JUS AD BELLUM RULES, NON-STATE ACTORS AND USE OF FORCE BETWEEN PALESTINE AND ISRAEL

NORMAS DE JUS AD BELLUM, ACTORES NO ESTATALES Y USO DE LA FUERZA ENTRE PALESTINA E ISRAEL

Autor: *Dimitris Liakopoulos*[*]

ABSTRACT

This work aims to investigate not so much the facts but the hostilities committed between Palestine and Israel which has been going on for years with various nuances. At stake are various rights, various neighboring states and not only that have taken positions through the bodies of the United Nations without giving ideas for justification and for the continuous struggle in the international community that has been going on for years in an endless situation where the victims continue to be the lives of human beings and the rules of jus ad bellum not to respect today's situation.

Key words: use of force, jus ad bellum / articles. 2, 4, 51 Charter of the UN / ICJ / Security Council / struggle for self-determination / self-defence / non-state actors / armed conflict / threats, self-defence.

RESUMEN

Este trabajo pretende investigar no tanto los hechos sino las hostilidades cometidas entre Palestina e Israel que se prolongan desde hace años con diversos matices. Están en juego varios derechos, varios Estados vecinos y no sólo los que han tomado posiciones a través de los ór-

(*) Professor of International law, European Union law, International and European Criminal and Procedural Law in various Universities in US and Europe. Director of the CEIJ, New York. Attorney at Law (of counsel). orcid: 0000-0002-6803-5774.

ganos de las Naciones Unidas sin dar ideas para la justificación y para la lucha continua en la comunidad internacional que se desarrolla desde hace años en una situación sin fin donde la Las víctimas siguen siendo las vidas de los seres humanos y las reglas del jus ad bellum para no respetar la situación actual.

***Palabras clave**: uso de la fuerza / jus ad bellum / artículos. 2, 4, 51 Carta de la ONU / CIJ, Consejo de Seguridad / lucha por la autodeterminación / autodefensa, actores no estatales / conflicto armado / amenazas, autodefensa*

1. INTRODUCTION

The clashes between Israel and Hamas are nothing new for the mass and social media or for various sciences dealing with Middle Eastern issues. What interests us in this work is to reflect on the use of force and on Articles 2, par. 4 and 51 Charter of the United Nations (Pellet, 2014) as well as the relevant customary norms. In October 2023 clashes are at the peak of a conflict that began in May 2021 when the Hamas gained control of the Gaza Strip and continued to leave rockets towards Israel.

This is an action involving violent riots that began many weeks ago between Israelis and Palestinians at the al-Aqsa mosque in Jerusalem as a consequence of the expropriation of buildings that are owned and inhabited by Palestinians especially in the Sheikh Jarrah neighborhood. The response to the rockets was the military operations in the Gaza Strip which took the name of Guardian of the Walls and caused damage and loss of life. Hostilities that officially ended on 21 May 2021 but the story continued in time arriving from scratch with new conflicts that the entire international community has been dealing with since October 2023 (Butchard, Nessa, 2021)[1].

Within this context, it is remembered that the rules of jus ad bellum are the guarantees of peaceful coexistence between states which prohibit the unilateral use of force in resolving international disputes and with the exception of legitimate defense. Each state reacts against another state that has provoked an armed attack against itself. A state-centric interpretation of the rules of the use of force maintains the "way" obtained by the International Court of Justice (ICJ) where already since 2001 it has been overcome by continuous attacks by entities that do not have a non-state character and not

1) See ex multis: United Nations, Peaceful settlement of the question of Palestine: Report of the Secretary-General, 24 August 2021, UN Doc. A/76/299, pp. 7-11.Secretary-General's remarks to the Security Council on the implementation of res. 2712 (2023), 29 November 2023: https://www.un.org/unispal/document/secretary-generals-remarks-to-the-security-council-on-the-implementation-of-res-2712-2023/; UN Security Council Meeting on Mideast Situation/Palestinian Question on 25 October 2023. Verbatim Record (S/PV.9453): https://www.un.org/unispal/document/un-security-council-meeting-on-mideast-situation-palestinian-question-on-25-october-2023-verbatim-record-s-pv-9453/; Escalation of violence in Gaza and Israel-Draft Security Council Resolution S/2023/772 of 16 October 2023: https://www.un.org/unispal/document/escalation-of-violence-in-gaza-and-israel-draft-security-council-resolution-s-2023-772/; Israel Has Been Experiencing a Wave of Terror Attacks-Letter from Israel to the UN Secretary-General and Security Council President (S/2023/330) of 07 July 2023: https://www.un.org/unispal/document/s-2023-330/; Dangerous Escalation of Israeli Terrorism and Violence against the Palestinian People- Letter from the State of Palestine (A/ES-10/943-S/2023/460) of 29 July 2023: https://www.un.org/unispal/document/a-es-10-943-s-2023-460/.

attributed to any status (Marxsen, Peters, 2019).

The hostilities that are obtained in 2021 between Israel and Hamas states refer to jus ad bellum in a broad way. The state-centric interpretation regarding the rules on the use of force as constructed by the ICJ are taken into consideration by the Security Council of the UN whenever armed or not conflicts bring it into play to defend their respective positions. The norms of jus ad bellum justify the unilateral use of force while respecting the fight against terrorism and self-determination. Israel invokes and justifies legitimate defense with the Palestinian people according to par. 3 of the ICJ opinion.

The interpretative models are elaborated and based on the use of force, highlighting the consensus of models which, as a paradoxical outcome, produces the ICJ itself. The jus ad bellum rules with specific purposes are shared by the international community which creates destabilization in a more general framework of the use of force (Liakopoulos, 2020d).

Especially the starvation of civilian population seen as a war crime according to the statute of the International Criminal Court (ICC) and Art. 8 (2)(b)(xxv). The total blockade violates the ban on starvation as well as the absence of a humanitarian corridor according to the bombing of the Rafah crossing which is carried out between Gaza and Egypt as a border that is not controlled by Israel (Dill, 2023).

Apart from the starvation it seems that war reprisals are also considered illegal under Art. 51(6) of the First Additional Protocol and by the International Criminal Tribunal for the Former Yugoslavia (ICTY) according to customary law as we have seen in the Prosecutor v. Zoran Kupreškic (Liakopoulos, 2019a) and the Prosecutor v. Milan Martić[2] cases. The prohibition on reprisals has a customary nature against persons who are protected outside of hostilities as a strong trend that crystallizes the prohibition against reprisals against civilians who are involved in the conduct of the relevant hostilities. The protection of civilians is a fundamental

"Apart from the starvation it seems that war reprisals are also considered illegal under Art. 51(6) of the First Additional Protocol and by the International Criminal Tribunal for the Former Yugoslavia (ICTY) according to customary law as we have seen in the Prosecutor v. Zoran Kupreškić (Liakopoulos, 2019a) and the Prosecutor v. Milan Martić cases"

2) ICTY, IT-95-11-R61, 8 March 1996, par. 10.

"The activity of private individuals can be traced back to the state only if the existence of a nexus of attribution according to customary law is demonstrated, a circumstance which Nicaragua failed to adequately prove in the dispute with the United States"

interest of the international community that the violation of state A violating the behavior of state B means violation of all states of the international community as a whole.

2. THE STATE-CENTRIC RELATIONSHIP AND NORMS OF JUS AD BELLUM

State centrism and ICJ have constructed a subjective scope of the norms of jus ad bellum which is based on fixed points (Corten, 2020). The application of self-defense seriously builds the prohibition on the use of force by continuously calling Art. 2, par. 4 of the UN Charter.

We also recall the case of the ICJ in the matter of military and paramilitary activities in and against Nicaragua in which the ICJ affirms the: "(...) distinction between the most serious forms of use of force, contrary to Art. 2, par. 4 of the UN Charter, as they constitute an armed attack pursuant to Art. 51, and the less serious ones (...) Declaration of principles on friendly relations between states set out in Resolution 2625 (XXV) of 1970 of the United Nations General Assembly (...) the violation by the State, of the obligation not to organize or encourage, instigate or assist irregular mercenary gangs or terrorists to incur into the territory of another state, or provide them with mere assistance or support (...) in art. 3, letter. g), of Resolution 3314 (XXIX) of 1974 of the General Assembly of the United Nations (...) recognized that the sending, by a state or on its behalf, of mercenary or irregular gangs into another state, or its substantial involvement in them, may constitute an armed attack if the activities carried out by them are of such gravity that they can be equated with an attack launched by a regular army (...) (Ruys, 2010; Liakopoulos, 2020e)[3].

The prohibition on the use of force is aimed only at to the states (...) provided for by Art. 3, letter. g), of the aforementioned Resolution 3314. The activity of private individuals can be traced back to the state only if the existence of a nexus of attribution according to customary law is demonstrated, a circumstance which Nicaragua failed to adequately prove in the dispute with the United States[4].

3) Military and paramilitary activities in Nicaragua (Nicaragua v. United States), precautionary measures, ordinance, 10 May 1984, ICJ Reports 1984, pp. 91, par. 191, 103, par. 195.

4) ICJ, Military and Paramilitary Activities in and Against Nicaragua, Nicaragua v. United States of America of 27 June 1986, ICJ. Reports, 1986, pp. 187-189, par. 15ss.

The ICJ took into consideration self-defense by requiring the production of evidence demonstrating the attribution of a state in relation to the armed attack alleging violation of the prohibition on threats or use of force (Tams, 2019)[5]. The Opinion of 2004 relating to the Legal Consequences of the construction of a wall in the occupied Palestinian territories states: "(...) the irrelevance of Art. 51 of the UN Charter in this case, since the attacks that Israel aimed to counter through the construction of the wall did not come from a state, but from the territory over which Israel exercised control (...)"[6].

The state-centric relationship and the acts that are committed by non-state entities such as for example in the case of acts of terrorism do not fall within the application of the prohibition on the use of force and do not determine the relative relevance with Art. 51 of the UN Charter unless the victim state fails to demonstrate that the acts are not attributable to another state and that they create an armed attack.

The lack of evidence placing only the international offense as the basis of a less serious violation of Art. 2, par. 4 of the UN Charter is not sufficient by itself making applicable art. 51 (Corten, 2020; Liakopoulos, 2022)[7]. Unilateralism favors collective action which has been decided by the organization of the UN. The state victim of terrorist acts does not invoke and "use" legitimate defense in favor against the state hosting the non-state entity unless the Security Council acts after it has decided according to what is provided for by Art. 39 of the UN Charter.

3. HOSTILITY BETWEEN ISRAEL AND PALESTINE AND THE RELATED STATEMENS OBTAINED

The use of jus ad bellum rules are not always positive and broad based and/or made in a coherent manner. The interpretation of Articles 2, par. 4 and 51 of the UN Charter are customary laws that exist to modify the use of force and self-defense (Nolte, 2015; Tams, 2019; Liakopoulos, 2020c)[8].

5) ICJ, Armed activities on the territory of Congo (new appeal: 2002) (Republic Democratic of Congo v. Rwanda), precautionary measures, order, 10 July 2002, ICJ Reports 2002, par. 245. Armed Activities in the Territory of the Congo, Democratic Republic of the Congo v. Uganda of 19 December 2005, I.C.J. Reports, 2005, 222, par. 146. Oil platform affair, Islamic Republic of Iran v. United States of America of 6 November 2003, I.C.J. Reports, 2003, pp. 186, par. 51, 190, par. 60, and 195, par. 71.

6) ICJ, Legal consequences of building a wall in the occupied Palestinian territories, ICJ Reports of 9 July 2004, 194, par. 139.

7) "(...) the mere acquiescence or assistance of a state towards the activities of irregular armed groups present in its territory could not be considered as an armed attack pursuant to Art. 51 of the UN Charter in the absence of any link of imputability with the state (...)".

8) The use of force has an imperative, unresolved character and through the practice of states are relevant to ascertain the modification of the customary norm which already exists in Art. 53 of the Vienna Convention of 1968. The separation between state practice and the assessment of the customary norm or modification and the conclusion of a global agreement such as the UN Charter are relevant according to Art. 31 of the Vienna Convention of 1969 on the Law of Treaties for Interpretative Purposes. According to the ILC: "(...) the decisions of the plenary bodies of an international organization can constitute interpretative agreements pursuant to Art. 31, par. 3, letter. a), of the Vienna Convention on the Law of Treaties of 1969. In order to identify the conditions necessary to establish when such an agreement can be said to be formed, it used an argument used by the International Court of Justice in the ruling on the merits rendered in Nicaragua affair v. United States of America (...)". And from the ICJ in case Nicaragua is affirmed that: "(...) the consent given by the states to Resolution 2625 (XXV) of the United Nations General Assembly was not given to clarify the scope of the Charter of the United Nations, but to express their true "acceptance" of the validity of the rules set out in said resolution (...) it made no reference to Art. 31, par. 3, letter. a), of the Vienna Convention of 1969 (nor could it have done so, given its limited competence ratione materiae in that dispute), since the aim was to

Already in a letter of 14 May 2021 to the Security Council of the UN, Israel reported Art. 51 of the UN Charter justifying its armed action by launching an appeal to the international community thus recognizing: "(...) the fundamental right to self-defence (...)" (Henderson, 2018; Henderson, 2023)[9]. The defense of the Israeli people and sovereignty against the indiscriminate attacks that have been carried out by terrorist groups that are present in the Gaza Strip are: "(...) campaign of incitement to the violation planned by the highest levels of the Palestinian Authority (...)"[10]. Referring to Art. 51 of the UN Charter demonstrates that Israel called on the international community to act in self-defense and based on a broad interpretation that approves the need to demonstrate that terrorist attacks on a state also shows other elements that must be taken into consideration (Corten, Verdebout, 2014)[11].

The permanent representative of Israel after this letter stated that: "(...) the expressions indicative of those elements characterize the register of the jus ad bellum (...). Israel would have had no other choice to stop the terrorist attacks of Hamas from wherever they came and thus put an end to his aggression, identifying the latter as the terrorist organization (...) solely responsible for their consequences (...)"[12].

Palestine has interpreted this position as a precise reference to self-defense and in the positions they have taken from the Security Council with a natural right of self-defense of Israel (Butchard, Nessa, 2021). Thus armed interventions are justified by demonstrating the attribution to an attack against a state (Murphy, 2002).

For Israel, legitimate defense was justified according to Art. 51 of the UN Charter which considered the occupied territory of the Gaza Strip. The ICJ ruled out that the application of jus ad bellum in the situation between Israel and Palestine and in par. 139 of the opinion of 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories has been reported many times in

detect the opinio juris of the states in relation to the customary rule on the prohibition of the use of force (...) emerge when it is necessary to evaluate state practice in relation to the norms of jus ad bellum, have pushed some scholars, despite belonging to opposing doctrinal currents, to limit the role of custom, thus sharing the same methodological choice (...)". According to Tams: "(...) the broad interpretation of the institution of self-defence would be deriving exclusively from the application practice following the conclusion of the United Nations Charter (...) according to Art. 31, par. 3, letter. b), of the 1969 Vienna Convention on the Law of Treaties (...)".

9) United Nations, Identical letters dated 12 May 2021 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council, 14 May 2021, UN Doc. S/2021/463, p. 2.

10) Identical letters dated 12 May 2021 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council, 14 May 2021, op. cit., p. 2ss.

11) "(...) the failure to refer to Art. 51 of the Charter in the "protective edge" operation of 2014 demonstrated Israel's willingness not to question what was established by the International Court of Justice in the Opinion of 9 July 2004 relating to the Legal Consequences of the construction of a wall in the occupied Palestinian territories, opinion shared for the international communauté des États dans son ensemble (...) Israel's declarations towards Hamās did not contain indicative terms of the jus ad bellum register which, on the contrary, characterized the position taken by Israel itself to justify the operations in Syria and Lebanon (...) Israel had denounced acts of aggression for which the two Arab States were tenus pour responsables (...)".

12) United Nations, Letter dated 18 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, 19 May 2021, UN Doc. S/2021/480, p. 42 s.

letters exchanged and between various institutions[13].

Thus the ICJ stated that: "(...) the legal regime in force between the two parties is only that provided for by the Fourth Geneva Convention of 1949 and by the other relevant provisions of international law, so that (also) the Gaza Strip considered an occupied territory according to the rules of international humanitarian law[14] (...). The rules of jus in bello would be applicable as lex specialis in the particular case of wartime occupation, with the consequent irrelevance of the rules of jus ad bellum (Henderson, 2013)[15] (...) Palestine was careful not to refer to the norms of jus ad bellum to contest Israel's armed responses, and this in particular in the "Cast Lead" operations of 2008, "Pillar of Defense" of 2012 and "Protective Edge" of 2014 (Corten, Verdebout, 2014) (...)".

In the 2004 opinion, the Court as noted: "(...) did not only use the argument just illustrated to reach this conclusion, as will be seen below (...). It excluded the applicability of the rules of jus ad bellum also due to of their state-centric interpretation (...)".

The positions obtained are as follows. The states that participated in the Secu-

"The ICJ ruled out that the application of jus ad bellum in the situation between Israel and Palestine and in par. 139 of the opinion of 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories has been reported many times in letters exchanged and between various institutions"

13) ICJ, Legal consequences of building a wall in the occupied Palestinian territories, ICJ Reports of 9 July 2004, par. 44, p. 194, par. 139. The par. 139 affirms that: "(...) Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State (...) Israel does not claim that the attacks against it are imputable to a foreign State. The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence (...)".

14) United Nations, Identical letters dated 21 May 2021 from the Permanent Observer of the State of Palestine to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, 24 May 2021, UN. Doc. S/2021/493, p. 1ss.

15) "(...) we share the logic and criticism of the use of the specialty principle. Specialty that does not exist in relation to the species between the norms of jus ad bellum and jus in bello. Behavior is evaluated in normative corpus. The norms of jus ad bellum are irrelevant through war occupation and the existence of the presumption where the armed conflict and the applicability of the norms of international humanitarian law are now the basis of analysis of every conflict and crisis on a global level (...)".

rity Council maintained and invited the parties to cease hostilities[16]. In particular the United States has confirmed Israel's right to self-defense through statements made outside the Security Council (Butchard, Ness, 2021).

The group of states was inspired in favor of Israel and qualified Hamas' actions as: "(...) attacks[17] or confirming the right to exercise self-defense within the limits of respect for the canon of proportionality or, in general, of international humanitarian law (...)"[18]. The United Kingdom and France stated that: "(...) Hamas attacks as terrorist (...) legitimate the right to self-defense (...)"[19].

For the European Union recognized Israel: "(...) the right to defend itself against any attack[20] (...) underlining the existence of an attack, the need to defend itself and to respect, in any case, the principle of proportionality, even without mentioning Art. 51 of the Charter, seem to refer to a broad meaning of the institution of self-defense, not asking Israel to demonstrate the link of attribution of the offensive state conduct (...) the United States, Australia and Estonia affirmed that one can always make use of this option if the hosting state the non-state entities cannot or does not want to prevent the activities of the latter (...)"[21]. The United Kingdom, Norway and France did not consider self-defense to counter terrorist attacks[22].

States such as Iceland and Brazil have referred to the meaning of self-defense by not requiring Israel to demonstrate attribution in its own perspective by recognizing Palestine as a state[23]. In particular Brazil: "(...) opposed to a broad interpretation of the institution of self-defense, reiterating the need for a joint reading of Art. 2, par. 4, and Art. 51 of the Charter of the United Nations[24](...) in May 2021, it was the only one to bring Israel's right to self-defense under the Charter of the United Nations (...)"[25].

The jus ad bellum register has a very broad meaning to reach opposite results while respecting the opinions of various

16) United Nations, Letter dated 18 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, 19 May 2021, UN Doc. S/2021/480, pp. 15 (United States), 20 (Vietnam), 22 (Mexico), 49 (Australia) and 56 (Chile).

17) United Nations, Letter dated 18 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, 19 May 2021, UN Doc. S/2021/480, pp. 12 (Norway), 19 (Estonia).

18) ID, pp. 12 (Norway), 13 (Ireland), 19 (Estonia), 26 (United Kingdom), 32 (France), 49 (Australia) and 61 (Iceland).

19) ID, pp. 26 (United Kingdom) and 32 (France).

20) ID, p. 59 (European Union).

21) United Nations, Letter dated 8 March 2021 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General and the President of the Security Council, 16 March 2021, UN Doc. S/2021/247, pp. 13 (Australia), 30 (United States) and 32 (Estonia).

22) ID, pp. 35 (France), 50 (Norway) and 63 (United Kingdom). See also the United Nations, Letter dated 3 June 2016 from the Permanent Representative of Norway to the United Nations addressed to the President of the Security Council, 6 June 2016, UN Doc. S/2016/513, p. 1.

23) http://palestineun.org/about-palestine/diplomatic-relations

24) United Nations, Letter dated 8 March 2021 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General and the President of the Security Council, 16 March 2021, UN Doc. S/2021/247, p. 20.

25) United Nations, Letter dated 18 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, 19 May 2021, UN Doc. S/2021/480, p. 53 (Brazil).

groups. A common thread was that they all used the term of the use of aggression, the behaviors that are held by Israel and towards the Palestinian people and with reference to Sheikh Jarrah and the al-Aqsa[26] mosque.

The states that were part of the Arab League took the same position through Resolution 8660 of 11 May 2021[27] stating: "(...) the Palestinian people have the right to self-defense for this reason[28] (...) the aggressive conduct of Israel (...) demonstrated the intention to apply this notion, indicative of an interstate relationship, to the Palestinian people as holders of the right to self-determination, also following a constant practice (Corten, 2012; Henderson, 2013)[29] (...) already recognized Palestine (...) and specified that the Israel's aggression occurred against the State of Palestine (...)"[30].

According to my opinion the use of force by the Palestinian people justifies the cause of Israel's permanent aggression. Both Israel and the Palestinian people could legitimately based on self-defense. The characteristics of coherence and uniformity are necessary to interpret the norms of jus ad bellum on a broader level (Corten, Verdebout, 2014)[31]. This outcome is contradictory and the manifestation of consensus that is generalized in the states extends the rules on the use of force and non-state entities fighting terrorism and evaluating the right to self-determination.

4. RULES OF JUS BELLUM AND TERRORISM. THE CASE OF ISRAEL

As we understood from the previous paragraphs, some states have called for the fundamental right to self-defense to res-

"The jus ad bellum register has a very broad meaning to reach opposite results while respecting the opinions of various groups"

26) ID., pp. 10ss. (Tunisia), 30 (Saint Vincent and the Grenadines), 44 s. (Algeria), 50 (Bangladesh), 52 (Bolivia), 63 (Indonesia), 64 (Iran), 66 (Iraq), 69 (Kuwait), 73 (Malaysia), 76s. (Pakistan), 83 (Syria) and 84. (Turkey). It is noted that other states have not used the term aggression, qualifying that Israel's behavior towards the Palestinians is pure attacks: pp. 80 (South Africa), 37 (Jordan), 50 (Bangladesh), 50 (Lebanon) and 86 (Venezuela).

27) United Nations, Letter dated 12 May 2021 from the Permanent Representative of Qatar to the United Nations addressed to the Secretary-General, 14 May 2021, UN Doc. S/2021/462, pp. 3-5.

28) ID., pp. 28 (Niger) and 65 (Iran).

29) Henderson affirms that: "(...) Israel's conduct as aggression also during the previous operations conducted by the latter in the Gaza Strip, without however specifying whether the term used was precisely the legal one (...) this practice demonstrates that even an entity non-state could be the object of aggression by a state under international law.

30) United Nations, Letter dated 18 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, 19 May 2021, UN Doc. S/2021/480, pp. 30.

31) "(...) in the "Protective Edge" operation of 2014, the states found themselves clearly opposed just as happened in 2021. For this reason, even that precedent, like the one which is the subject of this analysis, could not be highlighted, in itself, to confirm an overcoming of the State-centric perspective (...)".

"Reacting against self-defense which complies with the rules of public international law and effectiveness as a guiding criterion"

pond to terrorist attacks. This is the interpretative-theoretical point acts towards this path and position (Lanovoy, 2017)[32]. The interpretation of jus ad bellum rules refers to the obligation that provides for the presence of a state unwilling or unable to prevent.

A position inspired by the United States to justify in the past the killing of Osama bin Laden in Pakistan and after the related intervention in Syria in 2014 which was reported at the meeting of the Security Council of March 2021 by states that used force and justified legitimate defense by demonstrating that the state in its territory where the non-state entity provoked an attack was unwilling or unable to prevent it (Deeks, 2012; Paust, 2015; Mahmoudi, 2021). The key to the reconstruction was a preventive obligation of impossibility which attributes customary rules to the conduct of non-state actors in a state (Wilmshurst, 2006; Bethelem, 2012; Kattan, 2018).

Perhaps this is how we speak of the objective liability of states due to the activities of private individuals (Starski, 2015; Orakhelashvili, 2015; Corten, 2016; Christakis, 2017; Martin, 2019; Kolb, 2018; Higgins, Webb, Akande, Sivakumaran, Sloan, 2018; Nuňez-Mietz, 2020)[33]. Israel and the states that have taken their stand in favor of their attitude have not also simultaneously accused the State of Palestine that has violated the obligation of prevention considering that they have not recognized their statehood.

Reacting against self-defense which complies with the rules of public international law and effectiveness as a guiding criterion. By acting in self-defense against non-state entities that have temporary control over a state's territory they exercise a sort of sovereignty. This is an argument that was suggested by the Secretary General in 2014 and which was confirmed by some states such as Germany for the intervention in Syria against ISIS (Starski, 2015; Liakopoulos, 2019b).

This is a model that has been justified by the violation of the sovereignty of one or more states that exist in a territory that

32) "(...) the criteria for attribution of the illicit act, the opposing current of doctrine states that, in any case, the rules on the attribution of the illicit act to a state, as lex generalis, cannot be used to circumvent or call into question Art. 51 of the United Nations Charter, as lex specialis (...)". See also in argument: https://www.ohchr.org/en/documents/country-reports/a77356-situation-human-rights-palestinian-territories-occupied-1967

33) "(...) the mere violation of the prevention obligation could not constitute, in itself, an armed attack pursuant to Art. 51 of the United Nations Charter, if anything a "less serious" violation of the Art. 2, par. 4, of the Charter (...) if the violation of the prevention obligation justified the use of force as a form of self-defense based on customary law parallel to art. 51 of the Charter, there would be no abstract reason to exclude, a fortiori, the use of self-defence set out in the latter provision in the event of any violation of art. 2, par. 4 (such as, for example, a short-of-war measure implemented by a state), thus ending up implicitly repealing the requirement of armed attack and ignoring the distinction drawn by the International Court of Justice (...)".

has settled on a state entity that created the relevant attack. Israel and some states did not report the de facto control that was exercised by Hamās over the Gaza Strip (Pina, 2008)[34] stating that: "(...) the right to defend oneself invoked by Israel (...) to the theory of the so-called extra-territorial law enforcement (...). It is always possible to react against attacks launched by any non-state entity. In this case, the victim state would carry out a sort of police action in a territory that is not its own, replacing the state that should have guaranteed its control (...)" (Saoul, 2004; Gaja, 2004; Dinstein, 2020; Wood, 2020).

Art. 51 is read according to Art. 2, par. 4 of the UN Charter (Murphy, 2002)[35]. The Charter does not constitute a self-centred regime which is related with the causes of exclusion to an offense in customary law which invokes the justification of the violation of the prohibition on the use of force and alternatively of self-defense which is codified by art. 51 (Tams, 2019). Perhaps this is not a question of a unanimous position (Ruys, 2010; Corten, Koutroulis, 2021; Tladi, 2021)[36]. States are also divided and positions are different as we saw in the Security Council of March 2021[37].

"Perhaps this is not a question of a unanimous position (Ruys, 2010; Corten, Koutroulis, 2021; Tladi, 2021). States are also divided and positions are different as we saw in the Security Council of March 2021"

34) United Nations, Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, UN Doc. A/76/35, 1° September 2021, p. 9, par. 18; United Nations, Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, 1° September 2020, UN Doc. A/75/35, p. 7, par. 14; United Nations, Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, 5 September 2017, UN Doc. A/73/35, p. 8, par. 14.

35) "(...) art. 51 admits collective legitimate defense in the event of aggression, which constitutes an international crime. The faculty is granted to states by the Charter itself to use force unilaterally and collectively outside the organization to repress other serious violations of general international law (...) Art. 2, par. 4 of the Charter would no longer constitute the only parameter that can be used to ascertain the lawfulness of the use of force, but it should be accompanied by what is provided for in customary law (...). The Security Council would be required to respect customary law, both when it issues authorizations to the states to use force without rigid mandate limits (in this case it is the unilateral intervention of the states that must be evaluated in the light of customary law), both when it assumes the direction and control of the operation (...) to preserve the Security Council from the constant abuses that states make of its function, but also to limit the new competences assumed by the Council since the beginning of the nineties of the last century, which are the expression of a normative function rather than merely political and operational (...)".

36) Peremptory norms of general international law (jus cogens): Text of the draft conclusions and draft annex provisionally adopted by the Drafting Committee on first reading, 29 May 2019, UN Doc. A/CN.4/L.936, p. 6.

37) United Nations, Letter dated 8 March 2021 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General and the President of the Security Council, 16 March 2021, UN Doc. S/2021/ 247, p. 23.

"This necessity could have excluded the illegality of a minor violation of the prohibition on the use of force committed against an innocent state, under very strict conditions (...)"

Such an opening in the UN Charter as a response to an armed attack is not considered as an armed reprisal which is prohibited in customary law and as established by the International Law Commission (ILC) according to Art. 50, par. 1, letter. a) of the draft articles on the responsibility of states for torts. Except that it comes in as a model of self-defense and as was indicated by the ICJ in the ruling on Military and Paramilitary Activities in and Against Nicaragua (Ruys, 2010; Corten, 2011; Kolb, 2018; Corten, 2020)[38].

The state of necessity establishes difficulties that demonstrate Roberto Ago's positions and how they are interpreted in the ILC (Vidmar, 2017) also stating: "(...) the extreme fragmentation of the practice established from the Second World War onwards (...) in absolutely exceptional circumstances, to justify the violation of an international norm through the necessity (...) that this norm did not have an imperative nature (Ago, 1980) (...) it believed that only the prohibition of aggression, even in its extensive definition provided by Resolution 3314 (XXIX) of the United Nations General Assembly, had this characteristic (...). This necessity could have excluded the illegality of a "minor" violation of the prohibition on the use of force committed against an "innocent" state, under very strict conditions (...).

It has eliminated this distinction from the draft articles on the responsibility of states for torts of 2001, the question nevertheless remains relevant (...)" (Gaja, 2007).

On the other hand, the ICJ specified that in Art. 2, par. 4 of the UN Charteer after the positions of Roberto Ago has obtained a disposition relating to the requirement of element in the armed attack and as referred to in art. 51 through the distinction of violations that are serious and less serious in the prohibition of the use of force in the sentence rendered in the matter of Military and Paramilitary Activities in and against Nicaragua (Tladi, 2021). The ILC had a broad and not very precise attitude to this basis of thought and above all to the mandatory norms of international law and the prohibition of aggression (Liakopoulos, 2020a; Liakopoulos, 2020b)[39].

38) ICJ, Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States, ICJ. Reports, 1986, pp. 94, par. 176 and 110, par. 210. Oil platforms (Islamic Republic of Iran v. United States of America), counter-claim, order of 10 March 1998, ICJ Reports 1998, p. 206, par. 12.

39) Yearbook of the International Law Commission, 2001, vol. II, part two, p. 85, par. 5: "(...) the state of necessity can be used by states only in "very limited" circumstances. In the commentary of Art. 25 of the draft articles does not take a position on the relationship between this cause of exclusion of the offense and the prohibition on the use of force, unlike what happens for countermeasures. The explanation for this choice is to be found in the distinction between primary and secondary rules, by virtue of which art. 25 is not relevant if the "necessity" is an element of the primary rule, as in the case, precisely, of the rules relating to the use of force in international relations (...)".

Israel and some states have taken the position of the fundamental right to defend themselves and the war on terror as the position of the former Bush presidency (Dinstein, 2009; Lubell, 2010). The extraterritorial law enforcement claimed the existence of a state that prevented attacks on a non-state entity and from the perspective that a state exists in the present case. No reference was made to the territory that is under the control of Hamās and as a justification for the armed response on the basis of the second model and different in the hypothesis to a de facto regime as an entity that possesses the requirements of statehood and the lack of broad recognition of the international community.

Legitimate defense presents the non-state entity as the recipient of the customary prohibition on the use of force which acquires international subjectivity (Tsagourias, 2011; Frowein, 2013; Henderson, 2013). The fundamental right of legitimate defense defends the sovereignty of Israel in the attacks or aggressions of Hamās which arise from the fact that they hold the person responsible for the same, denoting the replacement of the state as the author of the constitutive responsibility of the armed attack with the non-state entity, recognizing the reaction of self-defense (Dinstein, 2021). The qualification of non-state entity terrorism and the terrorist acts of its own attacks Israel's perspective broadens the subjective scope of the jus ad bellum rules serves to combat terrorism and lacks the broad consensus of the international community.

5. JUS AD BELLUM NORMS AND THE DEFENSE OF PALESTINE. THE RIGHT TO SELF-DETERMINATION

For Palestine, as we have seen from the previous paragraphs, Israel has denied calling Art. 51 of the UN Charter interpreting paragraph 139 of the opinion of the ICJ on the case of the Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territories, where: "(...) the applicability of the rules of jus ad bellum was excluded due to of the continuing occupation of the Palestinian territories by Israel (...) does not appear to be the only possible exegesis (...). The reason for the exclusion was due precisely to the state-centric vision of the jus ad bellum norms retained by the court (...) not only it was established that the attacks came from the occupied territories over which Israel exercised control, but also that they had not been launched by a state (...)" (O'Keefe, 2004).

The attack allows us to put the state-centric perspective that harmonizes the relative conclusions of the same opinion (Kolb, 2013). The application of Art. 51 of the UN Charter recognizes that this rule addressed Palestine as a state. This admission contradicted the relevant conclusions of the opinion where the ICJ accepted that: "(...) Israel had violated the right of the Palestinian people to self-determination through the construction of the wall, and not the sovereignty of the

"The attack allows us to put the state-centric perspective that harmonizes the relative conclusions of the same opinion"

"The aggression and conduct that Israel undertakes against the Palestinian people recognizes the possibility of reacting in self-defense according to the norms of the right to use armed forced in the right to self-determination"

Palestinian state[40] (...) to maintain itself within a state-centric reading.

The only way to reconcile the norms of jus ad bellum and the principle of self-determination of peoples is to deny that the latter can be recipients of those in the absence of a generalized consensus of the states on this issue[41]. It seems possible to preserve the symmetry between the armed attack launched by a state and the armed response of a state (...) statements made to the Security Council by the states belonging to the third group, the largest one. Although they have all recognized the State of Palestine (...)".

The aggression and conduct that Israel undertakes against the Palestinian people recognizes the possibility of reacting in self-defense according to the norms of the right to use armed forced in the right to self-determination. The position derives from the intention to replace the state as the subject that suffers the responsibility of the aggression with the non-state entity with the aim of attributing the faculty to react with force in legitimate defense to achieve self-determination and the right to resistance[42].

In particular, the right to resistance as a power that allows and corresponds to international law that jus contra bellum and jus in bello implies the use of force as well as all actions that imply the use of force and respect the rules of jus in bello. As we understand, resistance is not prohibited in international law and it follows the rules of international humanitarian law. Hamas' military actions violate every rule of international humanitarian law and more (Dannenbaum, 2023).

40) ICJ, Legal consequences of building a wall in the occupied Palestinian territories, op. cit., par. 122, and 199, par. 155.

41) In par. 139 of the order, the ICJ affirms that: "(...) the case of Israel was "different" from that contemplated in Resolution 1368 (2001) of the Security Council of 12 September 2001. As seen, this act does not lend itself to a univocal interpretation (...)

42) See, Charter of Hamās, Contemporary Review of the Middle East, 2017, pp. 398, par. 25, 399, par. 39: "(...) the debate before the Security Council in May 2021 denotes a certain ambiguity. In fact, they did not dissociate themselves at all nor did they condemn this conduct in any way, but only referred to the attacks suffered by the Palestinian people (...) the role played by Hamās in recent years does not clarify the picture either (...) resident in the territories occupied, but does not participate in the Palestine Liberation Organization, which is the entity to which international subjectivity is recognised, on an international level, for the purpose of exercising the right to self-determination of the Palestinian people. While the Palestine Liberation Organization expressly renounced the armed struggle to realize the right to self-determination of the Palestinian people in the exchange of letters between Rabin and Arafāt on 9 September 1993, this did not happen for Hamās. Its 2017 Statute, which replaces the previous one from 1988, in addition to expressing the total repudiation of the Oslo Accords, highlights that, from a "legal" point of view, the liberation of Palestine represents an act of "self-defense", expression of a "natural right of all peoples to self-determination" (...) legitimized by divine laws and by "international norms and laws", can be exercised through acts of resistance with "all means and methods" (...)".

6. THE LACK OF BROAD CONSENSUS

We believe ex novo from the previous paragraphs that the positions obtained by various states as well as by the states that were involved in "dispute" were not appropriate and had as an element in communs the absence of an agreement between the states, thus expanding the subjective scope of application of the norms of jus ad bellum fighting terrorism to achieve self-determination.

The lack of manifestation of a consensus on a broad level reminds us that the ICJ has taken a position to overcome the state-centric interpretation of some norms of international law, thus ascertaining the general consensus of the international community. Respect for territorial integrity and the prohibition of the use of force as stated in the unilateral declaration of independence regarding Kosovo in 2010 and on the legal consequences of the separation of the Chagos Islands from Mauritius in 1965 in 2019 allows us to arrive at these useful conclusions towards this road.

In the case of Kosovo the ICJ stated that: "(...) the authors of the declaration of independence could not have violated the principle of the territorial integrity of a state (in this case, Serbia), since this principle, enunciated in Art. 2, par. 4, of the UN Charter and in Resolution 2625 (XXV) of the General Assembly of the United Nations (...) confined to the sphere of relations between states (...)" (Corten, 2011)[43]. This is a choice that recognized the international subjectivity of non-state actors, thus ascertaining the violation of the obligation towards Serbia. Secessionist movements are excluded from the subjective sphere and the obligation to respect territorial integrity for international law was a basis that conferred the right to constitute themselves as a state (Orakhelashvili, 2011; Oeter, 2015).

This missing right and the lack of international subjectivity reflected the general consensus of states in the hypothesis of external self-determination. In the opinion of 2019 on the Legal Consequences of the separation of the Chagos Islands from Mauritius in 1965, it did not ascertain: "(...) that par. 6 of resolution 1514 (XV) of 1960 of the United Nations General Assembly, considered a defining moment

"The lack of manifestation of a consensus on a broad level reminds us that the ICJ has taken a position to overcome the state-centric interpretation of some norms of international law, thus ascertaining the general consensus of the international community"

43) ICJ, Opinion of 22 July 2010 on the Conformity with International Law of the Unilateral Declaration of Independence Concerning Kosovo, ICJ. Reports, 2010, p. 437, par. 80

"The ICJ took into account the rules of jus ad bellum in the relations between the parties in the opinion it sought in the case of Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories as well as in the Legal Consequences of the Separation of the Chagos Islands from Mauritius in 1965 for the obligation to respect territorial integrity"

in the consolidation of state practice, reflects a customary norm (...)"[44] .

When it comes to consistently emphasized, states themselves attribute the non-state entity, i.e. the non-autonomous territory is connected with the right to self-determination as the right to respect territorial integrity towards all states within the limits defined in the uti possidetis iuris.

The positions of one of the parties in favor of Palestine and Israel shows the consensus that extends the application of the norms of jus ad bellum in the international community.

There was no broad consensus in favor of the State in Palestine recognizing the applicability of the jus ad bellum norms for the self-determination of a people. The ICJ took into account the rules of jus ad bellum in the relations between the parties in the opinion it sought in the case of Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories as well as in the Legal Consequences of the Separation of the Chagos Islands from Mauritius in 1965 for the obligation to respect territorial integrity. The consensus is clear about the preparatory work of the adoption of Resolution 2625 (XXV) of the General Assembly of the UN. States were of the opinion of the possibility of allowing the struggle for self-determination to use force and self-defense as the basis of the same law (Chadwick, 1966).

This option was contrary to a minority group of Western states where the norms of jus ad bellum could apply exclusively to relations between states. The compromise according to Art. 5 prohibits states from being contrary with force that realizes the right to self-determination which gives the right to resist without mentioning Art. 2, par. 4 and Art. 51 of the UN Charter (Wilson, 1988)[45].

44) ICJ, Opinion 25 February 2019 relating to the legal consequences of the separation of the Chagos Islands from Mauritius in 1965, ICJ. Reports, 2019, p. 132, par. 150.

45) According to par. 5, "(...) has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their

The compromise denies that the people struggling for self-determination consider the norms of jus ad bellum as subject to an attempt to limit the use of force by states in international law. It is admitted that peoples and national liberation movements are directly entitled to self-determination and for this reason are recipients of jus ad bellum norms as a true right of self-defense and with the license to use force to a state that has prevented the realization of the right to self-determination (Yau, 2020).

Israel and the other states highlight that the opposing bloc has not formed a consensus of a broad nature of the states such as a universal definition that is accepted for terrorism and the methods that conduct the verification of an act of terrorism outside the resolution of the Security Council lacking the reference to the case in question (Chadwick, 2020; Capone, 2021; Dinstein, 2021). The consent of the extension within the scope of subjective application of the norms of jus ad bellum reaches a fundamental consensus and with specific aspects[46].

7. CONCLUSIONS

The demonstrations and the continuous struggle between Palestine and Israel show the problems of expanding a subjective sphere that applies the rules to the use of force for purposes that the positions of combating terrorism facilitate the right to self-determination. The outcome leads to two extreme positions that adopt, distinguish the aggressor according to international law.

This contradiction shows the inability of states that are not neighboring and are far from the area to try to qualify non-state activities. The conduct shows in a contrary way the polarization of the needs that are found, confirming the absence of a generalized consensus of the international community by expanding the norms of jus ad bellum and determining the non-state entities pursuing the purposes that want to be concluded.

The traditional interpretation of the use of force as obtained in the ICJ offers the guarantee of distinguishing with certainty the subject who acts against self-defense and who has violated the prohibition on the use of force without taking into consideration the true motivations of the parties. When one or more states recognize the applicability of the rules of jus ad bellum to a state or a non-state entity for specific objectives such as self-determination, terrorism and where the consensus of the international community is lacking, the state-centric interpretation overcomes centricity of the norms of jus ad bellum and the objective distinction of the aggressor objectively distinguishes the aggressor from the attacked and allows evaluations that are subjective to the lawfulness or unlawfulness of the use of force.

Thus the uniform application of the rules of jus ad bellum as the protagonist of destabilization of the international community is shattered and individual legitimate defense is inevitably oriented and expanded towards that which has a collective nature. ◆

actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter (...)".

46) Security Council, seventy-sixth year, 8913th meeting, 30 November 2021, UN Doc. S/PV.8913, p. 3, 7-9, 12, 14, 16, 20ss.

8. REFERENCES

Ago, R. (1980). Addendum to the eighth report on State responsibility. *Yearbook of the International Law Commission*, vol. II, part one, pp. 15, par. 4, 19, par. 12, 20, par. 16, 37-39, par. 55, 40, par. 58, 44, par. 66, par. 79.

Bethlehem, D. (2012). Self-defence against an imminent or actual armed attack by non-State actors. *American Journal of International Law*, 106 (4), 778ss.

Butchard, P.M., Nessa, J.J. (2021). Digest of State practice: 1 January-30 June 2021. *Journal on the Use of Force and International Law*, 8 (1), 382ss.

Capone, F. (2021). Criminalising terrorist offences and the phenomenon of foreign terrorist fighters at the municipal level without defining terrorism in international law: Does the trick really work? *International Criminal Law Review*, 21 (4), 734ss.

Chadwick, E. (1966). *Self-determination, terrorism and the international humanitarian law of armed conflict.* Martinus Nijhoff Publisher, The Hague, 28, 44, 55 and 88-91.

Chadwick, E. (2020). Terrorism and self-determination. In B. Saul. *Research handbook on international law and terrorism*. Edward Elgar Publisher, Cheltenham/Northampton, 288ss.

Christakis, T. (2017). Challenging the "unwilling or unalble" test. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 77, 22ss.

Corten, O. (2011). Judge Simma's separate opinion in the oil platforms case: To what extent are armed "proportionate defensive measures" admissible in contemporary international law?. In U., Fastenrath, R., Geiger, D.E., Khan, A. Paulus, S. Von Schorlemer, C. Vedder, *From bilateralism to community interest: Essays in honour of Judge Bruno Simma*. Oxford University Press, Oxford, 862ss.

Corten, O. (2011). Territorial integrity narrowly interpreted: Reasserting the classical inter-State paradigm of international law. *Leiden Journal of International Law*, 24 (1), 92ss.

Corten, O. (2012). L'applicabilité problématique du droit de la légitime défense au sens de l'article 51 de la Charte des Nations Unies aux relations entre la Palestine et Israël. *Revue Belge de Droit International*, 45 (1), 77ss.

Corten, O. (2016). The "unwilling or unable" test: Has it been, and could it be, accepted?. *Leiden Journal of International Law*, 29 (3), 792ss.

Corten, O. (2020). *Le droit contre la guerre: l'interdiction du recours à la force en droit international contemporain*. ed. Pedone, Paris, 314, 698-700 and 715-719.

Corten, O., Koutroulis, V. (2021). The jus cogens status of the prohibition on the use of force: What is its scope and why does it matter?. In D. Tladi. *Peremptory norms of general international law (jus cogens)*. ed. Brill, Leiden/Boston, 653-665

Corten, O., Verdebout, A. (2014). Les interventions militaires récentes en territoire étranger: vers une remise en cause du jus contra bellum? *Annuaire Français de Droit International*, 60, 146ss.

Dannenbaum, T. (2023). The Siege of Gaza and the starvation war crime.

Just Security: https://www.justsecurity.org/89403/the-siege-of-gaza-and-the-starvation-war-crime/

Deeks, A. (2012). Unwilling or unable: Toward a normative framework for extraterritorial self-defense. *Virginia Journal of International Law*, 52, 487ss

Dill, J. (2023). Our shared horoor. *EJILTalk*, 13 October 2023, https://www.ejiltalk.org/our-shared-horror/

Dinstein, Y. (2009). The "war on terrorism. In P.A., Fernàndez-Sànchez, *International legal dimension of terrorism*. ed. Martinus Nijhoff, Leiden/Boston, 242ss.

Dinstein, Y. (2017). *War, aggression and self-defence*. Cambridge University Press, Cambridge, 292ss.

Dinstein, Y. (2021). *Non-international armed conflicts in international law*. Cambridge University Press, Cambridge, 34, 112ss.

Frowein, J.A. (2013). De facto regimes. *Max Planck Encyclopaedia of Public International Law*, par. 1 and 4ss.

Gaja, G. (2004). Combating terrorism: Issues of jus ad bellum and jus in bello. The case of Afghanistan. In W. Benedek, A. Yotopoulos-Marangopoulos. *Anti-terrorism measures and human rights, ed. Brill*, Leiden/Boston, 168ss.

Gaja, R. (2007). La possibilité d'invoquer l'état de nécessité pour protéger les intérêts de la communauté internationale. In A.A.V.V., *Droit du pouvoir, pouvoir du droit: Mélanges offerts à Jean Salmon*, ed. Bruylant, Bruxelles, 422ss.

Henderson, C. (2013). Contested States and the rights and obligations of the jus ad bellum. *Cardozo Journal of International and Comparative Law*, 21, 397-399.

Henderson, C. (2018). Israeli Military Operations against Gaza: Operation Cast Lead (2008-2009), Operation Pillar of Defence (2012), and Operation Protective Edge (2014). In T. Ruys, O. Corten, A. Hofer. *The use of force in international law*: *A case-based approach*. Oxford University Press, Oxford, 734ss.

Henderson, C. (2023). *The use of force in international law*. Cambridge University Press, Cambridge

Higgins, R., Webb, P., Akande, D., Sivakumaran, S., Sloan, J. (2018). *Oppenheim's international law: United Nations*, Oxford University Press, Oxford

Kattan, V. (2018). Furthering the "war on terrorism" through international law: How the United States and the United Kingdom resurrected the Bush doctrine on using preventive military force to combat terrorism. *Journal on the Use of Force and International Law*, 5, 107ss.

Kolb, R. (2013). *The International Court of Justice*. Hart Publishing, Oxford/Portland, 1104ss.

Kolb. R. (2018). *International law on the maintenance of peace: Jus contra bellum*. Edward Elgar Publisher, Cheltenham/Northampton, 362ss.

Lanovoy. V. (2017). The use of force by non-State actors and the limits of attribution of conduct. *European Journal of International Law*, 27 (2), 580ss.

Liakopoulos, D. (2019a). Justicia dura: anatomia e interpretaciòn en la ex-

clusiòn de la responsabilidad penal individual en la justicia penal internacional. *Revista Eletrònica de Estudios Penales y de la Seguridad*, n. 4

Liakopoulos, D. (2019b). Rough justice: Anatomy and interpretation in the exclusion of individual criminal liability in international criminal justice. *Revista do Curso de Direito do UNIFOR*, 10(1), 148-233

Liakopoulos, D. (2020a). *Complicity in international law*, W.B. Sheridan Law Books, ed. Academica Press, Washington, London

Liakopoulos, D. (2020b). *Complicity of States in the international illicit. ed. Maklu*, Antwerp, Portland

Liakopoulos, D. (2020c). *States and the interpretation of treaties*, W.B. Sheridan Law Books, ed. Academica Press, Washington, London

Liakopoulos, D. (2020d). *The role of customs in international law*, W.B. Sheridan Law Books, ed. Academica Press, Washington, London,

Liakopoulos, D. (2020e). *The role of not party in the trial before the International Court of Justice*. ed. Maklu, Antwerp, Portland

Liakopoulos, D. (2022). Qui tacet consentire videtur si loqui debuisset ac potuisset v. quo tacet neque negat neque utique fatetur (he who remains silent is considered to consent, if he must and can speak v. he who remains silent neither rejects nor accepts-affirms). *American Yearbook of International Law*, n. 1

Lubell, N. (2010). *Extraterritorial use of force against non-State actors. Oxford University Press*, Oxford, 113ss.

Mahmoudi, S. (2021). *Self-defence and "unwilling or unable" States*. Recueil des cours, vol. 422, ed. Brill, Bruxelles, 328ss.

Martin, C. (2019). Challenging and refining the "unwilling or unable" doctrine. *Vanderbilt Journal of Transnational Law*, 52 (2), 442ss.

Marxsen, C., Peters, A. (2019). Dilution of self-defence and its discontents. In A. Peters, C. Marxsen, *Self-defence against non-State actors*. Cambridge University Press, Cambridge, 7-9

Murphy, S.D. (2002). Terrorism and the concept of "armed attack" in Article 51 of the U.N. Charter. *Harvard International Law Journal*, 42, 48ss.

Nolte, G. (2015). Third Report on subsequent agreements and subsequent practice in relation to the interpretation of treaties. *Yearbook of the International Law Commission*, 2 (1), 50ss

Nuñez-Mietz, F. (2020). *The use of force under international law*, ed. Routledge, London & New York

O'Keefe, R. (2004). Legal consequences of the construction of a wall in the occupied Palestinian territory: A commentary. *Revue Belge de Droit International*, 37, 144ss.

Oeter, S. (2015). The Kosovo case-An unfortunate precedent. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 75, 55-57 and 69.

Orakhelashvili, A. (2011). The International Court's advisory opinion on the UDI in respect of Kosovo: Washing away

the "foam on the tide of time. *Max Planck Yearbook of the United Nations Law*, 15, 79ss.

Orakhelashvili, A. (2015). Undesiderd, yet omnipresent: Jus ad bellum in its relation to other areas of international law. *Journal on the Use of Force and International Law*, 2 (2), 252ss.

Paust, J. (2015). Armed opposition groups. In M. Noortmann, A. Reinisch, C. Ryngaert, *Non-State actors in international law*. Oxford University Press, Oxford, 292s.

Pellet, A. (2014). *The charter of the UN. A commentary*, Oxford University Press, Oxford

Pina, A.D. (2008). Fatah and Hamās: The new Palestinian factional reality. In D.C., Lovelace. *Terrorism: Documents of international and local control, Oxford University Press*, New York, 138ss.

Ruys, T. (2010). *Armed attack" and article 51 of the UN Charter: Evolutions in customary law and practice*. Cambridge University Press, Cambridge, 128ss.

Starski, P. (2015). Right to self-defense, attribution and the non-State actor: Birth of the "unable or unwilling" standard?. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 75, 468ss.

Starski, P. (2017). Silence within the process of normative change and evolution of the prohibition on the use of force: Normative volatility and legislative responsibility. *Journal on the Use of Force and International Law*, 4 (1), 52ss.

Tams, C.J. (2019). Self-defence against non-State actors: Making sense of the "armed attack" requirement. In A. Peters, C. Marxsen. *Self-defence against non-State actors*. Cambridge University Press, Cambridge, 159ss

Tladi, D. (2021). *The extraterritorial use of force against non-State actors. Recueil des cours*, vol. 418, ed. Brill, Boston, 25ss.

Tsagourias, N. (2011). Non-State actors in international peace and security: Non-State actors and the use of force. In J. D'Aspremont. *Participants in the international legal system: Multiple perspectives on non-State actors in international law.* ed. Routledge, London/New York, 326, 331-333.

Vidmar, J. (2017). The use of force as a plea of necessity. *American Journal of International Law-Unbound*, 111, 306ss.

Wilmshurst, E. (2006). The Chatham House principles of international law on the use of force in self-defence. *International and Comparative Law Quarterly*, 55 (4), 972ss.

Wilson, H. (1988). *International law and the use of force by National Liberation Movements.* Oxford University Press, New York, 96-103

Wood, M. (2020). Terrorism and the international law on the use of force. In B. Saul (eds.). *Research handbook on international law and terrorism, Edward Elgar Publisher*, Cheltenham/Northampton, 186ss.

Yau, S.S.M. (2020). The legality of the use of force for self-determination. *The Palestine Yearbook of International Law*, 27 (1), 69-71.

Recibido: 16/01/2024
Aprobado: 22/05/2024