOWED BETWEEN PARTIES IN A WAR. OUR PRESENTATION MAINLY FOCUSES ON JUS AD BELLUM IN THE CASE OF ISRAEL, AND LIMITS OUR QUESTIONS TO WHETHER ISRAEL STARTING THE WAR IN GAZA IS A VALID FORM OF SELF-DEFENCE.

UN CHARTER ART.2(4)

PROHIBITION ON
THE USE OF FORCE THAT HARMS:
TERRITORIAL INTEGRITY
POLITICAL INDEPENDENCE
EXCEPT IN CASE OF:

UN CHARTER ART. 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"

Criteria and Statethood

CRITERIA THAT MUST BE CONSIDERED BEFORE EXERCISING SELF-DEFENCE: (1) THERE MUST BE A CLEAR ARMED ATTACK, (2) ANY FORCE USED IN SELF-DEFENCE MUST BE NECESSARY AND PROPORTIONATE TO THE THREAT FACED, (3) THE RIGHT TO SELF-DEFENCE MUST BE INVOKED IMMEDIATELY AFTER AN ATTACK OR IN RESPONSE TO AN IMMINENT THREAT, (4) SELF-DEFENCE BE IMMEDIATELY REPORTED TO THE UN SECURITY COUNCIL.

- THE INSISTENCE OF ISRAEL ON THE DEFENCE AGAINST HAMAS, NOT PALESTINIAN PEOPLE, MADE BY ISRAEL CO-AGENT TAL BECKER IMPLIES THE ABSENCE OF A RIGHT OF SELF-DEFENCE UNDER THE ARTICLE 51, WHICH ONLY APPLIES TO STATE ACTORS
- HOWEVER, THE APPLICATION OF UN CHARTER ART. 51 TO ATTACKS BY HAMAS FROM THE LAND OF GAZA, WHOSE GOVERNING AUTHORITY IS NOW UNDER HAMAS, IS OPEN TO DEBATE THE SENSE OF SELF-DEFENCE AGAINST NON-STATE ACTOR

Proportionality Test

PROPORTIONALITY: THE RESPONSE MUST BE PROPORTIONATE TO THE THREAT.

- **TIT-FOR-TAT TEST:** THE RELATIONSHIP BETWEEN AN ACT AND THE LEGITIMATE RESPONSE TO THAT ACT. THE AMOUNT OF FORCE USED BY A STATE AS A COUNTERMEASURE MUST BE PROPORTIONATE TO THE FORCE PREVIOUSLY USED.
- **MEAN-ENDS TEST:** AN ASSESSMENT OF THE HARM CAUSED BY MEANS USED TO FURTHER LEGITIMATE ENDS. THIS MEANS CONSIDERING WHETHER THE DEFENSE IS INTENDED TO STOP A CURRENT ATTACK AND PREVENT FUTURE ATTACKS. (JUS IN BELLO ASSESSMENT)
- **ASSESSMENT OF ISRAEL'S CLAIM :** ISRAEL HAD A RIGHT TO TAKE MEASURES TO SECURE THE SAFETY OF ITS OWN NATIONALS, BUT GIVEN THE DISPROPORTIONATE RESPONSE TO THE POINT WHERE THE ICJ HAS NOT RULED OUT GENOCIDAL INTENT, ISRAEL'S ACTIONS FAIL THE PROPORTIONALITY TEST.

Necessity Test

- **NECESSITY:** THE USE OF FORCE MUST BE NECESSARY BECAUSE THE THREAT IS IMMINENT, SO PURSUING PEACEFUL ALTERNATIVES IS NOT AN OPTION. (CAROLINE TEST)
- **NECESSITY SETS THE CONDITIONS UNDER WHICH FORCE CAN BE USED.** THERE MUST BE NO OTHER OPTION AND THE USE OF FORCE MUST BE UNAVOIDABLE.
- **NECESSITY OF SELF-DEFENCE WAS INSTANT, OVERWHELMING, LEAVING NO CHOICE OF MEANS, AND NO MOMENT OF DELIBERATION. OR;**
- **THE LEAST RESTRICTIVE MEASURE SHOULD BE CHOSEN**
- **EVEN IF THERE WAS AN IMMINENT THREAT AND IT WAS OVERWHELMING NECESSITY, ATTACKS AGAINST CIVILIANS AND CIVILIAN OBJECTS CANNOT BE PROVEN TO BE NECESSARY AND ARE NOT THE LEAST RESTRICTIVE MEASURE. ISRAEL'S SELF-DEFENCE CLAIM DOES NOT SATISFY THE NECESSITY TEST.**

Conclusion

ALTHOUGH ISRAEL ASSERTS ITS RIGHT TO SELF-DEFENCE UNDER ARTICLE 51 OF THE UN CHARTER, OUR ANALYSIS ASSUMES THAT ITS MILITARY ACTIONS MAY EXCEED THE BOUNDARIES OF SELF-DEFENCE. GIVEN THE ONGOING NATURE OF THE CONFLICT, THESE ASSUMPTIONS REMAINS PRELIMINARY AND REQUIRES FURTHER LEGAL SCRUTINY AND MONITORING UNDER INTERNATIONAL LAW.

TRUE???

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