International Law, Self-Defense, and the Israel-Hamas Conflict

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ABSTRACT: This article examines the international law of self-defense as it applies to the ongoing Israel-Hamas conflict to determine whether the October 2023 attacks by Hamas against Israel can be interpreted under Article 51 of the UN Charter as an “armed attack” that gives Israel the right to use military force in self-defense against non-state actors. It situates the conflict within ongoing legal and political debates, shows how this conflict fits into a changing global reality where the most dangerous security threats do not exclusively emanate from other states, and concludes that Israel’s resort to force in the current conflict appears to have a sound basis in international law.

Keywords: self-defense, international law, non-state actors, Israel, Hamas

The attacks perpetrated by Hamas from the territory of Gaza on October 7, 2023, against military bases and civilian kibbutzim in southern Israel were unprecedented in terms of their scale, lethality, and gratuitous barbarism. The deadliest attack against Israel in its 75-year history, the attacks claimed more than 1,200 Israeli lives and resulted in around 240 others being held hostage in Gaza by Hamas and allied militant groups.¹ By now, the images, videos, and descriptions of the attacks are familiar, as thousands of Hamas militants breached barriers and attacked some 22 Israeli military installations and kibbutzim, and an outdoor music festival, using small arms, artillery, grenades, and incendiary devices. Hamas militants recorded themselves deliberately committing all manner of atrocities against Israeli civilians, including murdering entire families with grenades, decapitations, brutal sexual violence against women and girls, and other torture and mutilation of defenseless civilians, including children.² Such crimes certainly call for criminal prosecution, but whether such atrocities constitute an “armed attack” that gives Israel the right to use military force in self-defense is a separate question.

Israel’s response has been swift and severe. Following a declaration of war against Hamas and after securing the sites Hamas had initially attacked, Israel ceased all food, water, medicine, and fuel deliveries to Gaza
The following weeks witnessed a relentless Israeli bombing campaign against Hamas and military targets in Gaza, followed by a slow but steady ground incursion intended to root out and destroy Hamas. Unsurprisingly, the severity of Israel’s military response has come under intense scrutiny as civilian casualties mount, spurring a heated debate over Israel’s right to self-defense against Hamas under international law. This debate raises a question of *jus ad bellum*—or whether a state’s resort to the use of force is lawful—which is different than whether its means and methods are lawful. Critics of Israel’s efforts have questioned whether Israel has the right to use force self-defense at all against Hamas under international law. The thrust of these arguments is that due to Gaza’s status under international law as a non-state actor and purportedly occupied territory, the rules applicable to self-defense under the UN Charter—specifically Article 51—do not apply.

This article examines the international law of self-defense as it applies to the ongoing Israel-Hamas conflict. I ultimately conclude that Israel’s resort to force in self-defense is lawful under Article 51 because of how the rules of self-defense have evolved over the past two decades. This conclusion is supported by an examination of the following concerns as they pertain to this case: 1) whether the “scale and severity” of October 7 attacks qualify as an “armed attack” for the purposes of Article 51, 2) whether Gaza, as a purported non-state actor that is under international occupation, is legally capable of undertaking “armed attack” that could trigger Israel’s right to self-defense, and 3) whether Israel’s resort to force meets “necessity and proportionality” requirements as part of *jus ad bellum*. Importantly, this essay does not address questions of *jus in bello* and will not investigate concerns related to the actual conduct of the hostilities wherein Israel has undertaken a relentless and deadly campaign against an enemy that is deliberately ensconced among civilians.

## The Right to Self-Defense

As a sovereign state and UN member, Israel has the right to use military force to defend itself from an armed attack. Article 51 of the UN Charter makes this right abundantly clear, and self-defense is perhaps the least contested legal basis for a state resorting to military force. Article 51 reads: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”
The reference to a state’s “inherent” right to self-defense is understood to reference states’ preexisting right to self-defense as it existed under customary international law, consisting of legal rules derived from consistent state practice over time. Accordingly, the right to self-defense is subject to evolution and reinterpretation in light of prevailing understandings by international bodies and state practice. Since the drafting of the UN Charter, however, the concept of an “armed attack” has been the subject of some controversy, specifically surrounding the “scale and severity” of a purported armed attack and the extent to which non-state actors are capable of undertaking an “armed attack” for the purposes of Article 51.

The Concept of “Armed Attack”

The UN Charter does not define “armed attack,” but it is generally understood that not all uses of force will cross the threshold of intensity, breadth, and gravity to qualify as an “armed attack.” Only attacks that reach a certain scale and severity would qualify, so as to preclude lesser uses of force—border skirmishes, a minor small-arms fire, or even accidents—from triggering a self-defensive armed conflict. The International Court of Justice (ICJ) in the 1986 Nicaragua case, for instance, suggested that a “mere frontier incident” would not qualify as an armed attack, while the UN General Assembly’s “Definition of Aggression” resolution clearly states that military incursions must pass a certain threshold of violence to qualify as an “armed attack.” While there is not a consensus on exactly where this threshold lies, legal commentators typically refer to uses of force that produce “serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property.” Aside from this broad standard, there is considerable ambiguity on when the threshold for an “armed attack” has been met.

In the case of the Israel-Hamas conflict, there seems to be little doubt that the October 7 attacks met and exceeded the levels of violence required to rise to the level of an “armed attack” under Article 51. It involved a breach of Israel’s border with Gaza by hundreds or thousands of armed Hamas militants, firing rockets at Israeli bases and civilian areas, using military-grade weapons (small arms, grenades, RPGs, thermobaric bombs), resulting in the deaths of 1,200 people and thousands more injured, mostly civilians, while more than 240 Israelis were kidnapped and taken hostage by Hamas. Moreover, the direct and deliberate attacks against civilians, the torture and kidnapping of civilians to be used
as human shields or as bargaining chips, undoubtedly constitute Crimes Against Humanity, and would meet the definition for war crimes.

When states resort to the use of force in self-defense under the authority of Article 51, they are required to report their intention to do so to the UN Security Council. For its part, once the Israeli military had provided immediate defense to the bases and civilian areas under attack, Israel announced to the UN Security Council that it would “act in any way necessary to protect its citizens and sovereignty from the ongoing terrorist attacks originating from the Gaza Strip.” While it is clearly invoking the discourse of self-defense, and allies like the United States are insisting that Israel has the right to defend itself under Article 51, this statement does not appear to be a formal invocation of Article 51. Likewise, the initial draft resolutions circulated at the Security Council in reference to the attacks and Israel’s response were vetoed by the United States because they did not reaffirm Israel’s right to self-defense.

Despite the October 7 attacks reaching the threshold to qualify as an armed attack, there are still several reasons why we might question Israel’s legal right to resort to self-defensive force in Gaza. First, a landmark 2004 Advisory Opinion by the International Court of Justice on the legality of Israel’s separation barriers (the “Wall Opinion”) has stated, prima facie, that Article 51 does not apply to situations where the threat being opposed exists in a territory under the control of the state invoking Article 51. In this advisory opinion, the International Court of Justice is responding to the argument that Israel’s construction of a separation barrier on its frontiers with the Palestinian territories was justified as an act of self-defense under Article 51. The Court concluded that since Israel did not claim that a foreign state had attacked it, and since the attacks emanated from a territory that Israel controls (occupied territory), Article 51 does not apply in this situation. Accordingly, some observers of the present conflict invoke the 2004 opinion to conclude that Israel has no right to defend itself from attacks emanating from Gaza or the West Bank.

There are several reasons to doubt the validity of this reasoning, which claims that Israel has no right under international law to take forcible action against large-scale and deadly violence perpetrated against its citizens and territory. First, ICJ advisory opinions do not have the same legal effect as verdicts rendered in contentious cases, that is, they are not legally binding. Thus, while we often draw legal conclusions from advisory opinions, they are not binding as a technical matter of international law, though they do have a certain authoritative force
regarding the interpretation of international law. Likewise, even if we consider this opinion binding, the problem it addresses is the legality of the construction of a separation barrier as an act of self-defense, which is a qualitatively different activity than using force in self-defense against attacks.\textsuperscript{16} Thus, it addresses very different kinds of activity being justified by Article 51 than the current conflict in Gaza.

Assuming that we can apply the legal logic of the \textit{Wall Opinion} to the present situation, it raises two additional issues: 1) the legal validity of using force against threats that emanate from occupied territories, and 2) using force in self-defense against non-state actors. The ICJ’s \textit{Wall Opinion} asserted that 1) Article 51 does not apply in cases where the threat emanates from occupied territory, and 2) Article 51 does not apply to attacks perpetrated by non-state actors. Developments in the 20 years since the \textit{Wall Opinion} affect how we view the present situation in Gaza.

\textbf{Self-Defense, States and Non-state Actors}

Whether Article 51 applies to attacks perpetrated by non-state actors has been the subject of significant debate in international law on self-defense. While the language of Article 51 does not explicitly require state involvement to trigger the right to self-defense, the prevailing interpretation—at least prior to the September 11, 2001, terrorist attacks—has been that only states are capable (legally speaking) of undertaking an “armed attack” for the purposes of Article 51.\textsuperscript{17} The drafters of the UN Charter did not consider terrorist violence to be on the same threat level as violence perpetrated by state militaries and therefore did not have terrorist attacks in mind when they drafted the rules on the use of force. Likewise, the world in 1945 had not yet experienced the advent of global, state-sponsored terrorism capable of inflicting the levels of violence and carnage perpetrated on 9/11 and October 7, 2023.

\textbf{The Legal Status of Gaza/Palestine}

Israel’s right to self-defense under the existing interpretation thus rests on two questions: whether Palestine is still occupied in the international legal sense and whether “Palestine” is considered a state actor. Regarding the first concern, according to the Hague Regulations, which constitute customary international law on occupation, “a territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”\textsuperscript{18} While international opinion is divided on whether
the Palestinian territories continue to be occupied by Israel in the legal sense and Israel claims it no longer occupies Gaza, it seems clear that political and military affairs within Gaza have not been under Israel's full control since September 2005, when Israel withdrew its forces and citizens from Gaza to the 1967 Green Line. Hamas took political control of Gaza two years later, and since then, there have been routine rocket attacks emanating from Gaza toward Israel and Israeli military incursions into Gaza. Israel continues to control Gaza's air and maritime space, and most of the land crossings into Gaza, while Gaza has remained dependent on Israel for most of its water, electricity, and other utilities.\textsuperscript{19}

Although Israel exerts significant control over many aspects of life in Gaza, it does not appear to meet the Hague Regulations' standard for occupation. Some legal scholars believe that while Israel withdrew ground forces from Gaza in 2005, it retained control over its airspace and maritime areas and should therefore not be assumed to have relinquished effective control.\textsuperscript{20} The level of control required to be considered an occupying power, however, assumes some level of control over the daily governance of the territory, and it is hard to determine whether Israel maintains such control, given that Palestine is governed in ways that are manifestly against its desires and interests.\textsuperscript{21} Israel's presence in the West Bank and East Jerusalem may very well meet the definition of occupation, but Israel's exercise of authority in Gaza is far more limited than it was prior to its withdrawal in 2005.

One could also reasonably argue that Gaza—and indeed “Palestine” as a whole—is a sovereign state; even if Israel considers Gaza neither a state nor an occupied territory but rather an entity with sui generis status.\textsuperscript{22} It is unclear whether Palestine would meet the criteria for statehood outlined in the Montevideo Convention on the Rights and Duties of States (a permanent population, defined territory, government, and the ability to enter into foreign relations), particularly since Palestine's boundaries are disputed and no one government exercises exclusive authority within its territory.\textsuperscript{23} Still, most countries recognize the “State of Palestine” as comprising the West Bank, Gaza, and East Jerusalem, the UN has considered it to be a “non-member observer state” since 2012, and 138 of the 193 UN members recognize it.\textsuperscript{24} Palestine is a party to the 1949 Geneva Conventions. In 2014, it began to accede to at least eight major international human rights treaties, and in 2015, it became a State Party to the International Criminal Court.\textsuperscript{25} Since at least 2007, Hamas has also been the undisputed political authority in Gaza, performing virtually all the typical functions of a government. Thus, under international
law, Palestine plausibly meets the conditions of statehood, complete with a military capable of legally undertaking an armed attack against another state, giving Israel the right to use force in self-defense under Article 51.

If we do not consider Palestine a state and regard Hamas as a non-state terrorist group, the predominant view (at least prior to the 9/11 attacks) would be that “armed attacks” had to be either perpetrated by or attributable to a state actor. This discussion played out significantly during the Cold War, when it became clear that states were utilizing non-state proxies to undertake cross-boundary violence. As some of these conflicts made their way to the International Court of Justice, the prevailing legal interpretation was that a non-state actor is only capable of undertaking an “armed attack” for the purposes of Article 51 if the attack in question is attributable to a state actor, with the pertinent issue being the standard for attribution, or the nature of the nexus between the state and non-state actor. Consistent with jurisprudence flowing from the International Court of Justice, and the opinions of the International Law Commission’s Articles on State Responsibility, the standard of “effective control” emerged. Essentially, a state must exercise “effective control” over a non-state actor, which must go beyond the mere provision of supplies, arms, or logistical support. In practical terms, “effective control” meant that the non-state actor literally had to be sent on the state actor’s behalf or otherwise act under their orders.

Under these circumstances, Israel’s right to use force in self-defense may be limited inasmuch as the nexus between Hamas and any state actor—most obviously, Iran—would need to meet the standard for the October 7 attacks to be attributed to a state. While it is well known that Iran sponsors and supports both Hamas and Hezbollah, and there is evidence Iran had some involvement in helping Hamas prepare for the October 7 attacks, the extent to which Iran was involved, or if their involvement would meet the “effective control” standard, is currently unknown. Importantly, if Iran was found to have exercised effective control over Hamas in this regard, it could open them up to self-defensive measures by Israel, as well. My own view, based on the evidence currently publicly available, is that Hamas was probably not acting under orders from the Iranian state when it carried out the October 7 attacks and, as such, this situation would leave Israel without a lawful military option to defend itself, against either Hamas or Iran.

**Self-Defense against Attacks by Non-state Actors**

A new consensus has arguably emerged on the question of self-defense against attacks by non-state actors. Indeed, after the 9/11 attacks,
the United States invoked its right under Article 51 of the UN Charter to commence its invasion of Afghanistan and directed self-defensive measures against both the Taliban and al-Qaeda. The US operation in 2001 received near-universal support, with some of the usual suspects objecting (Iran, Iraq, and North Korea). The UN Security Council passed resolutions in response to America’s actions that reaffirmed “the inherent right of individual or collective self-defense in accordance with the Charter.” Both NATO and the Organization of American States (OAS) adopted resolutions that likewise confirmed that the United States had the right to self-defense in response to the 9/11 attacks, even concluding that “those responsible for aiding, supporting, or harboring the perpetrators of [9/11] are equally complicit in these acts.” Based on the international reaction, it seemed clear that most states and international bodies accepted that the 9/11 attacks gave the United States the legal right to use force against both the Taliban and al-Qaeda in self-defense.

This support is significant because it was not at all clear that al-Qaeda was acting on behalf of a state actor—the Taliban—and we now know that the Taliban was not even close to exercising “effective control” over them. Nonetheless, the fact that US defensive measures were directed at both the Taliban and al-Qaeda—and that the international community broadly accepted this operation—suggests one of two developments: Either the standard for attribution has been relaxed from “effective control” to some less stringent standard—perhaps “harboring”—or states recognize that a non-state actor is legally capable of undertaking an “armed attack” for the purposes of Article 51 independently, regardless of any nexus to a state actor.

These developments may not be mutually exclusive, however, as one can accept that non-state actors are legally capable of undertaking “armed attacks” independently of states while concluding that the level of state involvement in those attacks sufficiently implicate a state actor (and make them the lawful targets of self-defensive measures), whatever the standard of attribution happens to be. It is unclear what exactly this new standard of attribution indicates, but state practice since the 9/11 attacks appears to accept that states may lawfully direct self-defensive military measures against non-state actors, regardless of any involvement by a state actor. Whether such actions may take place in the territory of another state, without the latter’s permission, is a more controversial proposition. Depending on that state’s level of involvement in the attacks, though, it could become a lawful target of self-defensive military action.

Subsequent state practice has further refined this legal evolution, as numerous states began to cite America’s response to 9/11 to justify
their own military measures against terrorists operating from neighboring or nearby states with little protest. Such cases include Russian strikes against terrorists in Chechnya in 2002, a Turkish incursion into Iraq in 2008 against the Kurdistan Workers’ Party (also called the PKK), airstrikes by Colombia against the Revolutionary Armed Forces of Colombia (known as FARC) terrorists inside Ecuador in 2008, attacks by Ethiopia against terror groups operating from Somalia in 2006, a Kenyan incursion into Somalia to target the Al-Shabaab terrorist group in 2011, and Egyptian airstrikes in 2015 against an ISIS-affiliated group operating in Libya. Consider also the actions of various Western and Arab states against the Islamic State terror group operating in Iraq and Syria that began around August 2014. Led by the United States, a coalition of Western and Arab states responded to ISIS’s rapid and brutal takeover of territory and cities in Iraq and Syria by launching thousands of airstrikes against ISIS targets in Iraqi and Syrian territory. While the Iraqi government consented to these strikes—and indeed requested assistance from the United States—Syria did not consent and protested that the strikes violated international law.

The United States argued in its September 2014 letter to the UN Security Council that the bombing campaign was an act of collective self-defense as ISIS had undertaken a series of armed attacks against Iraq, which requested US and coalition military assistance. Importantly, the United States did not argue that ISIS was under the effective control of a state, once again departing from the idea that a nexus to a state actor is required to constitute an armed attack. Since Iraq had consented, the coalition attacks against ISIS in Iraqi territory were relatively uncontroversial. It thus appeared again that states were willing to accept the idea that non-state actors could undertake an armed attack for the purposes of Article 51. Many states were initially reluctant to accept the more expansive argument that the United States advanced, that since Syria was “unwilling or unable” to prevent its territory from being used by terrorists for attacks, then coalition forces could direct self-defensive measures against ISIS within Syrian territory without Syria’s permission.

Further support for these arguments came in 2015 when ISIS bombed a Russian airliner over Egypt and attacked a stadium and concert hall in Paris, killing or injuring more than 800 people. In response, the UN Security Council unanimously passed resolution 2249, calling for “all necessary means” to eradicate the ISIS safe havens from Syrian territory. While legal scholars do not consider the precise wording of this resolution to provide any independent legal authority, “it does
stand as a confirmation that the use of force against ISIS in Syria is permissible,” lending further weight to the “unwilling or unable” doctrine that allows states to direct self-defensive measures against non-state actors in another state’s territory without that state’s permission.

While there is still disagreement among states and legal scholars regarding the “unwilling and unable” doctrine as it pertains to self-defense against non-state actors, the emerging consensus is that states have the right to self-defense against non-state actors whose attacks cannot be attributed to a state. The International Law Association’s 2018 report on aggression and the use of force, which reflects the opinions of leading experts and international legal practitioners, shares this view. Furthermore, at a relatively recent informal meeting of the UN Security Council called by Mexico to address this issue in the context of counterterrorism, states appeared to take for granted that Article 51 allowed the use of force in self-defense of attacks by non-state actors, and instead focused on the “unwilling or unable” doctrine. Accordingly, while states still disagree on whether they may direct self-defensive measures at a non-state actor in another state’s territory without the latter state’s permission, most states appear to have endorsed the view that a non-state actor is capable of undertaking an armed attack that triggers the right to self-defense under Article 51.

Such a conclusion would appear to vindicate Israel’s right to use force in self-defense against Hamas under the legal authority of Article 51, while the “unwilling or unable” doctrine would be inapplicable, since Hamas was operating from territory it controls. The “unwilling or unable” doctrine and questions of attribution may come into play if Israel decides to direct military measures against, say, Iran, for its support and sponsorship of Hamas. Such an attack would probably be inconsistent with international law given that 1) the level of control that Iran held over Hamas is insufficient to attribute the October 7 attacks to Iran, and 2) Hamas is not operating or otherwise launching its attacks from Iranian territory. If Hamas were operating and launching attacks from Iran, Israel could, at most, direct self-defensive measures against Hamas personnel and bases located in Iran, assuming that Iran was “unwilling or unable” to prevent them from using its territory. Nevertheless, until evidence emerges that implicates Iran as having directly participated in the October 7 attacks against Israel, Israel could not attack Iran in self-defense.
Necessity and Proportionality

A final consideration regarding Israel’s use of force in self-defense relates to the requirements of necessity and proportionality, which require “an imminent threat of force or a continuing armed attack” and that “any [military] response must be necessary to avert the threat.”\textsuperscript{40} Although distinct concepts, proportionality and necessity are related in that the force used in self-defense may not be more than necessary to provide actual defense against the attack. While this concern moves closer to questions of \textit{jus in bello}, the idea of having necessity and proportionality as part of \textit{jus ad bellum} is to forbid violence that is known beforehand to be futile, unnecessary, or ineffective in neutralizing a threat. As it pertains to necessity, it seems clear that the October 7 attacks were a lawful basis for Israel to resort to deadly force. Israel did not stop once the initial terrorist attacks had been successfully halted and the various kibbutzim and military installments secured, however. Whether Israel is allowed to use force beyond providing immediate self-defense against the October 7 attacks is a more difficult question. Still, it appears that based on the 9/11 precedent, Israel would be permitted to take action to try and prevent future attacks, insofar as we would regard the October 7 attacks as an armed attack that commenced an armed conflict between Hamas and Israel, and any peaceful options for addressing the conflict were unavailable. Statements made by Hamas officials clearly indicate that in their minds, October 7 was just the beginning, and that Hamas intends to undertake more attacks against Israel like the October 7 attacks, with the ultimate goal of annihilating Israel.\textsuperscript{41} Such threats, alongside numerous Hamas proclamations that they seek the destruction of the State of Israel, would seemingly necessitate the resort to force.

Now, whether Israel’s military measures have been proportionate is less clear, and there is a prima facie case that Israel’s response has been wildly disproportionate. At the time of writing, Israel’s response has entailed a blockade of food, water, medicine, electricity, and fuel—and a massive and devastating bombing campaign that has resulted in as many as 20,000 Palestinian deaths.\textsuperscript{42} By the time this article is published, that figure is likely to be much higher as Israel will have begun its ground assault. Nonetheless, given that the purpose of self-defense is to defend a state from imminent or ongoing attacks and explicit threats of future attacks, Israel is responding to the ongoing threat of terrorist violence and rocket attacks emanating from Gaza. Accordingly, the proportionality test should be applied as it pertains to what is required to avert \textit{this} threat—which arguably entails the destruction of the State of Israel—and not simply
to achieve an equivalent or symmetrical level of violence to the original (October 7) attacks. In this sense, arguments comparing the number of deaths caused by the initial Hamas terror attacks to the number of deaths caused by Israel’s self-defensive measures are not necessarily legally relevant.

Conversely, one must question whether such heavy-handed measures will avert or increase the ongoing terrorist threat to Israel. In this sense, if a military action is likely to increase the terrorist threat it can hardly be said to be necessary to avert it, thus potentially impacting the legality of such a use of force in self-defense. Whether Israel’s conduct has been legally necessary and proportionate is thus exceedingly difficult to ascertain and will be fraught with the uncertainty and incomplete information—the Clausewitzian “fog and friction”—that characterizes every war.43

**Conclusion**

This analysis suggests Israel has the right to use force in self-defense under Article 51 of the UN Charter in response to the Hamas terrorist attacks of October 7, 2023. There is bound to be disagreement on whether Israel is still the occupying power in Gaza, whether Palestine is a state for the purposes of international law, and the extent to which international law recognizes self-defense against attacks perpetrated by non-state actors. In light of how international law has evolved since the 9/11 attacks, however—or at least how many states have come to interpret this body of law—Israel’s resort to force in this context appears to have a sound basis in international law.

This conclusion does not mean that the manner in which Israel has been conducting its operations are consistent with *jus in bello* and international humanitarian law, which govern the means and methods of warfare and outline the rights of the victims of war (that is, wounded combatants and civilians). If Israel claims the *jus ad bellum* right to self-defense under international law to protect itself from attacks emanating from Gaza, it must also conduct itself in a way consistent with the laws of war, especially the principles of distinction and proportionality. While this article has not delved into these *jus in bello* questions, observers must continue to question whether Israel’s strikes in Gaza that have resulted in substantial civilian deaths are consistent with applicable international rules.

There is much room for disagreement with the various conclusions reached in this analysis, but there is little denying that over the past 20 years, states have claimed (and arguably been granted) substantial
leeway in their efforts to neutralize threats from non-state actors operating from outside their jurisdiction. Since 9/11, states have increasingly accepted that non-state actors can carry out armed attacks for the purposes of Article 51, and that victim states have the right to use force in response—even, at times, in the territory of other states without their permission. While this situation does not suggest a limitless right to self-defense, it does reflect the changing reality in world politics that some of the most dangerous security threats faced by states do not exclusively emanate from other states. The evolution of these legal rules is simply international law catching up with this political reality.

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Endnotes


15. For example, Nasri, “Israel’s False Claim”; and Erakat, “Right to Self-Defense.” Return to text.


42. CBS News and AP, “Palestinian Death Toll.” Return to text.