

Analysis of international legal protection of the existence of the state of Palestine and the legality of Israel's counter-attacks against the attacks launched by Hamas

Roniya Yudha Sanjaya

Military Law College, Indonesia

roniyayudhasanjaya@gmail.com



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Abstract

Purpose: This study is expected to provide significant scientific contributions in understanding the dynamics of international law in the context of armed conflict, as well as providing policy recommendations to strengthen efforts for a peaceful resolution.

Research/methodology: This study uses a normative legal method with a case approach and is analyzed based on relevant international legal principles, including the Charter of the United Nations, the Geneva Conventions, and international humanitarian law.

Conclusions: This study concludes that although the right to self-defense is recognized internationally, its implementation must always be in line with the principles of justice, humanity, and applicable law to avoid things that can worsen the humanitarian situation.

Contributions: this study provides a significant scientific contribution in understanding the dynamics of international law in the context of armed conflict, as well as providing policy recommendations to strengthen efforts for peaceful resolution.

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1. Introduction

Based on International Law, several countries establish cooperative relations with other countries to establish good cooperative relations. World history and the experience of several countries, the nature of relations between subjects of International Law is not only covered in the scope of the country and follows the changes of the times according to the changes of the times and circumstances. The fluctuation of the relationship can be maintained and preserved until now through diplomacy (Suryono 1986).

According to a study of international relations, war is seen as a form of interaction between countries in the form of a conflict (Ambarwati 2010). A conflict or dispute that can be resolved diplomatically to a dispute that ends in armed conflict as a way to resolve the problem. Armed conflict is an event full of violence and hostility between the warring parties. In the history of armed conflict it has been proven that conflict is not only carried out unfairly, but also causes cruelty (Darmawan 2005). War is the highest level of conflict between two or more parties. This type of interaction has been going on since the emergence of human civilization until now. The problem of conflict and war is a contemporary issue in the study of International Law, even more so when there are human victims due to the event. These frequent armed conflicts certainly violate Human Rights because there is violence and human suffering that is contrary to humanitarian values. State security and urgent situations are certainly the most basic factors in the emergence of armed conflicts that have occurred or are still

occurring today. The occurrence of armed conflict begins with a conflict of interest with another nation or a conflict between groups within a nation itself.

Mochtar Kusumaatmadja divides the law of war into two, namely *ius ad bellum*, the law of war, regulating how a country is justified in using armed violence and *ius in bello*, the law that applies in war, which is further divided into:

1. The law that regulates how war is conducted (the conduct of war). This section is usually called The Hague Laws.
2. The law that regulates the protection of people who are victims of war. Usually called The Geneva Laws (Unani 2017).

Armed conflict must indeed be avoided as a form of problem solving. However, efforts to avoid war on earth are impossible. Thus, in order to reduce the suffering caused by this war, an agreement was made in the form of a convention or international agreement that regulates war. This law was formerly known as the law of war and is now better known as International Humanitarian Law. Humanitarian Law, as a branch of Public International Law, is not widely known by the public. Likewise, its name causes a lot of confusion because it is indeed somewhat misleading. Not many people think that Humanitarian Law is a new name for what was previously known as the Laws of War (Haryomataram 2012).

This conflict has been going on for more than 100 years. On November 2, 1917, the British Foreign Secretary, Arthur Balfour, wrote a letter to Lionel Walter Rothschild, a figure in the British Jewish community. The letter was short, only 67 words, but its contents had an impact on Palestine that is still felt today. The letter committed the British government to "establish a national home for the Jewish people in Palestine" and to facilitate "the achievement of this goal." The letter is known as the Balfour Declaration. In essence, the European powers promised the Zionist movement a state in an area where 90% of the population were native Palestinian Arabs. The British Mandate was formed in 1923 and lasted until 1948. During this period, Britain facilitated the mass migration of Jews. After the Nazi movement in Europe, there was a fairly large wave of arrivals. In this wave of migration, they met resistance from Palestinians. Palestinians were concerned about the demographic changes in their country and the confiscation of their land by the British to be handed over to Jewish settlers. The increasing tensions eventually led to the Arab Revolt. This lasted from 1936 to 1939. In April 1936, the newly formed Arab National Committee called on Palestinians to launch a general strike.

The second phase of the rebellion began in late 1937. The rebellion was led by the Palestinian peasant resistance movement, targeting British power and colonialism. In the second half of 1939, the British collaborated with the Jewish settler community and formed armed groups and "counter-insurgency forces" consisting of Jewish fighters called the British-led Special Night Squad. In the Yishuv, the pre-state settler community, weapons were secretly imported and arms factories were established to expand the Haganah, the Jewish paramilitary that later became the core of the Israeli army. In the three years of the rebellion, 5,000 Palestinians were killed. As many as 15,000 to 20,000 people were injured and 5,600 people were imprisoned. On December 14, Hamas was founded, although it had existed before. Hamas is a movement to liberate Palestine from Israeli occupation. In the period 1987-1993, Hamas carried out more propaganda through the publication of books, pamphlets, brochures, and so on to raise the spirit of the Palestinian people. Hamas also developed various forms of civil resistance, such as demonstrations, boycotts, mass riots, and various other non-cooperative actions. Hamas also fought against Israel by taking up arms.

The conflict continues to this day, the first attack around 2023 in October. The first attack was carried out by Hamas using thousands of rockets launched into Israeli territory, namely towards the southern and central parts, including Tel Aviv and also Jerusalem. One of them hit a hospital in Ashkelon. Israel's Iron Dome reportedly failed to block the rockets prepared by Hamas. The missile defense is claimed to be one of the most effective air defense systems on Earth. Hamas claims 5,000 rockets were launched in 20 minutes. In response, the Israel Defense Forces (IDF) revealed that 2,200 bullets

were fired but did not release how many Hamas attacks were intercepted (Natamiharja, Panjaitan, & Setiawan, 2025; Zulfa, Raharjo, & Shafira, 2022).

The conflict began a month ago with a sneak attack, involving thousands of armed Hamas terrorists who breached the security fence separating Gaza from Israel, and indiscriminately tortured and shot dead Israeli civilians in their homes, as well as attacking soldiers, caught off guard at military bases. The militants also brought death from the sky, paragliding into Israel, to launch a savage attack on an open-air music festival billed as a celebration of "unity and love". Immediately after the Hamas attack on October 7, which also included thousands of missiles launched into Israel from the Gaza Strip, the IDF began its retaliatory campaign, bombarding Gaza with air strikes. Israel immediately vowed to eradicate Hamas, the terrorist organization that controls Gaza and is believed to operate with Iranian support (Dokku & Kandula, 2021; Zahrani, Nurmayani, & Deviani, 2022).

As a result of the Hamas attack, reported by Al Jazeera, 250 Israelis were killed, 1,500 were injured, and 270 others are in serious condition. Then the IDF carried out a retaliatory attack on Palestine in early January 2024, the Gaza Health Ministry recorded the death toll in the war-torn Palestinian territory reaching 25,000. This happened when Israel launched its attack on the south and returned to bombing the northern region.

The phenomenon that occurs above, leads to the assumption that the use of Self Defense referring to the UN Charter article 51 really needs to be considered. The big question is when the attack comes and when the attacked country attacks back without paying attention to the terms of using Self Defense, then what impact will arise, then a counterattack that is not in accordance with the provisions of applicable regulations will result in a wrong action taken by the country against another country. In an effort to fill the gap between Das Solen and Das Sein, this thesis will answer the above questions through a comprehensive and in-depth review and analysis of various international legal reviews.

Based on the description above, the author is interested in conducting further research by raising the title "Analysis of the Legality of Israel's Counter-Attack Against Hamas Attacks Reviewed from the Perspective of International Law (Case Study Of Hamas Attacks On Israel In October 2023)".

1.1. Problem Formulation

1. What is the form of international legal protection for the existence of the State of Palestine?
2. How is the legality of Israel's retaliatory attack against Hamas's attack viewed from an international legal perspective?

2. Literature Review

2.1. Legal Protection Theory

Legal protection is providing protection for human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is all legal efforts that must be given by law enforcement officers to provide a sense of security, both mentally and physically, from disturbances and various threats from any party (Rahardjo 2000).

2.2. Self Defense Theory

Self-defense is the right to defend oneself granted by the UN Security Council as stated in Article 51 of the UN Charter. This right can be used by a country in order to defend itself from an attack from another country. Article 51 of the UN Charter states that nothing in this Charter may prejudice the individual or collective right to 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. Actions taken by members in exercising this right of self-defense must be reported immediately to the Security Council and in no way can reduce the power and responsibility of the

Security Council under this Charter to take such action as it deems necessary at any time to maintain or restore international peace and security (Dinstein, 2017; Gill & Fleck, 2015; Idham et al., 2023).

However, this right is not simply a reason for a country that is attacked to carry out a retaliatory attack which ultimately results in war. The right to self-defense has written rules that require countries that experience attacks to report to the UN Security Council. Furthermore, the UN Security Council will act through negotiations or military force. If the attack cannot be resolved through negotiations, then strict sanctions will be the last resort used by the UN Security Council to maintain international peace and security. The purpose of self-defense is so that there is no misinterpretation of the function of self-defense which ultimately only ends in war that threatens international peace and security (Pratiwi, Dewi, Widnyani, & Rahayu, 2023; Zailani, Idham, & Erniyanti, 2023).

2.3. Principle of Proportionality

The principle of proportionality prohibits attacks that can be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination of these, which would be excessive in relation to the concrete and direct military advantage anticipated (Huda & SH, 2017; Lubell, 2010). Given that direct attacks on civilians and civilian objects are already prohibited. Proportionality is only relevant when the attack is directed against a legitimate target.

2.4. Conceptual Framework

2.4.1. Legality

Legality is a legal principle that states that an act can only be subject to criminal punishment if the act has been clearly regulated as a criminal act in the applicable legislation before the act was committed. Prioritizing a fair legal system where everyone is treated equally in the eyes of the law, without discrimination.

2.4.2. Hamas

The name Hamas comes from 'Harakat al-Muqawamah al-Islamiyyah' which means Islamic Defense Movement. Hamas means 'spirit'. Although this organization was founded on December 14, 1987, Hamas actually existed long before the emergence of the Israeli-Palestinian conflict. Hamas was previously part of the Muslim Brotherhood (IM) in Egypt. IM members in Palestine established the IM branch in Palestine in 1946. After Israel was founded, the Palestinian IM began to fight after the 1967 war. After the first intifada broke out, the Palestinian IM leadership established a more focused and orderly organization to achieve one goal, namely Hamas. Apart from Hamas, there is also the Fatah group which has the same goal, but prioritizes negotiation and peace. After the Palestine Liberation Organization peace agreement represented by Arafat (2014) was rejected by Israel in 1993, Hamas became more visible with its struggle through taking up arms.

2.4.3. Israel

Israel is a small country in the Middle East bordering Egypt, Jordan, Lebanon, and Syria. Currently, the population of Israel is over 9 million people, most of whom are Jewish. Israel declared its independence on May 14, 1988.

2.4.4. Palestina

The State of Palestine is a country in the Middle East between the Mediterranean Sea and the Jordan River. Its political status is still under debate. Most countries in the world including member states of the OIC, the Arab League, the Non-Aligned Movement, and ASEAN have recognized the existence of the state of Palestine. The territory of Palestine is currently divided into two political states, namely the Israeli Occupied Territories and the Palestinian National Authority. The Palestinian Declaration of Independence was declared on November 15, 1988 in Algeria by the National Council (PNC) of the Palestine Liberation Organization (PLO).

2.4.5. Counterattack

A counteroffensive is a term used in the military to describe a large-scale operation, usually a strategic attack by forces that successfully stops the enemy, while occupying a defensive position.

2.5. The Existence of Palestine as a Sovereign State

Palestine is a state recognized by the United Nations (UN) as a "Non-Member Observer State". On 29 November 2012, the UN General Assembly adopted Resolution 67/19 granting Palestine this status, affirming the rights of the Palestinian people to self-determination and independence in the State of Palestine in the Palestinian territories occupied since 1967. The resolution also called for a just and lasting peace settlement between Israel and Palestine based on relevant UN resolutions and international law. This recognition marks an important step in the Palestinian struggle for international recognition and full independence.

2.6. Self Defense Theory in International Law

In Article 51, it is stated that Self Defense actions can be carried out in response to armed attacks, the use of violence must be as needed and proportional and must immediately report the action to the UN Security Council (UNSC). The action must be stopped immediately if the UN Security Council has taken action (Gustian, Respationo, Erniyanti, Anatami, & Parameshwara, 2022).

Then the UNSC will determine whether the action taken by the member state is a threat to international peace and security or not. If according to the UNSC there has been a threat and violation of international peace and security, then based on Article 39 CHAPTER VII of the UN Charter concerning actions related to threats to peace, violations of peace and acts of aggression, the UN Security Council has the authority to determine the steps whether or not there is a threat to peace or an act of aggression and will recommend or decide what actions should be taken in accordance with Articles 41 and 42 of the UN Charter to prevent maintaining or restoring international peace and security (Sefriani 2016).

2.7. Israeli retaliatory strikes against rockets launched by Hamas

The retaliatory attack carried out by Israel was a retaliatory attack during war, namely an act of retaliation between the warring parties with the aim of forcing the opposing party to stop their actions that violate the Law of War. However, the actions taken by Israel were excessive so that they violated several principles of Humanitarian Law and also the regulations in the Hague Convention and the Geneva Convention on retaliatory measures (Sarita 2017).

The principle of Humanitarian Law violated by Israel is the principle of proportionality. Where the parties to the war must pay attention to the principle of proportionality or balance. This principle aims to balance military interests and risks that will harm civilians. The principle of proportionality is generally accepted as one of the customary international laws. So that every country is fully bound to apply the principle of proportionality in armed conflict. Israel may carry out retaliatory attacks. However, the retaliation may only be carried out as long as it is proportional, namely not excessive and not against the law. The principle of proportionality has been codified in article 51 paragraph 5 letter b of Additional Protocol I of 1977 to the Geneva Convention which states "Thus the civilian population or civilians may not be the target of attacks. Acts or threats of violence whose primary purpose is to spread terror among the civilian population are prohibited.

From the article it is stipulated that every country is prohibited from carrying out "an attack that can be expected to cause unnecessary losses in the form of civilian lives, injuries to civilians, damage to civilian objects, or a combination of all of these which is something that is beyond the limit compared to the concrete and direct military advantage that can be expected beforehand." However, the attack turned out to cause several losses such as damage to residential areas, and one civilian was injured. In addition to violating the principle of proportionality, the retaliatory attack also violated the principle of necessity or the principle of necessity which is related to the principle of necessity.

3. Research Methodology

3.1. Type of Research

This research is descriptive analysis, which is a method that functions to describe or provide an

overview of an object being studied through data or samples that have been collected and research. Normative Legal research type. Research that uses or refers to the Statute Approach, case approach, and historical approach (Marzuji 2016).

3.2. Legal Materials

Primary legal materials are legal materials that are authoritative, meaning they have authority, consisting of laws and regulations related to the topic of discussion, namely:

- 1) The Charter of the United Nations (UN);
- 2) International Conventions

3.3. Data Collection

Data collection activities are obtained through library research and collecting data from the internet, especially from official websites (Internet searching) and data collection using limited empirical legal research methods (Sumarna 2023). Data collection is carried out through document studies of secondary data. For secondary data in legal research, it can be limited to the use of document studies or library materials only.

3.4. Data Analysis

Considering that this legal research is descriptive analytical and prescriptive analytical in nature, data analysis is carried out qualitatively, namely by collecting research data to be processed analytically regarding state accountability in the use of self-defense while simultaneously emphasizing the rules imposed in the use of this weapon from an International Law perspective.

3.5. Drawing Conclusions

Drawing conclusions is done using deductive logic, meaning a method of drawing conclusions from general to specific. Conclusions are answers to problems raised based on test results and discussions convincingly as far as the research is concerned.

4. Results and Discussions

4.1. Research Interview of the Palestinian Ambassador to Indonesia

Dr. Zuhair S.M.Alshun as Ambassador of the State of Palestine on July 22, 2024.

Interview results: In this interview, the resource person provides an in-depth view of Hamas' role in the Palestinian struggle for independence. According to the resource person, Hamas is an integral part of Palestine that fights for freedom and independence through warfare. They see that Hamas' actions are not without reason, but rather a response to the long history of aggression carried out by Israel. The resource person explained that since ancient times, Israel has carried out various acts of aggression to occupy and control the Palestinian territories. History records many events in which Palestinians lost their land and homes due to the expansion of Israeli settlements. In Hamas' view, their military actions are a form of resistance against the occupation which is considered illegal under international law. They believe that through armed struggle, Palestine can achieve true independence and be free from Israeli domination.

In addition, the resource person emphasized the importance of attention and support from the international community. According to him, many countries need to understand the historical context and the complex situation in Palestine so that they can see Hamas' struggle from a broader perspective. International support is essential to prevent Palestine from continuing to be oppressed and to ensure that its rights as a nation are respected. The source hopes that through global attention, there will be more diplomatic pressure on Israel to stop its aggression and support efforts for a just peace for both parties. The source also highlighted that for many Palestinians, Hamas is seen as a symbol of resistance and steadfastness in defending their rights. Although the methods used by Hamas are often controversial and have drawn criticism from various parties, the source emphasized that the background of Hamas' actions cannot be separated from the historical context and the complex political situation in the region. Hamas, according to the source, represents the aspirations of many Palestinians who want freedom and justice in their homeland. Support and solidarity from other countries are essential to help realize these ideals.

4.2. International Legal Protection for the Existence of the State of Palestine

Not many people realize that Israel often considers Hamas as a security threat. Therefore, Israel launched an attack on the Gaza Strip. However, this can be seen from two perspectives. First, regarding the legitimacy of the use of force (*jus in bellum*), and second, regarding the manner in which the attack was carried out (*jus in bello*). In the context of the legitimacy of the use of force (*jus in bellum*), the question is whether Israel's attack can be considered an act of self-defense. As we have learned, there are only two categories of justification: "self-defense" and "necessity". However, it is important to note that in this context, "necessity" cannot be used to justify a state's violation of its international obligations unless only in this way essential national interests can be protected from imminent grave risk and the action does not seriously interfere with the intrinsic interests of another state that holds the obligation.

Self-defense can be used as a justification for action when the self-defense is carried out as self-defense applicable under the provisions of the United Nations (UN) Charter. It is important to note that this does not mean that all acts of self-defense are legitimate, but only acts of self-defense in accordance with the UN Charter are considered legitimate. This provision also means that if the same act is not carried out, but in self-defense, the act is unlawful (and therefore cannot be used as justification). Countries that have suffered losses at the hands of other countries are allowed to take revenge (take retaliatory measures). In the form of demands that they do not fulfill certain international obligations to the violating country. But this is done only in the interests of the violating country to stop the violation and provide full compensation (make repairs). However, we need to be aware that there is a risk of this retaliation. Retaliatory measures are illegal if the actions of a country that were originally considered to be violating turn out to be legal actions under international law. Then the action is not legitimate. Regarding the definition of retaliatory measures, it should be underlined that there are differences in state responsibility and retaliation that are within the scope of humanitarian law and also different from the actions of imposing and condemning or ending sanctions from an agreement.

Some of the violations committed by the Israeli army during the armed conflict and classified according to the principles of international humanitarian law that have been violated are as follows:

1. The principle of military necessity

Article 57 of Additional Protocol I of the Geneva Conventions states that objects that can be attacked in armed conflict are military and combatant objects. Targeted attacks on civilian casualties and private assets, including infrastructure and other vital assets, must be avoided. However, in reality, Israel also attacks civilian objects such as schools, hospitals, homes, and power lines. The interruption of Palestinian electricity and the destruction of hospitals threaten the survival of Palestinian civilians, especially children and those injured in the attacks.

2. Principle of humanity

Several incidents committed by the Israeli army that violated the provisions of humanitarian principles, including the blocking of humanitarian aid sent by various international organizations that wanted to express sympathy to the Palestinian people in Gaza who were suffering from the ongoing conflict.

3. Principle of proportionality

This principle means a balance between what is received and what is given in armed conflict. Here, in the case of the conflict between Palestine and Israel, there is a gap or imbalance in Israel's retaliatory attacks on the Gaza Strip in response to Hamas rocket attacks on Israeli territory. For days, Israeli forces bombed private areas used by Hamas as hiding places by dropping aerial bombs. Of course, the impact and casualties caused were different from the results of Hamas rocket attacks on Israeli territory. Attacks on public facilities by the Israeli army are not necessarily the result of negligence, but are a form of the Israeli army's attempt to ignore human rights and international humanitarian law. Hamas often uses public buildings and infrastructure to provoke Israel to attack UN schools from which Hamas launches rockets. The actions carried out by Hamas paramilitaries show that they violate the rules of international humanitarian law, and from the perspective of Article 28 of the Geneva Convention, Hamas's military is not targeting civilian attacks.

4. Human rights issues

In the conflict between Palestine and Israel from the perspective of international humanitarian law, human rights are the relationship between citizens and their country concerning the state's obligation to promote and secure the special basic rights of citizens as determined in legal instruments (Mangku 2020), but in the conflict between Palestine and Israel there are examples of human rights violations. Where there was a 22-day Israeli attack on Palestine resulting in the deaths of around 1,434 civilians and injuries of around 5,000. This is contrary to the principles of humanity both in humanitarian law and in human rights itself. There have been many violations of humanitarian principles committed by the Israeli military. One of them is the blocking of humanitarian aid sent by various international organizations who want to show sympathy for Palestinians suffering from the conflict. This Israeli military action has violated the most basic rights that are part of both legal systems: human rights and international humanitarian law, especially the right to life, the prohibition of torture and inhumane treatment, the prohibition of slavery and justice. Israel deserves to be tried for "crimes against humanity", and the International Criminal Court should not delay whether the Israeli leaders who will be held responsible for the blockade deserve to be charged with violations. The problem of determining who is involved in war crimes in the Palestine-Israel conflict is a serious obstacle to international humanitarian law and the enforcement of human rights in the international world.

So far, the International Court has not taken concrete steps to bring these war criminals to justice. The great hope and responsibility of the member states of the UN Security Council can take effective and important steps in influencing US international policy and providing valuable lessons for the future about the values and dignity of humanity that are absolutely owned by all humans in realizing world peace. The conflict between Palestine and Israel in the Gaza Strip has not been resolved and remains an unstable (not conducive) area. Various peace efforts have been made between the parties, both by the UN and intermediary countries. Acts violating international humanitarian law and human rights continue to be carried out by two countries, Palestine and Israel, especially Israel which is more dominant (Arianti 2020).

In the implementation of Humanitarian Law in the Palestine and Israel conflict, it is in the form of self-defense action from Israel in the form of retaliation by implementing the Cast Lead method as a reaction to the missile and rocket attacks from Hamas paramilitaries on Israel which disturb and endanger the safety of the Israeli people. Where various methods have been taken to avoid the use of military force but have not created a bright spot between the disputing parties. So that Israel carried out an invasion of the Gaza Strip. Based on the violation of Humanitarian Law in the armed conflict between Palestine and Israel, it can be concluded that both parties to the dispute, both Israel and Palestine. In this case, Hamas (labeled as a terrorist organization by Israel and the United States) and carried out actions that violate International Humanitarian Law, especially human rights violations. The Cast Lead method is not a form of violation of Humanitarian Law but rather an action of Self-defense in the form of Reprisal against the Hamas rocket attacks that disturb the stability and safety of the Israeli people. Violations of Humanitarian Law by Israel here are on the principle of military necessity, the principle of distinction, the principle of proportionality and the principle of humanity in relation to violations of Human Rights.

Faced with the conflict cases above, international legal protection of the existence of the State of Palestine is a complex issue and involves various legal, political, and historical aspects. Here are some main points that explain how international law protects the existence of the State of Palestine:

1. UN Resolutions:

- a) UN General Assembly Resolution 181 (1947): This resolution recommended the partition of the Palestine Mandate into an Arab and a Jewish state, with Jerusalem under international administration. Although not fully implemented, this resolution remains the basis of legitimacy for the establishment of a Palestinian state.
- b) UN Security Council Resolutions 242 (1967) and 338 (1973): These resolutions called for Israel's withdrawal from the territories occupied in the 1967 conflict and stressed the importance of respecting the sovereignty of each state in the territories.

2. International Recognition:
 - a) In 1988, the Palestine Liberation Organization (PLO) declared the independence of the state of Palestine, which has been recognized by more than 130 countries.
 - b) In 2012, the UN General Assembly upgraded Palestine's status to "Non-Member Observer State", which gave additional legitimacy to Palestinian demands for sovereignty.
3. International Humanitarian Law:
 - a) The Geneva Conventions and their additional protocols provide for the protection of civilians in armed conflict. The Israeli-occupied Palestinian territories of the West Bank, Gaza Strip and East Jerusalem are recognized as occupied territories, and their inhabitants are entitled to this protection.
 - b) The UN Security Council and General Assembly have repeatedly reaffirmed that Israeli settlements in the occupied territories are illegal under international law.
4. International Court of Justice (ICJ):

In 2004, the ICJ issued an advisory opinion stating that Israel's construction of a barrier wall in the occupied Palestinian territories violates international law.
5. International Criminal Court (ICC):

In 2015, Palestine officially became a member of the ICC, allowing for investigations into alleged war crimes and crimes against humanity committed in the Palestinian territories.
6. Oslo Accords:

A series of agreements signed in the 1990s between the PLO and Israel, which included mutual recognition and the establishment of a Palestinian Authority with limited control over parts of the West Bank and Gaza Strip. Although imperfectly implemented, these agreements remain the foundation for peace efforts.

However, all of these descriptions contain several challenges that still need to be resolved, which can be described as follows:

- 1) Continued Occupation

Despite various resolutions and agreements, the Israeli occupation of the Palestinian territories continues, and settlement construction continues to grow.
- 2) Territorial Fragmentation

The West Bank and Gaza Strip are separated geographically and politically, with Hamas controlling Gaza and the Palestinian Authority controlling the West Bank.
- 3) Peace Negotiations

The Middle East peace process has often stalled, and international efforts for mediation have sometimes failed to achieve the expected results.

Although there are many international legal instruments that support Palestinian rights, the implementation and enforcement of these laws often face significant political challenges. The open conflict between Palestine and Israel has recently attracted media attention. This is because the conflict, which increased in intensity after Eid al-Fitr 1 Shawwal 1442 Hijri, has caused many casualties. The Palestinian Ministry of Health reported that the 11-day war had resulted in 248 deaths, including 66 children, 39 women, and 17 elderly people, as well as 2,000 people being injured. Around 17,000 houses were damaged with total destruction and heavy or light damage (Rahman, Kompas, May 24, 2021).

The development of the open conflict between Palestine and Israel was triggered by events around the Al-Aqsa Mosque complex, Jerusalem, before Eid al-Fitr. Before Eid al-Fitr, Palestinian residents living in the Sheikh Jarrah area (Palestine), who are threatened with eviction by the Israeli authorities, held a protest at the Al-Aqsa Mosque compound which was then responded to with violence by Israel. Although no one was killed in the incident, the attack resulted in dozens of people being injured and damage to several parts of the Al-Aqsa compound. The violence continued to develop, culminating in fighting between Hamas (Palestine) and the Israeli military. The open conflict between Palestine and Israel, even though there has been a ceasefire, has raised international concern. The UN Secretary-General, Antonio Guterres, assessed that this battle was 'very terrible' and if the conflict continues, it

will have broad implications, not only will there be a security and humanitarian crisis in Palestine and Israel, but also in the region.

Meanwhile, open conflict between Palestine and Israel has occurred several times, and has the potential to reoccur. This study examines why open conflict occurs between Palestine and Israel, what causes it, and how the international community, including Indonesia, should respond. Recently, it was triggered by the same thing, where the Israeli authorities planned to evict Palestinians from Sheikh Jarrah in East Jerusalem, which is one of the oldest Palestinian Arab settlements in Jerusalem. The actions of the Israeli authorities were protested by Palestinians, which then escalated into clashes between Israeli police and demonstrators in several areas of the West Bank. Tensions increased after the last Friday prayer of Ramadan at the Al-Aqsa Mosque compound, when Palestinian Muslims clashed with Israeli security forces, resulting in a number of Palestinians being injured. Hamas, which had warned Israel to stop the violence at the Al-Aqsa Mosque compound, but was ignored, responded to the violence by Israeli security forces with rocket attacks. Mutual attacks then occurred between Palestine (Hamas) and Israel.

The open conflict between Palestine and Israel triggered by the issue of expanding Jewish settlements has occurred several times, and East Jerusalem is an occupied territory and considers all Jewish settlement building activities there illegal. On the other hand, Israeli Prime Minister Benjamin Netanyahu does not recognize international law and rejects the international community's demands for Israel to respect Palestinian rights. The support of the previous President of the United States (US), Donald Trump, for Israel through the Deal of Century peace proposal, seems to have influenced Netanyahu enough for his tough actions. In Trump's peace proposal, which was drafted by his Jewish son-in-law, Jared Kushner, Jerusalem is mentioned as the capital of Israel, while the capital of Palestine is on the outskirts of Jerusalem. It is also stated that the areas currently inhabited by Palestinians in Gaza and the West Bank will remain Palestinian territory. However, thousands of Jewish settlements that have been built in the area, including in Jerusalem, will become Israeli territory. Trump's proposal clearly deviates from international law and political references to the two-state solution, and if implemented, it will certainly trigger a prolonged open conflict between Palestine and Israel. This means that the cause of the open conflict between Palestine and Israel is closely related to the issue of occupation and Israel's unilateral actions in insisting on building and expanding Jewish settlements in the Palestinian territories. Palestinians, who feel entitled to be in their territory and are often intimidated by Israeli security forces, naturally defend themselves to maintain their rights, including through armed struggle when they have to face Israeli troops.

The Organization of Islamic Cooperation (OIC), which held an emergency virtual session on May 16, 2021 with a number of resolutions produced, but also from the European Union and the UN Security Council, although their expressions of concern were not expressed in one voice, because it included pro-Israeli countries. It is indeed not easy to build a common view and attitude from countries in the world towards the Palestine-Israel conflict, especially when there are still parties who 'want to win alone' and ignore the voice of the international majority. A ceasefire was finally reached on Friday, May 21, 2021, after 11 days of Hamas and Israel fighting, through mediation carried out by Egypt simultaneously and reciprocally. Egypt became the mediator because Egypt is one of the few countries that has official relations with both parties.

The agreement to stop the violence was reached after Egyptian President Abdel Fattah el-Sisi and US President Joe Biden discussed by telephone on Thursday, May 20, 2021, specifically discussing steps to end the bloody Israel-Hamas conflict. The Egyptian President also discussed this cessation of violence with UN Secretary General Antonio Guterres. President Sisi and Guterres discussed the importance of launching a collective international effort aimed at restarting the path of negotiations between the two parties to achieve the desired peace. The 11-day open Palestine-Israel conflict has given rise to a new reality in the form of international community awareness of the urgency of restarting the Palestine-Israel peace negotiations. Egypt in this regard is actively communicating with regional and international powers in order to revive the Middle East peace process.

The last Palestine-Israel negotiations were held in 2013-2014 under the initiative of US Secretary of State John Kerry, but failed. The momentum to revive the Middle East peace process must be aimed at finding a just and comprehensive solution to the Palestinian issue. The majority of the international community, including the Palestinian Authority, wants a two-state solution, namely the establishment of a Palestinian State peacefully side by side with Israel. However, this solution continues to hit a dead end due to Israel's aggressive steps to expand the occupied territories in Palestine and heat up the situation there.

However, the implementation of Operation Protective Edge in the Gaza Strip by Israel is a manifestation of its response to Hamas rocket attacks on Israeli civilians. Israel feels the need to protect its people to maintain their existence in the international community. With this pretext, Israel stated that Operation Protective Edge was launched as an effort of their self-defense. A country's efforts to carry out its own self-defense in Just War can be justified because it fulfills just cause. This is also in accordance with the provisions of the UN Charter, where it is written in Article 51 that the State has the right to carry out self-defense efforts when an armed attack occurs against a member of the UN (Charter of the United Nations and Statue of the International Court of Justice, 1945). But the problem is whether the self-defense framework emphasized by Israel has complied with the criteria set by the international court. After the end of the Israel-Hamas military confrontation, the International Criminal Court (ICC) decided to investigate the situation in Palestine. But on the other hand, Israel through Prime Minister Benjamin Netanyahu immediately launched a public campaign to oppose the legitimacy of the ICC.

In his defense, Netanyahu claimed that Israel is not a country but has a legal system that meets international standards in their interests to carry out self-defense efforts. Based on ICC rules, if Israel's argument is correct, then the ICC investigation can be stopped and the ICC can be prevented from investigating and trying Israeli citizens. Another justification emphasized by Israel is that they are trying to defend themselves from terrorism which then became the center of Israel's public campaign to maintain their immunity in carrying out violent actions in Gaza. Although until now the designation of Hamas as a terrorist group is still debated in academic circles because Arab countries and some international communities believe that Hamas is a resistance group. And in its justification, Israel is supported by the United States Department of State. The description above shows that even though the facts and laws are contrary to Netanyahu's argument, Israel with US support can maintain their justification to avoid accusations of war crimes committed in Gaza.

Violations in Operation Protective Edge that were later debated and considered inconsistent with Just War were that the state must have authority based on its constitution in declaring war and approved by its people. Israel launched Operation Protective Edge without a formal declaration of war, just like in the two previous military operations where there was no declaration of war at all. In the Israeli Constitution, paragraph 40(c) indicates that a state can start a war with a policy of government decision. The government that decides to carry out war must inform the Security and Foreign Relations Commission and the Prime Minister to announce the implementation of war immediately.¹ Contradictorily, Israel's military confrontation in Gaza violates their constitution. Israel did not declare war through their Prime Minister. Thus, it is inconsistent with the principle of *jus ad bellum* because Israel's actions are contrary to the applicable constitution. Thus, there is no argument that strengthens Israel's strategic goals and national interests in carrying out attacks on the Gaza Strip. In the absence of a declaration, there is also no legitimacy obtained from the approval of the community because the decision to go to war was only taken unilaterally.

Referring to the next rule, war must be the last resort in resolving the conflict. In the Israel-Hamas conflict, war is not the last resort in resolving the conflict. This refers to the implementation of Operation Cast Lead and Operation Pillar of Defense which did not resolve the conflict comprehensively and only ended with a ceasefire. Just like previous military operations, Operation Protective Edge also ended with a ceasefire signed on August 26, 2014. The ceasefire was not only signed by Hamas and Israel but also the Palestinian Authority and other militant groups operating in Gaza.

The long-term ceasefire indicates that the conflict is not completely over. If an incident occurs that triggers tensions between the two parties, then war is still possible again. In reviewing the alleged violation of Operation Protective Edge against International Humanitarian Law, we must re-examine the basis of the provisions written in the legal framework. The main pillar of International Humanitarian Law is the very significant distinction between combatants and non-combatants. In Operation Protective Edge, many civilians became victims of attacks by Israeli troops known as the Israel Defense Force (IDF). Data from the United Nations for the Coordination of Humanitarian Affairs (OCHA) shows that Operation Protective Edge resulted in a very large scale of death and destruction. It was reported that more than 2,250 people were killed in the Gaza Strip, at least 1,585 of whom were civilians, including 538 children and 306 women (OCHA, 2014). More than 11,000 Palestinians were injured, up to 10% of whom were permanently injured. At the peak of the conflict, around 485,000 people in the Gaza Strip were displaced and living in dire conditions in emergency shelters in UN or government schools, in public buildings, or with host families (OCHA, 2014). Based on the data above, Operation Protective Edge can be said to have caused very large collateral damage.

The data also underlies the view that the war caused great suffering for Palestinians in the Gaza Strip. During the war, residents lived in extreme fear of rocket and mortar attacks that could kill them. Because there were no longer truly safe shelters to protect civilians during the war, several civilians were also killed in UN schools. With these data, it can be analyzed that in carrying out its attacks, Israel has ignored the immunity of civilians in being targets of attacks. Civilians should be fully protected by International Law. In the military operations that occurred, the IDF has not been able to take better precautions to avoid the loss of civilian lives. This was then also considered inconsistent with the rules of International Humanitarian Law. In response to the violations that occurred during the war, on July 23, 2014 the UN Human Rights Council (UNHRC) issued a resolution. The resolution decided that the UNHRC would establish an independent international commission of inquiry to investigate all violations of International Humanitarian Law and human rights violations in the occupied Palestinian territory, including East Jerusalem, especially in the occupied Gaza Strip, in the context of the military operations carried out since 13 June 2014, and to submit a report to the Council at its twenty-eighth session in March 2015.

The investigation into Operation Protective Edge indicated serious violations of human rights and fundamental freedoms of Palestinian civilians. Thus, during the war the IDF has committed serious violations of International Humanitarian Law, including war crimes. According to Amnesty International, Israeli violations include direct attacks on civilians and civilian objects using precision weapons (International, 2024). In addition, attacks also used ammunition such as artillery that could not be accurately targeted and fell on densely populated residential areas. The use of violence that ignores humanitarian aspects is certainly not in accordance with the principle of *jus in bello*. However, with these humanitarian violations, Israel still has the justification to justify their use of violence.

4.3. Legality of Israel's Counterattack Against Hamas Attacks Reviewed From an International Law Perspective

4.3.1. Basic Principles of International Law

International law has principles that govern the use of force between states and non-state actors. Some key principles include:

a) United Nations Charter

Article 2(4) of the UN Charter prohibits the use of force against the territorial integrity or political independence of another state. However, Article 51 allows for the right to self-defense in the event of an armed attack until the Security Council takes measures necessary to maintain international peace and security.

b) International Humanitarian Law

This governs the conduct of hostilities, including the Principle of Proportionality and Discrimination in attacks, which means attacks must be proportionate and must not target civilians.

4.3.2. Right to Self-Defense

The right to self-defense is recognized in Article 51 of the UN Charter, which states that states have the right to defend themselves individually or collectively in the event of an armed attack. In the context of Hamas's attacks on Israel, Israel can claim the right to self-defense under this article.

4.3.3. Practical Considerations

a) Israel's actions

Israel often claims that its strikes are legitimate self-defense in response to rocket attacks from Hamas. It tries to limit its strikes to military targets in order to comply with the principle of discrimination.

b) Hamas's actions

Hamas, on the other hand, often attacks civilian targets in Israel, which violates international humanitarian law prohibiting attacks on non-combatants. Israel's retaliatory attacks against Hamas can be considered legal in the context of international law if viewed as an act of self-defense under Article 51 of the UN Charter. However, such actions must still comply with the principles of proportionality and discrimination in international humanitarian law (Permanasari 1999).

Violation of these principles can change the legality of the action. Article 51 of the UN Charter regulates Self-defense as an exception to the use of weapons from Article 2 paragraph 4, the UN allows a country to act in the context of self-defense individually or collectively is said to be legitimate only if an armed attack occurs and the country is obliged to report its use of force when claiming to act as self-defense to the UN Security Council (United Nations). However, the UN (United Nations) should make changes to the contents of the UN Charter, especially in Article 51 concerning Self-defense. Both regarding the time of implementation of Self-defense and the place of implementation of Self-defense. Also adding more detailed rules regarding anticipatory Self-defense actions. The unclear points in the elements of Article 51 of the UN Charter which create loopholes for the interests of each country which claims to be carrying out armed attacks with the aim of self-defense.

On October 7, 2023, an armed conflict occurred between the two, Hamas began the attack by sending 5,000 rockets launched in 20 minutes aimed at Israel. For this action, Israel also launched a retaliatory attack towards Palestine until now, with tens of thousands of casualties. Israel did not comply with the demands of the ICJ regarding temporary measures in preventing genocide in the Palestinian territories. Israel's actions raised a new problem formulation about why the role of international law has not been able to influence Israel's actions to comply with the temporary measures issued by the ICJ. Since October 2023, Hamas has killed 1,200 and taken more than 250 hostages, and until now Israel has stated that of the 130 hostages still in Gaza, at least 34 people have died. However, since October 2023 until now, the attacks launched by Israel towards the Gaza Strip have claimed the lives of more than 33,000 people in Gaza, some of whom were civilians, not Hamas militant combatants. The impact of Israel's retaliatory attacks is not only in the form of casualties, but Israel also targets important infrastructure such as schools, hospitals, personal assets, and homes. Throughout Israel's continuous bombardment of the densely populated Gaza Strip, which is home to 2.3 million people. More than 7,000 Palestinians have been killed since October 7, 2023, including nearly 3,000 children, according to the Gaza Health Ministry. In some cases, bombs have turned entire blocks and even large sections of settlements into rubble. Moreover, Israeli forces have used white phosphorus, a chemical that ignites when it comes into contact with oxygen, causing severe and horrific burns, in densely populated areas. White phosphorus can burn all the way to the bone, and burns of up to 10% of the human body are often fatal.

Responding to the armed conflict that occurred in Israel and Palestine began to make the international conditions unpredictable in its direction. Such as the actions taken by South Africa where it sued Israel to the International Court of Justice ICJ regarding the violation of the genocide convention that was committed. South Africa sued Israel on December 29, 2023. At the beginning of the filing of the lawsuit by South Africa, using the indication of the Court's Jurisdiction based on Article 36 paragraph

1, the Statute of the Court, and Article IX of the Genocide Convention, in filing the lawsuit the applicant (South Africa) also filed a Request regarding the indication of temporary measures in accordance with Article 41 of the Statute of the Court, Articles 73, 74, and 75 of the Rules of Court.

With the details of the Application including “protection from further, more serious and irreparable damage to the rights of the Palestinian people under the Genocide Convention” and ensuring Israel’s compliance with the Genocide Convention to refrain from genocide, prevent and punish genocide based on Article 74 of the Rules of Court point a “requests for indication of provisional measures shall take priority over all other cases”. On January 26, 2024 the ICJ issued a summary related to the lawsuit filed by South Africa against Israel, where in the summary it was stated regarding the request for provisional measures authorized by the ICJ to be implemented by Israel, along with the contents of the provisional measures.

The order to take temporary measures carried out by the ICJ must be carried out immediately and report the progress of the process in carrying out temporary measures within 1 month. However, until now Israel has not complied with the temporary measures ordered by the ICJ. The nature of the ICJ itself cannot fully bind countries that are members or not members so that the position of the ICJ in the Israeli-Palestinian conflict is only as a mediating actor from the countries in conflict. In this case, the ICJ has not been able to fully bind Israel to submit to international law in full so that the temporary measures process that must be carried out has not yet found an end point in mediating the conflict.

International crimes must lead to accountability. The International Criminal Court (ICC) in The Hague has jurisdiction over war crimes and other serious international crimes committed in or from the Occupied Palestinian Territory (the territory of the State of Palestine, which is a member of the ICC), and by Palestinian citizens. In fulfilling its obligation to achieve international justice, the ICC can carry out its duties, functions, and authorities in the territory of member states of the Rome Statute of 1998. In addition, in accordance with the needs and agreements of the country, the ICC can also conduct trials in the territory of other countries through special agreements. The ICC provides flexibility to conduct trials outside its office in The Hague, Netherlands. There are several limitations to the jurisdiction of the ICC court as follows:

First, seen from the aspect of the legal subject in trying or the scope of personal jurisdiction (*rationae personae*), based on article 25 paragraph (1) of the Rome Statute, the ICC only has jurisdiction to try individuals (natural persons) and based on article 26 of the Rome Statute, the individual must be over 18 years of age. If a case occurs involving an individual who has not reached the age of 18, then the individual is returned to his/her country of origin and the national law of that country is applied. This includes individual responsibility for both commanders, government officials, and those of a military or civilian nature (individual responsibility).

Second, based on the classification of violations included in the material jurisdiction (*rationae materiae*). The ICC has the authority to handle crimes that are considered serious violations, as indicated by articles 5-8 of the Rome Statute. The types of crimes referred to are as follows:

1. The crime of Genocide, contained in Article 6 of the Rome Statute of 1998
2. Crime Against Humanity, contained in Article 7 of the Rome Statute of 1998
3. War crime, contained in Article 8 of the Rome Statute of 1998
4. The Crime of Aggression, this matter has not been regulated in more detail in the Rome Statute.

Third, seen from the time jurisdiction (*ratione temporis*), based on article 11 paragraph (1) the ICC has authority only over crimes committed after the Rome Statute of 1998 came into force, namely on July 1, 2002. In other words, based on article 11 paragraph (2) of the Rome Statute, it states that if a country becomes a State Party to the Rome Statute after it is declared in force, the ICC can only apply its jurisdiction to crimes committed after the Rome Statute is declared in force in that country. However, in accordance with the regulations contained in article 12 paragraph (3) of the Rome

Statute, exceptions can be made if the country issues a declaration in accordance with these provisions.

Based on the description of the four limitations on the jurisdiction of the ICC court, it is concluded that the ICC as a permanent and independent criminal court still has authority to handle perpetrators of crimes who are not part of one of the countries participating in the Rome Statute, but as long as the crime occurs in the territory of a country that is a party to the Rome Statute and the country mandates the case to the ICC. Although humanitarian aspects are recognized by the Rome Statute and are taken into consideration in the jurisdiction of the ICC, in its conflict Israel claims not to have ratified the Rome Statute and does not recognize the jurisdiction of the ICC. Israel also made a statement by considering that Palestine is not classified as a country and is not allowed to be part of one of the ICC member states.

4.4. The Role of International Organizations in Resolving the Palestine (Hamas) and Israel Dispute

The presence of international organizations has a very close relationship with international law applied in the modern era today. The status of international organizations as subjects of international law that help the process of forming international law itself can be said to be a tool to enforce the obedience of international law. International law in general can be defined as the whole law that mostly consists of principles and rules of behavior to which countries feel bound to obey, and therefore, are truly obeyed in general in relations between countries with each other (Starke, 1995).

In some cases, it violates the sovereignty of a country. Both sovereignty in the sense of territory and political sovereignty of a country. The results of the discussion show many interpretations of the principle of self-defense, both interpretations given by experts and from the practices of countries before the United Nations Charter regime. The main purpose of the UN is essentially to protect humanity from the dangers of war threats, and the UN Charter contains detailed provisions regarding the maintenance of international peace and security. Indeed, when the UN was founded, the problem of maintaining international peace and security was the main task and goal. For this purpose, the UN is expected to take collective steps effectively in an effort to prevent and avoid threats to peace, in addition to suppressing acts of aggression or other violations of peace and working on the Peaceful Path. In relation to efforts to maintain international peace and security, the UN has laid down 5 principles in its charter. Namely (Suryokusumo 1987):

1) Principles for resolving international disputes peacefully

The UN Charter provides provisions on what steps must be followed by states, whether members or non-members of the UN, when involved in a dispute. This principle is stated in Article 2 paragraph 3 in conjunction with Chapter VI and Chapter VIII of the Charter. In the event of a dispute before submitting it to the UN, the parties are obliged to seek a solution through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional bodies or arrangements by peaceful means of their choice.

2) The principle of not using threats or violence

In Article 2 paragraph 4 of the Charter lays down one of the basic principles of the UN. As an organization established to maintain international peace and security, the success of the UN depends greatly on the extent to which its members uphold these basic principles and the extent to which its bodies function effectively in assuming responsibility for achieving these goals. The formulation of Article 2 paragraph 4 includes:

- a. War of aggression is an International Crime against Peace
- b. Every state has an obligation to refrain from organizing or encouraging the organization of irregular or volunteer forces or armed groups in its territory or other territories to attack the territory of another state.
- c. Every state has an obligation to refrain from inciting, assisting or organizing civil strife or committing terrorist acts in another state, or from conspiring or agreeing in organized activities directed to such ends, when such actions involve the threat or use of force.

- d. Every state has an obligation to refrain from the threat or use of force across existing borders or other states, or as a means of resolving international disputes, including territorial disputes and problems related to Borders between States.

If we pay attention to the provisions in Article 2 paragraph 4 of the Charter in relation to actual UN practice, it will contain 3 (three) important aspects, namely, first, the meaning of "threat or use of force", second, the limitations referred to in "international relations", and third, under what conditions violence can be carried out without violating the provisions in Article 2 paragraph 4.

1) Principle regarding responsibility for determining the existence of a threat

The UN also contains provisions on measures to take action in certain circumstances Article 39 of the Charter. In the UN charter the use of sanctions against those who violate obligations will be more selective and more political, where the charter places the security council as a political body. Article 40 The Security Council is authorized to call on the parties concerned to take temporary measures and according to articles 41 and 42 the Security Council can order in all directions in order to take joint action. In addition to the responsibility of the Security Council, the General Assembly also considers it has the right to determine the existence of a threat. Such as voicing to the Security Council to pay attention to problems that can endanger peace and security and also provide recommendations on steps that may be taken.

2) Principles regarding the regulation of weapons

One of the responsibilities laid down by the charter is to formulate a plan to create a system for regulating armaments that can be considered by the members of the UN, Article 26 of the Charter. Armaments are considered by the drafters of the Charter as one of the subsidiary approaches to maintaining national peace and security.

3) General principles regarding cooperation in the field of maintenance and international cooperation

The UN General Assembly discusses all issues concerning international life including the maintenance of international peace and security. The General Assembly in developing the principles of cooperation is almost entirely reflected in intensive discussions and then issuing resolutions on issues concerning:

- a. General principles to provide guidance for all member states in political relations, including principles and procedures for achieving disarmament.
- b. Rules in international law and subsequent developments for efforts to strengthen the UN body and ways to maintain international peace and security.

In general, the goals and principles of the organization cannot act arbitrarily and are not constrained by restrictions (Bowett 1992). In the efforts to reconcile the chaotic conflict between Israel and Palestine, the United Nations (UN) in this case became a mediator who tried to cool the situation between Palestine and Israel. In addition, there are many resolutions put forward by the UN that affect the conflict between the two Middle Eastern countries. Mediation implemented by the UN is a diplomatic effort aimed at resolving the conflict. Based on UN Security Council (UNSC) Resolutions 242 and 338, the UN has been indirectly involved in every negotiation effort. UN involvement has begun since 1947, namely the separation of Palestine from the Jewish State and the Arab State through UN Security Council Resolution 181. After the outbreak of the initial war between Israel and the Arabs, this direct negotiation was made by Israel to protect its interests and rights as the party that won the Six Day War, Israel assumes that if bargaining is carried out in the UN, its interests and rights will definitely be limited. In this direct negotiation process, Israel voiced its request for "Land for Peace" to the Palestinian Liberation Organization (PLO).

Currently, the UN is trying to offer the best option in the Israeli-Palestinian conflict peace efforts so that it does not drag on. The UN offers a place and means of mediation for this conflict, the membership of the Arab League countries and Israel in the UN is the greatest weapon for the UN to bring the peace efforts of this conflict into an international problem that is noticed by the International World. Negotiations between key actors are always prioritized by the UN, and the UN also becomes a

supervisor in the armed conflict that occurs. In the end, the UN remains only a mediator, the UN hopes that by carrying out a lot of diplomacy and negotiations, therefore in Israel-Palestine can find a middle ground and immediately end the conflict (Marzuki, 2005).

The ongoing dispute between Palestine and Israel that the issuance of UN Security Council Resolution 181 for the separation of Palestine from the Jewish State and the Arab State and Palestine refers to Security Council Resolution 181 issued by the UN in late 1947. To divide the Land of Palestine for the Jewish and Arab Nations. in the division of the region more for the Jewish nation around 55 percent. While the rest is the right of the Arab nation (Huala 2004). The role of the UN as a guardian of world security and peace has attempted mediation to Israel and Palestine as diplomatic relations, in addition the UN tries to offer the best choice in efforts to reconcile the Israeli and Palestinian conflict so that it does not drag on.

However, Israel ignored the mediation efforts, and continued to carry out aggression on Palestinian land. In the discussion of the International Law dispute we know the factors why Palestine and Israel are in conflict which the solution that Israel uses to resolve the dispute that it turns out that resolving it violently will not have a good impact on the country even for the people in it, each country makes an example of the dispute between the two countries as an evaluation of each country because each country cannot support and prosper its people without good relations with international countries.

5. Conclusion

5.1. Conclusion

Based on the discussion contained in the previous chapter and the results of the research that has been obtained by the author, the following conclusions can be drawn:

1. Legal Protection for the State of Palestine

Based on the analysis that has been carried out, it can be concluded that the armed conflict between Israel and Palestine has resulted in various violations of international humanitarian law, especially against Palestinian civilians. UN General Assembly Resolution 181 of 1947 and UN Security Council Resolution 242 of 1967 and 338 of 1973 emphasize the importance of respecting the sovereignty of each country in the region. In 1988, the Palestine Liberation Organization (PLO) declared the independence of the state of Palestine which has been recognized by more than 130 countries. In addition, in 2012, the UN General Assembly upgraded Palestine's status to a "Non-Member Observer State" which provides additional legitimacy to the demands for Palestinian sovereignty. International law, through various conventions and resolutions, seeks to provide protection to the Palestinian population involved in this conflict. The Geneva Conventions and their additional protocols provide for the protection of civilians in armed conflict. The Israeli-occupied Palestinian territories of the West Bank, Gaza Strip and East Jerusalem are recognized as occupied territories and their inhabitants are entitled to this protection.

2. Legality of Israeli Counterattacks

Based on the analysis that has been done, it can be concluded that In the analysis of international law on the armed conflict between Israel and Palestine, it can be concluded that both parties have violated international humanitarian law. Israel often considers Hamas as a security threat and carries out controversial counterattacks. In the context of the legitimacy of the use of force (*jus in bellum*), Israel's actions can be considered self-defense based on UN Charter Article 51. However, these actions must comply with the principles of proportionality and discrimination in international humanitarian law. Excessive Israeli attacks and causing disproportionate civilian losses are considered to violate international law. In addition, although many international legal instruments support Palestinian rights, the implementation and enforcement of these laws often face significant political challenges. The open Palestine-Israel conflict has not been resolved and remains a volatile region. Various peace efforts have been made between the parties, both by the UN and intermediary countries, but acts that violate international humanitarian law and human rights continue to be carried out by both parties, especially Israel which is more dominant.

5.2. Suggestions

Based on the above conclusions, the author can provide the following suggestions:

1. UN member states, the Security Council, and the international community must work together to ensure that the principles of international humanitarian law and human rights are respected and upheld in armed conflicts. This includes providing diplomatic pressure and sanctions on parties that violate international law and supporting the efforts of the International Court of Justice (ICJ) and the International Criminal Court (ICC) in prosecuting war crimes and crimes against humanity committed in the Palestinian territories. The international community must also ensure that UN resolutions, such as UN General Assembly Resolution 181 and UN Security Council Resolutions 242 and 338, are implemented effectively to protect Palestinian rights. Tighter international supervision is needed to prevent further violations and ensure the fulfillment of legal obligations by all parties involved in the conflict.
2. In efforts to implement the right to self-defense must be in accordance with the provisions of Article 51 of the UN Charter, against countries must ensure that their retaliatory measures are proportionate. Excessive attacks and causing disproportionate civilian losses must be avoided. In the context of Israel and Palestine, attacks on civilian targets violate international humanitarian law and must be stopped. Acts of self-defense must be reported to the UN Security Council, so that the Security Council can take the necessary measures to maintain international peace and security. Tighter international oversight is needed to ensure that claims of self-defense are not misused to commit acts of aggression or other violations of international law.

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